

means biological and geological resource management that requires the presence of scientific and technical passengers to gather information that can only be gathered by direct observation from the air.

e. "*Cost Reimbursement Agreement.*" This term means any agreement, either oral or written, providing for reimbursement of the costs of the aircraft operation. If there is any charge or payment in excess of the cost of the operation, then the agreement does not constitute a cost reimbursement agreement.

f. "*Unit of Government.*" This term means a government. The singular characteristic of a unit of government in this context is its common treasury. This interpretation generally allows reimbursement among or between agencies of a state, among or between a city, and among or between agencies of the Federal government without the need for compliance with FAR Parts 121, 125, 133, 135, or 137. However, should a city, state, or Federal agency receive reimbursement from another government, it would need to ensure that it is in compliance with the appropriate portions of the FAR, unless the other government is able to certify that there is a significant and imminent threat to life or property and that no private operator is reasonably available, as discussed below.

g. "*Certifies.*" Cost reimbursement between governments does not negate public aircraft status when the government on whose behalf the operation was conducted certifies that there was a significant and imminent threat and that no private operator was reasonably available to meet the threat. The certification by a unit of government should include the following: a description of the significant and imminent threat; a description of the operation undertaken; the date on which the operation occurred; and an explanation of how it was determined that no service by a private operator was reasonably available.

(1) Units of government should retain the required certification, which should be completed contemporaneously, as part of their records in case any question should arise.

(2) A general or "blanket" statement that an operator will always comply with statutory requirements will not be considered acceptable. The certification must occur for each occasion of operation.

Note: Congress' intent in amending the public aircraft definition was, in part, to insure that units of government are not impeded in attempting to respond to certain

emergency situations. In the words of Senator Gorton, Congress intended that "when an emergency breaks out, all aircraft—public and private—will be available to respond without delay." See paragraph 1(b) above. Consistent with this intent, the FAA does not intend to generally to look behind a unit of government's certification that there was a significant and imminent threat and that no private operator was reasonably available to meet the threat. Thus, it is not expected that FAA inspectors will routinely review or challenge these determinations made by units of government.

h. "*Significant and Imminent Threat.*" * * * "Significant and imminent threat to life or property (including natural resources)" means a situation in which the authority responsible for responding to the threat has determined that serious injury, death, or significant damage to property may occur before land- or water-borne assistance can be deployed to counter the threat effectively.

i. "*No Service by a Private Operator*" * * * "*Reasonably Available.*" No service by a private operator was reasonably available to meet the threat" means that, as reasonably determined by the authority charged with responding to the threat, no private operator is able, at the time of the threat, to deliver aircraft capable of performing the minimum tasks necessary to respond to the threat by the latest time at which such aircraft would provide an effective response.

Chapter 2. Bringing Operations Into Compliance

3. Basic Types of Civil Aircraft Operations

The government operator should contact the nearest FAA Flight Standards district office (FSDO) for assistance and guidance in bringing its operations into compliance with the FAR. For operations requiring certification, the FSDO manager will assign an FAA aviation safety inspector to assist the government operator during the certification process. Initial inquiries about certification or requests for applications should be in writing or by personal visit to the FSDO.

a. *FAR Part 91.* (1) FAR Part 91 prescribes the general flight rules for all aircraft operations within the United States, including the waters within 3 nautical miles of the U.S. coast. U.S.-registered civil aircraft are required to comply with FAR Part 91. When over the high seas, they must comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation.

(2) FAR Part 91 prohibits a pilot from operating a civil aircraft unless it is in

an airworthy condition. The pilot in command (PIC) is responsible for determining whether the aircraft is in condition for safe flight. The PIC is required to terminate the flight when unairworthy mechanical, electrical, or structural conditions occur. In addition, the PIC may not operate the aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

(3) Under FAR Part 91, the PIC of an aircraft is directly responsible for, and is the final authority as to the operation of that aircraft. In case of an inflight emergency, the PIC is authorized to deviate from any rule in FAR Part 91 to the extent necessary to meet the emergency. However, any PIC who deviates from a rule in FAR Part 91 is required, upon the request of the Administrator, to send a written report of that deviation to the Administrator.

b. *FAR Part 125.* If an operator uses an airplane with a seating configuration for 20 or more passenger seats or a maximum payload capacity of 6,000 pounds or more, and is not engaged in "common carriage," then FAR Part 125 applies. A person is considered to be engaged in "common carriage" when "holding out" to the general public or to a segment of the public as willing to furnish transportation within the limits of its facilities to any person who wants it. Examples of holding out are as follows: advertising through telephone yellow pages, billboards, television, radio, and individual ticketing. FAR Section 125.11(b) prohibits FAR Part 125 certificate holders from conducting any operation which results directly or indirectly from holding out to the general public. Further information regarding common carriage vs. private carriage can be found in AC 120-12. If the operator is engaged in "common carriage," then FAR Part 121 or 135 applies rather than FAR Part 125.

c. *FAR Part 121 or 135.* When a government-owned aircraft is operated "for commercial purposes" (see paragraph 2(a) above), the requirements contained in either FAR Part 121 or 135, depending on the type of operation, must be met. Generally, FAR Part 121 applies to domestic, flag, and supplemental air carriers and commercial operators of large aircraft, while FAR Part 135 applies to air taxi operators and commercial operators. An operator should consult Special Federal Aviation Regulation (SFAR) No. 38-2 as well as the applicability provisions of each part (FAR Sections 121.1 and 135.1) to