

**U.S. ARMED FORCES PAO DECISION TOOL\*\*\***

**Public Aircraft Operations (PAO).** In general, the U.S. Armed Forces considers an aircraft operation "Public" when the aircraft is owned by the Armed Forces, or is used by the Armed Forces and operates outside of the purview of its FAA airworthiness certificate (e.g. configuration, operational use, or maintenance) and applicable operating regulations under 14 CFR. See 49 U.S.C. § 40102 (A)(41) and 41 U.S.C. § 40125. For case by case PAO determinations, refer to US Armed Forces PAO Decision Tool (below) and the FAA PAO Circular 00-1.1A.

A determination of PAO means a significant shift in airworthiness responsibilities from the FAA to the responsible U.S. Service airworthiness authority. DoD owned aircraft are generally PAO, although questions can arise about the aircraft status during the acquisition process and when considering aspects of FMS cases. Determining if a contracted air service is public or remains civil is much more complex. If a non-DoD aircraft is being operated by or for DoD purposes, then the operation may be considered PAO when it is in support of an inherently military requirement and the FAA has no regulations that govern that operation. PAO determinations are made on an operation-by-operation basis and may be bounded by specific contract language that establishes when a provider is operating in support of a DoD contract, and when conditions exist that exclude the operation from "civil use".

| QUESTION                                      | RESPONSE  | USE    | ACTIONS & NOTES  |
|---|---|--------|--|
| A. Is the aircraft owned by the Armed Forces? | YES   | Public | <p><b>Note:</b> This includes aircraft leased to the armed forces, pre-accepted aircraft whose design, development, and flight are being funded by, and for, government use; whether the aircraft is commercial derivative or military design.</p> <p><b>Note:</b> On a Federal Acquisition Regulation (FAR) Part 15 contract, title to property vests in the Government upon the date of the first performance based payment under the contract for property acquired or produced before that date.</p> <p><b>Note:</b> FAR Part 15 contracts are the standard for armed forces designed aircraft. FAR Part 12 contracts are used for commercial derivative aircraft conforming to FAA airworthiness standards.</p> <p><b>Note:</b> The transfer of ownership of FMS aircraft vary and are dependent on the specific FMS contract. It is possible that an FMS aircraft remains the property of the U.S. government prior to delivery and, as a result, the operations could be deemed PAO.</p> <p><b>Go to step E</b></p> |
|   | NO  |        | <b>Go to step B</b>  |
| Exceptions                                    | <ol style="list-style-type: none"> <li>1. While not a common occurrence, an aircraft owned by the Armed Forces can conduct civil aircraft operations if the following conditions are met:               <ol style="list-style-type: none"> <li>A. The aircraft has been provided to the contractor under a lease, loan, or bailment agreement, and;</li> <li>B. The contractor operations are not being conducted by, on behalf of, or are not directly supporting, Armed Forces interests, and,</li> <li>C. The Armed Forces are not directly or indirectly funding the efforts, and;</li> <li>D. The contractor has obtained a civil airworthiness certificate and is operating the aircraft IAW 14 CFR, i.e., operations cannot be inherently governmental and must be able to meet all the requirements to remain civil as articulated in this tool.</li> </ol> </li> <li>2. For aircraft purchased under a FAR part 12 contract, produced on a commercial line to FAA airworthiness standards, the government's equitable interest may not vest until acceptance takes place.</li> </ol> |        |  |

| QUESTION   | RESPONSE | USE    | ACTIONS & NOTES  |
|--|----------|--------|--|
| B. Is the aircraft being operated by the Armed Forces?                                       | YES      | Public | <p><b>Note:</b> Can include military, government, or contractor Pilots working in support of the Armed Forces.</p> <p><b>Note:</b> Can include U.S. Armed Forces operations in support of FMS programs.</p> <p><b>Note:</b> Includes Joint acquisition programs where foreign nations have teamed with U.S. military or contracted for U.S. Armed Forces oversight.</p> <p><b>Note:</b> This includes aircraft from other government agencies that own or operate aircraft covered by the U.S. Military airworthiness releases/oversight and are non-military aircraft.</p> <p><b>Go to step E</b></p>   |
|  | NO       |        | <b>Go to step C</b>  |
| C. Is the contracted aircraft being operated and maintained in accordance with Title 14 CFR? | YES      | Civil  | <p><b>Note:</b> The aircraft holds a FAA type certificate and can be operated in accordance with its FAA airworthiness certificate.</p> <p><b>Note:</b> No configuration changes or deviations authorized unless properly accomplished IAW 14 CFR by FAA authorized personnel IAW FAA approved processes.</p> <p><b>Note:</b> FAA aircraft maintenance being conducted IAW FAA approved processes by FAA approved personnel.</p> <p><b>Note:</b> Aircraft operations are being conducted entirely IAW 14 CFR.</p> <p><b>Note:</b> Contractors may only operate civil aircraft under Experimental Certificates for the purposes for which the certificate was issued. See 14 CFR Part 91.319(a)(1).</p> <ul style="list-style-type: none"> <li>➤ An FAA Experimental Certificate cannot be used to carry persons or property for compensation or hire, and as such, the presence of non-company (such as U.S. government) personnel or government furnished equipment (GFE) on board a contracted aircraft is not permissible when it is being operated as a civil aircraft subject to Title 14 Code of Federal Regulations. See 14 CFR 91.319(a)(2). Exceptions can apply if the FAA has authorized (via operating limit or other FAA process) the specific GFE or non-company personnel as is often described in the applicant's Program Letter.</li> <li>➤ Data-gathering equipment that is attached to the aircraft and approved under a field approval is considered to be a fixture instead of property or cargo. For the equipment to be considered as a fixture that would fall outside the purview of the compensation and hire clause, the owner operator must have approved FAA Form 8110s and/or 337s, for each individual piece of GFE installed.</li> <li>➤ A Letter of Deviation Authority (LODA) can be issued under 14 CFR Part 91.319(h) to allow a contractor to conduct flight training operations for compensation under an Experimental Certificate, which would otherwise be in violation of Part 91.319.</li> <li>➤ Compliance with the limitations of an FAA certificate is the responsibility of the contractor; contractual requirements that entail flight outside the limitations of an FAA certificate may trigger Government oversight, subject to PAO procedures.</li> </ul> <p><b>Go to step D</b></p> |

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| <p>C. Is the contracted aircraft being operated and maintained in accordance with Title 14 CFR?</p> | <p>NO</p> | <p>Public</p> | <p><b>Note:</b> While the National Transportation Safety Board (NTSB) is likely to retain mishap investigation and response on Contractor Owned, Contractor Operated (COCO) aircraft conducting PAO, they may request that the Service or government agency who contracted for the operation assume mishap investigation and response.</p> <p><b>Note:</b> Contractors who have received designation as PAO are only subject to the limitations of Part 91 Subparts A &amp; B, and not those of other Subparts dealing with Equipment, Special Flight Operations, Maintenance and other subjects, but are subject to the Government's requirements for those flights designated PAO.</p> <p><b>Go to step E</b></p> |
|---|-----------|---------------|---|

| <p>CONCLUSION</p>   | <p>ACTION AGENCY</p> | <p>• <b>REQUIRED ACTION</b></p>   |
|---|----------------------|---|
| <p><b>D. Aircraft operation is most likely Civil</b></p>  | <p><b>ACTION</b></p> | <ul style="list-style-type: none"> <li>• <b>For contracted aircraft supporting DoD transportation requirements, the AMC inspection process is required.</b></li> <li>• <b>No other oversight action is required by Armed Forces in support of the aircraft operations as the operations are deemed civil and fall under the cognizance of the FAA.</b></li> </ul>   |
| <p><b>E. Aircraft operation is most likely Public</b></p> | <p><b>ACTION</b></p> | <ul style="list-style-type: none"> <li>• <b>Any operation that is determined to be conducting PAO based on the above criteria must be maintained, operated, and supported IAW accepted Armed Forces airworthiness and continued airworthiness (operations, maintenance, and safety) policies.</b></li> <li>• <b>For contracted PAO services:</b> <ul style="list-style-type: none"> <li>➤ <b>Contracting government agency may be required to issue the contractor a declaration that the aircraft is conducting PAO.</b></li> <li>➤ <b>Contractor is then required to follow the FAA process for recording the declaration of PAO with the FSDO.</b></li> <li>➤ <b>Government agency responsible for the contract is required to mandate contract language to notify the government and FAA of PAO or Civil status in the event of a mishap.</b></li> <li>➤ <b>Requiring or contracting government agency becomes the Airworthiness authority.</b></li> <li>➤ <b>Government oversight of contractor operations by the contracting agency; FAA oversight not in place.</b></li> </ul> </li> </ul> |

\*\*\*This tool provides guidelines to facilitate determinations and understanding. It is not a substitute for a written opinion or determination. The status of an operation depends on the circumstances of each flight and may change from mission to mission.

## General Information

The following information is designed to expand on the Decision Tool Matrix. In general, the U.S. Armed Forces consider an aircraft operation "public" when the aircraft is owned by the Armed Forces, or is used by the Armed Forces and operates outside of the purview of its FAA airworthiness certificate (e.g. configuration, operational use, or maintenance) and applicable operating regulations under Title 14 of the Code of Federal Regulations (14 CFR). See 49 U.S.C. § 40102(a)(41) and 41 U.S.C. § 40125. Factors that can contribute to determining if an operation is public are aircraft ownership, the operator, the purpose of the operations, and the persons or equipment on board the aircraft. The determination of PAO is dependent on circumstances such that an aircraft and aircrew could conduct a civil operation in the morning, while that same crew operating the same aircraft could be tasked to conduct PAO in the afternoon, based on a number of factors (e.g., changes to the aircraft configuration and/or the operation being conducted). The US Armed Forces PAO Decision Tool is the primary guide used by Service Airworthiness authority to determine if an aircraft operation is PAO.

### Note

The concept of PAO is unique to U.S. Code. A contracted aircraft conducting PAO ceases to be doing such as soon as it leaves the U.S. National Air Space (NAS). Under international law an aircraft (flying under a contracted air services contract tasking order) would be either "declared" or "deemed" a "State Aircraft" operating in international air space or over foreign state territory. If a foreign country requires formal overfly clearances and landing permits, the State Department can issue a formal "State Aircraft" declaration, however this brings with it added complications. Such a declaration would formally signify that the U.S. government is declaring the contracted aircraft to be U.S. sovereign territory on foreign soil. The contracted aircraft would fundamentally be viewed as a DoD aircraft and be exempt from foreign inspections. If the foreign country does not require such a declaration, under international law the contracted aircraft supporting a tasking order would be "deemed" a "State Aircraft".

### **A. Expansion on "Is the aircraft owned by the Armed Forces?"**

The term "ownership" goes beyond "title transfer" and introduces a legal concept of "equitable or vested interest". It is important to understand how and when the government acquires an equitable/vested interest in the aircraft during the acquisition process because this drives airworthiness and other responsibilities. The subject is complex but in general the government assumes equitable or vested interest when we assume risk of loss for the aircraft, or when the Ground and Flight Risk Clause (GFRC) is put on the contract. The GFRC allows the government to indemnify the aircraft, avoiding the requirement for the contractor to carry and

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charge the government for private insurance. Because aircraft can be very expensive, the GFRC protects the contractor from liabilities where a single mishap could bankrupt a contractor. Because of the government's interest in the aircraft when the GFRC is on a contract, DoD through the Defense Federal Acquisition Regulations (DFARS) impose oversight requirements included in Contract Administrative Services (CAS) to manage risk. The type of contract will impact this operational construct and determine the applicability of the GFRC. This should not be taken to imply that without the GFRC, the DoD bears no risk in an aircraft operation, however the GFRC provides a clearly definable legal obligation.

- For aircraft purchased under a FAR Part 12 contract, the contractor will have insurance in place covering their manufacturing and operation of Commercial off the Shelf (COTS) aircraft, and inclusion of the GFRC on a FAR Part 12 contract is prohibited. As a COTS contract the government will not have an equitable interest in the aircraft until government acceptance (specifics will be articulated in the applicable contract). The contractor will normally operate the aircraft under a FAA FAR Part 21 production certificate and FAA airworthiness until government acceptance. Any oversight prior to title transfer will typically be provided by the FAA. Title transfer usually does not occur until the contract effort is completed and the product is accepted by the government. The impact to airworthiness is that aircraft procured under a Part 12 contract are not necessarily subject to DoD airworthiness or oversight by the government. This should not be taken to imply that DoD will not be involved and play a role in monitoring the acquisition, but by leveraging a COTS product, DoD is accepting commercial standards.
- Under a Part 15 Contract (competitive procurement), the government is directing the manufacturing of an aircraft to specific standards not defined by the FAA. In such cases it makes more sense for the government to self-insure through the GFRC and as a result, the government will have a vested interest from the time of the first performance based payment. This means the government literally has a stake in the aircraft ownership often before the first metal is bent. DFARS requires the GFRC on all Part 15 acquisition contracts. When the government is assuming the risk of loss via the GFRC, the DCMA INST 8210.1 is mandated to minimize risk by ensuring surveillance of ground and flight operations.
- Contracts outside of the acquisition process: DoD employs FAR Part 15 contracts to engage contractors to maintain, modify and operate DoD aircraft already in the government's custody under support services contracts. The government already holds title to these aircraft and therefore has a clear equitable interest in the aircrafts operations and sustainment, and as a result the DFARS require the GFRC on these contracts. As a consequence of the inclusion of the GFRC, DCMA INST 8210.1 is mandatory any time a contractor is involved in maintaining, operating or sustaining a DoD aircraft in order to minimize the government's risk. DCMA INST 8210.1 can also be used to reduce risks when the GFRC is not on the contract.

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- While a determination of PAO drives an airworthiness and continued airworthiness requirement on behalf of DoD, it does not drive a requirement for the inclusion of the GFRC on all contracts. While it is possible to put the GFRC on contracts where contractor owned aircraft are provided to the government for services, the GFRC is not designed to be used when the government does not have an equitable interest in the aircraft. Most contractor owned and operated aircraft maintain private insurance covering all their operations. When the GFRC is put on such a contract where private insurance is already in place, a portion of the private insurance cost are passed along to DoD as a customer. However when the GFRC is on a contract, in the event of an aircraft loss no private insurance will pay, because the GFRC takes precedence. Therefore in most cases, it simply does not make sense to put the GFRC on contracted air services contracts. Rare examples of when the GFRC might be employed on a contractor air services contract include; when a contractor is unable to obtain private insurance due to the configuration or operations that the DoD contract requires; or, when it is simply cheaper for the government to insure the contractor aircraft, than for the contractor to pass along private insurance costs to the government.
- Inclusion of the GFRC mandates the inclusion of the DCMA INST 8210.1 as a risk mitigation strategy when the government is indemnifying an aircraft. It should be noted that the DCMA INST 8210.1 is often used in part or total when the GFRC is not on a contract, as a risk mitigation strategy in support of continued airworthiness.

### Note

The DCMA INST 8210.1 is a multi-service instruction. Each Service and the Coast Guard recognizes and signs the 8210.1 and each Service has its own designation for this instruction. The Air Force designation for the policy is AFI 10-220\_IP. The Army policy designation is AR 95-20. The Navy designation for the policy is NAVAIRINST 3710.1. The Coast Guard designation for the policy is COMTINST M13020.30. All these names refer to the exact same instruction and the policy does not change regardless of which Service or if DCMA is implementing the instruction. However waiver authorities and associated Service guidance does change.

- FMS aircraft being procured via a contract production line may not ever come into DoD inventory but through the FMS contract, the purchasing country has asked DoD to impose our oversight processes on the manufacturing and operations of the contractor. The majority of FMS aircraft are technically contractor held, foreign “State” aircraft, and while operating in the U.S., their operations are normally considered PAO, regardless of if the contractor is flying or a DoD aircrew is operating the aircraft. Legal title merely enables the U.S. to exercise any contractual remedies and to manage the contract on

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behalf of, and for the benefit of, the non-U.S. DoD participant who holds the beneficial interest in that aircraft. After transfer, all the interests to the aircraft are vested in the foreign government and the U.S. has no responsibility or right to provide support, absent an agreement that expressly allows for operation of the aircraft. While not mandatory as with DoD aircraft, many FMS cases will contain a GFRC. When a FMS contract contains a GFRC, there will also be a “Hold Harmless” clause in the contract, transferring the risk and liability back to the foreign country purchasing the aircraft.

### **B. Expansion on “Is the aircraft being operated by the Armed Forces?”**

It is important to recognize that aircraft operated by the Armed Forces, include more than simply uniform service members and government civil servants on a flying status. Operated by the Armed Forces also includes contractor Pilots working in support of the Armed Forces on a contract, and may involve foreign aircraft being operated by the Service or DCMA in support of a FMS effort on joint exercise.

- Any aircraft operation regardless of ownership, can be considered PAO if operated by DoD aircrews. Thus privately owned aircraft or even foreign military “State aircraft” operations can be PAO when operated by DoD. These operations can establish requirements for DoD airworthiness and continued airworthiness.
- A foreign aircraft being operated by a DoD aircrew in the U.S. NAS under the authority of a U.S. squadron or DCMA CMO would be PAO. Even a foreign aircrew operating a foreign aircraft in the U.S. NAS can be considered PAO, if both the aircrew and aircraft are operating under the authority of a DoD squadron in U.S. airspace. Real world examples include a uniform aircrew or contractor aircrew working for DoD supporting an FMS case conducting flight testing, or a Joint flight training squadron, where foreign aircraft and aircrew are assigned to a U.S. DoD squadron. In these scenarios, a DoD Service Airworthiness authority can leverage the foreign nations Airworthiness authority, but when operating within the U.S. NAS, the operation is PAO and the responsibility for airworthiness rest with DoD airworthiness.
- When a foreign aircrew operates their own aircraft in U.S. airspace outside the control of a DoD squadron, those operations are considered foreign State operations under U.S. Code and international law, even if they are working with DoD aircrew in an exercise or for training or test unless they are doing so under the authority of a DoD squadron.

### **C. Expansion on “Is the contracted aircraft being operated and maintained in accordance with Title 14 CFR?”**

It is important to remember that contractors may only operate civil aircraft under Experimental Certificates for the purposes for which the certificate was issued. See 14 CFR Part 91.319(a)(1).

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### WARNING

Failure of a contractor to comply with the requirements of their civil certificate when supporting a government contract, does not in itself make the operation PAO; it simply means that the contractor is in violation of 14 CFR. The FAA can fine or revoke the contractor's certificate which can adversely affect the contracted effort. In addition, while DoD may not be directly subject to FAA fines, knowingly allowing a contractor to violate their certificate while on contract to DoD exposes the contracting authority to risk, especially in the event of a mishap.

- FAA Special Category, Experimental Certificates are issued in response to a contractor owner and/or operator (applicant) generated Program Letter (Reference 14 CFR 21.193). The Program Letter is written by the applicant to specify the intended use of an aircraft to be operated outside of an FAA standard design and certificate. The FAA's response comes in the form of a Special Airworthiness Certificate, accompanied by a list of FAA-approved Experimental Operating Limitations. The Experimental Operating Limitations are usually provided as standard wording to address typical conditions. In order to understand the context of these Operating Limitations, it is essential to also review the applicant's Program Letter. For example, if the applicant's Program Letter describes the intended use of the aircraft to include dropping practice bombs for hire in support of DoD contracts, and the FAA-provided Operating Limitations approve the intended use of the aircraft, then the mission (i.e., dropping practice bombs) may be conducted in accordance with their civil certificate within the confines of 14 CFR 91.15. While this is an improbable example, the intent of this PAO Decision Tool is to provide insight for consistently predicting FAA determinations and not to contradict FAA decisions or authority. Applicant Program Letters are often intentionally written in vague and imprecise terms, which, when not clarified by FAA approvals can introduce confusion, impact government decision-making, and lead to delayed work. The more precisely the contractor's Program Letter defines the intended use of the aircraft, the easier it is for all parties to understand when the operation may remain civil or must be categorized as PAO. Current guidance on Program Letter content is contained in Order 8130.2H Appendix B.
- It is in the DoD's interest for contractor operations to remain civil because doing so reduces DoD cost and oversight responsibilities, but clearly documented civil approval is needed for this determination. Normally FAA Special Category, Experimental Certificates, do not permit the contractor to operate their aircraft as a civil aircraft for compensation and hire. The Operating Limitations for Experimental Certificated aircraft will typically include the following clause: "No person may operate this aircraft for carrying persons or property for compensation or hire". This applies to government



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personnel functioning as mission aircrew or operating specialized Government Furnished Equipment (GFE) on a contractor aircraft with an Experimental Certificate. The FAA has established precedent for the “compensation and hire” clause in some circumstances. The precedent is further explained in the following letters of interpretation; however, these letters may be of limited value when applied to situations outside of the specific usage context:

- **Shaw Letter:** In the FAA’s legal ruling covered in the 4 February 2008 letter to Bob Shaw (the “Shaw Letter”), the following was conveyed: “flights are not considered for compensation or hire if the operator is carrying only his own employees who are necessary for the purpose of the flight. However, if the operator carries persons or property of another and receives compensation that operation would be a violation of section 91.319(a)(2). As a result, the carriage of any DoD employees on a contractor flight in an Experimental Aircraft, even if they are on board the flight in furtherance of the primary purpose of the flight; e.g., equipment flight testing,” means that the operation cannot be completed under the FAA civil certificate and would require a declaration of PAO and DoD airworthiness.
- **Winton Letter:** In the FAA’s legal ruling covered in the 14 February 2013 letter to Gregory Winton (the “Winton Letter”), the following was conveyed: “The FAA has consistently taken the position that an operation for compensation or hire is prohibited under 91.319(a)(2) when it involves the transportation by air of persons or property of another but not when it involves transportation of the operator’s employees or property. See Legal Interpretation to Bob Shaw (Feb. 4, 2008). Data-gathering equipment that is attached to the aircraft and approved under a field approval is considered to be a fixture, instead of property or cargo of another that is transported from place to place. See Legal Interpretation to Jeffrey Hill (Mar. 10, 2011).” Therefore, if GFE is installed and covered specifically under an approved FAA Form 8110-3 or 337, the equipment would be considered to be a fixture and would not fall under the compensation and hire clause.
- **Ratini Letter:** In the FAA’s legal ruling covered in the 30 April 2014 letter to Joy Ratini of BAe Systems (the “Ratini Letter”), the following was conveyed: “Under the terms of the contract, BAe Systems would be carrying the property and persons of NAWCWD for compensation and hire. The FAA has interpreted “compensation and hire” broadly and the contract services are just that, services that BAe is being compensated for. **The experimental certificate for research and development is limited to BAe’s use of the aircraft for its own research and development, using BAe equipment and personnel.** As such, BAe could only conduct these services for NAWCWD as a public aircraft operation with NAWCWD’s approval and written declaration of that status to BAe. **BAe cannot conduct the**

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**operations under contract to NAWCWD using NAWCWD property and personnel and comply with the operating limitations of its experimental certificates.”**

- There are two standing exemptions where the contractor can support compensation and hire operations with an Experimental Certificate; however, it should be emphasized that the Service Airworthiness authorities and FAA FSDO or FAA Office of Counsel should be consulted when a DoD office is attempting to apply the following exemptions. They include:
  - The contracted aircraft is supporting flight training and the contractor has a LODA issued by the FAA under 14 CFR Part 91.319(h) that allows the contractor to conduct flight training operations for compensation under their Experimental Certificate.
  - When equipment that is attached to the aircraft and approved under a field approval, is considered to be a fixture, instead of property or cargo. For the equipment to be considered as a fixture that would fall outside the purview of the compensation and hire clause, the owner operator must have approved FAA Form 8110s and/or 337s, for each individual piece of GFE installed. Again, based on the FAA’s legal ruling covered in the February 2013 letter to Gregory Winton (the “Winton Letter” – see above), if GFE is installed and covered specifically under an approved FAA Form 8110-3 or 337, the equipment would be considered to be a fixture and would not fall under the compensation and hire clause. The FAA warns, however, that the Owner/Operator will need to clearly establish with the FAA what GFE is being “installed”, how it will be installed, and how it will be operated with the FAA’s endorsement captured in an approved FAA Form 8110-3 or 337. In addition, the FAA encourages the Owner/Operator to seek a legal ruling on a case-by-case basis (or more likely, a contract-by-contract basis) to ensure liability and mishap accountability is clearly understood, if the Owner/Operator intends to operate solely under the FAA issued Experimental Certificate. It is the Owner/Operator’s responsibility to prove that the customer’s equipment is a “fixture” through an approved FAA Form 8110-3 or 337.
- When GFE equipment is installed, it is considered a “fixture to that aircraft, and not “property carried for hire. For aircraft operations that are based on Experimental Certificates, two categories must be considered in determining if the equipment is “installed”, or if it is to be considered property or cargo.
  - **Experimental Aircraft where the certification basis is a Type Certificate, but due to the special nature of the aircraft or operations, it no longer qualifies for a “Standard” certificate.** These aircraft may or may not be bound with compliance to 14 CFR 43. Since the aircraft is based on a Type Certificated design, there exists a certification basis, and modification and alterations can be

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performed and recorded in accordance with 14 CFR 43. This means the proper 337s citing approved data (STCs, 8110-3s, Field Approvals) are on file. All items installed on the aircraft and documented in accordance with 14 CFR 43 are considered “fixtures” of that aircraft, and are not considered property or cargo.

- **Experimental Aircraft that are based on designs where no Type Certificate exists.** Aircraft that fall into this category will have wording (similar) in their “Operating Limitations” that directs the following “The cognizant FSDO must be notified and the contractor must have a response in writing, prior to flying this aircraft after incorporation of a major change as defined by 14 CFR 21.93 in order to determine whether new operating limitations will be required. . .” For these aircraft, the operator’s letter to the FSDO with the FSDO’s response, along with appropriate log book entries and weight and balance changes in the aircraft records, would constitute the required documentation to show that the equipment is “Installed”, and not property and cargo.

It should be noted that the FAA will consider all contracted aircraft operations to be civil, until:

- a) The contracting government entity provides the operator with a written declaration of public aircraft status for designated, qualified flights.
- b) The contracted operator notifies the local FAA Flight Standards District Office (FSDO), having oversight of the operator that they have contracted with the government, to conduct “eligible” public aircraft operations.
- c) The flights in question are determined to be eligible for public aircraft operations under the terms of the statute.
- d) The above declaration is submitted to the FSDO in advance of any public aircraft operations conducted by the civil operator.
- e) For all aircraft that have a FAA Standard Airworthiness Certificate, it may be possible to operate as a civil aircraft for compensation or hire, provided the contractor is in compliance with the requirements of 14 CFR §119.1 for the duration of the contract.

For additional questions related to this tool, please contact your Service Airworthiness Office:

### **D/E. Expansion on “Aircraft Operations are Civil or Public.”**

When discussing contracted air services contracts it is DoD’s responsibility to declare operations public, not the contractor’s nor the FAA’s. Specifically it is the responsibility of the PCO on the contract. The FAA cautions DoD entities that PAO performed by civil operators create a significant transfer of liability to the contracting government entity, and that FAA oversight ceases during the time the aircraft are performing the public mission. The FAA cautions civil operators that unless there is a declaration of public aircraft status, all operations must be conducted in accordance with all applicable civil aviation regulations, and that the FAA retains

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oversight and enforcement authority for any deviation from the provisions of 14 CFR. Operators are also cautioned that it is their responsibility to refuse a contract to perform operations that violate 14 CFR if they cannot ensure that the government entity offering the contract has declared the operation (specific flights) as a public aircraft operation. The law requires DoD to declare PAO and establish government airworthiness and oversight of continued airworthiness on all contracted flights which contain a contractual requirement to support PAO. Government oversight will need to be in place for flying operations, maintenance operations and ordnance operations (if applicable).

Per 14 CFR § 1.1, in order for a PAO to be recognized by the FAA, the following must occur:

- The flight(s) in question are determined to be legitimate public aircraft operations under the terms of the statute.
- The contracting government entity, (contracting officer or higher-level official) must provide the operator with a written notice of public aircraft status for designated, qualified flights (this declaration must be made in advance of the proposed public aircraft flight).
- The contracted operator must then notify the FAA FSDO having oversight of the operator (or the operation, as appropriate) that it has contracted with a government entity to conduct “eligible” public aircraft operations.
- The contracted operator must then submit the written declaration to the FSDO with jurisdiction having oversight. The FSDO having oversight of the contracted operator will record receipt of these declarations by electronic means.
- Any operation that is determined to be conducting PAO based on the above criteria must be maintained, operated, and supported IAW accepted Service airworthiness and continued airworthiness (operations, maintenance, and safety) policies.

In summary, when a PAO assessment recommends a contracted operation to be public, then the PM/PCO/ACO/COR has the responsibility to:

- Contact the service airworthiness office and request airworthiness support.
- Mandate contract language to notify the government and FAA of PAO or Civil status in the event of a mishap.
- Establish government oversight of contractor operations ensuring a safe for flight assessment and continued airworthiness.
- Declare the set of operations public and, in writing, provide that declaration to the owner/operator of the contracted aircraft.
- The Contractor is then required to provide a copy of the declaration to the FAA field office that has jurisdiction over that owner/operator.

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