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

**Office of the Chief Counsel**

**800 Independence Ave., S.W.**
**Washington, D.C. 20591**

DEC 14 2015

Kenneth T. Meyer
[redacted]

Re: Whether Maintenance Service Bulletins Referenced in a Current Inspection Program Recommended by the Manufacturer and Selected by the Owner or Operator of an Aircraft under 14 C.F.R. § 91.409(f)(3) are Mandatory

Dear Mr. Meyer:

This responds to your December 9, 2013 request on behalf of Eclipse Model 500 aircraft owners for a legal opinion on whether maintenance service bulletins that are incorporated in an aircraft manufacturer's recommended inspection program are mandatory if the aircraft operator or owner has adopted that program under the provisions of 14 C.F.R. § 91.409(f)(3).[1] The answer is no, except for the parts, if any, of those *maintenance* service bulletins that contain *inspection* requirements and that are included in the program at the time the operator or owner adopted it. In addition, if the FAA has mandated the service bulletin by rule, such as an Airworthiness Directive (AD), compliance with it also would be mandatory.

We addressed these issues in depth in a December 3, 2015 legal interpretation from the Acting Assistant Chief Counsel for Regulations addressed to Mr. Keith Siilats. We are enclosing a copy for your convenience. As we stated in that interpretation, our explanation applies to all manufacturer-issued maintenance service bulletins that are contained in a manufacturer-recommended inspection program under § 91.409(f)(3), whether they appear directly in the program, or whether they are incorporated into it by reference. Moreover, the fact that a manufacturer labels a service bulletin "mandatory" does not make it mandatory from an FAA regulatory perspective unless mandated by rule.

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[1] This interpretation addresses aircraft operated under 14 C.F.R. part 91, and inspected in accordance with a current inspection program recommended by the manufacturer under § 91.409(f)(3). The reasoning set forth herein that manufacturer's maintenance service bulletins are not part of the inspection program at issue also applies to aircraft inspected under the provisions of § 91.409(a) and (b) (annual and 100-hour inspections). This reasoning may not apply to aircraft inspected in accordance with an inspection program referenced in § 91.409(f)(1) or (2), *i.e.*, a program used by a person operating aircraft under 14 C.F.R. parts 121 or 135. This is because those programs may require the operator to follow and comply with later-issued revisions and, sometimes, manufacturer-issued service bulletins.

You ask two specific questions. First:

> Are Part 91 operators of the Eclipse 500 aircraft who select the manufacturer's recommended inspection program under FAR 91.409 required to perform "mandatory" service bulletins that are not specifically referenced by number and date in the Airworthiness Limitations Section and not referenced by an Airworthiness Directive?

The answer is no, unless mandated by an FAA-issued rule, which could be an AD. By placing the word mandatory in quotation marks, we assume you mean the service bulletin is described as mandatory by the manufacturer. Note that for airplanes type certificated under 14 C.F.R. part 23, the Airworthiness Limitations section (ALS) is part of the Instructions for Continued Airworthiness (ICA), and is the only part of the ICA that is approved by the FAA. As set forth in paragraph G23.4 of appendix G to part 23, the Airworthiness Limitations section must:

> set forth each mandatory replacement time, structural inspection interval, and related structural inspection procedure required for type certification.

The section must contain a statement that it is FAA approved. While service bulletins may reference the ALS, that section does not normally reference service bulletins, though it could in order to reference how to do the structural inspection. Note, however, that under 14 C.F.R. § 21.31(c) the ALS is part of an aircraft's type design, and while compliance with the ALS is mandatory under 14 C.F.R. §§ 43.16 and 91.403(c), it is the ALS in existence when your aircraft was produced that is part of the type design of your aircraft, and therefore the ALS with which you must comply. If the FAA later approves an different ALS for the same model aircraft, that ALS then becomes part of the type design for any newly-manufactured aircraft—the type design for the previously-manufactured aircraft remains what it was, and it is the prior associated ALS that applies to that aircraft. On May 21, 2015, the FAA's Deputy Chief Counsel for Regulations issued a legal opinion to Mr. Paul New that addressed this issue in detail (copy enclosed).

Your second question:

> Does selection of the manufacturer's recommended inspection program under FAR 91.409 obligate a Part 91 operator to follow the manufacturer's recommendations for maintenance, overhaul, and replacement intervals contained in AMM Chapter 5, or is such an operator only obligated to follow the inspections outlined in Chapter 5 and the Airworthiness Limitations of Chapter 4?

The operator is obligated to follow only the inspection program in effect when the program was selected under § 91.409(f)(3). As we explained in the *Siilats* interpretation, only the inspection parts of the program are mandatory, and if the manufacturer has inserted various maintenance requirements, or references to service bulletins that specify maintenance procedures or "mandatory" upgrades, those portions of the program are not mandatory from an FAA regulatory standpoint. While following a manufacturer's recommended maintenance procedures is usually good practice, under § 43.13(a) other methods, techniques, and practices may also be acceptable.

Also, the FAA-approved Airworthiness Limitations section items that are set forth in Chapter 4 of the Eclipse maintenance manual that was in effect on the date your aircraft was produced are controlling, and any manufacturer-revised limitations are not, unless they are mandated by an AD or other FAA rule.

I trust this letter is responsive to your questions. 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 FAA's Flight Standards Service. If you have additional questions regarding this matter, please call us on (202) 267-3073.

Sincerely,

Lorelei Peter
Acting Assistant Chief Counsel for Regulations, AGC-200

Enclosures