

to the listing guidelines under Section 106 of the Guide, which provide, among other things, that: (1) the issuer shall have tangible net worth of at least US\$150 million and otherwise substantially exceed size and earnings requirements in Section 101(A) of the Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be one million warrants, together with a minimum of 400 public holders, and an aggregate market value of at least US\$4 million.

DAX Index warrants will be direct obligations of their issuer subject to cash-settlement during their term. Index warrants will either be exercisable throughout their life (*i.e.*, American-style) or exercisable only during a specified period immediately prior to the expiration date (*i.e.*, European-style). Upon exercise, the holder of a warrant structured as a "put" will receive payment in U.S. dollars to the extent that the DAX Index has declined below a cash settlement value specified at the time of issuance. Conversely, upon exercise, holders of an Index warrant structured as a "call" will receive payment in U.S. dollars to the extent that the DAX Index has increased above a cash settlement value specified at the time of issuance. Index warrants that are "out-of-the-money" at the time of expiration will expire worthless.

The Amex has adopted suitability standards applicable to recommendations to purchasers of Index warrants and transactions in customer accounts. Amex Rule 411, Commentary .02 applies the options suitability standard in Amex Rule 923 to recommendations regarding Index warrants; and the Amex requires that Index warrants be sold only to accounts approved for the trading of options. Amex Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in Index warrants on the day the order is entered. In addition, the Amex, prior to the commencement of trading of Index warrants, will distribute a circular to its membership calling attention to specific risks associated with warrants on the DAX Index.⁷

In its order approving listing standards for foreign currency and index warrants, the Commission noted that, with respect to foreign index

warrants, there should be an adequate mechanism for sharing surveillance information with respect to an index's component securities.⁸ In this regard, the Amex represents that it has entered into discussions with representatives of the FSE and has reached preliminary agreement with respect to establishing an appropriate means to accomplish such information sharing.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objections of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-55 and should be submitted by February 16, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 00-1.1]

Proposed Advisory Circular on Government Aircraft Operations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed advisory circular.

SUMMARY: Proposed Advisory Circular (AC) 00-1.1, Government Aircraft Operations, provides guidance on whether particular government aircraft operations are public aircraft operations of civil aircraft operations under the new statutory definition of "public aircraft." This AC contains the FAA's intended application of key terms in the new statutory definition. For operations that have lost public aircraft status under the new law, this AC provides information on bringing those operations into compliance with FAA safety regulations for civil aircraft. It also provides information on applying for an exemption.

DATES: Comments must be received on or before February 27, 1995.

ADDRESSES: Written comments are invited on all aspects of the proposed AC. Commenters must identify file number AC 00-1.1, Government Aircraft Operations. Send all comments on the proposed AC to the following location: Federal Aviation Administration, Flight

⁷ The Commission notes that the Amex will be required to submit a draft of the circular to the Commission staff for approval prior to distribution to members.

⁸ See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988).

⁹ 17 CFR 200.30-3(a)(12) (1994).

Standards Service, Air Carrier Branch (Attention; AFS-200), 800 Independence Avenue, SW., Washington, DC 20591.

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

SUPPLEMENTARY INFORMATION: This AC provides guidance on the FAA's application of the new definition of public aircraft enacted in the Independent Safety Board Act Amendments of 1994, Pub. L. 103-411. This guidance material supplements the final rule titled "Public Aircraft Definition and Exemption Authority." Because Pub. L. 103-411 becomes effective April 23, 1995, the AC is published in its entirety to allow commenters access to the document as quickly as possible.

Issued in Washington, DC on January 20, 1995.

William J. White,

Deputy Director, Flight Standards Service.

1. Purpose. The purpose of this advisory circular (AC) is to provide guidance on whether particular government aircraft operations are public aircraft operations or civil aircraft operations under the new statutory definition of "public aircraft." This AC contains the Federal Aviation Administration's (FAA) intended application of key terms in the new statutory definition. For operations that have lost public aircraft status under the new law, this AC provides information on bringing those operations into compliance with FAA safety regulations for civil aircraft. It also provides information on applying for an exemption. This AC provides acceptable, but not exclusive, means of complying with the law.

2. Reference. 49 U.S.C. 40102(A)(37).

3. Related Material:

a. AC 00-2.8, Advisory Circular Checklist, lists documents that provide guidance on many of the processes required to be followed in the certification and operation of civil aircraft.

b. AC 00-44FF, Status of Federal Aviation Regulations, provides the current public status of the Federal Aviation Regulations (FAR), prices, and order forms.

c. AC 20-132, Public Aircraft, provides guidance that public aircraft status under the Federal Aviation Act does not permit operations outside the territorial limits of the United States without a valid airworthiness certificate.

d. AC 120-12A, Private Carriage Versus Common Carriage of Persons or Property, furnishes general guidelines

for determining whether transportation operations by air constitute private or common carriage.

e. AC 120-49, Certification of Air Carriers, provides information and guidance on the certification process for air carriers under FAR Parts 121 and 135.

f. Guide to Federal Aviation Administration Publications provides guidance on identifying and obtaining FAA and other aviation-related publications issued by the Federal Government.

Note: Copies of the above documents may be obtained from the Department of Transportation, M-45.3, General Services Section, Washington, DC 20590.

Thomas C. Accardi,

Director, Flight Standards Service.

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Chapter 1. Determining Whether Operations are Public or Civil

1. Public Aircraft Definition

a. *Background.* In recent years, there has been a growing concern about the safety of public aircraft, which are statutorily exempt from most types of FAA regulation.

(1) Intergovernmental reimbursement for the use of government-owned aircraft has also engendered a great deal of controversy. Intergovernmental reimbursement is involved when, for example, state and local governments enter into agreements with each other whereby one government reimburses the other for flying firefighting, rescue, or other missions for it. Some private operators have claimed that state and local governments have competed with them unfairly under the public aircraft exemption. The FAA's longstanding interpretation has been that where there is an exchange of money, an operation is "for commercial purposes" and does not have public aircraft status—i.e., such an operation is a civil aircraft operation. Many government operators objected that this interpretation made it impossible to carry out their missions, because it is impractical to obtain the services commercially, and too costly to change many of their aircraft to meet FAA requirements for civil aircraft.

(2) In response to this controversy, the FAA announced in the **Federal Register** on August 1, 1994, that it would reconsider whether intergovernmental reimbursement negates public aircraft status. The FAA invited comment from interested parties, 59 FR 39192, and planned to announce its decision by the end of the year.

(3) On October 9, 1994, Congress passed the Independent Safety Board Act Amendments, Pub. L. 103-411, which contained a major change in the definition of "public aircraft." The new law made the FAA's planned reconsideration unnecessary. Under the new law, where intergovernmental reimbursement occurs, the aircraft is a 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."

b. Legislative History. The purpose of the new law, as reflected in the legislative history, is twofold.

(1) First, in the words of Senator Pressler, the purpose of the new law is "to mandate that FAA safety regulations, directives, and orders issued for civil aircraft be made applicable to all government-owned, nonmilitary aircraft engaged in passenger transport. * * * [T]he Administrator would be allowed to waive FAA requirements for public aircraft provided an equivalent level of safety has been established by the governmental entity responsible for the aircraft." Congressional Record, S14419-S14420 (October 6, 1994).

(2) A second purpose reflected in the legislative history concerned emergency situations like wildfires. As Senator Gorton stated "the summer wildfires had a drastic impact throughout the State of Washington. Local governments were frustrated that although fires were burning, all available resources could not be utilized. Emergency or not, it is presently prohibited for public agencies to reimburse one another for the use of helicopters. The language in this bill will now give authority to local governments to respond immediately to emergency situations without having to cut through the bureaucratic red tape. In certain cases, where an imminent threat is looming and private operators are not readily available, public agencies will be allowed to use each other's helicopters. This language helps ensure that when an emergency breaks out, all aircraft—public and private—will be available to respond without delay." *Id.* at 14419.

c. Statutory Text. The new definition of public aircraft enacted by Congress is as follows:

- (1) an aircraft—
 - (i) used only for the United States Government; or
 - (ii) 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
- (2) does not include a government-owned aircraft—
 - (i) transporting property for commercial purposes; or
 - (ii) transporting passengers other than—

- (I) 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

- (II) 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.

(3) 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 part 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. 49 U.S.C. 40102(a)(37).

d. Operational Nature of Definition. The status of an aircraft as "public aircraft" or "civil aircraft" depends on its use in government service and the type of operation that the aircraft is conducting at the time. Rather than speaking of particular aircraft as public aircraft or civil aircraft, it is more precise to speak of particular operations as public aircraft or civil aircraft in nature. If a flight is a mixture of both public aircraft and civil aircraft operations, then it is considered a civil aircraft operation.

(1) Example: An aircraft owned by a state government is used in the morning for a search and rescue mission that meets the statutory definition of public aircraft in all respects. For the search and rescue operation, the aircraft is a public aircraft. Later that same day, however, when the aircraft is used to fly the governor of the state from one meeting to another, the aircraft loses its public aircraft status and is instead a civil aircraft.

(2) Caution: Care must be taken when aircraft are used in both public and civil aircraft operations. Before such aircraft are returned to civil operations, the government operator may need to record in the aircraft records that the aircraft

has been returned to civil status by someone authorized to do so under FAR Part 43, if equipment was removed and replaced to accommodate the governmental function.

e. Effective Date. The effective date of the new statute is April 23, 1995.

2. Meaning of Key Statutory Terms. The FAA interprets various words, phrases, and clauses in the statutory definition (in their order of appearance in the statute) as follows:

a. "For Commercial Purposes." This term basically means "for compensation or hire" as that term historically has been defined by the FAA. The test for determining whether a particular operation is "for compensation or hire" is whether the operator receives direct or indirect remuneration for the operation. The remuneration need not be in the form of money; the receipt of other items of value, such as good will or the logging of flight time, have also been held to make an operation "for compensation or hire." Furthermore, no profit need be made; an operation may be "for compensation or hire" even if the operator takes a loss. When the operator is a governmental entity, reimbursement from a party not sharing a common treasury with the governmental entity makes the operation "for commercial purposes." Examples:

(1) One state agency reimburses another agency of the same state for conducting operations on its behalf using a state-owned aircraft. Where the two state agencies share a common treasury, the operation is not "for commercial purposes" within the meaning of the statute.

(2) A Federal agency reimburses a state agency for conducting aircraft operations on its behalf. This operation is a civil aircraft operation, unless the Federal agency certifies to the FAA Administrator 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, then the aircraft will be a public aircraft. See paragraphs 2 (g) through (i) below.

(3) Flight instruction is offered as part of the curriculum at a state university. The flights involving student instruction are "for commercial purposes," within the meaning of the statute, because students pay tuition to the university for their instruction. Under FAR Section 135.1(b)(1), flights involving student instruction are excepted from the air taxi and commercial operator regulations of FAR Part 135. Instead, they are governed by FAR Part 91.

b. *“Whose Presence Is Required to Perform.”* This phrase means either a crewmember or a non-crewmember who will participate in carrying out the governmental function. Examples:

(1) Firefighters who are being carried to a fire scene to fight the fire, when the aircraft is also used for aerial assessment to ensure safe and efficacious deployment of the firefighters, are included.

(2) Persons on board aircraft used in search and rescue operations who are needed to conduct the search when the aircraft is indispensable to the search, or to conduct the rescue operation when the aircraft is the only feasible means of reaching the victim with the necessary speed, are included. Medical evacuation operations carrying persons whose presence is required to perform the medical evacuation, but where the aircraft is used only because it is an equal or better means of transportation than other means are not included; these are considered civil aircraft operations.

(3) Persons on board aircraft conducting law enforcement operations for the purpose of operating searchlights or performing similar observational functions are included. Transporting prisoners is not included.

(4) Persons on board aircraft conducting aeronautical research who are required to make observations and gather data, provided the work can only be done in the aircraft, are included.

(5) Persons on board aircraft engaged in biological and geological resource management, who perform scientific and technical tasks that can only be done from the air, are included.

c. *“Associated with the Performance of.”* This clause connotes a noncrewmember support person who, while not essential to performance of the governmental function, is expected to contribute to the effectiveness of those whose presence is required to perform the function.

(1) One of Congress' primary purposes in enacting the new statutory definition of “public aircraft” was to increase FAA regulatory oversight of government aircraft. See Congressional Record, S14418–S14424 (October 6, 1994). Giving the phrase “associated with the performance of” an overly broad interpretation would be contrary to that intent.

(i) Examples:

(A) A government executive who accompanies firefighters to a fire scene solely to assess what further action the government should take in regard to fighting the fire is “associated with the performance of” the governmental function of firefighting. Persons

gathering information for dissemination through new media are not considered within the exception.

(B) A government-owned aircraft is used to survey a natural disaster. Individuals whose presence is required to monitor equipment installed in the aircraft for the purpose of the survey are persons “associated with the performance of” the governmental function.

d. *“Governmental Function such as * * *”* The term “such as” in the clause “a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management” indicates that the listed functions are not exhaustive, but that certain other governmental functions would be included as well. In the context of the clause “governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management,” the term “such as” implies other governmental functions that share a common characteristic with those listed. The unifying characteristic shared by the governmental functions listed in the statute is that they each involve the use of the aircraft as an integral or indispensable element of the operation. That is, the presence of those aboard the aircraft performing the governmental function is required on the aircraft, in the air—rather than merely at the end of the flight.

(1) Examples:

(i) An aerial survey in a government-owned aircraft to determine the extent of a natural disaster is a governmental function within the scope of the statute. This operation would be a public aircraft operation.

(ii) Firefighters are transported from a base camp to the firefront, and before the aircraft lands, it is used for reconnoitering to determine the most effective deployment of the firefighters. This operation falls within the firefighting exception, and is a public aircraft operation.

(iii) Firefighters are flown from one area of the country to a firefighting base in another part of the country. This operation involves transportation that does not fall within the firefighting exception. As a result, compliance with appropriate FAA safety regulations for civil aircraft would be required.

(2) *“Firefighting.”* This term includes the drop of fire retardants, water, and smoke jumpers, and transportation of firefighters from a base camp to the firefront, if the flight includes use of the aircraft as an integral part of the firefighting operation, as, e.g., with

reconnoitering to determine the most effective deployment of the firefighters.

(3) *“Search and Rescue.”* “Search and rescue” is a term of art meaning aircraft operations that are flown to locate and rescue people who cannot be located and rescued in a timely manner from the ground. The term includes operations where the aircraft is indispensable to the search, or is the only feasible means of reaching the victim. Victims would be considered to be “associated with” the search and rescue operation.

(i) The FAA interprets this term narrowly. The term “search and rescue” does not include routine medical evacuation of persons from traffic accidents and the like. However, if no commercial operators are available, medical evacuation operations by a government operator will be considered public aircraft. The FAA does not believe that Congress intended for injured people to be carried in aircraft that are not subject to FAA regulation when other, equally effective means are readily available. Nor does the FAA believe that Congress intended to put state and local governments in competition with commercial operations, which generally provide ample civil aircraft capacity for medical evacuation operations.

(ii) Examples:

(A) A car crashes in a remote location, and the driver will die if she is not immediately transported to a hospital. No commercial operators are available to fly the injured driver to the hospital in an expeditious manner, but the sheriff's helicopter is. The sheriff's flight carrying the injured driver to the hospital is a public aircraft operation.

(B) Same situation, but this time commercial operators are available. The medical evacuation operation by the sheriff is a civil aircraft operation.

(4) *“Law Enforcement.”* Law enforcement operations that employ aircraft with searchlights and law enforcement personnel ready for immediate on-the-spot deployment (e.g., spotters looking for fugitives on the ground) are public aircraft operations. Transportation of prisoners; however, does not fall within the category of “law enforcement” and is not a public aircraft operation.

(5) *“Aeronautical Research.”* Aeronautical research (e.g., conducting flights to determine aircraft performance in various operating environments), even when it requires the presence on board the research aircraft of engineers and technicians who are not part of the crew, is a public aircraft operation.

(6) *“Biological and Geological Resource Management.”* This term

means biological and geological resource management that requires the presence of scientific and technical passengers to gather information that can only be gathered by direct observation from the air.

e. "*Cost Reimbursement Agreement.*" This term means any agreement, either oral or written, providing for reimbursement of the costs of the aircraft operation. If there is any charge or payment in excess of the cost of the operation, then the agreement does not constitute a cost reimbursement agreement.

f. "*Unit of Government.*" This term means a government. The singular characteristic of a unit of government in this context is its common treasury. This interpretation generally allows reimbursement among or between agencies of a state, among or between a city, and among or between agencies of the Federal government without the need for compliance with FAR Parts 121, 125, 133, 135, or 137. However, should a city, state, or Federal agency receive reimbursement from another government, it would need to ensure that it is in compliance with the appropriate portions of the FAR, unless the other government is able to certify that there is a significant and imminent threat to life or property and that no private operator is reasonably available, as discussed below.

g. "*Certifies.*" Cost reimbursement between governments does not negate public aircraft status when the government on whose behalf the operation was conducted certifies that there was a significant and imminent threat and that no private operator was reasonably available to meet the threat. The certification by a unit of government should include the following: a description of the significant and imminent threat; a description of the operation undertaken; the date on which the operation occurred; and an explanation of how it was determined that no service by a private operator was reasonably available.

(1) Units of government should retain the required certification, which should be completed contemporaneously, as part of their records in case any question should arise.

(2) A general or "blanket" statement that an operator will always comply with statutory requirements will not be considered acceptable. The certification must occur for each occasion of operation.

Note: Congress' intent in amending the public aircraft definition was, in part, to insure that units of government are not impeded in attempting to respond to certain

emergency situations. In the words of Senator Gorton, Congress intended that "when an emergency breaks out, all aircraft—public and private—will be available to respond without delay." See paragraph 1(b) above. Consistent with this intent, the FAA does not intend to generally to look behind a unit of government's certification that there was a significant and imminent threat and that no private operator was reasonably available to meet the threat. Thus, it is not expected that FAA inspectors will routinely review or challenge these determinations made by units of government.

h. "*Significant and Imminent Threat.*" * * * "Significant and imminent threat to life or property (including natural resources)" means a situation in which the authority responsible for responding to the threat has determined that serious injury, death, or significant damage to property may occur before land- or water-borne assistance can be deployed to counter the threat effectively.

i. "*No Service by a Private Operator*" * * * "*Reasonably Available.*" No service by a private operator was reasonably available to meet the threat" means that, as reasonably determined by the authority charged with responding to the threat, no private operator is able, at the time of the threat, to deliver aircraft capable of performing the minimum tasks necessary to respond to the threat by the latest time at which such aircraft would provide an effective response.

Chapter 2. Bringing Operations Into Compliance

3. Basic Types of Civil Aircraft Operations

The government operator should contact the nearest FAA Flight Standards district office (FSDO) for assistance and guidance in bringing its operations into compliance with the FAR. For operations requiring certification, the FSDO manager will assign an FAA aviation safety inspector to assist the government operator during the certification process. Initial inquiries about certification or requests for applications should be in writing or by personal visit to the FSDO.

a. *FAR Part 91.* (1) FAR Part 91 prescribes the general flight rules for all aircraft operations within the United States, including the waters within 3 nautical miles of the U.S. coast. U.S.-registered civil aircraft are required to comply with FAR Part 91. When over the high seas, they must comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation.

(2) FAR Part 91 prohibits a pilot from operating a civil aircraft unless it is in

an airworthy condition. The pilot in command (PIC) is responsible for determining whether the aircraft is in condition for safe flight. The PIC is required to terminate the flight when unairworthy mechanical, electrical, or structural conditions occur. In addition, the PIC may not operate the aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

(3) Under FAR Part 91, the PIC of an aircraft is directly responsible for, and is the final authority as to the operation of that aircraft. In case of an inflight emergency, the PIC is authorized to deviate from any rule in FAR Part 91 to the extent necessary to meet the emergency. However, any PIC who deviates from a rule in FAR Part 91 is required, upon the request of the Administrator, to send a written report of that deviation to the Administrator.

b. *FAR Part 125.* If an operator uses an airplane with a seating configuration for 20 or more passenger seats or a maximum payload capacity of 6,000 pounds or more, and is not engaged in "common carriage," then FAR Part 125 applies. A person is considered to be engaged in "common carriage" when "holding out" to the general public or to a segment of the public as willing to furnish transportation within the limits of its facilities to any person who wants it. Examples of holding out are as follows: advertising through telephone yellow pages, billboards, television, radio, and individual ticketing. FAR Section 125.11(b) prohibits FAR Part 125 certificate holders from conducting any operation which results directly or indirectly from holding out to the general public. Further information regarding common carriage vs. private carriage can be found in AC 120-12. If the operator is engaged in "common carriage," then FAR Part 121 or 135 applies rather than FAR Part 125.

c. *FAR Part 121 or 135.* When a government-owned aircraft is operated "for commercial purposes" (see paragraph 2(a) above), the requirements contained in either FAR Part 121 or 135, depending on the type of operation, must be met. Generally, FAR Part 121 applies to domestic, flag, and supplemental air carriers and commercial operators of large aircraft, while e aircraft, while FAR Part 135 applies to air taxi operators and commercial operators. An operator should consult Special Federal Aviation Regulation (SFAR) No. 38-2 as well as the applicability provisions of each part (FAR Sections 121.1 and 135.1) to

determine whether it is FAR Part 121 or 135 that applies to a particular DO will provide an applicant for a FAR Part 121 or 135 certificate with a videotape on certification and a copy of AC 120-49, Certification of Air Carriers. Once the videotape and the AC have been reviewed, the applicant will complete FAA Form 8400-6, Preapplication Statement of Intent, and the FSDO manager will assign a Certification Team to assist the applicant through each phase of the certification process.

d. *FAR Part 133.* FAR Part 133, Rotorcraft External-Load Operations, prescribes the airworthiness certification requirements for rotorcraft, and the operating and certification rules governing the operation of rotorcraft conducting external-load operations in the United States by any person. The certification rules do not apply to a Federal, state, or local government conducting operations with a government-owned aircraft unless it is operating as a civil aircraft due to receipt of compensation. Federal, state, or local governments must; however, comply with all of the other rules contained in FAR Part 133, even when operating a public aircraft.

(1) FAR Part 133 requires that a person must obtain a Rotorcraft External-Load Operator Certificate issued by the FAA before any rotorcraft external-load operations in the United States are begun. This certificate is valid for 24 calendar months unless it is surrendered, suspended, or revoked prior to the expiration date shown on the certificate.

(2) Rotorcraft used in external-load operations must have been type certificated and must continue to meet the requirements of FAR Part 27 or 29 or of FAR Section 21.25. Rotorcraft must also comply with the airworthiness requirements contained in Subpart D of FAR Part 133 and must have a valid standard or restricted category airworthiness certificate. At the present time, only rotorcraft of U.S. registry are eligible for external-load operations.

(3) Pilots conducting rotorcraft external-load operations must have at least a current commercial pilot certificate with a rating appropriate to the rotorcraft being used, and a Second Class Medical Certificate.

e. *FAR Part 137.* FAR Part 137, Agricultural Aircraft Operations, prescribes the rules which govern the certification and operation of agricultural aircraft operated in the United States, and the issuance of either a private or commercial agricultural aircraft operator certificate for those operations. In a public emergency, a person who conducts agricultural

aircraft operations may, where necessary, deviate from any operating rule contained in FAR Part 137 for relief and welfare activities approved by an agency of the United States or of a state or local government. However, each person who deviates from a rule shall complete a report of the aircraft operation involved within 10 days, including a description of the operation and the reasons for it, to the nearest FAA FSDO.

(1) As defined in FAR Part 137, an agricultural aircraft operation means the operation of an aircraft for the purpose of:

(i) dispensing any economic poison;
 (ii) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control; or
 (iii) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation. It does not include the dispensing of live insects. Forest firefighting is considered to be an agricultural aircraft operation.

(2) FAR Part 137 requires that a person must obtain an Agricultural Aircraft Operator Certificate issued by the FAA before any agricultural aircraft operations in the United States are begun. A rotorcraft may conduct agricultural aircraft operations with external dispensing equipment in place without a rotorcraft external-load operator certificate. However, an operator with a rotorcraft external-load operator certificate may conduct agricultural aircraft operations if it disperses only water on forest fires by rotorcraft external-load means without an agricultural aircraft operator certificate. A Federal, state, or local government conducting agricultural aircraft operations is not required to obtain an Agricultural Aircraft Operator Certificate. They must; however, comply with all of the other rules contained in FAR Part 137.

(3) Aircraft used in agricultural aircraft operations must be certificated and airworthy, and equipped for agricultural operation. They must be equipped with a suitable and properly installed shoulder harness for use by each pilot.

(4) Operators conducting agricultural aircraft operations must have the services of one person who has at least a current U.S. commercial pilot certificate and who is properly rated for the aircraft to be used.

4. Pilot Certification

a. *Generally.* All civil aircraft are required to be operated by pilots certificated under FAR Part 61, Certification: Pilots and Flight

Instructors. FAR Part 61 prescribes the requirements for issuing pilot certificates and ratings, the conditions under which those certificates and ratings are necessary, and the privileges and limitations of those certificates and ratings.

b. *Domestic Aircraft.* Pilots operating civil aircraft of U.S. registry are required to have in their personal possession a current pilot certificate issued to them under FAR Part 61. U.S.-registered aircraft may be operated in a foreign country with a pilot license issued by the that country.

c. *Foreign Aircraft.* Foreign aircraft may be operated in the U.S. by pilots who have in their personal possession current pilot certificates issued under FAR Part 61 or a pilot license issued to them or validated for them by the country in which the aircraft is registered.

d. *Medical Certificate.* Pilots operating U.S.-registered civil aircraft are required to have in their personal possession an appropriate current medical certificate issued to them under FAR Part 67, Medical Standards and Certification. FAR Part 67 prescribes the medical standards for issuing medical certificates. A Third Class Medical Certificate is required for Private Pilot certification. A Second Class Medical Certificate is required for Commercial Pilot certification. A First Class Medical Certificate is required for Airline Transport Pilot certification.

e. *Instrument Rating.* Pilots operating civil aircraft under instrument flight rules or in weather conditions less than the minimums prescribed for Visual Flight Rules are required to hold an Instrument Rating or an Airline Transport Pilot Certificate appropriate for the aircraft flown.

5. Aircraft Certification

a. *Generally.* Government aircraft operations that are no longer eligible for public aircraft status must now meet the civil airworthiness standards for certification of aircraft. This includes the aircraft's engines and propellers as well as the aircraft as a whole. A civil aircraft must have a current airworthiness certificate to operate in the National Airspace System. Additionally, all civil aircraft must meet the following requirements:

(1) The aircraft must have an effective U.S. registration certificate on board during all operations as required by FAR Section 91.203.

(2) An appropriate and current airworthiness certificate must be displayed in accordance with FAR Section 91.203(c). An airworthiness certificate is effective as long as the

maintenance, preventive maintenance, and alterations are performed in accordance with FAR Parts 21, 43, and 91, as appropriate, and the aircraft is registered in the United States.

(3) The aircraft must have been inspected in accordance with FAR Section 91.409 within the preceding 12 calendar months.

(i) If the government agency plans to use a progressive inspection program, it must submit a written request to the FAA. The request must be sent to the FSDO having jurisdiction over the area in which the applicant is located and the applicant must be able to meet the requirements identified in FAR Section 91.409(d).

(ii) Large airplanes, turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-powered rotorcraft must have a program approved that meets the requirements of FAR Section 91.409(e).

(4) All maintenance and required inspections must have been completed by a person authorized under FAR Sections 43.3 and 43.7. Additionally, the maintenance and inspections performed must be recorded in accordance with FAR Sections 43.9 and 43.11. FAR Part 43 prescribes the rules governing the maintenance, preventive maintenance, rebuilding, and alteration of civil U.S.-registered aircraft.

(5) Any alterations to the aircraft must have been accomplished and returned to service by an appropriately certified and authorized person under FAR Part 43.

(6) Aircraft operations for compensation or hire must be performed in accordance with the appropriate Air Operations Certificate, e.g., FAR Parts 125, 135, etc.

b. Type Certification. Prior to airworthiness certification, the type design must be certificated by the FAA. Section 603(c) of the Federal Aviation Act of 1958 makes a type certificate a prerequisite for issuance of airworthiness certificates. Each government operator who wishes to determine the eligibility of its aircraft for civil operations must contact the responsible geographic Aircraft Certification Office (ACO) for assistance in seeking either:

(1) design approval for aircraft that have been type certificated in the past; or

(2) type certification approval of aircraft that have been operated in the past under public aircraft status without a type certificate.

c. Aircraft Previously Type Certificated. If the aircraft was originally built to an FAA type certificate, the Aircraft Certification Office will review the type certificate data and make a

comparison with the aircraft's current design and condition.

(1) The applicant should provide the FAA Aircraft Certification Office with the technical information to assist in the following:

(i) a review of type design for any engineering changes or modifications;

(ii) a review of replacement parts and technical data on the replacement parts;

(iii) a review of applicable Airworthiness Directives (AD);

(iv) a review of previous operating regimes;

(v) if needed, application of later regulatory amendments or special conditions for any changes found necessary to establish current airworthiness standards for safe design.

(2) The applicant must provide accurate records of any changes from the approved type design that are necessary to establish the current design. The applicant should update all maintenance manuals as necessary. If there has been a substantial change in the type design, e.g., in the configuration, power, power limitations, speed limitations, or weight that have proven so extensive that a substantially complete investigation of compliance with the applicable regulations is required, the owner will be required to apply for a new type certificate.

d. Aircraft with No Prior Certification. It will be extremely difficult to obtain type certification of aircraft that have no history of civil certification. However, if a government operator wishes to apply for type certification, it should file an application for a type certificate on FAA Form 8110.12. The applicant must submit the application and all type design data for the aircraft, including the aircraft's engines and propellers, to the Aircraft Certification Office in its geographic area for approval. The application form must be accompanied by a three-view drawing and available basic data so that a preliminary regulatory certification basis may be established. The applicable airworthiness certification regulations, i.e., FAR Part 23, 25, 27, 29, 33, 35, etc., will be those that are in effect on the date of application for the certificate, unless otherwise noted in the regulations. The applicant must submit the type design, test reports, and computations necessary to show that the product to be certificated meets the applicable airworthiness, aircraft noise, fuel venting, and exhaust emission requirements of the FAR. Upon examining the data and test reports, participating in testing, and inspecting the prototype aircraft, the Administrator must be able to find that the type design

in fact complies with the above-mentioned regulations.

e. Airworthiness Certification. An operator of an aircraft that has been operated in public aircraft status cannot obtain a standard airworthiness certificate or return the aircraft to civil operations without showing that the aircraft meets all the criteria for that airworthiness certificate as prescribed by the regulations. Making that showing may be difficult when the aircraft has not been maintained, altered, or inspected in accordance with the FAR. In order to receive a standard airworthiness certificate, the operator should show that the aircraft has been maintained according to the manufacturer's instructions, and that any modifications to the aircraft either were removed or approved by the FAA. Before a standard airworthiness certificate can be issued, the applicant must show that:

(1) The aircraft conforms to its approved type design and is in condition for safe operation.

(2) Any alterations were accomplished in accordance with an approved supplemental type certificate (STC) or other FAA approved data, such as a field approval as reflected by the issuance of an FAA Form 337, Major Repair of Alteration.

(3) All applicable AD's have been complied with.

(4) If altered while in another category, the aircraft continues to meet, or has been returned to, its approved type design configuration and is in a condition for safe operation.

f. Procedures for Obtaining Certificate. Applicants interested in obtaining an airworthiness certificate must follow the following procedures.

(1) Applicants are required to submit a properly executed Application for Airworthiness, FAA Form 8130-6, and any other documents called for in FAR Parts 21 and 45 for certification. An applicant may obtain an FAA Form 8130-6, "Application for Airworthiness" from the local Manufacturing Inspection district office (MIDO) or FSDO. The applicant must have completed and signed the appropriate sections prior to submitting it to the FAA.

(2) The applicant is required to make available for inspection and review the aircraft, aircraft records, and any other data necessary to establish conformity to its type design.

(3) The applicant must properly register the aircraft in accordance with FAR Part 47, Aircraft Registration.

(4) The applicant is also required to show that the aircraft complies with the noise standards of FAR Sections

21.93(b), 21.183(e), Part 36, or Part 91, as appropriate. This may be demonstrated through the use of data. Also, the applicant is required to show that the aircraft's fuel venting and exhaust emission systems comply with the requirements of FAR Part 34. In addition, the applicant must show the aircraft meets the applicable passenger emergency exit requirements of FAR Section 21.183(f) and SFAR No. 41.

(5) During the course of the certification process, the FAA will review records and documentation to the extent necessary to establish that:

(i) All of the required records and documentation are provided for the aircraft, i.e., an up-to-date approved flight manual, a current weight and balance report, equipment list, maintenance records, FAA-accepted Instructions for Continued Airworthiness (ICAW) and/or FAA-acceptance maintenance manual(s) (MM), and any other manuals required by FAR Sections 21.31, 21.50, 23.1529, 25.1529, 27.1529, 29.1529, 33.4, and 35.4. These documents must be in the English language.

(ii) The applicant should ensure that the appropriate markings are present in accordance with FAR Part 45. The applicant should make available the Type Certificate Data Sheets (TCDS), aircraft specification, or aircraft listing that is applicable.

(iii) The inspection records and technical data should reflect that the aircraft conforms to the type design, and all required inspections, including those provided for in FAR Section 21.183(d)(2), which provides for a 100-hour inspection, as described in FAR Section 43.15 and Appendix D. The applicant must also show that the tests the aircraft has been subjected to have been satisfactorily completed, the records completed, and reflect no unapproved design changes.

(iv) The aircraft has been flight tested, if required. If it has not been flight tested, the FAA may issue a special airworthiness certificate as provided for in FAR Sections 21.35 and 21.191(b). The flight test must be recorded in the aircraft records in accordance with FAR Section 91.417(a)(2)(i) as time in service as defined in FAR Part 1. Aircraft assembled by a person other than the manufacturer (e.g., a dealer or distributor) must have been assembled and, when applicable, flight tested in accordance with the manufacturer's FAA-approved procedures.

(v) Large airplanes, turbojet, or turbopropeller multi-engine airplanes must comply with the inspection program requirements of Subpart C of FAR Part 91 or other FAR referenced

therein. A supplemental structural inspection program is also required for certain large transport category airplanes. Reference AC 91-56, Supplemental Structural Inspection Program for Large Transport Category Airplanes.

(6) Inspection of the aircraft. Aircraft submitted by the applicant for inspection will be inspected for the following:

(i) The nationality and registration marks and identification plate should be displayed and marked in accordance with FAR Part 45. The information presented should agree with the application for airworthiness certification.

(ii) All equipment, both required and optional, should be properly installed and listed in the aircraft equipment list.

(iii) Instruments and placards should be located in the appropriate places, installed, and properly marked in the English language.

(iv) All applicable AD's must have been complied with and appropriately recorded.

(v) The aircraft should conform to its approved U.S. type certificate and should be in a condition for safe operation.

(vi) All aircraft systems should have been satisfactorily checked for proper operation. The operation of the engine(s) and propeller(s) should be checked in accordance with the aircraft manufacturer's instructions.

Chapter 3. Applying for an Exemption 6. Administrator's Exemption Authority

a. *In General.* The FAA Administrator has the authority to grant exemptions, provided certain requirements are met, to units of government for operations that do not have public aircraft status. The Independent Safety Board Act Amendments of 1994, Pub. L. 103-411, provide, in pertinent part:

(1) Authority To Grant Exemptions

(i) *In General.* The Administrator of the Federal Aviation Administration may grant an exemption to any unit of Federal, State, or local government 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 amendment made by subsection (a) of this section (the revised "public aircraft" definition).

Note: The above provision authorizes exemptions from the United States Code—specifically, the Federal Aviation Act of 1958, as amended and recodified—rather than from the regulations.

b. *Statutory Requirements.* The statute provides as follows:

(1) The Administrator may grant an exemption [to a unit of government] . . . only if—

(i) the Administrator finds that granting the exemption is necessary to prevent an undue economic burden on the unit of government and

(ii) the Administrator certifies 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.

Independent Safety Board Act Amendments of 1994, Section (b)(2), Pub. L. 103-411 (emphasis added).

Note: The FAA intends to grant exemptions only where it is clearly in the public interest to do so.

c. *Delegation of Authority.* In the interest of administrative efficiency, the Administrator's authority to grant exemptions to units of government has been delegated to the Director, Flight Standards Service, and the Director, Aircraft Certification Service. FAR Section 11.25(b)(6).

7. Key Statutory Terms

a. "*The Administrator Finds . . . and . . . Certifies.*" This language indicates that the Administrator, or his or her delegate, is to make an independent determination as to whether the statutory requirements for granting an exemption have been met. This is in contrast to an earlier portion of the statute in which the *unit of government* rather than the Administrator makes the required certifications (that the operation was necessary to respond to a significant and imminent threat, and that no private operator was reasonably available to meet the threat).

b. "*Undue Economic Burden.*" One finding that the Administrator or his or her delegate must make before granting an exemption is that the exemption is necessary to prevent an undue economic burden on the unit of government. "Undue economic burden" means that it would cost substantially more to comply with FAA regulations than with "an aviation safety program that is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government" under the statute's exemption provision. To show "substantial additional costs," a petitioner for exemption should submit information that will allow the FAA to compare the cost of operating in compliance with Part A of Subtitle VII of Title 49 of the United States Code with comparable costs if an exemption

were granted. At minimum, such information should include:

(1) The purpose and duration of the aircraft operations for which exemption is sought.

(2) The estimated initial and recurring costs of bringing the petitioner's aircraft operations into compliance with civil aircraft requirements.

(3) The estimated costs associated with conducting comparable aircraft operations under the exemption.

(4) The estimated cost of obtaining the same aircraft operations from a private operator.

c. "*Aviation Safety Program.*" The Administrator or the Administrator's delegate may not grant an exemption to a unit of government without certifying 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." As a result, in the petition for an exemption, the petitioner must show to the Administrator's satisfaction that the petitioner's aviation safety program is effective and appropriate to ensure safe operations of the type of aircraft operated by the petitioner.

(1) An aviation safety program submitted for approval must specify how the aircraft will be maintained and operated safely. The program must include:

(i) procedures covering the maintenance and inspection of the aircraft, including the avionics equipment, emergency equipment, aircraft interior modifications;

(ii) installation, removal, and inspection instructions for all special equipment on or modifications of specific aircraft;

(iii) procedures for operating the aircraft, personnel training associated with the aircraft; and

(iv) any other procedures determined to be necessary for the safe operation of the aircraft.

(2) Example: A unit of government applies for an exemption on an aircraft whose wings were modified to carry external pods for various surveillance activities. In its proposed aviation safety program, the unit of government would need to identify how the continued airworthiness of the modification will be accomplished. At minimum, the following may be required: a special structural inspection at the wing attach points, additional training for pilots operating the aircraft during pod installations, and flight manual changes to reflect any new operating limitations that may be necessary due to the modifications.

d. *Aircraft Ineligible for Airworthiness Certificates.* It will be extremely difficult for units of government to show that aircraft ineligible for airworthiness certificates—e.g., military surplus aircraft—have "an aviation safety program that is effective and appropriate to ensure safe operations of the type of aircraft operated by the unit of government." In order to meet the "aviation safety program" requirement, the public must be assured that the safety of the aircraft in question is at least roughly equivalent to that provided by the FAR. Aircraft that have no history of civil certification often present significant "unknowns" when it comes to such critical safety matters as life-limited parts and aircraft design. Thus, such aircraft do not usually have the needed base on which to build an aviation safety program that is effective and appropriate to ensure safe operations.

(1) The FAA does not now expect to grant exemptions for aircraft that are ineligible for airworthiness certificates. Units of government may apply for an exemption, but they should be aware of the limited likelihood of obtaining and exemption for such aircraft, particularly when deciding whether to expend their resources in seeking an exemption. While the FAA will not rule out completely the possibility of granting exemptions for such aircraft, the burden on the petitioner of showing that safety will not be jeopardized will be very heavy indeed.

(2) A successful petitioner for an exemption would need to show that its aviation safety program is at least roughly equivalent in terms of level of safety what is required by the operations, maintenance, and inspection requirements of the FAR.

(3) A unit of government developing a proposal for an aviation safety program may find the information below helpful:

(i) *Generally.* Subpart E of FAR Part 91 prescribes the rules governing the maintenance, preventative maintenance, and alterations of U.S.-registered aircraft civil aircraft operating within and outside the United States. FAR Section 91.403 states that the owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition, including compliance with FAR Part 39. FAR Part 39 describes the requirements for compliance to AD's issued by the FAA.

(ii) *Inspection Programs.* Operators of large aircraft, turbojet multiengine airplanes, or turbopropeller powered multiengine airplanes, should select and use one of the four inspection program options outlined in FAR Sections 91.409(e) and (f).

(A) For one of the four inspection program options, that identified in FAR Section 91.409(f)(4), the inspection program submitted should be compared with the manufacturer's recommended program. Where there is no manufacturer's program, a time-tested program should be utilized. The program developed must provide a level of safety equivalent to or greater than that provided by the other inspection options identified in FAR Section 91.409(f).

(B) For the other three inspection options outlined in FAR Sections 91.409(e) and (f), the basis for the development of the inspection program or the instructions for continued airworthiness, including the detail of the parts and areas of the airplane to be inspected, is the manufacturer's recommendations. In the case of surplus military aircraft, the manufacturers provide this basic information to the specific military service that has contracted for the airplane. The military service then develops a reliability-centered maintenance program to meet its needs and environment which are often comparable to the continuous airworthiness maintenance programs developed by air carriers.

(C) In many cases, manufacturers may be unwilling or unable to provide instructions for continued airworthiness for operation of the airplane in other than a military environment. Therefore, in keeping with existing policy as provided by the FAA, the only reasonable basis that for detailing the inspection criteria for the aircraft to be inspected, as required by FAR Section 91.409(g)(1), is the scope and detail developed by the applicable military service.

(D) In addition to the "field" level inspection requirements set forth in the military maintenance program, the "depot" level inspection requirements should also be included in any inspection program approved under FAR Section 91.409(f)(4). The military "field" level maintenance is roughly equivalent to the civil terminology that air carriers use to describe "A, B or C" checks. The military "depot" level maintenance is comparable to the "heavy C or D" checks used by air carriers. Some air carriers may use a numerical description verses the alphabetical identifier for inspection checks.

(E) The inspection frequency and program structure established by the military may not be appropriate for use in a civilian environment. Therefore, inspection frequency and program structure may require adjustment to meet the government operator's

requirement. However, facts and sound judgment must form the basis for any inspection frequency adjustment beyond that which has been established for use by the military.

(F) An alternate means of compliance for individual specific inspection requirements, in lieu of that which is called for in the military "field" or "depot" level programs, may be approved following evaluation of the applicant's inspection process instructions.

(G) Revisions to an existing approved inspection program should be requested in accordance with FAR Section 91.415.

(iii) *Persons Conducting Inspections and Maintenance.* The program proposed by the petitioner should include procedures to insure that inspections and maintenance tasks are performed by persons authorized by FAR Sections 43.5 and 43.7.

(iv) *Modifications and Repairs.* The program must identify all major modifications and repairs accomplished since the aircraft was put into service. Additionally, all further modifications and major repairs will need to be approved in the same format as required for civil aircraft under the regulations.

8. Petition for Exemption

a. *Procedure.* FAR Section 11.25—contains the procedures to be followed by a unit of government seeking an exemption. The petition for exemption should be submitted in duplicate to the Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591. Under FAR Part 11, petitions for exemption are published in the **Federal Register** for notice and comment period.

b. *Contents.* The petition for exemption must set forth the text or substance of the statute from which the exemption is sought. (As noted above, Congress authorized exemptions from the statute—the Federal Aviation Act of 1958, as amended and recodified—rather than from the regulations.) The petition for exemption must contain any information, views, analysis, or arguments available to the petitioner to show that the statutory requirements for granting an exemption have been met—i.e.:

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

(2) 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. FAR Section 11.25. Individuals drafting a petition for exemption on behalf of a unit of

government should familiarize themselves with FAR Part 11.

[FR Doc. 95-1919 Filed 1-20-95; 4:26 pm]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 94-92; Notice 2]

Decision That Nonconforming 1972 and 1973 Ferrari Daytona 365 GTB/4 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S.-certified versions of the 1972 and 1973 Ferrari Daytona 365 GTB/4), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of January 26, 1995.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202)-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Motors, Inc. of Kingsville, Maryland (Registered Importer R-90-006) petitioned NHTSA to decide whether 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on November 16, 1994 (59 FR 59274) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Fiat Auto U.S.A., Inc. (Fiat), the United States representative of Ferrari. In its comment, Fiat stated that Ferrari, and other companies within the Fiat Group, have invested considerable resources in the design and production of vehicles that comply with the Federal motor vehicle safety standards. Although it stated that it has not determined what modifications are necessary to bring a vehicle into compliance with the Federal safety standards, Fiat contended that it is not possible to achieve such compliance by simply retrofitting a vehicle built for the European market, without conducting extensive development and testing.

Because Fiat's comments did not specify how non-U.S. certified 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are incapable of being readily altered to conform to the standards, there was no basis for NHTSA to solicit a response from J.K. As they have been performed with relative ease on thousands of vehicles imported over the years, none of the modifications described in the petition would preclude NHTSA from determining that non-U.S. certified 1972 and 1973 Ferrari Daytona 365 GTB/4 passenger cars are eligible for importation. NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate