Federal Aviation Administration

Memorandum

Date: JAN 12 2010

To: Manager, Flight Standards Division, AEA-200

From: Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Edmund Averman, AGC-210

Subject: Legal Interpretation of PURPOSE Paragraph of Advisory Circular AC 43-13-1B

This is in response to your May 4, 2009, request for a legal interpretation on the text in the PURPOSE paragraph of Advisory Circular AC 43.13-1B. That paragraph presently states:

> **PURPOSE.** This advisory circular (AC) contains methods, techniques, and practices acceptable to the Administrator for the inspection and repair of non-pressurized areas of civil aircraft, only when there are no manufacturer repair or maintenance instructions. This data generally pertains to minor repairs. The repairs identified in this AC may only be used as a basis for FAA approval for major repairs. The repair data may also be used as approved data, and the AC chapter, page, and paragraph listed in block 8 of FAA form 337 when:
>
> a. the user has determined that it is appropriate to the product being repaired;
>
> b. it is directly applicable to the repair being made; and
>
> c. it is not contrary to manufacturer's data.

You asked for "legal advice concerning the authority of the AC to restrict the use of data that has been found to be acceptable to the Administrator, if the manufacturer has also provided acceptable instructions for continued airworthiness (ICA)." Your concern takes issue with the first sentence of the PURPOSE paragraph, which states that the information in the AC is acceptable "*only* when there are no manufacturer . . . instructions." (Emphasis added.) This implies that if manufacturer repair or maintenance instructions exist, the information in the AC

would *not* be acceptable. Your concern is well-founded because, taken literally, the statement is not correct, as a matter of law.[1]

As you know, 14 C.F.R. § 43.13(a) provides that a person performing maintenance shall use the current manufacturer's maintenance manual or Instructions for Continued Airworthiness [ICA], "**or** *other methods, techniques, and practices acceptable to the Administrator* . . . ." (Emphasis added.) Thus, if a person performs aircraft maintenance and uses a method, technique, or practice that differs from those specified in the applicable manufacturer's maintenance manual or Instructions for Continued Airworthiness, the FAA would have to show that the maintenance done, even though different from the steps outlined in the manual, was not acceptable in order to prove a violation of the regulation.

It is our understanding that the repair methods and data in the AC are generally acceptable to the FAA for use in minor repairs on non-pressurized areas of civil aircraft, unless the manufacturer of the aircraft at issue specifically recommends against the method, technique, or practice. In any such case, whether the repair method, technique, or practice chosen by the maintenance provider would nevertheless be acceptable to the FAA would require a fact-specific determination.

The word "only" in the third sentence of the PURPOSE paragraph renders the sentence confusing at best, as it could be read to mean that the repair information in the AC could not be used for any purpose other than as a basis for FAA approval for major repairs, whereas in fact the information may be used in performing minor repairs.[2] We recommend deleting "only" from the text and, because the regulations require that major repairs be done in accordance with FAA-approved data, we also recommend that the sentence refer to the repair data in the AC being used as a basis for FAA approval of data for major repairs.

Finally, we recommend that the last sentence in the PURPOSE paragraph be revised for clarity. We recommend the paragraph be replaced with the following:

> **1. PURPOSE.** This advisory circular (AC) contains methods, techniques, and practices acceptable to the FAA for performing inspections and minor repairs of non-pressurized areas of civil aircraft unless the repair at issue is recommended against in the applicable manufacturer's maintenance or repair instructions. The repair data described in this AC may be used as a basis for FAA-approved data for major repairs. The repair data may be used as FAA-approved data for repairs of non-pressurized areas of civil aircraft provided the AC chapter, page, and paragraph are listed in Block 8 of FAA Form 337, and the data are:

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[1] Our recollection is that the reference to "only" in the first sentence expressed the thought that, if the maintenance provider had applicable manufacturer repair or maintenance instructions, there would be no reason to consult the AC.

[2] Our recollection is that the reference to "only" in the third sentence expressed the thought that the repairs in the AC are not, *per se*, approved data, with the exception being as stated in the fourth sentence.

a. appropriate to the product being repaired;

b. directly applicable to the repair being made; and

c. not contrary to the manufacturer's data.

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.

Rebecca B. MacPherson