U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUN 25 2012

Francis M. DeJoseph
[redacted]

Dear Mr. DeJoseph,

This is in response to your April 2012 letter asking whether an aircraft that is being used by two different part 135 operators can satisfy the "exclusive use" requirement of 14 C.F.R. § 135.25(b).

Subsection 135.25(b) requires each certificate holder to have the "exclusive use of at least one aircraft" that satisfies the standards set out in that subsection. Subsection 135.25(c) defines "exclusive use," stating that "a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner. . ."

In a 1990 interpretation, the FAA addressed whether an aircraft being used by multiple part 135 operators could satisfy § 135.25(b).[1] In that interpretation, the FAA was asked whether a part 135 operator could allow other air taxi operators to use its "exclusive use" aircraft when that aircraft was not scheduled for use. The question emphasized that the aircraft would be shared for only a single day and not for extended periods of time. In response, the FAA stated that it has "consistently interpreted the term 'exclusive use' to mean the sole possession, control, and use of the 'exclusive use' aircraft." Accordingly, the FAA concluded that the part 135 operator "cannot allow other air taxi operators to have possession, use, and control of [its] 'exclusive use' aircraft when [it does] not have that aircraft scheduled for use."

As the above interpretation points out, because the term "exclusive use" requires the sole possession, control, and use of an aircraft, an aircraft that is being used by multiple operators cannot be considered an "exclusive use" aircraft as neither operator has the sole possession, control, and use of that aircraft. Accordingly, an aircraft that is being used by two different part 135 operators cannot satisfy the "exclusive use" requirement of § 135.25(b).

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

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[1] *See* Letter to Alex Matway from Donald P. Byrne, Acting Assistant Chief Counsel for Regulations and Enforcement (Jan. 5, 1990).

Sincerely,

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