



**“THE FEDS ARE COMING! THE FEDS ARE COMING!”**

**A DISCUSSION OF OPERATIONAL CONTROL FOR CHARTER OPERATORS**

**(ADAPTED FROM THE NBAA/NATA WORKSHOP, MAY 23, 2006)**

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*When insurance agents have spare time, one of their favorite things to do is to attend an FAA regulatory seminar, and this was an important one. We hope that this summary will assist you in interpreting the new regulation of FAR Part 135 charter operations. Also attached is a copy of the proposed A-008 Op Spec to be implemented on or about 8/31/06. Further attachments include the new A-008 OpSpec and FAA PowerPoint presentation. Please call us at 800-432-8519 if we can help in any way with your insurance needs.*

*- James M. Graber, CIC, CAIP, President  
[Alexander Aviation Associates, Inc.](#)*

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In February of 2005, a Challenger left the confines of the runway and the airport at Teterboro, New Jersey. Property was damaged, people were injured, insurers responded ... and the FAA woke up.

In this particular accident, the entity that the FAA had issued the charter certificate to (the Certificateholder) was not the entity that was actually operating the aircraft under that certificate. There is nothing like an expensive, high-profile incident to give regulators a moment of clarity and self-examination.

In this case, the FAA believed that the accident may have been prevented if the Certificateholder had exercised more control over the operations conducted under their certificate.

***“What we’ve got here is ... a failure to communicate.”***

***-Strother Martin, Actor: Cool Hand Luke, 1967***

FAA regulations already require that a Certificateholder be responsible for *all* aspects of *all* charter flights. In an attempt to be flexible, the FAA’s various Flight Standards District Offices (FSDO’s) allowed Certificateholders some latitude with these operational control rules. In fact, a local FSDO actually approved the arrangements under which the now-famous Teterboro flight was attempted. The FAA has overruled that approval after the fact.

As far as the FAA was concerned, allowing this flexibility would give Certificateholders a broad range of maintenance, crewing and operations options. Like too much of a good thing, many Certificateholders believed that this gave them the ability to contract out, delegate, or outsource charter functions they either would not or could not do themselves. This put a great deal of operational control over the charter flights in the hands of unapproved, non-certified third parties.

Some examples of the outsourced services are:

- Crewing: Pilot services are often provided by independent contractors, a third-party operator or by the aircraft owner, none of whom are Certificateholders.
- Maintenance: A non-certified aircraft owner or operator approves specific maintenance items or selects maintenance facilities.
- Operations / Marketing: Non-certified persons, companies or independent contractors advertise, schedule, plan, execute, and terminate chartered flights.



In their most egregious forms, these practices might be called...

**“Playing the Shell (Company) Game”**

When a Certificateholder operates in name only and makes financial arrangements with Non-Certificateholders to run charters, they play a “shell game.” The operational control shifts so that the Certificateholder no longer controls the routine operations of the certificate, and it becomes increasingly difficult to identify the responsible parties in the event of an incident or FAR violation. Even if the Certificateholder does proving runs and check airman work, the control is not there on a day-to-day basis.

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**WHAT THE FAA WANTS**

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The FAA wants safety, responsibility and accountability. They want to know that when they issue a charter certificate, only the certificated entity will be flying charter flights under that certificate. They also cannot do their job efficiently if, after every accident, there is a room full of people pointing fingers and saying, “It wasn’t my job.”

The FAA also wants uniform enforcement from all the FSDO’s and uniform compliance from all the Certificateholders. To this end, all parties may expect:

- **Responsibility:** The Certificateholder will be completely and solely responsible for all aspects of all charter operations. This means that any agreements that assign responsibility to any other party will be invalid as far as the FAA is concerned. (Civil liability statutes and doctrines will differ from this interpretation, so consult your attorney.)
- **Key Personnel:** (Director of Operations, Director of Maintenance and Chief Pilot):
  - Must have **FULL RESPONSIBILITY** and authority to do the everything their job title suggests without “string-pulling” by other parties.
  - Must be **READILY AVAILABLE** to meet and communicate with FSDO Inspectors on short notice. Directors of Operations who are also line pilots probably will not be able to do both jobs under the new system.
  - Must be **LOCAL** to the Certificateholder and actively involved to avoid remote “rent-a-director” situations.
  - Must be **LONG TERM** employees. The FAA is looking for stability and predictability in a charter operator.
- **Independent Contractors:** *The use of “Independent Contractors” is prohibited.* They cannot be “independent.” Instead, the Independent Contractor will become an *agent* of the Certificateholder. The Certificateholder’s operational specifications define the duties of the agent. Actions outside the defined duties are prohibited. (There could be significant tax implications here, so consult your Certified Public Accountant.)



- **DBA's and Third-Party Sales:** The use of DBA's will be limited. The only legitimate use of a DBA will be as an alias for the Certificateholder (e.g., Crashenburn Airways, Inc. d/b/a Wings of Eternal Security). No longer may the Certificateholder allow flights in any name other than their own or a legally authorized DBA name. This will have substantial impact on operations where one Certificateholder offers charters on behalf of another. The charter client must have knowledge of which Certificateholder is doing the flight. Code sharing agreements are exempt.
- **Satellite Locations:** In the charter business, the FAA will carefully scrutinize satellite locations in order to ensure that there is a vertical system of authority and reporting. The key personnel described above must still be able to exercise all of their duties and be active in the administration of the satellite location.
- **Insurance:** Insurance policies that allow coverage for charter operations by parties other than the Certificateholder should be re-written to comply with the new OpSpec. We recommend that a Certificateholder insure all the aircraft on their certificate themselves and maintain that insurance, rather than transferring that duty to the lessor or registered owner.
- **Aircraft Lessors / Registered Owners:** Owners must assume a passive position in charter operations and must relinquish full control of the aircraft to the Certificateholder. Wet leases in which aircraft and crew are leased to the Certificateholder will **not** be acceptable in charter operations.
- **Part 91 Operations:** The FAA will allow Part 91 (Pleasure and Business) operations on an aircraft by parties other than the Certificateholder, but full disclosure must be made to all parties that it is not a charter flight. In addition, situations where an aircraft is rented to a someone who then hires "recommended" contract pilots ("Part 134.5") will be examined. We suggest a regulatory review of all flights where an exchange of money or other item of value will occur.

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### Meet "008" The A-008 Op Spec

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#### ***"Pay Attention, 007!"***

-Desmond Lewellyn "Q": "James Bond" Films

Attached to this article is the current (as of 5/23/06) draft of Op Spec A-008 which is scheduled to reach final form by 08/31/2006, with enforcement to begin soon thereafter. This is the working text of what the FAA expects you to do. As in most regulatory situations, negotiations and amendments will most likely be possible.

We encourage you to read "008" and to direct your inquiries or comments to your FSDO. These are substantial changes, but, after all, safety is your best insurance.

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**A008. Operational Control**

**HQ Control 04/28/98  
HQ Revision 01b**

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 or agents.

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 supercedes 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) 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 exist:

- (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 or 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. 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 independent 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 system must include:

- (1) The certificate holder conducting a direct review of all available and known agreements concerning the aircraft,

- (2) The certificate holder's written query to all affected parties requesting documentation that no limitations exist, or,
- (3) The certificate holder's notification of all affected parties that the certificate holder will use the aircraft in operations under these operations specifications.

After taking such an action, should the certificate holder become aware of any additional agreement (s), the certificate holder must make this determination for that agreement(s).

(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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1. Issued by the Federal Aviation Administration.
  2. These Operations Specifications are approved by direction of the Administrator.
  3. Date Approval is effective: \_\_\_\_\_ Amendment Number: \_\_\_\_\_
  4. I hereby accept and receive the Operations Specifications in this paragraph.
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# Operational Control Workshops

Flight Standards Service  
Kent Stephens



Federal Aviation Administration




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## Purpose

- Facilitate Understanding of Operational Control Requirements in Part 135
- Explanation of Opspecs A008 (Operational Control)
- Operational Control Inspection (PTRS 1636)

Operational Control Workshop



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## Locations

- Van Nuys, CA (May 16)
- Fort Lauderdale, FL (May 23)
- Atlanta, GA (May 25)
- Anchorage, AK (June 7)
- Chicago, IL (June 13)
- Seattle, WA (June 20)
- Dallas, TX (June 29)

Operational Control Workshop




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## Issues That Will Be Covered

- What is "operational control"?
- What are the key factors in assessing operational control?
- Examples of where an air carrier has surrendered operational control to a non-carrier.
- Examples where an air carrier does not have adequate operational control.

Operational Control Workshop




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## Issues That Will Be Covered

- What is a "DBA"?
- Why are "DBAs" important?
- What is a "Wet Lease"?
- What is an illegal Wet Lease?
- Other Examples of Agreements between Aircraft Owners and Certificate Holders

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## Issues That Will Be Covered

- Operational Control Requirements
  - Necessary Actions by the Certificate Holder
  - Necessary Actions by the Pilot in Command (PIC)

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## Case Studies and Examples

- Darby Aviation
- Aero Leasing
- American Air Network

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## Current Policy and Guidance Material

- Federal Register Notice on Wet Lease Policy Guidance (10/25/05)
- FAA Notice 8400.83 -  
(Responsibility for Operational Control During Part 135 Operations and The Use of a DBA Name)
- FAA Notice 8400.85 -  
Air Ambulance Operations (Special Emphasis)

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## Opspecs A008

- Current Content and Requirements
- Other Requirements Determined to be Necessary

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## Operational Control Inspections PTRS 1636 Part 135 On-Demand Operators

- "R" Item
- Inspector Handbook Practices and Procedures

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# OPERATIONAL CONTROL

Office of the Chief Counsel

Joseph Conte  
Douglas Mullen




Federal Aviation Administration



## WHY IS THE FAA FOCUSING ON OPERATIONAL CONTROL?

- Operational Control is a safety concept. It is not a concept based on the customer's desire to travel from Point A to Point B. (Example ACOG).
- The person or entity found by the FAA and others to have "operational control" of the flight will be held accountable for the safety of the flight.
- Who controls (operates) a flight, the aircraft owner or the air carrier? Who controls it when paying 3<sup>rd</sup> parties are on board and who controls it when the aircraft owner is on board?

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## Summary of Presentation

- What Does the FAA mean by "operational control"?
- Key Factors in Assessing Operational Control.
  - carrier relationship w/ flight crew
  - possession/custody of aircraft
  - carrier's authorization for fit and knowledge
  - carrier's system to ensure qualified fit crew current pilots and airworthy aircraft
- Examples where an air carrier has surrendered operational control to a non-carrier.
- Examples where an air carrier does not have adequate operational control.

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## What does the FAA mean by "operational control"?

- What is not "operational control"? A passenger specifying her planned destination does not equate with "operational control". E.g. ACOG example.
- Part 1 defines "Operational Control". It says "... with respect to a flight, [it] means the exercise of authority over initiating, conducting or terminating a flight."

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## Is "operational control" an issue only in air carrier operations?

- Section 135.77 provides, "Each certificate holder is responsible for operational control and shall list, in the manual required by Section 135.21, the name and title of each person authorized by it to exercise operational control."
- What does "exercise of authority" clause mean in the phrase "exercise of authority over initiating, conducting or terminating a flight"?
- Does someone other than the 135 carrier (acting by and through one of its officers listed in the manual) have the authority to initiate, conduct or terminate a flight?
  - Darby/Platinum (surrender of control)
  - American Air Network (surrender of control)
  - Aero Leasing (Loss of, or inadequate, operational control)

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## What Questions are Answered by analyzing "operational control"?

- Who? It answers the "who" question as to – who was actually operating the flight and who should have been operating/overseeing the flight. Who has go/no go authority?
- Who? It answers the "who" question as to who will be held accountable for the safety of the flight.
- What? It answers the "what" question as to what set of safety rules and practices must be followed by the operator.

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## Operational Control of a Car Driven by a 16 year old.

- Who is **operating** the car? (directly)
- Who can be held civilly **accountable** for unsafe operation of the car that results in injury or death? (agent) (status of your kid vis you)
- What **authority** (leverage – power to act effectively) does P have regarding C? (1. law – P's car and 2. C is a child, and 3. money)
- What practices, methods and procedures do parents use to make sure the Parent's operation of the car, through the child, is done safely? Practice training with the child, "drive" checks, power over the keys, phone calls, curfews.



## Air Carrier use of employees, agents, independent contractors.

- **Employees.** The carrier's pilots are employees.

**Agents.** The carrier – as principal – is accountable for the acts or omissions of its agents. Although not W-2 employees, the pilots know that they are working for the carrier and must adhere to the carrier's orders/policies.

**Independent contractors.** Red Flag if **flight crew** is so labeled. Even accountability for maintenance issues cannot be delegated away.

- Alaska, USAir. e.g., Independent contractor OK (145 repair station) but carrier is still accountable for ensuring that the aircraft is airworthy.
- Pilot v. UPS truck driver and your package.

During such times that the flight crewmember is engaged in Part 135 flying for the air carrier, the flight crewmember shall be an independent contractor of the air carrier. [red flag]



## 3 Operational Control Problems with Some Air Carriers.

1. Surrender of Operational Control of common carriage – for hire – flights to 3<sup>rd</sup> parties (often the aircraft owner).
2. Loss of Operational Control within the air carrier.
3. Management agreements with aircraft owners, when the aircraft owner is on board the aircraft. Part 91 or 135?



## ASSESSING WHETHER THE CARRIER SURRENDERED CONTROL TO OTHERS.

- Is this an aircraft lease or the leasing of an air carrier certificate to a non air carrier?
  - Safety Purpose of 135 rules.
  - Safety Purpose for 119 certification.
- If the nature of the business arrangement between an aircraft owner and an air carrier results in the non carrier operating the flight (relationship factors; possession of aircraft factors; oversight system factors; attempts to shed potential accountability), then safety purpose of 135 rules and the 119 certification rules are undermined.



## Surrender of Operational Control

- Potential Red Flags.
  - DBAs in the name of non carrier aircraft owner.
  - Who Controls the pilots? (relationship w/ crew)
  - Possession/custody status of aircraft.
  - No knowledge of flights beforehand.
  - Indemnification Clause. (some try to shed accountability)
- Wet Leases. Defined.



## DBAs

- Is it necessarily inappropriate for a Carrier to use – as a DBA – the name of another Company?
- What if the Carrier uses a DBA name that is the same or similar to that of the aircraft's owner?
- If the FAA removes a DBA from a Carrier's Operations Specifications, does that solve the operational control issues?



## The USES AND ABUSES OF DBAs.

- Some Uses Of DBAs are appropriate and do not signal the loss of Operational Control of Carrier Operations.
- Some Uses of DBAs are Red Flags that the Carrier Really Does Not Control the Aircraft or the Crew.
- The inappropriate use of a DBA is not the only way that a carrier loses operational control and preventing the inappropriate use of DBAs will not, by itself, ensure that the carrier maintains appropriate control of the commercial operation. Other business arrangements between an air carrier and an aircraft owner may result in the carrier losing, or never having, operational control of the flight.



## APPROPRIATE USES OF DBAs

- Traditional Use of DBA (nickname)
- Marketing Method to Highlight Business Affiliation with Another Carrier (U Express, D Connection)
- Marketing Method To Downplay Real Name of Carrier (Rambo)



## SUSPICIOUS DBAs

- The DBA name used is that of the Aircraft Owner. Mistaken belief that a non carrier owner can operate – for hire – under the auspices of an air carrier's 119 certificate.
- The DBA name has the name of an unrelated entity including LLC or INC.



## Who controls the Pilots?

- Employment/agency status. (no "independent contractors")
- Who pays the pilots?
- Who has best leverage over pilot through employment or possession of aircraft?
- Has the carrier done anything to disavow knowledge, control or responsibility for the pilot's actions for 135 flights?
- Wet Leases. Some permitted some not permitted.



## WET LEASE DEFINITION

- Wet Lease. "Any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember." See 14 CFR Section. 119.3  
"Provide": How has that been construed?  
Examples:  
-Lessor/owner is *obligated* to provide crew.  
-Carrier is *obligated* to use lessor/owner's crew on the carrier's part 135 flights carrying 3<sup>rd</sup> parties.  
-Lessor/Owner can *veto* who the carrier can use as a pilot on leased aircraft to the point that the only pilots the carrier can use are pilots specified by lessor/owner (Aircrane case)  
-K provision that lessor/owner must pay a *financial penalty* if the carrier conducts a part 135 flight with owner's aircraft but owner's pilot/employees failed to show up for the flight.



## What does the word "lease" mean in the phrase "wet lease"?

- A wet lease is any situation where someone transfers legal possession of an aircraft, with a crewmember, to someone else for a specified time. (FAA approach).
- Lease Example. An agreement whereby legal possession of an aircraft is transferred from the owner to the lessee for a specified period. As long as the lessee continues to make timely lease payments (and isn't otherwise damaging the aircraft), the lessee has the right to possess the aircraft --- *even if the owner wants the aircraft returned before the end of the lease.*



## “Lease” vs. “Other Aircraft Possessory Arrangements”.

- **Exclusive Use Aircraft.** Section 135.25. Part 135 carriers must have the exclusive possession, control and use of an aircraft for at least 6 consecutive months. That’s a lease.
- **What about the carrier’s 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> etc.. Aircraft?** If those aircraft are not owned by the carrier, must the carrier possess them by lease or is it OK to possess them under some other custodial arrangement? 135.25(b) and (c).



## LEGAL WET LEASES

- **LEGAL WET LEASE:** From a US carrier to another US carrier. Just a notification requirement. AFS then decides who has “operational control”.
- **LEGAL WET LEASE:** From a US carrier to a foreign carrier. FAA position is that the US carrier has operational control (through the US Carrier’s pilots) and the flight will comply with US rules and be subject to US oversight.



## ILLEGAL WET LEASES

- **ILLEGAL WET LEASE:** From a foreign carrier or any foreign person to a US carrier. See 119.53(b).
- **ILLEGAL WET LEASE:** From any person not authorized to engage in common carriage to a US carrier. See 119.53(b).
- See examples of illegal wet leases on slide 17.



## Where else does the FAA prohibit wet leases?

- Section 135.25(d) provides, in part, the following:

“A certificate holder may operated in common carriage ... a civil aircraft which is leased or chartered to it without crew and is registered in a country which is a party to [the Chicago Convention] if -- ...

(3) The aircraft is operated by U.S. certificated airmen employed by the certificate holder....”



## Can a carrier ever use the aircraft owner’s crew?

- The air carrier must maintain operational control (safety is paramount) of 135 flights
- The air carrier must not “wet lease” an aircraft from a non-certificate holder.
- An air carrier’s use of owner’s pilots may raise a presumption that the carrier does not have operational control. However, a carrier could make a case that it maintains operational control of its 135 flights – even when using pilots of the aircraft owner (in a non wet lease situation) if:
  1. Carrier’s written agreement with the owner does not provide who will pilot 135 flights carrying 3<sup>rd</sup> parties, the carrier is not obligated to use the owner’s pilot, and the owner is not obligated to provide the crewmember.” FAA can look behind the written agreements to verify.
  2. Carrier has a separate written agreement with the pilot and directly pays the pilots, who are the carrier’s agents, at a minimum.
  3. Carrier legally possesses the aircraft (dry lease).
  4. Carrier knows – before the flight – that the pilot is qualified and current to operate under part 135 and that the aircraft meets the carrier’s 135 maintenance program.
  5. The carrier authorizes (ahead of time) the specific 135 flight. The carrier has the capability and the power to initiate, delay, cancel or redirect the flight/modify the flight plan prior to takeoff.
  6. The aircraft owner’s insurance/financing documents contain no prohibitions on the use of the aircraft in air carrier operations.
- **Owner flights.** Some owner flights are legitimately conducted under part 31. Other owner flights (i.e., when the owner is the party) must be done under 135 where the owner hasn’t agreed that the owner is operating the flight and is accountable for the safety of the flight. On such flights, the owner can request certain pilots but the carrier need not provide those pilots.
- The FAA retains the authority (and responsibility) to make the final call as to whether the carrier has operation control while using the owner’s crew. The carrier cannot shift accountability for the safety of its part 135 flights to the aircraft owner/lessor.



## Who has possession/custody of the aircraft and when?

- Possession via a lease.
- Custody via some other written arrangement.
- Questions to ask. Who operates the aircraft on a positioning flight that occurs after a morning 135 flight and before an afternoon 135 flight, the aircraft owner or the air carrier?
- Why is possession/custody an important factor? It would be difficult for a carrier to argue that it lacked knowledge about an unauthorized flight if it had possession/custody of the aircraft.



## LOSS OF OPERATIONAL CONTROL WITHIN THE CARRIER

- Or, has the carrier inadequate controls over its own operation?
- Factors.
- Aero Leasing Case.
- North Coast Aviation case.



## GENERIC OPERATIONAL CONTROL ISSUES

- Knowledge  
Carrier has to authorize the flight ahead of time.  
Crewmember qualifications.  
Aircraft is airworthy. (same wt + balance)  
Designates PIC  
Determines whether 91 v. 135.



## No knowledge beforehand about a common carriage flight.

- Darby case. Non air carrier operates as if it were the air carrier. NTSB Finding.
- Citicorp lease to Platinum.
- Platinum agreement (non lease) with Darby.
- Darby didn't know about Teterboro flight beforehand.
- Darby created the environment whereby a non carrier operated in its name. Result. Emergency Suspension. Restrictive Op specs.



## INDEMNIFICATION CLAUSES

### EXAMPLES

- Lessor (aircraft owner) shall bear the entire risk of loss or damage or destruction to the aircraft and shall indemnify and hold Lessee (air carrier) harmless from and against ... all claims (in contract, tort or otherwise ... arising from the use or operation of the aircraft. AANI).
- Lessor shall exercise all due care in the provision of all common carriage operations utilizing the aircraft on behalf of the lessees.
- Any and all legal fees or fines incurred by [the air carrier] due to neglect by the aircraft owner and/or lessor, ... will be the sole responsibility to the aircraft owner and/or lessor.
- Aircraft owner agrees to indemnify and hold harmless [the carrier] from and against any and all claims for bodily injury, including death of a flight crewmember.



## Red Flag Phrases in Aircraft Ks

- "Operator exercises operational control with regard to all flights and maintenance aspects of the operation. However, the operator delegates operational control of the aircraft to a third party for dispatch services, flight following and time and duty record keeping."
- "Both [operator] and client shall operate the Aircraft in accordance with the terms and conditions contained in the [operator's] flight manual and in accordance with all FARs. All FAR 135 flights must be authorized by the [operator]. ... Client shall be charged a fee equivalent to an additional Administration Fee on a pro-rata daily basis for each day any member of Client's Aircrew is not Part 135 current and qualified until the entire aircrew has regained Part 135 currency and qualification."
- "Lessor shall supply a qualified flight crew for all flights."
- "Although the flight crews and mechanics furnished by Client shall be employees of Client, [operator] shall have in its absolute discretion the unrestricted right to reject (with or without cause), at any time, any member of the flight crews as unsatisfactory upon written notice to the Client."



## Red Flag Phrases in Aircraft Ks

- "Owner shall provide at its expense crew necessary to operate the Aircraft under each Charter and that each such crew member shall be qualified and certified pursuant to applicable FAA rule and regulations to operate on the Certificate."
- "Lessor agrees to provide a trained and qualified flight crew consisting of a captain and a first officer for the charter flight operations outlined herein. Flight crews will undergo semi-annual flight check and reviews provided by Lessee, at Lessor's expense."



## Red Flag Phrases in Aircraft Ks

- Lessor's crew will fly the aircraft for all flights, but the Lessee may elect to have a crewmember on board to monitor the operation of the aircraft and certify that the flight is being conducted in accordance with part 135.
- Should the aircraft owner request a reassignment of flight crew without reasonable cause, the owner shall reimburse the carrier for the cost of replacing such crewmembers.




**Methods of Exercising Operational Control**

Federal Aviation Administration

Presented to: FAA/Industry Operational Control Forum  
By: Hooper Harris, Manager, AFS-250  
Date: March 29, 2006


## Overview

- **Background**
- **Examples of Operational control Configurations**
  - International
  - Domestic
  - Remote Area
  - Scheduled Shift
  - Multi-Day Assignment
- **Summary**

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## Background

- **§ 1.1 General definitions.**  
*Operational control*, with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight.
- **§ 135.77 Responsibility for operational control.**  
Each certificate holder is responsible for operational control and shall list, in the manual required by §135.21, the name and title of each person authorized by it to exercise operational control.

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## Background

- **§ 135.23 Manual contents.**  
(a) The name of each management person required under §119.69(a) of this chapter who is authorized to act for the certificate holder, the person's assigned area of responsibility, the person's duties, responsibilities, and authority, and the name and title of each person authorized to exercise operational control under §135.77;

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## Background

- The following examples are provided to illustrate the range of configurations of an operational control system, assuming that impediments to free exercise of operational control by the certificate holder are absent
- The primary driver to configuration is the availability of communication between the operator and the crew.
- The vehicle for these different configurations is the General Operations Manual
  - Duties, Responsibilities, Authority

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## Duty, Responsibility, Authority

- **Responsibility**
  - Something a person is accountable for
- **Authority**
  - A power that a person is vested with
- **Duty**
  - A task or function a person must do


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## International

- Gulfstream GV, KILG-LFBD
  - Area of operations, types of operation, weather, etc. driven by OpSpecs, applied by operator in accepting the flight request.
  - Operator assigns crew, aircraft for a specific flight
  - Operator/Crew applies OpSpecs, company procedures in planning the flight
  - Crew responsible for return or diversion if required in flight
    - May report to operator via satphone/radio, if possible
  - Crew reports when landed (destination, diversion, return)

*Management exercises all operational control until departure, then crew is authorized to exercise operational control as an agent for the certificate holder*

Initiation  
Conduct  
Terminate


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## Domestic

- BE-200, MOB-AUS-HOU-BTR-MOB
  - Area of operations, types of operation, weather, etc. driven by OpSpecs, applied by operator in accepting the flight request.
  - Operator assigns pilot, aircraft for series of flights.
  - Pilot applies OpSpecs, company procedures in planning the flight
  - Pilot responsible for return or diversion if required in flight
  - Pilot reports when landed (destination, diversion, return), and any changes in the itinerary
  - If changes are made, pilot reports to operator, plans and executes new flight

*Management exercises operational control of the flight when changes are made to itinerary because communications is available*

Initiation  
Conduct  
Terminate  
Conduct

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## Domestic

Customer wants to change plan enroute:  
MOB-AUS-BPT-BTR-MOB

- OpSpecs applied by pilot and operator: Area of operations, types of operation, weather, etc. in accepting the flight request.
- Pilot, as an agent for the operator, determines if the pilot and aircraft can accept the new flight request, coordinates with operator.
- Pilot applies OpSpecs, company procedures in planning the flight
- Pilot responsible for return or diversion if required in flight
- Pilot reports when landed (destination, diversion, return)

*Pilot may be the agent for carrier for itinerary changes, may be required to advise carrier (phone call)*

Initiation  
Conduct  
Terminate


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## Remote Area

- PA-18 floatplane, PALH-numerous remote lakes-PALH
  - Area of operations, types of operation, weather, etc. driven by OpSpecs, applied by operator in accepting the flight request.
  - Operator assigns pilot, aircraft for series of flights.
  - Pilot applies OpSpecs, company procedures in planning the flight
  - Pilot responsible for return or diversion if required in flight
  - Pilot reports when landed (destination, diversion, return) (if possible)
  - Pilot and operator expect changes in route per customer request

*Operator has no contact with the pilot after takeoff*

Initiation  
Conduct  
Terminate  
Initiation


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## Remote Area

- PA-18 floatplane, PALH-numerous remote lakes-PALH
  - Once departed, no contact is possible with the pilot
    - Operator sets hard parameters for the conduct of the flight
      - "Don't come back if you will arrive after sunset at PALH... spend the night out and come back in the morning."
      - Training/knowledge of local weather phenomenon
  - Operator and pilot understand that the itinerary may change enroute

*Pilot may be authorized to act as agent for carrier in all respects, after departure. Carrier must set parameters and be able to anticipate the actions of the pilot away from base*


Initiation,  
Conduct,  
Termination

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## Scheduled Shift

EMS helicopter pilot, assigned 0000-1200 shift at LA89

- Operator assigns pilot and aircraft to the base, but has no expectations of what flights may or may not occur
  - Flight and rest, aircraft maintenance times allow completion of the assigned shift, if identified parameters are met
- Operator provides pilot with hard parameters
  - Duty day
  - Max number of flight hours (pilot limits)
  - Max number of flight hours (maintenance)
  - Weather requirements
  - LZ requirements

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## Scheduled Shift

- Area of operations, types of operation, weather, etc. driven by OpSpecs, applied by operator in making the shift assignment.
  - Operator assigns pilot, aircraft for a duty period. Sets parameters for operation.
  - Pilot applies OpSpecs, company procedures in planning the flight
  - Pilot responsible for return or diversion if required in flight
  - Pilot reports when landed (destination, diversion, return) (if possible)
- } Initiation  
 } Conduct  
 } Termination

*Pilot and operator have no knowledge of the customer's request(s) prior to assigning the crew and aircraft*

## Scheduled Shift

- **Operator management and agent-pilot share initiation responsibilities**
  - Operator places pilot and aircraft in position to accept flight assignments from customer in accordance with established policies, OpSpecs, regulations.
  - Pilot is authorized to accept or decline individual flight requests, may defer to carrier in certain specified circumstances
- **Pilot acts as agent for certificate holder for the conduct and termination responsibilities**
  - May confer with company (dispatch) if enroute contact is possible

## Multi Day Assignment

- **Offshore helicopter pilot assigned to work seven day shift based at East Cameron 71**
  - Operator assigns pilot, aircraft, maintenance personnel to offshore platform base.
    - Flight and rest requirements, maintenance times, tools, equipment, inspections support completion of the assignment, or limits are set in the assignment
  - Communication with flight following, maintenance control, through phone, commercial radio, relay.
  - Operator provides parameters for accepting flight assignments
    - Duty day
    - Max number of flight hours (pilot limits)
    - Max number of flight hours (maintenance)
    - Weather requirements

## Multi Day Assignment

- Area of operations, types of operation, weather, etc. driven by OpSpecs, applied by operator in accepting the shift assignment.
  - Operator assigns pilot, aircraft for series of flights.
  - Pilot applies OpSpecs, company procedures in planning the flights
  - Pilot responsible for return or diversion if required in flight
  - Pilot reports when landed (destination, diversion, return) (if possible)
- } Initiation  
 } Conduct  
 } Termination
- Pilot and operator expect changes in route per customer request*

## Summary

- Certificate holder is responsible for operational control
- System of operational control must ensure that management understands what the pilot is doing, and can anticipate the pilot's actions in matters of initiation, conduct and termination of flight operations.
- Duties, responsibilities, authorities must be identified for carrier personnel to ensure operational control

## Contact Information

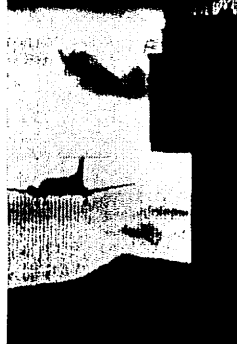
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## Responsibility for Operational Control During Part 135 Operations



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## Review



## Lease Agreements

- **Lessor**
  - Person that conveys property by lease
- **Lessee**
  - Person that holds property under a lease



## Lease Agreements

- **Wet Lease**
  - Any leasing agreement whereby a person agrees to provide an entire aircraft and at least one crewmember.
  - A wet lease does not include a code-sharing arrangement.



## Wet Lease

- **Prior to conducting operations involving a wet lease, each certificate holder shall provide the Administrator with a copy of the wet lease.**
- **Administrator determines which party to the agreement has operational control of the aircraft**
- **Lessor provides information**



## Wet Leasing

- **No certificate holder may wet lease:**
  - From a foreign air carrier
  - From any foreign person
  - From any person not authorized to engage in common carriage



## Operational Control

- **With respect to a flight means:**
  - The exercise of authority over initiating, conducting or terminating a flight



## Direct Air Carrier

- **Means a person who provides or offers to provide air transportation and**
- **Who has control over the operational functions performed in providing that transportation**



## Maintaining Operational Control

- Has the knowledge to make decisions
- Performs those actions on a daily basis that are necessary to operate flights safely and in compliance with the regulations



## Responsibility for Operational Control vs. Responsibility and Authority of the Pilot in Command

- Is there a difference?
- May the PIC exercise operational control?
- Can operational control be delegated?



## Necessary Actions by the Part 135 Operator

- Ensure that it alone conducts operations authorized in the OpSpecs
- Ensure that only its crewmembers, who are trained and qualified in accordance with the applicable regulations and the certificate holder's approved training program, are assigned to conduct a flight.



## Necessary Actions by the Part 135 Operator

- Prior to initiation of flight the part 135 operator must know the identity of each crewmember
- The part 135 operator must affirmatively determine that the crewmember is qualified to function as a required crewmember on the flight.



### Necessary Actions by the Part 135 Operator

- Designate a pilot in command (PIC) for each flight before the flight commences
- Ensure that all of its crewmembers are in compliance with all applicable flight, duty, and rest requirements before assigning the crewmembers to a flight



### Necessary Actions by the Part 135 Operator

- Ensure that an aircraft is airworthy and is in compliance with the conditions and limitations specified by the FAA-approved inspection/maintenance program for the certificate holder before it is allowed to depart on a part 135 flight
- Ensure that when safety conditions specified for a flight cannot be met, the flight is cancelled, delayed, rerouted, or diverted



### Necessary Actions by the Pilot in Command

- Directly responsible for and is the final authority as to the operation of the aircraft.
- PIC may deviate from any rule to the extent required to meet the emergency



### Fictitious Business Names (DBAs)

- The name of the OpSpecs holder must be the legal name of the certificate holder
- The addition of an aircraft owner's and/or management company's name (or close likeness to its name) as a DBA on an air carrier's OpSpecs does not constitute an authorization for the aircraft owner or management company to conduct business as the air carrier



## **Fictitious Business Names (DBAs)**

- Potential to create confusion as to who is exercising operational control of the part 135 flight.
- OpSpecs paragraph A001



## **Current Policy and Guidance**

- Notice 8400.83 (Operational Control and Use of DBA Names)
  - Background
  - Discussion
  - Action



## **Current Policy and Guidance**

- Dear Air Carrier Letter
  - 130 air carriers
    - Not everyone responded
  - Findings & Conclusions
    - Same aircraft on multiple Opspecs
    - Same management official on multiple Opspecs
    - Misunderstanding of operational control
    - Different kinds of agreements



## **Current Policy and Guidance**

- Federal Register Notice on Wet Lease Policy Guidance (10/25/05)
  - Background
  - Operational Control
  - Affected Commercial Arrangements
  - Proposed Guidance
  - Conclusion: Recommended Carrier Review of Existing Leasing Arrangements



## Current Policy and Guidance

- **Notice 8400.85 (Air Ambulance Operations Special Emphasis)**
  - Background
  - Discussion
  - Action
  - Findings & Conclusions



## Part 135 Industry Input

- **Operational Control and Wet Lease Policy Guidance Working Group**
  - Focus on Safety
  - Primary Tenets of Operational Control
    - Crew
    - Aircraft
    - Passengers
    - Flight



## Part 135 Industry Input

- **Control Authorization Process**
  - Air Carrier controlled
  - Owner controlled
- **Operational Control Briefing and Acknowledgement**
- **Flight Crewmembers direct employees or agents**



## Part 135 Industry Input

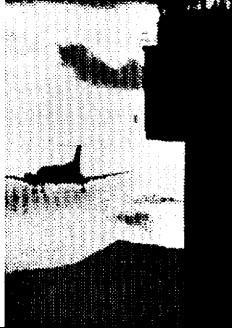
- **Flight Crew**
  - Responsibility
  - Knowledge
  - Leverage



## The Loss, Improper Relinquishment, or Surrender of Operational Control – Lessons Learned



Federal Aviation Administration



OFFICE OF THE CHIEF COUNSEL  
Allan Horowitz

## Indicia of Operational Control

- Operational control – the exercise of authority over initiating, conducting or terminating a flight. 14 CFR § 1.1.
- Operators exercise operational control by making those decisions and performing those actions that are necessary to operate flights safely and in compliance with the regulations. FAA Order 8400.10, ¶ 1145 B.(1).
- Factors to consider when determining who is exercising operational control:
  - Who scheduled crew & aircraft
  - Who accepted charter flights from the public
  - Who reviews weather & NOTAMS
  - Who performs flight planning
  - Who designates PIC for each flight
  - Who ensures that crews comply with flight & duty requirements prior to departure
  - Who pays the flight crew.
  - Whether an obligation is placed on the air carrier, by lease or any other arrangement or mechanism, to use the aircraft owner's pilots.



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## Indicia of Operational Control - Continued

- Who specifies conditions under which a flight may be dispatched or released, e.g., weather minimums, flight planning, airworthiness of aircraft, aircraft loading, & fuel requirements.
- Who ensures that only trained & qualified crews are assigned to conduct flights.
- Who receives the revenue for the flights.
- Whether air carrier ensures that only those operations authorized by its op specs are conducted.
- Prior to departure, who ensures flight complies with the conditions specified in the release.
- When conditions specified for flight's release cannot be met, who ensures that flight is cancelled, delayed, re-routed, or diverted.
- Who monitors the progress of each flight, and initiating timely actions when the flight cannot be completed as planned, including diverting or terminating the flight.



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## Look at all Indicia of Operational Control, Not Just the Lease

- A determination of who exercises operational control is not dependent solely on the wording of a lease or other agreement or arrangement.
  - Leases cannot not be viewed in a vacuum.
  - A Lease, in and of itself, does not shift responsibility for operational control to the lessee.
- Examination of the substance of a transaction, rather than the form, is essential to determine who exercises operational control.
- Courts look beyond the form of contractual agreements to the substance of the actual operations, sanctioning those who effectively operate for compensation or hire in violation of FAA safety regulations. FAA v. Landy, 705 F.2d 624, 632 (2<sup>nd</sup> Cir. 1983).



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## Look at all Indicia of Operational Control, Not Just the Lease - Continued

- The facts and circumstances regarding the operation, not the language in the lease, determines which party exercised operational control of the flights. Administrator v. Ribler, 2 N.T.S.B. 606, 607 (1973).
  - Facts.
    - Respondent who did not hold an air carrier certificate, owned 2 aircraft, which he leased to another entity.
    - A company arranged with Respondent to transport 15 drums from Miami to Jamaica using Respondent's aircraft and Respondent as PIC. Respondent was paid \$1,491.82.
    - Respondent also conducted a series of flights from the Bahamas to Florida, in which he was paid \$175 per flight to transport crawfish.
  - Although Respondent's aircraft was used on all of the flights and he was PIC, he contended that the flights were made under the auspices of another entity, who under the lease, was the operator of the aircraft.
- The Board found that the leases in question were illegal wet leases because they provided for both aircraft and pilot.



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## Ways to Lose, Relinquish, or Surrender Operational Control

- Loss of operational control within the air carrier - hands-off management results in inadequate controls over its own operations.
- Loss of operational control within the air carrier - exercise of operational control by an unapproved person.
- Loss of operational control internally and externally, i.e., the mixed bag – hands-off management results in surrender of operational control to air carrier's remote ostensible subsidiary.
- Loss of operational control externally – surrender of operational control to an uncertificated entity.
- Loss of operational control externally – air carrier's illegal renting/franchising-out use of its air carrier certificate to an uncertificated entity.



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**Surrender of Operational Control to Uncertificated Entity - Continued**

- The Board held that Platinum, not Darby:
  - Controlled the initiation, conduct, and termination of each individual flight listed in the emergency order;
  - Provided the crew and aircraft;
  - Controlled crew and aircraft scheduling;
  - Accepted charter flights from the public, handled flight planning, and exercised many of the operational control functions that should have been the sole province of Darby; the certificated air carrier, e.g., Platinum designated the pilot-in-command for each flight and specified the conditions under which the flight could be released, such as weather minimums, flight planning, airworthiness of aircraft, aircraft loading, and fuel requirements.
- Each of the functions that Platinum performed represented areas in which Darby surrendered operational control.

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**Loss of Operational Control - Surrender to an Uncertificated Entity**

- Adm. v. Darby, EA-5159, Darby entered into an illegal "Charter Management Agreement" with Platinum Jet Management, an uncertificated entity, allowing Platinum to exercise operational control over passenger flights for comp or hire.
  - Under the agreement, Darby did not maintain responsibility for operational control of its flight operations.
  - Darby's ops specs authorized Darby to conduct operations under business name AlphaJet International.
  - Darby's ops specs and manual did not list Platinum as authorized to exercise operational control.

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**Loss of Operational Control Internally and Externally - Continued**

- AMT's CEO ignored signals that its ostensible Buffalo Division was operating comp or hire flights as if it held an Air Carrier Certificate. CEO did little to involve or inform self in the running of the putative Buffalo Division.
  - Before AM & BE signed their Operations Agreement, CEO knew that BE was sending out invoices in its own name.
  - CEO learned that BE falsified flight manifest to appear to meet insurance requirement.
  - AMT's hands-off management, which resulted in inadequate control of flights conducted by its remote Buffalo Division.
  - At first indication that a problem exists, deal with it.
  - Cancel the deal, if necessary.
- AMT's CEO ignored signals that its ostensible Buffalo Division was operating comp or hire flights as if it held an Air Carrier Certificate. CEO did little to involve or inform self in the running of the putative Buffalo Division.
  - BE put an aircraft that crashed back into Part 135 service after AMT CEO told BE not to do so.
  - AMT's CEO ignored signals that its ostensible Buffalo Division was operating comp or hire flights as if it held an Air Carrier Certificate.

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**Loss of Operational Control Internally & Externally - Surrender of Operational Control to Air Carrier's Ostensible Subsidiary.**

- Administrator v. Air Maryland (AM), EA-2951, Air carrier had inadequate control over its own operation, resulting in the surrender of operational control to its ostensible subsidiary, located in Buffalo, NY.
  - Air carrier failed to maintain operational control of flights conducted by its remote Buffalo Division (BE).
  - BE operated flights under AM's Air Carrier Certificate.
  - Facts
    - Indicia that loss of operational control existed.
    - BE kept own records, own accounts payable & receivable, checking account in own name.
    - Profits were divided 90% BE 10% AM
    - BE's checks made no mention of AM
    - Passengers never heard of AM, understood flights were operated by BE
    - Invoices thanked passengers for flying with BE.

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**Exercise of Operational Control by Unapproved Person Equals Loss of Operational Control Within the Air Carrier**

- Administrator v. Aero Leasing, EA-5210, Air carrier used an unapproved person to exercise operational control on three flights—a 2004 cargo flight carrying sheep and two 2005 passenger flights.
  - Op specs authorized only the CO and chief pilot to exercise operational control.
  - In the 2004 flight, the unapproved person used by air carrier to exercise operational control was a person the FAA would not have accepted in a management position due to his prior admitted violation history.
  - Air carrier used on the 2004 flight was unapproved, i.e., it was reconfigured from a passenger to a cargo aircraft w/o approval.
  - Air carrier did not have FAA-approved or accepted operations or training procedures for safely transporting animals as cargo.
- Lessons Learned.
  - Air carrier only can use approved persons to exercise operational control on its behalf.
  - Where an air carrier conducts those flights for composition or hire and permits operational control to be exercised by persons not approved by the FAA to do so, revocation was the appropriate sanction.

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**Hands-Off Management Equals Loss of Operational Control Within the Air Carrier**

- Administrator v. North Coast Aviation EA-3200, Air carrier had inadequate controls over its own operation to stop violative flights authorized by its VP & DO.
  - When air carrier empowers its VP & DO—a person with substantial operations on its behalf, air carrier is responsible for violations— to conduct by the VP & DO during the performance of the air carrier's business.
  - Air carrier's failure to remove its VP and DO from authority or control, after learning that he committed serious safety violations during performance of air carrier's business, shows that air carrier was unwilling or unable to act responsibly.
  - Lesson Learned - Air carrier should have had adequate controls in place to remove such an official from a position of authority over flights conducted under the ostensible authority of its operating certificate.

## Surrender of Operational Control to Uncertificated Entity - Continued

- **Further Board findings:**
  - FSDO's knowledge and approval of the character of the management agreement does not preclude the Administrator from taking a position that differs from the FSDO.
  - Administrator can, and indeed should, overrule the FSDO's position if she believes it is incorrect or may be inconsistent with safety.
- **Lesson Learned – An air carrier should not be driven by its business practices or business model to create an environment in which an uncertificated entity operates flights for compensation or hire under the apparent authority of the air carrier's certificate.**

## Relinquishing Operational Control to Uncertificated Entities

- **Administrator v. American Air Network (AAN).** AAN illegally rented-out use of its air carrier certificate to uncertificated entities.
- **AAN lacked the necessary systems and information to make responsible operational control decisions regarding flights in air transportation ostensibly conducted under its air carrier certificate.**
- **AAN did not have adequate systems to track flights for comp or hire, pilot records, or aircraft maintenance; it merely asserted that it "made sure" the dbas's pilots and aircraft complied with Part 135.**

## Relinquishing Operational Control to Uncertificated Entities Continued

- **Factors evidencing the illegal renting/franchising-out of AAN's Air Carrier Certificate.**
  - Listing the names of the owners or lessors of each aircraft (more than one dozen) on AAN's op specs as dbas
  - Each entity listed on AAN's op specs held itself out as an air carrier.
  - AAN received a flat monthly management fee (e.g., \$2,000) for each aircraft.
- **Lessons Learned - While it might be a profitable business venture, an air carrier may not rent/franchise-out use of its air carrier certificate to uncertificated entities because safety is compromised when the certificated air carrier is unwilling or unable to maintain operational control over commercial operations.**

## Conclusions

- **If a deal looks too good to be true, step back carefully and examine it.**
  - An air carrier's business model or business practices should not create an environment in which an uncertificated entity operates flights for compensation or hire under the apparent authority of the air carrier's certificate.
- **Use only approved persons to exercise operational control on the air carrier's behalf.**
- **Have adequate controls in place to ensure that officials in a position of authority over part 135 flights are conducting those flights in accordance with safety regulations.**
- **Management of your operations should never be lackadaisical. Hands-off management is not a legitimate excuse for failing to maintain operational control.**

## Enforcement Guidance and Policy

### Part 135 Industry Input

- Guidance on Charter Management Use Agreements
- Actions by Certificate Holder Discovering Unauthorized Commercial Use of Aircraft (illegal part 135)



### Opspecs A008 (Operational Control)

Issued by Administrator -  
Binds all operators 30 days from  
issue dated 08/31/06. Only  
administrator can waive POI's.  
Do not have to review all lease  
agreements, which must lead to  
procedures which must be approved  
by FAA.

