

Introduction

The Public Aircraft Issues Resource Book was designed for the ALEA Unit Manager's Course. This booklet includes FAA Advisory Circulars, various articles, public laws, FAA interpretations and associated documents to assist the student in better understanding the complex issues dealing with the operation of public aircraft.

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**EXECUTIVE SUMMARY
THE NATIONAL SHERIFFS ASSOCIATION
PUBLIC LAW 103-411
FOR THE UNITED STATES CONGRESS**

NOVEMBER 1, 1995

SEVENTH REVISION JUNE 30, 2001

**THE NATIONAL SHERIFFS ASSOCIATION
AVIATION COMMITTEE
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**THE NATIONAL SHERIFFS ASSOCIATION
1450 DUKE STREET
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The National Sheriff's Association represents a number of public aircraft users in the law enforcement field within the United States. In 1994, it formed an aviation committee to oversee the impact of aircraft laws, regulations and associated issues on the nation's public aircraft operators. Sheriff Dan Breda of Chelan County, Washington was named the chairman of the committee, and Sheriff John H. Butterworth of Marion County, Ohio was named as the co-chair.

In 1994, Senator Larry Pressler (R-SD) asked for hearings (ostensibly to explore the safety of the air fleet operated by various government sub-divisions) in the wake of a tragic crash of a State of South Dakota aircraft that killed the Governor of South Dakota and his entourage. Senator Pressler was advised that faulty maintenance contributed to the crash and that other public aircraft were equally at risk. In the ensuing investigation by the NTSB, the aircraft was not only found to be meticulously maintained beyond the

standard maintenance demanded by the manufacturer and the FAA, it was discovered that the crash was a direct result of a propeller hub failing in such a way that no inspection would have detected the defect.

Civil aircraft operators, particularly in the Western United States, have repeatedly petitioned the Federal Aviation Administration (FAA) to regulate government aircraft. Their objection was the fact that public aircraft, especially in forest firefighting missions, posed a threat to their profitability because public aircraft could fly cheaper than they could contract in such circumstances. With shrinking revenues, they needed a federal fix to keep public aircraft away from missions that the civil operator could then contract for higher rates paid by the taxpayer.

Using the South Dakota example, an intense lobbying effort took place, most noticeably by Helicopter Association International, to put the fix into the law. In October, 1994, after few hearings (at which no law enforcement or firefighting interests were invited to testify) Public Law 103-411 was passed and signed by the President. It became law in April of 1995.

FAA REGULATIONS, PAST AND PRESENT: PUBLIC LAW 103-411

Prior to the passage of the Pressler Bill, public aviation enjoyed a mission intensive existence with very little federal interference. The safety record of government aircraft was, and remains, excellent. Costs of operations could be recovered under most circumstances and operations large and small were able to operate for the public good. Public Law 103-411 changed all of that.

For the first time in history, the Congress of the United States passed a law that took government out of the mission of protecting the public and gave preferential treatment to civil aircraft operators. Unless a significant threat to life or property exists ***and no private operator is available*** can a government operator come to the aid of a fellow jurisdiction and recover costs (emphasis added). No cost recovery can take place outside a common treasury (defined as a single unit of government), flying in the face of mutual aid agreements between public safety air operators and neighboring agencies.

Cost recovery equates to government being able to provide aircraft services much cheaper than civil operations. Before 103-411, a turbine powered public use helicopter could be operated for a fraction of the cost of private enterprise including insurance, maintenance and pilot certification. The public now has no choice on how the services will be chosen except in the most critical of times ***and*** when the higher cost of civil aircraft are not available for the emergency. In fact, the delay created by the search for available civil operators in the face of an emergency has a serious adverse impact on the safety of the public.

The redefinition of public aircraft, restrictions on aircraft type and the common treasury issues are just part of this law that took government out of its own business in order to assist an industry that cannot be adequately inspected or policed by the FAA now.

Assaults by Helicopter Association International (HAI) and other special interest groups have continued, in an attempt to stem taxpayer supported surplus programs from releasing aircraft that will help fill a void for public safety forces. They have mischaracterized public flight operations as unsafe, uninsured and uninformed in spite of the fact that the law makes no demand on the private operator to be trained in firefighting, EMS or law enforcement aviation techniques. In fact, while HAI views us as second class operators who should be shut down, there are few private operators in this country with the necessary expertise that would make them safe enough to fly the number of incident free missions that public aircraft fly today, especially in the law enforcement arena.

Finally, in October of 1995, fully one year after the passage of 103-411, Representative John Duncan (R-TN), of the House Committee on Transportation opened hearings before the Sub-Committee on Aviation to explore 103-411. After the hearings that were attended by an excellent panel of public safety flight operators¹, the chairman and members of the committee stated their surprise and amazement over the callous manner in which this law has affected their constituents. Prior to the hearings and the charge of Chairman Duncan, several tasks are being undertaken by the public aircraft coalition in this country:

- ?? Aircraft manufacturers and public aircraft operators have formed a liaison to keep lines of communications open and provide technical assistance for excess military aircraft.
- ?? The Government Services Administration (GSA) have formed a task group to oversee surplus parts distribution to help insure only flight quality surplus parts are available for former DOD aircraft.
- ?? The Interagency Committee for Aviation Policy (ICAP) has formed several task groups to develop standardized maintenance programs for released surplus aircraft. These programs have been approved by the FAA.
- ?? The major law enforcement groups in the United States; The National Sheriffs Association (NSA), International Association of Chiefs of Police (IACP) and the Airborne Law Enforcement Associations (ALEA) have networked to promote positive legislative reform, aircraft operations training and other public safety issues relevant to safe public aircraft endeavors.

SPECIFIC LEGISLATIVE RELIEF SOUGHT BY THE NSA

To address the specific issue of PL. 103-411, the NSA would appreciate The Congress to do the following to insure that local government cannot be restricted by high cost and regulations that require delay in the face of emergency, sacrificing public safety for private profit:

1. Remove the common treasury requirement and revise the definition of public aircraft in PL. 103-411.

¹ NSA Was Represented by Sheriff Dan Breda, Chelan County, Washington

=2. Eliminate the ambiguity of the law by the following legislation that is consistent with the Federal Aviation Act. The following language amends paragraph (36) of 49 USC 1301 to read as follows (with changes in bold):

? (36) A Public aircraft@ means an aircraft used exclusively in the service of any government of any State, Territory or possession of the United States, or the District of Columbia, but not including any government-owned aircraft engaged in carrying persons or property for commercial purposes.

(I) For purposes of this paragraph, used exclusively in the service of@ means, for other than the Federal Government, an aircraft which is owned or operated by a governmental entity for not less than 90 continuous days.

(ii) For purposes of this paragraph, commercial purposes means carriage by air of persons or property for a purpose connected with commerce or trade that is, in itself, a major enterprise for profit. The term commercial purposes is not intended, nor shall it be interpreted to include:

(A) The operation of public aircraft by government entities pursuant to agreements to recover the reasonable and proximate costs of operating such aircraft in the performance of a governmental activity or function, including but not limited to, public safety, fire fighting, search and rescue, emergency medical service, aeronautical research, law enforcement or biological or geological resource management.

(B) The recovery of only those costs reasonable and proximately related to a governmental entities operation of a public aircraft to perform a governmental activity or function.

This language makes it clear that mere receipt of restitution, reimbursement or any other thing of any value, no matter how small, is not adequate to convert a government purpose into commerce. It also makes it clear that a profit motive is required, even though actually making a profit is not required.

In order to define the proposed amendment and discuss the problems surrounding the possible elimination of the 1208 military excess property program, a meeting was held January 23 and 24 at the invitation of Sheriff Larry Carpenter (Ventura County California).

At that time, a two day process of group interaction took place among representatives of the ALEA, IACP, Western Sheriffs and the Chair and Co-Chair of the NSA Aviation Committee. The results of the meeting were two fold; first, a presentation by NSA brought the participants up to speed on the 1208 (now 1033) excess military property program and two, after much work and discussion, a draft amendment was finalized, taking the place of the previous draft in the executive summary. It is expected that the new (1996) draft will be used by NSA, ALEA and IACP as the blueprint for further legislative action.

Further discussion concerning the possibility of a new SFAR² was tabled at this meeting.

Issues surrounding the SFAR and other pertinent issues will be discussed in the following months.
1996 REVISION, PROPOSED AMENDMENT TO PL. 103-411

It is suggested by NSA that the new amendment should read as follows (changes in bold italics):

- (36) Public aircraft
- (A) means an aircraft that is
- (I) used only for the United States Government;
 - or
 - (ii) Owned or operated by (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.
- (B) but, 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) crew member or other persons aboard the aircraft whose presence is required to perform, or is associated with the performance, **administration or support of**, a governmental function such as, **but not limited to, public safety**, 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.

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,

(i) if the unit of government on whose behalf the operation is conducted certifies to the 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;

or

(ii) if the aircraft is being used in a government function as enumerated in paragraph (I) above and the unit of government providing the aircraft receives reimbursement for cost recovery only.
For the purpose of this section, commercial purposes does not include receipt of reimbursement for cost recovery.

H.R. 1521 INTRODUCED IN CONGRESS MAY 1, 1997

On May 1st, 1997, California Representative Elton Gallegly introduced H.R. 1521 in the United States Congress. The House Resolution contains the technical amendments that the NSA seeks in reference to PL. 103-411. As of June 1998 there are 41 Congressional co-sponsors for 1521, and a growing understanding and support in the Senate for the changes embodied in HR 1521.

The safety issue remains intact. No one on the committee wants to see any denigration of the safety issues. NSA and its Aviation Committee will continue to work both as an organization and as a member of a larger coalition to promote flight safety, management and maintenance issues.

With this in mind, however, the onus of restricted cost sharing and putting commercial interests ahead of legitimate governmental operations will be fought through the House Resolution (1521) as introduced.

GRAHAM AMENDMENT INTRODUCED IN SENATE APPROPRIATIONS BILL, 1998

Through the continued effort of the NSA, IACP and ALEA, Senator Bob Graham of Florida introduced an amendment to the Senate Appropriations Bill. S. 2260 was introduced late in the legislative session of the 105th Congress and contains language to remove the common treasury and cost recovery issues in PL 103.411.

The amendment passed the Senate and is now in the Senate/House Conference Committee for consideration for this session's appropriations. The amendment was made to the Commerce, Justice and State Appropriations Bill.

HA's reaction to this development has been swift and cutting. Their legislative action has included misleading statements concerning safety, tax payer cost savings and other items that range from merely misleading to downright fabricated. Once again, they are concentrating on non-factual information in an attempt to paint law enforcement aviation as an evil to be reconciled by private contractors.

The fact of the matter is that law enforcement aviation in this country is safer than most commercial concerns, especially in the area of logging and forest aircraft operations. Law enforcement is delivering aviation services at a fraction of the cost that commercial operators charge. Finally, law enforcement aviators are highly trained and dedicated practitioners who view their mission as more than a mere profit motivated contract.

With the Graham Amendment, sanity and the proper utilization of government resources will be back where they belong; in the hands of law enforcement aviators and not money motivated commercial concerns.

GRAHAM AMENDMENT DOES NOT PASS 106TH CONGRESS

On October 21, 1998, word was received that the amendment to S.2260 was not passed with the budget. New strategy will be worked up for the 107th Congress to continue our push for legislative relief of PL. 103-411.

RE-INTRODUCTION 107TH CONGRESS

Representative Gallagly introduced the Bill in the 107th Congress. The language remained basically intact from the previous Bill.

Almost immediately, HAI and others started to lobby against the new bill.

Although a summit meeting was held with HAI and interested parties including NSA, ALEA, state foresters and Congressional aids in Washington, no real movement from HAI's position was forthcoming.

A major development came from within the ICAP when the Committee proffered a new definition of public aircraft. With assistance and concurrence with the FAA through Gene Kirkendall, language very similar to that offered by the joint task force of NSA, ALEA and IACP is now part of the federal recommendations to the full ICAP.

As recently as June of 1999, that language or possibly substitute language has been discussed for the Senate Crime Bill, or in the FAA re-authorization bill. Progress in that regard will be monitored closely.

MID-WINTER MEETING MARCH 2, 2000- FAA CONCURRENCE WITH JOINT LANGUAGE

The NSA met at the annual Mid-Winter meeting on March 2, 2000 at the J W Marriott Hotel in Washington D.C. At that time, representatives from ALEA, IACP and the FAA were in attendance. Two significant events came about as a result of the meeting.

First, after discussion with the members in attendance including Dave Tennessen and Don Gilcrest (Ventura County), concurrence was reached with the public aircraft coalition and the FAA on the FAA sponsored definition of public aircraft set as a Bill to Congress. This is the same language previously reached by the FAA and ICAP in 1999 with a revision of the phrase "inherently governmental function". Any questions concerning time in type, training and other ancillary issues will be covered in a new FAA Advisory Circular published after Congressional passage of the Bill.

The historical significance of this cannot be understated. For the first time since 103-411 became law, Federal, state and local public aviation agencies, along with the FAA, have reached agreement on a new public aircraft definition that has the potential to be passed

by Congress. The concurrence language eliminates any ambiguity that may have existed prior to this date .

A joint letter was authored and was ready to be signed when word was received that the FAA Re-Authorization Bill was passed out of conference without any significant changes to this issue. Basically this means that once again a vehicle needs to be identified to get the Bill before Congress in 2000/2001.

The second significant event of meeting came when Chief Don Shinnamon (City of Holly Hill, Florida) passed out a comprehensive survey outlining public aviation crashes. This marks the first time that some empirical data exists concerning this issue.

DEFINITION OF PUBLIC AIRCRAFT-CONCURRENCE EDITION MARCH 2000

A BILL

To amend Title 49, United States Code, to revise and clarify the definition of Public Aircraft.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT OF DEFINITION OF PUBLIC AIRCRAFT

Section 40102(a) (37) of Title 49 United States Code is amended to read as follows:

(37) > Public Aircraft means an aircraft operated by or on behalf of the United States Government, a state, the District of Columbia, a territory or possession of the United States or a political subdivision of one of these governments, but only when operated under the conditions specified by sections 40125(b) or 40125(c) of this title, or as described in section 40125(d) of this title.

SECTION 2. QUALIFICATIONS FOR PUBLIC AIRCRAFT STATUS

(A) GENERAL- Chapter 401 is amended by adding at the end of the following:
Sec. 40125. Qualifications for public aircraft status

(A) DEFINITIONS- In this section, the following definitions apply:

(1) ARMED FORCES- The term armed forces has the meaning given that term in Title 10, Section 101 and includes the reserve components of the armed forces and the National Guard of a state, territory Puerto Rico of the District of Columbia.

(2) COMMERCIAL PURPOSES- The term commercial purposes means the transportation of persons or property for hire, but does not include the operation of an

aircraft by a government under cost reimbursement required by federal law or a cost reimbursement agreement:

(A) to undertake an **inherently governmental** function³ that is so intimately related to the public interest as to mandate performance by the government and require either the exercise of discretion in applying government authority or the use of value judgement in making decisions for the government; or

(B) to undertake other governmental functions, but only when needed to respond to an imminent threat to life, property or natural resources and no service by a private operator is reasonably available to meet the threat.

(3) **GOVERNMENTAL FUNCTION-** The term governmental function means an activity mandated by law or otherwise undertaken by a government requiring the use of an aircraft, such as national defense, intelligence missions, search and rescue, law enforcement (including transport of prisoners, detainees and illegal aliens), security operations, fire fighting, natural resource and disaster management, transport of mission related cargo, equipment development and demonstration, employee or contractor training and space, aeronautical atmospheric, geographic or oceanographic research.

(4) **QUALIFIED NON CREW MEMBER-** The term qualified non crew member means an individual, other than a member of the crew,

(A) Aboard an aircraft owned or operated by the armed forces or an intelligence agency of the United States Government; or

(B) Whose presence is required for, or is associated with, the performance of the governmental function for which the aircraft is being operated.

(B) **GENERAL-** An aircraft described in 40102 (a) (37) qualifies as a public aircraft except when it is used for commercial purposes, used to carry an individual other than a crew member, or a qualified non- crew member⁴ or not used exclusively for the government.

(C) **OPERATIONS OF THE ARMED FORCES-** An aircraft described in 40102 (a) (37) qualifies as a public aircraft if it is -

(1) Owned by the armed forces or operated by personnel of the armed forces in the performance of their duties; or

(2) Chartered to provide transportation or other services to the armed forces, but only upon designation of the operation (made in writing to the Administrator of the Federal Aviation Administration) as required in the national interest by the Secretary of Defense or the Secretary of the Department in which the Coast Guard is operating.

(D) **OPERATIONS FOR CREW TRAINING, EQUIPMENT DEVELOPMENT OR DEMONSTRATION-** An aircraft owned by the United States Government and operated by any person for purposes related to crew training, equipment development or demonstration qualifies as a public aircraft⁵.

(2) CONFORMING AMENDMENT- The analysis for Chapter 401 is amended by adding at the end the following:
40125 Qualifications for public aircraft status.

Section 3 EXEMPTION OF GOVERNMENT AIRCRAFT OPERATIONS FROM STATUTORY REQUIREMENTS

(A) Section 40109(b) of Title 49, United States Code is amended by -

(1) Striking Safety Regulation.– The and substituting Safety Authority B(1) The; and

(2) Adding the following at the end:

(2) The Administrator may grant an exemption to a government from a requirement of this Part, other than subpart II, that would be applicable to aircraft operated by or on behalf of the government if-

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

(B) The aviation safety program of the government ensures safe operation of the type of aircraft operated by the government.

(B) Section 3 (b) of the Independent Safety Board Act Amendments of 1994" (Public Law 103-411; October 25, 1994) is repealed.

PUBLIC LAW 106-424 (NATIONAL TRANSPORTATION AMENDMENTS ACT OF 2000) NOVEMBER 2, 2000⁶

In January of 2000, Congress introduced Senate Bill 2412 which was an appropriations bill for the NTSB. As the bill proceeded through the Senate and House of Representatives, several amendments were attached to the bill. On October 3, 2000, Senator John McCain attached Section 14 to the bill. Section 14 focused on the issue of training in non-certificated military surplus aircraft. Section 14 of the bill states:

In determining whether an individual meets the aeronautical experience requirements imposed under section 44703 of Title 49, United States Code, for an airman certificate or rating, the Secretary of Transportation shall take into account any time spent by that individual operating a public aircraft as defined in section 40102 of Title 49, United States Code if that aircraft is:

1. *Identifiable by category and class; and*
2. *Used in law enforcement activities.*

On November 1, 2000 this bill was approved by Congress and signed into law by then President William J. Clinton. The bill became Public Law 106-424. This marks the first *significant* change in public aircraft operations since PL 103-411. While the entire concurrence bill did not pass as an amendment, Section 14

certainly indicates that Congress is starting to listen to the law enforcement aviation coalition.

The FAA has issued a Question and Answer response to the passage of PL 106-424. This document is known as Q and A 254A, and was originally written in response to questions raised by the Baltimore County, Maryland Police Department concerning training in non-certificated military surplus aircraft.

Q and A 254A offers an interpretation of PL 106-424 that is not too favorable for law enforcement. In short, the interpretation allows for the logging of flight time for the purposes of obtaining primary and advanced ratings in non-certificated aircraft, if the flight is an approved law enforcement mission. The interpretation does not allow for flights for the sole purpose of training to obtain primary or advanced ratings. The FAA interpretation also clarified the issue of aircraft check rides in non-certificated military surplus aircraft. The interpretation states that *“a flight for the purposes of providing an aircraft check in that specific public aircraft to another pilot of a Federal, State, County or Municipality law enforcement agency”* is an approved law enforcement mission. The interpretation went on to state *“the emphasis here is a check for the purposes of qualification, proficiency, currency or familiarization in the specific public aircraft”*.

We are expecting further clarification and a new FAA Advisory Circular sometime in 2001. This hopefully will be an inclusive document to define acceptable missions, current definition and guidance to public aircraft operators.

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. Section 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
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.

/s/ Thomas C. Accardi
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 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. 100-233, 1987). The FAA's long-standing interpretation has been that, what 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 government 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 of "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 was 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 or 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 available 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 this 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 Section 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) Modification 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 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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Independent Safety Board Act Amendments of 1994 (Enrolled as Agreed to or Passed by Both House and Senate)

--H.R.2440--
H.R.2440

**One Hundred Third Congress
of the
United States of America
AT THE SECOND SESSION**

Begun and held at the City of Washington on Tuesday,
the twenty-fifth day of January, one thousand nine hundred and ninety-four
An Act

To amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1994, 1995, and 1996, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Independent Safety Board Act Amendments of 1994'.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

Section 1118(a) of title 49, United States Code, is amended to read as follows:

`(a) IN GENERAL- There is authorized to be appropriated for the purposes of this chapter \$37,580,000 for fiscal year 1994, \$44,000,000 for fiscal year 1995, and \$45,100,000 for fiscal year 1996. Such sums shall remain available until expended.'

SEC. 3. APPLICABILITY OF CERTAIN REGULATIONS AND REQUIREMENTS TO THE OPERATION OF PUBLIC AIRCRAFT.

(a) DEFINITION OF PUBLIC AIRCRAFT- Section 40102(a)(37) of title 49, United States Code, is amended by striking subparagraph (B) and inserting the following:

`(B) 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.

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.

(b) **AUTHORITY TO GRANT EXEMPTIONS-**

(1) **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.

(2) **REQUIREMENTS-** The Administrator may grant an exemption under paragraph (1) only 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.

(c) **INVESTIGATIVE AUTHORITY OF BOARD-**

(1) **ACCIDENTS INVOLVING PUBLIC AIRCRAFT-** Section 1131(a)(1)(A) of title 49, United States Code, is amended by inserting before the semicolon at the end the following: "or an aircraft accident involving a public aircraft as defined by section 40102(a)(37) of this title other than an aircraft operated by the Armed Forces or by an intelligence agency of the United States".

(2) **DUTIES AND POWERS-** Section 1131 of title 49, United States Code, is amended--

(A) by redesignating subsection (d) as subsection (e); and

(B) by inserting after subsection (c) the following:

(d) **ACCIDENTS INVOLVING PUBLIC AIRCRAFT-** The Board, in furtherance of its investigative duties with respect to public aircraft accidents under subsection (a)(1)(A) of this section, shall have the same duties and powers as are specified for civil aircraft accidents under sections 1132(a), 1132(b), and 1134(b)(2) of this title.

(d) **EFFECTIVE DATE-** The amendments made by subsections (a) and (c) shall take effect on the 180th day following the date of the enactment of this Act.

SEC. 4. RELEASE OF RESERVATIONS AND RESTRICTIONS ON CERTAIN PROPERTY LOCATED IN RAPIDES PARISH, LOUISIANA.

(a) **RELEASE-** Notwithstanding any other provision of law, and except as provided in subsections (b) and (d), the United States releases without consideration all reservations, restrictions, conditions, and limitations on the use, encumbrance, or conveyance of certain real property (together with any improvements thereon and easements appurtenant thereto) consisting of approximately 1,991.53 acres of land and located in Rapides Parish, Louisiana, the location of Esler Field, as identified in the deed of conveyance from the United States to the Parish of Rapides, Louisiana, dated January 23, 1958, to the extent such reservations, restrictions, conditions, and limitations are enforceable by the United States.

(b) **EXCEPTIONS-** The United States reserves the right of reentry upon or use of the property described in subsection (a) for national defense purposes in time of war or other national emergency without charge. The release provided by subsection (a) does not apply to any conditions or assurances associated with (1) the continued nonexclusive use without charge of the airport and use of space at the airport, without charge, by the Louisiana National Guard, (2) the

nonexclusive use of the airport by transient military aircraft without charge, or (3) the nonexclusive use of the airport by transient military aircraft without charge during periods of maneuvers.

(c) **LIMITATION ON STATUTORY CONSTRUCTION-** Nothing in this section shall be construed to affect the disposition or ownership of oil, gas, or other mineral resources either in or under the surface of the real property described in subsection (a).

(d) **FEDERAL AVIATION ADMINISTRATION-**

(1) **NONAPPLICABILITY OF RELEASE TO GRANT AGREEMENTS-** The release described in subsection (a) does not apply to any conditions and assurances associated with existing airport grant agreements between the Rapides Parish Airport Authority/Eslar Field and the Federal Aviation Administration.

(2) **AGREEMENT-** Notwithstanding any other provisions of law, the Administrator of the Federal Aviation Administration shall enter into an agreement with the Airport Authority of Rapides Parish, Louisiana, to provide for the terms and conditions under which the real property described in subsection (a) may be used, leased, sold, or otherwise disposed. The agreement shall be concluded not later than 180 days after the date of the enactment of this Act.

(e) **EFFECTIVE DATE-** This section shall take effect on the 180th day following the date of the enactment of this Act.

Speaker of the House of Representatives.
Vice President of the United States and
President of the Senate.

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H.R.1000

Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Enrolled as Agreed to or Passed by Both House and Senate)

SEC. 702. PUBLIC AIRCRAFT.

(a) DEFINITION OF PUBLIC AIRCRAFT- Section 40102(a)(37) is amended to read as follows:

“(37) ‘public aircraft’ means any of the following:

“(A) Except with respect to an aircraft described in subparagraph (E), an aircraft used only for the United States Government, except as provided in section 40125(b).

“(B) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in section 40125(b).

“(C) 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, except as provided in section 40125(b).

“(D) 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, except as provided in section 40125(b).

“(E) An aircraft owned or operated by the armed forces or chartered to provide transportation to the armed forces under the conditions specified by section 40125(c).”

(b) QUALIFICATIONS FOR PUBLIC AIRCRAFT STATUS-

(1) IN GENERAL- Chapter 401 is further amended by adding at the end the following:

‘Sec. 40125. Qualifications for public aircraft status

“(a) DEFINITIONS- In this section, the following definitions apply:

“(1) COMMERCIAL PURPOSES- The term ‘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.

“(2) GOVERNMENTAL FUNCTION- The term ‘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.

“(3) QUALIFIED NON-CREWMEMBER- The term ‘qualified non-crewmember’ means an individual, other than a member of the crew, aboard an aircraft--

“(A) operated by the armed forces or an intelligence agency of the United States Government; or

“(B) whose presence is required to perform, or is associated with the performance of, a governmental function.

“(4) ARMED FORCES- The term ‘armed forces’ has the meaning given such term by section 101 of title 10.

“(b) AIRCRAFT OWNED BY GOVERNMENTS- An aircraft described in subparagraph (A), (B), (C), or (D) of section 40102(a)(37) does not qualify as a public aircraft under such section when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

`(c) AIRCRAFT OWNED OR OPERATED BY THE ARMED FORCES-

`(1) IN GENERAL- Subject to paragraph (2), an aircraft described in section 40102(a)(37)(E) qualifies as a public aircraft if-

`(A) the aircraft is operated in accordance with title 10;

`(B) the aircraft is operated in the performance of a governmental function under title 14, 31, 32, or 50 and the aircraft is not used for commercial purposes; or

`(C) 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.

`(2) LIMITATION- An aircraft that meets the criteria set forth in paragraph (1) and that is owned or operated by the National Guard of a State, the District of Columbia, or any territory or possession of the United States, qualifies as a public aircraft only to the extent that it is operated under the direct control of the Department of Defense.'

(2) CONFORMING AMENDMENT- The analysis for chapter 401 is amended by adding at the end the following:

`40125. Qualifications for public aircraft status.'

(c) SAFETY OF PUBLIC AIRCRAFT-

(1) STUDY- The National Transportation Safety Board shall conduct a study to compare the safety of public aircraft and civil aircraft. In conducting the study, the Board shall review safety statistics on aircraft operations since 1993.

(2) REPORT- Not later than 6 months after the date of the enactment of this Act, the National Transportation Safety Board shall transmit to Congress a report containing the results of the study conducted under paragraph (1).

Text of Public Law 106-424

SEC. 14. CREDITING OF LAW ENFORCEMENT FLIGHT TIME.

In determining whether an individual meets the aeronautical experience requirements imposed under section 44703 of title 49, United States Code, for an airman certificate or rating, the Secretary of Transportation shall take into account any time spent by that individual operating a public aircraft as defined in section 40102 of title 49, United States Code, if that aircraft is--

- (1) identifiable by category and class; and
- (2) used in law enforcement activities.

Public Aircraft Issues: Where Are We Now?

By: Don Roby
Captain, Baltimore County Police Department

Background

The topic of Public Aircraft Regulation has been a major issue for government agencies that operate aircraft. Although the focus on this issue tends to be Public Law 103-411, the real problem pre-dates the passage of this law.

In the early 1990's three public aircraft crashes catapulted the issue of government aircraft operations into the spotlight. On August 7, 1992, a state owned Sikorsky S-76 carrying the governor of Kentucky crashes and injures 5 of the 6 people on board. On April 19, 1993, a state owned Mitsubishi MU-9 crashes in Iowa killing the governor of South Dakota. On October 26, 1993, a Beechcraft 300 owned and operated by the FAA crashes into a mountain near Front Royal, Virginia killing three on board.

In addition to the crashes of the three public aircraft, the issue of compensation of public aircraft operators became an issue. On December 3, 1992 a commercial operator requested an interpretation regarding compensation of public aircraft operators. The issue focused on a sheriff's office that received compensation for fire suppression flights that were performed in a non-certificated surplus UH-1. On April 23, 1993, the FAA issued an interpretation that stated that those public aircraft operators that receive compensation would be treated as civil aircraft operators. Realizing that a non-certificated UH-1 could not be treated as a civil aircraft, the sheriff had no choice but to cease the operation of his aircraft and not receive compensation. Immediately, the FAA was petitioned to re-examine this interpretation and the FAA suspends the interpretation.

While all of this is occurring, House Bill 2440 is submitted in the House of Representatives in 1994. In addition, hearings are scheduled in October of 1994 to address the issue of the safety of public aircraft operations. Unbeknownst to law enforcement and other public operators this is all taking place. Although HR 2440 has absolutely no impact on the safety of public aircraft operations, it is touted as the Independent Safety Board Act Amendments of 1994. HR 2440 actually deals with the interpretation of public aircraft, compensation issues and mandating that the NTSB investigate accidents involving public aircraft. Immediately after the hearings HR 2440 passes the House and Senate and is signed into law by then President William Clinton. HR 2440 subsequently becomes Public Law 103-411 and the rest is history.

Update on Public Aircraft Issues

Although there has not been any recent major developments in the area of public aircraft issues, there has been some movement in the legislative process to clarify various issues. In March of 1999 HR 1000 was introduced into Congress. HR 1000 was a major bill that focused on amending Title 49 of the United States Code and to reauthorize programs of the FAA. A small part of HR 1000 was Section 702, which dealt with Public Aircraft. Section 702 contained four important elements.

The first element of importance was the clarification of the definition of public aircraft. In Section 702, Congress clarified the definition of a public aircraft as follows:

- ?? An aircraft used only for the United States Government.
- ?? An aircraft owned by the United States Government, operated by any person for the purposes related to crew training, equipment development or demonstration.
- ?? An aircraft owned and operated by the government of a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of one these governments.
- ?? An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, a territory or possession of the United States, or a political subdivision of one of these governments.
- ?? An aircraft owned by the Armed Forces or chartered to provide transportation to the Armed Forces.

The only changes contained in this bill regarding the definition of public aircraft concerned Federal aircraft used for crew training, equipment development or demonstration.

The second element of importance concerned the redefining of the term “commercial purposes”. The changes in the definition of commercial purposes focused on the removal of the phrase “common treasury”. Public Law 103-411 allowed compensation only if the funds came from a “common treasury”. Section 702 removed this mandate. However, the requirement that *“the government entity on whose behalf the operation is conducted certifies to the Administrator of the FAA that the operation was necessary to respond to significant and imminent threat of life and property and that no service by a private operator was reasonably available to meet the threat”* remained in the definition.

The third element of importance addressed in Section 702 was the definition of “government function”. Public Law 103-411 did not clearly define what a government function was. In Section 702 the important issue of the transportation of prisoners, detainees and illegal aliens was included into this definition. Although the United States Justice Department interpreted Public Law 103-411 to allow this type of transportation, it was not included in any legislation. Therefore, Congress included the transportation of prisoners, detainees and illegal aliens under an approved governmental function of law enforcement.

The fourth element of importance was the mandate to the NTSB to study the safety of public aircraft as compared to civil aircraft. This study has just been completed and is available on the NTSB web site (www.nts.gov).

The passage of HR 1000 was completed in March of 2000 and sent to the President for signature on April 5, 2000. HR 1000 subsequently became Public Law 106-181.

The final issue that has been addressed through legislative relief was the issue of training in public aircraft. In April of 1999, the Baltimore FSDO asked for clarification from its legal department regarding the use of the Baltimore County Police Department’s non-certificated military surplus aircraft for primary, proficiency and re-currency training. The FAA legal department issued a decision that stated that training is not an inherent mission of law enforcement or other public aircraft operators. The decision also stated that the use of public aircraft for training was not permitted under Public Law 103-411. Although the decision impacted the Baltimore County Police Department and its training program, it had a major impact on all public aircraft operators. The decision basically banned the use of non-certificated military excess aircraft for factory training schools and all other facets of training.

In late 1999, Bell Helicopter Textron’s Flight Academy requested further clarification on this issue. Bell challenged this interpretation and stressed to the FAA the importance of proficiency training. In early 2000, the FAA reversed part of its decision and issued a decision that permitted training if the following was met:

1. The training was not given to satisfy any certificate requirements.
2. The training was for the purpose of familiarizing pilots in emergency procedures.
3. The training was done in an aircraft owned by the government entity.
4. The government entity assumes responsibility for the safety of the flight.

Realizing that the new decision for the FAA lessened the impact of the 1999 decision, law enforcement was still not satisfied. In the summer of 2000, an amendment was placed into an appropriations bill for the NTSB. This amendment allowed for the training of law enforcement personnel in public aircraft and mandated that the FAA accept the flight time that was logged. This language was included in Senate Bill 2412 and was subsequently passed and became Public Law 106-424.

In response to the passage of Public Law 106-424, the FAA issued a revised interpretation on the issue of training in public aircraft. The interpretation stated that training in a public aircraft is permitted under the following circumstances:

1. The training must be flown in an aircraft identifiable by category and class.
2. The aircraft must be flown on a law enforcement activity.
3. Pilots of non-certificated public aircraft will be credited with flight hours flown in these aircraft to obtain a pilot's certificate and certificate add-on.
4. The FAA will accept the flight time for the purposes of meeting the aeronautical experience, recency of experience and currency requirements of the Federal Aviation Regulations.
5. The FAA will "grandfather" the flight time for law enforcement pilots.

The FAA's interpretation also included language regarding limitations on the use of public aircraft for training. The FAA advised that the use of non-certificated public aircraft for the purposes of the following flights is not permitted:

1. For the purposes of providing initial pilot training to obtain an airman's certificate or rating.
2. For the purposes of conducting the practical test for an airman's certificate or rating.
3. For the purposes of accomplishing a flight review.
4. For the purposes of accomplishing the instrument currency requirements of the Federal Aviation Regulations.
5. For the purposes of providing transportation to a law enforcement official for personal reasons, speaking engagements or for a charitable event.

In review of this latest interpretation regarding training in public aircraft, the FAA is stating that only the flight time flown in a public aircraft for an approved law enforcement mission will be accepted by the FAA for a pilot's certificate or certificate add-on. Non-certificated public aircraft are not to be used for the sole purpose of training. Although this latest interpretation is somewhat confusing, several groups representing public aircraft operators are pressing the FAA for a revised interpretation of this law. Among these groups are the Federal Intergovernmental Committee for Aviation Policy (ICAP), the National Sheriff's Association, the International Association of Chief's of Police and of course the Airborne Law Enforcement Association. To date, there has not been a revised interpretation issued by the FAA.

What Still Needs to be Done?

There is much that still needs to be accomplished to address the issue of the operation of public aircraft. However, there are four important items that need addressed at this time.

The first item is the continued cooperation between the Airborne Law Enforcement Association, National Sheriff's Association and the International Association of Chief's of

Police to assure that our segment of the aviation industry is heard. These three groups have worked extremely hard together over the past four years to address the issue of public aircraft operations. ALEA is represented on both the IACP and NSA's Aviation Committees. Likewise, members of the IACP and NSA Aviation Committee sit on the ALEA Public Aircraft Issues Committee.

The second item is the need for the FAA to recognize that the Federal Aviation Regulations are not in line with what is occurring in law enforcement aviation today. Changes are desperately needed within the FAR's to recognized military surplus aircraft and establish procedures to have them type certificated in a special category. Although this is a laborious task, it must be undertaken to assure the safety of these aircraft and the expansion of the missions (most importantly all facets of training) that these aircraft can perform.

The third item is the need for law enforcement aviation to strive for agreed upon maintenance standards for military surplus aircraft, minimum pilot qualifications and mandatory medical evaluations for all public aircraft pilots. These three issues are extremely important to law enforcement aviation. Each one is vital to our continued survival and success as a viable part of the aviation industry. Aircraft must be maintained to a maintenance standard and operated by highly qualified professional pilots.

The final item concerns the relationship between the three organizations that represent law enforcement aviation and Helicopter Association International (HAI). In the not so distant past, the relationship between law enforcement and HAI was strained. Unfortunately this was brought upon by the release of hundreds of military surplus aircraft and the perceived threat that this posed to the airframe manufacturers. Through the efforts of ALEA, IACP, NSA and HAI this relationship has greatly improved. The organizations frequently communicate with HAI on various issues and all agree that the overall goal is improved safety.

The issue of public aircraft operations continues to be a high priority for ALEA. Although this issue has relatively calmed down over the past year or so, it is not forgotten. Most people view "public aircraft" law enforcement operations as those missions performed in a military surplus aircraft. Many ALEA members believe that if they are operating a certificated aircraft, they are not a public aircraft operation. This could not be farther from the truth. If the aircraft is owned and operated by a government entity, or leased for 90 continuous days, and performing a government function it is a public aircraft mission. As such, you are bound by the laws pertaining to public aircraft. However, if you operate a certificated aircraft and are **not** conducting a "government function" you are a civil aircraft. The key issue in the determination of whether or not you are a public or civil aircraft is the mission that you are flying.

After the tragic events of September 11, 2001 the role of law enforcement aviation has expanded to include a more active role in the preparedness and response to domestic terrorism. Our brothers and sisters from the New York City Police Department's Aviation Unit, Pennsylvania State Police Aviation Unit, the aviation units surrounding the Washington DC area and the other allied agencies that supported all of them showed the importance of a unified response to terrorism. The services provided by the responding aviation units were critical to the success of managing these critical incidents. As such, law enforcement aviation units will be called upon more frequently to provide aerial command and control functions, surveillance of suspected terrorists and other related law enforcement missions. Our operations will continue to be thrust into the spotlight and we,

as an industry, must aspire to the highest standards to assure safety, professionalism at all aspects of our operation and follow the mandates of existing public aircraft laws.

About the author:

Don Roby is a 22-year veteran with the Baltimore County Police Department. He served from 1993 through 2000 as the commander of their Aviation Unit. Don currently serves as a precinct commander within the Operations Bureau. He is the past chairman of the IACP Aviation Committee and currently serves on the ALEA Public Aircraft Issues Committee, National Sheriff's Association Aviation Committee and the IACP Aviation Committee. He has represented law enforcement aviation on the topic of public aircraft issues in Congress and at various seminars and conferences. Don is an instructor for ALEA and teaches part of the Unit Manager's Course and various other topics. He can be reached via e-mail at droby@co.ba.md.us or 410-887-7311.