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

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

JUL 18 2012

Mr. Steven Tommer
Assistant Chief Inspector
Constant Aviation, LLC
5211 Secondary Road
Cleveland, OH 44135

Re: Request for Legal Interpretation of the Phrase "Current Manufacturer's Maintenance Manual or Instructions for Continued Airworthiness" in 14 C.F.R. § 43.13(a)

Dear Mr. Tommer:

Thank you for your letter postmarked June 7, 2010, requesting a legal opinion on the meaning of the phrase in 14 C.F.R. § 43.13(a) requiring persons performing maintenance, alterations, or preventive maintenance to use "the methods, techniques, and practices prescribed in the *current* manufacturer's maintenance manual or Instructions for Continued Airworthiness . . . , or other methods, techniques, and practices acceptable to the Administrator . . . ." (Emphasis added.) You seek clarification of this meaning in view of a previous FAA legal interpretation[1] explaining that the word *current*, as used in the FAA's inspection program regulations (specifically 14 C.F.R. § 91.409(f)(3))[2], meant that the aircraft inspection program adopted by an owner or operator that was current when adopted remained current for that owner or operator unless changed by an FAA rule (*e.g.*, Airworthiness Directive (AD)). We apologize for the long delay in responding to you.

We were able to discern insights into the clarification you seek through telephone conversations between you and two attorneys on my staff—Viola Pando and Edmund Averman. In those conversations you expressed your concern and frustration with a scenario you described in hypothetical examples which, you stated, are premised on your actual experiences. You described a situation in which an airplane owner brings you the airplane for an inspection in accordance with a program selected under § 91.409(f)(3), which was current long ago when the owner obtained the airplane and validly adopted the then current inspection program.

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[1] FAA Office of the Chief Counsel letter to Paul N. Sissons, dated May 3, 2010, which clarified (provided additional explanation) of an FAA Office of the Chief Counsel Memorandum dated December 5, 2008, interpreting 14 C.F.R. § 91.409(f)(3).

[2] For owners or operators of the category of aircraft specified in § 91.409(e), one of the types of inspection programs available is set forth in § 91.409(f)(3). This section states: "A current inspection program recommended by the manufacturer."

This scenario raises at least two issues for you. First, your customer (the aircraft owner) either no longer has the inspection program available, or otherwise does not make it available to you. Further, you are unable to obtain the program either from the manufacturer (as it will provide only the now-current program) or from another source. Assuming you are able to obtain only the newer (now current) program, it may contain revised inspection items (items not mandated by the FAA) that are not in the owner's older program—items the owner is unwilling to pay for. This appears to raise economic/contractual issues between you and the owner that do not involve the FAA. If the owner does not select and adopt the newer program, you may inspect the airplane only under the program that has been selected and is currently in effect for it.[3] Under § 91.403(a), the owner or operator of an aircraft is primarily responsible for maintaining it in an airworthy condition; therefore, it would behoove your customer to provide the proper inspection program to you.

Second, during an inspection of the airplane under an inspection program currently in effect, you determine that you must perform maintenance items in the process, and you are directed to the manufacturer's maintenance manual for the proper method, technique, or practice. As discussed above, your concern is that § 43.13(a) appears to require you to use "the methods, techniques, and practices prescribed in the *current* manufacturer's maintenance manual or Instructions for Continued Airworthiness . . . ." (Emphasis added.) The issue for you, as expressed in your example, is that, when you are using an inspection program adopted long ago, the now-*current* manufacturer's maintenance manual no longer addresses the maintenance item you need (perhaps because of revision to the airplane design), and the maintenance manual that was current at the time the inspection program was adopted no longer is available. So, your question becomes, in essence: "What source do I use for performing the needed maintenance item and not run afoul of the regulation?"

The answer is found in the last phrase of the quoted sentence in § 43.13(a)—you may use "other methods, techniques, and practices acceptable to the Administrator." Sources of repair data include, but are not limited to, the product's manufacturer, FAA Advisory Circular AC 43.131B (Acceptable Methods, Techniques, and Practices—Aircraft Inspection and Repair), and the FAA. Those sources may be useful in performing a particular maintenance item referenced in the inspection program. The more fundamental issue for you, as you stated, is when an aircraft owner or operator brings you an aircraft for the inspection required under § 91.409(f)(3) and does not provide you the inspection program that was selected and is applicable to that aircraft. If you are unable to obtain the program from another source, it follows that you may not perform that inspection.

I would like to make clear that we did not *define* the word *current* in our May 3, 2010 legal interpretation, as you suggested in your letter; nor did we do so in any other interpretation.[4]

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[3] The owner, of course, could develop a different inspection program and have it approved by the FAA under § 91.409(f)(4), but that is beyond the scope of your question.

[4] We did, however, include a dictionary definition of "current" in a December 5, 2008 Memorandum Interpretation that addressed the § 91.409(f)(3) inspection requirement.

The May 3rd interpretation, and the others referenced in this letter, simply addressed the application of the term in the context of the particular regulation being discussed.

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