DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 11, and 121

[Docket No. 28060; Amdt. No. 1–39, 11–38; SFAR 38–21

RIN 2120-AF59

Public Aircraft Definition and Exemption Authority

AGENCY: Federal Aviation Administration (FAA), DOT. **ACTION:** Final rule, request for comments.

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

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

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

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

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

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

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

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

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

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

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

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

Good Cause for Immediate Adoption

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

Economic and Other Analyses

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