

Is it Legal?

Solutions to a charter operator's
every-day legal problems.

Q: Can charter flights be sold by the seat?

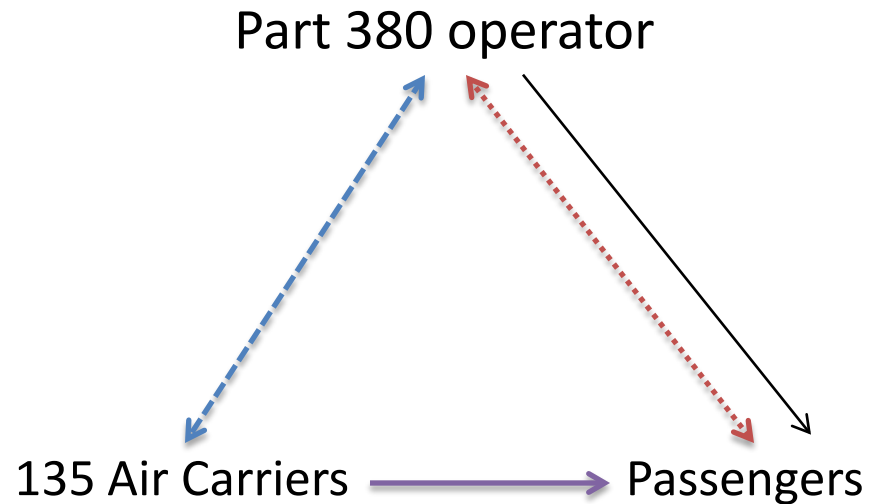
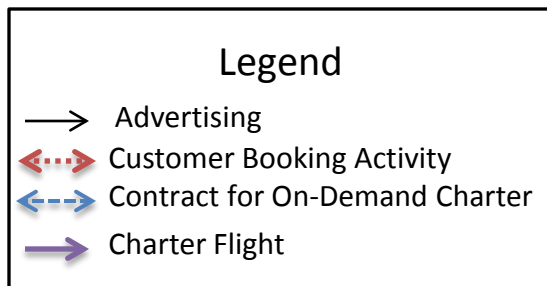
A: It Depends.

- ❑ Part 135 effectively prevents an operator or agent from selling single seats on charter flights because all flights must be “on-demand.”
- ❑ Charter flights become “*scheduled*” flights when the operator or agent advertises the:
 - 1) departure location,
 - 2) departure time, and
 - 3) arrival location

However...



A Part 380 (public charter) operator may sell single seats.



How it works

1. The operator submits a “Prospectus” and receives DOT approval to conduct Part 380 operations.
2. The Part 380 operator has an on-going agreement with a Part 135 carrier.
3. The Part 380 carrier publishes a schedule of the Part 135 carrier’s flights. (This conduct is specifically included in the definition of “on-demand operation” for Part 380 operations in 14 C.F.R. 110.2.)

Limitations



Flight Schedule

- Cannot include flights over more than a 1 year period.
- Limitations on cancellation within 10 days of flight.

Advertising

- Clearly disclose which operator will provide the flight.
 - A statement like “our jets” could be read by the DOT as an assertion that the Part 380 operator owns or operates the aircraft.
- Reference passenger rights.
- No deceptive or discriminatory statements.

Limitations

Payment

- Public Charter operator is the last to be paid.
- Generally may not be paid until 2 banking days after the flight is completed.

Q: May a *passenger* provide his or her own medical oxygen on a flight?

A: It depends.

Ask yourself:

Is the passenger carrying a Portable Oxygen Concentrator (POC)?

OR

Is the passenger carrying a cylinder that contains oxygen under pressure?

Are you a “Will Carry Hazmat” operator?

OR

Are you a “Will Not Carry Hazmat” operator?

Different rules apply when the *operator* provides the medical oxygen or POC to the passenger. (See 49 C.F.R. 175.8).



Cylinder of Oxygen

- ❑ Compressed oxygen is HAZMAT
 - ❑ “Will Not Carry Hazmat” operators MAY NOT transport cylinders of medical oxygen. (Informal opinion from Special Agent Jeff Coppock, FAA Joint Security & Hazardous Materials Safety.)
 - ❑ 14 C.F.R. 135.91 and 49 C.F.R. 175.501
 - ❑ Requirements for carrying and storing medical oxygen.
 - ❑ No passenger or crew member exceptions like those listed in 49 C.F.R. 175.10(a).

- ❑ “Will Carry Hazmat” operators
 - ❑ 14 C.F.R. 135.91 and 49 C.F.R. 175.501
 - ❑ Regulations for “Will Carry Operators”
 - ❑ Information that should be included in operator manual for guidance on handling medical oxygen cylinders.



Portable Oxygen Concentrator

- Device that filters nitrogen from ambient air to provide a concentration of oxygen above 90%.
 - Generally not considered Hazmat. (AC 120-95).
- Operator Responsibilities. (AC 120-95).
 - Only transport FAA authorized POCs.
 - Passenger must have a physician's statement authorizing use of POC.
 - Provide user with the expected duration of the flight to allow the user to carry a sufficient number of batteries.
 - Not seat a POC user in an exit row.
 - POC must be properly stowed.



Q: May a pilot perform a tire pressure check?

A: It depends.

- ❑ 14 C.F.R. 43.3(g) prevents pilots from performing preventive maintenance on Part 135 aircraft.

“Preventive maintenance means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.” (14 C.F.R. 1.1).

- ❑ Checking tire pressure may be preventive maintenance on one aircraft and not on another. (AC 43-12A, ¶ 4(b)(1)).



❑ FAA found that checking tire pressure on a Learjet 60 was preventive maintenance because:

- ❑ Tire air pressure could exceed 200 psig,
- ❑ Need for proper and calibrated gauge,
- ❑ Possibility of incorrect reading if test was not performed properly.



❑ FAA also found that the exhaustive list of preventive maintenance in FAR Part 43, Appendix A was not actually exhaustive.

- ❑ This holding is contrary to the language in 14 C.F.R. 43, Appendix A, and AC 43-12A, ¶ 4(b)(1).

FAA legal interpretation, (Feb. 26, 2009).

Q: What is an air ambulance operation flight?



❑ Definition: Air Ambulance Operations

1. Air transportation of a person with a health condition that requires *medical personnel* as determined by a health care provider; or
2. Holding out to the public as willing to provide air transportation to a person with a health condition that requires medical personnel including, but not limited to, advertising, solicitation, association with a hospital or medical care provider.

- ❑ Note: requirement of medical personnel on board the flight is a determining factor.

❑ Definition: Air Ambulance

- ❑ An aircraft used in air ambulance operations. The aircraft must be equipped with at least medical oxygen, suction, and a stretcher, isolette, or other approved patient restraint/containment device. The aircraft need not be used exclusively as an air ambulance aircraft, and the equipment need not be permanently installed.



- ❑ Air ambulance operators must comply with all pertinent Part 135 requirements and FAA issued Air Ambulance Operation Specifications. (Op Spec A021 or A024).

- ❑ Example: Part 135 Op Spec reads “ABC operator is not authorized to conduct Part 135 air ambulance flights except on an emergency basis.”
 - ❑ The operator cannot conduct air ambulance operations because the operator has not been issued Op Spec A021 or A024.

 - ❑ The operator may be able to transport organs because transporting organs can be considered a cargo operation. (AC 135-15).
 - ❑ Part 135 Op Spec must allow cargo operations.



Q: Are my pilots classified as “direct employees” or “independent contractors?”

A: It depends.

- ❑ The FAA distinguishes between “direct employees” (W-2 employees) and “agents.”
 - ❑ Direct employee
 - ❑ Operator exercises some control over the employee, and employee is “on your books” (i.e. receives a W-2 statement).
 - ❑ Can only use direct employees for tier 1 jobs (e.g. Chief Pilot, Director of Operations, Director of Maintenance)
 - ❑ Agent
 - ❑ Not “on your books”
 - ❑ May be used for tier 2 jobs (e.g. pilot, flight attendant, maintenance professionals)

Q: Rest and Duty. What qualifies as “rest?”

- To qualify as “rest,” the rest time must be:
 - Continuous
 - Free from **all** duty and restraint
 - Free from the responsibility of work

FAA Legal Interpretation, Dec. 9th, 1999.

- No certificate holder may assign any flight crewmember to any duty with the certificate holder during any required rest period.

(14 C.F.R. 135.263(b)).



- ❑ Requirement to answer a phone or pager is a “duty,” and that time cannot qualify as rest time.

However...

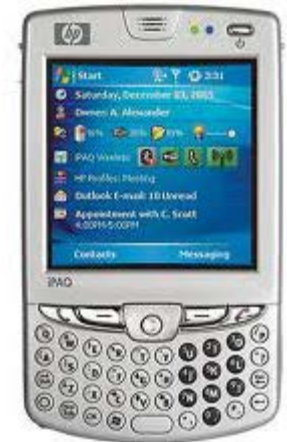
- ❑ The operator may attempt to initiate contact during a rest period without violating 14 C.F.R. 135.263(b) as long as the pilot does not have to answer.

(FAA Legal Interpretation, Dec. 9th, 1999).



Easy Violations

- ❑ Retroactively assigned rest periods
 - ❑ Violates § 135.263(b) because pilot *could* have been required to report for duty but wasn't called.
- ❑ Self-certification of rest (contract pilots, etc.)
 - ❑ Example: operator gives pilot less than 10 hours notice for flight duty. Pilot certifies that she was in rest for previous 10 hours. But, if pilot had a duty to answer calls from operator, then not in rest.



Q: Rest and Duty. To what extent is maintenance a “circumstance beyond the control of the operator?”

§ 135.263(d): *A crewmember is not considered to be assigned flight time in excess of the limitations if the crewmember was assigned a flight that would normally terminate within the limitations but did not because of “circumstances beyond the control of the operator.”*

Circumstances Beyond the Control of the Operator

- Can include late passenger or cargo arrivals, maintenance difficulties, adverse weather. FAA Legal Interpretation (Aug. 30, 1993).
- Element of unforeseeability. *In the Matter of: Charter Airlines, Inc.*, FAA Order No. 95-8 (1995).
- Thunderstorms forecast well in advance of departure time were not “unforeseeable.” *In the Matter of: Charter Airlines, Inc.*, FAA Order No. 95-8.
- “Condition that exceeds the reach or understanding of an operator.” FAA legal Interpretation (Aug. 1, 1989).

❑ FAA does not subscribe to “legal to start, legal to finish” theory.

❑ Potential for 14 C.F.R. 91.13 violations

❑ May not depart if crewmembers’ lack of rest would endanger life or property of others. FAA Legal Interpretation (Mar. 28, 1991).

❑ Not actual but potential endangerment of life or property. FAA Legal Interpretation (Mar. 28, 1991).

Time & Duty Monthly Report		Pilot:			Month: Jun 2012		
Day	Tail Number	Duty	Duty	Ttl Duty	Pt91	Pt135	Ttl Flt Time
1	N526JM	0800	1300	5.0	0	5.0	3.0
2		N/A	N/A	0	0	0	0
3	N526JM	15:00	04:00	13.0	0	13.0	7.5
4		N/A	N/A	0	0	0	0
5		N/A	N/A	0	0	0	0
6		N/A	N/A	0	0	0	0
7		N/A	N/A	0	0	0	0
8		N/A	N/A	0	0	0	0
9		N/A	N/A	0	0	0	0
10		N/A	N/A	0	0	0	0
11		N/A	N/A	0	0	0	0

Q: Will SMS data be used for enforcement?

Q: Grace Period. Can a pilot legally fly during a grace period if the pilot does not receive recurrent training during the grace period?

A: Yes.

§ 135.301: *If a crewmember who is required to take a test or a flight check under this part, completes the test or flight check in the calendar month before or after the calendar month in which it is required, that crewmember is considered to have completed the test or check in the calendar month in which it is required.*

- ❑ A crewmember is legal to fly during the grace period month regardless of whether the crewmember receives a proficiency check during that month. (FAA Legal Interpretation (Oct. 29, 1992)).

DATE	Crewmember's name	Crewmember's ID	ROUTE OF FLIGHT		REMARKS AND ENGAGEMENTS	AIRCRAFT CATEGORY	
			FROM	TO		Single Engine Land	Multi Engine Land
10/21	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	0
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	0
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	0
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	0
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	2
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	1
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	2
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	2
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	3
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	0
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	0
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	2
10/14	Paul A. Lange	201408	PNE	Local	4 Flts - PNE, Local, 1000 ft	1	1

Q: Can I sell a “certificate?”

A: It depends.

☐ FAA guidance requires a “stock sale” of the company that holds the certificate; the FAA does not view a certificate as an asset that can be sold separately.