



U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

NOTICE
N 8000.347

Effective Date:
12/28/06

Cancellation Date:
12/28/07

SUBJ: Operational Control: Revised Operations Specifications A008 and A002

1. PURPOSE. This notice provides revised guidance and a mandatory revision for Operations Specification (OpSpec) A008, Operational Control, and OpSpec A002, Definitions and Abbreviations, for principal operations inspectors responsible for Title 14 of the Code of Federal Regulations (14 CFR) part 119 certificate holders conducting operations under 14 CFR part 135. Aviation safety inspectors (ASI) should be aware that these part 119 certificate holders conducting operations under part 135 may hold either an Air Carrier Certificate or an Operating Certificate, depending on the operations authorized.

2. DISTRIBUTION. We will distribute this notice to the division level in the Flight Standards Service in Washington headquarters, including the Regulatory Standards Division at the Mike Monroney Aeronautical Center; to the branch level in the regional Flight Standards divisions; and to all Flight Standards District Offices. Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at <http://fsims.avr.faa.gov>. Operators may find this information on the Federal Aviation Administration's (FAA) Web site at: http://www.faa.gov/library/manuals/examiners_inspectors/8000/.

3. BACKGROUND.

a. The FAA has become aware of a problem in the air carrier industry relating to the development of commercial arrangements that, at the very least, call into question whether an air carrier has control of its operations purportedly conducted under the authority of its certificate. The revised OpSpec A008 outlines existing regulations and case law.

b. In connection with our oversight responsibilities, we must know who is responsible and who should be held accountable for the safety of any flight, whether commercial or not. The FAA determines what person has the real world control over an aircraft and its crew by evaluating the facts and circumstances surrounding that flight.

c. During a recently-conducted review of part 135 operators, we noted that numerous part 119 certificate holders conducting operations under part 135 had been authorized to use several "doing business as" (DBA) names, some of which were identical or substantially similar to the name of an aircraft owner and/or management company that is otherwise legally distinct from the air carrier. In some instances, it appeared that these parties characterized their business arrangement so an aircraft owner or management company purportedly could operate the aircraft in common carriage under the auspices of the air carrier's certificate.

Distribution: A-W(FS)-2; A-X(FS)-3; A-FFS-7 (LTD); AMA-200 (12 cys)
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Initiated By: AFS-260

4. DISCUSSION. Part 119, section 119.51 authorizes the Administrator to amend any OpSpec. Section 119.51 also describes the procedures the FAA uses to make such an amendment and the rights of the certificate holder as they relate to amendments that the FAA-initiated, such as this revision to the standard OpSpecs A008 and A002. Subject to the Administrator's authority under section 119.51, the FAA will revise all OpSpec paragraphs A008 issued to 119 certificate holders conducting operations under part 135 no later than 60 days from the receipt of notification, and, in any event, by no later than March 15, 2007. Throughout this document, the term "air carrier," "operator," or "certificate holder" will mean the holder of either an air carrier certificate or operating certificate with OpSpecs issued to conduct operations under part 135.

5. ACTION.

a. Within 10 days of receiving this notice, principal operations inspectors (POIs) of part 119 certificate holders conducting operations under part 135 will distribute this notice, including the appendices, to their assigned certificate holders, notifying them that the FAA will issue and make effective the revised OpSpec A008 (as contained in Appendix 3 of the notice) 60 days after the certificate holder's receives notification. OpSpec A002 has also been revised to contain new definitions. POIs should use the sample letter for notification in Appendix 4 of this notice.

b. Inspectors should encourage certificate holders to review section 119.51 to ensure that they are familiar with their due process rights.

c. Subject to actions specified in section 119.51, POIs of part 119 certificate holders conducting operations under part 135 will reissue OpSpec paragraphs A008 and A002 no later than 60 days after notification to the certificate holder, and, in any event, no later than March 15, 2007.

d. Inspectors must also review OpSpec A001 for their part 119 certificate holders conducting operations under part 135 to ensure that the appropriate DBA names are listed in accordance with the guidance in this notice. Inspectors must reissue the OpSpec A001 paragraphs for those certificate holders that have inappropriate DBAs listed.

6. TIMELINE.

a. POIs will notify their individual certificate holders within 10 days of the issuance of this notice that the FAA will issue a sample letter for this notification is in Appendix 4.

b. The certificate holder has 10 days to respond with any written information, views, and arguments on the amendment.

c. The CHDO evaluates those responses/within, and notifies the operator of the decision for adoption, partial adoption, or, withdrawal of the proposal. If the operator indicates that it will require more than 60 days from notification to effect changes required to adopt the revised OpSpecs, the certificate holder should provide to the CHDO:

- The specific reason(s) it requires an extension beyond 60 days
- The specific portions of the OpSpec it is unable to comply with in a 60-day period
- A proposed action plan to bring the certificate holder into compliance with the OpSpec, including milestones, dates, products, personnel changes and any other identifiable steps to meet the requirements

d. Operators should already be exercising operational control regardless of whether they have been issued the revised mandatory change to OpSpec A008. The revised OpSpec change reiterates existing regulation and case law.

e. Upon receiving such a request by a certificate holder to delay implementation, the CHDO will forward that request and its recommendation through the regional office to the Air Transportation Division, AFS-200, as soon as possible. AFS-200 will review the request and recommendation and respond with concurrence, limited concurrence, or non-concurrence within 10 working days of receipt. To ensure prompt response, forward all requests and recommendations to 9-AWA-AVS-AFS-AFS250-A008.faa.gov.

7. TRACKING. POIs must document accomplishment of the issuance of amended OpSpec A008 by:

- a.** Opening a Program Tracking and Reporting Subsystem (PTRS) record, using code 1327.
- b.** Entering “N8000.347” in the “National Use” field (without the quotes).

8. GUIDANCE.

a. Appendix 1 contains the guidance for issuing the mandatory amendment for OpSpec A008, A001, and A002.

b. Appendix 2 contains a sample of the revised OpSpec A008.

c. Appendix 3 contains the revised sample OpSpec A008 with section-by-section guidance. OpSpec A002 is also revised to contain these new definitions and must be reissued with OpSpec A008.

d. Appendix 4 contains a sample letter of notification.

e. See Order 8400.10, Air Transportation Operations Inspector’s Handbook, Volume 2, Chapter 3, Section 6, for guidance on part 135 operations.

9. DISPOSITION. We will permanently incorporate the information in this notice in FSIMS before this notice expires. Direct any questions concerning this notice to the Commuter, On Demand, and Training Center Branch, AFS-250, at (202) 267–8166. For automated Operations Safety System (OPSS) technical support in issuing the applicable template, you may call the

OPSS Support Hotline at (405) 954-7272. This guidance is also available in the OPSS Guidance Subsystem in association with the A008 and A002 templates.

ORIGINAL SIGNED BY

James J. Ballough

Director, Flight Standards Service

APPENDIX 1. ORDER 8400.10, VOLUME 3, CHAPTER 6, SECTION 5.**1269. OPERATIONAL CONTROL.**

A. A direct air carrier or commercial operator (certificate holder) certificated by the FAA includes any person or entity that provides or offers to provide transportation by air and *who maintains control* over the operational functions performed in providing that transportation. To legally act as a direct air carrier, a person or entity must hold an FAA part 119 certificate and comply with applicable regulations. Throughout this section, the terms “air carrier,” “certificate holder,” or “operator” will mean the holder of either an Air Carrier Certificate or Operating Certificate issued with OpSpecs authorizing operations under part 135, including those authorized operations under both parts 121 and 135.

B. Each part 119 certificate holder conducting operations under part 135 must have a system and/or procedures for the exercise of authority over the initiation, conduct, and termination of a flight. The intent of OpSpec A008 is to promote a mutual understanding between an operator and the FAA concerning the system and procedures used by that operator.

(1) Each part 119 certificate holder conducting operations under part 135 must maintain control and authority over the initiation, continuation, conduct, and termination of its part 135 flights. In addition, under section 135.77, each operator conducting operations under part 135 is responsible to list, in the manual required by section 135.21, the name and title of each person it authorizes to exercise operational control. Those operators issued OpSpec A039, Single Pilot Operator, or OpSpec A040, Single Pilot-in-Command Operator, may not have manuals but may list these authorized persons in OpSpec A039 or A040, as applicable. If a certificate holder is issued OpSpec A037 or A038 and has a full deviation from the manual requirements, these persons must be listed in the certificate holder’s OpSpec A006. A part 135 operator may not delegate the responsibility to maintain operational control over its air transportation and commercial services to any outside entity, including any aircraft owner and/or any aircraft management company.

(2) The FAA has become aware that aircraft owners and aircraft management companies have entered into contracts to carry passengers or cargo for compensation or hire. These aircraft owners and management companies solicit and separately contract with a certificate holder conducting operations under part 135 purportedly to allow the flight operations promised to their customers to be conducted under the auspices of the operator’s air carrier certificate. Under some of these arrangements, a “certificate fee” is provided to the part 119 certificate holder conducting operations under part 135 and operational control is exercised by the aircraft owner or management company. Where the aircraft owners and management companies are not also certificated as direct air carriers or commercial operators by the FAA to engage in common carriage, such arrangements are unlawful. In addition, when one certificate holder owns an aircraft that it is not authorized to be used in common carriage and enters into an arrangement with a second certificate holder under which the second certificate holder purportedly operates the aircraft, such an arrangement is unlawful if the aircraft owner/certificate holder actually conducts the flights in air transportation.

(3) The FAA cautions each air carrier or commercial operator that holds a part 119 certificate authorizing part 135 operations that it may not franchise or lease out its authority to engage in part 135 operations to third parties. Uncertificated entities or entities that hold certificates that do not authorize them to conduct flights for compensation or hire using the type of aircraft being operated. Persons and entities not certificated by the FAA to engage in part 135 operations or persons certificated by the FAA but not authorized to use the type of aircraft being operated may not be directly or indirectly authorized by a part 135 operator to conduct flights under the authorized certificate holder's name or under that authorized operator's fictitious business name(s) (i.e., DBA).

C. Operational Control.

(1) Maintaining operational control of flights (section 135.77) and providing flight locating functions (section 135.79) are two separate but distinct responsibilities of each part 135 operator. Flight locating requires procedures by the operator to locate each flight for which an FAA flight plan is not filed. Having a sufficient flight locating system does not, by itself, mean that the part 135 operator is properly maintaining operational control of a part 135 flight. Operational control also requires that an operator has the knowledge to make those decisions perform those actions on an ongoing basis that are necessary to operate flights safely and in compliance with the regulations, and be held accountable for those decisions and actions.

(2) Maintaining operational control requires the part 135 operator to, among other things:

- (a) Ensure that it alone conducts operations authorized in its OpSpecs.
- (b) Ensure that only its crewmembers that are trained and qualified in accordance with the applicable regulations and the certificate holder's approved training program, are assigned to conduct a flight (see section 135.115).
- (c) Prior to initiation of a flight or series of flights the part 135 operator must know the identity of each crewmember and must affirmatively determine that the crewmember is qualified to function as a required crewmember on the flight. Absent such knowledge and determination, the part 135 operator must not assign a crewmember to a flight or series of flights.
- (d) Ensure that all of its crewmembers are in compliance with all applicable flight, duty, and rest requirements before assigning the crewmembers to a flight.
- (e) Designate a pilot-in-command (PIC) for each flight before the flight commences.
- (f) Specify the conditions under which a flight may be operated, such as determining weather minimums, proper aircraft loading, center of gravity limitations, icing conditions, and fuel requirements.
- (g) Put procedures in place to ensure that when safety conditions specified for a flight cannot be met, the flight is canceled, delayed, rerouted, or diverted.

(h) 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.

(i) Have a system for locating each flight if a flight plan has not been filed.

(3) The manner in which each part 119 certificate holder conducting operations under part 135 ensures operational control of flights conducted under its certificate will necessarily vary with the size and scope of the operations and the kind of aircraft flown by the operator. It is impractical, however, for an individual to exercise operational control over flights without the assistance of others in any but the simplest and most basic flight operations. Thus, each part 135 operator must have an organization and system in place—including all the necessary tools such as recordkeeping and management surveillance/oversight—that is sufficient to ensure that all functions have been accomplished before a flight or a series of flights is authorized to depart. This includes establishing effective internal communications, operating procedures, and administrative controls to accomplish regulatory requirements. In addition, the part 135 operator must publish these procedures in the operator's general operations manual for use by the certificate holder's flight, ground, and maintenance personnel. For those issued OpSpec A037, A038, A039 or A040 that have a full deviation from the manual requirement, abbreviated procedures may be entered into OpSpec A008.

(4) In addition to those factors discussed in paragraph C(2) above, other circumstances that may affect whether a part 119 certificate holder conducting operations under part 135 properly maintains operational control of flights conducted under its certificate for compensation or hire include:

(a) Who is in actual or legal possession of the aircraft?

(b) The business relationship between the part 119 certificate holder conducting operations under part 135 and the crewmembers. In addition, under part 119, section 119.53(b), an aircraft owner is prohibited from providing an aircraft and a pilot to a certificate holder. If the certificate holder decides to use a pilot who is employed by the aircraft owner, that pilot must become the direct employee or agent of the certificate holder. Moreover, if the pilot receives monetary compensation for serving as a flight crewmember on a revenue flight operated by the certificate holder, the certificate holder, and not the aircraft owner must pay such monetary compensation to the pilot.

(c) Insurance arrangements;

(d) Fuel payments; and

(e) Payment flows.

D. Fictitious Business Names: Doing Business As (DBA).

(1) Under section 119.9(a), a certificate holder may operate an aircraft under part 121 or part 135 only under a business name appearing in the certificate holder's OpSpecs. OpSpec A001 (Issuance and Applicability) identifies the name of the certificate holder to whom the OpSpecs are issued. The name of the certificate holder that is issued the OpSpecs must be the legal name of the certificate holder.

(2) OpSpec A001 also provides for authorization to conduct operations under a DBA. 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. Indeed, such arrangements have the potential to create confusion as to who is exercising operational control of the part 135 flight.

(3) Aircraft owners, management companies, and other persons that do not hold part 119 certificates are reminded that air carrier operations can only be conducted by air carriers that have been issued an FAA part 119 certificate and that certificate holder is in direct control of the operations. Addition of a DBA that is the name of another company or corporation that has no part 119 certificate will not be allowed without concurrence from the Air Transportation Division, AFS-200.

E. OpSpec A008. The system and procedures to maintain operational control used by an operator must be described or referenced in OpSpec A008. It is preferable to complete OpSpec A008 with references to an operator's manual or sections of an operator's manual that describe the system and/or procedures used by that operator. It is not necessary to control these references by date. The references should be changed only when a revision to the operator's manual makes the reference in the OpSpecs incorrect. In the case of a certificate holder issued a deviation from the manual requirements, i.e., a certificate holder issued OpSpec A037, A038, A039, or A040, those procedures may be entered directly into OpSpec A008 itself.

(1) Often, it may not be appropriate to use references in OpSpec A008. In these cases narrative descriptions may be necessary. When a narrative description is used, it should be brief but provide sufficient information so that the FAA and the operator have the same understanding about the system and/or procedures used by the operator.

(2) The description of the systems and/or procedures for controlling flight movement as described in the operator's manual (which is referenced in OpSpec A008), or described in a narrative in OpSpec A008, must include the following information, as appropriate to the kind of operation:

- (a) Methods and procedures for initiating, diverting, and terminating flights;
- (b) Persons or duty positions authorized to, and responsible for, exercise of operational control;

(c) Facilities and location of facilities used by the operator in the exercise of operational control;

(d) Communication systems and procedures used by the operator;

(e) The methods and/or procedures used by the operator to ensure all authorized aircraft are airworthy;

(f) Emergency notification procedures;

(g) Methods and procedures for ensuring that assigned crewmembers are qualified before and during all flight operations; and

(h) Methods and procedures to ensure the assigned PIC knows the certificate holder's responsibilities to exercise operational control.

(3) The POI, in coordination with the PMI and PAI, must evaluate and substantiate submitted information. If the principal operations inspector (POI) does not concur with the operator's proposal, he or she will forward a letter to the operator denying the proposed system with an explanation of the reasons for denial. The operator should contact the POI to address the POI's concerns. If the POI concurs that the operational control system should be approved, he or she will prepare and forward a letter to the operator accepting the proposed system.

F. Operational Control Failures.

(1) The FAA has identified several failure modes of operational control, including at least the following basic conditions:

(a) Loss of operational control within the air carrier—hands-off management results in inadequate controls over its own operations.

(b) Loss of operational control within the air carrier—exercise of operational control by an unapproved person.

(c) Loss or surrender of operational control externally. For example, an air carrier's illegal renting/franchising-out the use of its air carrier certificate to one or more uncertificated entities.

(2) The level of severity of the failure in operational control will dictate the actions required by both the certificate holder and the FAA. Simple cases may require reinforcement or realignment of management structure or procedure. In such cases, administrative action may be acceptable. In more egregious cases, civil penalty and/or certificate action may be appropriate. For guidance regarding the appropriate type of enforcement action and amount of sanction, refer to the agency's sanction guidance. In cases of suspected renting or franchising of a certificate by

the holder to either an uncertificated entity or a certificated entity that is not authorized to conduct flights for compensation or hire using the type of aircraft being operated, please contact the Air Transportation Division, Commuter, On-Demand, and Training Branch, AFS-250 at (202) 267-8166 for guidance.

G. Operational Control Systems Key Concepts.

(1) Operational control affects each aspect of a certificate holder's activities: operations, training, maintenance, advertising, personnel management, capital asset management, leases, financing, and insurance, to name a few. The key concepts of operational control are that the certificate holder retains authority and responsibility for operations conducted under its certificate and is capable of conducting such operations. To exercise that authority and meet that responsibility, the certificate holder has to have knowledge of its flight operations, and control those operations through its management personnel for functions described in paragraph d(6)(a) of OpSpec A008. When the certificate holder performs the functions described in subparagraph d(6)(b) of OpSpec A008, those functions must be performed by a certificate holder's employees or agents.

(2) Basic Operational Control Questions.

(a) The basic questions that must be answered in any review of operational control are:

1. "Who makes the decisions to assign flight crewmembers and aircraft, accept customer requests, and initiate, conduct, and terminate flights?" and
 2. "For whom do the pilots and mechanics work as direct employees or agents?"
- (b) In both cases, the answer must be "the certificate holder."

(3) Regardless of the relationship between a certificate holder and another entity (customer, aircraft owner, broker, etc.), the certificate holder must make the flightcrew and aircraft assignments, and determinations regarding the initiation, conduct, and termination of the flight.

(4) Whether the pilot or mechanic is a direct employee or an agent, he or she is doing the certificate holder's work and must adhere to the directions of the certificate holder's management in matters related to flight operations, including the air carrier's maintenance program.

(5) Obviously, in on-demand operations, no flight occurs unless the customer makes a request. This is not the initiation of a flight. Also, a customer may request specific aircraft and/or pilots be assigned to flights where the customer is a passenger. This is not, by itself, the exercise of operational control by an uncertificated entity, but rather a customer preference in negotiating a service. In such cases, the certificate holder must apply the regulations, its OpSpecs, standards, procedures, policies, and processes to determine if the customer request can be met safely and in compliance with the regulations.

(6) The same is true of customer-requested diversions in-flight, be it for general customer preference (change in destination for business reasons, for example) or medical reasons (such as in the case of an air ambulance flight). Again, if the certificate holder determines that the request can be satisfied safely and within the regulations, and the certificate holder controls the decisionmaking process and is (through its authorized employees and agents) the decision maker, there is no loss of operational control.

H. Two-Tiered Operational Control Concept. OpSpec A008 contains a two-tiered approach to operational control. (Certificate holder's direct employees.)

(1) The First Tier.

(a) The first tier is the assignment of flight crewmember(s) and aircraft for revenue service under the operating certificate. The assignment of crew and release of aircraft to revenue service is the responsibility of the certificate holder, and must be made by the management of the certificate holder or management delegates. In order to be delegated the authority to make these decisions, the management delegates must be trained, found competent, and designated by the certificate holder, be listed in the general operations manual (GOM) (or in OpSpec A006, A039 or A040, if applicable), and be under management supervision.

(b) Management supervision means, for example, that the certificate holder tracks the actions of the management delegate or employee, samples the work of that employee (reviews a sample of the decisions made), and has the ability to enforce the certificate holder's standards through corrective actions such as retraining, re-qualification, or disciplinary actions such as disqualification, demotion, suspension, or termination. Since the certificate holder is responsible for the conduct of its employees or agents, it must have the ability to monitor and control their performance.

(2) The second tier of operational control is more tactical. This involves the decisions made by personnel (such as the PIC) in the day-to-day conduct of operations. This may include the initiation of flights upon the PIC receiving a request from the customer directly (often the case in on-demand operations being conducted under a dedicated service contract, such as offshore operations or EMS). This is acceptable if the PIC is authorized by the certificate holder to make those decisions on behalf of the certificate holder. To do so would require that the PIC be trained, found competent by the certificate holder, designated, be listed in the GOM (or in OpSpec A006, A039 or A040, if applicable), and be under management supervision.

(3) The GOM (or other appropriate documentation) must contain guidance which describes the certificate holder's operational control system. The training program must provide the certificate holder's personnel with the knowledge and skills required to ensure that the operational control system is effective.

I. Surveillance. In conducting all surveillance activities, inspectors should consider if the management structure, training, procedures, and practices of the certificate holder provide for effective operational control.

(1) When conducting certification and surveillance activities, principal inspectors should evaluate the effectiveness of the certificate holder's or applicant's operational control system.

(2) Seldom does a single factor (alone) determine if an operator has lost operational control. The following factors are offered to provide insight to the effectiveness and regulatory compliance of a certificate holder's operational control system. When factors exist that indicate that operational control may be ineffective or lost, further investigation is required to ascertain the compliance level of the certificate holder. Upon further investigation, the relative value of the individual factors will be determined and an accurate assessment can be made of the operational control system.

(3) Some specific questions to consider in these evaluations are:

- (a) Who scheduled crew and aircraft?
- (b) Who accepted charter flights from the public?
- (c) Who reviews weather and NOTAMs?
- (d) Who performs flight planning?
- (e) Who designates PIC for each flight?
- (f) Who ensures that crews comply with flight and duty requirement prior to departure?
- (g) Who pays the flightcrew?
- (h) Whether an obligation is placed on the air carrier, by lease or any other arrangement or mechanism, to use the aircraft owner's pilots?
- (i) Who specifies conditions under which a flight may be dispatched or released, e.g., weather minimums, flight planning, airworthiness of aircraft, aircraft loading, and fuel requirements?
- (j) Who ensures that only trained and qualified crews are assigned to conduct flights?
- (k) Who receives the revenue for the flights?
- (l) Whether the air carrier ensures that only those operations authorized by its OpSpecs are conducted?
- (m) Prior to departure, who ensures the flight complies with the conditions specified in the release?
- (n) When conditions specified for a flight's release cannot be met, who ensures that the flight is canceled, delayed, rerouted, or diverted?

(o) Who monitors the progress of each flight, and initiates timely actions when the flight cannot be completed as planned, including diverting or terminating the flight?

(p) Has the certificate holder shifted financial accountability for its operations or the conduct or safety of the part 135 flight from the air carrier to the aircraft owner or others?

J. Leases and Other Agreements.

(1) OpSpec A008 requires the operator to determine that all leases and other agreements affecting the aircraft and personnel of the certificate holder are reviewed to ascertain that they are in compliance with regulatory requirements and limitations. The limitations are centered on illegal wet leases (leases in which an uncertificated entity provides possession of a specific aircraft and at least one crewmember to a certificate holder for a specified period of time.) But other non-leasing arrangements could raise operational control red flags, especially those agreements where an aircraft owner dictates which pilot the air carrier can use on part 135 flights with third-party passengers or cargo.

(2) Should inspections or surveillance reveal possible or potential loss or transfer of operational control, further investigation may involve the review of leases and other agreements relative to the operation.

(3) A determination of who exercises operational control is not dependent solely on the wording of such leases or other agreements or arrangements. Such agreements cannot be viewed in a vacuum. A dry 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 actually exercises operational control. Case law has established that the substance, not the form, of contractual agreements, establishes the nature of the relationship between parties, and that taking enforcement action against those who effectively operate for compensation or hire in violation of FAA safety regulations is appropriate. When required, principal inspectors should seek the assistance of the Regional Counsel for their region for review of leases and other agreements.

K. Summary of Operational Control.

(1) Only approved persons may exercise operational control on the certificate holder's behalf.

(2) The certificate holder must have adequate controls in place to ensure that officials in a position of authority over flights conducted under the certificate do so safely, and in compliance with the regulations, OpSpecs, GOM, as applicable, and accepted or approved procedures.

(3) Management of operations should never be inattentive, distracted, or careless. Hands-off management is not a legitimate excuse for failing to maintain operational control.

L. Specific Policies and Procedures. The following notes describe the FAA's position on the subjects as they relate to operational control.

(1) *Advertising by Indirect Air Carriers.*

(a) Indirect air carriers may not purport to directly provide transportation by air.

(b) Indirect air carrier advertising must indicate the name of the certificate holder providing transportation by air. This does not mean that all pages of a website, or a brochure or any other advertising vehicle must identify the certificate holder. If more than one certificate holder is used, language to the effect that the advertiser uses FAA-certificated air carriers or operators is acceptable. The test is that a casual reader of the advertisement would understand who is actually conducting the transportation by air.

(2) *Aircraft Marking.* Must comply with section 119.9(b), Use of business names.

(a) The aircraft must be marked so that the "... name of the certificate holder... or the ... certificate number of the certificate holder who is operating the aircraft, is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft."

(b) In some cases of contractual service (HEMS, offshore, oil and gas), the customer may desire that the aircraft have markings such as the oil company or hospital logo and/or name displayed on the aircraft. In such cases, the operator must ensure that it is clear to the passengers and crew that the certificate holder is conducting the air transportation service. Adherence to section 119.9(b) is still required.

(3) *Billing.*

(a) There may be circumstances when billing may be accomplished by the indirect air carrier.

(b) If possible, the billing should indicate that the air transportation was provided by the certificate holder (by name).

(c) In some circumstances, such as insurance or Medicare/Medicaid billing by medical service providers, it is highly impractical for the bill to reflect the name of the certificate holder (transportation by air provider). This is acceptable if other literature, websites, advertising, etc., adequately reflect that transportation by air is provided by the certificate holder.

(4) *Delegation of Authority.*

(a) Authority and duty, but never responsibility, may be delegated (see paragraph 1255).

(b) Functions may be contracted to personnel or organizations in accordance with paragraphs 1145 and 1257.

(c) Persons to whom authorities or duties (functions) have been delegated must be trained and found competent by the certificate holder, be designated, be listed in the GOM, in OpSpec A006, A038, or A040, as applicable, and be under management supervision and oversight to ensure performance (management must have disciplinary authority over its contractors).

(d) Some functions may never be delegated outside the air carrier, e.g., see subparagraph d (6)(A) of OpSpec A008.

(5) *Flight Locating.*

(a) The certificate holder must accomplish flight locating unless FAA flight plans are filed for each flight.

(b) The certificate holder may delegate flight locating duties to employees of, or agents for, the certificate holder.

(c) Again, these persons must be trained and competent, be designated in writing, be listed in the GOM (or in OpSpec A006, A039 or A040, if applicable), be provided with procedures, policies, and guidance, and be under certificate holder management oversight.

(d) The certificate holder must have knowledge of all flight operations.

(6) *Crew Resource Management (CRM)/Air Medical Resource Management (AMRM).*

(a) Operational control concepts do not counter CRM and AMRM concepts.

(b) In any decision-making process, there is a designated decision maker.

(c) In air transportation matters, that decision maker is the certificate holder.

(d) Operational control ensures that the certificate holder exercises that decision-making authority and meets its regulatory responsibilities.

(e) The PIC is directly responsible for, and is the final authority as to, the operation of the aircraft (14 CFR part 91, section 91.3). The PIC serves in this regulatory capacity and as an agent for the certificate holder after assignment to PIC duty by management.

(7) *Initiation and Diversion.*

(a) If authorized by the certificate holder, in accordance with the FAA-approved operational control system, the PIC may receive a request from a customer, and, within his/her documented authorities, accept or decline the request in accordance with certificate holder's policies.

(b) The PIC must be trained and competent, designated in writing, and listed in the GOM (or in A006, A039 or A040, if applicable), provided with procedures, policies and guidance, and be under certificate holder management oversight.

(8) *Operations Control Center.*

(a) The rules do not specifically require an operations control center.

(b) However, the complexity of a particular operation may make the use of an operations control center necessary to ensure the effectiveness of operational control by the certificate holder.

(c) Numerous factors determine the complexity of an operation, such as the number and geographic dispersal of aircraft, diversity of aircraft types, diversity of types of operations (visual flight rules (VFR)/instrument flight rules (IFR)/night vision goggles (NVG)), and diversity of operating environments (domestic/international).

(9) *Remote Area Operations.*

(a) Remote area operations often involve extended operations outside of communications with the certificate holder. Using the two tiered system of operational control, these operations may be conducted if the certificate holder's management or management designees make the assignment of the crew and the release of the aircraft at the beginning of the remote area operation assignment. Since such assignments may extend over several days, the certificate holder must determine that the crew and aircraft will remain in deployable status (pilot checks, medical examinations, aircraft inspection, and maintenance requirements will all be satisfied) during the assignment period. The crew must receive specific instructions on how to monitor and control operational control elements which he or she will be authorized to control for the certificate holder when outside communication with company management. In such cases, the certificate holder must establish procedures and alternatives for the PIC to use in the conduct of flight operations, including, but not limited to:

1. Flight, duty and rest requirements.
2. Airport, landing site requirements.
3. Weather limitations.
4. Weight and balance control.
5. Maintenance and servicing requirements.
6. Communications alternatives (relay with airborne aircraft, etc.).
7. Hazardous materials.

8. Emergency operations.

(b) Before operating in an area outside of communications with the certificate holder, the certificate holder and PIC must agree on a time, place, and date where communications will be re-established, and the emergency plan if they are unable to establish communications.

(c) When applicable, remote area operational control procedures must be described in the GOM (or in OpSpec A008 for those certificate holders issued OpSpec A037, A038, A039, or A040). Furthermore, remote operational control procedures must be addressed in the training program for certificate holders that are not issued OpSpec A037, A038, A039, or A040, and for those certificate holders that do hold OpSpec A037, A038, A039, or A040, it also must be addressed in training program unless they have a full deviation that includes training. In addition, the certificate holder must identify the area(s) in which remote area operational control procedures will be utilized, and such areas must be described in the FAA-accepted GOM (or in OpSpec A008 for those certificate holders issued OpSpec A037, A038, A039, or A040).

*(10) The Air Ambulance Operators: Civil Aeronautics Board (CAB)
Exemption (83-1-86).*

(a) The air medical (emergency medical services (EMS)) community secured a blanket exemption from the economic authority requirements of the Department of Transportation on January 12, 1983.

(b) This exemption is still valid.

(c) It pertains only to the economic authority to act as an indirect air carrier.

(d) The actual flight operations and the operational control must be accomplished by a certificate holder.

(e) It does not permit uncertificated entities to conduct flights in air transportation.

APPENDIX 2. SAMPLE OPSPEC A008, OPERATIONAL CONTROL

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

Enter description of operational control procedures or manual reference for operational control procedures.

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

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

(2) Use a "Doing Business As" (DBA) name in any way that makes it appear to the public that an uncertificated entity has a certificate and operations specifications.

(3) Engage in a Wet Lease Contrary to 14 CFR Section 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 14 CFR Parts 121 or 135 (as appropriate), whereby that other person provides an aircraft and at least one crewmember to the certificate holder. A lease, or other business arrangement with a lease, is considered a wet lease if any of the following conditions exists:

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

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

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

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

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

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

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

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

(b) Currently trained and/or tested, qualified, and holds the appropriate airman and medical certificates to conduct flights for the certificate holder under Part 135, and is otherwise qualified to accept the specific flight assignment, considering flight duty 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 in OpSpec A039 or A040, if applicable). 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 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 must ensure 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 Section 135.25. This exclusive use aircraft cannot be listed on any other Part 119 certificate holder's operations specifications 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 as if that entity were the certificate holder.

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

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

(5) Aircraft Operation Agreements and Other Arrangements.

(a) In accordance with 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, 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, that 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 or a management person designee (who is a direct employee of the certificate holder) listed in operations specification A006 (management personnel) of these operations specifications, other than a pilot assigned to the specific flight or series of flight, must determine and have sufficient knowledge of the following:

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

(ii) 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 the PIC assigned in subparagraph d.(6)(a)(i) must determine and have sufficient knowledge of the following: 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.

(c) The management person designee mentioned in paragraph (d)(b)(a) must:

(i) Meet the requirements of Section 119.69(d), and their names, titles, and duties, responsibilities, and authorities shall be specified in the general operations manual, OpSpec A006, or described in subparagraph (a) above, or

(ii) 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 flight(s) 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 specifications 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 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) Air Traffic Control instructions, clearances, Notices to Airmen (NOTAMs) received from FAA or cognizant foreign Air Traffic Control authorities,

(ii) Aeronautical safety of flight information received by the pilot, and,

(iii) Operation under the emergency authority of the pilot in command in accordance with Section 91.3(b), and /or Section 135.19(b).

APPENDIX 3. SAMPLE OPSPEC A008, OPERATIONAL CONTROL WITH EMBEDDED GUIDANCE

NOTE: The following definition of “agent” will be inserted into OpSpec A002: “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 below shall be used by the certificate holder that conducts operations under 14 CFR Part 135 to provide operational control for its flight operations. The essential elements of operational control described in subparagraph d below must be included or described in that system. Enter description of operational control procedures or manual reference for operational control procedures.

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 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.

NOTE: It is acceptable to designate certain employees or agents to exercise the carrier’s authorities and duties. A certificate holder may never delegate its responsibility. See contractor/delegation references in 8400.10 Volume 3, Chapter 6, Section 1, paragraph 1145(G) and Section 5, paragraph 1257(E). Only direct employees of the certificate holder may be assigned the functions listed in paragraph d(6)(a) of this operations specification.

A simple way to understand the terms “duty,” “responsibility,” and “authority” is to consider the following definitions that have been inserted into OpSpec A002:

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.

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

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

(2) Use a “Doing Business As” (DBA) name in any way that makes it appear to the public that an uncertificated entity has a certificate and operations specifications.

NOTE: Any DBA must be listed in A001 of these operations specifications. The use of a DBA that is the name of a non-certificated entity is prohibited.

Marking: In some cases, such as when a hospital or medical services provider or an oil and gas entity contracts with the certificate holder, the uncertificated entity may want to mark the aircraft with its logo or name (hospital/medical organization, oil company). This is acceptable, provided the aircraft meets the marking requirements of 14 CFR Section 119.9, and the advertising, other literature (press releases, websites, etc.) and other documents associated with the customer (medical entity or oil company, in these examples) identify that the transportation by air offered, described, or provided is by the named certificate holder. The test is that a casual reader of such advertisement or documents would understand that the certificate holder is the provider of the aviation service. There are specific instances, such as in emergency medical services flight operations, where billing must be made by a medical entity. Examples include Medicare, Medicaid, and most health insurance programs. In these cases, it is unnecessary to require that the bill reflect that the air transportation services were provided by the certificate holder. However, the name of the air transportation provider should be obvious through other documents and advertisements. The uncertificated entity must never hold itself out as providing direct transportation by air, which is specifically prohibited in Section 119.5.

Advertising, websites, etc., may involve active or passive descriptions of services. For example, if an entity said “We maintain our aircraft to the highest standards, and we employ only the most skilled and experienced pilots” that would be an active holding out to provide transportation by air. If that entity was not certificated, this would appear to be contrary to Section 119.5. Less direct language, such as websites that speak to aircraft and pilots, but not to the fact that the entity actually operates them, might be considered passive, and confuse the reader as to who actually was operating the aircraft. The best course of action for an uncertificated entity to describe transportation services it may be able to arrange might be “Our flights are conducted by “XXX Airways:, an FAA certificated air carrier...” or “We arrange air transportation from a variety of FAA certificated air carriers...” or other active descriptions that services are provided by a certificated entity. It is not required that this description be found on every page of a website, or every page of a brochure; it is, however, important that the casual reader understand who is actually providing the air transportation services.

(3) Engage in a Wet Lease Contrary to 14 CFR Section 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 14 CFR Parts 121 or 135 (as appropriate), whereby that other person provides an aircraft and at least one crewmember to the certificate holder. A lease, or other business arrangement with a lease, is considered a wet lease if any of the following conditions exists:

This definition of a "lease" is inserted into OpSpec A002: A lease is where an aircraft owner transfers possession and use of a specific aircraft to a lessee for a fixed period. In a lease, as opposed to other types of custody/use agreements, the lessee has the right to possess and use the aircraft during the term of the lease, even if the aircraft owner wants the aircraft returned, assuming the lessee has made timely payments and is properly maintaining the aircraft.

- (a) The certificate holder and the aircraft owner/lessor agree that the certificate holder is required to use the aircraft owner's/lessor's pilot in Part 135 operations;
- (b) The aircraft owner/lessor is obligated to furnish pilots to the certificate holder to operate the aircraft; or
- (c) The aircraft owner/lessor has the power to veto who the certificate holder will use to pilot the aircraft in Part 135 operations, so as to limit the certificate holder to using only the owner's/lessor's pilots.

Note: 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 and separately contract with pilots to be the carrier's agents even though they also happen to work as pilots for the aircraft owner/lessor.

Guidance: The aircraft owner (non-certificate holder) cannot deliver a pilot and aircraft together in a leasing or other agreement(s) with the certificate holder. Even if the arrangement is not a "lease," if the aircraft owner provides custody of the aircraft along with a crewmember, that can indicate a loss or transfer of operational control, and requires further investigation. Any agreement between the certificate holder and the pilot (with or without payment) must be independent of the agreement between the owner and the certificate holder to provide the aircraft. This may require some investigation to ensure that an illegal wet lease has not been masked by the parties. Indications that the lease is not illegal include the certificate holder's ability to assign any pilot to the aircraft from its pool of qualified pilots, and that the owner's pilots, if used by the certificate holder, are direct employees or agents of the certificate holder and have full knowledge of and allegiance to the certificate holders management and procedures. An indication that the certificate holder only uses the owner's pilots to fly the owner's aircraft, and that those pilots never fly any other aircraft operated by the certificate holder, may indicate that the owner has improperly provided both an aircraft and at least one pilot in the arrangement with the certificate holder.

Obviously, the owner's pilots would be required to meet all of the certificate holder's training and qualification requirements before serving as a crewmember for the certificate holder.

This is independent from the situation in which a customer (i.e., the person seeking transportation services from the certificate holder) requests a certain crew and/or aircraft for an on-demand flight. These customer service driven requests may be entertained and satisfied by the certificate holder if otherwise in compliance with the regulations, applicable OpSpecs and/or GOM.

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

Guidance: In some circumstances, the certificate holder enters into an agreement to service an air transportation contract with a customer, such as in the offshore oil and gas industry, and in the helicopter emergency medical services industry. In these cases, the customer and certificate holder enter into long term agreements in which aircraft, crewmembers and ground personnel are stationed on the customer's property and work directly with the customer on a daily basis. This is different from the typical on-demand customer who has only a temporary business relationship with the certificate holder, and limited short term contact with crewmembers and other operational personnel. In the case of an extended contract service relationship, there is a potential that the roles and responsibilities of the customer and service provider may become confused. It is inappropriate for any of the duties or authorities of the certificate holder to be transferred to anyone other than the certificate holder's, agents or employees. The customer may not assume operational control, nor may the certificate holder surrender operational control to the customer. However, the customer may provide personnel and/or equipment to support the flight operations of the certificate holder, provided they are contracted to do so, and are under the management authority of the certificate holder for those functions. For example, the use of hospital staff for crewmember duties aboard an EMS aircraft must be in compliance with the aviation training and operations standards of the certificate holder. The medical service training and qualifications of such crewmembers, as well as their standards of medical performance, is the jurisdiction of the cognizant state medical professional licensing and/or ambulance service licensing agency(s). The use of medical communications specialists to perform any duty or function of operational control (such as communicating any operational information, or conducting flight locating) must be in accordance with FAA Order 8400.10, Volume 3, Chapter 6, Section 1, paragraph 1151G and Section 5, paragraph 1257. These personnel must be trained and found by the certificate holder to be competent, designated by the certificate holder to accomplish specific duties and functions, and under the certificate holder's management oversight. Moreover, the certificate holder must not permit the customer's relationship with remotely located certificate holder personnel to promote the transfer or loss of operational control. The certificate holder must establish and maintain its authority, over its employees and agents conducting air transportation under these OpSpecs.

- (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.

The following definition for “sustainable transfer” is inserted into OpSpec A002: 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 subparagraph 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 as described or referenced in subparagraph a. above:

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

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

Guidance: If the certificate holder decides to use a pilot who is employed by the aircraft owner, that pilot must become the direct employee or agent of the certificate holder. Moreover, if the pilot receives monetary compensation for serving as a flight crewmember on a revenue flight operated by the certificate holder, but the uncertificated aircraft owner pays the compensation for such service, then it is the FAA position that in such a circumstance: 1. the pilot is not the agent or employee of the certificate holder; 2. that the uncertificated aircraft owner is “providing” the aircraft and pilot to the certificate holder; and, thus, the certificate holder does not have operational control of the revenue flight.

(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 duty 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 OpSpec A039 or A040, if applicable. 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 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.

Guidance: An appropriate airworthiness conformity check is whatever check is necessary to return of an aircraft to Part 135 service. This may simply be an update of aircraft records to reflect hours/landings/cycles accumulated in the aircraft's absence from the certificate holder in the case of no maintenance being accomplished during that period. If maintenance is accomplished by the owner, and not under the direction of the certificate holder, the work accomplished must be inspected by the certificate holder and determined to be in accordance with the approved maintenance program, and the aircraft returned to service by the certificate holder before the aircraft may be used in Part 135 service.

(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 Section 135.25. This aircraft cannot be listed on any other Part 119 certificate holder's OpSpecs during the term of the exclusive use lease.

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

(a) The certificate holder may not allow or create the circumstances that would enable any other entity to conduct a flight for compensation or hire under 14 CFR Parts 119, 121 or 135 as if that entity were the certificate holder.

Guidance: This provision prohibits the certificate holder from entering into any relationship with a customer or owner that advertises or otherwise holds out or purports to conduct operations as an air carrier or operator.

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

(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 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, 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 OpSpecs, and that no surrender or loss of operational control exists.

(d) The certificate holder may not operate any aircraft in Part 135 operations that 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.

Note: An example would include a lease which contained a provision that the owner or lessor was responsible for civil liability in the event that a flight conducted under these OpSpecs results in an accident, incident, safety violation, injury, or death.

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

Guidance: All persons associated with the exercise of operational control must be trained, found competent by the certificate holder, formally designated, listed in the GOM or in OpSpecs A039 or A040, as applicable, and be under management supervision. Section 135.69 requires that the certificate holder be able to suspend or restrict operations when unsafe conditions exist. This requirement can only be met if the certificate holder has knowledge that flight operations are being conducted. The first step in having this knowledge is to know the identity and qualifications of the assigned crew, and the identification and airworthiness status of aircraft placed into service under these OpSpecs. In addition Section 135.77 requires that the certificate holder assign the pilot crew.

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

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

(ii) Whether the aircraft assigned for use is listed in OpSpec D08J, and is airworthy under the certificate holder's FAA-approved maintenance, inspection, or airworthiness program, as appropriate.

Guidance: *A flight or series of flights means either one specific flight or a set of flights that can be identified as a shift or multi-day assignment. The determining factors in whether an operator can use a series of flights rather than a single flight for these determinations are:*

Whether the aircraft or pilot qualification for use will change during the period of the series of flights?

Can the certificate holder receive communications from the pilot to assess flight, duty, rest and aircraft hours, cycles, landings, etc. to assess continued qualifications?

A “series of flights” will typically be no longer than an assigned shift (duty period). Typical examples of using a shift system for management assignment of aircraft and pilots at a known base occur in offshore oil and gas operations or helicopter EMS. At the end of each shift, the pilot would be able to report flight, duty, and rest times, and provide a report of cumulative aircraft flight log information for that shift. Even when a pilot and aircraft is assigned to a shift, conditions may change during that shift that would require notification of management for an assessment of pilot qualifications and the airworthiness status of the aircraft. For example, if weather conditions deteriorated at a base to be less than the pilot was qualified for, the assignment of that pilot might have to be rescinded. Likewise, if a shift began during the day, but a subsequent failure of the navigation lights on the aircraft occurred, that aircraft would have to be withheld from night operations by the certificate holder.

Other examples of a “series of flights” would be the assignment of a pilot to fly a series of flight legs for a customer, such as in supporting an itinerary for a salesman or other person having the need for a sequence of visits in a single day’s work. In such a case, the series of flights could be authorized by the certificate holder, and the pilot would only need to make contact as required to update the certificate holder on his/her whereabouts during the day. If the pilot were so authorized, the pilot could accept requests for diversions or changes in the itinerary from the customer as an agent for the certificate holder. See subparagraph d(6)(b) below.

A series of flights could also be a trip schedule (for example, a night freight operation) assigned by the certificate holder.

Typically, a series of flights does not exceed one day or one duty period. The assignment of a pilot to a schedule reflecting several days of duty is acceptable only for planning, as the actual flight and duty times of each day might affect the subsequent availability of the pilot. Accordingly, while such schedules may be used for planning purposes, actual flight operations in a particular duty period may not be conducted unless the certificate holder has established that the pilot and aircraft meet the requirements for operations in that duty period.

Remote area operations may require the assignment of a pilot and aircraft to operations beyond communications with the certificate holder. In these relatively rare circumstances, the certificate holder must ensure that the pilot is capable of managing all regulatory requirements as an agent for the certificate holder over the assigned

period. This includes, at least, flight, duty, and rest management, aircraft servicing and maintenance, and weather and aeronautical information gathering. These assignments also include determination of the place, date and time of reestablishing communications with the certificate holder.

This is a two-tiered system of operational control. The first tier is a management function that may be accomplished by the official named management personnel or their official designees (named in OpSpec A006, A039 or A040, as applicable). These personnel must be the direct employees of the certificate holder. This first tier involves the placement, by the certificate holder, of an airworthy aircraft and qualified crew in service to accept flight assignments. This is a strategic effort, in that it arranges personnel and aircraft to be in a position to meet an operational requirement. These actions may be accomplished for each flight, a series of flights, or at the beginning of a shift assignment for the pilot and aircraft, depending upon the nature of the operation. Any limitations to that assignment must be expressed by the certificate holder and understood by the crew and maintenance personnel associated with that assignment or shift. These limitations could be general, such as weather, area of operations, types of acceptable landing sites, etc., using GOM references. They may also be specific to the particular aircraft or pilot. For example, if a maintenance task is required in fewer flight hours than the pilot may fly in the assigned shift, (such as a lubrication interval due in five hours, while the pilot is eligible to fly eight hours), the crew and maintenance personnel must be advised by management, understand those limitations, and govern themselves accordingly. If changes to the status of the aircraft, such as an MEL item that prohibits night or IFR operations, management must be notified, and any new limitations to operations identified and communicated to the crew and maintenance personnel. The operator may designate a shift or base manager to accomplish these management tasks locally, or regionally, provided these persons are trained, qualified and designated and listed in accordance with Section 135.77.

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

(c) The management person designee mentioned in paragraph (d)(6)(a) must:

(i) Meet the requirements of Section 119.69(d), and their names, titles, and duties, responsibilities, and authorities shall be specified in the general operations manual, or described in subparagraph (a) above, or

(ii) For those certificate holders issued operations specifications 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.

Guidance: *The second tier of this system includes the actions of the flight crew once the flight assignment is made, by management, including any limitations made and communicated, per subparagraph d(6)(a) above. Tactical operational decisionmaking authority may be delegated by the certificate holder to the pilot, subject to general limitations (e.g., weather, area of operations, types of acceptable landing areas, minimum cruise altitudes, etc.) contained in the GOM or the applicable OpSpecs. Note: If the PIC assigned in subparagraph d(6)(a) is authorized to accept flight requests from the customer, most likely in the case of a contractual customer/provider relationship (offshore oil and gas, HEMS, etc.), that person must be trained and found competent by the certificate holder, named in the GOM (per Section 135.77), or as listed in OpSpecs A039 or A040, and under management oversight to ensure continued acceptable performance. These second tier personnel (pilots, mechanics, communications specialists, etc., may change too often to be listed by name in the GOM. In such cases, the GOM should list the job titles and the associated aspects of operational control authorized to holders of that job title, and refer to a list maintained by the certificate holder of the names of the persons designated to those job titles and vested with those authorities. This list would then be incorporated by reference in the GOM or other applicable documents, and a current list would be available physically at the principal base of operations and electronically or physically at any operator base (company website, email posting or fax transmittal). A copy would be provided to the FAA POI (through company website, email posting, or fax), and no person not identified on the list would be eligible to exercise any operational control authority for the certificate holder.*

When the PIC is so authorized, there is no requirement for the pilot to obtain management approval to accept a flight assignment. This assignment of operational functions to the pilot may be limited by the certificate holder to a specific radius from home base, while weather is reported and forecast to be above certain minima, and the aircraft has no deferred discrepancies (MEL items) other than those identified and communicated at the beginning of the shift. In such case, should these factors, or other identified factors change, the pilot must communicate with the certificate holder for management concurrence and direction. However, in all but the rarest of cases, such as in remote area operations, the certificate holder must have knowledge that a flight is occurring in order to meet the responsibilities contained in 14 CFR Section 135.69. Accordingly, the pilot must notify the certificate holder when a flight is initiated under this authority. In some cases, that may be through the use of a contract communications specialist (such as a HEMS operation, or an offshore oil and gas operation) who is tasked to notify the operator when a flight is initiated, or by actions by the pilot (radio call, phone call, email, fax) or by a passive system (e.g., an automatic dependent surveillance system such as OuterLink). When a person or organization is contracted to accomplish a tactical operational function (such as flight locating or operator notification of flight initiation), they must be trained, found competent, designated by the operator, listed in the GOM, and under management oversight to ensure performance. When an automatic system

is used, it must be described in the GOM or subparagraph a of OpSpec A008.

The certificate holder may also extend this authority to the PIC to divert a flight at customer request, whether for customer convenience (change in destination due to changes in business or personal needs), or, in the case of EMS, for any medical condition of the patient/passenger that results in a determination that another destination is more suitable for the patient. During any in-flight diversion, the pilot is expected to apply the standards, procedures, methods and practices contained in the company's operations specifications, the operating rules, the GOM, and the approved training program to accomplish that diversion safely and in compliance with the regulations. Procedures should be made for the PIC to report such diversion as soon as practicable to the certificate holder. If communication with the certificate holder is not possible in flight, such notification may be made immediately upon completing the flight.

In all cases, pilots may divert for aeronautical operation needs as they determine necessary in the case of an emergency or to avoid unsafe conditions without concurrence with the certificate holder under the PIC authority of Part 91 and the requirements of 14 CFR Section 135.69 to suspend operation when hazards to safe operations exist.

(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 OpSpec 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 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.

Guidance: In on-demand operations, no flight actually occurs until someone makes a request. The receipt of a flight request from a customer, or the request to divert once underway to meet a customer requirement should not be construed as "initiating" a flight. The certificate holder, through its management, management designees, or delegated personnel (including the pilot, under subparagraph d(6)(b), above) receives such a request, and must determine if the flight can be conducted safely and in accordance with the regulations, the operations specifications, and the certificate holders standards, procedures, and policies contained in the GOM, and supported by the training program. Acting positively on the flight request and beginning the process of meeting that request is the

“initiation” of a flight. If the certificate holder, through an employee or agent (which may be the pilot, in accordance with subparagraph d(6)(b), above) acts on a flight or diversion request, the certificate holder is exercising operational control, not the person making the request.

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

(i) Air Traffic Control instructions, clearances, Notices to Airmen (NOTAMs) received from FAA or cognizant foreign Air Traffic Control authorities.

(ii) Aeronautical safety of flight information received by the pilot.

(iii) Operation under the emergency authority of the PIC in accordance with Section 91.3(b), and /or Section 135.19(b).

APPENDIX 4. SAMPLE NOTIFICATION LETTER

Dear Operator:

This letter serves as official notification that the Federal Aviation Administration (FAA) is amending Operations Specification (OpSpec) paragraph A008, Operational Control, and OpSpec A002, Definitions and Abbreviations. The content of the amendment may be found in the appendices of the attached notice. This action is taken as a result of a determination by the Administrator that safety in air commerce and the public interest require this amendment. The provisions of this proposed amendment reflect existing regulations and case law.

Title 14 of the Code of Federal Regulations (14 CFR) part 119, section 119.51 describes the procedures for amending OpSpecs, including amendments initiated by the FAA, such as this amendment. Refer to this regulation for details on the procedure and your rights regarding FAA-initiated amendments to OpSpecs.

Please review the amendment to your OpSpec A008 and A002, and within 10 days, provide any written information, views, and arguments on the amendment to this office.

Subject to the requirements of section 119.51, the FAA to issue the amended OpSpecs on operational control within 60 days from receipt of this notice, but in no case after March 15, 2007.

In addition, we will need to review with you any Doing Business As (DBA) names that you presently have listed in your OpSpec A001 to ensure compliance with the guidance in the attached notice and revised OpSpecs. OpSpec A001 may need to be reissued if inappropriate DBAs are presently listed.

If you have any questions concerning this matter, please contact me by telephone at (XXX) XXX-XXXX or by e-mail at XXXXX.XXXXX@faa.gov.

[POI's signature]