

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 1, 11, and 121**

[Docket No. 28060; Amdt. No. 1-39, 11-38; SFAR 38-2]

RIN 2120-AF59

**Public Aircraft Definition and Exemption Authority**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

**SUMMARY:** This rule amends the Federal Aviation Regulations to reflect statutory changes in the definition of public aircraft and the FAA Administrator's new authority to grant exemptions from statutory requirements, under certain conditions, to units of Federal, state, and local government for operations of government-owned aircraft. This rule is necessary to implement the Airport and Airway Improvement Act Amendments of 1987 and Independent Safety Board Act Amendments of 1994.

**DATES:** This final rule is effective April 23, 1995. Comments must be submitted on or before February 24, 1995.

**ADDRESSES:** Send comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-200), Docket No. 28060, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** David Catey, (AFS-220), (202) 267-8094, 800 Independence Avenue SW., Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** On December 30, 1987, and October 25, 1994, the President signed into law the Airport and Airway Improvement Act Amendments of 1987 and the Independent Safety Board Act Amendments of 1994, respectively, each of which changed the statutory definition of the term "public aircraft." Public aircraft are exempt from many FAA regulations.

Under the 1987 Amendment, an aircraft leased by a government, other than the Federal Government, remains a civil aircraft unless the lease is exclusively for the use of that government for not less than 90 continuous days. Under the 1994 Amendments, many aircraft previously considered public aircraft will be subject to FAA safety regulations on the effective date of those amendments. For example, when the change in the definition enacted by the 1994

Amendment becomes effective, government-owned aircraft used to transport passengers will, except in limited circumstances, no longer be considered public aircraft. Therefore, the operators of such aircraft will have to meet civil aircraft requirements, including those for certification, maintenance, and training, unless they qualify for narrowly defined exemptions. Aircraft operated by the Armed Forces and intelligence agencies, however, will retain their public aircraft status unless operated for a commercial purpose.

Although the 1994 Amendment gives the FAA Administrator certain authority to grant exemptions to "units of government" from the statutory requirements applicable to civil aircraft, the agency expects to invoke that exemption authority only when the public interest clearly demands it. To obtain an exemption under the statute, a unit of government must show that granting the exemption is necessary "to prevent an undue economic burden on the unit of government," and that the aviation safety program of the unit of government is "effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government." In acting on any exemption request the FAA will assess the safety of the operation in question. The FAA is developing guidance in the form of an advisory circular for use in this process. It should be noted that, it is unlikely that the FAA will be able to grant exemptions from type certification and airworthiness requirements for aircraft that have no history of civil certification.

In a notice published in the **Federal Register** on August 1, 1994, (59 FR 39192) the FAA invited comment on the question whether intergovernmental reimbursement for the use of government-owned aircraft prevents the aircraft involved from meeting the definition of public aircraft and, therefore, requires compliance with all safety regulations applicable to civil aircraft. That issue has been clarified by the 1994 Amendment, and the FAA will not be taking further action on that Notice.

As to whether public aircraft status is lost when one government reimburses another for the use of its aircraft, under the 1994 Amendment, if there is cost reimbursement, the aircraft will be civil aircraft unless the appropriate unit of government certifies "that the operation was necessary to respond to a significant and imminent threat to life or property," and "that no service by a private operator was reasonably available to meet the threat."

To implement both the 1987 and 1994 Amendments, this rule amends the definition of "public aircraft" in 14 CFR part 1. This rule also amends 14 CFR part 11 to reflect the Administrator's new statutory exemption authority concerning government-owned aircraft. While the Administrator's exemption authority in the past has been limited to exemptions from rules rather than from statutes, in this case Congress granted the Administrator the authority to grant exemptions from the statute—specifically, "from any requirement of part A of subtitle VII of title 49, United States Code." Pub. L. 103-411. As a result, this rule modifies Section 11.25(b)(3) to include exemptions, for government-owned aircraft only, from statutes as well as from rules.

One final conforming change to the regulations is in the applicability section of SFAR No. 38-2, entitled "Certification and Operating Requirements." In its present form, the applicability section provides that: "This Special Federal Aviation Regulation applies to persons conducting commercial passenger operations, cargo operations, or both \* \* \*." This rule adds the words "operating civil aircraft in" to the applicability statement. The new law permits some public aircraft operations for which compensation is received. This change is necessary to assure that regulations intended only for application to civil aircraft are not inadvertently applied to public aircraft when public aircraft are permitted to be operated for compensation or hire.

**Good Cause for Immediate Adoption**

The FAA finds that notice and public comment on this rulemaking are unnecessary. This final rule is intended merely to conform the regulations to the statute. It is, in essence, a technical amendment that involves no exercise of agency discretion. The FAA is simply changing the rules to reflect, as closely as possible, the new statutory language. As a result, the agency for good cause finds that "notice and public procedure thereon" are unnecessary with the meaning of 5 U.S.C. 553(b)(B) of the Administrative Procedure Act. Individuals will have an opportunity to submit comments concerning this final rule by February 24, 1995.

**Economic and Other Analyses**

This amendment merely conforms FAA rules to the 1987 and 1994 Amendments to the law. Federal regulations must conform to the law, therefore the FAA has no discretionary power in this matter. Consequently, a Regulatory Evaluation of the costs and

benefits of this change would serve no useful purpose and none was prepared. While meeting these new requirements may result in costs to units of government, including the FAA, these costs are a result of the law and not the regulation. The law does give the FAA Administrator discretionary authority to grant exemptions from certain statutory requirements when the existing safety program of the unit of government is effective to ensure safe operations and conformance with federal regulations pertaining to civil aircraft would constitute "an undue economic burden" as previously discussed. Economic considerations will be evaluated by the FAA on a case-by-case basis at the time exemptions are requested.

For the same reason explained above, the other analyses and determinations normally made a part of rulemaking procedures are determined to be unnecessary in this case and are not included in this document: an analysis of whether there is a significant economic impact on a substantial number of small entities, an international trade impact assessment, a federalism assessment.

**Paperwork Reduction Act**

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

**Conclusion**

For the reasons discussed in the preamble the FAA has determined that this final rule is not significant under Executive Order 12866 or DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

**List of Subjects**

*14 CFR Part 1*

Air transportation, Public aircraft.

*14 CFR Part 11*

Administrative practice and procedure, Reporting and recordkeeping requirements, Exemptions.

*14 CFR Part 121*

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

**The Amendment**

Accordingly, 14 CFR parts 1, 11, and 121 are amended as follows:

**PART 1—[AMENDED]**

1. The authority citation for Part 1 continues to read as follows:

**Authority:** 49 U.S.C. app. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g).

2. Section 1.1 is amended by revising the definition of "Public aircraft" to read as follows:

**§ 1.1 General definitions.**

*Public aircraft* means an aircraft used only for the United States Government, or owned and operated (except for commercial purposes), or exclusively leased for at least 90 continuous days, by a government (except the United States Government), including a State, the District of Columbia, or a territory or possession of the United States, or political subdivision of that government; but does not include a government-owned aircraft transporting property for commercial purposes, or transporting passengers other than transporting (for other than commercial purposes) crewmembers or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance of, a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management; or transporting (for other than commercial purposes) persons aboard the aircraft if the aircraft is operated by the Armed Forces or an intelligence agency of the United States. An aircraft described in the preceding sentence shall, notwithstanding any limitation relating to use of the aircraft for commercial purposes, be considered to be a public aircraft for the purposes of this Chapter without regard to whether the aircraft is operated by a unit of government on behalf of another unit of government, pursuant to a cost reimbursement agreement between such units of government, if the unit of government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation was necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator was reasonably available to meet the threat.

**PART 11—[AMENDED]**

3. The authority for Part 11 continues to read as follows:

**Authority:** 49 U.S.C. app. 1341(a), 1343(d), 1348, 1354(a), 1401 through 1405, 1421 through 1431, 1481, 1502; 49 U.S.C. 106(g).

4. Section 11.25 is amended by revising paragraph (b)(3), by removing

"and" from the end of paragraph (b)(4), by removing the period at the end of paragraph (b)(5) and adding "; and" in its place, and by adding paragraph (b)(6) to read as follows:

**§ 11.25 Petitions for rulemaking or exemptions.**

\* \* \* \* \*

(b) \* \* \*

(3) Set forth the text or substance of the rule or amendment proposed, or of the rule or statute from which the exemption is sought, or specify the rule that the petitioner seeks to have repealed, as the case may be;

\* \* \* \* \*

(6)(i) In the case of a unit of Federal, state, or local government that is applying for an exemption from any requirement of part A of subtitle VII of title 49, United States Code, that would otherwise be applicable to current or future aircraft of such unit of government as a result of the statutory change in the definition of public aircraft made by the Independent Safety Board Act Amendments of 1994, Public Law 103-411, the petition for exemption must contain any information, views, analysis, or arguments available to the petitioner to show that:

(A) The exemption is necessary to prevent an undue economic burden on the unit of government; and

(B) The aviation safety program of the unit of government is effective and appropriate to ensure safety operations of the type of aircraft operated by the unit of government.

(ii) The authority of the Administrator, under the Independent Safety Board Amendments of 1994, Pub. L. 103-411, to grant exemptions to units of government is delegated to the Director, Flight Standards Service, and the Director, Aircraft Certification Service.

\* \* \* \* \*

**PART 121—[AMENDED]**

5. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. app. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, 1502; and 49 U.S.C. 106(g).

6. Section 1(a) introductory of SAFAR No. 38-2, located in the CFR at the beginning of Part 121, is revised to read as follows:

**SFAR No. 38-2—Certification and Operating Requirements**

\* \* \* \* \*

1. *Applicability.*

(a) This Special Federal Aviation Regulation applies to persons operating civil

aircraft in commercial passenger operations,  
cargo operations, or both, and prescribes—

\* \* \* \* \*

Issued in Washington, DC on January 6,  
1995.

**David R. Hinson,**

*Administrator.*

[FR Doc. 95-1744 Filed 1-20-95; 4:26 pm]

**BILLING CODE 4910-13-M**