

Flight Department Company

FEDERAL AVIATION DECISIONS

Interpretation 1981-6

FAD Digest of Interpretations:

FAR 135.1

A company that exists solely for the purpose of owning or leasing and operating a 7-passenger Cheyenne turboprop for its 3 founders, for which it will receive compensation, must hold a commercial operator certificate under Part 135, because transportation is the primary business of the company, rather than being a matter which is merely incidental to its primary business.

FAR 91Subpart D

Although Subpart D of Part 91 applies only to large and turbojet aircraft, the owner of a small turboprop aircraft may petition for an exemption permitting it to conduct operations under Subpart D.

Source of Interpretation: Letter to Rebecca H. Baritot from Edward P. Faberman, Assistant Chief Counsel, dated January 19, 1981.

The Draft of the proposed agreement relating to the sharing aircraft usage enclosed with your letter dated November 7, 1980, has been reviewed by this office.

According to the proposed agreement, three parties will form a company designed to purchase or lease an aircraft to be used by those parties. The company will be responsible for obtaining insurance and hanger space, maintaining the aircraft, hiring pilots, scheduling, and assuring compliance with Federal Aviations Regulations (FAR).

The terms of the proposed agreement indicate that the company will exist solely for the purpose of owning or leasing, and operating an aircraft for the use of the three parties. For this it will receive compensation. Section 91.181 (a) of the FAR states, in part, that the "operating rules in this subpart do not apply to those airplanes when they are required to be operated under Parts 121, 123, 129, 135, and 137 of this chapter." The preamble to Section 91.181 contains an explanation that if the primary business of persons or goods for a fee or charge of any kind would require the corporation to hold a commercial operator certificate under Part 121 or 135 of the FAR, as appropriate.

In the case of the 7-passenger Cheyenne turboprop named in your proposed agreement, a Part 135 certificate is required. Certification is necessary because transportation is the primary business of the company rather than being a matter which is only incidental to the primary business of the company.

Certification would be accomplished by the Federal Aviation Administration Region in which the operation is located. We will be glad to give you the name of the Regional Counsel for that region upon receipt of that information.

An additional issue is the fact that Section 91.181 of the FAR is applicable only to large and turbojet aircraft, while a Cheyenne is a small turboprop aircraft. If this were the only issue, you could petition for an exemption to conduct operations under the operating rules of Subpart D of Part 91.