Federal Aviation Administration

Memorandum

Date: AUG 13 2010

To: Manager, AWP-230
Manager, Sacramento FSDO

From: Assistant Chief Counsel for Regulations, AGC-200 by GHM

Prepared by: Edmund Averman, Staff Attorney, AGC-210

Subject: Legal Interpretation of "Current" as it Applies to Maintenance Manuals and Other Documents Referenced in 14 C.F.R. §§ 43.13(a) and 145.109(d).

This is in response to your February 19, 2009, request to the Regional Counsel for the FAA's Western-Pacific Region for a legal interpretation of the meaning of the word "current" as it is used in 14 C.F.R. § 43.13(a) and 14 C.F.R. § 145.109(d). Because your request specifically asked that the answer consider a previous interpretation (memorandum issued on December 5, 2008, by this office) addressing the meaning of "current" in the phrase "current inspection program" referenced in 14 C.F.R. § 91.409(f)(3), we are responding for the Regional Counsel.

Section 91.409(f) lists four types of inspection programs, one of which an operator of an aircraft specified in § 91.409(e) must select and follow. Section 91.409(f)(3), at issue in the December 5 interpretation, specified a "current inspection program recommended by the manufacturer." The interpretation addressed the question whether, if a manufacturer amends its maintenance inspection instructions, an aircraft operator who selects a program under 91.409(f)(3) is obliged to comply with the new instructions in order to comply with that section. For the reasons stated in the memorandum, we concluded that, absent a change required by the FAA, an operator is not so obliged. We stated: "[T]o comply with § 91.409(f)(3) an operator need only adopt a manufacturer's inspection program that is 'current' as of the time he adopts it, and that program remains 'current' unless the FAA mandates revisions to it." We also stated: "The legal conclusions below are equally pertinent to either type of document—*current maintenance instructions or current inspection program.*"

While § 91.409(f) applies to aircraft operators and dictates which inspection program they must select, § 43.13(a) applies to persons performing maintenance and sets forth performance rules those persons must follow. In pertinent part, § 43.13(a) states: "Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness [ICA] prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator,

except as noted in § 43.16." If a person uses the manufacturer's maintenance manual or ICA when performing aircraft maintenance, that person could use the most current version of the manual or ICA or, in many cases, a prior version (including one that was current at the date of manufacture) and not run afoul of the regulation. This is so because of the flexibility provided in the regulation. For example, § 43.13(a) provides that the 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, in a case in which a maintenance person is alleged to have violated that regulation because he or she used a "prior" version of the manual or ICA, the FAA would have to show how it was *unacceptable* for the person to have used that "prior" version. If the FAA could not show how the prior version is now unacceptable, the FAA could not prove the violation. For example, if the FAA had changed or invalidated the "prior" version by a rule, its use would not be acceptable, and the FAA should be able to prove the violation.

The obligation imposed by § 145.109(d) is different. That section requires that a repair station must maintain certain specified documents and data, and that the listed documents and data must be current and accessible when the relevant work is being performed. The items listed that must be so maintained include, *e.g.*, ICA, maintenance manuals, overhaul manuals, and service bulletins. As discussed in a similar context in the December 5 memorandum with regard to an air carrier's duty to keep a current FAA-approved Airplane Flight Manual under 14 C.F.R. § 121.141(a), this is essentially a paperwork requirement to keep the specified documents up to date. In the Part 145 context, a repair station would have to keep current (up-to-date) versions of the listed documents and data. Part 145, including the section at issue, was adopted through notice and comment procedures required by the Administrative Procedure Act (APA) (5 U.S.C. § 553), and the obligation incumbent on the regulated entities (repair stations) was determined at the time of adoption and does not change over time, unless amended by another notice and comment rulemaking process.

The above paragraph does not address the issue of which version of a manual or document must be followed by a repair station when it performs maintenance. In many cases the most recent revision of a manual would be the appropriate document to use. However, as articulated in the December 5 memorandum interpretation that addressed compliance with § 91.409(f)(3), and as explained above in the context of § 43.13(a), if a repair station customer had validly adopted a previous iteration of an inspection program that was "current" at the time of adoption and the repair station followed that program, the repair station would not be in violation of either regulation unless the FAA had invalidated it by rule or could otherwise show that it was not acceptable. Similarly, in the context of performing maintenance for a customer, if the repair station used a "prior" version of a manufacturer's maintenance manual that was applicable to the model of aircraft that was being maintained, and the FAA could not show how the prior version that was used was unacceptable, the repair station would not be in violation of § 43.13(a) or § 145.201 for following it.

That reasoning notwithstanding, however, the choice of which maintenance manual a repair station should follow is a non-issue when air carrier work is being done. Repair stations must follow § 145.205 when performing such work. Accordingly:

(a) If a repair station performs maintenance for an air carrier or commercial operator that has a continuous airworthiness maintenance program under Part 121 or Part 135, it must follow that entity's program;

(b) If a repair station performs inspections for a certificate holder that conducts operations under Part 125, it must follow the operator's FAA-approved inspection program;

(c) If a repair station performs maintenance for a foreign air carrier or foreign person operating a U.S.-registered aircraft under Part 129, it must follow the operator's FAA-approved maintenance program.

Section 145.205 is silent as to a repair station performing inspections for a person holding an operating certificate issued under Part 135 and who is using an inspection program approved under § 135.419. Most likely the contractual arrangement between the operator and the repair station would specify that the repair station follow the operator's approved program. However, the obligation to use that approved program is on the operator. The repair station would be required, at a minimum, to follow § 43.13(a), and the discussion above would apply.

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,

for Rebecca B. MacPherson