NOTICE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

N 8900.560

National Policy

Effective Date:
9/5/20

Cancellation Date:
9/5/21

SUBJ: Clarification of Time-in-Service Intervals for OpSpec/MSpec D101, Additional Maintenance Requirements—Aircraft Engine, Propeller, and Propeller Control (Governor)

1. Purpose of This Notice. This notice clarifies documentation requirements in the "Time-in-Service Interval" blocks in Table 1, Aircraft Engine, Propeller, and Propeller Control (Governor), of operations specification (OpSpec)/management specification (MSpec) D101. OpSpec/MSpec D101 is applicable for certificate holders/program managers who maintain their aircraft under Title 14 of the Code of Federal Regulations (14 CFR) part 135, § 135.411(a)(1) or part 91 subpart K (part 91K), § 91.1109.

2. Audience. The primary audience for this notice is Flight Standards Safety Assurance offices' Principal Maintenance Inspectors (PMI) and Principal Avionics Inspectors (PAI) assigned to certificate holders/program managers who maintain their aircraft under § 135.411(a)(1) or § 91.1109. The secondary audience includes the Safety Standards offices.

3. Where You Can Find This Notice. You can find this notice on the MyFAA employee website at https://employees.faa.gov/tools_resources/orders_notices. Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at https://fsims.avs.faa.gov. Operators can find this notice on the Federal Aviation Administration's (FAA) website at https://fsims.faa.gov. This notice is available to the public at https://www.faa.gov/regulations_policies/orders_notices.

4. Explanation of Changes. The Aircraft Maintenance Division has added a note to the OpSpec/MSpec D101 paragraph in FAA Order 8900.1, Volume 3, Chapter 18, Section 6, Parts D and E Maintenance Operations Specifications/Management Specifications/Letters of Authorization, that states, "If the manufacturer recommends or the extension approved by the FAA states a calendar-time and/or cycles/hours interval, all must be listed in the table." The Aircraft Maintenance Division has also added guidance on what should be annotated in OpSpec/MSpec D101 and action taken if the manufacturer does not provide for a time between overhauls (TBO) time limit but rather defined as On-Condition (OC). The Aircraft Maintenance Division has also received a legal interpretation from the FAA's Office of the Chief Counsel (AGC) on what is considered a "current" maintenance/inspection program and what is required per § 135.421(b) regarding maintenance instructions. These clarifications address the questions and comments the Aircraft Maintenance Division has received from the field regarding

documentation requirements for the “Time-in-Service Interval” blocks in Table 1 of OpSpec/MSpec D101.

5. Background. OpSpec/MSpec D101, Table 1 requires certificate holders/program managers to record the maintenance document used and the “Time-in-Service Interval” from that maintenance document or FAA-approved extension interval. There was no clear guidance on what needed to be in the “Time-in-Service Interval” block. Through two legal interpretations and other detailed research, we are providing the following guidance for what needs to be included in this block.

> **Note:** See Appendices A and B for the FAA’s legal interpretations concerning the term “current” with regards to a maintenance/inspection program and requirements of § 135.421(b).

a. In 14 CFR part 1, § 1.1, maintenance is defined to include “overhaul.” The “Time-in-Service Interval” is the manufacturer’s recommended TBO or the FAA-approved extension to the manufacturer’s recommended TBO.

(1) In accordance with § 135.421 and the associated FAA legal interpretations, all certificate holders that maintain their aircraft under § 135.411(a)(1) must follow the manufacturer’s recommended TBO as of the date the owner/certificate holder selects and adopts the manufacturer’s recommended maintenance program or program approved by the Administrator. If the certificate holder selects and adopts the manufacturer’s recommended maintenance program “as revised,” then they would be required to revise their TBOs as the manufacturer revises the TBOs.

(2) For both § 135.411(a)(1) certificate holders and § 91.1109 program managers, OpSpec/MSpec D101 must include TBO requirements per § 91.1015(a)(5) and 14 CFR part 119, § 119.49. If the manufacturer states an hour requirement and a calendar requirement, both must be listed in OpSpec/MSpec D101.

b. If a certificate holder/program manager wants to extend its TBO based on operating environment, trend analysis, etc., it must submit data to the FAA. Based on that data, the FAA could extend its TBO and revise the TBO intervals in the OpSpec/MSpec. As authorized by § 91.1017(a)(1) or § 119.51(a)(1) and (b), the FAA may amend any OpSpec/MSpec if it determines that safety in air commerce and the public interest requires the amendment, which could include the TBO limits in OpSpec/MSpec D101.

c. There are various methods and techniques that certificate holders/program managers may use to meet the requirements imposed by regulations. These requirements are typically established through the recommendations of the manufacturer. As such, the manufacturer is required to do one of the following:

- Establish an airworthiness limitation (AL) or other mandatory replacement interval for the engine, propeller, or governor typically referred to as a hard-time (HT);
- Define an "overhaul" time for the engine, propeller, or governor; or
- Provide technical data to support the continued serviceability of the product, typically referred to as OC requirements.

d. When the manufacturer establishes OC requirement(s), the certificate holder/program manager would maintain the engine, propeller, or governor under that criteria. The criteria established by the manufacturer may be presented by depicting conformity and verifying current compliance with various Service Bulletins (SB), part numbers, inspection programs, or other means. The certificate holder/program manager would need to define the OC requirement(s) they are following and show the FAA how they manage the SB, part number, inspection program, or other means of compliance verification to ensure they maintain the engine, propeller, or governor under the requirements recommended by that manufacturer. The principal inspector (PI) must validate the OC requirements the certificate holder/program manager is utilizing before authorizing OpSpec/MSpec D101.

e. Based on the legal interpretations and other research, the FAA's Aircraft Maintenance Division has determined there may be a systemic issue with the documentation in OpSpec/MSpec D101, Table 1. The intent of this notice is to ensure certificate holders/program managers are following the manufacturer's correct recommendations.

6. Action. This notice requires mandatory action by the PMI or PAI assigned to certificate holders/program managers that maintain aircraft under § 135.411(a)(1) or § 91.1109. The PMI or PAI should provide this notice to these certificate holders/program managers. The PMI or PAI must coordinate with these certificate holders/program managers and complete the following actions.

a. Review Documents. Within 90 calendar-days of the effective date of this notice:

(1) Review the revised Order 8900.1, Volume 3, Chapter 18, Section 6 for clarification on what must be recorded in the OpSpec/MSpec D101, Table 1, "Time-in-Service Interval" block, and review the two legal interpretations included in this notice.

(2) Using the revised guidance and legal interpretations, review the authorized OpSpec/MSpec D101, Table 1 maintenance documents.

(3) Verify that the "Time-in-Service Interval" blocks accurately reflect the correct calendar-time and/or cycles/hours/OC, as recommended by the manufacturers or extension approved by the FAA (e.g., "1500 hours and/or 12 years, whichever occurs first," "2000 hours or 72 months," or "1800 hours"). If the block states "On-Condition," verify the certificate holder/program manager defines in its manual the OC requirements it is following and is able to show the FAA how it manages the SB, part number, or other means of compliance verification to ensure it maintains the engine, propeller, or governor under the requirements imposed by that manufacturer.

(4) If deficiencies are identified, ensure the certificate holder/program manager initiates a corrective action plan within 180 calendar-days of the effective date of this notice.

b. Reporting Systems.

(1) Use Program Tracking and Reporting Subsystem (PTRS) for Part 91K.

(a) Use activity code 3314 or 5314 for review of a current MSpec D101.

(b) If a revision to MSpec D101 is required based on review, use activity code 3317 or 5317 instead of 3314 or 5314. Whether a revision is needed or not, enter "N8900.560" without quotes in the "National Use" field.

(c) If MSpec D101 needs to be amended, follow the amendment procedures in § 91.1017.

Note: These steps will need to be repeated for each part 91K program manager the PMI or PAI is assigned that maintains their aircraft under § 91.1109.

(2) Use the Safety Assurance System (SAS) for Part 135. Follow the steps below.

(a) PMIs, PAIs, or assigned aviation safety inspectors (ASI) will document completion of the actions required by subparagraph 6a using a National/Divisional Custom Data Collection Tool (C DCT) titled "OpSpec D101 Time-in-Service Intervals Verification."

(b) If deficiencies were noted in the C DCT, the PMI or PAI must use the Action Item Tracking Tool (AITT) to track actions required by subparagraph 6a(4). OpSpec D101 may need to be amended.

(c) If OpSpec D101 needs to be amended, follow the amendment procedures in § 119.51.

(d) C DCT. The PMI or PAI will load the applicable National/Divisional C DCT template using the following steps:

1. From the Comprehensive Assessment Plan (CAP), select the "Add Assessment" button.

2. Select "CH/A" from the dropdown menu.

3. Under "Specialty," ensure "Airworthiness" is selected from the dropdown menu.

4. Select the "Custom DCT" radio button.

5. In the text box, enter any text (it will autopopulate with the template title in subsequent steps). This will then activate the "Add" button.

6. Select "Add."

7. Enter “N8900.560” without quotes in the “Local/Divisional/National” field.

8. Select the checkbox for “LRN Locked?”

9. For “Requires Own Assessment?” select “Yes” from the dropdown menu.

10. Select the “Performance” radio button next to “Question Type.”

11. Ensure the “AW” radio button next to “Specialty” is selected.

12. Select the “Yes” radio button from the “Apply from Templates” menu and select “National/Divisional” from the dropdown menu.

13. Select “OpSpec D101 Time-in-Service Intervals Verification” from the “Select Template” dropdown menu.

14. Select “Search.”

15. When the question populates, click on the “Add” button.

16. Scroll up to the “Custom DCT Context” panel and verify that the “Custom DCT Name” field has autopopulated with the template title and replaced the text entered previously in step *5*.

17. Scroll back down and select “OK.” The “Assessment Details” window will appear.

18. Select an “Assessment Due Date” from the dropdown menu.

19. Enter “PI Common Instructions” if desired.

20. Under the “DCT Assignment” section:

a. Select the “Recommended/Assigned To” inspector from the dropdown menu.

b. Select a “Complete Data Collection By” date from the calendar menu.

c. Enter “Instructions” in the text field (specific to this particular DCT).

d. “Location” may be left blank.

e. “M/M/S” may be left blank.

f. If desired, documents such as this notice may be appended using the “Attach Document” button.

g. When the information has been populated for the C DCT, select “Save.”

21. Verify that the C DCT appears in the CAP.

22. Select “Submit Plan.”

Note: These steps will need to be repeated for each certificate holder the PMI or PAI is assigned that maintains their aircraft under § 135.411(a)(1).

7. Disposition. We will incorporate the information in this notice into Order 8900.1 before this notice expires. Direct questions and comments concerning the information in this notice to the Aircraft Maintenance Division at 202-267-1675.

Robert C. Carty
Deputy Executive Director, Flight Standards Service

Appendix A. Memorandum Regarding Legal Interpretation of 14 CFR Part 91, § 91.409(f)(3)

Memorandum

U.S. Department of Transportation
Federal Aviation Administration

Subject: Legal Interpretation of 14 C.F.R. § 91.409(f)(3) Date: DEC 5 2008

From: Assistant Chief Counsel for Regulations, AGC-200 Reply to Attn. of:

To: Manager, Aircraft Maintenance Division, AFS-300

This is in response to your August 25, 2008, request for a legal interpretation on the use of the phrase "current maintenance instructions." Your request, including the factual circumstances contained in associated background materials accompanying the request, is premised on 14 C.F.R. § 91.409(f)(3), which uses the phrase "current inspection program." You framed the issue as: Whether, if a manufacturer amends its maintenance/inspection instructions, an affected aircraft operator is obliged to comply with the new instructions in order to be in compliance with § 91.409(f)(3). You stated that historically this has been interpreted to mean that, when a manufacturer updates its maintenance instructions, an operator is obliged to comply with these new instructions. It is our opinion that the operator is not so obliged. The legal conclusions below are equally pertinent to either type of document—*current maintenance instructions* or *current inspection program*.

A 1998 memorandum from the then Assistant Chief Counsel for Regulations[1], addressed the meaning of "current" with respect to certain regulatory requirements. The memorandum noted that, "[a]ccording to Webster's II Dictionary the adjective 'current' means belonging to the present time." The memorandum distinguished between the use of the term in the context of making available to an aircraft owner a *current* Airplane Flight Manual (AFM) "at the time of delivery of the aircraft," (in which case the "current" obligation is fulfilled at the point in time of the aircraft delivery once and for all), and its use where there are no similar words of limitation and the nature of the obligation to be "current" is *ongoing*. In the memorandum's discussion, the context of the ongoing obligation was the obligation under 14 C.F.R. § 121.141(a) for an air carrier to keep a *current* AFM. The air carrier's duty would be to incorporate subsequent amendments issued by the manufacturer into the AFM of an airplane it operated, thereby keeping the AFM current. This is essentially a paperwork requirement to keep the manuals up to date. That rule was adopted through notice and comment procedures required by the Administrative Procedure Act (APA) (5 U.S.C. § 553), and the obligation incumbent on the regulated entities (air carriers) was determined at the time of adoption and does not change over time, unless amended by another notice and comment rulemaking process.

[1] Memorandum from the Assistant Chief Counsel for Regulations, AGC-200, dated October 8, 1998, on Legal Interpretation of Certain Provisions of Parts 21, 25, 91 and 121.

The 1998 memorandum also broached the question whether, under 14 C.F.R. § 91.9(a), an operator could be required to comply with a change to an operating limitation in an AFM if the change had not been made through the notice and comment procedures of the APA. Section 91.9(a) requires, in pertinent part, that "no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual . . . ." Because the specific question had not been asked, the memorandum reserved the issue for another day.[2] That day is now. Our answer is that an operator could not be so required, and our reasoning is the same as discussed below in answer to your questions concerning required compliance with "current" (*i.e.*, subsequently issued changes to maintenance manuals or inspection programs). 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 APA, and the public would not have had an opportunity to comment on these future limitations changes.

The legal implications of the issue you raise are similar to those discussed above on future-issued limitations changes to an AFM. If "current" in § 91.409(f)(3) and similarly worded regulations could be read to mean an ongoing obligation, manufacturers unilaterally could impose regulatory burdens on individuals through changes to their inspection programs or maintenance manuals. In essence, they would be making rules that members of the public affected by the change would have to follow. Under the APA, a rule is any agency statement "designed to implement, interpret, or prescribe law or policy . . . ." For purposes here, a rule is any statement that imposes legal requirements. In order for an agency to adopt a rule, it must comply with the APA, specifically, 5 U.S.C. § 553. That section requires notice and comment procedures for rules imposing requirements unless the agency makes a "good cause" finding that such procedures are "impractical, unnecessary, or contrary to the public interest" (for example, an emergency Airworthiness Directive (AD)).

If the word "current" in § 91.409(f)(3) and other similarly worded provisions did mean an ongoing obligation, when manufacturers make changes to their instructions and programs (which often accompany newly-produced models of products, but which also cover the previously-produced models), the new requirements could impose financial and other burdens on owners and operators of older aircraft that they did not bargain for. An interpretation of the regulation that would allow manufacturers unilaterally to issue changes to their recommended maintenance and inspection 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.

Moreover, nothing in the regulatory history of § 91.409(f)(3) indicates that the agency intended future changes to inspection programs issued unilaterally by manufacturers to be binding on an operator who had already adopted a specific program that was current at the time of adoption. (*See* 36 FR 19507, October 7, 1971, and 37 FR 14758, July 25, 1972.) Therefore, to comply with § 91.409(f)(3) an operator need only adopt a manufacturer's

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[2] *See* the memorandum's footnote 1.

inspection program that is "current" as of the time he adopts it, and that program remains "current" unless the FAA mandates revisions to it. Such a mandate would be adopted in the form of either an AD or an amendment to the operating rules. Although manufacturers' program revisions do not require operators to revise their inspection programs, operators may incorporate these revisions, and typically do so. This is an acceptable practice, and it fully complies with § 91.409(f)(3).

We agree with AFS-300 that a rulemaking change to clarify the meaning of § 91.409(f)(3) and similarly-worded regulations to remove the ambiguity associated with the term "current" would be beneficial. AGC-200 staff will work with your staff in developing clarifying rule text and associated preamble language.

This response was prepared by Edmund Averman, an Attorney in the Regulations Division of the Office of the Chief Counsel. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Rebecca B. MacPherson

Appendix B. Memoranda Regarding Legal Interpretation of 14 CFR Part 135, § 135.421(b)

Flight Standards Request for Legal Interpretation

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 Bo Gulk Date: 1/6/17

[ ] Disapproved: _____ Date: _____

AGC-200 Response to Flight Standards Request for Legal Interpretation of § 135.421(b)

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.