UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:	FAA Order No. 95-27
VALLEY AIR SERVICES, INC.	Served: December 19, 1995
	Docket Nos. CP94NE0095 94EAJANE0017

DECISION AND ORDER

This is an attorney fees case brought under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504(a)(1), and the Federal Aviation Administration's (FAA's) EAJA regulations, 14 C.F.R. Part 14. The FAA has appealed from the initial decision of Administrative Law Judge Robert L. Barton, Jr. awarding Valley Air Services, Inc. (Valley Air) attorney fees in the amount of $16,510.21.[1] In the underlying action, the FAA sought to impose a $4,000 civil penalty on Valley Air for welding cracked spinners without approval from either the FAA or the manufacturer, an alleged violation of four separate Federal Aviation Regulations.[2] The law judge found, however, that the FAA had failed to prove a violation of any of the four regulations alleged in the complaint, and the Administrator affirmed the law judge as to his ultimate conclusion, though not on the same basis. In the Matter of Valley Air Services, Inc., FAA Order No. 94-3 (March 10, 1994). In the

[1] A copy of the law judge's initial decision is attached.

[2] Specifically, 14 C.F.R. §§ 135.5, 135.25(a)(2), 135.413(a), and 135.421. For the text of these regulations, as well as other pertinent regulations, see the Addendum to this decision.

FAA's appeal from the law judge's decision awarding Valley Air attorney fees, the FAA argues that Valley Air was not entitled to an award of fees because the FAA's position in the underlying action was substantially justified.

Permissibility of Valley Air's Supplement

The threshold issue in this case is whether the law judge erred in accepting Valley Air's supplement to its application for attorney fees. In its answer to the application for fees, the FAA argued that Valley Air's application should be denied, among other reasons, because Valley Air failed to substantiate the amount claimed. The FAA pointed out that Valley Air's counsel failed to itemize his fees as required by the FAA's EAJA regulations and the EAJA itself.

Nine days after the FAA filed its answer, Valley Air filed a supplement itemizing the fees it had requested. The itemization, dated May 27, 1994, was in the form of an affidavit and was sworn to by counsel under penalty of perjury.

The FAA filed no objection to the filing or content of Valley's Air supplement before the law judge issued his initial decision awarding fees to Valley Air on July 7, 1994. In the initial decision, the law judge determined that the supplement should be accepted. He reasoned that the FAA's EAJA regulations, and in particular 14 C.F.R. §§ 14.12 and 14.26, contemplate the filing of additional material.[3] The law judge stated that if Valley Air had not volunteered the supplement, he would eventually have issued an order under 14 C.F.R. §§ 14.12 and 14.26 requiring Valley Air to submit the same information anyway.

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[3] 14 C.F.R. § 14.12 provides that the administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed, while 14 C.F.R. § 14.26 provides for the filing of written submissions other than the application, answer, or reply, upon the request of either the administrative law judge or one of the parties.

In its appeal brief, the FAA argues that the law judge erred in accepting Valley Air's supplement to its EAJA application. The FAA asserts that while the regulations cited by the law judge allowed *the law judge* to require additional information from Valley Air, they did not permit Valley Air to supplement its application *without leave*. The FAA also points out that Valley Air filed its supplement after the deadline for filing the EAJA application; therefore, the FAA argues, the supplement would be considered untimely as the application. The FAA contended that the law judge's reliance on Section 14.12, which provides that the law judge may require the submission of vouchers, receipts, or other substantiation, was misplaced. According to the FAA, if an itemized amount is questionable, then the law judge may, under the authority of Section 14.12, require some proof or verification to support it. The FAA asserts that Section 14.12 should not be used to permit an applicant to cure what the FAA terms "very basic defects" in the application, such as the failure to itemize.

The FAA also argues in its appeal brief that it was "greatly prejudiced" by the law judge's acceptance of Valley Air's supplement. According to the FAA, one purpose of the itemization requirement in Section 14.12 is to provide the FAA the information it needs to articulate meaningful objections to the amounts claimed in the application for fees. The FAA argues that it was denied this opportunity when the law judge accepted Valley Air's supplement without providing the FAA an opportunity to respond. The FAA lists several objections to the content of the supplement, but states that lodging these objections in its appeal brief does not cure the prejudice it already suffered when it was unable to present its objections to the law judge.

The law judge did not err in accepting Valley Air's supplement to its application for fees. Section 14.26 expressly permits the filing of written submissions other than the application, answer, or reply, upon the request of the law judge or one of the parties. The law judge had the discretion under Section 14.26 to accept the supplement that Valley Air filed on its own initiative.

It has been held that a failure to itemize an EAJA application under 28 U.S.C. § 2412(d)(1)(B) is a deficiency that may be corrected by later supplementation if the government does not show any prejudice. Dunn v. United States, 775 F.2d 99, 103-104 (3rd Cir. 1985). Although the FAA claims it has suffered prejudice, it does not explain why it failed to object to the contents of Valley Air's supplement within a reasonable time after it was filed. The law judge did not issue his decision until more than 40 days after the filing of Valley Air's supplement. Thus, although the FAA asserts that it was denied the opportunity to present its objections to the law judge, it appears that the FAA simply failed to take the opportunity it had. Procedural fairness does require that the party opposing the fee award be permitted the opportunity to scrutinize the fee requested and to present any legitimate objections. National Association of Concerned Veterans v. Secretary of Defense, 675 F.2d 1319, 1324 (D.C. Cir. 1982). It does not appear, however, that the FAA was denied that opportunity in this case. Therefore, it is held that the law judge did not err in accepting Valley Air's supplement to its application.

The Equal Access to Justice Act

Under the Equal Access to Justice Act (EAJA), a prevailing party is entitled to an award of attorney fees and other expenses unless the government's actions

were "substantially justified" or "special circumstances make a fee award unjust." Sullivan v. Hudson, 490 U.S. 877, 883 (1989).[4] Eligibility for a fee award in an agency adjudication requires:

1. that the claimant be a prevailing party;
2. that the Government's position was not substantially justified; and
3. that no special circumstances make an award unjust.

The government bears the burden of proving that its position was substantially justified. 14 C.F.R. § 14.04(a).

The FAA has not challenged the law judge's determinations that Valley Air was the prevailing party and that no special circumstances were present. Thus, only the "substantially justified" condition is at issue in this case.

Substantial Justification

Under the EAJA, no award of attorney fees will be made if the agency's position was "substantially justified." 5 U.S.C. § 504(a)(1). "Substantially justified" means justified to a degree that could satisfy a reasonable person. Immigration and Naturalization Service v. Jean, 496 U.S. 154, 158 n.6 (1990), citing Pierce v. Underwood, 487 U.S. 552, 565-566 (1988). "Substantial justification" does not mean

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[4] The EAJA provides, in pertinent part, as follows:

> An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with the proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust. Whether or not the position of the agency was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

5 U.S.C. § 504 (a)(1).

justified to a high degree; rather, it is satisfied if reasonable people could differ as to the appropriateness of the contested action. Underwood, 487 U.S. at 565. For the government to meet its burden of showing substantial justification, it must show:

1. a reasonable basis in truth for the facts alleged;
2. a reasonable basis in law for the theory it propounded; and
3. a reasonable connection between the facts alleged and the legal theory advanced.

Smith v. National Transportation Safety Board, 992 F.2d 849, 852 (8th Cir. 1993); Harris v. Railroad Retirement Board, 990 F.2d 519, 520-521 (10th Cir. 1993); United States v. One Parcel of Real Property, 960 F.2d 200, 208 (1st Cir. 1992).

Position of the Agency

In his initial decision, the law judge stated that a single position of the government must be identified in making the substantial justification determination. (Initial Decision at 15.) The case law, however, does not appear to support this statement.[5] *See* Goldhaber v. Foley, 698 F.2d 193, 197 (3rd Cir. 1983), stating that although the EAJA refers to the government's "position" in the singular, two or more independently dispositive claims would nevertheless be considered separate "positions" for purposes of EAJA. As the Goldhaber court

[5] The case cited by the law judge (Initial Decision at 15, n.6), Immigration and Naturalization Service v. Jean, 496 U.S. 154 (1990), does not support his conclusion that a single position of the government must be identified in a case like this, in which a number of different regulations were alleged to have been violated. In the Jean case, it was held that the government's position regarding the merits of the underlying proceeding was *not* substantially justified. The government then sought to defeat that portion of the attorney fee application attributable to the applicant's defense of the fee application by arguing that the government's position *in the EAJA proceeding* was substantially justified. It was in this context that that the Supreme Court stated that a single position of the government must be identified. The Supreme Court did not address the issue of whether, in a case involving a number of alleged regulatory violations requiring proof of non-identical elements, a single position of the government must be identified.

stated, "[it would be] incongruous to deny fees to a prevailing party who identifies and defeats one unreasonable government position simply because the government has substantial justification for defending a second claim in the same action." *Id.* *See also* Myers v. Sullivan, 916 F.2d 659, 666 (11th Cir. 1990), referring to the government's "positions" or "arguments" using the plural form; and McCarthy v. United States, 1 Cl. Ct. 446, 458 (1983), stating that "an episodic and issue-by-issue breakdown of the position of the United States is permissible when factually warranted."

In a case like this, where four separate regulations were alleged to have been violated, and the elements of the regulations are not identical, it is inappropriate to identify a single position of the government. In this case, the most sensible approach is to identify a separate position of the government for each alleged regulatory violation. The analysis that follows examines, regulation by regulation, whether the agency's position was substantially justified.

Section 135.5

In the complaint, the FAA alleged that Valley Air violated 14 C.F.R. § 135.5, which prohibits an air taxi/commercial operator from operating an aircraft in violation of the operator's operations specifications. The particular operations specification at issue provided that the aircraft must not be used in air taxi or commercial operations unless the Hartzell propeller and its component parts are maintained in an airworthy condition in accordance with the maintenance set forth in the Piper Service Manual.[6]

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[6] The exact language of the operations specification in question is as follows:

> Aircraft operated by Valley Air Services, Inc. shall not be used in air taxi or commercial operator operations unless . . . [t]he Hartzell propeller . . . and its

The operations specification at issue applies only to the propeller and its component parts. Thus, in order to show a violation of Section 135.5 and the underlying operations specification, the FAA needed to show that a spinner is either part of the propeller or one of its component parts. In the Matter of Valley Air Services, Inc., FAA Order No. 94-3 at 8 (March 10, 1994). The law judge found that the spinners were not part of the propeller itself, but instead were part of the propeller *installation* or *assembly;* the FAA did not challenge this finding on appeal. *Id.* As a result, the Administrator found that the FAA failed to prove a violation of 14 C.F.R. § 135.5.

At the hearing, the FAA offered the testimony of James Edwards, the Principal Maintenance Inspector for Valley Air, to support its assertion that the spinner was part of the propeller. Mr. Edwards testified that he had not been sure himself whether the spinner was technically part of the propeller. Consequently, he contacted FAA Regional Specialist Paul Inglis and was referred by the latter to Mr. Marty Buckman of the FAA's New England Regional Headquarters. (Tr. 57-58.) Mr. Edwards described Mr. Buckman as the FAA contact person for information on propellers (*Id.* at 57). Mr. Edwards testified that Mr. Buckman told him that the spinner was part of the propeller because the propeller was tested with the spinner when the propeller was type certificated. (*Id.* at 58.) According to Mr. Edwards, he based his conclusion that the spinner was part of the propeller entirely on his conversations with Mr. Buckman. (*Id.* at 58, 69.) When the law

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component parts are maintained in airworthy condition in accordance with the maintenance . . . set forth in the Piper PA-31-350 Service Manual F761-488, as amended . . . .

judge asked the FAA attorney at the hearing if there was any reason Mr. Buckman could not be present to testify, she said no. (*Id.* at 59.)

As the law judge noted, there were several problems concerning Mr. Buckman's alleged statements:

> First, because he was not produced as a witness, he was not subject to cross-examination, and we do not know if he communicated the information which Mr. Edwards attributes to him. Further, Buckman certainly cannot be credited as an expert because his education, experience, and training have not been introduced in evidence. Had Mr. Buckman been produced, Respondent could have sought to determine if in fact he said what Mr. Edwards alleges he said, his qualifications to make those judgments, and the correctness of the statements.

(Initial Decision at 19.)

Mr. Inglis, the FAA's Regional Specialist, testified that in his opinion the spinner was part of the propeller, but he was unable to explain the basis for his opinion. (*Id.* at 109-110.) There is no other evidence in the record to show that a spinner is part of the propeller. Thus, the FAA has failed to show that it had a reasonable basis for alleging that the spinner was part of the propeller. As a result, the law judge's holding that the FAA lacked a reasonable basis in fact for the Section 135.5 allegation must be affirmed. The law judge did not err in holding that the Section 135.5 allegation was not substantially justified.

Section 135.421(a)

The Section 135.421(a) allegation, like the Section 135.5 allegation, depended upon a showing that a spinner was part of the propeller. Section 135.421(a) required Valley Air to comply with the manufacturer's recommended maintenance programs, or a program approved by the Administrator, *for each aircraft engine, propeller, rotor, and each item of emergency equipment*. As discussed above, the

FAA lacked a substantial basis in fact for asserting that the spinners were a part of the propeller. The FAA did not attempt to argue that the spinners fell into one of the other categories listed in Section 135.421(a)--the engine, rotor, or items of emergency equipment. Thus, the law judge did not err in holding that the FAA lacked a reasonable basis in fact for the Section 135.421(a) allegation and that the FAA's position regarding Section 135.421(a) was not substantially justified.

Section 135.25(a)(2)

The FAA also alleged that Valley Air violated 14 C.F.R. § 135.25(a)(2) by operating an aircraft in Part 135 revenue service when it was not in airworthy condition. The Federal Aviation Act, as amended, sets forth a two-prong test for airworthiness, both prongs of which must be met: first, the aircraft must conform to its type certificate, and second, the aircraft must be in condition for safe operation. 49 U.S.C. § 44704(c) (providing that "[t]he Administrator shall issue an airworthiness certificate when the Administrator finds that the aircraft conforms to its type certificate and, after inspection, is in condition for safe operation"); In the Matter of Watts Agricultural Aviation, Inc., FAA Order No. 91-8 at 17 (April 11, 1991). The FAA did not attempt to prove that the aircraft failed to meet the second prong of the test--*i.e.*, that it was unsafe.[7] Rather, the FAA argued that Valley Air's aircraft failed to meet the first prong of the test--the requirement that it conform to its type certificate. According to the FAA, Valley Air's attempts to repair the cracked spinners by welding them, which the manufacturer did not recommend or

[7] At the hearing, the law judge asked the FAA attorney, "Is the FAA alleging that the weld performed by Mr. Minck affected the structural integrity [of the spinners] or weakened the spinners?" The FAA attorney responded, "We're not alleging that." (Tr. 18.)

approve, resulted in an aircraft that was not in conformity with its type certificate.[8] (Complainant's Post-Hearing Brief at 6.)

At the hearing, the FAA presented the testimony of Inspector Edwards, who served as the FAA's expert regarding airworthiness and maintenance. Mr. Edwards testified that he reviewed the type certificate data sheet for the aircraft at issue, that nothing on the data sheet provided for a weld repair to a spinner, and that in his opinion, the aircraft, with weld-repaired spinners, did not conform to its type certificate. (Tr. 67-68.)

In his initial decision, the law judge noted that although the FAA contended that the welded spinners altered the aircraft from its type design, it did not offer the type certificate data sheet into evidence to substantiate that contention. The only evidence offered by the FAA to support the alleged violation was testimony by Mr. Edwards, and the law judge did not credit his testimony.[9] (Initial Decision at 18.) As a result, the record is inadequate to show that the FAA was substantially justified in alleging a violation of Section 135.25(a)(2). Accordingly, the law judge's

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[8] The law judge stated that the FAA took a different and inconsistent legal position earlier in the proceedings, relying upon the following statement in the FAA's Response to Respondent's Motion for Summary Judgment: "The FAA's position . . . is that a weld repair to a spinner renders that spinner unairworthy in that it no longer equals its original or properly altered condition." (FAA's Response to Motion for Summary Judgment at 2.) This statement, however, does not appear to be inconsistent with the legal position discussed in the text. Although the law judge is correct that in difficult cases, one of the factors the courts have considered in making the substantial justification determination is the consistency of the government's position, Spencer v. NLRB, 712 F.2d 539, 559-61 (D.C. Cir. 1983), *cert. denied*, 466 U.S. 936 (1984), the record does not support the law judge's conclusion that the FAA changed its legal theory with regard to the Section 135.25 allegation during the course of the proceeding.

[9] As noted in the decision regarding the underlying civil penalty action, Mr. Edwards' testimony was particularly weak and uncertain. In the Matter of Valley Air Services, Inc., FAA Order No. 94-3 at 7 (March 10, 1994).

holding that the FAA's position regarding Section 135.25(a)(2) was not substantially justified is affirmed.

Section 135.413

The complaint alleged a violation of Section 135.413(a) "in that Respondent, as a certificate holder primarily responsible for the airworthiness of its aircraft, did not have defects repaired between required maintenance under Part 43 of the Federal Aviation Regulations." The particular provision of Part 43 that the FAA claimed Valley Air failed to follow was Section 43.13(a).[10] Section 43.13(a) requires persons performing maintenance on an aircraft to use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator. Valley Air argued that by following Advisory Circular 43.13-1A (AC 43.13-1A) (entitled "Acceptable Methods, Techniques, and Practices: Aircraft Inspection and Repair") in welding the spinners, it was using "other methods, techniques, and practices acceptable to the Administrator" in accordance with the above-quoted language of Section 43.13(a). The FAA countered that unless the manufacturer recommends that its part be welded, the data for accomplishing the weld in AC 43.13 does not apply.

[10] In its response to interrogatories, the FAA stated that it was Section 43.13(a) that required Valley Air to contact the manufacturer about a cracked spinner, to determine the manufacturer's requirements, and to replace rather than weld the spinners. Although the FAA stated at the hearing that it was not alleging a violation of Section 43.13(a), agency counsel may have meant only that the FAA had not specifically alleged in the complaint that Section 43.13 had been violated.

It was held in FAA Order No. 94-3 that while the FAA's argument may be correct, the FAA failed to provide any support for it. In the Matter of Valley Air Services, Inc., FAA Order No. 94-3 at 10-11 (March 10, 1994). As noted in that order, "[n]otably absent from Complainant's brief are any citations to the transcript or other evidence in the record to support Complainant's argument." *Id.* Moreover, AC 43.13-1A was not even introduced at the hearing. As a result, it was held that the FAA had not sustained its burden of proving that AC 43.13-1A contains procedures that may not be used absent manufacturer approval. For the same reasons, the FAA has failed to show it had a reasonable basis in fact and law for the Section 135.413 allegation. The law judge did not err in finding that the FAA's position regarding Section 135.413 was not substantially justified.[11]

Amount of Award

The FAA claims that the award of fees should be reduced for several reasons. First, the FAA claims that Valley Air included fees stemming from the consolidation of the instant spinners case with the case involving governors. The FAA argues that the time spent on the consolidation of the two cases is partially attributable to Valley Air's unsuccessful appeal of the governors case and, therefore, should be reduced by half. This argument is correct. It was error for the law judge to award fees that are fairly attributable to a case in which Valley Air did not prevail. As a result, the fees stemming from the consolidation of the two cases (3.8 hours on

[11] Although the law judge analyzed the violation of Section 135.413(a) in terms of whether the FAA had shown a major repair, I do not believe this is necessary or appropriate, though the result would be the same in any event. The regulation that requires that a major repair be done in accordance with technical data furnished by the Administrator, 14 C.F.R. § 135.437(b), was not even alleged in the complaint, and nowhere in the record did the FAA specifically connect Section 135.437(b) to the regulations alleged in the complaint to have been violated.

June 18, 1991, plus 0.675 hours on July 18, 1991 equals 4.475 hours; 4.475 hours times $75 per hour equals $335.63) are reduced by half, or $167.81.

Second, the FAA asserts that 6.5 hours of attorney time for "drafting discovery requests" spread over the period from August 16, 1991, to August 28, 1991, and 31 hours for "preparing and filing findings of fact and conclusions of law" spread over the time period of March 1, 1993, to March 31, 1993, were too broad to allow proper objection.

The better practice for counsel submitting a fee application is to include a daily breakdown of hours worked on the case. Indeed, if there is any question about the hours spent, counsel may be asked to provide photocopies of his or her daily time logs. (*See* 14 C.F.R. § 14.12, which provides that the applicant may be required to substantiate any expenses claimed.) Here, however, the FAA failed to object in a timely manner. Had the FAA filed a timely objection, Valley Air could have provided the FAA with a daily breakdown before the law judge issued his decision.

In any event, it is unclear in this particular case that a day-by-day breakdown was necessary. The issue was whether it was reasonable for counsel to spend 6.5 hours on the discovery requests and 31 hours on the findings of fact and conclusions of law. The FAA has failed to show that the law judge erred in finding that these figures were reasonable. As a result, the fees at issue will not be subtracted from the award.

Third, the FAA argues that the law judge improperly awarded expert witness fees in excess of the statutory cap for two witnesses, Mr. McIntosh and Mr. Thurston. The law judge did not, however, award fees for Mr. McIntosh's

services. (*See* Initial Decision at 25, showing fees for Mr. McIntosh of $0.) Only Mr. Thurston's fees are at issue.

Section 3109 of Title 5 of the United States Code limits the amount the FAA may pay experts, barring special authorization, to the highest rate payable under the General Schedule.[12] In addition, Section 14.05(b) of Title 14 of the Code of Federal Regulations provides that no award to compensate an expert witness may exceed the highest rate at which the agency pays expert witnesses. The FAA has submitted documents demonstrating that the highest rate payable under the General Schedule is that of a GS-18, and that in 1993, the year in which Mr. Thurston rendered his services, the hourly rate for a GS-18 was $46.63. (Appendix A and B to Appeal Brief.)

The law judge awarded fees for Mr. Thurston's services in the amount of $150 per hour, stating that the FAA did not contend, in its answer to the fee application, that Mr. Thurston's fees were excessive. A law judge, however, should not award a fee to an expert without ensuring that the award is within the statutory and regulatory limits. In the instant case, the law judge should have required the FAA to submit information concerning the maximum allowable amount of expert fees before issuing his decision.

The law judge awarded Valley Air $1,950 for the 13 hours of Mr. Thurston's time (at $150 per hour). He actually should have awarded Valley Air $606.19 for Mr. Thurston's time (the hourly GS-18 rate of $46.63 times 13 hours). The award to Valley Air is therefore reduced by $1,343.81.

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[12] The General Schedule is found at 5 U.S.C. § 5332.

Conclusion

The law judge did not err in finding that the FAA lacked substantial justification for its positions regarding 14 C.F.R. §§ 135.5, 135.25(a), 135.413(a), and 135.421. However, the law judge's award of $16,510.21 in attorney fees and costs must be reduced as follows:

$16,510.21	
- 167.81	(Governors case)
- 1,343.81	(Excess expert fees)
$14,998.59	

Thus, Valley Air is awarded attorney fees in the amount of $14,998.59.[13]

DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of December, 1995.

[13] Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. § 46110), this decision shall be considered an order assessing civil penalty. *See* 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1995).

ADDENDUM

Regulations Cited in the Complaint

14 C.F.R. § 135.5 (1989) provides, in relevant part, as follows:

> No person may operate an aircraft under this part without, or in violation of, an air taxi/commercial operator (ATCO) operating certificate and appropriate operations specifications issued under this part . . . .

14 C.F.R. § 135.25(a)(2) (1989) provides, in relevant part, as follows:

> (a) . . . [N]o certificate holder may operate an aircraft under this part unless that aircraft--
>
> . . . .
>
> (2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter, including those relating to identification and equipment.

14 C.F.R. § 135.413(a) (1989) provides, in relevant part, as follows:

> Each certificate holder is primarily responsible for the airworthiness of its aircraft, including airframes, aircraft engines, propellers, rotors, appliances, and parts, and shall have its aircraft maintained under this chapter, and shall have defects repaired between required maintenance under part 43 of this chapter.

14 C.F.R. § 135.421 (1989) provides as follows:

> (a) Each certificate holder who operates an aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, must comply with the manufacturer's recommended maintenance programs, or a program approved by the Administrator, for each aircraft engine, propeller, rotor, and each item of emergency equipment required by this chapter.
>
> (b) For the purpose of this section, a manufacturer's maintenance program is one which is contained in the maintenance manual or maintenance instructions set forth by the manufacturer as required by this chapter for the aircraft, aircraft engine, propeller, rotor, or item of emergency equipment.

Other Pertinent Regulations

14 C.F.R. § 43.13(a) (1989) provides as follows:

> Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

14 C.F.R. § 135.437 (1989) provides, in relevant part, as follows:

> (a) A certificate holder may perform or make arrangements with other persons to perform maintenance, preventive maintenance, and alterations as provided in its maintenance manual. . . .
>
> (b) A certificate holder may approve any airframe, aircraft engine, propeller, rotor, or appliance for return to service after maintenance, preventive maintenance, or alterations that are performed under paragraph (a) of this section. However, in the case of a major repair or alteration, the work must have been done in accordance with technical data approved by the Administrator.