

RE: EXEMPTION No. 6540I
Regulatory Docket No. FAA-2001-11089

Chester D. Dalbey, Acting Director
Flight Standards Service
Federal Aviation Administration
800 Independence Avenue, S.W.
Washington, DC 20591

**APPLICATION FOR PARTIAL RECONSIDERATION
OF AUGUST 28, 2009 EXEMPTION LETTER**

Dear Acting Director Dalbey,

By letter you authored on August 28, 2009 the FAA denied in part a petition of The Collings Foundation (“TCF”) regarding its request to include a McDonnell Douglas F-4 Phantom, McDonnell Douglas TA-4J Skyhawk, Classic Fighter Me-262 and Fiesler Co. Fi-156 on its Exemption No. 6540I.

In all other respects the petition was allowed subject to the conditions and limitations more particularly detailed in your letter (App: 1-4)(Hereinafter, “App.” is in reference to the companion 240 page **Appendix to a Request for Reconsideration on Behalf of The Collings Foundation**).

TCF respectfully requests that you reconsider that denial on a substantive basis and also requests an expedited reconsideration on a procedural basis in contemplation of 14 CFR 11.101 [a] TCF has significant additional facts, [b] the FAA made several important factual errors, together with the contention that [c] the FAA did not correctly interpret and apply a law, regulation, or precedent.

TCF’s positions may be fairly summarized as follows:

**A. THE Me-262 AND Fi-156 ARE HISTORICALLY SIGNIFICANT
IN THE CONTEXT OF U.S. AERONAUTICAL HISTORY**

THE AGENCY’S ANALYSIS

The FAA's current policy and standard of review for issuance of "Exemptions for Passenger Carrying Operations for Compensation and Hire in Other than Standard Category Aircraft" are set forth at 72 FR No. 194, p. 57196 (10/09/07)(hereinafter, the "Policy"). In denying the addition of these two particular aircraft, you concluded that "in the context of U.S. aeronautical history" neither the Fi-156 Storch nor the Me-262 satisfied "the policy requirement of being a historically significant aircraft."

TCF RESPONSE

[a] The FAA made factual errors and did not correctly interpret current FAA objectives. The Fi-156 Storch and Me-262 denial by the FAA was arbitrary and contrary to its Policy:

3. An aircraft that was not made by a U.S. manufacturer may be considered for an exemption if the operational and maintenance history is adequately documented (72 FR 57197).

[b] The operational and maintenance history of both aircraft are fully documented.

[c] Nowhere in the Policy does it state a requirement that the aircraft must be "*historically significant in the context to U.S. aeronautical history*" as stated in the August 28th decision. Furthermore, the Policy acknowledges in its first sentence that "The FAA recognizes the need for and seeks to promote an exposure to and appreciation of aviation history"- not U.S. aeronautical history. In this regard the Policy further states:

10. Applicants may be required to submit an operational history of the make/model/type aircraft, or justification with respect to aviation history in order for the FAA to determine the public interest basis for granting an exemption (72 FR 57197).

[d] During the application process TCF repeatedly asked if any additional information was needed by the FAA to grant the exemption, but none was ever requested.

[e] By way of background, the FAA had previously stated the source and origins of the exemptions were originally intended for large, crew served, piston-powered, multiengine, World War II (WWII) bomber carrying passengers for the purpose of preserving U.S. military aviation history. That is not the current policy as many exemptions include small, not large single engine, not multiengine, non-WWII, non-Bomber aircraft that were not even used by the U.S. military. Currently an exemption letter is issued to a Replica

Ryan NYP and a Replica Wright B Flyer. Both are amateur built and have no correlation to the FAA policy of 1996, but are appropriate under the policy of 2007.

[f] It is a factual error to say the Fi-156 and the Me-262 are not historically significant and important in aviation history. The Fi-156 was the first (in the world) and most advanced STOL aircraft during WWII. The Fi-156 has significant WWII history. The Fi-156 was used during WWII to rescue Benito Mussolini, the Fascist Italian leader, from a mountaintop where he was held by allied troops. This represents the only time in history where an aircraft was used in such a role! The National Museum of the United States Air Force in Dayton, Ohio, features a Fi-156 Storch as one of the few foreign aircraft on display. Other “reconnaissance” aircraft currently hold exemption letters. The CAF’s exemption 6802F includes an Aeronca L-3 (commonly known as an Aeronca Champ) and other aircraft that arguably have less aviation historical significance than the Fi-156. A “Google” search of the Fi-156 in demonstration that it is historically significant will yield 3,650,000 results. The Aeronca L-4, an exemption letter holding aircraft, does not exceed 11,600 results.

[g] The fact the Me-262 is a replica is not even relevant *nor a correct* interpretation as the Policy states:

1. Aircraft holding any category of airworthiness certificate issued under 14 CFR part 21 may be considered for an exemption to provide living history flight experiences (72 FR 57197).

[h] Additional Facts: There are aircraft that are “replicas” or amateur built that currently hold an exemption letter for rides. A Ryan NYP “Spirit of St. Louis” with the EAA and Wright B Model were cited as eligible at 72 FR 57196.

[i] Additional Facts: The Me-262 is the world’s first operational jet fighter. Many feel that had the Me-262 been more rushed into production as a fighter the war would have been severely prolonged. That is historically significant. The DNA in the Me-262 is directly visible in most jet transport category aircraft today. Swept wings, leading edge slats, and podded axial flow jet engines are all innovations pioneered by the Me-262 that allowed the U.S. to develop the aircraft we have today. Werner Von Braun and the German rocket program helped put an American on the moon--- the Me-262 was that significant for U.S. jet development. During and after WWII the U.S. Army Air Forces and the USN flew a significant number of captured Me-262s and used that technology transfer to create the first generation of post WWII swept wing fighters, such as, for example, the legendary F-86 Saber.

A static Me-262 is on display at the National Air and Space Museum (Smithsonian) at the mall in Washington D.C. highlighting the first operational jet fighter along with the Original Wright Flyer (the first powered aircraft), the Spirit of St. Louis (first aircraft to fly across the Atlantic), the Bell X-1 (first aircraft to break the speed of sound) and the Apollo 11 Capsule (first man to land on the moon). To be a connoisseur of the obvious, these aircraft are of extraordinary historical significance.

The National Museum of the USAF has a Me-262 on display in the same hall with the B-17, B-24 and the B-29 that dropped the second atomic bomb. The History Channel's program of the "10 best fighter aircraft ever" features the Me-262. The Me-262 is simply one of the most historic aircraft ever built by any reasonable standard. When one conducts a "Google" search regarding the Me-262 there is much to review with the 22,400,000 results. By comparison, President Lincoln returns 8,640,000 results and the FAA totals 13,400,000. The Me-262 (NX262AZ) is the only flyable example in the U.S. Contrast this to FAA Exemption Letter 6802 issued to the CAF with 26 aircraft including a Beech C-45 (Beech 18) of which there are: 373 C-45's and 731 Beech 18's registered in the U.S. No matter what the criteria applied for historical significance is, the Me-262 exceeds it.

B. SAFETY CONCERNS REGARDING THE F-4 AND THE TA-4J HAVE BEEN ADEQUATELY ADDRESSED

THE AGENCY'S ANALYSIS

You denied the addition of a McDonnell Douglas F-4 Phantom and TA-4J to TCF's exemption because of expressed concern "that has not been adequately addressed" regarding the aircrafts' ejection systems. Although agreeing with the proposition that the subject aircraft were historically significant, you specifically determined that

...the FAA must consider that permitting the public to experience flights in an aircraft that while in U.S. military service required the installation of an ejection seat raises a safety concern that has not been adequately addressed. Until the petitioner provides sufficient information on the means by which it ensures an equivalent level of safety, the FAA will not grant an exemption authorizing operations with (the subject aircraft). Therefore, the petitioner's request to include the (subject aircraft) in this exemption is denied (App: 2).

TCF RESPONSE

[j] The F-4 and TA-4 were denied for having ejection seats. Egress systems are addressed in the Policy:

4) Aircraft with crew egress systems will be considered, provided that flight crew, ground personnel, and passengers have completed a training program approved by the FAA. Passenger training programs must be at least as thorough as what is provided by the manufacturer or military service user when preparing an individual for a "familiarization" flight (72 FR 57197).

[k] The FAA has stated its reluctance to approve for exemption aircraft equipped with ejection seats. This understandable concern has arisen in the context of applicant aircraft of foreign manufacture. The Policy notes this background:

.... (The) (L-29, L-39, TS-11 Alfa Jet, etc) remain in active military service or are readily available in the current international market. The availability of these aircraft is indicative of an increasing market and thus undermines any argument that this aircraft meets the public interest goal of preserving unique, historical aircraft. Additionally, the FAA was concerned that petitioners could not demonstrate that these aircraft had been adequately maintained. Unlike foreign manufactured military surplus aircraft, operators of U.S.- manufactured surplus military aircraft certified in an airworthiness category [experimental, limited and restricted category under 21.25(a)(2)] for which no common standards exist, were required to avoid potential safety issues through (1) the continued operation and maintenance requirements imposed on them, and (2) a requirement to provide adequate documentation of previous maintenance history (72 FR 57196)

[l] The above reference ignores the significant impact of end user agreements associated with these aircraft that eliminate a market for them. TCF is operating only U.S. manufactured turbojet and egress equipped aircraft. Furthermore, there is currently only one F-4 Phantom and one TA-4 Skyhawk operating in the Experimental / Exhibition category, unlike the 162 L-39's and 127 L-29's that are currently registered.

[m] Additional Facts: TCF maintains the egress systems to the manufacturers' and military's standard and has an FAA approved maintenance program, inspection sheets and 100 hr inspection. TCF receives updated technical orders (T.O.) directly from the USAF logistical library for the F-4. The updates for the TA-4 are the most recent in the USN library. TCF works directly with Martin-Baker, the manufacturer of the F-4 ejection seat, and Indian Head, the USN's facility for the ejection seat components for the TA-4 CAD/PADS and technical support. All of TCF's CAD/PADS and life-limited parts are tracked to maintain that they are current. The parachutes are maintained and repacked as per 91.307 (a)(1) by a USAF trained and FAA certified master rigger. TCF has access to Military trained egress personnel for major inspections. TCF conducts initial as well as recurrent training for maintenance personnel by USAF and USN trained egress personnel.

[n] Additional Facts: TCF has a seat training program already approved by the Houston FSDO for "familiarization" flights. The TCF also has an FAA approved LODA for flight training, which incorporates seat training. TCF has successfully maintained and operated aircraft with ejection seats for 10 years, the maintenance, training and "familiarization" flight programs are USAF or USN programs that have been fully adopted

by TCF. All of our flight crews undergo initial training and recurrent training on the egress systems. TCF offers an “*equivalent level of safety*,” as cited by the FAA analysis (App: 2), to military programs for “familiarization” flights, like the program that the USAF Thunderbirds use.

[o] The egress systems and the training that TCF conducts for a passenger offers an enhanced “*equivalent level of safety*” above requirements currently imposed by Exemptions from 91.319, 91.315, 119.5 and 119.21. The documentation within the companion **Appendix** includes:

1. FAA approved Maintenance Program of Egress System Maintenance (F-4 and TA-4) (App: 152-188; 201-227)
2. FAA approved Egress Maintenance Sign Off Sheets (F-4 and TA-4)(App: Sections 7 and 8)
3. FAA approved 100hr Egress Inspection (F-4 and TA-4)(App: Sections 7 and 8)
4. FAA approved Experimental Training Program covering Egress Systems and Egress System Training Syllabus (F-4 and TA-4) (App: 42-80; 81-132)
5. FAA approved Letter of Deviation Authority (LODA) (F-4 and TA-4) (App: 133-148)
6. TCF’s F-4 and TA-4 Operational History Background (App: 10)

These documents were not originally included in their entirety because the FAA policy did not require that they be part of the core petition. An “equivalent” level of safety had to be affirmatively demonstrated of course, but since there were prior approvals of record by the Agency on these identical issues, TCF incorrectly assumed the FAA would have seen that TCF meets---and has met---the Policy’s (par. J, above) requirements.

[p] Additional Facts: Precedent of Exemption Letter denial history. Prior to the adoption of the current Policy, exemptions from 91.319, 91.315, 119.5, and 119.21 were denied to several organizations. The denials were the result of the fact that the applicant aircraft did not meet the then existing FAA criteria that required them to:

1. Be a former, U.S. military, WWII or earlier vintage airplane;
2. Be piston-powered
3. Either be designed as a crew-served airplane or multiple-seat airplane with more than one pilot seat; or

4. Be a replica of the vintage that is so unique as to warrant further consideration
5. Have been manufactured on or before December 31, 1947

Denied aircraft were not only jets, but also WWII fighter aircraft. After the Policy's approval, no aircraft have been denied an Exemption from 91.319, 91.315, 119.5, and 119.21, according to the information at: aes.faa.gov. In fact the Indiana Aviation Museum (IAM) was denied an Exemption for their WWII and post WWII fighters in 2004. IAM was later granted an Exemption after the 2007 rule change for their WWII and post WWII fighters. All of the jet operator/petitioners, aside of TCF, that were denied prior to 2007 would not be eligible today since they do not meet the stated purpose clause of Federal Register/ Vol 72 No. 194

By enabling non-profit organizations, identified as such by the U.S. Department of Treasury, to offer living history flights for compensation used to preserve and maintain these aircraft, the public will be assured access to this important part of history (72 FR 57197).

Petitioners like Red Knight Airshows (T-33) and Gustl Spreng Enterprises (Mig-15UTI, L-29 and L-39) would still not be eligible for an Exemption since they are not Non-Profit organizations. There is no precedent for the present denial subsequent to the Policy adoption in 72 FR No. 194.

[q] TCF called the FAA at least every other week to check on the Exemption request and specifically asked if there is any more information needed to make a decision. The answer was always, in words or substance of words, "no, everything is fine."

Notwithstanding this history, you took the position that "Until the petitioner provides sufficient information on the means by which it ensures an equivalent level of safety, the FAA will not grant an exemption" (App: 2). The inconvenient contrary facts to this determination are that TCF has provided an FAA approved training program, TCF maintains the seats to the same specification as the military and TCF has operated successfully for 10 years.

For the above reasons, TCF respectfully asserts that it meets or exceeds all of the criteria in the Policy for all four of the aircraft contemplated by this request for reconsideration. The conclusion is compelled that you reconsider your denial and grant TCF an addition to the exemption letter 6540I for the Fi-156, Me-262, F-4 Phantom, and A-4 Skyhawk per established FAA Policy.

Very truly yours

Rob Collings
Executive Director
The Collings Foundation