

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1

[Docket No. 27836]

Use of Public Aircraft

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of reconsideration of legal interpretation and invitation for comments.

SUMMARY: The Federal Aviation Administration (FAA) is reconsidering a previously issued legal interpretation of the term "commercial purposes" used in the definition of "public aircraft" that appears in the Federal Aviation Act of 1958, as amended. The reason for this action is to assess whether the interpretation is appropriate, and if it is not, to issue an appropriate interpretation.

DATES: Comments must be received on or before August 31, 1994.

ADDRESSES: Send comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, ATTN: Rules Docket (AGC-200), Docket No. 27836, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: John Walsh (AGC-100), (202) 376-6406, 701 Pennsylvania Avenue NW., Suite 925, Washington, DC 20004.

SUPPLEMENTARY INFORMATION: Under the Federal Aviation Act of 1958 (Act), as amended, aircraft fall into one of two major categories, "civil" or "public". Civil aircraft are regulated in every aspect of their construction, maintenance, and operation by the Federal Aviation Administration (FAA). Public aircraft are free from such regulation except with regard to air traffic rules.

The two classes of aircraft are defined in the Act as follows:

... of including the 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. For purposes of this paragraph, "used exclusively in the service of" means, for other than the Federal Government, an aircraft which is owned and operated by a governmental entity for other than commercial purposes or which is exclusively used by such governmental entity for not less than 90 continuous days.

Act, Section 101 (17), (36); 49 U.S.C. App. 1301 (17), (36).

In April, 1993, in response to an inquiry from a private sector operator, I issued an interpretation of the term "used exclusively in the service of" as that term applies to government-owned aircraft. The interpretation was not new in its analytical approach. It only restated, in the context of a novel question, the FAA's previous interpretations that receipt of any compensation for the operation of one's aircraft constitutes operating the aircraft for "commercial purposes" within the meaning of the statutory definition. When a county sheriff whose operation was the subject of the interpretation became aware of the interpretation, he asked for the opportunity to submit information and argument on the subject. I agreed to reconsider the interpretation, and the sheriff submitted information. In the meantime, others who became aware of the reconsideration process submitted information, also. After consideration of all the submitted information found relevant to the legal question, I confirmed the interpretation in a letter to the sheriff's county attorney, dated December 1993.

That letter has apparently been widely disseminated among private and public sector operators that have an interest in the issue. Since its issuance, the FAA has been advised by local government agencies, by Federal government agencies, and by Congressional sources, that the interpretation is having an unintended effect that they view as detrimental to public safety. These sources advise that certain public agencies' wildfire suppression capabilities are reduced by the unavailability of aircraft that do not comply with the FAR, but which previously had been considered by those public agencies to be available for those uses. The FAA has been advised that this shortage creates an imminent danger to life and property from wildfires.

Some of those same sources have also urged that the FAA reconsider whether reimbursement by one government entity to another for the use of the latter's aircraft to carry out a governmental duty of the reimbursing agency constitutes "commercial purposes" within the Act. In support of their request, they have provided a legal

analysis of the Act that is different from the FAA analysis and that warrants consideration.

In further support of reconsideration, the sources point to what they consider an anomalous result when the law is applied as interpreted. That is, a government entity can use its aircraft for fire suppression activities on its own land without complying with the FAR but must comply with the FAR when operating on behalf of another jurisdiction, only because the economics of government require reimbursement in the latter case. This circumstance, they urge, indicates that the FAA is making decisions based on economic factors rather than on safety considerations. Finally, the same sources urge expedited treatment of the request for reconsideration in view of the emergency circumstances they perceive to be extant in regard to wildfires in the western forests.

At the same time, other interested parties have urged that there are sufficient private sector resources available to support wildfire suppression activities. Those parties claim to be disadvantaged in their efforts to obtain contracts to perform that work by the fact that public sector aircraft do not have to bear the cost of compliance with the FAR. These parties also urge that their operations are, by virtue of their compliance with the FAR, inherently safer than public aircraft operations.

In view of the public safety situation that has been reported to the FAA; the apparently anomalous situations permitted by the Act as currently interpreted, and the possible merits of a different legal interpretation of the Act that has been provided to the FAA, it is appropriate to reconsider whether reimbursement by one government for the use of another government's aircraft to carry out a governmental duty means the resulting operation is for a commercial purpose. The arguments advanced in support of such review suggest some uncertainty in the statutory definition, as applied to intergovernmental reimbursement, and it is possible that, upon reconsideration, a different interpretation might be reached. The parties to whom the previous interpretation was issued, as well as other parties who have recently written the agency expressing concern, are being advised by mailed copies of this notice that the matter is again under review.

This reconsideration should be completed within 90 days. Interested persons are invited to submit any arguments, views, or information they consider relevant. All material received

60 days after publication date will be considered in coming to a final interpretation. Later received material may be considered as time allows. All material submitted will be available for review and copying by interested

persons in the FAA Rules Docket No. 27836 at the address given above. All material relied upon in the interpretative process to date is available in the docket as of the date of this announcement.

Issued in Washington, DC on July 26, 1994
John H. Cassady,
Deputy Chief Counsel.
[FR Doc. 94-18546 Filed 7-29-94; 8:45 am]
BILLING CODE 4910-13-M