Federal Aviation Administration

Memorandum

Date: September 12, 2023

To: Lawrence Fields, Executive Director, Flight Standards Service, AFX-1

From: Laura Megan-Posch, Assistant Chief Counsel for Regulations, AGC-200

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Subject: Response to Request for Interpretation of 14 CFR §135.419(a) (Approved Aircraft Inspection Program (AAIP)) in the Context of the Phrase "exclusive use of at least one aircraft (as defined in §135.25(b))"

LAURA JANE MEGAN-POSCH Digitally signed by LAURA JANE MEGAN-POSCH Date: 2023.09.12 10:25:34 -04'00'

This responds to your request for an interpretation of the meaning of the phrase "exclusive use of at least one aircraft (as defined in §135.25(b))" in 14 Code of Federal Regulations (CFR) §135.419(a) (Approved Aircraft Inspection Program [AAIP]). An AAIP is one of the inspection options provided by 14 CFR 91.409(f). Section 135.419(a) states:

> Whenever the Administrator finds that the aircraft inspections required or allowed under part 91 of this chapter are not adequate to meet this part, or upon application by a certificate holder, the Administrator may amend the certificate holder's operations specifications under §119.51, to require or allow an [AAIP] *for any make and model aircraft of which the certificate holder has the exclusive use of at least one aircraft (as defined in § 135.25(b)).* (Emphasis added.)

Section 135.25(b) provides:

> Each certificate holder must 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 [OpSpecs]. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation. However, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than

> operations under this part and does not require the certificate holder to have exclusive use of all aircraft that the certificate holder uses.

Section 135.25(c) explains the meaning of the term "exclusive use of an aircraft" described in paragraph (b). Paragraph (c) states:

> For the purposes of paragraph (b) of this section, 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 (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control, and use for at least 6 consecutive months.

You referenced the FAA's guidance on the matter in FAA Order 8900.1, Volume 3, Chapter 38, section 1, paragraph 3-3734(A) (AAIP Regulatory Requirements) and asked whether that guidance is correct. The paragraph, including its explanatory note, states in pertinent part:

> Part 135, §135.419 lists the regulatory requirements for an AAIP. Before evaluating the AAIP, the principal inspector (PI) must verify that the certificate holder has exclusive use of at least one aircraft for each make and model of aircraft it intends to be covered under an AAIP as required per § 135.419(a). The exclusive use must meet the criteria established in §135.25(c). The certificate holder shall include the AAIP in the manual required by §135.21. The [FAA] approves the AAIP and authorizes the use of that approved program through the issuance of [OpSpecs]. The certificate holder may request to use an AAIP, or the FAA may find the certificate holder's current program inadequate and require the operator to develop an AAIP.
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> > NOTE: For example, if a certificate holder has a fleet of five BE-200s, three BHT-206B3s, and four CE-525s under an AAIP, the certificate holder would be required to have an exclusive use arrangement for at least one BE-200, one BHT-206B3, and one CE-525.[1]

The quoted guidance from FAA Order 8900.1 is correct under the current §135.419.

In your request, you posed two alternative scenarios, wherein you noted that if the second one is correct, then it would render the guidance incorrect.

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[1] See FAA Order 8900.1, Volume 3, Section 1, Chapter 38 (EVALUATE PART 135 (NINE SEATS OR LESS) APPROVED AIRCRAFT INSPECTION PROGRAM), 3-3734 (AAIP REQUIREMENTS.), Change 545, dated August 24, 2017.

These alternatives were either 1) the certificate holder must have exclusive use of one aircraft of each make and model that is maintained under an AAIP; or 2) the certificate holder must have an AAIP for each aircraft make and model—but the exclusive use only refers to the requirements of 14 CFR §135.25(b), which is exclusive use of one aircraft for the type of operation.

Under the plain language of §135.419(a), the first scenario is correct.

When the FAA first proposed the AAIP inspection program option in January 1969[2], the preamble noted the benefits of an aircraft inspection program tailored to an operator's specific experience with a particular aircraft. In reference to the proposed AAIP, the FAA stated:

> It is anticipated that improved inspection programs that are responsive to the certificate holder's operational requirements can be developed in this manner. Among the factors to be considered in development and approval of the program are: Size and stability of the operator's aircraft fleet; the operator's maintenance management practices; geographical area of operations; types of operations, e.g., IFR or VFR, frequency of landings; manufacturer's recommendations; and, service history, particularly with respect to new or evident trends, and with special reliance on the service experience of a particular operator. Procedures for notice, development, approval, change, and reconsideration of a program are proposed. (34 FR 1445, January 30, 1969.)

The rule—as it was originally proposed—required an operator to have exclusive use of *all* aircraft that would be subject to an AAIP. Proposal No. 34 stated in pertinent part:

> **§ 135.---- Approved aircraft inspection program.**
>
> (a) Whenever the Administrator finds that the aircraft inspections required or permitted under § 91.169 … are not adequate … the certificate holder, after notification by the Administrator, shall develop and submit for the Administrator's approval an aircraft inspection program, for all aircraft for which he has exclusive use, that contains adequate procedures and instructions ….
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> (b) A certificate holder who desires to conduct aircraft inspections in a manner other than that required or permitted under §91.169 …, may develop and submit an aircraft inspection program for *all aircraft* for which he has exclusive use for the Administrator's approval. (34 FR 1449, January 30, 1969.) [Emphasis added.]

[2] 34 FR 1445, January 30, 1969.

When the FAA published the Final Rule on December 3, 1969 (then numbered as §135.60 (Approved aircraft inspection program)), the rule text changed to require that a certificate holder had to have exclusive use of *only one* aircraft make/model to develop an AAIP for that make/model. The regulation stated:

> **§135.60 Approved aircraft inspection program.**
>
> (a) Whenever the Administrator finds that the aircraft inspections required or permitted under §91.169 or §91.171 … are not adequate …, or upon application of the certificate holder, the Administrator may amend the certificate holder's operations specifications, … to require or allow an [AAIP] for any make and model of aircraft of which the certificate holder has the exclusive use *of at least one aircraft* (as defined in §135.31(b)). (34 FR 19137, December 3, 1969.) [Emphasis added.]

Thus, the final rule was intended to allow a certificate holder to develop an AAIP for all of a particular aircraft make/model that they operate, while only being required to have exclusive use of one of them (the other aircraft, for example, could be operated in shared use with another operator). Nonetheless, the regulatory history contains no indication that the underlying intent (for the Administrator to be able to require or allow certificate holders to develop an AAIP for each different make/ model) had changed between the proposed and final rule. The factors to be considered in AAIP development, as stated in the proposal's preamble, are the specific aircraft make/model and the operator's specific experience with it. The factors discussed in the proposal's preamble continued to form the basis for the final rule. A plain reading of the regulations supports this view.

The text at issue in the current §135.419(a) is identical to the 1969 version of §135.60. The words "of which" in the phrase "an approved inspection program for any make and model aircraft *of which* the certificate holder has the exclusive use of at least one aircraft" must be read to tie together the sentence's two objects: [make and model aircraft] and [one aircraft]. The current requirement cannot be read to imply that a certificate holder could develop an AAIP for a particular make/ model aircraft (e.g., a Beechcraft King Air) that it operates in shared service based on the fact that they have exclusive use of a completely different aircraft make/ model (e.g., a Cessna Caravan). Such a reading cannot be reconciled with the intent underlying the FAA's January 1969 proposed rule to require that a certificate holder have exclusive use of all aircraft for which it sought approval for an AAIP. (34 FR 145, January 30, 1969.)

Accordingly, the intent of §135.419(a) is to require that—in order to develop and obtain approval for an AAIP for a particular aircraft make/model—a certificate

holder must have exclusive use of at least one aircraft make/model for which approval is sought.

This memorandum as been coordinated with the Aircraft Maintenance Division, AFS-300.