U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

AUG 16 2013

Mr. Michael Origel
[redacted]

Dear Mr. Origel:

This letter is provided in response to two requests for legal interpretations sent to the Deputy Assistant Chief Counsel for International Law, Legislation and Regulations, on May 1, 2013. Your requests include questions regarding the application of 14 C.F.R. §§ 135.25(b), 135.267, and 135.269.

Section 135.25(b)

In one request, you provide a scenario in which a part 135 operator uses only one aircraft in its operation. The part 135 operator has entered into a lease agreement with the aircraft owner for the use of this aircraft. The terms of the lease agreement allow the aircraft owner to use the aircraft at the part 135 operator's discretion. You then ask whether the part 135 operator may allow the aircraft to be operated under part 91 by the aircraft owner.

Section 135.25(b) requires each certificate holder to "[H]ave the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications." Since the operator in your scenario uses only one aircraft in its operation, it must have exclusive use of that aircraft to comply with § 135.25(b).

The agency defines "exclusive use" in § 135.25(c) 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, or has a written agreement…in effect when the aircraft is operated, giving the person that possession, control and use for at least 6 consecutive months." In previous legal interpretations addressing the issue of whether an aircraft used by more than one part 135 certificate holder could satisfy the "exclusive use" requirement of § 135.25(b), the FAA has interpreted the term "exclusive use" to mean the sole possession, control, and use of the "exclusive use" aircraft, consistent with a plain reading of the definition of "exclusive use" in § 135.25(c). *See* Letter to Alex Matway from Donald P. Byrne, Acting Assistant Chief Counsel for Regulations and Enforcement (Jan. 5, 1990); Letter to Francis M. DeJoseph from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (June 25, 2012). Thus, an aircraft operated by more than one certificate holder cannot be considered an "exclusive use" aircraft by any certificate holder because no single certificate holder would have the sole possession, control and use of that aircraft. *See* id.

Whether the part 135 certificate holder in your scenario allows the aircraft owner or any other entity to operate the aircraft, the result is the same. The certificate holder would no longer have the sole possession, control and use of the aircraft and thus would no longer have exclusive use of the aircraft. Any other interpretation of the term "exclusive use" would be inconsistent with the definition in § 135.25(c) and render the paragraph meaningless.[1]

Sections 135.267 and 135.269

In your second request, you question the applicability of §§ 135.267 and 135.269. You provide a scenario in which a part 135 operator assigns three pilots to an aircraft that requires two pilots and ask whether the limitations of §§ 135.267 or 135.269 would apply. You also ask whether a certificate holder may apply the requirements of § 135.267 to pilots who serve with augmented flight crews.

Sections 135.267 and 135.269 provide flight time limitations and rest requirements for pilots serving in unscheduled part 135 operations. *See* § 135.261(c) (stating that §§ 135.267 and 135.269 apply to any operation that is not a scheduled passenger carrying operation and to any operation conducted solely within the State of Alaska, unless the operator elects to comply with § 135.265 as authorized under § 135.261(b)(2)). Section 135.267 applies to one and two-pilot crews. Section 135.269 applies to three and four-pilot crews (i.e., augmented flight crews).

In the preamble to the final rule adding § 135.269 to title 14 of the Code of Federal Regulations, the agency explains that § 135.269 provides flight time limitations and rest requirements for operations that augment flight crews. *See* 50 Fed. Reg. 29306, 29317 (July 18, 1985); 49 Fed. Reg. 12136, 12141 (Mar. 28, 1984). Accordingly, a determination of whether to apply the flight time limitations and rest requirements of §§ 135.267 (one and two-pilot crews) or 135.269 (three and four-pilot crews) must be based on the number of pilots actually used in the operation; not the number of pilots required by the type certificate.

In response to the second part of your question, regarding whether a certificate holder may apply the requirements of § 135.267 to pilots who serve in three or four-pilot flight crews, we note that § 135.269 provides the minimum flight time limitations and rest requirements applicable to flight crews consisting of three and four pilots. Consistent with the general principle that the applicable regulation provides the minimum standard with which a person must comply, a certificate holder may choose to apply more restrictive limitations and requirements to an augmented crew, including those identified in § 135.267.

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[1] The Acting Assistant Chief Counsel for International Law, Legislation and Regulations recently issued a legal interpretation on a similar issue related to exclusive use under § 135.25. *See* Letter to Scott W. Williams, Esq. from Mark W. Bury Acting Assistant Chief Counsel for International Law, Legislation and Regulations (July 19, 2013).

This response was prepared by Sara Mikolop, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service. If you have any additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International Law,
Legislation and Regulations, AGC-200