



Plane Talk: How to Obtain an FAA Part 135 Certificate Without Having to Apply (and Wait Years) for a New Certificate

By Roy Goldberg

If an aircraft owner wants to obtain a Federal Aviation Administration (FAA) Part 135 air carrier or operating certificate and calls and asks the FAA for advice, chances are the FAA will tell the person about the certification process—and how it can take years to obtain a new certificate. What is often not mentioned is the fact that Part 135 certificates can be purchased from third parties, even though the FAA regulations do not allow for certificates to be sold. And yet it happens all the time, including when aircraft operators seek to retire and “sell” the certification that is necessary for their operation. How? There are corporate organizational techniques that, combined with helpful FAA assistance, can result in the effective *transfer* of a Part 135 certificate. In short, rather than “purchase” a certificate, a legal entity can buy the entity that owns the certificate, as long as the FAA is involved and approves the “amendment” of the certificate to reflect the new ownership structure.

FAA Part 135 Certificates

The types of operations that the FAA authorizes a Part 135 certificate holder to conduct are either (i) on-demand operations, which may include limited scheduled operations; or (ii) scheduled (commuter) operations, which allow unlimited scheduled operations as well as on-demand operations.

Requirements for a Part 135 Certificate

The 10 basic requirements for a Part 135 certificate are noted below.

No. 1: U.S.A. Citizenship

The holder of a Part 135 certificate must be a citizen of the United States of America. If the certificate holder will be owned by a partnership, each member of the partnership must be a U.S. citizen. If the certificate holder will be owned by a corporation or association,

the entity must have been created or organized under the laws of the United States or of any state, territory, or possession of the United States; the president and two-thirds or more of the board of directors and other managing officers thereof must be citizens of the United States; and at least 75 percent of the voting interest must be owned or controlled by persons who are citizens of the United States or of one of its possessions. Regardless of whether the entity is a partnership, corporation, or association, it must at all times remain under the actual control of U.S. citizens.

No. 2: Exclusive Use of at Least One Aircraft

The certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation. The certificate holder must either own or have a lease agreement for a period of six continuous months to satisfy the exclusive use requirement. (An applicant may begin the certification process with a letter of intent showing that an aircraft will be purchased or leased, but in no circumstance will the certification process be completed until the applicant provides a suitable aircraft.)

No. 3: Airport Base for Aircraft

The certificate holder must have an established physical location for its principal base of operation.

No. 4: Aircraft Maintenance Program

Aircraft that are type-certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, must be maintained under 14 C.F.R. parts 91 and 43 and 14 C.F.R. §§ 135.415, 135.417, 135.421, and 135.422. An approved aircraft inspection program may be used under 14 C.F.R. § 135.419. This can include annual inspections, 100-hour inspections, and approved aircraft inspection programs (AAIP). Aircraft that are type-certificated for a passenger seating configuration, excluding any pilot seat, of 10 seats or more must be maintained under a maintenance program that meets the requirements of 14 C.F.R. §§ 135.415, 135.417, and 135.423–135.443. This includes a continuous airworthiness maintenance program (CAMP).

No. 5: Key Personnel

In order to become certificated as a Part 135 “standard”

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certificate holder, an applicant must designate by name the individuals who will serve as the director of operations, chief pilot, and director of maintenance. If applying for certification as either a “basic” or “single pilot in command (PIC)” certificate holder, an applicant may request FAA deviation authority for certain management positions.

No. 6: Aircraft Manuals

The certificate holder must create and maintain the required aircraft manuals. The certificate holder’s manual should contain the certificate holder’s operations policies, methods, and procedures. Crew members are required to comply with the operations policies, methods, and procedures contained in the manual. 14 C.F.R. § 135.81(c) requires that Part 135 operators maintain a current flight manual (or the equivalent information for certain aircraft certified without a flight manual) for each aircraft used in their air transportation operations. To satisfy these Part 135 requirements, operators may use the approved airplane flight manual (AFM) or the approved rotorcraft flight manual (RFM), as applicable; or they may develop, obtain approval from the FAA for, and use a company flight manual (CFM).

No. 7: Hazardous Materials Training Program

All Part 135 certificate holders are required to submit a hazardous materials training program for approval, even if they do not intend to carry hazardous materials.

No. 8: Training Program for Pilot Crew Members and Flight Attendants

A certificate holder, other than one who only uses one pilot in its operation, is required to have a training program for its pilot crew members and, if applicable, flight attendants.

No. 9: Drug and Alcohol Testing

The Department of Transportation (DOT) has established required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry.¹ All air carriers and operators certificated under 14 C.F.R. part 119 and authorized to conduct Part 135 operations shall have a drug and alcohol program.

No. 10: Transportation Security Administration (TSA) Security Program

Certificate holders who conduct operations under 14 C.F.R. part 135 may be required to adopt and implement a TSA-approved security program. The size and scope of the security program required will be based upon several factors, including, but not limited to, the kind of operations conducted, maximum certificated takeoff weight of the aircraft, aircraft seating

capacity, and whether or not the certificate holders will enplane or deplane passengers within a sterile security area of an airport.

Practical Guidance for the Transfer of a Part 135 Certificate

Aircraft owners who want to acquire a Part 135 certificate without going through the formal application process for certification should follow the steps outlined below.

No. 1: Create a New “Drop-Down” Legal Entity

Have corporate counsel establish a separate legal entity within the seller to own the Part 135 certificate, and transfer the certificate to that “drop-down” corporate entity, which could be either a new corporation or a new limited liability company (LLC).

No. 2: Negotiate an Agreement for the Sale of Corporate Shares or Company Membership Interests

Negotiate a transaction whereby the purchaser buys the shares or membership interests of the entity that owns the Part 135 certificate (rather than purchase the certificate itself), and memorialize this in a written share or membership purchase agreement. The amount of the purchase price will be a key issue for negotiation.

No. 3: Seek FAA Approval for Amendment of the Certificate

Assist the current holder with an application to the FAA (the local Flight Standards District Office (FSDO)) to amend the Part 135 certificate to reflect the new name (under which the purchaser intends to operate). Pursuant to 14 C.F.R. § 119.41 (“Amending a certificate”), the FAA “may amend any certificate issued under” part 119 (including a Part 135 certificate) if (1) the FAA determines that “safety in air commerce and the public interest requires the amendment”; or (2) the “certificate holder applies for the amendment and the responsible [FSDO] determines that safety in air commerce and the public interest allows the amendment.”²

When the certificate holder applies for an amendment of its certificate, the following procedure applies:

- (1) The certificate holder must file an application to amend its certificate with the responsible [FSDO] at least 15 days before the date proposed

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by the applicant for the amendment to become effective, unless the [FAA] approves filing within a shorter time period; and

(2) The application must be submitted to the responsible Flight Standards office in the form and manner prescribed by the FAA.³

No. 4: Ensure Stability with Key Personnel

Structure the purchasing entity such that there will be operational stability to ensure that safety requirements are met with the new entity. In particular, make sure that some of the key personnel remain with the certificate. The new owner will want to show the FAA that at least two of the following three positions are contractually bound to remain with the operation at least for a reasonable period of time: (1) director of operations, (2) chief pilot, and/or (3) director of maintenance.

No. 5: Collaborate with the Local FSDO

Work with the local FSDO to ensure that the FAA has the information it needs to approve the amendment of the certificate. It is important to make contact early on in the process and keep open the lines of communication so that the FSDO is aware of the transaction and

its timing and is not surprised by the ultimate request to approve amendment of the certificate.

No. 6: Update Manuals

Update all of the above-referenced manuals to reflect the new entity that is holding and using the Part 135 certificate.

No. 7: Determine Whether DOT Approval Is Required

If the entity from which the buyer purchases the ownership interest holds commuter air carrier authorization or a certificate of public convenience and necessity issued by the DOT and the buyer intends to continue exercising the privileges of such DOT authority, pre-closing notification must be provided to the DOT in accordance with 14 C.F.R. part 204 (ideally 30 days before closing) so that the DOT may assess the carrier's continuing fitness and citizenship status under new ownership.

Following the above steps will facilitate the transfer of the Part 135 certificate to the new owner.

Endnotes

1. 49 C.F.R. pt. 40.
2. 14 C.F.R. § 119.41(a).
3. *Id.* § 119.41(c).