Federal Aviation Administration

Memorandum

Date:	October 7, 2016
To:	John S. Duncan, Director, Flight Standards Service, AFS-1
From:	Lorelei A. Peter, Assistant Chief Counsel for Regulations, AGC-200
Prepared by:	Edmund Averman, Attorney, AGC-210
Subject:	Response to Request for Interpretation of 14 C.F.R. §§ 121.368(h) and 135.426(h) Regarding the Circumstances When an Air Carrier Must Include on the Required List of Maintenance Providers the Name of Each Individual Airframe and Powerplant (A&P) Mechanic Who Performs Work as a Maintenance Provider for the Air Carrier

This responds to your June 1, 2016 request for an interpretation of §§ 121.368(h) and 135.426(h), each of which requires an air carrier, when contracting for maintenance, to provide to the FAA a list that includes the name and address where the work is carried out for each maintenance provider that performs work for the carrier, and a description of the type of work to be performed at each location. Specifically, with respect to five numbered scenarios, you ask whether an air carrier that contracts for maintenance with a maintenance provider[1] must include the name and other required information for a certificated airframe and powerplant (A&P) mechanic who actually performed the work while employed by the "maintenance provider" (the contracted entity). You also ask whether this inclusion would be in addition to providing the information for a non-certificated maintenance provider for whom the individual mechanic works. You state that it is the Air Carrier Maintenance Branch (AFS-330) position that the "maintenance provider" intended by the regulation is the person who actually performs the work.

We note that the term *maintenance provider* is defined in both §§ 121.368(a)(1) and 135.426(a)(1) to be "any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder." We address your scenarios in order:

[1] In four of your five scenarios, an air carrier contracts with an entity termed a "maintenance provider"—an organization that provides maintenance services for air carriers. In two of the scenarios the contracted maintenance provider entity is FAA-certificated (*e.g.*, a repair station) and in two scenarios the contracted entity is non-certificated (we assume this means a labor broker of some sort).

Scenario #1: An A&P mechanic is working for a non-certificated MP [maintenance provider] and signs for the maintenance performed with his/her certificate number.

Response: The A&P mechanic's name and the associated information must be included on the maintenance provider list. While the contract may be between the air carrier and the "non-certificated maintenance provider," the contracted party in your scenario is not the actual maintenance provider because the entity is not certificated to perform maintenance and approve the work for return to service. In accordance with the definition of a maintenance provider in §§ 121.368(a)(1) and 135.426(a)(1), it is the A&P mechanic who performed the work that is the maintenance provider referenced in §§ 121.368(h) and 135.426(h).

Scenario #2: An A&P mechanic is working for a non-certificated MP and signs for the maintenance performed with a MP stamp number or other means of employee identification.

Response: The A&P mechanic's name and the associated information must be included on the list as the maintenance provider. As in our response to Scenario #1, above, while the contract may be between the air carrier and the "non-certificated maintenance provider," the contracted party in your scenario is not the actual maintenance provider because the entity is not certificated to perform maintenance and approve the work for return to service. Moreover, although the A&P mechanic who performed the work may also sign for the work using his or her employer's MP stamp number or other means of employee identification for purposes of the employer's protocols, the mechanic should also sign for the work using his or her name, certificate number, and kind of certificate held, as required by § 43.9.

Scenario #3: An A&P mechanic is working for a certificated MP and uses his or her A&P certificate number to sign for the maintenance performed.

Response: The A&P mechanic's name and the associated information must be included on the maintenance provider list. Similar to our response to Scenarios #1 and #2, above, while the contract may be between the air carrier and the "certificated maintenance provider," the contracted party in your scenario (even though FAA-certificated to perform maintenance) is not the actual maintenance provider because, under the facts presented, the mechanic performed the work and, presumably, made a proper maintenance entry approving the item(s) for return to service in accordance with § 43.9. As you correctly suggested, in the case of multiple A&P mechanics employed by the certificated MP (each signing for the work they performed using their individual A&P certificate numbers in accordance with § 43.9), each of those mechanics' names and the associated information must be included on the maintenance provider list referenced in §§ 121.368(h) and 135.426(h).

Scenario #4: An A&P mechanic is working for a certificated MP and uses the MP certificate number to sign for the work performed.

Response: In this case, the certificated maintenance provider (*e.g.*, a certificated repair station) with which the air carrier contracted for maintenance is the maintenance provider that performed the work—that "MP" entity bears airworthiness responsibility by approving the work for return to service and using its own certificate number on the maintenance record. Accordingly, that entity is the maintenance provider that must be included on the list referenced in §§ 121.368(h) and 135.426(h).

Scenario #5: An individual A&P mechanic is directly contracted with by the air carrier, but is not an employee of the air carrier.

Response: The person in this scenario fits the definition of a maintenance provider in §§ 121.368(a)(1) and 135.426(a)(1). Under §§ 121.368(h) and 135.426(h), because this air carrier contracted for maintenance with the mechanic, the carrier must include on its list the name, physical address, or addresses, where the work is carried out, the name of the maintenance provider (the mechanic), and a description of the type of maintenance performed at each location. In the case of multiple A&P mechanics contracted with by the air carrier who meet the definition of a maintenance provider, the names of each mechanic must be included on the list along with the associated information required by the regulation.

Federal Aviation Administration

Memorandum

Date: JUN - 8 2016

To: Mark W. Bury, Assistant Chief Counsel, AGC-200

From: John S. Duncan, Director, Flight Standards Service, AFS-1

Prepared by: Timothy W. Shaver, Manager, Aircraft Maintenance Division, AFS-300

Subject: AFS Request for Legal Interpretation by AGC-200 on Title 14, Code of Federal Regulations section 121.368(h)

Please review the attached document(s).

[X] Approved

[ ] Disapproved

John S. Duncan
Director, Flight Standards Service, AFS-1

6.8.16
Date

Federal Aviation Administration

Memorandum

Date: June 1, 2016

To: John S. Duncan, Director, Flight Standards Service, AFS-1

From: Timothy W. Shaver, Manager, Aircraft Maintenance Division, AFS-300

Subject: Request for Legal Interpretation of Title 14, Code of Federal Regulations (14 CFR) sections 121.368(h) and 135.426(h)

M330-8000.1-E-1605-0378

The Aircraft Maintenance Division, Air Carrier Maintenance Branch, AFS-330, has received an inquiry from the Flight Standards Eastern Regional Office, AEA-200, asking for guidance to determine when an Airframe & Powerplant (A&P) mechanic is required to be individually listed on the Maintenance Provider List (MPL) required by 14 CFR section 121.368(h).

Question: Is an A&P mechanic working under their A&P certificate, that is employed by a non-certificated maintenance provider (MP) and performing maintenance on a 14 CFR Part 121 Air Carrier, required to be listed separately on the MPL in addition to the non-certificated MP they work for?

Argument: We in Flight Standards believe there are variables that may affect how this question is answered. We contend that section 121.368(h) requires that the person actually performing the maintenance is the MP intended by this regulation. Provided below are examples of different scenarios that we believe may determine whether or not an individual A&P mechanic is required to be listed on the MPL:

- Scenario #1: An A&P mechanic is working for a non-certificated MP and signs for the maintenance performed with his/her certificate number.
    - We believe that in this scenario, the A&P mechanic is the MP and must be listed on the MPL.
- Scenario #2: An A&P mechanic is working for a non-certificated MP and signs for the maintenance performed with a MP stamp number or other means of employee identification.
    - We believe that in this scenario, the non-certificated MP is the MP that must be listed on the MPL. The A&P mechanic should not be listed.
- Scenario #3: An A&P mechanic is working for a certificated MP and uses their A&P certificate number to sign for the maintenance performed.
    - In this scenario, we believe that the A&P mechanic is the MP, and that A&P mechanic must be listed on the MPL. In the case of multiple A&P mechanics at

the MP signing for work with their individual A&P certificates, each A&P mechanic must be listed separately on the MPL.

- Scenario #4: An A&P mechanic is working for a certificated MP and uses the MP certificate number to sign for the work performed.
    - We believe that in this scenario, the certificated MP is the MP that must be listed on the MPL. The A&P mechanic should not be listed.
- Scenario #5: An individual A&P mechanic is directly contracted with by the air carrier, but is not an employee of the air carrier.
    - In this scenario, we believe that the individual A&P mechanic is the MP, and that individual A&P must be listed on the MPL. In the case of multiple A&P mechanics, each directly contracted with by the air carrier, each A&P must be listed separately on the MPL.

We would appreciate guidance from AGC-200 in answering this question. If you have any additional questions regarding this memorandum, please contact the Aircraft Maintenance Division at (202) 267-1675.