

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

N 8900.496

National Policy

Effective Date:
12/19/18

Cancellation Date:
12/19/19

SUBJ: Identification of Direct Employees Exercising Operational Control

1. Purpose of This Notice. This notice announces changes to issuing requirements for Operations Specifications (OpSpec) A006, Management Personnel, and A008, Operational Control, and revises the templates for affected Title 14 of the Code of Federal Regulations (14 CFR) part 135 certificate holders. These changes clarify which 14 CFR part 119 management personnel are required to be direct employees of the part 135 certificate holder (i.e., the Director of Operations (DO) and Chief Pilot) as well as more clearly indicate whether or not the Director of Maintenance (DOM) is a direct employee.

2. Audience. The primary audience for this notice is the Flight Standards Safety Assurance offices and principal inspectors (PI) assigned oversight of operators conducting operations under part 135. The secondary audience includes the Safety Standards and Foundational Business offices.

3. Where You Can Find This Notice. You can find this notice on the MyFAA employee website at https://employees.faa.gov/tools_resources/orders_notices. Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at <http://fsims.avs.faa.gov>. Operators can find this notice on the Federal Aviation Administration's (FAA) website at <http://fsims.faa.gov>. This notice is available to the public at http://www.faa.gov/regulations_policies/orders_notices.

4. Background.

a. Policy Clarification. The Flight Standards Service received questions regarding which part 119 management personnel are required to be direct employees of a part 135 certificate holder. To clarify the policy, OpSpecs A006 and A008 have been amended. FAA Order 8900.1, Volume 3, Chapter 25, Section 5, Safety Assurance System: Part 135 Flight Locating Systems and Operating Rules; and Information for Operators (InFO) 08005, Part 135 Operational Control Questions and Answers (Q&As), both define and speak to first-tier employees being required to be direct employees. First-tier operational control is commonly exercised by the DO and Chief Pilot. DOMs may or may not be granted authority by the certificate holder to exercise operational control. A direct employee is defined as a person over whom the certificate holder must exercise some control, and such a person must be "on your books" (i.e., receive a W-2 statement). The operations side utilizes the first-tier and second-tier approach, but this does not always apply to the maintenance side. For a more in-depth discussion of first-tier versus

second-tier operational control, refer to Order 8900.1, Volume 3, Chapter 25, Section 5, subparagraph 3-2029G.

b. Circumstances. There are circumstances when a person may perform the duties of a DOM for a part 135 certificate holder, but is employed and paid by a part 145 repair station, Fixed-Base Operator (FBO), or other part 135 certificate holder. In these situations, the DOM does not need to be a direct employee of the part 135 certificate holder as long as he or she is readily available to fulfill all responsibilities of the DOM position consistent with the certificate holder's operations. The Principal Maintenance Inspector (PMI), in conjunction with the part 135 certificate holder, will determine whether a DOM that is not a direct employee can fulfill the requirements for the certificate holder. The determining factor is whether or not the certificate holder is operating at the highest degree of safety in the public interest. The DOM, as listed in OpSpec A006, is not required to be a direct employee. In accordance with current FAA policy, DOMs who are not direct employees of the certificate holder may not exercise operational control for the certificate holder. Furthermore, the Principal Operations Inspector (POI) should ensure that, as required by part 135, § 135.77, each certificate holder lists the name and title of each person authorized by it to exercise operational control in the manual required by § 135.21. The key is to determine that the certificate holder is operating in compliance with 14 CFR and current FAA policy.

5. Guidance. InFO 08005 and its associated National Air Transportation Association (NATA)/National Business Aviation Association (NBAA) Frequently Asked Questions (FAQ) document were updated to clarify that a DOM does not need to be a direct employee of the part 135 certificate holder under the circumstances discussed in paragraph 4. OpSpec A006 was updated to specify that the direct employee requirement applies to the DO and Chief Pilot only. Two new FAA Recognized Position Titles for part 119 management personnel have been added to the Web-based Operations Safety System's (WebOPSS) "Maintain Operator Data—Personnel" area, "Director of Maintenance, Direct Employee—Yes" and "Director of Maintenance, Direct Employee—No." OpSpec A008 is also updated to specify that any management personnel who exercises operational control must be a direct employee. This notice contains the following:

- The sample OpSpec A006 template in Appendix A applies to part 135.
- The sample OpSpec A008 template in Appendix B applies to part 135.

6. Action. This is a mandatory revision to the part 135 OpSpecs A006 and A008 templates. PIs should review the guidance in Order 8900.1, Volume 3, Chapter 18, Section 3, Part A Operations Specifications—General, and verify that the certificate holder's General Operations Manuals (GOM) correctly list only those persons who are direct employees as being authorized to exercise first-tier operational control. PIs should update all part 135 DOMs listed in OpSpec A006 to one of the new FAA Recognized Position Titles in the WebOPSS "Maintain Operator Data—Personnel" area, and reissue OpSpecs A006 and A008 to certificate holders within 90 days from the OpSpecs A006 and A008 HQ Control Date in WebOPSS.

7. Disposition. We will incorporate the information in this notice into Order 8900.1 before this notice expires. Direct questions concerning the information in this notice to the Aircraft Maintenance Division (AFS-300) at 202-267-1675 or the Air Transportation Division (AFS-200) at 202-267-8166.

A handwritten signature in black ink, appearing to read "R. Carty", with a stylized flourish at the end.

Robert C. Carty
Deputy Executive Director, Flight Standards Service

Appendix A. Sample OpSpec A006, Management Personnel: 14 CFR Part 135

a. The certificate holder is authorized to use the named personnel in the 14 CFR Part 135 management positions listed in Table 1. The Director of Operations and Chief Pilot listed in this operations specification must be direct employees of the certificate holder. The Director of Maintenance may or may not be a direct employee as indicated with their 14 CFR Part 119 position title.

Table 1 – Authorized Management Positions and Personnel

Part 119 Position Title	Name	Company Equivalent Position Title

Appendix B. Sample OpSpec A008, Operational Control: 14 CFR Part 135

a. The system described or referenced below must 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.

☐ (1) The certificate holder is a single Pilot-in-Command (PIC) operator issued operations specification A039. The PIC listed in operations specification A039 has sufficient knowledge of the certificate holder's operations specifications to determine whether a Part 135 flight or series of flights can be initiated, conducted, or terminated safely in accordance with all appropriate regulations; operations specification authorizations, limitations, and procedures; and the aircraft maintenance and MEL requirements. The PIC is responsible to ensure all second-in-command (SIC) pilots listed in operations specification A039 are qualified before and during all flight operations. The PIC is responsible for filing the appropriate flight plan for each Part 135 flight to be conducted and notifying the FAA and the certificate holder's main office of any emergency operation by radio, telephone, or other pre-arranged method of communication. If the PIC is unable to provide the appropriate notification, the responsibility falls to the SIC.

☐ (1) The certificate holder is a single-pilot operator issued operations specification A040. The pilot listed in operations specification A040 has sufficient knowledge of the certificate holder's operations specifications to determine whether a Part 135 flight or series of flights can be initiated, conducted, or terminated safely in accordance with all appropriate regulations; operations specification authorizations, limitations, and procedures; and the aircraft maintenance and MEL requirements. The pilot listed in operations specification A040 is responsible for filing the appropriate flight plan for each Part 135 flight to be conducted and notifying the FAA and the certificate holder's main office (if applicable) of any emergency operation by radio, telephone, or other pre-arranged method of communication.

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:

(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 Part 119, § 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 applicable), 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 or lessor agree that the certificate holder is required to use the aircraft owner's or lessor's pilot in Part 135 operations;

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

(c) The aircraft owner or 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's or 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 preflight and postflight 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 Part 135, § 135.63.

(2) Aircraft Requirements.

(a) The certificate holder may not conduct any operation under Part 135 unless each aircraft used in its Part 135 operations is:

(i) 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

(ii) 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.

(b) For each aircraft the certificate holder uses under these operations specifications, the aircraft owner or other lessee of the aircraft may operate the aircraft under 14 CFR 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:

(i) The certificate holder ensures that the maintenance of the aircraft continues to adhere to the certificate holder's maintenance program at all times; or

(ii) 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 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) (DBA).

(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 must not operate an aircraft under Part 135 under the legal name or fictitious name of any other person or entity, unless authorized in operations specification A001. 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 Part 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 who is a direct employee listed in operations specification A006, Management Personnel, 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 flights, 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 (GOM), 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 flightcrew members 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 must meet the requirements of § 119.69(d), and their names, titles, and duties, responsibilities, and authorities must be specified in the GOM, or described in subparagraph a above; or

(B) For 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, and 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 Part 91, § 91.3(b) and/or § 135.19(b).