

Federal Aviation Regulations: Part 91 v. Part 135

March, 2009

Summary of The Differences

- Federal Excise Tax (FET) on Part 135 flights and some Part 91 flights.
- Different Depreciation Schedules (the accountants do care!)
- Time & Expense of Certification under Part 135.
- Runway Length Requirements differ.
- Available Airports.
- Flight Crew Duty Time Limitations and Rest Requirements under Part 135.
- Restrictions and Fees in Foreign Countries.
- Drug and Alcohol Testing Requirements under Part 135.
- Pilot Records Improvement Act Compliance.
- Fire-Blocking Aircraft Interiors.

The Details

FET is Collected

- 26 U.S.C. § 4261 imposes a 7.5% (plus \$3.60 segment fee) federal excise tax on amounts paid for air transportation.
- This tax is not applicable to all FAR Part 91 operating structures. (FET is collected on timesharing, interchange and demo flights.)
- FET must be collected and remitted on a quarterly basis to the IRS when operating under FAR Part 135.

Different Depreciation Schedules

- Part 91- Aircraft can be depreciated on a 5 year schedule.
- Part 135 - Aircraft can be depreciated on a 7 year schedule.

Time & Expense of Certification

- Part 91 - no operating certificate required.
- Part 135 - obtaining an operating certificate is difficult and time consuming to obtain.

Runway Length Requirements

- Part 91 - runway length requirements determined by aircraft requirements.
- Part 135 - aircraft must be capable of landing within either 60% or 80% (depending on qualifications) of the runway length (affects access to as many as 2,400 smaller airports).

Available Airports

- Part 91 - An aircraft may begin an instrument approach to airports where there is no weather reporting and the pilots determine when they approach the airport whether they can land safely.
- Part 135 - An aircraft may not even begin an approach to an airport that has no weather reporting facility unless the alternate airport has approved weather reporting.

Flight Crew Duty Time Limitations and Crew Duty Rest Requirements

- Part 91 does not impose specific flight crew duty time and requirements.
- Part 135 imposes specific flight crew duty time and rest requirements.

Restrictions and Fees in Foreign Countries

- Part 135 operators are subject to fees, regulations and additional licensing imposed by foreign countries on commercial flight operations.

Drug and Alcohol Testing

- Part 135 operators are required to comply with the same drug and alcohol testing requirements as air carriers operating under Part 121.

Pilot Records Improvement Act

- Part 135 operators are required to comply with the Pilot Records Improvement Act of 1996, as amended, which requires disclosure of personnel and training records.

It is helpful to have an understanding of these and other issues which can arise with the operation of aircraft in the U.S. Consider involving an attorney with aviation expertise when addressing issues involved with structuring ownership and operation of a corporate aircraft.

Michelle M. Wade is an attorney with the law firm of Jackson & Wade L.L.C. and counsels clients on the acquisition, financing and operation of corporate jets operated under Part 91 and Part 135 of the Federal Aviation Regulations. Jackson & Wade L.L.C. can be found at www.jetlaw.com.