

April 13, 2018

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Room 831
Washington DC 20553-0002

Re: Public law 115-141, Section 420(b)
Operations Specifications Paragraphs Review

Dear John:

The undersigned have long been concerned about the method by which the agency issues operations specifications paragraphs to and for operators and air agencies. The recent enactment of Public Law [115-141](#), Section 420(b) provides the perfect opportunity to review the agency's procedures for performing this important function.

Congress has directed that "[without] a written finding of necessity, based on objective and historical evidence of imminent threat to safety, the Administrator shall not promulgate any operations specification, policy, or guidance document that is more restrictive than, or requires procedures that are not expressly stated in, the regulations."

Currently, the agency promulgates "standard" operations specifications paragraphs for part [119](#) operators with participation from the Operations Specifications Working Group (OSWG). However, the group's working guide fails to provide objective criteria for developing and issuing paragraphs for different types of certificates nor is there direction on language or usage. Additionally, the agency does not seek similar information from other certificate holders that are issued operations specifications paragraphs.

To assist the agency in complying with the congressional mandate, this letter explains the current issues with how operations specifications paragraphs are promulgated. It concludes with a request that the agency take this opportunity to review and improve its methods of creating and applying operations specifications paragraphs.

(I) Issues

- (1) Air carrier and other operator operations specifications paragraphs are issued under part [119](#). Except for the required paragraphs identifying authorized operations, operations specifications paragraphs are specifically *excluded* from the certificate. Changes to the operations specifications paragraphs are instituted and appealed under sections [119.41](#) and [119.51](#).
- (2) Air agency certificates are issued under parts [145](#) and [147](#); those regulations make clear that the operations specifications paragraphs are all *part of the*

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- certificate*. Thus, changes to paragraphs must be requested or agreed to by the certificate holder or handled as a certificate action by the agency.
- (3) Application of the automated operations specifications to all certificate holders fails to recognize the distinctions between types of certificates.
 - (a) Changes to air carrier and other part [119](#) certificate holder operations specifications paragraphs are covered by due process procedures contained in that part.
 - (i) The application of any particular paragraph is rarely if ever challenged by an operator and the “blanket” application of certain paragraphs in fact, creates regulation by operations specifications.
 - (ii) Additional paragraphs and changes to existing paragraphs seem to be created without objective standards. Consequently, they can be complex and duplicative, not supported by a regulation or documented safety justification and in some cases have been specifically rejected during the rulemaking process.
 - (b) Changes to air agency operations specifications equate to certificate action, which can be accomplished by application from the certificate holder or through legal action by the agency.
 - (i) The agency has applied “mandatory” operations specifications paragraphs to repair stations without careful consideration of their impact and thus has created conflicts between the plain language of the regulations and the verbiage in operations specifications paragraphs.
 - (ii) Similar to operations specifications applicable to operators, additional paragraphs and changes to existing paragraphs are created without objective standards. Consequently, they can be complex and/or become increasingly “non-standard” in application.
 - (4) Application of “standard” operations specifications carte blanche to all part [119](#) certificate holders is particularly problematic under the new mandate to ensure consistency with regulatory language.
 - (a) The agency develops and issues “standard” paragraphs to all part [119](#) certificate holders without ensuring the language is consistent with a regulation. Often extraneous language inadvertently adds requirements not contemplated by the plain language of a rule. The FAA should constantly review its “standard” paragraphs to ensure consistency with the regulations and removal of unnecessary language.
 - (b) The current methodology does not differentiate among and between paragraphs requested by an air carrier from those automatically applied by the agency. The agency can certainly have standard language for

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specific types of operations. However, some of the current paragraphs are already covered by a regulation and are only issued for the convenience of the agency. They gather information that exists within required manuals or procedures. This is particularly true with the advent of safety management systems—having an operations specifications paragraph noting positions, titles and contacts is for the convenience and administration of agency responsibilities. It is not in the interest of safety or any other requirement. If the agency wishes to collect this information, it may ask for voluntary submission under the proper procedures for such activity.

(II) Applicable regulations and guidance

(A) Regulations

- (1) Operations specifications for air carrier and operating certificates
 - (a) Section [119.7](#) sets forth the paragraphs of the operations specifications that are and are not part of an operator's certificate.
 - (b) Section [119.49](#) sets forth the paragraphs that are required, including items that are issued because "the Administrator determines [it] is necessary" (i.e., in the interest of safety).
 - (c) Changes to operations specification paragraphs are handled under sections [119.41](#) and [119.51](#).
- (2) Operations specifications for air agency certificates
 - (a) Section [145.53](#) for repair stations
 - (i) Definitions in sections [1.1](#) and [145.3](#).
 - (ii) Ratings issued under sections [145.59](#) or [145.61](#).
 - (iii) Changes to certificates and operations specifications paragraphs under section [145.57](#).
 - (iv) Privileges and limitations of repair stations under section [145.201](#).
 - (v) Capability lists for repair stations with limited ratings are kept as stated in section [145.215\(a\)](#); at the certificate holder's choice, either as part of the repair station's operations specifications or maintained by the repair station as set forth in § [145.209\(d\)\(1\) and \(2\)](#).
 - (b) Section [147.5\(b\)](#) for aviation maintenance technician schools
 - (i) Ratings issued under section [147.11](#).
 - (ii) Exemptions issued under section [11.15](#).

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- (iii) Utilization of designated mechanic examiners, as provided for in section [183.25\(a\)](#).
- (iv) Instructor listing, instructor requirements and instructor ratio requirements provided under sections [147.5](#), [147.23](#) and [147.36](#).
- (v) Student recordkeeping system requirements under section [147.33](#).
- (vi) Curriculum requirements in section [147.21](#).

(B) Public guidance

Unfortunately, there is no public information on the type, extent and necessity of operations specifications paragraphs.

(C) FAA guidance and procedure

- (1) Flight Standards Information Management System ([Order 8900.1](#)) for repair stations
 - (a) Volume 2, Chapter 1, [Section 4](#) “Preparation of FAA Operating Certificates”.
 - (b) Volume 2, Chapter 11, [Section 5](#) “Safety Assurance System: Phase 5—Administrative Functions”.
 - (c) Volume 3, Chapter 18, [Section 10](#) “Parts A, B, and D Operations Specifications for Part [145](#) Repair Stations”.
- (2) Flight Standards Information Management System (Order 8900.1), [Volume 3, Chapter 18, Section 1](#) and [Section 10](#)
- (3) OpsSpecs Working Group Procedures [Guide](#)

(D) Legal interpretations and decisions

There are no legal interpretations addressing the difference between operations specifications issued under part [119](#) and those issued to air agencies. Additionally, there are no legal interpretations on the proper use and application of operations specifications paragraphs to all operators versus specific operators “in the interest of safety.” Thus, the agency finds itself “regulating through operations specifications” without objective standards that distinguish among and between the types of certificate and/or operations specifications paragraphs.

There is at least one legal interpretation where the language in the operations specifications differed from the language in the regulation – [https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/data/interps/2014/fraser-keystone%20turbine%20services%20-%20\(2014\)%20legal%20interpretation.pdf](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/data/interps/2014/fraser-keystone%20turbine%20services%20-%20(2014)%20legal%20interpretation.pdf) – precipitating a misunderstanding of the regulatory compliance issues.

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Legal obligations created by operations specifications for part [119](#) operators – [https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/data/interps/2011/harris-avp-100%20-%20\(2011\)%20legal%20interpretation.pdf](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/data/interps/2011/harris-avp-100%20-%20(2011)%20legal%20interpretation.pdf).

Authority to issue part [119](#) operations specifications – [https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/data/interps/2013/honeycutt-charterflight%20-%20\(2013\)%20legal%20interpretation.pdf](https://www.faa.gov/about/office_org/headquarters_offices/agc/practice_areas/regulations/interpretations/data/interps/2013/honeycutt-charterflight%20-%20(2013)%20legal%20interpretation.pdf).

(E) Ambiguities or inconsistencies in regulations, guidance or correspondence

A comprehensive review of any certificate holder's operations specifications paragraphs will quickly reveal ambiguities and inconsistencies among and between the regulations, policy and guidance.

A simple example is the definition paragraph for part [145](#) certificate holders that contains language differing from section [1.1](#) of the regulations.

(III) Precedent: FAA decisions on the issue

Although the agency has made no "decisions" on the particular issue of distinguishing between operations specifications issued to operators versus air agencies, it is clear the FAA does not make the appropriate distinction when creating or applying a particular paragraph.

The agency has "ordered" its inspector workforce to make various changes to air agency operations specifications in the name of "consistency." To date, it has merely sent the "changes" to the certificate holder and requested a signature, which clearly makes a change to the air agency's certificate without due process.

Similarly, it applies "new" or "changed" paragraphs to operator operations specifications without distinguishing when the paragraph is (1) required by part [119](#), (2) being issued for the convenience of the certificate holder or agency, (3) required as a limitation on a particular operator in the interest of safety, (4) repetitive of an existing or new regulation, or (5) "required" to be applied to all operators and why that broad application is necessary in lieu of a regulation.

Consequently, the addition of more operations specifications paragraphs has become the norm. The removal of outdated or unnecessary paragraphs is nearly impossible; thus creating a hodge-podge of "requirements" without clear need or regulatory basis.

(IV) Suggested Resolution

We respectfully request the agency establish a committee of internal and external regulatory compliance experts to:

- (1) Create objective criteria for adding and reviewing paragraphs to any certificate holder's operations specifications that will distinguish—
 - (a) The different types of certificates, for example—

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- (i) Those where the operations specifications are separate from the certificate.
- (ii) Those where the operations specifications are part of the certificate.
- (b) The types of operations specifications paragraphs, for example:
 - (i) Required by the regulations (e.g., part [119](#)).
 - (ii) Required by written finding of necessity, based on objective and historical evidence of imminent threat to safety (as required by the new law).
 - (iii) Requested by the air carrier for convenience or unique circumstances or operations.
 - (iv) Requested by the air carrier to capture essential safety information on particular types of operators or operations—only applicable to a specific class, type or group of certificate holders or an individual certificate holder under objective and specific criteria).¹
 - (v) Required by or for the convenience or administration of the agency and only applicable to the agency (e.g., noting a certificate holder uses electronic methods for creating and storing required documents or information).
 - (vi) The nature of the paragraph, for example—
 - (A) Temporary
 - (B) Permanent
- (2) After the appropriate objective standards are created, review each and every “available” operations specifications paragraph assigned to operators and air agencies to—
 - (a) Ensure the language is consistent with a specified regulation and that it does not inadvertently add burdens or requirements.
 - (b) Determine and assign their type and nature.
 - (c) Remove the outdated or unnecessary ones.
- (3) Establish procedures for—
 - (a) Developing (i) new operations specifications paragraphs that adhere to the objective criteria and (ii) measures to track efficiencies for the agency and the public.

¹ OMB approval may be required if the information is voluntarily provided to the agency at its request.

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- (b) Reviewing new and existing operations specifications paragraphs with directly impacted certificate holders on a regular and ongoing basis for reassignment or elimination.

Thank you for your consideration of this request; we look forward to the agency's prompt response so we may begin to resolve the issues identified.

Sincerely

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