

compliance with the facility's opacity limits; (2) include periodic monitoring to assure compliance with the VOC handling, storage and disposal requirements of 6 NYCRR section 228.10; and (3) indicate the environmental rating for each air contaminant from each emission source as required under 6 NYCRR section 212.2. The order also explains the reasons for denying NYPIRG's remaining claims.

II. NYCTA

On May 16, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the NYCTA's East New York Bus Depot facility. NYPIRG raises 8 of the 9 issues raised in the Sirmos petition (all except for issue 7, above). On May 24, 2004, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) hold permittee responsible for complying with the sulfur-in-fuel limit; (2) require daily inspection of solvent storage containers to ensure compliance with 6 NYCRR section 226; (3) require periodic monitoring for opacity during operation of the spray paint booths to assure compliance with 6 NYCRR section 228; (4) require periodic testing for VOC content of surface coating materials to assure compliance with 6 NYCRR section 228; and (5) address an old PM emission limit that applies to any oil fired stationary combustion installation. The order also explains the reasons for denying NYPIRG's remaining claims.

III. NYOFCO

On October 4, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the NYOFCO's sludge pelletization facility. NYPIRG raises 7 of the 9 issues raised in the Sirmos petition (issues 2 through 6, 8, and 9, above). In addition, NYPIRG raises four additional issues in the petition for NYOFCO: (1) NYSDEC violated the public participation and record requirements; (2) the permit incorrectly states that the facility is not subject to new source review; (3) the permit fails to include an adequate compliance schedule; and (4) the final permit contains errors that were noted in a document presented by NYPIRG and local community groups to NYSDEC Region 2. On May 24, 2004, the Administrator issued an order partially granting and partially denying the petition. The order explains the

reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) add to the "federal-side" of the permit the SIP-approved "excuse" provision of 6 NYCRR section 201.5(e); (2) add opacity requirements pursuant to 6 NYCRR section 212.6 or explain why NYOFCO is not subject to this requirement; (3) add particulate matter requirements pursuant to 6 NYCRR section 212.4(b) or explain why NYOFCO is not subject to this requirement; (4) for the sulfur-in-fuel provision, correct the citation to the SIP-approved requirement, explain that certain requirements came from the previously issued State permit to construct and certificate to operate, and add monitoring based on fuel supplier reports; and (5) revise the mercury provision to specify the emission limitation and the required periodic monitoring. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: June 8, 2004.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 04-13933 Filed 6-18-04; 8:45 am]

BILLING CODE 6560-50-P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-37, 300-3, 301-10, 301-70

FTR Amendment 2004-02; FTR Case 2003-307

RIN 3090-AH90

Federal Travel Regulation; Use of Government Aircraft

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage related to travel on Government aircraft that has been in 41 CFR part 101-37 into the Federal Travel Regulation (FTR). A cross reference is added to the FPMR to direct readers to the coverage in the FTR. This final rule amends the Federal Travel Regulation (FTR) to provide policy for the use of Government aircraft for travel when necessary for the accomplishment of agency business.

DATES: *Effective Date:* This final rule is effective September 20, 2004.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS

Building, Washington, DC, 20405, (202) 208-7312, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jim Harte, Office of Governmentwide Policy, Travel Management Policy, at (202) 501-0483 or email at jim.harte@gsa.gov. Please cite FTR case 2003-307, FTR Amendment 2004-02.

SUPPLEMENTARY INFORMATION:

A. Background

The General Services Administration (GSA) is in the process of revising the Federal Property Management Regulations (FPMR) and transferring most of the content into a new, streamlined Federal Management Regulation (FMR). Part 101-37 of the FPMR (41 CFR part 101-37) contained rules for both the management of Government aircraft and the management of travel on Government aircraft.

The rules in 41 CFR part 101-37 that pertained to Government aircraft management were transferred to the Federal Management Regulation (FMR) as part 102-33 (41 CFR part 102-33) on November 6, 2002 (67 FR 67742) and a cross-reference was added to 41 CFR part 101-37.

This final rule moves the remaining rules in 41 CFR part 101-37, those pertaining to management of travel on Government aircraft, to the Federal Travel Regulation (FTR) (41 CFR chapters 300-304). It also amends part 101-37 by providing a cross-reference to both the FMR and the FTR.

The rules pertaining to Government aircraft are based on direction contained in Office of Management and Budget (OMB) Circular A-126, "Improving the Management and Use of Government Aircraft," revised May 1992. OMB Circular A-126 directs the Department of Defense (DoD) (and the military services) and the Department of State to publish rules regulating travel on Government aircraft by uniformed military members and by members of the foreign service, respectively. OMB Circular A-126 also directs GSA to publish in the FTR the rules for civilian employees who travel on Government aircraft. In compliance with this direction, GSA has developed these new provisions of the FTR in plain language, question-and-answer format to clarify and simplify the content.

In correspondence dated January 13, 2002, OMB states that they expect "agencies to treat their contractors like employees with regard to being passengers on Federal aircraft..." even though OMB Circular A-126 does not state this policy explicitly. In line with OMB's intent, the rules and definitions

in revised FTR parts 300–3, 301–10, and 301–70 treat employees and Government contractors similarly.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–37, 300–3, 301–10, 301–70

Government employees, Travel and transportation expenses.

Dated: June 1, 2004.

Stephen A. Perry,
Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5710, GSA amends 41 CFR parts 101–37, 300–3, 301–10, 301–70 as set forth below:

CHAPTER 101—[AMENDED]

■ 1. Revise part 101–37 to read as follows:

PART 101–37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

Authority: 40 U.S.C. 121(c); the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; Executive Order 11541; OMB Bulletin No. 93–11 (April 19, 1993) and OMB Circular No. A–126 (Revised May 22, 1992).

§ 101–37.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, part 102–33 and the Federal Travel Regulation (FTR) (41 CFR chapters 300–304, parts 300–3, 301–10, and 301–70)).

(a) For information on Government aviation administration and coordination, previously contained in subparts 101–37.1, 101–37.2, 101–37.3, and 101–37.5 through 101–37.14, see FMR part 102–33, Management of Government Aircraft (41 CFR part 102–33).

(b) For information on travel on Government aircraft previously contained in subparts 101–37.1 and 101–37.4, see 41 CFR parts 300–3, 301–10, and 301–70 of the Federal Travel Regulation (FTR).

CHAPTER 300—GENERAL

PART 300–3—GLOSSARY OF TERMS

■ 2. The authority citation for part 300–3 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118; 5 U.S.C. 5738; 5 U.S.C. 5741–5742; 20 U.S.C. 905(a); 31 U.S.C. 1353; E.O. 11609; 36 FR 13747; 3 CFR, 1971–1975 Comp., p. 586, Office of Management and Budget Circular No. A–126, “Improving the Management and Use of Government Aircraft.” Revised May 22, 1992

■ 3. Amend § 300–3.1 by adding in alphabetical order, the terms and definitions “Aircraft management office,” “Commercial Aviation Services,” “Crewmember,” “Executive agency,” “Federal traveler,” “Full coach fare,” “Non-Federal traveler,” “Passenger,” “Qualified non-crewmember,” “Required use travel,” “Senior Federal official,” “Space available travel,” and revising the definition of “Government aircraft” to read as follows:

§ 300–3.1 What do the following terms mean?

Aircraft management office—An agency component that has management control of Federal aircraft used by the agency or of aircraft hired as commercial aviation services (CAS).

Commercial Aviation Services (CAS)—Commercial aviation services (CAS) include, for the exclusive use of an executive agency—

- (1) Leased aircraft;
- (2) Chartered or rented aircraft;
- (3) Commercial contracts for full aviation services (*i.e.*, aircraft plus related aviation services) or acquisition of full services through inter-service support agreements (ISSA) with other agencies; or

(4) Related services (*i.e.*, services but not aircraft) obtained by commercial contract or ISSA, except those services acquired to support Federal aircraft.

Crewmember—A person assigned to operate or assist in operating an aircraft. Performs duties directly related to the operation of the aircraft (*e.g.*, as pilots, co-pilots, flight engineers, navigators) or duties assisting in operation of the aircraft (*e.g.*, as flight directors, crew chiefs, electronics technicians, mechanics). If a crewmember is onboard for the purpose of travel, (*i.e.*, being transported from point to point) he/she must be authorized to travel in accordance with rules in 41 CFR 301–10.260 through 301–10.266 and 41 CFR 301–70.800 through 301–70.903.

Executive agency—An entity of the executive branch that is an “executive agency” as defined in section 105 of title 5 U.S.C.

Federal traveler—For the purposes of 41 CFR 301–10.260–266 and 301–70.800–910, a person who travels on a Government aircraft and who is either—

- (1) A civilian employee in the Government service;
- (2) A member of the uniformed or foreign services of the United States Government; or
- (3) A contractor working under a contract with an executive agency.

Full coach fare—The price of a coach fare available to the general public on a scheduled air carrier between the day that the travel was planned and the day the travel occurred.

Government aircraft—An aircraft that is operated for the exclusive use of an executive agency and is a—

(a) Federal aircraft, which an executive agency owns (*i.e.*, holds title to) or borrows for any length of time under a bailment or equivalent loan agreement. See 41 CFR 102–33.20 for definition of all terms related to Federal aircraft, or

(b) Commercial aircraft hired as commercial aviation services (CAS), which an executive agency—

- (1) Leases or lease-purchases with the intent to take title,
- (2) Charters or rents, or
- (3) Hires as part of a full-service contract or inter-service support agreement (ISSA).

Non-Federal traveler—For the purposes of 41 CFR 301–10.260 through 301–10.266 and 41 CFR 301–70.800

through 301–70.910, an individual who travels on a Government aircraft, but is not a Federal traveler. Dependents and other family members of Federal travelers who travel on Government aircraft are considered to be non-Federal travelers within this regulation.

* * * * *

Passenger—In relation to use of Government aircraft, a passenger is any person who flies onboard a Government aircraft, but who is not a crewmember or qualified non-crewmember.

* * * * *

Qualified non-crewmember—A person flying onboard a Government aircraft whose skills or expertise are required to perform or are associated with performing the non-travel related Governmental function for which the aircraft is being operated (qualified non-crewmembers may be researchers, law enforcement agents, firefighters, agricultural engineers, biologists, etc.). If a qualified non-crewmember is onboard for the purpose of travel (i.e., being transported from point to point) in addition to performing his/her duties related to the non-travel related Governmental function for which the aircraft is being operated (e.g., when a scientist conducts an experiment at the same time he/she is also on the aircraft for the purpose of traveling from point to point), he/she must be authorized to travel in accordance with rules in 41 CFR parts 301–10 and 301–70.

Required use travel—Travel by Federal travelers that requires use of a Government aircraft to meet bona fide communications needs (e.g., 24-hour secure communications), security requirements (e.g., highly unusual circumstances that present a clear and present danger), or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations) of an executive agency. Required use travel must be approved according to § 301–10.262(a) and § 301–70.803(a) of this title.

Senior Federal official—An individual who is paid according to the Executive Schedule established by 5 U.S.C. 53, Subchapter II, including Presidential appointees who are confirmed by the Senate; employed in the U.S. Government's Senior Executive Service or an equivalent "senior" service; who is a civilian employee of the Executive Office of the President; who is appointed by the President to a position under section 105(a)(2)(A), (B), or (C) of title 3 U.S.C. or by the Vice President to a position under section 106(a)(1)(A), (B), or (C) of title 3 U.S.C.; or who is a contractor working under a

contract with an executive agency, is paid at a rate equal to or more than the minimum rate for the Senior Executive Service, and has senior executive responsibilities. The term senior Federal official, as used in the Federal Travel Regulation does not mean an active duty military officer.

Space available travel—Travel in space available on a Government aircraft that is already scheduled for an official purpose.

* * * * *

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

PART 301–10—TRANSPORTATION EXPENSES

■ 4. The authority citation for 41 CFR part 301–10 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); 49 U.S.C. 40118, Office of Management and Budget Circular No. A–126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992

■ 5. Revise the center heading above § 301–10.260 that reads "Government Aircraft" to read "Travel on Government Aircraft."

■ 6. Revise §§ 301–10.260 through 301–10.262 and add new §§ 301–10.263 through 301–10.266 to read as follows:

§ 301–10.260 May I use a Government aircraft for travel?

You may use Government aircraft for travel only if you have authorization from an executive agency under the rules specified in this part (except with regard to travel under § 301–70.808 and § 301–70.910). Because the taxpayers should pay no more than necessary for your transportation, generally you may travel on Government aircraft only when a Government aircraft is the most cost-effective mode of travel.

§ 301–10.261 When may I use a Government aircraft for travel?

You may use Government aircraft—

(a) For official travel only when—

(1) No scheduled commercial airline service is reasonably available (i.e., able to meet your departure and/or arrival requirements within a 24-hour period, unless you demonstrate that extraordinary circumstances require a shorter period) to fulfill your agency's travel requirement; or

(2) The cost of using a Government aircraft is less than the cost of the city-pair fare for scheduled commercial airline service or the cost of the lowest available full coach fare if a city-pair fare is not available to you. The cost of non-productive or lost work time while in travel status and certain other costs should be considered when comparing

the cost of using a Government aircraft in lieu of scheduled commercial airline service. Additional information on costs included in this cost comparison may be found in the "U.S. Government Aircraft Cost Accounting Guide," available from the General Services Administration, Office of Governmentwide Policy, MTA, 1800 F Street, N.W., Washington, DC 20405.

(b) For required-use travel only when you are required to use Government aircraft for bona fide communications (e.g., 24-hour secure communications) or security reasons (e.g., highly unusual circumstances that present a clear and present danger) or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations). Required use travel may include travel for official, personal, or political purposes, but must be approved in accordance with § 301–10.262(a) and § 301–70.803(a).

(c) For space available travel only when—

(1) The aircraft is already scheduled for use for an official purpose, and your use of the aircraft does not require a larger aircraft or result in more than minor additional cost to the Government; or

(2) You are a Federal traveler or a dependent of a Federal traveler stationed by the Government in a remote location not accessible to commercial airline service and authorized to use Government aircraft; or

(3) You are authorized to travel on a space available basis under 10 U.S.C. 4744 and regulations implementing that statute.

§ 301–10.262 How will my agency authorize travel on Government aircraft?

Your agency will authorize your travel on Government aircraft as follows:

(a) **Required use travelers.** Your agency's senior legal official or his/her principal deputy must authorize your required-use travel on a trip-by-trip basis, in advance, in writing, and in compliance with the agency's written policies describing the special circumstances under which the agency will require a traveler to use Government aircraft, unless—

(1) You are an agency head and the President has determined that all your travel (or your travel in specified categories) qualifies as required-use travel; or

(2) You are not an agency head, and your agency head has determined in writing that all of your travel, or your travel in specified categories, qualifies as required-use travel. Such written

explanation must state the specific basis for the determination.

Note to § 301–10.262(a): In an emergency situation, prior verbal approval for required-use travel with an after-the-fact written authorization is permitted.

(b) *Senior Federal officials.* If you are a senior Federal official, your agency's senior legal official or his/her principal deputy must authorize all your travel on Government aircraft in advance and in writing, except for required use travel authorized under paragraphs (a)(1) and (a)(2) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted. Senior Federal officials who are crewmembers or qualified non-crewmembers on a flight in which they are also traveling (i.e., being transported from point to point) are considered travelers and must be authorized to travel on Government aircraft according to this paragraph.

(c) *Non-Federal travelers.* If you are a non-Federal traveler, the senior legal official or his/her principal deputy in the agency sponsoring your travel must authorize you to fly on Government aircraft in advance and in writing. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your sponsoring agency's senior legal official is permitted.

(d) *All other Federal travelers.* Your designated travel-approving official (or anyone to whom he/she delegates this authority), who must be at least one organizational level above you, must authorize your travel on Government aircraft, in advance and in writing. Prior verbal approval with an after-the-fact written authorization by your agency's designated travel approving official is permitted in an emergency situation. If you hold a blanket travel authorization for official travel that authorizes travel on Government aircraft, it must define the circumstances that must be met for using Government aircraft and must comply with this regulation and any additional agency policies. Travel on Government aircraft that does not meet the circumstances specified in the blanket travel authorization must be authorized on a trip-by-trip basis in accordance with this regulation and other applicable agency policies. Check with your designated travel approving official for information on your agency's policy.

§ 301–10.263 What travel authorization documents must I present to the aircraft management office that operates the Government aircraft?

You must present to the aircraft management office that operates the Government aircraft—

- (a) A copy of your written travel authorization, including a blanket travel authorization, if applicable, approved in accordance with § 301–10.262; and
- (b) Valid picture identification, such as a Government identification card or a state-issued driver's license.

§ 301–10.264 What amount must the Government be reimbursed for travel on Government aircraft?

(a) No reimbursement is required for official travel on a Government aircraft.

(b) For personal travel on Government aircraft, reimbursement depends upon which of the following special cases applies:

(1) For any required use travel, you must reimburse the Government for the excess of the full coach fare for all flights taken over the full coach fare for the flights that you would have taken had you not engaged in personal activities during the trip, i.e., for a wholly personal trip, you must pay the full coach fare for the entire trip;

(2) For travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, or when you or your dependents are stationed by the Government in a remote location with no access to regularly scheduled commercial airline service and are authorized to use Government aircraft, you do not have to reimburse the Government.

(c) For political travel on a Government aircraft (i.e., for any trip or part of a trip during which you engage in political activities), the Government must be reimbursed the excess of the full coach fare for all flights taken on the trip over the full coach fare for the flights that you would have taken had you not engaged in political activities, except if other law or regulation specifies a different amount (see, e.g., 11 CFR 106.3, "Allocation of Expenses between Campaign and Non-campaign Related Travel"), in which case the amount reimbursed is the amount required by such law or regulation.

Note to § 301–10.264: Except for required use travel, any use of Government aircraft for personal or political activities shall not cause an increase in the actual costs to the Government of operating the aircraft.

§ 301–10.265 Will my travel on Government aircraft be reported?

Your travel on Government aircraft will not be reported unless you are a

senior Federal official, or a non-Federal traveler. (Travel under 10 U.S.C. 6744 is not reported.) If you are a senior Federal official or a non-Federal traveler, any use you make of Government aircraft, i.e., as a passenger, crewmember, or qualified non-crewmember, will be reported to the General Services Administration (GSA) by the agency that owns or hires the Government aircraft. (Agencies must maintain information on classified trips, but do not report classified trips to GSA.)

§ 301–10.266 Is information available to the public about travel on Government aircraft by senior Federal officials and non-Federal travelers?

Yes, an agency that authorizes travel on Government aircraft and an agency that owns or hires Government aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

PART 301–70—INTERNAL POLICY AND PROCEDURE REQUIREMENTS

■ 7. The authority citation for 41 CFR part 301–70 is revised to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c); Sec 2, Pub. L. 105–264, 112 Stat. 2350 (5 U.S.C. 5701 note), Office of Management and Budget Circular No. A–126, "Improving the Management and Use of Government Aircraft." Revised May 22, 1992

■ 8. Amend Part 301–70 by adding subparts I and J to read as follows:

* * * * *

Subpart I—Policies and Procedures for Agencies that Authorize Travel on Government Aircraft

Sec.

301–70.800 Whom may we authorize to travel on Government aircraft?

301–70.801 When may we authorize travel on Government aircraft?

301–70.802 Must we ensure that travel on Government aircraft is the most cost-effective alternative?

301–70.803 How must we authorize travel on a Government aircraft?

301–70.804 What amount must the Government be reimbursed for travel on a Government aircraft?

301–70.805 Must we include special information on a travel authorization for a senior Federal official or a non-Federal traveler who travels on Government aircraft?

301–70.806 What documentation must we retain for travel on Government aircraft?

301–70.807 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?

301–70.808 Do the rules in this part apply to travel on Government aircraft by the

President and Vice President or by individuals traveling in support of the President and Vice President?

Subpart J—Policies and Procedures for Agencies that Own or Hire Government Aircraft for Travel

- 301–70.900 May we use our Government aircraft to carry passengers?
- 301–70.901 Who may approve use of our Government aircraft to carry passengers?
- 301–70.902 Do we have any special responsibilities related to space available travel on our Government aircraft?
- 301–70.903 What are our responsibilities for ensuring that Government aircraft are the most cost-effective alternative for travel?
- 301–70.904 Must travelers whom we carry on Government aircraft be authorized to travel?
- 301–70.905 What documentation must we retain for travel on our Government aircraft?
- 301–70.906 Must we report use of our Government aircraft to carry senior Federal officials and non-Federal travelers?
- 301–70.907 What information must we report on the use of Government aircraft to carry senior Federal officials and non-Federal travelers and when must it be reported?
- 301–70.908 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?
- 301–70.909 What disclosure information must we give to anyone who flies on our Government aircraft?
- 301–70.910 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?

Subpart I—Policies and Procedures for Agencies that Authorize Travel on Government Aircraft

§ 301–70.800 Whom may we authorize to travel on Government aircraft?

You may authorize Federal travelers, non-Federal travelers, and any other passengers, as defined in part 300–3 of this subtitle, to travel on Government aircraft, subject to the rules in this subpart. Because the taxpayers generally should pay no more than necessary for transportation of travelers, except for required use travel, you may authorize travel on Government aircraft only when a Government aircraft is the most cost-effective mode of travel and the traveler is traveling for Governmental purposes.

§ 301–70.801 When may we authorize travel on Government aircraft?

You may authorize travel on Government aircraft only as follows:

- (a) For official travel when—
- (1) No scheduled commercial airline service is reasonably available to fulfill

your agency's travel requirement (i.e., able to meet the traveler's departure and/or arrival requirements within a 24-hour period, unless you demonstrate that extraordinary circumstances require a shorter period); or

(2) The cost of using a Government aircraft is not more than the cost of the city-pair fare for scheduled commercial airline service or the cost of the lowest available full coach fare if a city-pair fare is not available to the traveler.

(b) For required-use travel, i.e., when the traveler is authorized to use Government aircraft because of bona fide communications needs (e.g., 24-hour secure communications are required) or security reasons (e.g., highly unusual circumstances that present a clear and present danger to the traveler) or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations). Required-use travel may include travel for official, personal, or political purposes, but must be approved in accordance with § 301–10.262(a) and § 301–70.803(a).

(c) For space available travel when—

(1) The aircraft is already scheduled for use for an official purpose and carrying an official traveler(s) on the aircraft does not cause the need for a larger aircraft or result in more than minor additional cost to the Government; or

(2) The Federal traveler or the dependent of a Federal traveler is stationed by the Government in a remote location not accessible to commercial airline service; or

(3) The traveler is authorized to travel space available under 10 U.S.C. 4744 and regulations implementing that statute.

§ 301–70.802 Must we ensure that travel on Government aircraft is the most cost-effective alternative?

(a) Yes, you must ensure that travel on a Government aircraft is the most cost-effective alternative that will meet the travel requirement. Your designated travel approving official must—

(1) Compare the cost of all travel alternatives, as applicable, that is—

(i) Travel on a scheduled commercial airline;

(ii) Travel on a Federal aircraft;

(iii) Travel on a Government aircraft hired as a commercial aviation service (CAS); and

(iv) Travel by other available modes of transportation; and

(2) Approve only the most cost-effective alternative that meets your agency's needs.

(3) Consider the cost of non-productive or lost work time while in

travel status and certain other costs when comparing the costs of using Government aircraft in lieu of scheduled commercial airline service and other available modes of transportation. Additional information on costs included in the cost comparison may be found in the "U.S. Government Aircraft Cost Accounting Guide," available through the General Services Administration, Office of Governmentwide Policy, MTA, 1800 F Street, N.W., Washington, DC 20405.

(b) The aircraft management office in the agency that owns or hires the Government aircraft must provide your designated travel-approving official with cost estimates for a Government aircraft trip (i.e., a Federal aircraft trip cost or a CAS aircraft trip cost).

(c) When an agency operates a Government aircraft to fulfill a non-travel related governmental function or for required use travel, using any space available for passengers on official travel is presumed to result in cost savings.

§ 301–70.803 How must we authorize travel on a Government aircraft?

You must authorize travel on a Government aircraft as follows:

(a) *For required-use travel.* Your agency must first establish written standards for determining the special circumstances under which it will require travelers to use Government aircraft. Then, following those standards, your agency's senior legal official or his/her principal deputy must authorize required-use travel on a trip-by-trip basis in advance and in writing, unless—

(1) The traveler is an agency head, and the President has determined that all of his or her travel, or travel in specified categories, requires the use of Government aircraft; or

(2) Your agency head has determined in writing that all travel, or travel in specified categories, by another traveler requires the use of Government aircraft.

Note to § 301–70.803(a): In an emergency situation, prior verbal approval for required-use travel with an after-the-fact written authorization is permitted.

(b) *For travel by senior Federal officials.* Your agency's senior legal official or his/her principal deputy must authorize all travel on Government aircraft by senior Federal officials on a trip-by-trip basis, in advance and in writing, except for required use travel authorized under paragraphs (a)(1) or (a)(2) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted. Senior Federal officials who

are crewmembers or qualified non-crewmembers on a flight in which they are also traveling (i.e., being transported from point-to-point) are considered travelers and must be authorized to travel on Government aircraft according to this paragraph.

(c) *For travel by non-Federal travelers.* If you are the sponsoring agency for a non-Federal traveler, your senior legal official or his/her deputy must authorize all travel on Government aircraft by that non-Federal traveler on a trip-by-trip basis, in advance and in writing. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's senior legal official is permitted.

(d) *For all other travel.* (1) Your agency's designated travel approving official (or anyone to whom he/she delegates this authority and who is at least one organizational level above the traveler) must authorize, in advance and in writing, all other travel on Government aircraft (i.e., by passengers, crewmembers, or qualified non-crewmembers) that is not covered in paragraphs (a), (b), and (c) of this section. In an emergency situation, prior verbal approval with an after-the-fact written authorization by your agency's designated travel approving official is permitted. If your agency wishes to issue blanket travel authorizations that authorize travel on Government aircraft, such blanket authorizations must define the circumstances that must be met for using Government aircraft in compliance with this regulation and any additional agency policies. Travel on Government aircraft that does not meet the circumstances specified in the blanket travel authorization must be authorized on a trip-by-trip basis in accordance with this regulation and other applicable agency policies.

(2) When authorizing space available travel (except as authorized under 10 U.S.C. 4744 and regulations implementing that statute), you must ensure that the aircraft management office in the agency that owns or hires the aircraft has certified in writing before the flight that the aircraft is scheduled to be used for a bona fide governmental function. Bona fide governmental functions may include support for official travel. The aircraft management office must also certify that carrying a traveler(s) in space available does not cause the need for a larger aircraft or result in more than minor additional cost to the Government. The aircraft management office must retain this certification for two years. In an emergency situation, prior verbal confirmation of this information with an

after-the-fact written certification is permitted.

§ 301–70.804 What amount must the Government be reimbursed for travel on a Government aircraft?

(a) No reimbursement is required for official travel on a Government aircraft.

(b) For personal travel on Government aircraft, reimbursement depends upon which of the following special cases applies:

(1) You must require a traveler on required-use travel to reimburse the Government for the excess of the full coach fare for all flights taken on a trip over the full coach fare for the flights that he/she would have taken had he/she not engaged in personal activities during the trip; and

(2) No reimbursement is required for travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, or when the traveler and his/her dependents are stationed by the Government in a remote location with no access to regularly scheduled commercial airline service.

(c) For political travel on a Government aircraft (i.e., for any trip or part of a trip during which the traveler engages in political activities), you must require that the Government be reimbursed the excess of the full coach fare for all flights taken on the trip over the full coach fare for the flights that the traveler would have taken had he/she not engaged in political activities, except if other law or regulation specifies a different amount (see, e.g., 11 CFR 106.3, "Allocation of Expenses between Campaign and Non-campaign Related Travel"), in which case the amount reimbursed is the amount required by such law or regulation.

§ 301–70.805 Must we include special information on a travel authorization for a senior Federal official or a non-Federal traveler who travels on Government aircraft?

Yes, you must include the following information on a travel authorization for a senior Federal official or a non-Federal traveler:

(a) Traveler's name with indication that the traveler is either a senior Federal official or a non-Federal traveler, whichever is appropriate.

(b) The traveler's organization and title or other appropriate descriptive information, e.g., dependent, press, etc.

(c) Name of the authorizing agency.

(d) The official purpose of the trip.

(e) The destination(s).

(f) For personal or political travel, the amount that the traveler must reimburse the Government (i.e., the full coach fare or appropriate share of that fare).

(g) For official travel, the comparable city-pair fare (if available to the traveler) or full coach fare if a city-pair fare is not available.

§ 301–70.806 What documentation must we retain for travel on Government aircraft?

You must retain all travel authorizations and cost-comparisons for travel on Government aircraft for two years.

§ 301–70.807 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?

Yes, an agency that authorizes travel on Government aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

§ 301–70.808 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A–126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A–126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A–126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

Subpart J—Policies and Procedures for Agencies that Own or Hire Government Aircraft for Travel

§ 301–70.900 May we use our Government aircraft to carry passengers?

Yes. You may use Government aircraft, i.e., aircraft that you own, borrow, operate as a bailed aircraft, or hire as a commercial aviation service (CAS), to carry Federal and non-Federal travelers, but only in accordance with the rules in 41 CFR 102–33.215 and 102–33.220 and the regulations in this part.

§ 301–70.901 Who may approve use of our Government aircraft to carry passengers?

Your agency head or his/her designee must approve the use of your agency's Government aircraft for travel, i.e., for carrying passengers and any

crewmembers or qualified non-crewmembers who are also traveling. This approval must be in writing and may be for recurring travel.

§ 301–70.902 Do we have any special responsibilities related to space available travel on our Government aircraft?

Yes, except for travel authorized under 10 U.S.C. 4744 and regulations implementing that statute, you must certify in writing before carrying passengers on a space available basis on your Government aircraft that the aircraft is scheduled to perform a bona fide governmental function. Bona fide governmental functions may include support for official travel. You must also certify that carrying a passenger in space available does not cause the need for a larger aircraft and does not result in more than minor additional cost to the Government. Your aircraft management office must retain this certification for two years. In an emergency situation, prior verbal approval with an after-the-fact written certification is permitted.

§ 301–70.903 What are our responsibilities for ensuring that Government aircraft are the most cost-effective alternative for travel?

To help ensure that Government aircraft are the most cost-effective alternative for travel, your aircraft management office must calculate the cost of a trip on your aircraft, whether Federal aircraft or CAS aircraft, and submit that information to the traveler's designated travel-approving official upon request. The designated travel-approving official must use that information to compare the cost of using Government aircraft with the cost of scheduled commercial airline service and the cost of using other available modes of transportation. When you operate a Government aircraft to fulfill a non-travel related governmental function or for required use travel, using any space available for passengers on official travel is presumed to result in cost savings. For guidance on how and when to calculate the cost of a trip on Government aircraft, see the "U.S. Government Aircraft Cost Accounting Guide," published by the Aircraft Management Policy Division (MTA), General Services Administration, 1800 F Street, N.W., Washington, DC, 20405.

§ 301–70.904 Must travelers whom we carry on Government aircraft be authorized to travel?

Yes, every traveler on one of your aircraft must have a written travel authorization from an authorizing executive agency, and he/she must present that authorization, before the flight, to the aircraft management office

or its representative in the organization that owns or hires the Government aircraft. In addition to all passengers, those crewmembers and qualified non-crewmembers on a flight in which they are also traveling (i.e., being transported from point to point) are considered travelers and must also be authorized to travel on Government aircraft.

§ 301–70.905 What documentation must we retain for travel on our Government aircraft?

(a) You must retain for two years copies of travel authorizations for senior Federal officials and non-Federal travelers who travel on your Government aircraft.

(b) You must also retain for two years the following information for each flight:

- (1) The tail number of the Government aircraft used.
- (2) The dates used for travel.
- (3) The name(s) of the pilot(s), other crewmembers, and qualified non-crewmembers.
- (4) The purpose(s) of the flight.
- (5) The route(s) flown.
- (6) The names of all passengers.

§ 301–70.906 Must we report use of our Government aircraft to carry senior Federal officials and non-Federal travelers?

Yes, except when the trips are classified, you must report to the U.S. General Services Administration, Office of Governmentwide Policy (MTT), 1800 F Street, N.W., all uses of your aircraft for travel by any senior Federal official or non-Federal traveler, except travel authorized under 10 U.S.C. 4744 and regulations implementing that statute.

§ 301–70.907 What information must we report on the use of Government aircraft to carry senior Federal officials and non-Federal travelers and when must it be reported?

You must report on a semi-annual basis to the General Services Administration (GSA) information about Senior Federal officials and non-Federal travelers who fly aboard your aircraft. The reporting periods are October 1 through March 31 and April 1 through September 30 of each fiscal year. A report is due to GSA not later than 30 calendar days after the close of each reporting period and must contain the following information:

- (a) The person's name with indication that he/she is either a senior Federal official or a non-Federal traveler, whichever is appropriate.
- (b) The traveler's organization and title or other appropriate descriptive information, e.g., dependent, press, etc.
- (c) Name of the authorizing agency.
- (d) The official purposes of the trip.

(e) The destination(s).

(f) For personal or political travel, the amount that the traveler must reimburse the Government (i.e., the full coach fare or appropriate share of that fare).

(g) For official travel, the comparable city-pair fare (if available to the traveler) or the full coach fare if the city-pair fare is not available.

(h) The cost to the Government to carry this person (i.e., the appropriate allocated share of the Federal or CAS aircraft trip costs).

Note to § 301–70.907: You are not required to report classified trips; however, you must maintain information on classified trips for two years. Most of the information required by paragraphs (a) through (g) of this section can be found on the traveler's travel authorization. Your aircraft management office must provide the information about crewmembers and qualified non-crewmembers required by paragraph (b) as well as the information required by paragraph (h). For more information on calculating costs, see the "U.S. Government Aircraft Cost Accounting Guide," published by the Aircraft Management Policy Division (MTA), General Services Administration, 1800 F Street, N.W., Washington, DC, 20405.

§ 301–70.908 Must we make information available to the public about travel by senior Federal officials and non-Federal travelers on Government aircraft?

Yes, an agency that operates aircraft must make records about travelers on those aircraft available to the public in response to written requests under the Freedom of Information Act (5 U.S.C. 552), except for portions exempt from disclosure under that Act (such as classified information).

§ 301–70.909 What disclosure information must we give to anyone who flies on our Government aircraft?

You must give each person aboard your aircraft a copy of the following disclosure statement:

DISCLOSURE FOR PERSONS FLYING ABOARD FEDERAL GOVERNMENT AIRCRAFT

NOTE: The disclosure contained herein is not all-inclusive. You should contact your sponsoring agency for further assistance.

Generally, an aircraft used exclusively for the U.S. Government may be considered a 'public aircraft' as defined in 49 U.S.C. 40102 and 40125, unless it is transporting passengers or operating for commercial purposes. A public aircraft is not subject to many Federal aviation regulations, including requirements relating to aircraft certification, maintenance, and pilot certification. If a U.S. Government agency transports passengers on a Government aircraft, that agency must comply with all Federal aviation regulations applicable to civil aircraft. If you have questions about the status of a particular flight, you should contact the agency sponsoring the flight.

You and your family have certain rights and benefits in the unlikely event you are injured or killed while riding aboard a Government aircraft. Federal employees and some private citizens are eligible for workers' compensation benefits under the Federal Employees' Compensation Act (FECA). When FECA applies, it is the sole remedy. For more information about FECA and its coverage, consult with your agency's benefits office or contact the Branch of Technical Assistance at the Department of Labor's Office of Workers' Compensation Programs at (202) 693-0044. (These rules also apply to travel on other Government-owned or operated conveyances such as cars, vans, or buses.)

State or foreign laws may provide for product liability or "third party" causes of actions for personal injury or wrongful death. If you have questions about a particular case or believe you have a claim, you should consult with an attorney.

Some insurance policies may exclude coverage for injuries or death sustained while traveling aboard a Government or military aircraft or while within a combat area. You may wish to check your policy or consult with your insurance provider before your flight. The insurance available to Federal employees through the Federal Employees Group Life Insurance Program does not contain an exclusion of this type.

If you are the victim of an air disaster resulting from criminal activity, Victim and Witness Specialists from the Federal Bureau of Investigation (FBI) and/or the local U.S. Attorney's Office will keep you or your family informed about the status of the criminal investigation(s) and provide you or your family with information about rights and services, such as crisis intervention, counseling and emotional support. State crime victim compensation may be able to cover crime-related expenses, such as medical costs, mental health counseling, funeral and burial costs, and lost wages or loss of support. The Office for Victims of Crime (an agency of the Department of Justice) is authorized by the Antiterrorism Act of 1996 to provide emergency financial assistance to state programs, as well as the U.S. Attorneys Office, for the benefit of victims of terrorist acts or mass violence.

If you are a Federal employee:

1. If you are injured or killed on the job during the performance of duty - including while traveling aboard a Government aircraft or other government-owned or operated conveyance for business purposes, you and your family are eligible to collect workers' compensation benefits under FECA. You and your family may not file a personal injury or wrongful death suit against the United States or its employees. However, you may have cause of action against potentially liable third parties.

2. You or your qualifying family member must normally also choose between FECA disability or death benefits, and those payable under your retirement system (either the Civil Service Retirement System or the Federal Employees Retirement System). You may choose the benefit that is more favorable to you.

If you are a private citizen not employed by the Federal Government:

1. Even if you are not regularly employed by the Federal Government, if you are rendering personal service to the Federal Government on a voluntary basis or for nominal pay, you may be defined as a Federal employee for purposes of FECA. If that is the case, you and your family are eligible to receive workers' compensation benefits under FECA, but may not collect in a personal injury or wrongful death lawsuit against the United States or its employees. You and your family may file suit against potentially liable third parties. Before you depart, you may wish to consult with the department or agency sponsoring the flight to clarify whether you are considered a Federal employee.

2. If there is a determination that you are not a Federal employee, you and your family will not be eligible to receive workman's compensation benefits under FECA. If you are traveling for business purposes, you may be eligible for workman's compensation benefits under state law. If the accident occurs within the United States, or its territories, its airspace, or over the high seas, you and your family may claim against the United States under the Federal Tort Claims Act or Suits in Admiralty Act. If you are killed aboard a military aircraft, your family may be eligible to receive compensation under the Military Claims Act, or if you are an inhabitant of a foreign country, under the Foreign Claims Act.

§ 301-70.910 Do the rules in this part apply to travel on Government aircraft by the President and Vice President or by individuals traveling in support of the President and Vice President?

Given the unique functions and needs of the presidency and the vice presidency, section 4 of Circular A-126, "Improving the Management and Use of Government Aircraft," Revised May 1992, makes clear that Circular A-126 does not apply to aircraft while in use by or in support of the President or Vice President. Since the principal purpose of the rules in this part is to implement Circular A-126, the rules in this part also do not apply to such travel. If any questions arise regarding travel related to the President or Vice President, contact the Office of the Counsel to the President or the Office of the Counsel to the Vice President, respectively.

[FR Doc. 04-13349 Filed 6-18-04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 221, 315, and 355

[Docket No. MARAD 2004-18059]

RIN 2133-AB59

Shipping—Technical Amendments

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Final rule.

SUMMARY: This final rule makes minor technical changes to terms and definitions in title 46 of the Code of Federal Regulations (CFR). The minor technical changes update the title to conform to 46 App. U.S.C. 802, which was amended by the Coast Guard Authorization Act of 1998. This rulemaking will have no substantive effect on the regulated public.

EFFECTIVE DATE: This final rule is effective on June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Murray A. Bloom, Chief, Division of Maritime Programs, Office of Chief Counsel, Maritime Administration, 400 7th Street, SW., Room 7228, Washington, DC 20590; telephone: (202) 366-5164; fax: (202) 366-3511.

ADDRESSES: This final rule is available for inspection and copying between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays, at the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

SUPPLEMENTARY INFORMATION: MARAD is updating its regulations under 46 CFR parts 221, 315, and 355 to conform to 46 App. U.S.C. 802, which was amended by the Coast Guard Authorization Act of 1998, section 421 of Pub. L. 105-383. The changes eliminate references to company or entity presidents and instead include such individuals under the category of "chief executive officer, by whatever title."

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104-121

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule will not result in an annual effect on the economy of \$100 million