U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591

JUL - 9 2010

Larry Furnas
President, Aviation Advocates, LLC
P.O. Box 17007
Indianapolis, IN 46217

Re: Request for Legal Interpretation on Whether Supplemental Inspection Documents Issued by Aircraft Manufacturers Are Mandatory

Dear Mr. Furnas:

We have been asked by the Aircraft Maintenance Division (AFS-300) of the FAA's Office of Flight Standards to respond to six questions you asked that office through separate Emails dated August 6, 2009, and August 28, 2009. Your questions were prompted by modifications the Cessna Aircraft Company made to its recommended inspection program for its Conquest model aircraft. These were embodied in Cessna's Supplemental Inspection Document (SID) that added new inspection requirements to its recommended program. We will respond to your questions in order.

Question 1: How can the issuance of a SID that has not been approved and adopted by the FAA Administrator under 91.415 be made mandatory?

Response: There are four inspection program options that an owner or operator must select, identify in the aircraft maintenance records, and use under § 91.409(f).[1] We assume for the purposes of your question that the inspection program being modified by the SID is either the applicable "current inspection program recommended by the manufacturer" (which, in this case, is Cessna) that is referenced in 14 C.F.R. § 91.409(f)(3), or "[a]ny other inspection program established by the registered owner or operator of that airplane . . . and approved by the Administrator . . . ," which is referenced in § 91.409(f)(4). It is this fourth option that provides that the Administrator may require revisions in accordance with the provisions of § 91.415, the section you reference in your question.

---

[1] The first two options apply to a person that holds an air carrier operating certificate or an operating certificate [ref. 14 C.F.R. parts 121 or 135].

To the extent that an owner or operator has already selected and identified in the aircraft maintenance records a "current inspection program recommended by the manufacturer," or has selected and identified "any other inspection program . . . [that has been] approved by the Administrator . . . ," a SID issued by the manufacturer after the date of selection and identification in the aircraft maintenance records of the then current program would not be mandatory unless the FAA had mandated the SID requirements by issuing an Airworthiness Directive (AD) or through another rulemaking adopted through notice and comment procedures required by the Administrative Procedure Act (APA);[2] or, in the case of an approved inspection program selected under § 91.409(f)(4), the Administrator required the revision in accordance with the provisions of § 91.415.

Question 2: How can a SID (or any government rule) that has never been approved under the Administrative Procedure Act (APA) by a governmental agency ever be made mandatory on an owner?

Response: The way a SID issued by a manufacturer (not the FAA) would be mandatory for an aircraft owner or operator would be if it had already become a part of the manufacturer's recommended inspection program when the aircraft owner or operator selected and identified the program (ref. § 91.409(f)(3)); if the SID was already included in an inspection program established by the registered owner or operator of the airplane and approved by the Administrator (ref. § 91.409(f)(4)); or if the Administrator found that the SID should be incorporated into the previously approved program because it was necessary for the continued adequacy of the program (ref. § 91.409(f)(4) and § 91.415).

We are not sure what you mean by the phrase "or any government rule" that had not been approved under the APA. Generally, any "government rule" that was issued by an agency without comporting with the APA requirements could, if challenged, likely be invalidated by a competent court of law.

Question 3: Cessna has stated to some owners that unless they comply with the SID their aircraft will be "grounded" by them. It has always been my understanding that such powers could not be delegated by the FAA to a private, non-governmental entity. How can any private entity ground an aircraft or fleet of aircraft for non-compliance with their program?

Response: Your understanding that "such powers," *i.e.*, to "ground" an aircraft cannot be delegated by the FAA to a private, non-governmental entity is correct. Not only does the FAA not have the authority to delegate its rulemaking authority to manufacturers or

---

[2] See our Memorandum Opinion issued to the Manager, Aircraft Maintenance Division, AFS-300, on December 5, 2008 (copy attached).

other private entities (see our December 5, 2008 Memorandum Opinion, referenced above), neither does the agency have authority to delegate particular orders, such as the "grounding" of an airplane. If, however, any person, including Cessna, had knowledge that an aircraft might be in an unairworthy condition, that person could so advise the owner or operator of that opinion, and could also report the suspected condition to the FAA, which could then conduct an inspection of the aircraft to determine its condition.

Question 4: I have spoken with the Office of Chief Counsel of the FAA and they state no change has been approved or mandated for the Cessna Conquest Inspection program, that if an owner engages in the SID inspection program it is their personal election to do so. Are they correct?

Response: Consistent with what we said above, including in our December 5, 2008 Memorandum Opinion, if an aircraft owner or operator had selected and identified in the aircraft maintenance records a current inspection program recommended by the manufacturer before the date Cessna issued the SID at issue, then the program was current without the SID when the owner or operator adopted it. Therefore, for that owner or operator the SID is not mandatory. However, the owner or operator who adopted the program before the SID was incorporated into it may elect to incorporate the additional requirements of the SID into the previously adopted program. In that case, the inspection program with the SID would be the "current inspection program recommended by the manufacturer," and it would be mandatory for that owner or operator.

Question 5: Since the Cessna Conquest SID has not gone through final FAA and APA approval and adoption, can you state with assurance that it will ultimately be adopted in total without additions or deletions of particular inspection items?

Response: Our office cannot respond to this question. As of the date of this letter, the FAA has not issued an AD mandating the SID requirements for previously-adopted inspection programs. Your inquiry should be directed to the FAA's Small Airplane Directorate in Kansas City, Missouri. If the FAA decides to make all or part of the Cessna SID mandatory for those previously-adopted inspection programs, the most likely mechanism would be through the AD process. Absent an emergency determination requiring immediate adoption (in accordance with the APA), the AD process would be done through notice and comment rulemaking, also in accordance with the APA procedures. If the agency does decide to issue an AD based on the SID, whether it would "ultimately be adopted in total without additions or deletions of particular inspection items" would depend in large part both on the FAA's analysis of the SID requirements and on comments received in response to the published notice.

Question 6: If the SID implemented by Cessna has applicability to all new owners after the date of the SID (August 2007) and if the FAA cannot relinquish it's authority to a private entity, then how is it that Cessna is able to grant an extension to an owner on a mandatory inspection? If the inspection is mandatory, isn't the FAA the only authority to grant an extension?

Response: It is our opinion that, in general, once a current inspection program is adopted under § 91.409(f)(3), that program is mandatory under that regulation, and its intervals must be followed. However, the underlying factual predicate is not clear from your question. Assuming the inspection program at issue is one adopted under § 91.409(f)(3), and an interval extension is "granted" by Cessna to an individual owner or operator based on a particular set of applicable circumstances, the now-modified inspection program would be considered the most "current" one recommended by the manufacturer for that owner or operator. That is the program (with the extended interval) that the owner or operator must follow. Under the facts and circumstances assumed here, that interval extension would apply only to that owner or operator; it would not extend automatically to other owners or operators who had adopted the Cessna inspection program containing the SID.

In the case of an inspection program approved under § 91.409(f)(4), the program, as approved, would be mandatory, and the inspection intervals contained therein would have to be followed—unless the program itself contains provisions allowing Cessna to grant extensions. Absent such a provision, however, if Cessna were to "grant" an interval extension to an owner or operator who was using such an approved program, the owner or operator would have to seek approval from the FAA to make that change to the program; alternatively, the FAA, under the provisions of § 91.415, could unilaterally make the revision if the agency found it necessary for the continued adequacy of the program.

This response was prepared by Edmund Averman, an Attorney in the Regulations Division in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300) in the Office of Flight Standards If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200