U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

JUL 19 2013

Scott W. Williams, Esq.
The Small Business Law Firm
299 W. Hillcrest Drive, Suite 214
Thousand Oaks, CA 91360

Dear Mr. Williams:

This letter is in response to your request for a legal interpretation regarding 14 C.F.R. § 135.25(b) and the requirement in that paragraph for a part 135 certificate holder to "have 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." You also highlight additional language from § 135.25(b) that provides: "(h)owever, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than operations under this part."

You then pose several questions based on this language, dealing with whether a part 135 certificate holder would be deemed to have "exclusive use" of an aircraft if that aircraft is also used for part 91 operations conducted by the certificate holder or an appropriately rated pilot not on the certificate, if the certificate holder authorizes the operations. The specific scenario presented in your letter is that the certificate holder's only "exclusive use" aircraft is owned by an LLC whose managing member is a certificated pilot. The owner wishes to conduct some flights under part 91 and such flights may be conducted by the owner or another appropriately rated pilot authorized by the certificate holder.

You also note a Legal Interpretation to Francis DeJoseph from Rebecca B. MacPherson, Assistant Chief Counsel for International Law, Legislation and Regulations (Jun. 25, 2012), dealing with two part 135 certificate holders sharing an exclusive use aircraft. You distinguish DeJoseph since the interpretation did not specifically deal with the question of the use of aircraft "for other than operations under this part" as provided for under § 135.25(b). However, DeJoseph is relevant to your inquiry since it made clear how the FAA has interpreted the term "exclusive use" as it is defined in § 135.25(c).

In order to make a determination of whether a proposed operation would meet the requirements set out in § 135.25(b), the definition of exclusive use in § 135.25(c) must also be taken into consideration. In a 1990 interpretation, the FAA stated that it had "consistently interpreted the term 'exclusive use' to mean the sole possession, control,

and use of the 'exclusive use' aircraft."[1] Based on that interpretation, DeJoseph found that "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." In your scenario, the use of the aircraft by the aircraft owner would remove it from the sole possession and control of the certificate holder.

It is instructive to note that a certificate holder conducting on-demand operations is required to obtain operations specifications (OpSpecs) issued under § 119.49(c). The requirement for an "exclusive use" aircraft is one of the critical components for establishing operational control. As such, OpSpec A008, Operational Control, states the following with regards to the "exclusive use" requirements of § 135.25:

> (3) Exclusive Aircraft Use Requirements for Part 135 Operations. At least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specification must remain in the certificate holder's exclusive legal possession and actual possession (directly or through the certificate holder's employees and agents) as specified in Section 135.25. This aircraft cannot be listed on any other Part 119 certificate holder's operations specifications during the term of the exclusive use lease.

Consistent with previous interpretations, this language explains that a certificate holder is able to use or authorize its employees or agents to use the "exclusive use" aircraft for operations other than under this part as provided in § 135.25(b). But this only applies to the certificate holder. To allow any other person or entity to use the aircraft would render the definition of "exclusive use" in § 135.25(c) meaningless.

Thus, the scenario presented wherein the aircraft owner would occasionally use the "exclusive use" aircraft for operations under part 91 cannot meet the § 135.25(c) definition of "exclusive use" since there would not be "sole possession, control, and use of an aircraft" by the certificate holder that is leasing the aircraft. This would be true whether the owner piloted the aircraft or used another pilot authorized by the certificate holder to fly the aircraft for the owner. The certificate holder would no longer have "sole possession, control, and use" of the "exclusive use" aircraft.

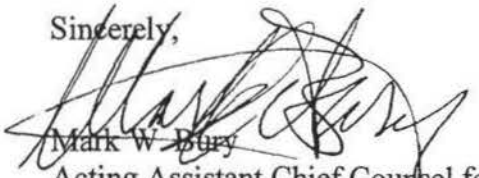
We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief

---

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

Counsel and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,



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