

19107, or by telephone at: (215)566-2179. Questions may also be sent via e-mail, to the following address: Cripps.Christopher@epamail.epa.gov

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone.

Dated: August 4, 1997.

Marcia E. Mulkey,

Acting Regional Administrator, Region III.

40 CFR part 52, subpart VV of Chapter I, title 40 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart VV—Virginia

§ 52.2428 [Removed]

2. Section 52.2428 is removed.

[FR Doc. 97-21538 Filed 8-13-97; 8:45 am]

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-37

[FPMR Amdt. G-112]

RIN 3090-AG54

Management, Use, and Disposal of Government Aircraft Parts

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This regulation provides policy on the management and disposal of Government-owned aircraft parts. This change is issued to address safety concerns that surplus Government aircraft parts are distributed without proper documentation and control, and to establish procedures to ensure that only eligible parts are made available for transfer and donation purposes.

EFFECTIVE DATE: August 14, 1997.

FOR FURTHER INFORMATION CONTACT: Peter Zuidema, Director, Aircraft Management Policy Division (MTA), 202-219-1377.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for

notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

GSA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a "plain English" style.

What is the "plain English" style of regulation writing?

The "plain English" style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How does the plain English style of regulation writing affect employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Part 101-37

Aircraft, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101-37 is amended as follows:

PART 101-37—[AMENDED]

1. The authority citation for Part 101-37 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(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; and OMB circular No. A-126 (Revised May 22, 1992).

2. Section 101-37.100 is amended by adding in alphabetical order the following definitions:

§ 101-37.100 Definitions.

* * * * *

Aircraft part means any part, component, system, or assembly primarily designated for aircraft.

* * * * *

Criticality Code is the one-digit code assigned by Department of Defense to designate an aircraft part as a Flight Safety Critical Aircraft Part (FSCAP).

* * * * *

Flight Safety Critical Aircraft Part (FSCAP) means any aircraft part, assembly, or installation containing a

critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in loss or serious damage to the aircraft or an uncommanded engine shut-down resulting in an unsafe condition.

* * * * *

Military surplus aircraft part is an aircraft part that has been released as surplus by the military, even if subsequently resold by manufacturers, owner/operators, repair facilities, or any other parts supplier.

* * * * *

Production approval holder is the holder of a Federal Aviation Administration Production Certificate (PC), Approved Production Inspection System (APIS), Parts Manufacturer Approval (PMA), or Technical Standard Order (TSO) who controls the design and quality of a product or part thereof, in accordance with Part 21 of the Federal Aviation Regulations (14 CFR 21.305).

* * * * *

Replacement means the process of acquiring property specifically to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it was used.

* * * * *

Unsalvageable aircraft part is an aircraft part which cannot be restored to an airworthy condition due to its age, physical condition, a non-repairable defect, insufficient documentation, or non-conformance with applicable specifications. For additional information on disposition of such parts refer to FAA Advisory Circular No. 21-38, or other current applicable guidelines.

3. Subpart 101-37.6 is added to read as follows:

Subpart 101-37.6—Management, Use, and Disposal of Government Aircraft Parts

Sec.

101-37.600 What does this subpart do?

101-37.601 What responsibilities does the owning/operating agency have in the management and use of Government aircraft parts?

101-37.602 Are there special requirements in the management, use and disposal of military Flight Safety Critical Aircraft Parts (FSCAP)?

101-37.603 What are the owning/operating agency's responsibilities in reporting excess Government aircraft parts?

101-37.604 What are the procedures for transferring and donating excess and surplus Government aircraft parts?

101-37.605 What are the receiving agency's responsibilities in the transfer and donation of excess and surplus Government aircraft parts?

- 101-37.606 What are the GSA approving official's responsibilities in transferring and donating excess and surplus Government aircraft parts?
- 101-37.607 What are the State Agency's responsibilities in the donation of surplus Government aircraft parts?
- 101-37.608 What are the responsibilities of the Federal agency conducting the sale of Government aircraft parts?
- 101-37.609 What are the procedures for mutilating unsalvageable aircraft parts?
- 101-37.610 Are there special procedures for the exchange/sale of Government aircraft parts?

Subpart 101-37.6—Management, Use, and Disposal of Government Aircraft Parts

§ 101-37.600 What does this subpart do?

This subpart prescribes special policies and procedures governing the management, use, and disposal of Government-owned aircraft parts.

§ 101-37.601 What responsibilities does the owning/operating agency have in the management and use of Government aircraft parts?

(a) The owning/operating agency is responsible for ensuring the continued airworthiness of an aircraft, including replacement parts. The owning/operating agency must ensure that replacement parts conform to an approved type design, have been maintained in accordance with applicable standards, and are in condition for safe operation.

(b) In evaluating the acceptability of a part, the owning/operating agency should review the appropriate log books and historical/maintenance records. The maintenance records must contain the data set forth in the latest version of Federal Aviation Administration (FAA) Advisory Circular 43-9. When the quality and origin of a part is questionable, the owning/operating agency should seek guidance from the local FAA Flight Standards District Office (FSDO) in establishing the part's airworthiness eligibility.

§ 101-37.602 Are there special requirements in the management, use, and disposal of military Flight Safety Critical Aircraft Parts (FSCAP)?

(a) Yes. Any aircraft part designated by the Department of Defense as a FSCAP must be identified with the appropriate FSCAP Criticality Code which must be perpetuated on all documentation pertaining to such parts.

(b) A military FSCAP may be installed on a FAA type-certificated aircraft holding either a restricted or standard airworthiness certificate, provided the part is inspected and approved for such installation in accordance with the

applicable Federal Aviation Regulations.

(c) If a FSCAP has no maintenance or historical records with which to determine its airworthiness, it must be mutilated and scrapped in accordance with § 101-37.609. However, FSCAP still in its original unopened package, and with sufficient documentation traceable to the Production Approval Holder (PAH), need not be mutilated. Undocumented FSCAP with no traceability to either the original manufacturer or PAH must not be made available for transfer or donation. For assistance in the evaluation of FSCAP, contact the local FAA Flight Standards District Office (FSDO).

§ 101-37.603 What are the owning/operating agency's responsibilities in reporting excess Government aircraft parts?

(a) The owning/operating agency must report excess aircraft parts to GSA in accordance with the provisions set forth in part 101-43 of this chapter. The owning/operating agency must indicate on the reporting document if any of the parts are life-limited parts and/or military FSCAP, and ensure that tags and labels, applicable historical data and maintenance records accompany these aircraft parts.

(b) The owning/operating agency must identify excess aircraft parts which are unsalvageable according to FAA or DOD guidance, and ensure that such parts are mutilated in accordance with § 101-37.609. The owning/operating agency should not report such parts to GSA.

§ 101-37.604 What are the procedures for transferring and donating excess and surplus Government aircraft parts?

(a) Transfer and donate excess and surplus aircraft parts in accordance with part 101-43, Utilization of Personal Property, and part 101-44, Donation of Personal Property.

(b) Unsalvageable aircraft parts must not be issued for transfer or donation; they must be mutilated in accordance with § 101-37.609.

§ 101-37.605 What are the receiving agency's responsibilities in the transfer or donation of excess and surplus Government aircraft parts?

(a) The receiving agency must verify that all applicable labels and tags, and historical/modification records are furnished with the aircraft parts. The receiving agency must also ensure the continued airworthiness of these parts by following proper storage, protection and maintenance procedures, and by maintaining appropriate records throughout the life cycle of these parts.

(b) The receiving agency must perpetuate the DOD-assigned Criticality Code on all property records of acquired military FSCAP. The receiving agency must ensure that flight use of military FSCAP on civil aircraft meets all Federal Aviation Regulation requirements.

(c) The receiving agency must certify and ensure that when a transferred or donated part is no longer needed, and the part is determined to be unsalvageable, the part must be mutilated in accordance with § 101-37.609 and properly disposed.

§ 101-37.606 What are the GSA approving official's responsibilities in transferring and donating excess and surplus Government aircraft parts?

(a) The GSA approving official must review transfer documents of excess and surplus aircraft parts for completeness and accuracy, and ensure that the certification required in § 101-37.605(c) is included in the transfer document.

(b) The GSA approving official must also ensure the following statement is included on the SF123, Transfer Order Surplus Personal Property:

"Due to the critical nature of aircraft parts failure and the resulting potential safety threat, recipients of aircraft parts must ensure that any parts installed on a civil aircraft meet applicable Federal Aviation Administration Regulations, and that required certifications are obtained. The General Services Administration makes no representation as to a part's conformance with FAA requirements."

§ 101-37.607 What are the State Agency's responsibilities in the donation of surplus Government aircraft parts?

(a) The State Agency must review donation transfer documents for completeness and accuracy, and ensure that the certification provisions set forth in § 101-37.605(c) is included in the transfer documents.

(b) The State Agency must ensure that when a donated part is no longer needed, and the part is determined to be unsalvageable, the donee mutilates the part in accordance with § 101-37.609.

§ 101-37.608 What are the responsibilities of the Federal agency conducting the sale of Government aircraft parts?

(a) The Federal agency must sell Government aircraft parts in accordance with the provisions set forth in Part 101-45, Sale, Abandonment, or Destruction of Personal Property of this chapter.

(b) The Federal agency must ensure that the documentation required pursuant to § 101-37.603(a) accompanies the parts at the time of sale, and that sales offerings on aircraft parts contain the following statement:

"Purchasers are warned that the parts purchased herewith may not be in compliance with applicable Federal Aviation Administration requirements. Purchasers are not exempted from and must comply with applicable Federal Aviation Administration requirements. Purchasers are solely responsible for all FAA inspections and/or modifications necessary to bring the purchased items into compliance with 14 CFR (Code of Federal Regulations)."

(c) The Federal agency must ensure that the following certification is executed by the purchaser and received by the Government prior to releasing such parts to the purchaser:

"The purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item."

§ 101-37.609 What are the procedures for mutilating unsalvageable aircraft parts?

(a) Identify unsalvageable aircraft parts which require mutilation.

(b) Mutilate unsalvageable aircraft parts so they can no longer be utilized for aviation purposes. Mutilation includes destruction of the data plate, removing the serial/lot/part number, and cutting, crushing, grinding, melting, burning, or other means which will prevent the parts from being misidentified or used as serviceable aircraft parts. Obtain additional guidance on the mutilation of unsalvageable aircraft parts in FAA AC No. 21-38, Disposition of Uns salvageable Aircraft Parts and Materials.

(c) Ensure an authorized agency official witnesses and documents the mutilation, retain a signed certification and statement of mutilation.

(d) If unable to perform the mutilation, turn in the parts to a Federal or Federally-approved facility for mutilation and proper disposition. Ensure that contractor performance is in accordance with the provisions of this part.

(e) Ensure that mutilated aircraft parts are sold only as scrap.

§ 101-37.610 Are there special procedures for the exchange/sale of Government aircraft parts?

Yes. Executive agencies may exchange or sell aircraft parts as part of a transaction to acquire similar replacement parts in accordance with FPMR part 101-46. In addition to the requirements of this subpart, agencies must ensure that the exchange/sale transaction is accomplished in

accordance with the methods and procedures contained in part 101-46 of this chapter, and comply with the restrictions and limitations under § 101-46.202 of this chapter.

(a) Prior to the proposed exchange/sale, agencies should determine whether the parts identified for disposition are airworthy parts. For additional guidance refer to the applicable FAA Advisory Circular(s), or contact the local FAA FSDO.

(b) At the time of exchange or sale, agencies must ensure that applicable labels and tags, historical data and modification records accompany the aircraft parts prior to release. The records must contain the information and content as required by current DOD and FAA requirements for maintenance and inspections.

(c) Life limited parts that have reached or exceeded their life limits, or which have missing or incomplete documentation, must either be returned to the FAA production approval holder as part of an exchange transaction, or mutilated in accordance with § 101-37.609.

(d) Uns salvageable aircraft parts, other than parts in paragraph (c) of this section, must not be used for exchange/sale purposes; they must be mutilated in accordance with § 101-37.609.

Dated: July 7, 1997.

David J. Barram,

Administrator of General Services.

[FR Doc. 97-21388 Filed 8-13-97; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97-218]

Forfeiture Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends the Commission's rules to incorporate, as a note to the rule, the Commission's policy statement regarding forfeitures and a suggested schedule of base forfeiture amounts. The policy statement and schedule of base forfeiture amounts is intended to provide a measure of predictability and uniformity to the process of assessing forfeitures.

EFFECTIVE DATES: Effective October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Pamela D. Hairston, Compliance and Information Bureau, (202) 418-1160.

SUPPLEMENTARY INFORMATION:

Adopted: June 19, 1997.

Released: July 28, 1997.

1. This rule making responds to the concerns expressed by the U.S. Court of Appeals for the District of Columbia Circuit when it vacated the Commission's previous policy statement in the decision, *United States Telephone Association v. FCC*.¹ In that decision, the Court stated that the forfeiture guidelines used by the Commission constituted a rule that was adopted without notice and comment proceedings as required by the Administrative Procedure Act. In light of the court's decision, the Commission initiated a Notice of Proposed Rule making proceeding,² proposing that the prior policy statement be adopted, but requesting comments on all aspects of the proposal. In addition, the Commission requested specific comment on: (a) Whether the Commission should use guidelines to assess forfeitures instead of the traditional case-by-case approach; (b) whether the guidelines proposed in the notice of proposed rule making should be modified; and (c) whether adjustment factor ranges should be adopted.

2. After evaluation of the record, the Commission adopted a Forfeiture Policy Statement on June 19, 1997. The majority of the commenters agreed that a guideline based approach was preferable to the traditional case-by-case approach. One commenter disagreed with the guideline approach and argued that too much Commission discretion or flexibility in the guidelines would invite litigation. The Commission agreed with the majority that guidelines would add a measure of predictability and uniformity to the forfeiture process. Regardless of which approach is used, Section 503 of the Act provides the violators an opportunity to litigate the facts underlying the violation in an administrative law hearing or a trial *de novo*. We do not believe, therefore, that the potential for litigation should preclude us from providing necessary guidance in the forfeiture process. Thus, the Commission expressly retains its discretion to depart from the guidelines where warranted by the facts of the case.

¹ *United States Telephone Association v. FCC*, 28 F.3d 1232 (1994).

² *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 10 FCC Rcd 2945 (1995), 60 FR 10056 (February 23, 1995).