U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

NOV 30 2011

Billy L. Johnson
U.S. Army Special Operations Aviation Command
Special Programs Division
Fort Bragg, NC 28310

Dear Mr. Johnson:

This letter responds to your August 2011 email to Karen Petronis of my staff. In your email, you asked several questions regarding public aircraft operations as they relate to civil operators under contract to the U.S. Army.

Your first question asks: *Since this operator is civil, is he still required to operate under the rules of his civil certificate while operating as Public Aircraft?*

If a civil operator is conducting a valid public aircraft operation (PAO), then the requirements of its operating certificate would not apply. When properly authorized, the Army would be taking responsibility for the PAO flights, including the airworthiness of the aircraft. Note that operating outside its certificate authority may, depending on the operation and any modifications made to the aircraft, affect the operator's ability to bring the aircraft back into civil operations on its certificate. The regulations applicable to all aircraft, such as air traffic regulations, still apply.

The FAA advises all government entities that, if a contract operation can be performed within the requirements of an operator's certificate, then it is beneficial to not declare it a PAO. If an operator finds that some facet of the proposed operation would violate its civil operating certificate, the operator is advised to decline the contract. If the operation is to proceed as a public aircraft operation, the government entity and the operator need to ensure that the requirements for operation as a public aircraft are satisfied. If the operation proceeds as a civil operation, the operator will be held responsible for any violation of civil regulations regardless of the terms of the contract.

We also must note that the U.S. armed forces have a specific requirement in the public aircraft statute regarding contractors. Under 49 USC §40125(c)(1)(C), an aircraft that is chartered to provide air transportation or other commercial air services to the armed forces qualifies as a public aircraft only when the Secretary of Defense designates the operation as being required in the national interest. In general, the FAA interprets 'other commercial air service' to be any operation that would be commercially available to the public.

The declaration by the Secretary of Defense required by the statute is separate from the declaration made by a government entity under the FAA's policy for civil contractors. In the latter case, all civil operators that are performing contract operations as a public aircraft

must have a declaration on file with the FAA from the government entity describing the flights that are conducted as PAO.

Your second question is: *What rules in a general term ... must he comply with as a civil certificate holder?*

Public aircraft operations are required to comply with the regulations in Title 14 of the Code of Federal Regulations that apply to all aircraft operating in the national airspace system (NAS). There may be other regulations that apply to specialized operations in which the language includes public aircraft operations.

Your third question asks: *Does the interpretation of Public Aircraft allow him to carry passengers/paratroopers if his certificate does not (PART 137)?*

We read this question as asking whether an operator must be civilly certificated by the FAA to conduct a certain operation in order to conduct that operation as a PAO. The answer is no. When a government entity contracts with an operator to conduct a public aircraft operation, the government entity is responsible for the operation, including the airworthiness of the aircraft, its capability for the contracted mission, and the competence of the flight crew. The choice of qualifications is a matter for the government entity and is not addressed in the public aircraft statute.

If a government entity requires a contractor to hold a certain civil certification as a term of the contract, that contract term is not up to the FAA to enforce. The FAA does not oversee contract requirements whether the operation is PAO or civil. When there is a written declaration of public aircraft status, the FAA does not oversee the flights for compliance with the regulations of 14 CFR except for those that apply to all aircraft in the NAS. If flights under a contract are conducted as a civil operation, all of the civil requirements that apply to the operation would be enforced.

Note that in order to operate as a PAO, the statute requires that only crewmembers or qualified non-crewmembers may be carried on board the aircraft. This opinion takes no position on whether the "passengers/paratroopers" referenced in your question would qualify as qualified non-crewmembers for any particular operation. Determinations of PAO status are made on a flight by flight basis.

This interpretation was prepared by Karen Petronis, Senior Attorney for Regulations in my office, and coordinated with the General Aviation and Commercial Division (AFS-800) of the Flights Standards Service. Please contact Karen Petronis if you have any further questions regarding this interpretation.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200