

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

**Aircraft Owners and Pilots
Association**

For an exemption from §§
61.113(a), 61.113(c) and 119.1
of Title 14, Code of Federal
Regulations

Exemption No. **20885**
Regulatory Docket No. **FAA-2023-1828**

GRANT OF EXEMPTION

By correspondence dated August 17, 2023, Mr. Jim Coon, Senior Vice President of Government Affairs and Advocacy, Aircraft Owners and Pilots Association (AOPA), 601 Pennsylvania Avenue NW, North Building Suite 250, Washington, DC 20004 petitioned the Federal Aviation Administration (FAA) on behalf of private pilots providing humanitarian relief on the Hawaiian island of Maui for an exemption from § 61.113(c) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption would allow private pilots to receive reimbursement for fuel costs incurred while transporting supplies to or within the island of Maui. The FAA has also determined that AOPA would also require an exemption from § 61.113(a) and 119.1 to obtain the relief sought in its petition.

Petition for Exemption

The petitioner requests relief from the following regulations:

Section 61.113(c) prescribes that a private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.

Section 61.113(a) prescribes that, except as provided in paragraphs (b) through (h) of that section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

Section 119.1 prescribes the applicability of part 119 to each person operating or intending to operate civil aircraft as a commercial operator.

The petitioner supports the request with the following information:

AOPA highlights that its members and other private pilots in Hawaii are volunteering their time, aircraft, and expertise to assist with relief efforts following the tragic fire in Maui. AOPA states that the fire has impacted thousands of Maui residents and that local businesses have started a charitable effort to help offset the high cost of fuel used by the volunteer aircraft that have been providing supplies and humanitarian relief.

In support of their petition, AOPA notes that the West Maui Airport has a runway that is only 3,000 feet (ft) long, which makes it difficult for larger aircraft to safely land and depart with supplies. Additionally, the unique geography of Maui naturally limits the availability of other modes of transportation to provide necessary supplies and personnel.

The petitioner further states that aviation gasoline (Avgas) in Hawaii is expensive, and that many pilots are wary of accepting any reimbursement for fear of retribution from Federal regulators, including legal action concerning compensation for fuel used by pilots who are volunteering their time and aircraft to assist the victims of the fire.

Federal Register Notice

The FAA has determined that good cause exists for waiving the requirement for *Federal Register* publication. The FAA has determined that good cause exists because the exemption would not set a precedent and any delay in acting on this petition would be detrimental to the private pilots providing humanitarian relief on the Hawaiian island of Maui during the state of emergency.

The FAA's Analysis

As summarized below, the FAA has granted exemptions for reimbursement for operations involving humans who are in need of medical care (*See for examples*, Exemption Nos. 10009, 10019, and 12627). The FAA has also granted exemptions for reimbursement involving charitable efforts to assist in the migration of whooping cranes and denied an exemption for reimbursement involving transportation of domestic animals for veterinary care.

- Grant of Exemption No. 10009 (Mercy Medical Airlift, Angel Flight Mid-Atlantic, and Airlift Hope of America) and Exemption No. 10019 (Wings of Mercy, Inc.) to transport humans who are in need of medical care to medical facilities.
- Grant of Exemption No. 12627 (Vet Air, Inc.) to allow Vet Air to reimburse its volunteer pilots for fuel costs incurred while conducting charitable flights transporting humans based on Exemption Nos. 10009 and 10019.

- Grant of Exemption Nos. 10429A and 10984 (Operation Migration) to allow persons holding a sport pilot certificate to operate weight-shift-control aircraft certificated under 14 CFR § 21.191(i) for compensation or hire to facilitate the migration of endangered whooping cranes.
- Denial of Exemption No. 10194 (HelpFourPaws, Inc.) that would have allowed for reimbursement of its volunteer pilots for fuel, rental, oil, and/or airport expense costs incurred while conducting flights transporting animals in need of veterinary care, transportation to veterinary facilities, or other animal rescue.
- Grant of Exemption No. 17899¹ (Turtles Fly Too) to allow the transport of endangered sea turtles based on Exemption Nos. 10009, 12627, 10429A and 10984.

The AOPA petition is similar to the Mercy Medical Airlift, Angel Flight, Airlift Hope, and Vet Air petitions, except that AOPA seeks to transport supplies for humanitarian relief instead of transporting humans who require medical care. In the Operation Migration and Turtles Fly Too exemptions, the FAA determined that certain charitable efforts merited exemption when the federal government determined that the operations were in the public interest. In the HelpFourPaws petition, the FAA determined that since the passenger or animal caretaker would dictate the choice of destination for veterinary care, a volunteer pilot receiving pro rata reimbursement of operating expenses would be considered a commercial operation for which a Part 119 operator's certificate would be required. This position was further supported by an FAA legal interpretation to Joseph A. Kirwan dated May 27, 2005, in which the FAA determined that charitable human medical flights that involve point-to-point transportation for which any kind of compensation is received would be considered a commercial operation. Accordingly, the FAA finds that relief is necessary from the applicability of part 119 for these operations. The FAA understands that limited mobility exists on the roadways in West Maui at this point in time; accordingly, other airports on-island such as Kahului Airport which may be able to accommodate larger aircraft and more regular operations from part 119 certificated operators may not be sufficient to serve the needs of the relief efforts. The FAA's understanding of the situation on the ground, as presented by AOPA, is that smaller aircraft used by general aviation pilots are more suited to operations using the shorter runway at the West Maui airport. Additionally, this relief is time-limited in duration and only valid until the end of the month, which makes it unique from other requests for similar relief. The urgent and short-term nature of the relief does not allow the FAA to provide the part 119 certification that would otherwise be necessary for such operations.

While AOPA proposes operations that are distinct from prior exemptions, the FAA has previously found that the charitable efforts of pilots who volunteer their time and piloting services are commendable and has, therefore, allowed some very limited exceptions to Section 61.113(c). These exemptions have generally been limited to situations in which human life and health have been the primary considerations. 14 CFR Part 11 requires a petitioner to demonstrate that relief is sufficiently in the public interest to justify exempting such operations from the regulations. In considering the AOPA petition, the FAA recognizes

¹ This exemption number has since been corrected to Exemption No. 17899, previously Exemption No. 107787. AFS-24-01119-E

that general aviation efforts to provide humanitarian relief after the devastating fires in Maui are a critical component of recovery operations and that private aircraft are an essential mode of transportation throughout Hawaii's archipelago. The FAA believes that granting this exemption supports local, state, and Federal recovery operations on Maui, which is in the public interest. The FAA acknowledges that it denied a similar request for relief to Cowboy State Volunteers in Exemption No. 19686; however, we find that a unique public interest exists in this particular instance because of the remote nature of the island of Maui, combined with the volume of relief efforts necessary and the FAA's understanding of the difficulties of on-the-ground transportation from other airports on the island which may allow for operation of larger aircraft. Additionally, as mentioned previously, this exemption is time-limited, which makes it distinguishable from prior, similar denials.

The relief required by the petitioner for private pilots to be reimbursed for fuel costs requires relief from Section 61.113(c). Because these relief flights may include more than just a single pilot onboard, the petitioner also requires relief from Section 61.113(a) as the flights may include a second pilot or another volunteer traveling with the supplies to and from the recovery efforts.

The FAA notes that the conditions and limitations prescribed for the petitioner are similar to conditions and limitations previously issued for charitable medical flights for humans, but have been tailored below to the specific situation currently facing the private pilots providing humanitarian relief on the Hawaiian island of Maui. The combined conditions and limitations regarding requirements such as those for pilot qualifications, flight and duty requirements, along with the limited duration and location of this exemption, the FAA finds no adverse impact on safety by providing regulatory relief for pilots to receive reimbursement for fuel costs.

The FAA's Decision

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 106(f), 40113, and 44701, delegated to me by the Administrator, I hereby grant private pilots, who are providing humanitarian relief, operating to and within Maui an exemption from 14 CFR §§ 61.113(a), 61.113(c), and 119.1 to the extent necessary to allow those private pilots to receive reimbursement for fuel costs incurred while transporting humanitarian relief supplies, subject to the conditions and limitations listed below.

Conditions and Limitations

1. This exemption may be exercised only by pilots operating to, from, or within the island of Maui for the purpose of providing humanitarian relief on the Hawaiian island of Maui during the state of emergency.
2. Any pilot exercising the privileges of this exemption must ensure the following items are available to any representative of the FAA Administrator, upon request—

Documentation of each flight and reimbursement containing the following information, at a minimum:

- i. Name and pilot certificate number of the pilot in command (PIC);
 - ii. Name and identifier of the departure and arrival airports;
 - iii. Names of all occupants of the airplane excluding the PIC (if any);
 - iv. Date and time of departure and arrival; and
 - v. Amount of the fuel reimbursement.
3. All the documentation required under Condition and Limitation No. 2 must be maintained by the pilot for a minimum of 24 calendar months after the funds are provided to a pilot and items 2.i-v., except for pilot certificate number, must be submitted to the docket for this exemption within a month of acceptance of such funds.
 4. Each flight is made during VFR conditions.
 5. All pilots operating under the terms of this exemption must possess the following certificates, qualifications and aeronautical experience —
 - a. At least a private pilot certificate that is appropriate to the aircraft being flown;
 - b. A current flight review (per § 61.56(a)) in the same aircraft category, class, and type (if a type rating is required) being flown;
 - c. For all night operations under this exemption, the pilot must meet the recent flight experience requirements for night operations (per § 61.57 (b)) in an aircraft of the same category, class, and type (if a type rating is required).
 6. No pilot may fly more than 8 hours of flight time, as defined in 14 CFR part 1, Section 1.1, within any 24-consecutive-hour duty day period. A duty day starts when the pilot arrives at the airport and begins preparation for the flight and terminates upon completion of the post flight inspection of the aircraft.
 7. Prior to each takeoff, the PIC must ensure that any additional pilot and any passenger, if carried, have been orally briefed on the following—
 - a. The flight is being permitted under this grant of exemption and that the operator is not a certificated commercial operator;
 - b. No smoking is permitted;
 - c. Use of safety belts and shoulder harness. When, where, and under what conditions it is necessary to fasten safety belts and, if installed, shoulder harnesses;
 - d. The placement of seat backs in an upright position before takeoff and landing;
 - e. Location and means for opening the passenger entry door and emergency exits;
 - f. Location of survival equipment;

- g. Use of normal and emergency oxygen, if installed; and
- h. Location and operation of fire extinguishers.

An FAA sample briefing document can be found in the July/August 2014 edition of the FAA Safety Briefing Magazine, located online at:

<https://www.faa.gov/newsroom/safety-briefing/faa-safety-briefing-julyaugust-2014>

- 8. Each aircraft operated under this exemption must have a standard airworthiness certificate and comply with all other parts of 14 CFR Part 91.
- 9. The aircraft must be maintained and inspected in accordance with 14 CFR Part 91, Subpart E, 14 CFR Part 43, or other inspection programs approved by the FAA.
- 10. All pilots operating under this exemption must utilize and brief the passenger(s), if onboard, about sterile cockpit procedures as defined under Section 135.100.
- 11. The privileges of this exemption may be exercised only for flights to, from, or within the island of Maui, Hawaii. This exemption is not valid for operations in airspace outside of the control of the United States.
- 12. The FAA may, at any time or place, conduct inspections of the pilots, aircraft, and any records required to be kept in accordance with this exemption.

This exemption terminates on August 31, 2023, unless sooner superseded or rescinded.

Issued in Washington, D.C., on August 17, 2023.

//signed//

David Boulter
Acting Associate Administrator
Aviation Safety