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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 11

[Docket No. FAA-03-15134, Amdt. Nos. 1-51, and 11-48]
[Docket No. DOT 20860]

Revision of Public Aircraft Definition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration is amending its regulations to conform them to the statutory definition of "public aircraft," as revised by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. This amendment is necessary to make the definition and requirements in the regulations consistent with those in the statute. This amendment also restores to the regulation a description of the statutory requirements for units of government to obtain exemptions for their civil aircraft.

EFFECTIVE DATE: [~~**Insert date of publication in the Federal Register**~~]. May 13, 2003 JMR 5/9/03

FOR FURTHER INFORMATION CONTACT: David Catey, (AFS-220), Flight Standards Service; Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, (202) 267-8094.

SUPPLEMENTARY INFORMATION

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue S.W., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

Background

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) was signed into law as Public Law 106-181. Among other provisions, the law revised the statutory definition of the term "public aircraft." This technical amendment revises the definition of "public aircraft" in title 14 of the Code of Federal Regulations to conform to the statutory definition in Public Law 106-181.

The distinction between civil and public aircraft is that public aircraft are excepted from many FAA regulations. The changes enacted in AIR-21 did not substantively change the definition of public aircraft. Rather, Congress sought to clarify an overly complex statutory definition: "[t]he purpose and intent of Congress in adding Section 702 to H.R. 1000 [AIR-21] is solely to replace old convoluted language (laden with multiple negatives) with positive language that states existing law in terms that are readily understood by both the nation's aviation community and the general public. Nothing in section 702 should be interpreted as a change in current public policy relating to public aircraft." (H.R. Rep. No. 106-167, pt. 1, at 91 (1999)). This technical amendment involves no exercise of agency discretion, as the statutory definition is already the controlling legal authority.

Disposition of Comments to Previous Revision

Prior to the enactment of AIR-21, Congress revised the definition of "public aircraft" in the Independent Safety Board Act Amendments of 1994 (Pub.L. 103-411, enacted on October 25, 1994). Public Law 103-411 substantively changed the definition of public aircraft, and further, it gave the Administrator of the FAA the authority to grant exemptions to government entities whose operations lost public aircraft status as a result of Public Law 103-411 (Pub.L. 103-411, section 3(b)).

In 1995, the FAA issued a final rule amending the definition of public aircraft in 14 CFR 1.1 (60 FR 5074, January 25, 1995). The FAA also requested comments from the public on this action. The FAA received 14 comments on the rule, with the majority expressing concern over exemptions rather than the definition of "public aircraft."

The National Association of State Aviation Officials and a county law enforcement agency commented that new requirements on "compensation" and "commercial purpose" would severely impair law enforcement agencies' ability to cooperate and respond to disasters properly. These comments are no longer applicable because of the statutory revision in 2000.

The Professional Aviation Maintenance Association supported the rule without further comment. All other commenters were air carriers that supported the rule but opposed allowing an excessive number of exemptions under the then-new statutory authority.

Revised Definition of Public Aircraft

This technical amendment changes the definition of "public aircraft" to adopt the statutory definition in Public Law 106-181 and as codified in 49 U.S.C. 40102. The amended definition also contains the qualifications for public aircraft status from Public Law 106-181 and as codified in 49 U.S.C. 40125. This technical amendment also restores to 14 CFR part 11 the language of Public Law 103-411 concerning statutory exemptions for government entities whose aircraft lost public aircraft status as a result of that revision. This language was omitted in the revision of part 11 in 2000.

No Notice – Immediate Adoption of Change

The FAA has not conducted notice and comment procedures for this rule. Notice and comment are not required when it would be "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b). This technical amendment will make the regulations

consistent with the statute and will have no substantive legal effect. Therefore, the FAA finds that notice and comment are unnecessary. This amendment will take effect immediately, as it is not a substantive amendment that requires a 30-day period between publication in the **Federal Register** and the effective date. See 5 U.S.C. 553(d).

Rulemaking Analyses

This regulation imposes no additional burden or requirement on the regulated industry, any person, or organization. Therefore, we have determined the action is not a significant rule under Executive Order 12866 or under Department of Transportation Regulatory Policy and Procedures. Also, because this regulation is editorial in nature, the FAA expects minimal impact and finds that a full regulatory evaluation is not required since the regulation will simply conform to the statute. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 1 and 11 as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

In §1.1,

2. Revise the definition of "public aircraft" to read as follows:

JMC 5/9/03

§1. 1 General definitions.

* * * * *

Public aircraft means any of the following aircraft when not being used for a commercial purpose or to carry an individual other than a crewmember or qualified non-crewmenber:

(1) An aircraft used only for the United States Government; an aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration; an aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments; or an aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments.

(i) For the sole purpose of determining public aircraft status, commercial purposes means the transportation of persons or property for compensation or hire, but does not include the operation of an aircraft by the armed forces for reimbursement when that reimbursement is required by any Federal statute, regulation, or directive, in effect on November 1, 1999, or by one government on behalf of another government under a cost

reimbursement agreement if the government on whose behalf the operation is conducted certifies to the Administrator of the Federal Aviation Administration that the operation is necessary to respond to a significant and imminent threat to life or property (including natural resources) and that no service by a private operator is reasonably available to meet the threat.

(ii) For the sole purpose of determining public aircraft status, governmental function means an activity undertaken by a government, such as national defense, intelligence missions, firefighting, search and rescue, law enforcement (including transport of prisoners, detainees, and illegal aliens), aeronautical research, or biological or geological resource management.

(iii) For the sole purpose of determining public aircraft status, qualified non-crewmember means an individual, other than a member of the crew, aboard an aircraft operated by the armed forces or an intelligence agency of the United States Government, or whose presence is required to perform, or is associated with the performance of, a governmental function.

(2) An aircraft owned or operated by the armed forces or chartered to provide transportation to the armed forces if—

(i) The aircraft is operated in accordance with title 10 of the United States Code;

(ii) The aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 of the United States Code and the aircraft is not used for commercial purposes; or

(iii) The aircraft is chartered to provide transportation to the armed forces and the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) designates the operation of the aircraft as being required in the national interest.

(3) An aircraft owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, and that meets the criteria of paragraph (2) of this definition, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.

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PART 11—GENERAL RULEMAKING PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701-44702, 44711, and 46102.

3. Add new § 11.103 to read as follows:

§11.103 What exemption relief may be available to federal, state, and local governments when operating aircraft that are not public aircraft?

The Federal Aviation Administration may grant a federal, state, or local government an exemption from part A of subtitle VII of title 49 United States Code, and any regulation issued under that authority that is applicable to an aircraft as a result of the Independent Safety Board Act Amendments of 1994, Public Law 103-411, if - -

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

(b) 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.

Issued in Washington, DC on MAY 5 2003

Donald P. Byrne,
Assistant Chief Counsel, Regulations Division.

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