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

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

May 21, 2015

Mr. Paul New
President
Tennessee Aircraft Services, Inc.
2313 Technology Center Drive
Jackson, TN 38301

Re: Request for Legal Interpretation of 14 C.F.R. §§ 91.403(c) and 43.16 Concerning Whether Requirements in an Airworthiness Limitations Section (ALS) Developed By a Design Approval Holder (DAH) and Approved by the Federal Aviation Administration (FAA) as a Change to Type Design are Mandatory for Operators and Maintainers of an Aircraft if the Type Design and Manufacture of the Aircraft Predate the FAA's Approval of the New ALS

Dear Mr. New:

This letter responds to your September 15, 2014 request for legal interpretation of 14 C.F.R. § 91.403(c) regarding whether replacement times and inspection intervals contained in an Airworthiness Limitations section (ALS) newly added to the maintenance manual or Instructions for Continued Airworthiness (ICA) by a manufacturer are mandatory for operators of an aircraft that was type-certificated and manufactured before the FAA approved the new ALS as a change to type design. On January 21, 2015, you amended your request, asking us to also address whether 14 C.F.R. § 43.16 (Airworthiness limitations) requires maintenance providers to perform inspections or other maintenance in accordance with the newly added ALS for those older aircraft. For aircraft operated under 14 C.F.R. part 91, the answer to your question is no.[1] These *after-added* ALS requirements are not mandatory for operators or maintainers of the affected aircraft absent the FAA's issuing an Airworthiness Directive (AD) or some other notice and comment rulemaking that would make them mandatory. Cessna included these new replacement times and inspection intervals in an ALS instead of in another portion of the maintenance manual where they would be more appropriate as non-mandatory procedures.

[1] As explained later in this response, inspections for aircraft operated under 14 C.F.R. part 135 may have different and mandatory inspection requirements.

Under 14 C.F.R. § 21.99(b), in a case where there are no current unsafe conditions,[2] but the FAA or the design approval holder (DAH) finds through product service experience that changes in type design will contribute to the safety of the product, the DAH may submit appropriate design changes to the FAA for approval. Your inquiry specifically addresses a recent revision to the Cessna Model 210 Service Manual comprising a new FAA-approved Section 2B that added an "Airworthiness Limitations section" containing "mandatory" inspection intervals and component replacement times.[3] This new ALS is a change to the product's type design incorporated under the provisions of § 21.99(b). This *now current* type design for the Cessna Model 210 would be the type design for any newly-produced Cessna Model 210 aircraft—it is not the type design for previously-produced Cessna 210 models. You stated that Cessna produced the last Model 210 in 1986. For a particular owner or operator of a Model 210 aircraft, the type design to which that aircraft conformed when it was produced, is the type design to which it still must conform, absent: (1) an AD or other rule mandating a later change, or (2) a voluntary change in type design (either major or minor) initiated by an owner and approved by the FAA.[4]

At least two relevant operating rules require compliance with an ALS contained in a manufacturer's maintenance manual or ICA. These are § 91.403(c), which prohibits the operation of an aircraft "for which a manufacturer's maintenance manual or instructions for continued airworthiness [ICA] has been issued that contains an airworthiness limitations section [ALS] unless the mandatory replacement times, inspection intervals, and related procedures specified in [the ALS] . . . have been complied with;" and § 43.16, which requires that each person performing an inspection or other maintenance specified in an Airworthiness Limitations section [ALS] of a manufacturer's maintenance manual or Instructions for Continued Airworthiness [ICA] shall perform the inspection or other maintenance in accordance with that section . . . ."

At issue here is Cessna's recent addition of a new FAA-approved Section 2B (titled Airworthiness Limitations) to the Model 210's Service Manual. Because the FAA approved this change as an ALS, some would argue that the addition triggers the mandatory requirements of §§ 91.403(c) and 43.16. This argument is incorrect. The only version of an ALS that is mandatory is the version that was included in the particular aircraft's type design that was approved by the FAA. As with the effectivity of a type design for a particular aircraft, absent an AD or other rule that would make the new replacement times and inspection intervals retroactive, Cessna's *after-added* ALS is not mandatory for persons who operate or maintain the Model 210 aircraft, the design and production of which predate the new ALS addition. This is

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[2] If the FAA finds that an unsafe condition exists in a product, the FAA issues an Airworthiness Directive (AD) under the authority of 14 C.F.R. part 39, which may require a change to the product's type design. The AD would specify to which models the AD and any associated design changes would apply—some of the requirements could have retroactive application to earlier models. Except for emergency ADs, the FAA issues ADs under notice and comment rulemaking procedures in accordance with the Administrative Procedure Act (APA), specifically 5 U.S.C. § 553.

[3] Under § 21.31(c), an ALS is part of a product's type design.

[4] Once an aircraft is produced under a type certificate, the type design of that particular aircraft is fixed in time, absent an FAA requirement to make a retroactive change, or an owner's voluntary change (if it is approved under a method acceptable to the FAA (§ 21.95 for a minor change in type design) or if it is FAA-approved through a major change in type design (§ 21.97) or through a supplemental type certificate (STC) (§ 21.113(b)).

the case for all older model aircraft. For aircraft with type certificates that pre-date the requirements for an ALS, the manufacturer's issuance of an ALS does not require operators or maintenance providers to comply with those limitations unless the FAA issues an AD or other rule to mandate it.[5] Conversely, for an aircraft produced after adoption of an FAA-approved ALS revision, an operator may not operate that aircraft unless the mandatory replacement times, inspection intervals, and related procedures specified in the revision have been complied with. By the same reasoning, for those aircraft produced after the ALS revision, maintenance providers must perform inspections or other maintenance in accordance with that section.

You also asked whether, if this Cessna ALS is retroactively mandatory for the older model airplanes, the action would constitute substantive rulemaking by the FAA without the benefit of the notice and comment procedures required by the Administrative Procedure Act (APA).[6]

To the extent it could be argued that the FAA imposed a requirement for operators and maintainers to comply with this type of *after-added* ALS by adopting §§ 91.403(c) and 43.16 through rulemaking, and that manufacturers' documents simply define how the affected persons must comply, that interpretation must fail. It would violate both the statutory constraint on the FAA's authority to delegate its rulemaking authority to private entities and the APA's requirement for notice-and-comment procedures. If operational regulations were interpreted as imposing an obligation on operators and maintenance providers to comply with the latest revision of a manufacturer's document, manufacturers could unilaterally impose regulatory burdens on operators of existing aircraft.

This would be legally objectionable in that the FAA does not have legal authority to delegate its rulemaking authority to manufacturers. Furthermore, "substantive rules" can be adopted only in accordance with the rulemaking section of the APA, 5 U.S.C. § 553, which does not grant rulemaking authority to manufacturers. To comply with these statutory obligations, the FAA would have to engage in its own rulemaking to mandate the manufacturer's document, as we do when we issue ADs.

You also asked whether, even if these types of *after-added* ALSs are not mandatory retroactively for a person who owned the aircraft prior to the addition of the new ALS, if the current owner sells the aircraft would the new requirements be mandatory for the new owner. The answer is no, for the reasons explained above. The *after-added* ALS changes the type design only of aircraft produced under the changed type design. Aircraft manufacturers' maintenance manuals and Instructions for Continued Airworthiness must be acceptable to the FAA,[7] and may be found acceptable if developed to maintain the aircraft in conformance with its type design. This necessarily means the specific type design for the aircraft at issue. Future changes, whether they

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[5] The FAA's requirements that Instructions for Continued Airworthiness (ICA) contain an ALS were adopted in 1980, and the Cessna Model 210 type certificate was first issued in 1959. Cessna produced the last Model 210 in 1986.

[6] Along these lines, we note that on September 24, 2014, Mike Busch, the President of Savvy Aircraft Maintenance Management, Inc., published an article on the Aircraft Owners and Pilots Association (AOPA) Opinion Leaders Blog entitled "Backdoor Rule Making?," in which he discussed the same *after-added* Cessna ALS matter, along with the related APA concerns. In that article, Mr. Busch notes that he co-drafted with you your September 15, 2014 request for interpretation that is the subject of this response.

[7] Except for the ALS, which must be FAA-approved.

be FAA-approved ALS or otherwise, cannot be retroactively enforced against owners/operators or maintenance providers of earlier model aircraft unless the FAA mandates their retroactive application by an AD or other properly adopted rule.

Finally, you sought clarification on whether the application of our reasoning in a previous interpretation, which concluded that a non FAA-approved inspection document issued by Cessna was not mandatory for owners or operators of existing aircraft, would be changed in view of the mandatory nature of the ALS requirement in § 91.403(c). The underlying premise of our reasoning would not change. That interpretation, issued on July 9, 2010[8], concluded that a Structural Inspection Document (SID) that added new inspection requirements to Cessna's recommended inspection program for its Conquest model aircraft would not be mandatory for an owner or operator of that aircraft if the owner or operator had already adopted the program before Cessna added the SID.[9] The difference in reasoning between the Cessna Conquest SID situation and the Cessna Model 210 situation at issue (involving the *after-added* ALS) is that the later SID requirements would become mandatory for an owner or operator who adopted the manufacturer's *current* recommended inspection program under § 91.409(f)(3) after the SID had been incorporated into the inspection program—because that would be *current* when adopted. Cessna Model 210 aircraft, however, unless operated under part 135 and therefore inspected under a part 135 inspection program, would be inspected in accordance with an annual or 100-hour inspection under § 91.409(a) or (b), and the current maintenance or inspection manual or other methods, techniques, and practices acceptable to the Administrator would be applicable. To the extent the "current" maintenance manual contains the *after-added* ALS, using it would be acceptable, but not mandatory, as the previous revision without the new ALS would still be acceptable to the FAA—again, absent an AD or other rule that would make the new ALS retroactive and mandatory.

On February 19, 2015, the FAA's Small Airplane Directorate sent a letter to Cessna that addressed some of the above issues, and pointed out the non-mandatory nature of the *after-added* ALS for the Model 210 aircraft. The FAA asked Cessna to republish the replacement times and inspections as recommendations that are encouraged, but optional, for those in-service aircraft, unless later mandated by an AD. To date Cessna has not provided a written response outlining its position on this matter.

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[8] FAA legal interpretation letter to Larry Furnas, President, Aviation Advocates, LLC, from Rebecca L. MacPherson, Assistant Chief Counsel for Regulations, dated July 9, 2010.

[9] As we pointed out, this may not be the case for aircraft operated under 14 C.F.R. parts 121 or 135. For purposes of inspections, the Cessna Conquest is a large airplane described in § 91.409(e); therefore, the owner or operator must select and use one of the four inspection programs listed in § 91.409(f). The first of these inspection programs requires a continuous airworthiness inspection program under parts 121 or 135, which *could* require adoption of later-issued inspection requirements, and the second program option requires an approved aircraft inspection program approved under § 135.419, which also *could* require adoption of later-issued inspection requirements.

This response was prepared by Edmund Averman and Benjamin Borelli, attorneys 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, and with the Aircraft Engineering Division (AIR-100) in the FAA's Aircraft Certification Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Lorelei Peter
Deputy Assistant Chief Counsel for Regulations