The Why's and How's of Special Authorizations - LOA's and OpSpecs
Wednesday, November 2, 2016 | 1:00 p.m. – 2:00 p.m.

PRESENTED BY:
David T. Norton, JD / MBA / ATP
Shackelford, Bowen, McKinley & Norton, LLP
9201 N. Central Expressway – Fourth Floor
Dallas, TX 75231
(214) 780-1407  dnorton@shackelfordlaw.net
Overview
Overview

• Setting the Stage – “Order of Guidance”
Overview

• Setting the Stage – “Order of Guidance”

• Background – History of Authorizations
Overview

• Setting the Stage – “Order of Guidance”
• Background – History of Authorizations
• The Specifics – Current Authorizations
Overview

• Setting the Stage – “Order of Guidance”
• Background – History of Authorizations
• The Specifics – Current Authorizations
• Tips on Applications – LOA’s
Overview

• Setting the Stage – “Order of Guidance”
• Background – History of Authorizations
• The Specifics – Current Authorizations
• Tips on Applications – LOA’s
• Current Consistency Efforts
Overview

- Setting the Stage – “Order of Guidance”
- Background – History of Authorizations
- The Specifics – Current Authorizations
- Tips on Applications – LOA’s
- Current Consistency Efforts
- Questions
Setting the Stage: “Order of Guidance”
Setting the Stage: “Order of Guidance”

• Statute – the Federal Aviation Act of 1958
Setting the Stage: “Order of Guidance”

- Statute – the Federal Aviation Act of 1958
- Regulations – 14 C.F.R. parts 1-199 (the “FAR”)

Setting the Stage: “Order of Guidance”

• Statute – the Federal Aviation Act of 1958
• Regulations – 14 C.F.R. parts 1-199
• Airworthiness Directives (“AD’s”)
Setting the Stage: “Order of Guidance”

- Statute – the Federal Aviation Act of 1958
- Regulations – 14 C.F.R. parts 1-199
- AD’s
- Notices to Airmen (“NOTAMs”)
Setting the Stage: “Order of Guidance”

- Statute – the Federal Aviation Act of 1958
- Regulations – 14 C.F.R. parts 1-199
- ADs
- NOTAMs
- FAA Orders – Order 8900.1 - FSIMS
Setting the Stage: “Order of Guidance”

- Statute – the Federal Aviation Act of 1958
- Regulations – 14 C.F.R. parts 1-199
- ADs
- NOTAMs
- FAA Orders – Order 8900.1 – FSIMS
- Advisory Circulars – 91-85A
Setting the Stage: “Order of Guidance” (cont.)

• Others
  • Handbooks and Manuals
  • Various Notices
  • Chief Counsel Interpretations
Setting the Stage: “Order of Guidance” (cont.)

- Others
  - Handbooks and Manuals
  - Various Notices
  - Chief Counsel Interpretations

- So Which are Binding on You?
Background: History of Authorizations
Background: History of Authorizations

• Early U.S. Civil Aviation Regulations (CAR) didn’t provide for OpSpecs or other authorizations as you would recognize them today
Background: History of Authorizations

• Early U.S. Civil Aviation Regulations (CAR) didn’t provide for OpSpecs

• Just needed valid certificate or temporary certificate plus applicable “competency letters” or “temporary letters”
Background: History of Authorizations

• Early U.S. Civil Aviation Regulations (CAR) didn’t provide for OpSpecs

• Just needed valid certificate or temporary certificate plus applicable “competency letters” or “temporary letters”

• What we’d begin to recognize as OpSpecs showed up in the CAR in 1953 – required to have, but initially not considered part of an air carrier certificate
Background: History of Authorizations

• Why?
  – Complexity in types of equipment and operations
  – Variability between operators
  – Both of which continue to increase!
The Specifics: Current (Special) Authorizations
The Specifics: Current (Special) Authorizations

- Current Approach Regarding Required was Formalized in the FAA Act of ‘58
The Specifics: Current (Special) Authorizations

- Current Approach Regarding Required was Formalized in the FAA Act of ‘58
  - Under statute and FAR:
The Specifics: Current (Special) Authorizations

- Current Approach Regarding Required was Formalized in the FAA Act of ‘58
  - Under statute and FAR:
    - OpSpecs required as part of air carrier, operating and repair station certificates – Parts 121, 125, 135 and 145
The Specifics: Current (Special) Authorizations

- Current Approach Regarding Required was Formalized in the FAA Act of ‘58

- Under statute and FAR:
  - OpSpecs required as part of air carrier, operating and repair station certificates – Parts 121, 125, 135 and 145
  - MSpecs required for Part 91K Managers
The Specifics: Current (Special) Authorizations

- Current Approach Regarding Required was Formalized in the FAA Act of ‘58
  - Under statute and FAR:
    - OpSpecs required as part of air carrier, operating and repair station certificates – Parts 121, 125, 135 and 145
    - MSpecs required for Part 91K Managers
    - Letters of Authorization and Letters of Deviation for Part 91 Operators
      - “voluntary”; based on certain specific situations
      - generally only applicable to Part 91 operators
The Specifics: Current (Special) Authorizations

• Current Approach Regarding Required was Formalized in the FAA Act of ’58 - (cont.)

The Specifics: Current (Special) Authorizations

• Current Approach Regarding Required was Formalized in the FAA Act of ’58 - (cont.)

• The automated Operations Safety System (OPSS) Web-based Operations Safety System (WebOPSS) consists of standard and non-standard templates for OpSpecs, MSpecs and LOA’s. There are a lot of them.
  • Examples include:
    – Part A – templates for administrative authorizations such as designation of a responsible person, etc.
    – Part B – templates for enroute authorizations and limitations such as RVSM, area navigation, etc.
    – Part C – templates for TERPs
    – Part D & E – templates for maintenance issues such as MEL’s
Tips of Applications – LOA’s
Tips of Applications – LOA’s

• Quick Detour – Who is the Operator?
Tips of Applications – LOA’s

• Quick Detour – Who is the Operator?

  • **Question**: So why talk about special authorizations and operational control?
Tips of Applications – LOA’s

• Quick Detour – Who is the Operator?
  
  • **Question**: So why talk about special authorizations and operational control?
  
  • **Answer**: Because these authorizations must be issued to the *operator* of the aircraft, i.e., the party that exercises *operational control* during the flight – *not necessarily* the owner or manager of the aircraft.
Tips of Applications – LOA’s

• Quick Detour – Who is the Operator? (cont.)

• Question: So why talk about special authorizations and operational control?

• Answer: Because these authorizations must be issued to the *operator* of the aircraft, i.e., the party that exercises *operational control* during the flight – *not necessarily* the owner or manager of the aircraft.

  – For Example – Regarding RVSM, 14 C.F.R. §§ 91.180 / 91.706 state in part:

    “. . . no person may operate a civil aircraft (of U.S. registry) in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

    (1) The *operator* and the operator’s aircraft comply with the requirements of appendix G of [Part 91]; and

    (2) The *operator* is authorized by the Administrator to conduct such operations.”
Tips of Applications – LOA’s

• Quick Detour – Who is the Operator?

Stated another way:

• Special authorizations should be applied for by, and issued to:

  • Registered owners that are:
    – Part 91 – personal / business operators for their non-air-transportation use (LOAs)
    – Part 135 – certificate holders for their commercial use (OpSpecs)
  
• Parties assuming operational control under “dry” lease or use agreements:
  – Part 91 operator lessees (LOAs)
  – Part 135 operator lessees (LOAs)

• NOTE – There can be multiple operators here, so multiple authorizations may be required!
Tips of Applications – LOA’s

• Quick Detour – Who is the Operator?
  Stated another way (cont.):

    • Special authorizations should **not** be applied for by, or issued to:
      • “Flight Department Companies” (e.g., holding companies)
      • Owner Trustees
      • Part 91 Management Companies (“mere management companies”) assisting Part 91 Operators
Tips of Applications – LOA’s

- Once you have identified the correct operator / applicant:
  - Research!
Tips of Applications – LOA’s

• Once you have identified the correct operator / applicant:
  • Research!
  • Understand both your and the FAA’s obligations
Tips of Applications – LOA’s

• Once you have identified the correct operator / applicant:
  • *Research!*
  • *Understand both your and FAA’s obligations*
  • *Complete an application that is complete and correct as possible – GIGO!*
Tips of Applications – LOA’s

- Once you have identified the correct operator / applicant:
  - Research!
  - Understand both your and FAA’s obligations
  - Complete an application that is complete and correct as possible – GIGO!
  - Ask for meeting with FAA personnel to submit application in person
Tips of Applications – LOA’s

• Once you have identified the correct operator / applicant:
  • Research!
  • Understand both your and FAA’s obligations
  • Complete an application that is complete and correct as possible – GIGO!
  • Ask for meeting with FAA personnel to submit application in person
  • Follow-up on a regular basis
Current Consistency Efforts
Current Consistency Efforts

• Section 313 of FAA Modernization and Reform Act of 2012 required the FAA, in consultation with industry representatives, to determine the root causes of inconsistent interpretation and regulations by AFS and AIR
Current Consistency Efforts

- Section 313 of FAA Modernization and Reform Act of 2012 required the FAA, in consultation with industry representatives, to determine the root causes of inconsistent interpretation and regulations by AFS and AIR
- FAA Chartered the Consistency of Regulatory (CRI) ARC in April 2012
Current Consistency Efforts (cont.)

- The CRI ARC submitted the following six prioritized recommendation in November 2012:
  1. Develop a single master source for guidance organized by 14 CFR part.
  2. Develop instructions for FAA personnel with policy development responsibilities.
  3. Review FAA and industry training priorities and curricula with focus on appropriate use of guidance in conjunction with 14 CFR (and study the feasibility of developing a specific training program designed for personnel with regulatory development and oversight responsibilities).
  4. Establish a Regulatory Consistency Communications Board (RCCB).
  5. Improve rulemaking procedures to achieve greater clarity in final rules issued by the FAA.
  6. Establish a full-time Regulatory Operations Communications Center (ROCC) as a centralized support center to provide real-time guidance to FAA personnel and industry certificate/approval holders and applicants.
Current Consistency Efforts

• Key points with respect to Items 1 and 4:
Current Consistency Efforts

- Key points with respect to Items 1 and 4:
  - Item 1: **Dynamic Regulatory System** (DRS)
    - Main Goal: Fix inconsistencies with respect to the written word
    - Integration of all regulations and guidance materials currently scattered through FAA.gov, REGS.gov, FSIMS, etc., as a single source for everything
    - Improve the consistency of the documents / versions made available to the public
Current Consistency Efforts

• Key points with respect to Items 1 and 4:
  • Item 6: *Regulatory Consistency Communications Board* (RCCB)
    • Main Goal: Fix inconsistencies with respect to *application* of the written word
    • Unlike the CSI – not an escalation process
      • Don’t have to have a current “controversy” – can apply to any noted inconsistency
      • Goes directly to HQ level
      • Can be done anonymously
    • But – GIGO applies!
      • Has to be specific – and the more specific, the better the chance of resolution
Current Consistency Efforts

• Timing?
  • On-going process
Current Consistency Efforts

• Timing?
  • On-going process
  • DRS current in beta testing – probably up and running in 2018?
Current Consistency Efforts

• Timing?
  • On-going process
  • DRS current in beta testing – probably up and running in 2018?
  • RCCB will be finally established by FAA Order – coming soon?
Questions
“Aviation in itself is not inherently dangerous. But to an even greater degree than the sea, it is terribly unforgiving of any carelessness, incapacity or neglect.”

Captain A.G. Lamplugh
British Aviation Insurance Group,
London, circa 1930