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NATIONAL TRANSPORTATION SAFETY BOARD

Washington, D.C.

FAA Advisory Circular AC 00 – 1.1 – Government Aircraft Operations

(32 Pages)

U.S. Department of Transportation
Federal Aviation Administration

Advisory Circular

Subject:	Date:	AC No:
GOVERNMENT AIRCRAFT OPERATIONS	Initiated by: 4/19/95 AFS-220	Change: 00-1.1

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. Agencies which conduct public aircraft operations are encouraged to comply with the Federal Aviation Regulations (FAR), even when they are not required to do so. They and the flying public will benefit from their voluntary adherence to the enhanced safety standards set out in the regulations. The FAA will continue to provide assistance to public agencies which seek to voluntarily comply with the regulatory requirements.

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.

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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 an increasing interest in matters involving operations of public aircraft, which are generally exempt from compliance with the Federal Aviation Regulations.

(1) One area of interest is related to government agencies' receipt of reimbursement for their operation of government-owned aircraft. Prior to the enactment of the Public Law 103-411, the Independent Safety Board Act Amendments of 1994, "public aircraft" was defined to exclude "any government-owned aircraft engaged in carrying persons or property for commercial purposes." (P.L. 100-223, 1987). The FAA's long-standing interpretation has been that, where there is a receipt of compensation, such an operation is "for commercial purposes" and that such an operation therefore is not a public aircraft operation. This interpretation has been applied to intergovernmental arrangements wherein one government agency receives compensation for providing aircraft services to another government agency. Such services may be provided for firefighting, search and rescue or other governmental functions. Many government operators objected to the FAA's interpretation, claiming that such an interpretation impeded their governmental missions. They urged that it was impractical or impossible to obtain the services commercially, and that it was too costly to conduct their operations under the Federal Aviation Regulations as civil aircraft.

(2) On October 9, 1994, Congress passed the Independent Safety Board Act Amendments, Pub. L. 103-411, which changed the definition of the term "public aircraft." The law was signed by President Clinton on October 25, 1994.

(3) On January 26, 1995, the proposed advisory circular on Government Aircraft Operations was published in the Federal Register. 60 Fed. Reg. 5237. The proposed advisory circular set forth the FAA's understanding of the terms set forth in the new statute and the agency's intended application of those terms. The proposed advisory circular requested comments from affected parties on the positions taken by the FAA.

(4) Between January 26 and the current date, the FAA received and considered numerous comments from federal, state, and local governmental organizations as well as from representatives of private aircraft operators. Additionally , the FAA received an opinion of the Office of Legal Counsel,

United States Department of Justice. That opinion, dated March 31, 1995, addresses whether the transport of prisoners on government aircraft falls within the statutory definition of "public aircraft." The opinion advised that the position taken by the FAA in the proposed advisory circular regarding the transport of prisoners was unnecessarily restrictive. It discusses generally the terms used in that section of the statute which relate to the transporting of passengers in government-owned aircraft and advises that those terms would more appropriately be given a slightly broader interpretation than that in the proposed advisory circular. The FAA has modified its position to accord with the legal direction received.

b. Legislative History. The general purpose of the new law, as reflected in the legislative history, is to extend FAA regulatory oversight to some government aircraft operations. In part, Congress determined that government-owned aircraft, which operate for commercial purposes or engage in transport of passengers, should be subject to the regulations applicable to civil aircraft. The new law (with certain exceptions) preserved as public aircraft operations, those relating to the performance of certain governmental functions and, further, allowed public agencies to receive reimbursement from other public agencies for some operations conducted in response to significant and imminent threats. The FAA was also authorized to grant exemptions for operations whose status had changed as a result of the new law.

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--

(A) 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

(B) 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 or civil in nature. Example: An aircraft owned by a state government is used in the morning for a search and rescue mission. During the search and rescue operation, the aircraft is a public aircraft. Later that same day, however, the aircraft is used to fly the governor of the state from one meeting to another. At that time, the aircraft loses its public aircraft status and must be operated as a civil aircraft.

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." The FAA has consistently taken the position that this term means "for compensation or hire". The test historically applied to determine whether an

operation is for "compensation or hire" is whether the operator receives direct or indirect payment for the operation. It is not necessary that a flight be conducted for profit to constitute an operation for "compensation or hire," the term may be applicable even where there is no intent or ability to make a profit from the flight. Even where there is only cost-reimbursement from a unit of one government to a unit of another for the operation of an aircraft, such reimbursement constitutes "compensation." Accordingly, operations conducted pursuant to cost-reimbursement arrangements between units of government are considered to be "for commercial purposes." The new statute provides a limited exception allowing for public aircraft status where the unit of government on whose behalf the operation is conducted 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. By providing this limited exception, Congress clearly recognized that operations conducted pursuant to cost-reimbursement agreements are to be considered "for commercial purposes." Generally, a transfer of funds by one element of government to another element within that same government will not be treated as compensation. Operations conducted pursuant to those arrangements are not considered "for commercial purposes" where the reimbursement is essentially an accounting of transactions within the same unit of government.

(1) One state agency reimburses another agency of the same state for conducting operations on its behalf using a state-owned aircraft. If the two 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 the former's behalf using state-owned aircraft. Such an operation is considered to be "for commercial purposes." Generally, this operation would be a civil aircraft operation, unless the federal agency certified 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. In that case, the operation would be considered a public aircraft operation.

b. "Whose Presence is Required to Perform." This phrase means that the person is aboard the aircraft for the purpose of performing a task or duty directly related to an ongoing governmental function of the sort enumerated in the statute. It indicates that the person's presence is essential to the performance of that function.

(1) Examples:

(i) Firefighters who are being transported for the purpose of engaging in a current firefighting activity are considered persons whose presence is essential for the performance of that activity. The transport of firefighters directly to a firefront by aircraft as part of a mission for which the use of an aircraft is necessary would constitute an accepted activity. Similarly, the transport of firefighters to a base camp by aircraft where they are to be dispersed to the firefront may be viewed in the same manner.

(ii) Officials who are conducting law enforcement operations while in an aircraft would be considered as being required for the performance of that governmental function. Thus, the carriage of law enforcement personnel performing aerial surveillance would be considered as necessary to perform the law enforcement function. So too, might officials who are being transported for the purpose of engaging in a law enforcement activity. For example, the carriage of officers to the scene of a public disturbance for the purpose of performing riot control duty on the ground would also be included if the effectiveness of riot control would be compromised by inability to use the aircraft. The movement of law enforcement personnel for administrative purposes would not be considered necessary for the performance of an excepted government function.

(iii) Persons engaging in search and rescue operations from an aircraft would be considered necessary for the performance of the governmental function. Also included would be persons who are being carried to a remote search area from which they would conduct ground search and rescue operations, provided that the use of the aircraft is necessary for the performance of that mission.

(iv) Persons on board aircraft conducting aeronautical research who are engaged in the airborne gathering of data or information are necessary for performance of the governmental function.

(v) Persons on board an aircraft that is engaged in biological and geological resource management would be included, so long as they perform biological and geological resource management-related duties on the aircraft. Also included would be persons carried to a location from which they would engage in an ongoing operation or mission.

c. "Associated with the Performance of." This clause operates to include persons who, while not directly engaged in performing the governmental function, are present on the aircraft in connection with that function.

(1) Examples:

(i) An official who accompanies firefighters to a fire to oversee or assess the success of the operation and/or the need to commit further resources to the fire fight would be associated with the performance of the governmental function.

(ii) A ground crew that accompanies a weather research aircraft to the theater of operations for the purpose of maintaining the aircraft and equipment would be associated with the performance of the governmental function.

(iii) Prisoners who are being transported aboard an aircraft are associated with the performance of a law enforcement function.

(iv) Persons who are rescued during a search and rescue operation are associated with that function. Also included are members of a ground rescue party which assists in the search and rescue operation.

d. "Governmental Function Such As..." The term "such as," when used 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 and that the exception may apply to other governmental functions as well. However, the exception is limited to those other governmental functions that are comparable to and consistent with the listed functions. The unifying characteristic shared by the governmental functions listed in the statute is that they each involve the carriage of persons as part of a mission for which the use of an aircraft is necessary. Thus, it is not sufficient to merely show that the passengers are being transported to perform one of the functions listed in the statute; the use of the aircraft must be necessary for the performance of the mission. The aircraft would be necessary for the performance of a mission if the inability to use the aircraft would compromise the effectiveness of that mission.

(1) Examples:

(i) The use of an aircraft for administrative travel, such as to attend meetings or make speeches, would not be considered necessary for the performance of a listed or

comparable governmental mission. Such an operation would not qualify for the exception.

(ii) Training flights would be included if the persons on board are being trained on the aircraft to perform one of the functions listed in the statute. Flights to transport persons to receive ground training would not be included.

(2) "Firefighting." This term includes the dispensing of water or fire retardants on a fire. It also includes the transport of firefighters and equipment to a fire or to a base camp from which they would be dispersed to conduct the firefighting activities.

(3) "Search and Rescue." This term is commonly used to mean operations conducted to locate and rescue persons who are lost, injured, and/or exposed to some degree of danger or harm. Generally, the use of an aircraft is indispensable to the search effort or is the only feasible means of recovering the victim. Persons rescued would be considered "associated with" the activity.

(4) "Law Enforcement." Operations requiring the use of an aircraft, such as aerial surveillance, fugitive apprehension, and riot control would be included. Also included would be other situations where the use of an aircraft is essential for the performance of an ongoing law enforcement mission. For instance, deployment of SWAT teams to the theater of operations by aircraft would be included when the use of an aircraft is essential for the successful performance of the mission.

(5) "Aeronautical Research." This term would include flights to measure the performance of aircraft or aeronautical components. It would also include atmospheric research, meteorological observation and airborne astronomy.

(6) "Biological and Geological Resource Management." This term would include operations which require the use of an aircraft for the successful performance of the mission. For example, counting wildlife from an aircraft would be included.

(7) "Other Governmental Functions - Examples:"

(i) Medical evacuation. While this term is not considered synonymous with "search and rescue," it may be an included governmental function, depending on the particular circumstances of the operation. Again, the use of an aircraft

must be essential to the successful performance of the mission. It is unlikely that the use of an aircraft would be essential for a medical evacuation operation in an urban area where other means of transportation are routinely available.

(ii) Aerial Survey. Operations conducted to assure compliance with state or local laws or codes are included if the inability to use an aircraft would compromise the effectiveness of the mission. Examples:

(A) The identification of environmental polluters would be included if the use of an aircraft was necessary to locate the offenders.

(B) Aerial patrol of nuclear test sites to deter or locate trespassers would be included.

e. "Cost-Reimbursement Agreement." This term means any agreement, oral or written, providing for reimbursement of all or part of the costs of an aircraft operation. Any charge or payment in excess of the cost of the operation would not constitute a cost-reimbursement agreement.

f. "Unit of Government." This term means a government body. Generally, the singular characteristic of a unit of government in this context is its common treasury. Reimbursement for flight operations between two elements of the same unit of government would not be considered an operation for "compensation or hire." However, the receipt of reimbursement for a flight operation from an element of one unit of government to an element of a separate unit of government would constitute an operation "for commercial purposes." Such operation would be considered a civil aircraft operation, except when the government unit, which receives the benefit of the operation, certifies that there is a significant and immediate threat to life or property and that no private operator is reasonably available.

g. "Certifies." The certification that there is a significant and immediate threat to life or property and that no private operator is reasonably available should be made by the unit of government on whose behalf the operation is conducted. Without the certification, the unit of government who receives reimbursement for conducting the operation will be assumed to have conducted the operation "for commercial purposes." Such an operation will be considered a civil aircraft operation and may require compliance with FAR Part 121, 125, 133, 135, or 137.

(1) The certification should include: the date of the operation, a description of the flight operation conducted, a description of the significant or immediate threat, and an

explanation of why it was determined that no service by a private operator was reasonably available.

(2) The certification is the responsibility of the unit of government which provides the flight operations. It is suggested that the certification be completed contemporaneously with the operation and be retained by the unit of government which operated the aircraft.

h. "Significant and Imminent Threat." This term refers to a situation where the public agency responsible for responding to a threat has determined that serious injury or death, or significant damage to property (including natural resources) is present. The agency must also determine that the use of an aircraft is necessary to respond to the threat.

i. "No Service by a Private Operator was Reasonably Available." This term means that the public agency responsible for responding to a threat has reasonably determined that, at the time of the response, no private operator was available and capable of responding to the threat in a timely manner.

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 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 operation. The FSDO 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 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, preventative 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, preventative 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 Part 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 may be 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 or 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 multiengined 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 STATUTORY 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. The above provision authorizes such exemptions only for operations whose status has changed as a result of the revised definition of public aircraft. This authorization does not apply to operations conducted for commercial purposes, in as much as they were considered civil aircraft operations under both the original and revised definitions.

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).

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.

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. 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 with No Previous FAA Type Certification. It may be difficult for units of government to show that, for aircraft having no previous FAA type certification, e.g., military surplus aircraft, they 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 make the "effective and appropriate aviation safety program" finding, the FAA must be assured that the safety of the aircraft in question is comparable 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 often do not have the basis on which to build an aviation safety program that is effective and appropriate to ensure safe operations. A unit of government developing a proposal for an aviation safety program may find the information below helpful:

(1) 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.

(2) 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).

(i) 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).

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) Revisions to an operator's existing approved inspection program can be requested by the Administrator in accordance with FAR Section 91.415.

(3) 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.

(4) 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 any kind of exemption. The petition for exemption should be submitted in duplicate to the Rules Docket (AGC-10), Federal Aviation Administration, 800 Independence Avenue, SW., 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 statutory 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, or analysis 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. Individuals drafting a petition for exemption on behalf of a unit of government should familiarize themselves with FAR Part 11.

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