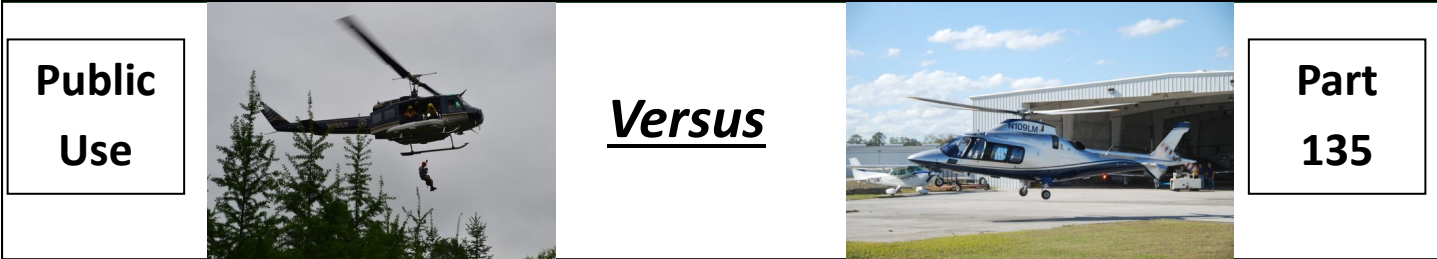


PUBLIC USE VS. PART 135



Research Request:

What are the main differences between public use rules and part 135 rules?

One quick bold statement to answer this question is FAA oversight. Public use operators assume liability and FAA oversight ceases to exist. The Title 14 CFR codes may still apply but grey areas become more apparent and a lack of rules, regulations and best practices standards are a common known missing item while operating under public use.

Disclaimer:

This research brief is to be used to help understand public use aircraft operations, rules, regulations and governance, along with comparing those set of items to Part 135 operations. This report is not a substitute to any regulations, rules, standards or other regulatory guidance.

Background:

On October 25, 1994, the President signed the Independent Safety Board Act Amendments, which contained a major change in the definition of public aircraft. Public aircraft are exempt from many types of Federal Aviation Administration (FAA) regulations. The current edition of Advisory Circular [\(AC\) 00-1.1A](#), Government Aircraft Operations, includes the FAA’s interpretation of key statutory terms in reference to the new definition. The AC will assist operators of government-owned aircraft in determining whether their aircraft operations are public aircraft operations under the definition. Title 49 of the United States Code (49 U.S.C) §§ 40102(a)(41) and 40125 define “public use aircraft operations.”

PAO are limited by the statute to certain government operations within U.S. airspace. Although these operations must continue to comply with certain general operating rules, including those applicable to all aircraft in the National Airspace System (NAS), other civil certification and safety oversight regulations do not apply to these operations. Accordingly, most aspects of PAO are not subject to FAA oversight.

What qualifies to be a PAO operation: The aircraft ownership, the operator, the purpose of the flight, and the persons on board the aircraft. More specifically refer to 49 U.S.C § 40102(a)(41). At no time may a public operation have a commercial purpose. In general, the FAA interprets the commercial purpose prohibition in 49 U.S.C. § 40125(a)(1) to mean that there can be no type of reimbursement to government entities for PAO, except under the one set of specific circumstances described in that section. Specific instances of whether an operation has a commercial purpose may be submitted for interpretation to the FAA Office of the Chief Counsel, International Law, Legislation, and Regulations Division. The statutory prohibition on commercial purpose prevents a government entity from getting paid or reimbursed to operate a PAO, not for paying for contracted services.

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Public Use Operations

Public aircraft operators are exempt from certain aviation safety regulations that normally apply to part-135 or part-91 operations. Government organizations conducting public aircraft operations supervise their own flight operations without oversight from the FAA. Because of this a lack of a industry wide standard or federal government oversight has created a need for a set of standards that public use operators can follow which include best practices, adopted policies and procedures from IS-BAO and other industry known practices that will help the industry operates in a safe an effective manner. The ALEA organization has filled this need and created the PSSAC accreditation standard which can now be attained after completing the required audit. Below is a comparison of some of the differences that exist on the operations side between operating PAO or Civil aircraft (Part 91 or Part 135):

- **Civil Aircraft Operation**

Private or Commercial operations for which the FAA performs:

- Safety oversight
- Training and currency oversight
- Certification for systems, equipment, personnel and
- Issuance of operational standards

- **Public Aircraft Operation**

- Safety oversight is provided by the agency operating the aircraft
- FAA certification is not required
- Must comply with certain general operating rules applicable to all aircraft

When looking across the agencies that operate PAO very few have a part-135 certificate. Those who have a Part-135 certificate only use it during specific HAA operations so that the agency can charge for their service and offset costs for operating their flight department. An example operator is Travis County Star Flight.

Regulations provided in Parts 135, 121 and 125 are merely operating rules that largely relate to the technical aspects of an aircraft operation, such as maintenance and inspection requirements and required equipment and training; they are not the rules under which an operator is licensed. Rather, it is Part 119 of the FARs that serves as the principal tool that operators must use to determine the appropriate authority needed for their operation and the rules under which they will operate.

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Aircraft Operations

Public use:

Few rules exist for public use operations. Below is a example of a few that currently exist.

Passengers: All persons carried on board must be crewmembers or meet the statutory definition of “qualified non-crewmember” (refer to Appendix 1, 49 U.S.C. § 40125(a)(3)). Carriage of a person other than a crewmember or a qualified noncrewmember makes a flight civil under the terms of the statute. It is important to note that a qualified non-crewmember is someone whose presence is required to perform the governmental function associated with the flight; providing air transportation is not a governmental function (except as provided for in 49 U.S.C. § 40125(c)).

The [FAA] Administrator may revoke the certificate of an airman who violates the regulations while operating an aircraft in public status where the airman’s actions demonstrate a lack of qualifications to hold a certificate. In all other instances, civil penalty action ordinarily is appropriate when the FAA determines that legal enforcement action should be taken against an airman for violations involving an aircraft operated in public status

Must comply with the manufacturer's recommended maintenance programs, or a program approved by the Administrator, for each aircraft engine, propeller, rotor, and each item of emergency equipment required.

If an aircraft is altered outside of its type certificate (TC) or not maintained under an FAA-accepted maintenance program during PAO, a conformity inspection is required to ensure the aircraft meets all civil regulations. The operator of an aircraft that has been operated in public aircraft status may not return the aircraft to service in civil operations without demonstrating that the aircraft meets all the criteria as prescribed by the regulations to hold its airworthiness certificate. For more information, contact your local FSDO.

Part 43 violations [maintenance] may be charged against persons provided the aircraft has a U.S. airworthiness certificate.

Part-135:

As a certificate holder, the operator is subject to additional surveillance from FAA inspectors and has less flexibility in conducting flight operations, e.g. legality of starting instrument approaches when weather is below minimums, takeoff minimums (there are none for Public use), flying to airports with no weather reporting equipment, crew rest, etc.

The 135 Air Carrier Operations Branch oversees national standards and policies for 14 CFR Part 135 fixed wing and helicopter operations, to include Helicopter Air Ambulance (HAA) and Part-135 On-demand Cargo Operations. Upon first entering the world of commercial aviation, new charter companies and aircraft owners often ask what regulatory requirements will apply to their operation.

From the FAA’s perspective, safety is the ultimate concern. As such, FAA issues and enforces a wide range of regula-

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Aircraft Operations

Part-135 Continued:

tions and requirements governing matters such as aircraft operations, air carrier certification, and maintenance requirements and standards. Acting as a roadmap of sorts, FAR Part 119 prescribes the certification requirements for air carriers and operators transporting persons and property by air for compensation or hire, and further designates under what Part of the operating rules—135, 121 or 125, a particular operation should be conducted.

While obtaining and operating under a Part 135 certificate is clearly more time consuming and expensive than operating under Part 91, there are procedures within Part 135 to streamline the process for operations of limited size and scope. How streamlined the process is in practice will depend largely upon the FAA district office with jurisdiction over the prospective operator. Part 135 includes streamlined procedures for “Single Pilot Operator,” “Single Pilot-in-Command,” and “Basic Part 135 Operations.”

The Single Pilot-in-Command classification, as the name indicates, is characterized by a single pilot-in-command (PIC) and up to three seconds-in-command. No substitution of pilots acting as PIC is permitted. This type of Part 135 operation is limited to aircraft having no more than nine seats and to the U.S., Canada, Mexico and the Caribbean. However, the local FAA district office would be authorized to grant these operators complete or partial deviations from manual requirements, pilot and flight attendant training requirements, and certain management positions.

The Basic Part 135 Operator classification is characterized by no more than five pilots (including SICs), three aircraft types, and five aircraft in total. Geographically, operations are restricted to the U.S., Canada, Mexico and the Caribbean. Provision is made for partial deviations from the manual, training, and management requirements consistent with the complexity (or non-complexity) of the proposed operation.

These streamlined FAA certification classifications, especially the Single PIC and Basic Part 135 Operator, may very well be useful for smaller flight departments whose geographic scope is limited to domestic U.S., transborder, and Caribbean operations. They also may be an answer to the single purpose flight department company dilemma which so many Part 91 corporate operators face.

Before proceeding to apply for a Part 135 certificate under one of the streamlined classifications, corporate operators should review in detail their current operations to determine whether they can fit within one of the classifications, and whether the additional restrictions that would be imposed by Part 135 versus Part 91, even under these streamlined classifications, are compatible with the operator’s mission. A preliminary "fact-finding" meeting with the local FAA district office would be necessary as well, to develop a good sense of the time, effort and expense involved in the project, including the cost of proving runs required to achieve Part 135 certification.

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NTSB input about Public Use aircraft

The safety of public helicopter operations is often overlooked. (NTSB Most Wanted 2015)

Every day, hundreds of federal, state, and local helicopter pilots fly helicopter air ambulance, law enforcement support, and search and rescue missions, as well as a host of other public operations. The public trusts these operators and relies on them to conduct the mission safely; the public often needs this transportation to survive. And each of these helicopter operations requires planning, training, and support. Unfortunately, not all of the pilots complete their missions.

- ◆ On September 27, 2008, a Maryland State Police (MSP) helicopter, Trooper 2, received a medevac flight request to pick up two patients involved in an automobile accident. Trooper 2 reached the accident site, loaded the patients, but never reached the hospital. On June 9, 2009, a New Mexico State Police (NMSP) helicopter pilot received a request for an aerial search for a lost hiker. The NMSP pilot landed the helicopter, located the hiker, departed from the mountain, but did not make it back to base.
- ◆ A very similar situation occurred on March 30, 2013. The Alaska Department of Public Safety (ADPS) helicopter pilot received a request to rescue a stranded snowmobiler. The pilot landed the helicopter, located the snowmobiler, departed from the frozen lake, but did not reach the designated landing zone.

Prior to accepting their missions, both the MSP and NMSP pilots expressed concern about weather conditions. Although the pilot of the ADPS helicopter did not discuss the weather with anyone, he should have been aware of the deteriorating conditions. However, all three pilots accepted and attempted to complete the missions even when faced with poor weather at night. And tragically, the helicopters crashed before reaching their destinations, killing a total of nine people.

Crashes involving public helicopters are not just limited to those used by law enforcement agencies. On January 5, 2010, a California Department of Fish and Game helicopter sustained substantial damage when it collided with power lines during a deer-surveying mission. The NTSB determined that the pilot's failure to maintain positive control of the helicopter caused the crash.

Since 2004, the NTSB has investigated more than 130 accidents involving federal, state, and local public helicopter operations, including the 4 mentioned above. Fifty people lost their lives and nearly 40 were seriously injured in these accidents. The lessons learned as a result of these investigations have the potential to make federal, state, and local public helicopter operations safer.

What can be done?

Because public operator safety is not generally governed by Federal Aviation Administration regulations, a safety net does not necessarily exist; the safety decisions and programs are solely the responsibility of the public operators. Yet these operators often carry passengers, and they owe it to the public, who they serve, to operate in the safest manner possible. The NTSB is concerned that, absent a concerted effort to enhance helicopter safety in public operations,

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NTSB Recommendations

accidents involving public helicopters will continue. These could lead to more injuries and loss of life in search and rescue operations and helicopter air ambulance flights, as well as other operations by federal, state, and local entities. Based on our accident investigations, the NTSB has identified a number of actions that public operators can take to address operational, pilot, and helicopter factors.

Operational factors hold great promise because they impact the overall safety of the operation. Operational improvements include developing and implementing safety management systems that include sound risk management practices, particularly flight risk evaluation programs and formalized dispatch and flight-following procedures. Operators can also implement best practices for flight crews that include scenario-based training and fatigue management. In particular, given the heightened risk associated with flight in bad weather, helicopter operators should employ training scenarios that expose pilots to inadvertent flight into instrument meteorological conditions.

Helicopter technology also plays a significant role in mitigating risk to thousands of pilots and passengers each year. The NTSB has recommended that helicopter operators install radio altimeters, night vision imaging systems, and terrain awareness warning systems.

Finally, the NTSB advocates for crash-resistant flight recorder systems for all aircraft. These recorders can be used to enhance the safety culture within the public agency by allowing the operators to identify and address safety issues before a crash occurs. Further, if an accident does occur, crash-resistant flight recorder systems can assist investigators, regulatory agencies, and operators to quickly identify what went wrong and how to prevent it from happening again.

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What would drive a public use operator to get a Part-135 License?

The question above can be answered with; An outside requirement from the State or Federal regulator, a desire to charge for services or a proactive internal decision. Lets examine each.

Requirement from State or Federal regulator / legislation:

In some States such as Maryland they have required the largest public use helicopter operator (Maryland State Police) to operate to Part-135 standards. This decision is coming at a cost to the taxpayers but Legislators in the state believe it would be a safer route vs operating as a public use operator. The cost is raising car license fees by \$3.50 per car per year. This outside pressure is a relatively new approach and those making such decisions would need to be educated on the additional costs associated with obtaining and meeting Part-135 requirements. It's the opinion from most in the industry that individual States are going to become more involved in the rule making and safety requirements set forth for aviation operations. A leading indicator to this is all of the activity that is being generated from UAS / Drone / UAV devices. States are passing unique restrictive laws on these devices. When States decide to start moving more into manned operation legislation is not known but it should be anticipated.

Desire to charge for services:

A handful of public use operators have found ways to generate revenue for some of their services. The typical patient transfer is a good example. They bill the patients insurance company for their services. The one down fall to this idea though is that the operator must bring on a billing and insurance submission team to manage those financial transactions. Other draw backs include not being able to charge for all services. An example is a mission where a live hoist rescue must be performed. In that case the operator would need a live load 14 CFR Part-133 license. Being as a very slim amount of Part-133 live load licenses exists, the operator switches hats and operates under the public use card. The mission or call would strictly dictate which role the operator would fly but all other policies and procedures would be followed to meet Part-135 requirements.

Proactive internal decision:

If a public use operator had a desire to obtain a part-135 license it would most likely be stated that the cost associated with meeting all of the requirements is the "show stopper." Most departments struggle with funding and one would have to persuade their bill payers to spend the extra dollars. As mentioned above, the state of Maryland is an example where they increased license fees to cover the needed costs. There is no doubt that when outside oversight is part of a operation that the operator will have more pressure to operate safer and meet and attain the required standards set forth. Alternatives to a part-135 license include, accreditation programs/audits such as; IS-BAO, PSAAC, BARS, CAMTS, Etc. These audits provide a 3rd party assessment of the organization and allow operators to achieve different accreditation levels of the program in some cases. Beyond this, some operators chose to simply have peer to peer audits from near by agencies. This again allows for a un-biased assessment of the organization. With this method a set of audit checklists and standards must be agreed upon and known.

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Break down of Part-135 vs Public Use (This list is not inclusive and is a sample of the differences)

	Public Use	Part-135
Pilot Qualifications	FAA Certificates are not required. Typical Agencies ensure each pilot has a commercial rating at a minimum.	Must have a commercial & instrument rating and the PIC must have at least 1200 total hours. Most pilots will have their ATP ratings.
Pilot Training Program	No training program is required.	An FAA Approved training program is required for all part-135 operations.
Drug and Alcohol program	No testing program is required.	Must have a drug and alcohol random testing program for all employees in "safety sensitive" positions.
Background Checks	Not Required	5 year background check is required due to the Pilot Records Improvement Act of 1996 (PRIA)
Fatigue Risk Management / limits on duty days and flight time	Not Required	<ul style="list-style-type: none"> -No more than 8 hours of flying in a 24 hour period. -Crewmembers must receive at least 8 consecutive hours of rest during any 24 consecutive hours. -Cannot be on duty for more than 72 consecutive hours. -For more rules refer to 14-CFR 135.271
Instrument Approach minimums	Pilots can initiate an approach to an airport regardless of the weather conditions being reported.	A pilot may not begin an instrument approach unless the latest weather reports at least minimums for the approach to be used.
Pilot Medical Examinations	Typically a 3rd class at minimum or internal program. (Under age 40, every 60 month's / over age 40, every 24 months)	2nd class medical at a minimum. (Medical exam required every 12 month's.)

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Break down of Part-135 vs Public Use (This list is not inclusive and is a sample of the differences)

	Public Use	Part-135
Company Manuals	None Required.	Must have a general operations manual (GOM) and general maintenance manual (GMM). SMS & ERP required for contracts, accreditations and flights in Europe.
Maintenance Training Program	No training program is required.	Program needs to be documented in the GMM and inclusive to the type of work being accomplished.
Maintenance Reporting to the FAA	None Required.	Currently 16 specific items listed in 135.415 require a report to be filled with the FAA.
Maintenance aircraft release process	None Required.	Flight crews must readily determine if the aircraft they will operate is legal and mission ready. Procedures must be documented in the GMM or GOM.
Maintenance Program: Airworthiness, preventative, inspection and repair program.	Depending on aircraft operated. If the aircraft is a civil aircraft all maintenance must be accomplished through a program approved by the manufacture.	All of the maintenance programs must be documented and approved by the FAA and manufacture. Part 135.411 & 135.419
Defined internal quality assurance system with effective oversight of all maintenance.	None Required.	Must have a formal and documented quality assurance program that includes internal audits and a system to validate policies, procedures and regulations are being followed. Part 135.431