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Subject: WPR21FA143 Legal Interpretation

Contact: Federal Aviation Administration, Office of Accident Investigation and Prevention

In an effort to clarify the relationship between FAA Order 8900.1 and 14 CFR Part 135, a legal interpretation request was submitted to the FAA on August 29, 2022. The request stated the following:

“Currently, there are requirements in FAA Order 8900.1 that certain manuals **MUST** contain specific items in order to gain FAA acceptance or approval. These requirements however, are not listed in 14 CFR. 8900.1, Volume 1, Chapter 1, Section 1 states that if the guidance conflicts with 14 CFR, then 14 CFR takes precedence. It doesn’t however address an example where the Order requires something by use of the words “must” or “shall” and there is no reference within 14 CFR.

As an example, FAA Order 8900.1, 3-2029, states that remote operations often involve extended operations outside of communications with the certificate holder. In addition, the certificate holder must [emphasis added] identify the area(s) in which remote area operational control procedures will be utilized, and such areas must be described in the FAA accepted GOM. This requirement is not listed in 14 CFR, so where would it be listed that an operator must comply with this requirement?

What I am trying to understand is if an operator submits a manual for acceptance or approval that meets 14 CFR, but does not contain all of the items from Order 8900.1, is the operator required to bring the manual into compliance with Order 8900.1? So in the above scenario, would the operator have to identify the remote areas or could they simply say that there is no regulatory requirement?

Another example would stem from flight locating. 14 CFR 135.79 requires that each certificate holder have procedures established for locating each flight for which an FAA flight plan is not filed. Let's say that the operator complies with that part since it is regulation. Order 8900.1 takes a step farther by containing guidance for determining the acceptability of a certificate holder's flight locating procedures. One component of this required the operator's notification of an overdue or missing aircraft be at least as prompt as notifications provided by FAA procedures and facilities, which according to FAA Order 7110.65Z, is 30 minutes. An operator may decide to create a policy that instead of 30 minutes, they want to use an hour or hour and a half. This component is contained only in FAA Orders and not regulation. They are in compliance with the regulations for having a flight locating system, but not the Orders. Is there a requirement for following the Orders?"

On October 17, 2022, the FAA replied by saying "The office of primary responsibility for the guidance on the development of Flight Standards guidance documents is the Office of Foundational Business, Mission Services, Flight Standards Publications (AFB-120). In the drafting of guidance documents, Flight Standards uses the FS Order 8000.96, Flight Standards Service Guidance Document Development. This order provides policy and guidance to Flight Standards policy divisions and other support staff that develop, update, or change directives, including the FAA Order 8900.1, and Advisory Circulars. Chapter 2 identifies that guidance cannot create or change regulatory or statutory requirements; however, it can be used to clarify the agency's intention with regard to implementation of a rule. The FAA Order 8900.1 is a directive, which is the type of publication the FAA uses to issue, establish, and describe agency policies, organization, responsibilities, methods, and procedures. The primary audience for directives are internal stakeholders, including designees, delegated organizations, and organization unit members."

To clarify the response, I sent the following reply the same day:

"Thank you for sending the response, however, it did not answer the question posed. Basically, I am trying to get clarification as to if an operator must comply with items contained within FAA Order 8900.1. The response states that the Order can be used to "clarify the agency's intention," but does that mean an operator must comply with it? There are many items that are not required by regulation for Part 135 such as training/testing items, but contained within the 8900 as required for approval. That doesn't seem to "clarify an intent" so much as regulate by directive. The POI cannot approve the manual because it doesn't comply with the 8900, but yet there is no requirement for an operator to comply with the FAA's internal policy.

The question posed was:

What I am trying to understand is if an operator submits a manual for acceptance or approval that meets 14 CFR, but does not contain all of the items from Order 8900.1, is the operator required to bring the manual into compliance with Order 8900.1? So in the above scenario, would the operator have to identify the remote areas or could they simply say that there is no regulatory requirement?

Can you please submit my response for consideration?"

The FAA wrote on October 26, 2022:

"As we previously noted, the primary audience for this directive are internal stakeholders, including designees, delegated organizations, and organization unit members (see Order 8900.1, Volume 1, Chapter 1, Section 1). For an example, an ASI would consult the guidance in the Order 8900.1 to review manuals submitted for acceptability. Some regulations, such as § 135.21 Manual requirements, note the certificate holder must submit documentation acceptable to the Administrator. In this case, the FAA may expand upon what acceptable is in a directive. In order to provide a specific answer regarding expectations for operator compliance with a requirement noted in a directive and its regulatory basis, we would need a specific question with regulatory and order citations."

END