Federal Aviation Administration

Memorandum

Date: MAY -3 2013

To: Timothy P. Davis, Manager, AC Technical Support Branch, AGL-240

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

Prepared by: Bonnie C. Dragotto, Attorney, Operations Law Branch, AGC-220

Subject: Legal interpretation of timing deadlines for aging airplane inspections and records reviews required under 14 C.F.R. § 121.1105

We received your December 11, 2012 memorandum requesting a legal interpretation, on behalf of the East Michigan Flight Standards District Office ("FSDO"), regarding the timing deadlines for aging airplane inspections and records reviews required under 14 C.F.R. § 121.1105. The East Michigan FSDO requested responses to three specific questions, which are answered below.

I. The meaning of the phrase "no later than 5 years after the start of the airplane's 15th year in service" as used in § 121.1105(b)(3).

Your memorandum requested an interpretation of the requirement in § 121.1105(b)(3) that an initial aging airplane inspection and records review be completed "no later than 5 years after the start of the airplane's 15th year in service." We conclude that this phrase means the initial aging airplane inspection and records review must be completed before the airplane enters its 20th year in service.

The Aging Aircraft Safety Act of 1991 ("AASA"), as codified in Section 44717 of Title 49 U.S.C., directed the FAA to "prescribe regulations that ensure the continuing airworthiness of aging aircraft" and provided that "inspections and reviews...shall be carried out as part of each heavy maintenance check of the aircraft conducted after the 14th year in which the aircraft has been in service." *See* 49 U.S.C. 44717(a) and (b)(1).

The aging airplane safety rule currently found in § 121.1105 specifies mandatory aging airplane inspections for certain airplanes according to their years in service.[1] Paragraph (b)(3) of § 121.1105 applies to airplanes not exceeding 14 years in service on December 8, 2003 and

[1] Before 2007, the regulatory provision implementing the AASA was located at 14 C.F.R. § 121.368. *See* 72 F.R. at 63412 (redesignation of § 121.368 as § 121.1105).

requires the initial inspection to be completed "no later than 5 years after the start of the airplane's 15th year in service."

In the preamble to the Notice of Proposed Rulemaking (NPRM) for the aging airplane safety rule, the FAA explained the proposed language in paragraph (b)(3) as requiring that airplanes exceeding 14 years in service after the rule's effective date "undergo the first records review and inspection no later than 5 years after their 14th year in service." *See* 64 F.R. at 16304-05. Accordingly, the inspection should be completed during the 19th year in service *at the latest*.

Moreover, the aging airplane safety rule defined "years in service" as meaning "the calendar time elapsed since an aircraft was issued its first U.S. or first foreign airworthiness certificate." *See* 67 F.R. at 72762; 14 C.F.R. § 110.2. Therefore, the clock for the initial aging airplane inspection and records review begins to run on the date an aircraft is first issued its airworthiness certificate.

The history of the aging airplane safety rule demonstrates that the intent of the rule was to ensure the completion of initial aging airplane inspections and records reviews required in paragraph (b)(3) before an airplane enters its 20th year in service.[2] Section II below provides an example of how this regulation should be applied in practice.

II. The due date of an initial aging airplane inspection required by § 121.1105 for a Boeing 747 aircraft with a June 7, 1993 date of manufacture.

In your memorandum, you requested an interpretation of § 121.1105(b)(3) in the context of a hypothetical scenario. Specifically, you asked for a determination of the due date for the initial aging airplane inspection of a Boeing 747 manufactured on June 7, 1993. As explained in section I above, the due date for the initial aging airplane inspection should be calculated based on the date the airplane is initially issued an airworthiness certificate. Since the date of issuance of the airworthiness certificate was not included in your hypothetical, we have assumed for purposes of applying the regulation to the hypothetical scenario that the date of manufacture is also the date the aircraft was initially issued an airworthiness certificate. We conclude that the initial inspection for this Boeing 747 was due before June 7, 2012.

For purposes of your hypothetical, June 7, 2007 is "the start of" the Boeing 747's 15th year in service. Since the initial inspection is due "no later than 5 years after" June 7, 2007, then the inspection is due before June 7, 2012 – the first day of the airplane's 20th year in service. *See* § 121.1105(b)(3). As explained in section III below, a 90-day extension is not permitted for the initial aging airplane inspection and records review.

III. Whether a 90-day extension may be granted by the Administrator in accordance with § 121.1105(c) for an initial aging airplane inspection.

Lastly, you requested an interpretation of paragraph (c) of the aging airplane safety rule found in § 121.1105. Specifically, you asked for clarification regarding whether the provision for a 90-

[2] The due date for the initial aging airplane safety inspection and records review may be calculated simply by adding 19 (years) to the date the airplane was issued its first airworthiness certificate.

day extension, which may be granted in the Administrator's discretion in the case of scheduling conflicts, is limited to the scheduling of repeat inspections only or whether a 90-day extension may be applied to the scheduling of the initial inspection as well. We conclude that the discretionary 90-day extension, provided for in § 121.1105(c), may only be applied to the due date for repeat inspections required to be completed at 7-year intervals under § 121.1105(b)(1)-(3) and should not be applied to extend the due date for an initial inspection.

In the NPRM for the aging airplane safety rule, the FAA proposed the addition of paragraph (c) as follows:

> In the event of an unforeseen scheduling conflict for a specific airplane, the Administrator may approve an extension of up to 90 days beyond ***a date*** specified in paragraph (b) of this section. *See* 64 F.R. at 16315 (emphasis added).

The preamble to the NPRM indicated that flexibility was purposefully built into the timing requirements for aging airplane inspections to allow for scheduling conflicts. The preamble further clarified that paragraph (c) "would permit the Administrator to approve 90-day extensions on the thresholds and repeat intervals of aging aircraft records reviews and inspections..." *See* 64 F.R. at 16305.

However, in the interim final rule the text of paragraph (c) was modified by amending the phrase "90 days beyond ***a date*** specified in paragraph (b)" to read "90 days beyond ***an interval*** specified in paragraph (b)." *See* 67 F.R. at 72761 (emphasis added). Although the preamble to the interim final rule did not detail the reasoning for this modification, the use of the term "interval" implies that the agency intended to exclude the initial inspection from the provision permitting a 90-day extension in the case of scheduling conflicts. *See* § 121.1105(b)(1)-(3)(Requirement for initial inspection and records review with repetitive inspections required at intervals not to exceed 7 years). The final rule issued in 2005 did not modify the text of paragraph (c) from the language included in the interim final rule. *See* 70 F.R. 5518.

Consistent with the aging airplane safety final rule, current agency guidance provides that the Administrator may approve an extension of up to 90 days on the repeat interval of an aging airplane inspection and records review and specifically excludes application of the 90-day extension to the threshold dates for the initial inspections. *See* FAA Advisory Circular 120-84, *Aging Aircraft Inspections and Records Review*, updated January 15, 2009; FAA Order 8900.1, *Flight Standards Information Management System*, section 6-2489 at paragraph A.2.

Therefore, the discretionary 90-day extension may only be applied to the repeat aging airplane inspections and may not be applied to the initial threshold inspection.

This response was coordinated with the Aircraft Maintenance and Air Transportation Divisions of Flight Standards Service. If you need further assistance, please contact our office at (202) 267-3073.