



**DEPARTMENT OF TRANSPORTATION**

**[4910-9X]**

**Office of the Secretary of Transportation**

**49 CFR Part 93**

**RIN 2105-AE86**

**Repeal of Aircraft Allocation Regulations**

**AGENCY:** Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

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**SUMMARY:** This final rule rescinds DOT regulations regarding aircraft allocation from the Code of Federal Regulations. The regulations prescribe procedures for the allocation of aircraft to the Civil Reserve Air Fleet (CRAF) program. The Department of Transportation (the Department or DOT) has concluded that the regulations are unnecessary and obsolete because they are inconsistent with the contractual nature of the current CRAF program and the Department's current procedures for allocation of civil transportation resources under the Defense Production Act.

**DATES:** This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Donna O'Berry, Office of Intelligence, Security, and Emergency Response, Department of Transportation, 1200 New Jersey Avenue, SE, Room W56-302, Washington, DC 20590; telephone: (202) 366-6136; e-mail: [donna.o'berry@dot.gov](mailto:donna.o'berry@dot.gov).

**SUPPLEMENTARY INFORMATION:**

## **Electronic Access and Filing**

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<https://www.archives.gov/federal-register> and the Government Publishing Office website at:

<https://www.gpo.gov>.

## **Background**

Under the Defense Production Act, which governs the CRAF program, aircraft may be added to the CRAF either by allocation by DOT or made available to Department of Defense (DOD) under a contract.<sup>1</sup> 10 U.S.C. 9511(6). The Department's Aircraft Allocation regulations to implement this provision were published in part 93 of title 49 of the Code of Federal Regulations on December 23, 1967,<sup>2</sup> and amended on May 29, 1968.<sup>3</sup> Part 93 includes two requirements. Section 93.1 provides that the Department will issue planning orders allocating aircraft to DOD for the CRAF Program and that the current listing of allocations may be obtained upon request. Section 93.3 provides that the owners and operators of aircraft identified in the allocations must notify the Department when aircraft is damaged, destroyed, or transferred.

The requirements in part 93 are inconsistent with the current regulatory framework and practices surrounding the CRAF Program. Under current DOD practice, all aircraft in the CRAF are made

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<sup>1</sup> Section 9511 of Title 10, U.S.C. defines the "Civil Reserve Air Fleet" as "those aircraft allocated, or identified for allocation, to the Department of Defense under section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511), or made available (or agreed to be made available) for use by the Department of Defense under a contract made under this title, as part of the program developed by the Department of Defense through which the Department of Defense augments its airlift capability by use of civil aircraft."

<sup>2</sup> See 32 FR 20778 (December 23, 1967).

<sup>3</sup> See 33 FR 7821 (May 29, 1968).

available for use by DOD through contracts between DOD and air carriers, and allocations by DOT are not needed. Further, allocations under the Defense Production Act for all civil transportation resources are now governed by the Department's Transportation Priorities and Allocation System (TPAS) regulation at 49 CFR part 33. If DOD needs to augment the CRAF fleet, DOT may allocate aircraft to CRAF under section 101 of the Defense Production Act of 1950 (50 U.S.C. 4511) under the Department's TPAS regulations. Part 93 is not necessary to facilitate these allocation actions. The procedures in part 93 are inconsistent with the TPAS regulations. Part 93 also imposes reporting requirements on the owners of aircraft identified in an allocation. However, the Department does not have a need for the information prescribed in § 93.3.

In light of the above, the Department has determined that part 93 is outdated and inconsistent with current practice and procedures. Accordingly, this rulemaking rescinds part 93 of title 49 of the CFR in its entirety.

#### **Good Cause to Dispense with Notice and Comment and Delayed Effective Date**

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive notice and comment procedures if it finds, for good cause, that notice and comment would be impracticable, unnecessary, or contrary to the public interest. The Department finds that notice and comment for this rule is unnecessary because the regulations are inconsistent with the current administration of the CRAF program and the regulations prescribing DOT's allocation process under the Defense Production Act. Further, neither the Department, nor CRAF carriers are currently complying with these outdated regulations. Therefore, the removal of these regulations will have no impact on the aviation industry or the public. Accordingly, the Department finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment. For the

same reasons, the Department finds good cause to dispense with the requirement for a delayed effective date.

### **Rulemaking Analyses and Notices**

#### **Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review)**

The Department has determined that this rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). The Office of Management and Budget (OMB) did not, therefore, review this document. This rule is not expected to have any costs because it will be conforming the regulations to current practice. There may be *de minimis* cost savings as a result of increased clarity in the regulations.

### **DOT Rulemaking Procedures**

This rulemaking is being promulgated consistent with the Department's rulemaking procedures, outlined at 49 CFR part 5.

#### **Executive Order 13711 (Reducing Regulation and Controlling Regulatory Cost)**

This final rule is considered an EO 13771 deregulatory action.

### **Regulatory Flexibility Act**

Since the Department finds good cause under 5 U.S.C. 553(b)(3)(B) to waive notice and opportunity for comment for this rule, the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) do not apply. However, the Department evaluated the effects of this action on small entities and determined the action would not have a significant economic impact

on a substantial number of small entities. This final rule removes an outdated reporting requirement for air carriers participating in the CRAF program, and does not create new requirements for air carriers.

### **Unfunded Mandates Reform Act of 1995**

The Department has determined that this rule does not impose unfunded mandates, as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48).

This rule does not include a Federal mandate that may result in expenditures of \$155.1 million or more in any single year (when adjusted for inflation) in 2012 dollars for either State, local, and Tribal governments in the aggregate, or by the private sector.

### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. DOT determined that no new information collection requirements are associated with this rule.

### **Regulation Identifier Number (RIN)**

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations.

The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 93**

Aircraft, Reporting and recordkeeping requirements.

**Authority and Issuance**

**PART 93—[REMOVED AND RESERVED]**

Therefore, under the authority of 50 U.S.C. 4511, DOT removes and reserves 49 CFR part 93.

Issued in Washington, DC, under the authority provided by 49 CFR 1.23 on February 6, 2020.

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Steven G. Bradbury,

General Counsel.