



## **Charter Management: New Directions from the FAA.**

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Many business aircraft owners place their aircraft with Part 135 charter operators so that the aircraft can be offered to the public for charter. This symbiotic “charter management” relationship between business aircraft owners and charter operators has worked for many years with significant benefits for the aircraft owner, the charter operator, and charter customers. The owner gets revenue from the charter flights, which defrays some aircraft ownership costs, and, with good tax planning, the aircraft owner may also receive substantial tax benefits. The charter operator can offer the aircraft to the charter market without incurring the substantial fixed costs of aircraft ownership. In addition, charter customers benefit from greater availability of charter aircraft and reduced costs of chartering. All in all a good deal for everyone and a foundation of the business aircraft industry in the United States.

However, despite charter management’s long and successful history, the FAA has recently increased its scrutiny of these arrangements. This increased attention arose from the Challenger aircraft crash at Teterboro Airport in February 2005. The airplane was unable to take off and ran off the end of the runway and across an adjoining public road. Although no

one was killed, several persons were injured and the potential for disaster was evident. The accident investigation revealed that, while the airplane was listed on operations specifications of an FAA-certificated air carrier, the actual operator was not properly certificated. Indeed, the FAA quickly concluded that the arrangement with the charter operator was little more than a “rent a certificate” sham, and that the operator had little or no control over the day-to-day aircraft operation. Consequently, the FAA suspended the charter operator’s certificate until the operator could satisfactorily demonstrate that it had “operational control” over the airplanes it operated. The term “operational control” simply means authority and responsibility for safety and regulatory compliance. The National Transportation Safety Board ultimately upheld the FAA’s action.

After the Teterboro accident, the FAA also began inspecting similar charter operators around the country, and it eventually took enforcement action against some for failing to maintain operational control of its flights. However, the FAA also decided that better oversight and guidance might forestall similar problems in the future. To this end, it began an initiative, based out of its national headquarters in Washington, DC, to refine its

operational control guidance both for charter operators and its own inspectors. This initiative included several items. First, the FAA proposed to significantly expand the standard operations specifications paragraph, A008, dealing with operational control. Next, it undertook to draft some guidance to accompany this new “op spec” paragraph, so that operators and inspectors would know how to apply it. Finally, it set up a series of road shows around the country to explain to the aviation industry and FAA inspectors both the safety concerns about operational control and the FAA’s proposed new “op spec” paragraph.

As of this writing, release of the final version of new paragraph A008, and the associated guidance is still some weeks away. Nevertheless, many FAA offices are already applying the principles outlined in the draft versions, and all new charter management contracts are apparently getting a thorough review at the FAA. Thus, a brief review of the main points covered in proposed new paragraph A008 is worthwhile.

1. A charter operator always retains sole responsibility for operational control of all flights under its certificate, and is responsible for the actions (or inactions) of its direct employees and agents. In its briefings, the FAA has made it clear that, while pilots may be employed by the aircraft owner, the pilots must be exclusively agents of the charter operator while flying under Part 135 and the operator must be exclusively responsible for the pilots’ actions.<sup>1</sup>

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<sup>1</sup> Employment of the pilots is a significant tax planning issue.

2. The charter operator must ensure that there are no restrictions or prohibitions in any documents affecting the aircraft (such as leases, loan documents or insurance policies) that would affect aircraft operations under Part 135 or that would adversely affect the operator’s responsibility for operational control.

3. An operator may not use any business name (or d/b/a) that is in any way related to an entity that does not hold FAA charter authority. Thus, a charter operator could use as a d/b/a a fictitious name unrelated to another entity, but it could not use the actual name of an uncertificated entity such as an aircraft owner. Otherwise, an aircraft owner might be able to represent that it was authorized to conduct charter flights under the d/b/a.

4. The charter operator must have a system that ensures that all pilots who operate Part 135 flights are properly qualified and trained in accordance with the requirements of Part 135 and the operator’s FAA-approved training program.

5. An operator must have a system in place to ensure that all aircraft listed on its certificate are continuously inspected and maintained under the operator’s FAA-approved maintenance program, even when the aircraft is in the aircraft owner’s custody and is flown under Part 91.

6. Any agreements between the aircraft owner and the charter operator must clearly define when each party has operational control of the aircraft. Of course, the charter operator must always have operational control of all Part 135 flights. However, the agreements should

also spell out whether the owner or the charter operator will have operational control of Part 91 flights, such as those for positioning, ferry and maintenance.

7. The operator must have a system in effect that ensures that pilots are informed, before a flight or series of flights, that the flights will be operated under Part 135. This system must also inform the pilots, in advance, of who will have operational control over any Part 91 flights.

The FAA is looking very hard at compliance with these requirements, even before new paragraph A008 is issued. When considering a new, or ongoing, charter management arrangement, it will be important to consult with aviation counsel familiar with these enhanced requirements and able to provide cutting edge tax planning to ensure a smooth transition to this new direction from the FAA.

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