

FLIGHT-WATCH

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CAN AN AIRSHOW PERFORMER FLYING AN EXPERIMENTAL AIRCRAFT PROVIDE MEDIA RIDES AS PART OF HIS APPEARANCE FEE?

I.

The Accepted Industry Practice

For many years, it has been an accepted industry practice for pilots of experimental aircraft (especially warbirds) to provide one or more media flights to members of the press as part of the airshow appearance package. If the pilot of an experimental aircraft is going to provide a media ride, based upon the FAA's position on this matter, it appears that this must not be part of the airshow appearance contract. The airshow pilot must bear the full costs of providing the flight, including the fuel and oil. The airshow pilot must not benefit from the flight nor should the sponsor of the airshow benefit from the flight. Again, the act of providing a media ride must not be included as part of the terms and provisions of an airshow appearance contract. The reasons for these conclusions will be discussed in the remainder of this article.

II.

A REVIEW OF FAR §91.319

14 C.F.R. §91.319 provides, in part:

- (a) No person may operate an aircraft that has an experimental certificate
 - (2) carrying persons or property for compensation or hire

On its face, the regulation appears to be fairly straight forward. The question becomes whether an airshow pilot providing a media ride to a person is providing the ride “for compensation or hire.”

FAA Interpretation 1997-15 was written by Donald Byrne, Esq., Assistant Chief Counsel for the FAA, and dated July 30, 1997 (“the interpretation”). In the interpretation, Byrne quoted specifically from §91.319 and then noted that the first question is not whether there has been compensation to the pilot, but whether the airworthiness certificate of the aircraft prohibits the carriage of persons who are not required for the flight. Accordingly, any airshow pilot contemplating providing a ride to a person at an airshow must satisfy himself that the airworthiness certificate does not prohibit the carriage of persons who are not required for the flight. Assuming the airworthiness certificate does not prohibit the carriage of persons on a flight, then the question becomes under what circumstances would a media ride at an air show constitute compensation to the pilot/airshow performer. However, Mr. Byrne noted in the interpretation that if the airshow sponsor provides fuel and oil used during the media ride, then that would constitute compensation to the pilot. Additionally, the letter of inquiry to the FAA declared that the airshow performer would not receive any individual benefit by providing the media ride. Mr. Byrne, on behalf of the FAA, observed that if the airshow promoter received some benefit, such as publicity, then that would constitute compensation to the airshow promoter.

The interpretation written by Mr. Byrne also notes that if a pilot is compensated for fuel and oil and is logging flight time that could be considered compensation. However, Mr. Byrne went on to write:

However, if the airshow performer bears full costs, including for fuel and oil, for the media rides, logging flight would not be a problem.

In the letter of inquiry to the FAA, the representation was made that the price of the appearance for the airshow performer would be the same whether any media rides were given or not. However, the FAA took the position that if the media ride was part of the performance package and compensation to the airshow performer, then that would be compensation under the contract in violation of §91.319 of the Federal Aviation Regulations. The interpretation concluded with these comments:

The parties to the contract can avoid a violation of 14 CFR §91.319 by removing from the contract any terms relating to the provision of media/public relations rides. Of course, you should understand that any agreement outside the contract between the airshow promoter and the airshow performer, or anyone else, to provide media/public relations rides in return for compensation of any kind is prohibited under 14 CFR §91.319. It is the receipt of compensation, not the source of the compensation that results in a violation of the regulation.



III.

What Is A Pilot To Make of The Letter of Interpretation?

As we reflect on the statements made by counsel for the Administrator in the letter of interpretation, it seems that the following points should be considered:

1. First, there must be no provision for a media ride in the appearance contract of the airshow performer.
2. Secondly, the airshow performer/pilot must pay for the ride himself, including all of the expenses such as fuel, oil and lubricants. The FAA did say that if the airshow performer bears the full cost of the flight, then logging flight time would not be a problem since it would not trigger the flying for compensation element of §91.319.
3. Even if there is no written provision in the appearance contract for the airshow pilot to provide a media ride as a condition of his appearance, if there is an outside (oral) agreement for the airshow pilot to provide a media ride, this oral contract or understanding outside the written contract could constitute compensation and, therefore, a violation of §91.319.
4. Neither the airshow promoter, sponsor nor the pilot should receive compensation as a consequence of the flight.
5. The language in the interpretation suggests the media ride must be a spontaneous event paid for by the pilot with no benefit to the airshow promoter nor to the pilot which defies the very purpose of media rides in the airshow industry, i.e. to promote the airshow.

6. If an airshow pilot gratuitously provides a flight to a person at an airshow at his own expense with no benefit to the pilot nor to the airshow, and with no side agreement that this would be done, then the term “media ride” should be discouraged in the industry. Instead, it should be a voluntary, gratuitous ride provided by the pilot on a spontaneous basis.

IV.

Conclusion

If airshow pilots who fly experimental aircraft are satisfied that the aircraft can be operated with a passenger aboard without violating the aircraft’s airworthiness certificate, then a gratuitous, spontaneous flight of a person at an airshow would not be a violation of FAR §91.319 if the pilot pays the cost of the flight, if the pilot receives no benefit from the flight, if the airshow promoter receives no benefit from the flight, and if there is no written or oral agreement between the pilot and airshow sponsor to provide a flight to a person. While it has been common practice over the years to provide “media rides” and bill the cost of the rides into the appearance fee of an airshow performer, if the aircraft is an experimental aircraft, then caution should be exercised in structuring the airshow performance contract. There should be no discussions concerning “media rides” where experimental aircraft are concerned. While it would be theoretically possible to seek an exemption from the regulation so that media rides could be accomplished in experimental aircraft, given the FAA’s moratorium on living history flights, this does not appear to be a successful option at this time.

In summary, pilots who fly experimental aircraft at airshows should exercise caution and understand that they cannot provide “media flights” to passengers if those flights are part of the performance package, or if they benefit either the pilot or the airshow promoter. The flights must be gratuitous, spontaneous and at the expense of the airshow pilot.

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