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

Office of the Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591

OCT 25 2017

Mr. Juan Pablo Cárcano
Accountable Manager
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20851 Johnson Street, Ste. 109
Pembroke Pines, FL 33029

Re: Legal Interpretation of the Term "Current"
in 14 C.F.R. §§ 43.13(a) and 145.109(d)

Dear Mr. Cárcano:

This letter is provided in response to your May 19, 2017 letter requesting clarification of the word "current" as applicable to 14 CFR §§ 145.109 and 43.13. Your letter refers to two related legal memoranda issued by our office,[1] in which we provided legal interpretations on the use of the term "current" with respect to inspection programs selected under 14 C.F.R. § 91.409(f)(3) and requirements for maintenance manuals in §§ 43.13(a) and 145.109(d). Specifically, you are requesting clarification on whether the principles set forth in the 2010 memorandum apply to your company's particular circumstances. We believe the answers to your questions are found in the 2010 memorandum, so another legal interpretation is not required. However, because you raised the issues, we are providing the following clarifications.

Before we address your company's specific questions, we believe three of your stated conclusions that you based on our two interpretations (referenced above) warrant clarification.

Conclusion 1: A previous version of a Component Maintenance Manual can be considered "current" unless the FAA has invalidated it by rule or can otherwise show that it was not acceptable.

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[1] *Legal Interpretation of 14 C.F.R. § 91.409(f)(3)* from Assistant Chief Counsel for Regulations, AGC-200, to Manager, Aircraft Maintenance Division, AFS-300 (Dec. 5, 2008), and *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)* from Assistant Chief Counsel for Regulations, AGC-200, to Manager, AWP-230 (August 13, 2010).

FAA Clarification: First, it is important to distinguish between an aircraft owner or operator selecting an *inspection program* for current and future *inspections* of that aircraft, and *maintenance* to be performed on it using a *maintenance manual*. As you correctly noted, our 2008 interpretation, quoting a dictionary, stated that "the adjective 'current' means belonging to the present time." Accordingly, a previous version of a manual is no longer "current," though, depending on the circumstances, it may be acceptable to use.

The 2008 interpretation addressed the requirement in § 91.409(f)(3) that provided an aircraft owner or operator the option to select as the inspection program for the aircraft "a current inspection program recommended by the manufacturer." That inspection program (current at that moment in time) would be a program acceptable to the FAA for future inspections of the aircraft to which it applied unless some part of it was deemed unacceptable because of changes required by an Airworthiness Directive (AD) or some other FAA rule. If the manufacturer later made revisions to the program, the originally selected program would no longer be the manufacturer's "current" inspection program as of that later date, but it would remain an acceptable inspection program for the owner or operator who had selected it because it was current at the time of selection, as required by the regulation. The later revised inspection program would, however, be the "current" inspection program for an owner or operator who selected it at that later point in time.

Conclusion 2: In the context of § 43.13(a), "current" does not necessarily mean "the latest" or "the most current version" of a Manufacturer's Maintenance Manual or Instructions for Continued Airworthiness of an article.

FAA Clarification: Your conclusion is not correct. As explained below in answer to your specific question, the word "current" in § 43.13(a) means just what the dictionary says it does, *i.e.*, "belonging to the present time"—in other words, the *latest* version of the manufacturer's maintenance manual or Instructions for Continued Airworthiness in effect at the point in time of use. None of our legal interpretations attempted to re-define the meaning of *current*—they only explained its application in the particular regulation at issue. Section 43.13(a) provides the option of using "other methods, techniques, and practices acceptable to the Administrator" in lieu of those provided by the manufacturer.

Conclusion 3: As explained in your memorandum of Dec-05-2008, the manufacturers should not unilaterally issue changes to their recommended maintenance and inspection programs that could impose financial and/or other burdens to the owner or operators of an aircraft without running afoul of the APA.

FAA Clarification: Your conclusion is not correct, as it appears to be based on an incomplete reading and analysis of what we stated in the 2008 legal memorandum. Manufacturers

frequently make changes to their recommended inspection programs and maintenance manuals. Often these changes result in improved inspection or maintenance techniques and practices.

Our point in the 2008 memorandum was that, once an owner or operator selects an inspection program under the option provided by § 91.409(f)(3) (and that program becomes mandatory for subsequent inspections), the manufacturer cannot thereafter unilaterally impose new requirements on the owner or operator by making changes to the program. We stated:

> If the word "current" in § 91.409(f)(3) and other similarly worded provisions did mean an ongoing obligation, when manufacturers make changes to their instructions and programs (which often accompany newly-produced models of products, but which also cover the previously-produced models), the new requirements could impose financial and other burdens on owners and operators of older aircraft that they did not bargain for. An interpretation of the regulation that would allow manufacturers unilaterally to issue changes to their recommended maintenance and inspection programs that would have future effect on owners of their products would not be legally correct. This would run afoul of the APA.

So long as later changes made by a manufacturer to its recommended inspection program were applicable to the aircraft model at issue and were acceptable to the FAA, an owner or operator could voluntarily adopt those changes.

FAA Response to Your Questions

You state that your company, a repair station certificated under part 145, has a written agreement with a customer in which the customer explicitly requests "the use of a prior—but current—version" of the manufacturer's maintenance manual when performing maintenance on articles. You have verified that the manufacturer's maintenance manual has not been invalidated by an FAA rule and that, at the time of servicing the articles, no Airworthiness Directives (AD) involved the use of information that is not contained in the version of the maintenance manual used. Based on these facts, you do not believe your company's use of the prior version of the maintenance manual is a violation of § 43.13(a).

Based on our explanation above, your customer's request that you use "a prior—but current—version" of a maintenance manual is contradictory. However, as explained in our 2010 legal memorandum, your company would not violate § 43.13(a) if it uses a prior version of the maintenance manual, so long as that manual was still acceptable to the FAA. The FAA explained in the 2010 memorandum:

> 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.

You also ask if your company is still required to have available the latest version of the manufacturer's maintenance manual at the time that relevant work is being performed. The answer is yes. In the 2010 memorandum, we provided the following reasoning behind this requirement:

> 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.

Accordingly, § 145.109(d) requires that your company maintain the latest (*i.e.* up-to-date) version of the manufacturer's maintenance manual even though the applicable maintenance performance rule (§ 43.13(a)) permits the use of a prior version when performing maintenance, so long as the portion being used is still acceptable to the FAA. The FAA's Flight Standards Service is aware of instances in which manufacturers refuse to provide up-to-date manual revisions to some repair stations, rendering it impossible for them to be in compliance with the requirement to have the "current" document accessible when the relevant work is being done.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Edmund Averman and Richard Doan, attorneys in the Regulations Division of the Office of the Chief Counsel. If you have further compliance questions or require additional technical assistance, please contact the Aircraft Maintenance Division at (202) 267-1675.

Sincerely,



Lorelei Peter
Assistant Chief Counsel for Regulations, AGC-200

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May 19th, 2017

I am writing to request clarification of the word "current" as applicable to 14 CFR 145.109 and 43.13.

Having read in detail your Memorandums of Dec-05-2008 and Aug-13-2010, (attached to this letter) we have developed the following analysis:

If, according to your Memorandum of Dec-05-2008:

1) The adjective "current" means belonging to the present time,
2) Your interpretation of "current" applies to § 91.409(f)(3) and other similarly-worded provisions and regulations,
3) "To comply with § 91.409(f)(3) an operator need only to 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. Such a mandate would be adopted in the form of either an AD or an amendment to the operating rules,"

And according to your Memorandum of Aug-13-2010 and in the context of § 43.13:

4) "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".
5) "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,"

We conclude that:

- A previous version of a Component Maintenance Manual can be considered "current" unless the FAA has invalidated it by rule or can otherwise show that it was not acceptable.

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- "Up to date" refers to a document that has been verified and not found cancelled by rule as of the time when relevant work is being performed.

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- An FAA 8130-3 form is a "Statement of Compliance with 14 CFR Part 43." If we are complying with this regulation even when not using the latest revision of Component Maintenance Manual released by the manufacturer, its use under the described conditions does not constitute a violation of the above-mentioned regulation.

- In the context of § 43. 13(a), "current" does not necessarily mean "the latest" or "the most recent version" of a Manufacturer's Maintenance Manual or Instructions for Continued Airworthiness of an article.

X

Given the fact that:

- We have a written agreement with the customer explicitly stating that they request the use of a prior- but current- version of the Manufacturer's Maintenance Manual when performing maintenance on their articles.
- We have verified that the Manufacturer's Maintenance Manual has not been cancelled by rule of the administrator.
- At the time of servicing the articles, no Airworthiness Directives (ADs) involved the use of information that is not contained in the version of the Manufacturer's Maintenance Manual used.

We conclude that our procedures do not constitute a violation to the CFR43. Is this a correct interpretation?

As explained on your memorandums of Dec-05-2008, the manufacturers should not unilaterally issue changes to their recommended maintenance and inspection programs that could impose financial and/or other burdens to the owner or operators of an aircraft without running afoul of the APA. Therefore, their subsequent revisions of the maintenance manuals will not invalidate the effectiveness of prior versions of these documents unless the FAA has cancelled that prior version by rule.

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For those reasons, the content of a later version of a Manufacturer's Maintenance Manual should not contain substantially different information as to undermine the safety of the aircraft articles.

In the previously described situation, in which a customer requested us to use not the latest but a prior version of the Manufacturer's Maintenance Manual that has not been cancelled by rule: are we still required to have available the latest version of the referenced document at the time that relevant work is being performed? If so, what would be the effective purpose of it?

Yes + Good Q !

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We will truly appreciate your help, for a better understanding of the regulation.

Sincerely yours.

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