

Federal Aviation Administration Guidelines by Howard Martin

What rules apply to flight operations conducted on behalf of guides or lodges in Alaska?

Generally, if the flight operations are conducted by the guide, lodge, or employees of the guide or lodge, and the operations are incidental to providing guide services in the field, then they may be conducted under Part 91 of the Federal Aviation Regulations and Part 119 and 135 does not apply. The pilot(s) must still comply with Part 61 and 67 and the aircraft maintained in accordance with Part 43.

May a guide or lodge hire a pilot to fly for the employer if the pilot is not providing services in the field on a regular basis?

A guide or lodge may hire someone to operate aircraft owned or leased by the guide or lodge to transport employees, clients, property of the guide/lodge, employees or clients and not trigger requirements under Part 135. However, a person who is hired principally to operate aircraft and is not actually involved in providing field services must possess a commercial pilot certificate and 2nd class airman medical certificate.

What if an assistant guide provides services in the field but also operates aircraft for the contracting guide or lodge?

A bona fide guide or assistant guide who is providing services in the field and the particular flight operation *is in direct support of that field service* may do so under Part 91 rules and does not require a commercial pilot certificate. The person may operate the aircraft as a private pilot.

If he or she is not involved in guiding at that particular location and merely transports property or people the pilot would need to hold a commercial pilot certificate and a 2nd class medical certificate as the flight operation is not incidental to his or her service in the field.

May a guide or lodge hire a pilot to fly for the employer if the pilot also provides the aircraft used in the operation?

As noted above, a bona fide guide or assistant guide who is providing services in the field and the particular flight operation *is in direct support of that field service* may do so under Part 91 rules and does not require a commercial pilot certificate. He or she may be compensated for the aircraft use, including his or her time.

However, if someone is hired to operate aircraft, and provides an aircraft for that use, and the aircraft operation is not directly tied to his or her service in the field, then not only must the pilot possess a commercial pilot certificate and 2nd class medical certificate, the operation must comply with all requirements of Parts 119 and 135. The pilot's service would not be considered incidental to the pilot's status as a guide or assistant guide, but rather it is considered providing air service to the guide or lodge operation.

As an example, an assistant guide is hired to provide services to clients in the field and supports the establishment of a spike camp by flying equipment to the camp and eventually the client. He or she stays in the field with the client and thus provides services in the field. The assistant guide

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may be compensated for personal time and aircraft use. He or she only needs to hold a private pilot certificate.

Contrast this with an assistant guide who does not work in or out of the particular camp and does not actually provide field services but whose contracting guide or lodge secures the pilot with the pilot's own aircraft to ferry equipment and/or clients to a spike camp where the pilot is not providing field service. The pilot/aircraft owner would need to meet both the commercial pilot certificate requirements and hold an operating or air carrier certificate issued under FAR Part 119 and 135.

The FAA will look at all relevant circumstances, including the depth and breadth of participation of the pilot in field activities. Likewise, the FAA will evaluate on an individual basis any lease or contractual agreement and its actual implementation to determine if operations are truly incidental to the pilot's other duties and to control of the aircraft actually vests with the guide or lodge operation. The fact that the pilot may also possess a guide license from the State of Alaska is NOT determinative of the application of the Federal Aviation Regulations. The fact that specific charges are not made for flights subject to Parts 119 and 135 are not determinative but will be considered on a case by case basis under all the facts presented in any given situation or business arrangement.

What about the owner of the guide operation who is a properly licensed guide and who employs or contracts with other guides or assistant guides to provide field services?

The contracting guide is not required to actually provide field services in order to avoid the application of Parts 119 and 135 or any requirement to hold a commercial pilot certificate. He or she may operate an aircraft, ferry equipment, assistant guides/other employees and clients for that guide operation even though the contracting guide does personally not render services in the field or otherwise remain in a field location. Those flights are considered incidental to his or her guiding operation and may be conducted by a contracting guide holding at least a private pilot certificate.

May a guide or lodge operate its aircraft for another guide or lodge under Part 91?

Under almost all circumstances, those operations must be conducted under Parts 119 and 135 if the aircraft operator is providing both aircraft and pilot. In those situations, the aircraft operations are not considered incidental to guide or lodge operating the aircraft, and the FAA considers this providing air service. Even if no specific charge is made for the operations, any form of business goodwill or business/professional benefit is considered a form of compensation thereby triggering rules on compensation or hire. The application of these regulations recognizes that emergency situations that involve a threat to human safety or property may allow for gratuitous service to another entity. Inconvenience to clients, additional cost to the guide, lodge or client, or other problems such as potential spoilage of salvageable meat due to failure to transport out of the field resulting from inadequate logistical planning do NOT constitute an emergency under the Federal Aviation Regulations. Only emergencies attributed to Acts of God, accident or other unforeseen events may qualify as an emergency. Although the guide, lodge or pilot is not required to report such an event to the FAA, they may be required to respond to the FAA should the agency inquire.

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May a guide or lodge provide “drop-off” services where there is no actual guide service provided in the field but the clients are dropped off, with or without guide/lodge provided equipment?

State law determines what type of services may be provided and what form of guide/outfitter/transporter licenses are required. However, regardless of any state license or permit, where an aircraft operator provides transportation by aircraft to a point in the field and/or return and does not provide actual guiding services in the field, the operation must be conducted in accordance with Part 119 and 135 of the Federal Aviation Regulations.

Notwithstanding that state regulations may consider this “outfitting”, including the provision of food, supplies and/or equipment to the clients, the FAA does NOT consider this incidental to guide services. Likewise, the fact that someone may hold a transporter license issued by the state does not absolve that party from appropriate certification and compliance in accordance with Part 119 and 135 of the Federal Aviation Regulations.

Must the guide or lodge provide accommodations in order to be considered incidental to guide or lodge operations?

Under current application of existing enforcement policy in Alaska, the party or entity providing guide services does NOT have to provide accommodations to the clients. The critical element to be considered incidental to guide service is that there be actual guide service provided in the field. While this has little impact on big game guides because of state law that restricts flying and hunting on the same day, should there be an opportunity to fly and hunt the same day, such as some deer hunts and the like, the guide would not be required to be the provider of any accommodations for clients. “Day trip” arrangements may fall under the incidental to guiding category. This could change should the FAA engage in any future rule-making due to the language in the applicable statute. However there is no present plan to complete a rule-making project that would trigger such a requirement.

Must aircraft operated as incidental to a guide or lodge operation be inspected every 100 hours of operation pursuant to Federal Aviation Regulation 91.409?

No. As long as the aircraft is not used in operations that would trigger Part 119/135, or other operations such as flight-seeing as defined in Federal Aviation Regulation 91.146, the aircraft only needs to meet requirements of annual inspections as called out in Federal Aviation Regulation 91.409.

What if a guide or lodge holds an air carrier or operating certificate issued under Parts 119 and 135 of the Federal Aviation Regulations?

If a guide or lodge holds an air carrier or operating certificate, they are not required to conduct aircraft operation under the requirements of those parts if the operations otherwise qualify as incidental to the guide or lodge business. However, holders of such certificates must exercise caution that contemporaneous operations under Parts 91 and 135 requires the operator/carrier to ensure all requirements of Part 135 are met for operations conducted under that part which could be impacted by other operations conducted under Part 91, including but not limited to flight and duty time requirements and aircraft inspection intervals. If an airplane is moved from guide or lodge operations into use under a 135 certificate, the 100 hour inspection intervals

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required by 91.409 must be met. However there is no penalty provision that will reduce the subsequent 100 hour interval below that interval standard.

How do guide or lodge operations affect the use of an external load permit?

As noted by discussions above, guide and lodge operations, except for those specific situations noted, are considered incidental to the primary purpose of providing guide and lodge services. External load “permits” as issued by the FAA for use in the State of Alaska are in actuality a dual airworthiness certificate that places the aircraft in the restricted category when external load operations are conducted. Unless the operation triggers the requirements of Part 119 and 135, the restrictions on the use of restricted category aircraft for compensation or hire found in FAR 91.313 do not apply. If the operation is subject to Part 119 and 135, then the restrictions of that section do apply. In that situation, the operation may qualify as a “special purpose” operation under FAR 91.313(c). The FAA has defined external load operations in small aircraft conducted entirely within the state of Alaska may qualify as a “special purpose operation” in accordance with FAR 21.25(b)(7). More information may be found at Federal Register, Volume 80, No. 129, page 38798, July 7, 2015. In order to meet the definition of “special purpose operation” the operator and the applicable airworthiness certificate must meet the conditions set out in that notice. Aircraft operators who wish to conduct external load operations under these special provisions and definitions should contact their servicing Flight Standards District Office for more information.

Regardless of the application of FAR 91.313, operators must comply with all conditions set out in the external load permit. In the past, some operators have carried passengers who do not perform a bona fide safety mission essential to the operation. Generally, unless there is a clear and articulable reason to have a passenger aboard during an external load operation, the FAA would find the operator in non-compliance with the external load permit which could result in enforcement action against the owner/operator, including the contracting guide, and the pilot operating the flight. Convenience or cost-saving by transporting antlers and the client on the same flight does not fall under the allowable purposes set out in the applicable permits.

What are the relationships between state laws and regulations and the Federal Aviation Regulations?

Possession of state licenses and authorizations do not impact compliance and requirements under the Federal Aviation Regulations. Likewise, possession of certificates and authorizations from the FAA does not change or affect the necessity of complying with state laws and regulations relating to game management, land use and other matters properly regulated by the state, even when such laws or regulations specifically apply to aircraft use. The general rule is operations must be conducted in accordance with both state and federal law.

What could change the application of these rules?

As a result of court precedent, the FAA may not implement any changes to the traditional application of enforcement policy and interpretations that existed in Alaska prior to 1998 unless it engages in a public process such as rule-making. Subsequent congressional enactments

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prohibit the FAA from implementing the requirements of Part 119/135 or otherwise treating those operations incidental to guiding as commercial air operations. Some exceptions exist to this prohibition, such as operations conducted with rotorcraft and multi-engine aircraft, but those aircraft types are not generally encountered in most guide operations, particularly big game guiding. Any changes would only occur if there was a publically announced rule-making project. The FAA has no current plans to conduct such rule-making.

What if I have questions not covered by the above or need additional explanation?

You may contact the Office of the Regional Counsel, Federal Aviation Administration, Alaskan Region at 907-271-5269. Written inquiries should be directed to that same organization at Federal Aviation Administration, Office of the Regional Counsel, Alaskan Region, 222 West 7th Ave, #14, Anchorage, Alaska 99513. You may also email the Regional Counsel at howard.martin@faa.gov.