Federal Aviation Administration

Memorandum

Date:	May 23, 2017
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. § 135.421(b)

This responds to your January 6, 2017 request for an interpretation of 14 C.F.R. § 135.421(b), in particular the construction of the term "maintenance instructions." First, you asked what constitutes "maintenance instructions" as the term is used in the regulation. Second, you asked whether "manufacturer's (engine, propeller, rotor, and each item of emergency equipment) service bulletins, service letters, service instructions, etc., that specifically address a maintenance procedure [are] considered to be part of the 'manufacturer's maintenance programs' and thus mandatory under this rule?"

As to your first question, *i.e.*, what would constitute *maintenance instructions*, we believe that, in the absence of a regulatory definition, the term should be given its plain meaning—something that would instruct (teach) how to perform a maintenance task or procedure. To borrow from your second question, these could include any or all of your examples. This could encompass various documents issued by a manufacturer, such as a maintenance manual, service bulletins, service letters, service instructions, *etc.*

Your second question asks whether, in the context of § 135.421(b), those foregoing documents that specifically address a maintenance procedure are considered to be part of the manufacturer's maintenance programs [referenced in paragraph (a) of the regulation] and thus mandatory for the part 135 operator that chose the "manufacturer's recommended maintenance programs" in lieu of the alternative option of a program approved by the administrator. The answer is yes, because paragraph (b) provides that a manufacturer's maintenance program [which is made mandatory by paragraph (a) for operators who choose that option][1] "is one contained in the maintenance

[1] Section 135.421(a) provides, in pertinent part, that the operator who chooses the first option "must comply with the manufacturer's recommended maintenance programs . . . for each aircraft engine, propeller, rotor, and each item of emergency equipment required by this chapter."

manual or maintenance instructions set forth by the manufacturer . . . for the aircraft, aircraft engine, propeller, rotor, or item of emergency equipment."

You provided two factual scenarios for our office to consider in answering the questions.

> **Scenario #1**: The Part 135 certificate holder adopts the manufacturer's maintenance program/instructions on a specific date and will maintain their aircraft to that program up to that date only. In this scenario, would the certificate holder only be required to accomplish the maintenance related service bulletins (SB), service letters (SL), or service information (SI) that is included in the manufacturer's maintenance program up to the date they adopted this maintenance program? Or would the certificate holder have to continue to adopt future SB, SL, or SIs?

Answer: The certificate holder would be required to follow the maintenance procedures contained in those manufacturer's documents that were in effect on the date the certificate holder adopted the maintenance program. Our reasoning is explained in previous legal interpretations issued by this office.[2] While those interpretations addressed different regulations, the same reasoning applies. Under § 135.421(a), the certificate holder has the option of selecting either a manufacturer's recommended maintenance program for the aircraft's engine, propeller, rotor, and each required item of emergency equipment, **or** a program for those items approved by the FAA. If the certificate holder chooses the first option, he or she is adopting a known maintenance program then in existence, with knowledge of what it entails. With that adoption, the certificate holder agrees to be bound by that existing program, in lieu of developing a different program and seeking FAA approval.

Whereas the two referenced legal interpretations dealt in part with the application of the word "current" in the respective regulations, the same legal principles apply here even though § 135.421(a) does not use that term. It is implicit that if a certificate holder adopts a manufacturer's maintenance program, it is the one in effect (hence current) at the time of adoption. Manufacturer's often make revisions to their recommended maintenance programs, including issuing future SBs, SLs, and SIs, but under the circumstances set forth in Scenario #1, a certificate holder is not obligated to follow these later-issued procedures. As we observed in our December 5, 2008 legal interpretation, if certificate holders were required to follow newly-issued changes to their maintenance programs, these new requirements could impose financial and other burdens on them for which they did not bargain. The exception would be if the maintenance program selected by the certificate holder included a clause stating that the program, if selected, necessarily includes all future-issued SBs, SLs, and Sis, etc.

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[2] *See, e.g., Legal Interpretation of 14 C.F.R. § 91.409(f)(3),* dated December 5, 2008, addressed to the Manager, Aircraft Maintenance Division, AFS-300, from Assistant Chief Counsel for Regulations, AGC-200; and *Legal Interpretation of "Current" as it applies to Maintenance Manuals and Other Documents Referenced in 14 C.F.R. §§ 43.13(a) and 145.109(d).* dated August 13, 2010, addressed to the Manager, AWP-230 and the Manager, Sacramento FSDO, from Assistant Chief Counsel for Regulations, AGC-210.

Moreover, if such compliance were required, this would be tantamount to private entities issuing "rules" of general applicability without meeting the notice and comment requirements of the Administrative Procedure Act (APA) (5 U.S.C. § 553), and the public would not have had an opportunity to comment on these future requirements.

An interpretation of the regulation that would allow manufacturers unilaterally to issue changes to their recommended maintenance programs that would have future effect on owners of their products would not be legally correct. This would run afoul of the APA. It would mean that our regulations effectively authorize manufacturers to issue "substantive rules," as that term is used in the APA, *i.e.*, it would enable them to impose legal requirements on the public. This would be objectionable for at least two reasons. First, and most significantly, the FAA does not have authority to delegate its rulemaking authority to manufacturers. Second, "substantive rules" can be adopted only in accordance with the notice-and-comment procedures of the APA, which does not apply to manufacturers. This reasoning is discussed in greater detail in our December 5, 2008 legal interpretation.

> **Scenario #2**: The Part 135 certificate holder adopts the manufacturer's maintenance program/instructions and state[s] that they [sic] will maintain their [sic] aircraft to the current manufacturer's program/instructions, without a set date. In this scenario, would the certificate holder be required to accomplish all maintenance related SB, SL, and SIs past, present, and future?

Answer: The certificate holder would be required to follow the maintenance procedures contained in those manufacturer's documents that were in effect on the date the certificate holder adopted the maintenance program, plus all the above-referenced later-issued maintenance-related documents. That would be the maintenance program selected by the certificate holder, and therefore it would be mandatory until such time that the certificate holder rejects that program by (1) either electing to adopt the program in effect on that date of decision, or (2) by selecting the second option provided by paragraph (a) of the regulation, *i.e.*, developing its own program and obtaining FAA approval of it.

You also attached five examples of Service Bulletins and Service Instructions that contain maintenance procedures that are part of Lycoming's maintenance program/instructions, and ask whether they are required to be accomplished by the certificate holder under § 135.421(b). In that regard, all three attached Service Bulletins are labeled MANDATORY by Lycoming. Consistent with our answers above, if these documents are applicable and included in Lycoming's maintenance program at the time a certificate holder adopts Lycoming's program for its engine, the certificate holder would be obliged to follow them. A certificate holder would not be required to follow any of them that are issued after the date of adoption of the program, except as noted above. The fact that Lycoming has labeled the Service Bulletins as mandatory has no regulatory effect unless they are already included in the engine maintenance program as adopted by the certificate holder, or the FAA has issued an Airworthiness Directive or other rule incorporating the service bulletin by reference.

Nevertheless, because Lycoming is probably in the best position to provide maintenance advice on its products, a certificate holder would be well-served to follow the procedures in these recommended documents even if they are not part of the adopted maintenance program. For example, we note that Lycoming's Mandatory Service Bulletin No. 533C addresses actions that should be taken in the event of a sudden engine stoppage. The Service Bulletin's Subject is: "Recommended Action for Sudden Engine Stoppage, Propeller/Rotor Strike or Loss of Propeller/Rotor Blade or Tip." We note that, although the procedures in the bulletin may not be mandatory from an FAA regulatory perspective, following them would be an acceptable means of addressing the damage at issue. Doing nothing after one of the listed damage events would not be acceptable to the FAA, and doing something else would run the risk that the FAA would find the attempted maintenance unacceptable.

This response was prepared by Edmund Averman, an attorney in the Regulations Division of the FAA's office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300). If you have further questions concerning this response, please contact Mr. Averman at 202-267-3073.

Federal Aviation Administration

Memorandum

Date: JAN 6 2017

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 (14 CFR) section 135.421(b)

M330-8000.1-E-1612-0467

The Aircraft Maintenance Division, Air Carrier Maintenance Branch, AFS-330, received a request from the Northwest Mountain Flight Standards Regional Office, ANM-230, for a legal interpretation of 14 CFR section 135.421(b). The incoming email is attached for reference. In the email, ANM-230 asks the following questions:

QUESTION 1: What constitutes "maintenance instructions" as addressed in 14 CFR section 135.421(b)?

QUESTION 2: Specifically, are manufacturer's (engine, propeller, rotor, and each item of emergency equipment) service bulletins, service letters, service instructions, etc. that specifically address a maintenance procedure considered to be part of the "manufacturer's maintenance programs" and thus mandatory under this rule?

BACKGROUND: A previous version of FAA Order 8900.1 Volume 2, Chapter 4, Section 8 (revision dated 1/31/2011) is attached for review. Within the last few revisions, the information provided in paragraphs 2-512 and 2-513 have been removed. Unfortunately, we can find no reason as to why it was removed. If this previously removed information is technically correct, AFS-300 believes adding it back into this section would help answer the questions above.

Within this legal interpretation, there are at least two scenarios to consider:

> Scenario #1: The Part 135 certificate holder adopts the manufacturer's maintenance program/instructions on a specific date and will maintain their aircraft to that program up to that date only. In this scenario, would the certificate holder only be required to accomplish the maintenance related service bulletins (SB), service letters (SL), or service information (SI) that is included in the manufacturer's maintenance program up to the date they adopted

this maintenance program? Or would the certificate holder have to continue to adopt future SB, SL, or SIs?

Scenario #2: The Part 135 certificate holder adopts the manufacturer's maintenance program/instructions and state that they will maintain their aircraft to the current manufacturer's program/instructions, without a set date. In this scenario, would the certificate holder be required to accomplish all maintenance related SB, SL, and SIs past, present, and future?

Attached are five examples of SBs and SIs that contain maintenance procedures that are part of Lycoming's maintenance program/instructions. Are these SB and SIs required to be accomplished by the certificate holder under 14 CFR section 135.421(b)?

If you have any additional questions regarding this memorandum, please contact the Aircraft Maintenance Division, AFS-300, at (202) 267-1675.

Attachments

[X] Approved: John Bolgiano Date: 1/6/17

[ ] Disapproved: _____ Date: _____