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Sent via email

Mark Bury
Deputy Chief Counsel
Federal Aviation Administration
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Ali Bahrami
Associate Administrator for Aviation Safety
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Re: Part 147 Interim Final Regulation

Misters Bury and Bahrami:

As you know, on Dec. 27, 2020, Congress passed the Consolidated Appropriations Act ([Public Law 116-260](#)). The law directs the FAA to repeal Title 14 Code of Federal Regulations part 147, and issue interim final regulations in accordance with section 135—which sets forth specific regulatory language for promulgation—by March 27, 2021.

Based on various conversations with FAA officials since the Act was passed, our community perceives some uncertainty surrounding how the agency will implement the interim final regulation. Given the council was heavily involved in the drafting of the legislative language, we offer up our view of the mandate in hopes that this community's sponsorship will further swift promulgation of the interim final rule by the congressional deadline.

Issuance of interim final regulations. As you know, the Act states that the Administrator shall “issue interim final regulations to establish requirements for issuing aviation maintenance technician school certificates” and, upon the effective date of those interim final regulations, repeal the current part 147 such that it “shall have no force or effect on or after the effective date of such interim final regulations.” The clear expectation is that the language provided in the Act's section 135 would be promulgated to replace the current part 147—initially bypassing Administrative Procedure Act (APA) notice and comment requirements.

We understand that interim final regulations are used when the agency finds it has good cause—such as when it is directed by Congress—to issue a final rule without the opportunity for notice and comment. We would therefore expect and support the agency's determination that the part 147 interim rule become effective immediately upon publication, with the stipulation that it be subsequently subject to public notice and comment. We also understand that the agency could thereafter make adjustment to the rule if warranted by public comment or notify the public through publication of a final rule that no changes were made to the interim rule.

Incorporation of mechanic airman certification standards by reference. Language in the interim final regulation directing schools to “establish, maintain, and utilize a curriculum designed to continually align with mechanic airman certification standards...”¹ was not intended to reference a specific document, but instead to employ a general concept that the school always align its curriculum to what the FAA deems the certification standard (as evidenced by the use of lowercase letters). While Mechanic Airman Certification Standards (ACS) are awaiting FAA publication, the drafters purposefully declined to reference the document specifically to provide flexibility should the agency house certification standards in a different form at any point in the future.

Thus, it was not the intent that the new part 147 incorporate the ACS by reference and thereby invoke additional administrative requirements. But even if the agency made the determination that the ACS is incorporated by reference in the new rule, the FAA’s obligations would be limited to either publishing the referenced document in the Federal Register or demonstrating that it is reasonably available and obtain approval from the Director of the Federal Register to specifically incorporate it by reference.²

Here, the ACS is easily and readily available to the community on the FAA website—as is the case for current ACS³—thus the agency’s obligations would be satisfied by simply seeking approval from the Federal Register Director to publish the interim final rule as directed by Congress. The council does not take the position that a document deemed to be incorporated by reference in regulation must itself be subject to APA rulemaking procedures.

We thank you for the opportunity to provide our comments and invite a follow-on discussion should you seek clarity on the council’s position. And should any subsequent meeting be deemed an *ex parte* communication, we are happy to provide a transcript of the conversation for publication in the federal register rulemaking docket for public inspection.

Sincerely,



Crystal Maguire
Executive Director

cc: Steve Dickson, Administrator, Steve.Dickson@faa.gov
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¹ See PL 116-260, SEC. 135(d)(3)(A)

² See 5 U.S.C. § 552

³ Current ACS are published at https://www.faa.gov/training_testing/testing/acs/