Federal Aviation Administration

Memorandum

Date: DEC - 8 2010

To: Michael J. Zenkovich, Manager, Flight Standards Division, ASW-200

From: Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Alex Zektser, Attorney, AGC-200

Subject: Interpretation of 14 C.F.R. § 137.19(d)

This is in response to your July 15, 2010, memorandum requesting an interpretation of 14 C.F.R. § 137.19(d). Your memorandum poses the following two questions: (1) whether the requirements of § 137.19(d) are applicable only to initial certification; and (2) what type of ownership interest in an agricultural aircraft must a Part 137 certificate-holder have in order to be in compliance with § 137.19(d)?

I. Whether the requirements of § 137.19(d) are applicable only to initial certification

Your first question asks whether the requirements of § 137.19(d) continue to be applicable to a person or entity after obtaining a Part 137 certificate. Part 137 regulates agricultural aircraft operations, and it requires that the person or entity who has operational control over such an operation obtain a Part 137 certificate before conducting the operation. *See* 14 C.F.R. § 137.11(a). Under § 137.19(d), to be eligible for a certificate, an "applicant must have at least one certificated and airworthy aircraft, equipped for agricultural operation." Section § 137.19(d) works in conjunction with § 137.11(a), which prohibits agricultural aircraft operations that are conducted while a certificate-holder is in violation of its Part 137 certificate.

Because § 137.19(d) sets out one of the eligibility requirements for obtaining a Part 137 certificate, if a Part 137 certificate-holder stops complying with § 137.19(d), then that certificate-holder is in violation of its certificate because the certificate-holder is no longer eligible for a Part 137 certificate. While the certificate-holder is in violation of its Part 137 certificate, § 137.11(a) prohibits it from conducting an agricultural aircraft operation. This line of reasoning is consistent with NTSB decisions that revoked and/or suspended a Part 137 certificate due to the certificate-holder's failure to comply with §

137.19(d) after receiving the certificate. *See Administrator v. Keller*, SE-13309 (1994) (revoking a Part 137 certificate because the certificate-holder failed to comply with § 137.19(d)); *Administrator v. Fogarty*, SE-5572 (1982) (suspending a Part 137 certificate because the certificate-holder failed to comply with § 137.19(d)). As such, because under § 137.11(a) a certificate-holder cannot conduct agricultural aircraft operations while it is in violation of § 137.19(d), the requirements of § 137.19(d) continue to be applicable after the initial certification of a Part 137 certificate-holder.

II. What type of ownership interest in an agricultural aircraft must a Part 137 certificate-holder have in order to be in compliance with § 137.19(d)

Your second question asks about the type of ownership interest that a Part 137 certificate-holder must have in an agricultural aircraft in order to comply with § 137.19(d). There is no requirement for an ownership interest in the aircraft to be operated under the certificate. The longstanding FAA interpretation states that:

> The requirements of section 137.19(d) of Part 137 are satisfied if the applicant merely has the use of one certificated and airworthy aircraft equipped for agricultural operation. The use of at least one aircraft includes ownership of the aircraft as well as any agreement for the use of the aircraft regardless of the period or the exclusive nature of the use. Feb. 2, 1966, Memorandum to Chief of the Operations Division, FS-400 from James B. Minor.[1]

As such, a Part 137 certificate-holder is in compliance with § 137.19(d) if he or she can prove that he or she is permitted the use of an agricultural aircraft for a Part 137 operation. *See id.*; FAA Order 8900.1, Vol. 2, Ch. 8, § 1, par. 2-969(A)(2)(a) (requiring that an applicant for a Part 137 certificate show proof that they have at least one agricultural aircraft available to them). This proof may take different forms as noted above, and we believe it is the responsibility of the Flight Standards District Office (FSDO) to ensure continued compliance as part of the normal surveillance program for each Part 137 certificate holder. The FSDO also may need to account for the seasonal nature of the agricultural industry when verifying compliance with § 137.19(d). *See* FAA Order 8900.1, Vol. 3, Ch. 52, § 1, par. 3-4238(c)(3).

Additionally, please be aware that because a Part 137 certificate is an operator certificate, the person who has operational control over the agricultural aircraft operation must have a Part 137 certificate. *See* § 137.11 (requiring that the person who conducts agricultural aircraft operations have a Part 137 certificate). Moreover, a Part 137 operator must ensure "that each person used in the holder's agricultural aircraft operation is informed of that person's duties and responsibilities for the operation." 14 C.F.R. 137.41(a).

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was

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[1] A copy of the February 1966 interpretation has been attached to this memorandum.

prepared by Alex Zektser, Attorney, Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of Flight Standards Service.