- performing riot control duty on the ground would also be included if the effectiveness of riot control would be compromised by inability to use the aircraft. The movement of law enforcement personnel for administrative purposes would not be considered necessary for the performance of an excepted government function.
- (iii) Persons engaging in search and rescue operations from an aircraft would be considered necessary for the performance of the governmental function. Also included would be persons who are being carried to a remote search area from which they would conduct ground search and rescue operations, provided that the use of the aircraft is necessary for the performance of that mission.
- (iv) Persons on board aircraft conducting aeronautical research who are engaged in the airborne gathering of data or information are necessary for performance of the governmental function.
- (v) Persons on board an aircraft that is engaged in biological and geological resource management would be included, so long as they perform biological and geological resource management-related duties on the aircraft. Also included would be persons carried to a location from which they would engage in an ongoing operation or mission.
- c. "Associated with the Performance of."
 This clause operates to include persons who, while not directly engaged in performing the governmental function, are present on the aircraft in connection with that function.
 - (1) Examples:
- (i) An official who accompanies firefighters to a fire to oversee or assess the success of the operation and/or the need to commit further resources to the fire fight would be associated with the performance of the governmental function.
- (ii) A ground crew that accompanies a weather research aircraft to the theater of operations for the purpose of maintaining the aircraft and equipment would be associated with the performance of the governmental function.
- (iii) Prisoners who are being transported aboard an aircraft are associated with the performance of a law enforcement function.
- (iv) Persons who are rescued during a search and rescue operation are associated with that function. Also included are members of a ground rescue party which assists in the search and rescue operation.
- d. "Governmental Function Such As. The term "such as," when used in the clause "a governmental function such as firefighting, search and rescue, law enforcement, aeronautical research, or biological or geological resource management" indicates that the listed functions are not exhaustive and that the exception may apply to other governmental functions as well. However, the exception is limited to those other governmental functions that are comparable to and consistent with the listed functions. The unifying characteristic shared by the governmental functions listed in the statute is that they each involve the carriage of persons as part of a mission for which the use of an aircraft is necessary. Thus, it is not sufficient to merely show that the passengers

- are being transported to perform one of the functions listed in the statute; the use of the aircraft must be necessary for the performance of the mission. The aircraft would be necessary for the performance of a mission if the inability to use the aircraft would compromise the effectiveness of that mission.
 - (1) Examples:
- (i) The use of an aircraft for administrative travel, such as to attend meetings or make speeches, would not be considered for the performance of a listed or comparable governmental mission. Such an operation would not qualify for the exception.
- (ii) Training flights would be included if the persons on board are being trained on the aircraft to perform one of the functions listed in the statute. Flights to transport persons to receive ground training would not be included.
- (2) "Firefighting." This term includes the dispensing of water or fire retardants on a fire. It also includes the transport of firefighters and equipment to a fire or to a base camp from which they would be dispersed to conduct the firefighting activities.
- (3) "Search and Rescue." This term is commonly used to mean operations conducted to locate and rescue persons who are lost, injured, and/or exposed to some degree of danger or harm. Generally, the use of an aircraft is indispensable to the search effort or is the only feasible means of recovering the victim. Persons rescued would be considered "associated with" the activity.
- (4) "Law Enforcement." Operations requiring the use of an aircraft, such as aerial surveillance, fugitive apprehension, and riot control could be included. Also included would be other situations where the use of an aircraft is essential for the performance of an ongoing law enforcement mission. For instance, deployment of SWAT teams to the theater of operations by aircraft would be included when the use of an aircraft is essential for the successful performance of the mission.
- (5) "Aeronautical Research." This term would include flights to measure the performance of aircraft or aeronautical components. It would also include atmospheric research, meteorological observation and airborne astronomy.
- (6) "Biological and Geological Resource Management." This term would include operations which require the use of an aircraft for the successful performance of the mission. For example, counting wildlife from an aircraft would be included.
- (7) "Other Governmental Functions— Examples:"
- (i) Medical evacuation. While this term is not considered synonymous with "search and rescue," it may be an included governmental function, depending on the particular circumstances of the operation. Again, the use of an aircraft must be essential to the successful performance of the mission. It is unlikely that the use of an aircraft would be essential for a medical evacuation operation in an urban area where other means of transportation are routinely available.
- (ii) Aerial Survey. Operations conducted to assure compliance with state or local laws or

- codes are included if the inability to use an aircraft would compromise the effectiveness of the mission. Examples:
- (A) The identification of environmental polluters would be included if the use of an aircraft was necessary to locate the offenders.
- (B) Aerial patrol of nuclear test sites to deter or locate trespassers would be included.
- e. "Cost-Reimbursement Agreement." This term means any agreement, oral or written, providing for reimbursement of all or part of the costs of an aircraft operation. Any charge or payment in excess of the cost of the operation would not constitute a cost-reimbursement agreement.
- f. "Unit of Government." This term means a government body. Generally, the singular characteristic of a unit of government in this context is its common treasury. Reimbursement for flight operations between two elements of the same unit of government would not be considered an operation for "compensation or hire." However, the receipt of reimbursement for a flight operation from an element of one unit of government to an element of a separate unit of government would constitute an operation "for commercial purposes." Such operation would be considered a civil aircraft operation, except when the government unit, which receives the benefit of the operation, certifies that there is a significant and immediate threat to life or property and that not private operator is reasonably available.
- g. "Certifies." The certification that there is a significant and immediate threat to life or property and that no private operator is reasonably available should be made by the unit of government on whose behalf the operation is conducted. Without the certification, the unit of government who receives reimbursement for conducting the operation will be assumed to have conducted the operation "for commercial purposes." Such an operation will be considered a civil aircraft operation and may require compliance with FAR Part 121, 125, 133, 135, or 137.
- (1) The certification should include: the date of the operation, a description of the flight operation conducted, a description of the significant or immediate threat, and an explanation of why it was determined that no service by a private operator was reasonably available.
- (2) The certification is the responsibility of the unit of government which provides the flight operations. It is suggested that the certification be completed contemporaneously with the operation and be retained by the unit of government which operated the aircraft.
- h. "Significant and Imminent Threat."
 This term refers to a situation where the public agency responsible for responding to a threat has determined that serious injury or death, or significant damage to property (including natural resources) is present. The agency must also determine that the use of an aircraft is necessary to respond to the threat.
- i. "No Service by a Private Operator was Reasonably Available." This term means that the public agency responsible for responding to a threat has reasonably determined that, at