

Operational Control

Operations Specification Paragraph A008

Presented to: AMTC

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Federal Aviation
Administration



NOTE: The significance of the words "agent" and "agents" as used in these operations specifications is that the certificate holder is the principal and that the certificate holder is accountable and liable for the acts or omissions of each of its agent(s).



a. The system described or referenced in <insert GOM reference> shall be used by the certificate holder to provide operational control of its flight operations.



b. Certificate Holder Responsibilities:

1. The certificate holder retains all responsibility for the operational control of aircraft operations conducted under this Certificate and Operation Specifications, 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. Certificate Holder Prohibitions:

The certificate holder may not engage in any of the following practices:

- 1. The franchising or sharing of 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 of a "Doing Business As" (DBA) name in any way that represents an entity that does not hold an air carrier or operator 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 section 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 parts 121 or 135 of the Federal Aviation Regulations, 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.**

If the aircraft owner/lessor does not agree to provide any crewmember with the leased aircraft to the certificate holder, the certificate holder may independently contract with pilots who also happen to work as pilots for the aircraft owner/lessor.

- 4. The transfer, surrender, abrogation, or sharing of operational control responsibility to or 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.**



5 (Continued) A sustainable transfer is a transfer of operational control, without any impediment, by a contract, agreement, lease, or other written or verbal arrangement between the owner, lessor, or other entity, and any other entity, that restricts any person or entity from transferring operational control to the certificate holder. Examples of such impediments are lease, mortgage, insurance, management agreements, and other agreements which limit the use of the aircraft to a particular party or purpose other than the certificate holder and its authorized kinds of operation. See also paragraph (d) (5) (c) below.



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 described as referenced in (a.) above:

1. Crewmember Requirements:

The certificate holder may not conduct any operation under part 135 of the Federal Aviation Regulations, unless each of the certificate holder's crewmembers:

- (a) Is 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) Is 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. This information must be available for inspection by the Administrator as specified in section 135.63.**

2. Aircraft Requirements:

The certificate holder may not conduct any operation under part 135 of the Federal Aviation Regulations, 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:

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 14 CFR Section 135.25. This aircraft cannot be listed on any other part 121, or 135 certificate holder's operations specification during the term of the exclusive use lease.

4. Use of Other Business Name(s):

(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 parts 119, 121 or 135 of the Federal Aviation Regulations as if that entity were the certificate holder.

(b) The certificate holder shall not operate an aircraft under part 135 of the Federal Aviation Regulations under the name or fictitious name of any other person or entity, unless authorized by the FAA in Paragraph A001 of this Operations Specification. 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 is responsible for the safety of each of the part 135 flights conducted under the various authorizations issued to it under these Operations Specification and 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 section 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 of the Federal Aviation Regulations, 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 system of ensuring that they have complete, effective and sustainable operational control over each aircraft operated under these operations specifications, and that no surrender or loss of operational control exists. The certificate holder, by use of this system, must determine that no limitation exists in any of its agreements or any agreement between an aircraft owner (other than the certificate holder) and any other parties (e.g., insurance companies or financial institutions) which restricts the free transfer of operational control to the certificate holder, or which otherwise limits the use of the aircraft to a person other than the certificate holder. This is an ongoing requirement.

(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. An example would include a lease which included a provision that the owner or lessor was responsible for civil liability in the event of part 135 flights conducted under these Operations Specifications that result in an accident, incident, safety violation, injury or death.



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 or their management person designees listed in paragraph A006 (management personnel), other than a pilot assigned to the specific flight or series of flight, must determine and have sufficient knowledge of the following:

(1) 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 d.1.b).

(2) Whether the aircraft assigned for use is listed in Operations Specification paragraph 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 one management person or their management person designees listed in paragraph A006 (management personnel), or a non-management person listed in the certificate holder's general operations manual (or equivalent) must determine and have sufficient knowledge of the following:

(1) 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 equivalent), and the appropriate regulations.

This determination and knowledge in (b) (1) 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. Such determinations include, but are not limited to, visibility determinations, whether ice is adhering to control surfaces, whether the aircraft has sufficient fuel, and whether the aircraft is in a condition for safe flight.

Note: 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 equivalent.



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 pilot in command (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.

(b) The system of operational control must ensure that each pilot is knowledgeable that the failure of a pilot to adhere to the carrier'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.

These requirements do not apply to:

- (1) Air Traffic Control instructions, clearances, Notices to Airmen (NOTAMs) received from FAA or cognizant foreign Air Traffic Control authorities,**
- (2) Aeronautical safety of flight information received by the pilot, and,**
- (3) Operation under the emergency authority of the pilot in command in accordance with 14 CFR 91.3(b), and /or 135.19(b).**

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