



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Aviation Safety

800 Independence Avenue, SW  
Washington, DC 20591

June 4, 2021

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Mr. Peter J. Bunce  
President and CEO  
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Mr. Jack J. Pelton  
CEO and Chairman of the Board  
Experimental Aircraft Association  
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Dear Messrs. Baker, Bunce and Pelton:

Thank you for your April 19, 2021 letter requesting clarification of FAA policy in light of the April 2, 2021 D.C. Circuit Court of Appeals opinion in *Warbird Adventures, Inc. et al. v. Federal Aviation Administration* (hereinafter *Warbird*). Consistent with your request, the FAA will publish a statement for industry that explains the impact of the decision and provides guidance on how to comply with the regulations. Until that statement is published, I would like to provide the following clarifications regarding flight training in general and flight training for compensation in certain categories of aircraft.

As you know, the requirements for a person exercising the privileges of a pilot certificate or a flight instructor certificate are generally contained in part 61 of Title 14 of the Code of Federal Regulations (14 CFR). These regulations govern what is required to “act as pilot in command,” “serve as a required flightcrew member,” or “conduct flight training in an aircraft.” The regulations in 14 CFR part 91 on the other hand contain operating requirements that govern how the aircraft is operated. The term “operate” is broadly defined in 14 CFR 1.1 as “use, cause to use or authorize to use aircraft, for the purpose (except as provided in section 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).”<sup>1</sup>

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<sup>1</sup> The FAA notes that, as defined, the term “operate” has broader meaning than the general terms used in part 61 that address “acting as pilot in command” or “exercising the privileges” of a particular pilot certificate. A person may be considered to “operate” an aircraft under the § 1.1 definition without serving as a required flightcrew member or manipulating the controls of the aircraft.

Although a person may hold the appropriate privileges “to act as a required crewmember” or “conduct flight training” under part 61, the regulations in part 91 may restrict the exercise of those privileges in a particular category of aircraft under certain conditions, such as operations conducted for compensation or hire.

Under section 91.315, no person may operate a limited category aircraft carrying persons or property for compensation or hire. You suggest that a flight instructor is being compensated for flight training rather than the carriage of persons or property; therefore, the flight instructor has not violated the regulation. Based on the plain language of the regulation, the FAA’s position as represented in a 2014 legal interpretation<sup>2</sup> and in the *Warbird* case was that a flight instructor who is operating (i.e. “using”) a limited category aircraft that is carrying a person (i.e. the person receiving instruction) for compensation (i.e. payment) is acting contrary to the regulation.<sup>3</sup>

You note in your letter that the regulations governing other categories of aircraft (e.g. experimental aircraft and primary category aircraft) include the same language as the prohibition in section § 91.315 and seek clarification how flight training can be provided in these categories aircraft in compliance with the regulations. The prohibitions in sections 91.319 and 91.325 that mirror the language in section 91.315 must be read to have the same meaning.<sup>4</sup> As such, a flight instructor providing flight training in one of these categories of aircraft for compensation is acting contrary to the regulations absent a letter of deviation authority (LODA) or exemption.<sup>5</sup>

We understand your concerns regarding this matter. The FAA appreciates that it is critical for pilots to receive flight training specific to the unique characteristics of the aircraft in which they intend to act as pilot in command or serve as a required flightcrew member.<sup>6</sup> To aid the regulated community in continuing operations with minimal interruption, while also advancing our shared goal of facilitating training—including make/model-specific training—the FAA suggests the following:

- Owners of limited category or primary category aircraft may follow the procedures outlined in 14 CFR part 11 to petition for exemptions from sections 91.315 or 91.325, as appropriate, to allow the owners to pay flight instructors to receive flight training in the owners’ aircraft.

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<sup>2</sup> FAA Legal Interpretation to Gregory Morris (October 7, 2014). The Morris Interpretation concluded, inter alia, that § 91.315 “does not set forth any exceptions for providing flight training for hire in a limited category aircraft” and that “the only way to provide such training is pursuant to an exemption from this section of the regulations” following the procedures of 14 CFR part 11.

<sup>3</sup> The FAA notes that the term “operate” has a different meaning from the term “operational control,” which is defined in § 1.1 as “the exercise of authority over initiating, conducting or terminating a flight.”

<sup>4</sup> There is no part 91 regulation that prohibits flight training for compensation or hire in a standard category aircraft.

<sup>5</sup> The guidance for inspectors on flight training in an experimental aircraft in FAA Order 8900.1 is not consistent with the plain language of § 91.319. FAA Order 8900.1, Vol. 3, Chpt 11, sec. 1, para. 3-292. Where a regulation and guidance conflict, the regulation controls.

<sup>6</sup> While the FAA understands the safety benefits of receiving flight training in the specific make and model of aircraft that the pilot intends to fly, many of the recent flight experience requirements can be accomplished in a standard category aircraft in which the pilot is rated.

- Owners of experimental aircraft may obtain deviation authority from section 91.319(a)(2) in accordance with section 91.319(h) for the purpose of receiving flight training from flight instructors in the owners' aircraft.

The FAA is considering ways to streamline the process for owners of these aircraft to obtain flight training and will provide more information in the upcoming policy statement.

Sincerely,

**ALI  
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Ali Bahrami  
Associate Administrator for Aviation Safety