Exemption No. 2776

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C. 20591

In the matter of the petition of GESCHWENDER AEROMOTIVE, INC., for an exemption from Sections 21.191 and 91.42(a) or 21.25(a)(1) and 23.903(a) of the Federal Aviation Regulations	Regulatory Docket No. 18946

DENIAL OF EXEMPTION

By letter dated December 13, 1978, Mr. James L. Sedgwick on behalf of Geschwender Aeromotive, Inc., Building 978, Lincoln Air Park West, Lincoln, Nebraska 68524, petitioned for an exemption from certain Federal Aviation Regulations (FAR) to the extent necessary to permit aircraft equipped with uncertificated engines to engage in agricultural operations either under an experimental certificate without the prohibition against conducting operations for compensation or hire, or under a restricted category type certificate.

The petitioner, in effect, has requested exemption from Section 21.191, which specifies the purposes for which experimental certificates are issued, and Section 91.42(a)(2), which provides, in pertinent part, that no person may operate an aircraft that has an experimental certificate carrying persons or property for compensation or hire. Alternatively, the petitioner seeks exemption from Section 21.25(a)(1), which provides, in pertinent part, that an applicant is entitled to a type certificate for an aircraft in the restricted category for special purpose operations if the aircraft meets the airworthiness requirements of an aircraft category except those requirements that the Administrator finds inappropriate for the special purpose for which the aircraft is intended, and from Section 23.903(a), which specifies that each engine must be type certificated under Part 33.

FS-79-236-E

In support of its request, the petitioner states that it is a Nebraska-domiciled corporation engaged in the manufacture of liquid-cooled V-8 aircraft engines. Recently, petitioner produced a 460-cubic-inch displacement (CID) engine producing 430 horsepower (HP) and a 351 CID engine producing 330 hp. The 430 hp engine has been installed in a Piper Model PA-36-285, Pawnee Brave. The 330 hp engine has been installed in a Cessna Model A-188B, Ag Truck. Petitioner will soon complete the manufacture of a 460 CID engine producing 600 hp, which it intends to install in a Grumman Model G-164, Ag Cat. Petitioner's request covers the three named aircraft and ten additional, unidentified aircraft in which its engines will be installed.

On November 7, 1978, the petitioner applied for a type certificate for a normally inspirated (nonsupercharged) 460 CID ? engine. According to the petitioner, similar applications are anticipated for the 351 CID and the 460 CID turbosupercharged engines.

The petitioner asserts that safety would not be adversely affected because of the nature of the operations, the terrain to be overflown, and the qualifications of the pilots. Furthermore, petitioner contends that it would be in the public interest to grant the petition because air-cooled piston engines have proven themselves to be unsatisfactory, especially in the ranges over 300 horsepower, mainly because of the cost of upkeep and their proven record of unreliability. The petitioner claims that everyone is aware that turbine engines remain too costly. Geschwender contends that it is in everyone's best interest that it be permitted to sell the engines it has produced to date and, in addition, to be permitted to produce and sell a limited number of engines that can be used in agricultural spray aircraft. It alleges that there are no alternatives currently available to the agricultural spray industry. Finally, the petitioner contends that the hundreds of home-built (amateur) aircraft that are being flown and the specially-built acrobatic airplanes that put on shows all over the country establish a precedent for certification and sale of its airplanes.

The petitioner's attempted comparison with amateur-built aircraft and fully certificated acrobatic aircraft bears no relevancy to the type certification program that is necessary for petitioner's contemplated venture. Neither does the petition disclose anything unique in the petitioner's circumstances to justify a grant of exemption that would not be available to other similarly situated developers of aircraft engines. A grant of exemption in this one case for the reasons given would make such a procedure available to any person who, for personal reasons, did not wish to comply with the minimum safety standards of the regulations. Thus, it would tend to subvert the regulatory scheme of the Federal Aviation Regulations for assuring aircraft safety.

The unsupported assertions as to pilot fatigue caused by aircraft vibrations, or the existence of exceptional piloting skill, are not considerations to justify bypassing the existing requirements for issuance of aircraft or engine type certificates. The safety aspects enumerated by the petitioner must be considered in connection with all agricultural operations and the regulations reflecting the limitations and restrictions necessarily imposed on such operations. Likewise, the nonavailability of satisfactory air-cooled engines does not justify the use of petitioner's noncertificated water-cooled engines as replacements for fully certificated engines.

While the petitioner does show it has initiated applications for type certificates, the principal reason advanced for not continuing and completing the certification procedure appears to be the petitioner's financial condition. However, financial hardship is not a reason for circumventing the safety requirements of the Federal Aviation Regulations. In this connection, the petition does not satisfactorily explain why an exemption would not adversely affect safety or why it would provide a level of safety equal to that provided by the regulations from which exemption is sought.

In consideration of the foregoing, I find that granting the exemption requested by the petitioner would not be in the public interest. Therefore, pursuant to the authority contained in Sections 313(a) and 601(c) of the Federal Act of 1958, delegated to me by the Administrator (14 CFR 11.53), the petition of Geschwender Aeromotive, Inc., for an exemption from either Sections 21.191 and 91.42(a) or Sections 21.25(a)(1) and 23.903(a) of the Federal Aviation Regulations is hereby denied.

/s/ James M. Vines
Acting Director
Flight Standards Service

Issued in Washington, D.C., on
July 6, 1979.