Federal Aviation Administration

Memorandum

Date: January 25, 2024

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: Legal 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"

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On September 12, 2023, the Office of the Chief Counsel issued an interpretation regarding 14 Code of Federal Regulations (CFR) § 135.419(a) and the phrase "for any make and model aircraft of which the certificate holder has the exclusive use of at least one aircraft."[1] On July 11, 2023, your office requested a response to several additional questions regarding § 135.419. This interpretation addresses those additional requests.

I. Background

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 approved aircraft inspection program [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:

[1] *See 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))"*, Memorandum Opinion to Executive Director, Flight Standards Service, AFX-1, from Assistant Chief Counsel for Regulations, AGC-200 (Sept. 12, 2023).

> 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. 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); it 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.

As stated in the September 2023 interpretation, if a part 135 certificate holder wants an AAIP for a particular aircraft make/model that the holder operates, or proposes to operate, then the certificate holder must have exclusive use of at least one aircraft of that make/model—regardless of how many aircraft they actually operate (the other aircraft, for example, could be operated in shared use with another operator).[2]

II. Questions and Responses

The July 11, 2023 memorandum requested that this interpretation address the following additional questions, which are presented here with their responses.

1. What options do part 135 certificate holders have if they request the FAA to allow them to have an AAIP but do not have exclusive use of at least one aircraft of each make and model for which the AAIP would be applicable?

As discussed in the September 2023 interpretation, under § 135.419(a), in order to 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.

Part 91, Subpart E (Maintenance, Preventive Maintenance, and Alterations) prescribes rules governing the maintenance, preventive maintenance, and alterations of U.S.-

[2] *Supra* note 1, at *4.

registered civil aircraft, including inspection requirements. Section 91.409 contains several inspection program options based on the aircraft's size, seating capacity, number and type of engines, and operations. A part 135 certificate holder unable to qualify for an AAIP would first determine which rules apply based on the aircraft's number of seats, excluding the pilot. Section 135.411 assigns different inspection requirements for aircraft with 10 or more passenger seats than for aircraft with 9 or fewer passenger seats. Part 135 operators of aircraft configured for 10 or more passenger seats, excluding the pilot, would be required to meet the maintenance requirements of §§ 135.415, 135.417, and 135.423-443.[3] Per § 91.401(b), § 91.409 does not apply to those part 135 aircraft that are maintained under a continuous airworthiness maintenance program (CAMP).

If the aircraft has 9 passenger seats or fewer, then the operator would follow § 91.409 in addition to the §§ 135.415, 135.417, 135.421, and 135.422 maintenance requirements.[4] Under § 91.409, unless an aircraft falls under the exceptions in § 91.409(c), the operator is required to use the annual and/or 100-hour inspection programs under § 91.409(a) and (b), depending on the nature of the operations. In addition to these inspection requirements, the operator may choose to use a progressive inspection program under § 91.409(d). A part 135 aircraft with a seating capacity of nine seats or fewer that is used for passenger operations would be inspected under both § 91.409(a) and (b). Non-passenger-carrying part 135 aircraft would comply solely with § 91.409(a).

If the aircraft is a large airplane, turbojet multiengine airplane, turbopropeller-powered multiengine airplane, or turbine-powered rotorcraft (an aircraft subject to § 91.409(e)), then the owner/operator must comply with the life-limited parts replacement requirements and select an inspection program—and identify it in the aircraft's maintenance records—under § 91.409(f).

Section 91.409(f) requires a registered owner or operator of an airplane or turbine-powered rotorcraft described in § 91.409(e) to use one of the following programs for the inspection of the aircraft:

> (1) A continuous airworthiness inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier operating certificate or an operating certificate issued under part 121 or 135 of this chapter and operating that make and model aircraft under part 121 of this chapter or operating that make and model under part 135 of this chapter and maintaining it under § 135.411(a)(2) of this chapter.
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> (2) An approved aircraft inspection program approved under § 135.419 of this chapter and currently in use by a person holding an operating certificate issued under part 135 of this chapter.

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[3] *See* § 135.411(a)(2).
[4] *See* § 135.411(a)(1).

(3) A current inspection program recommended by the manufacturer.

(4) Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section. However, the Administrator may require revision of this inspection program in accordance with the provisions of § 91.415. See 14 CFR § 91.409(f).

Additionally, part 135 certificate holders would look to part 135 for additional inspection program options. In your question, you asked what options a part 135 operator has if they applied for an AAIP under §135.419 but were not approved by the FAA because they did not meet the exclusive use requirements for at least one aircraft make/model. A more precise answer cannot be provided without knowledge of the aircraft make and model, and seating configuration.

2. **Is a part 135 certificate holder allowed to submit an inspection program (per §91.409(f)(4)) for approval by the Administrator if the certificate holder:**

   - Determines that the manufacturer's recommended inspection program, as provided by §91.409(f)(3), is not adequate for its aircraft that are subject to the inspection requirements of §91.409(e); and

   - Is not eligible for an AAIP because it does not have exclusive use of at least one aircraft of that make and model.

Yes, a part 135 certificate holder whose aircraft is either a large airplane (not subject to part 125), a turbojet multiengine airplane, a turbopropeller-powered multiengine airplane, or a turbine-powered rotorcraft may submit an inspection program to the FAA for approval under § 91.409(f)(4). There is no requirement that a manufacturer's inspection program under § 91.409(f)(3) be found inadequate for a certificate holder to submit an inspection program for FAA approval under § 91.409(f)(4). Because this hypothetical part 135 certificate holder does not possess exclusive use of at least one aircraft make/model for which the holder intends to operate, then the options available to them are the same as previously discussed in the response to question 1.

3. **What steps or options does an FAA Aviation Safety Inspector have when dealing with a part 135 certificate holder that currently has an AAIP for aircraft for which the certificate holder does not have exclusive use of at least one aircraft of that make and model?**

If a part 135 certificate holder holds an AAIP for make/model of aircraft for which it does not have exclusive use, the operator no longer meets the requirements of § 135.419(a). Consequently, the FAA may withdraw its approval of the AAIP and amend or remove the associated operations specification. The part 135 operator must then either change to an

alternative inspection program or obtain exclusive use of a make/model of that aircraft to come into compliance with the requirements of § 135.419.

If in the future, the part 135 certificate holder again obtains exclusive use (i.e., "sole possession, control" as an owner, or a lease that allows for "possession, control, and use for at least 6 consecutive months") of one aircraft make/model that they operate, then the fleet of aircraft could again be inspected under an AAIP.