

# NOTICE

U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION

N 8900.95

National Policy

Effective Date:  
10/19/09

Cancellation Date:  
10/19/10

**SUBJ:** Clarification of Direct Employee for Part 135 in OpSpecs A006 and A008

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**1. Purpose of This Notice.** This notice provides information to principal operations inspectors (POI) with oversight responsibilities of Title 14 of the Code of Federal Regulations (14 CFR) part 135 certificate holders regarding direct employees exercising operational control.

**2. Audience.** The primary audience for this notice is Flight Standards District Office (FSDO) aviation safety inspectors (ASI) having oversight of part 135 operators. The secondary audience includes the Flight Standards branches and divisions in the regions and in headquarters.

**3. Where You Can Find This Notice.** Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at <http://fsims.avs.faa.gov>. Operators and the public can find this notice at <http://fsims.faa.gov>.

#### **4. Discussion.**

**a. Clarification.** In May of 2008, the 135 Air Carrier Operations Branch, AFS-250, clarified the guidance in Order 8900.1, Volume 3, Chapter 25, Section 5, regarding operational control in part 135 operations. Consequently, AFS-250 determined that language in operations specification (OpSpec) A006, Management Personnel; and A008, Operational Control, for part 135 operators needed clarification to avoid any confusion on the part of FAA inspectors or operators. Further information regarding the definition of direct employee can be found in the following two citations:

- [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/media/2008/info08005.pdf](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/2008/info08005.pdf).
- [http://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/info/all\\_infos/media/135op\\_control\\_qa.pdf](http://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/info/all_infos/media/135op_control_qa.pdf).

**b. OpSpec A006 Amendment.** The FAA amended OpSpec A006 paragraph a to clarify all management personnel must be direct employees of the certificate holder. Appendix A contains a sample of OpSpec template A006.

**c. OpSpec A008 Amendment.** The FAA amended OpSpec A008 paragraph d(6)(a) to clarify who can exercise operational control of a flight. Appendix B contains a sample of OpSpec template A008.

**5. Action.** POIs of part 135 certificate holders should reissue OpSpecs A006 and A008 within 120 days of the publication of the amended A006 and A008 templates.

**6. Disposition.** We will not incorporate the information in this notice into FSIMS before the notice expires. Direct questions concerning this notice to AFS-250, (202) 493-4971.

ORIGINAL SIGNED by Chester D. Dalbey for  
John M. Allen  
Director, Flight Standards Service

**Appendix A. Sample Part 135 OpSpec A006, Management Personnel**

The certificate holder is authorized the following management positions:

- a. The certificate holder uses the following named personnel in the 14 CFR part 135 management positions listed below. All management personnel listed in this OpSpec must be direct employees of the certificate holder.

<b>Part 119 Position Title</b>	<b>Name:</b>	<b>Company Equivalent Position Title:</b>
TABL01	TABL02	TABL03

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**Appendix B. Sample Part 135 OpSpec A008, Operational Control**

a. The system described or referenced below shall be used by the certificate holder that conducts operations under 14 CFR part 135 to provide operational control for its flight operations. The essential elements of operational control described in subparagraph d below must be included or described in that system.

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b. Certificate Holder Responsibilities:

(1) The certificate holder retains all responsibility for the operational control of aircraft operations, and thus the safety of each flight conducted under this certificate and operations specification, including the actions or inactions of all direct employees and agents of the certificate holder.

(2) This responsibility is not transferable to any other person or entity.

(3) The certificate holder's responsibility for operational control supersedes any agreement, contract, understanding or arrangement, either oral or written, expressed or implied, between any persons or entities.

c. The certificate holder may not engage in any of the following practices and shall not:

(1) Franchise or share the certificate holder's authority for the conduct of operations under its certificate and operations specifications to or with another person or entity.

(2) Use a "Doing Business As" (DBA) name in any way that represents an entity that does not hold an air carrier or operating certificate and operations specifications as having such a certificate and operations specifications.

(3) Engage in a wet lease contrary to 14 CFR § 119.53. In accordance with § 119.53(b), the certificate holder may not wet lease from or enter into any wet leasing arrangement with any person not authorized by the FAA to engage in common carriage operations under 14 CFR part 121 or 135 (as appropriate), whereby that other person provides an aircraft and at least one crewmember to the certificate holder. A lease, or other business arrangement with a lease, is considered a wet lease if any of the following conditions exists:

(a) The certificate holder and the aircraft owner/lessor agree that the certificate holder is required to use the aircraft owner's/lessor's pilot in part 135 operations,

(b) The aircraft owner/lessor is obligated to furnish pilots to the certificate holder to operate the aircraft, or

(c) The aircraft owner/lessor has the power to veto who the certificate holder will use to pilot the aircraft in part 135 operations, so as to limit the certificate holder to using only the owner/lessor's pilots.

(4) Transfer, surrender, abrogate, or share operational control responsibility with any party.

(5) Engage in any arrangement with an aircraft owner, lessor or any other person or entity, such as an aircraft management entity, which allows the use of an aircraft for operations under these operations specifications without a complete, effective and sustainable transfer of operational control to the certificate holder for all part 135 operations conducted under these operations specifications.

d. Elements of Operational Control. The following items are essential elements of operational control and are required to be components of the operational control system, used by the certificate holder, and as described or referenced in subparagraph a above:

(1) Crewmember Requirements. The certificate holder may not conduct any operation under part 135, unless each of the certificate holder's crewmembers is:

(a) The certificate holder's direct employee or agent during every aspect of the part 135 operations, including those aspects related to any pre-flight and post-flight duties. The certificate holder is accountable for the actions and inactions of these persons during all its aircraft operations.

(b) Currently trained and/or tested, qualified, and holds the appropriate airman and medical certificates to conduct flights for the certificate holder under part 135, and is otherwise qualified to accept the specific flight assignment, considering flight and rest requirements, airspace qualification and the type of operation intended in the assignment. Each pilot must be specifically listed by name and airman certificate number on a list of pilots maintained by the certificate holder at its main base of operations or listed in operations specification A039 or A040, if applicable. This information must be available for inspection by the Administrator as specified in § 135.63.

(2) Aircraft Requirements. The certificate holder may not conduct any operation under part 135 unless each aircraft used in its part 135 operations is:

(a) Owned by the certificate holder and remains, without interruption in the certificate holder's legal and actual possession (directly or through the certificate holder's employees and agents) during all of its part 135 flights; or

(b) Leased by the certificate holder or otherwise in the legal custody of the certificate holder and remains in the certificate holder's exclusive possession or custody during all of its part 135 flights.

(c) For each aircraft which the certificate holder uses under these operations specifications, the aircraft owner or other lessee of the aircraft may operate the aircraft under part 91, under the control and responsibility (including potential liability for an unsafe operation) of the owner or other lessee, as long as the following condition is met:

- The certificate holder ensures that the maintenance of the aircraft continues to adhere to the certificate holder's maintenance program at all times or,
- When the aircraft is returned to the certificate holder but before the aircraft is operated under part 135 again by the certificate holder, that aircraft undergoes an appropriate airworthiness conformity validation check.

(3) Exclusive Aircraft Use Requirements for Part 135 Operations. At least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications must remain in the certificate holder's exclusive legal possession and actual possession (directly or through the certificate holder's employees and agents) as specified in § 135.25. This aircraft cannot be listed on any other part 119 certificate holder's operations specification during the term of the exclusive use lease.

(4) Use of Other Business Name(s) (DBAs):

(a) The certificate holder may not allow or create the circumstances that would enable any other entity to conduct a flight for compensation or hire under part 119, 121 or 135 as if that entity were the certificate holder.

(b) The certificate holder shall not operate an aircraft under part 135 under the name or fictitious name of any other person or entity, unless authorized in operation specification A001 of these operations specifications. Such authorization does not authorize any person or entity, other than the certificate holder, to conduct operations under the certificate holder's certificate and operations specifications.

(c) The certificate holder may not allow the use of a fictitious name to obscure the certificate holder's responsibility and accountability to exercise operational control over its flight operations.

(5) Aircraft Operation Agreements and Other Arrangements.

(a) In accordance with § 119.53(b), the certificate holder may not wet lease from or enter into any wet leasing arrangement with any person not authorized by the FAA to engage in common carriage operation under

parts 121 or 135, whereby that other person provides an aircraft and at least one crewmember to the certificate holder. This requirement does not prohibit the separate use of a crewmember by the certificate holder when that crewmember is also employed by the aircraft's owner or lessor.

(b) Any agreement or arrangement between the certificate holder and an aircraft owner must fully explain how the certificate holder oversees and ensures that only airworthy aircraft are used in its part 135 operations.

(c) The certificate holder's operational control system must include a system of ensuring that it has complete, effective and sustainable operational control over each aircraft operated under these operations specifications, and that no surrender or loss of operational control exists.

(d) The certificate holder may not operate any aircraft in part 135 operations, which is subject to an agreement between the certificate holder and the aircraft owner or any lessee of the aircraft, if that agreement shifts liability and accountability for the safety of the certificate holder's part 135 flight operations from the certificate holder to the aircraft owner or other parties.

(6) Management Personnel and Persons Authorized to Exercise Operational Control:

(a) Prior to conducting a part 135 flight or series of flights, at least one management person listed in operations specification A006, Management Personnel, of these operations specifications or a management person designee who is a direct employee of the certificate holder, other than a pilot assigned to the specific flight or series of flight, must determine and have sufficient knowledge of the following:

(i) Whether each assigned crewmember is qualified and eligible to serve as a required crewmember in the aircraft and type of operation to which the crewmember is assigned (see subparagraph d(1)(b) above) and

(ii) Whether the aircraft assigned for use is listed in operations specification D085, and is airworthy under the certificate holder's FAA-approved maintenance, inspection, or airworthiness program, as appropriate.

(b) Prior to conducting a part 135 flight or series of flights, at least the pilot assigned in accordance with subparagraph d(6)(a)(i) above must determine and have sufficient knowledge of the following:

(i) Whether a part 135 flight or series of flights can be initiated, conducted, or terminated safely and in accordance with the authorizations, limitations, and procedures approved in the certificate holder's operations specifications, general operations manual, or subparagraph a above and the appropriate regulations.

(ii) Notwithstanding the requirements of subparagraph d(6)(a) above, this determination and knowledge described in subparagraph d(6)(b)(i) above may be made for the certificate holder by pilots and/or flight crewmembers assigned to a flight or series of flights, in accordance with policies, procedures, and standards prescribed by the certificate holder.

(A) Such non-management persons shall meet the requirements of § 119.69(d), and their names, titles, and duties, responsibilities, and authorities shall be specified in the general operations manual, or described in subparagraph a above, or

(B) Those certificate holders issued operations specification A039 or A040, the persons listed in those operations specifications must determine and have sufficient knowledge of whether a part 135 flight or series of flights can be initiated, conducted, or terminated safely in accordance with the authorizations, limitations, and procedures approved in subparagraph a above and in accordance with the appropriate regulations.

(7) Operational Control Information Requirements:

(a) Prior to the certificate holder conducting any flight operation under part 135, the certificate holder must provide information to the designated PIC that indicates which flight or series of flights will be conducted under part 135, that indicates which part 91 flights will be conducted by the certificate holder, and that the certificate

holder is accountable and responsible for the safe operations of these flights or series of flights. (For those issued operations specification A039 or A040 the pilots listed in those operations specifications are accountable and responsible for the safe operations of these flights or series of flights.)

(b) The system of operational control for part 135 operations must ensure that each pilot is knowledgeable that the failure of a pilot to adhere to the certificate holder's directions and instructions, or compliance with directions or instructions from an aircraft owner (other than the certificate holder), or any other outside private person or private entity, that are contrary to the certificate holder's directions or instructions, while operating aircraft under these operations specifications, may be contrary to parts 119 and/or 135, and therefore may be subject to legal enforcement action by the FAA.

(c) These requirements do not apply to the following:

- (i) ATC instructions, clearances, NOTAMs received from FAA or cognizant foreign ATC authorities,
- (ii) Aeronautical safety of flight information received by the pilot, and
- (iii) Operation under the emergency authority of the PIC in accordance with § 91.3(b), and/or § 135.19(b).

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