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

Office of the Chief Counsel

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

JUL - 5 2017

W. Harvey Cash
6 Aeronca Road
Belton, SC 29627

Re: Applicability of 14 C.F.R. Part 43 Maintenance Regulations for Aircraft Operated under 14 C.F.R. Parts 91 and 135

Dear Mr. Cash:

This responds to your January 28, 2017 letter seeking clarification on when changes or supplements made by manufacturers to their maintenance manuals or Instructions for Continued Airworthiness (ICA) are mandatory for the maintenance of aircraft operated in three types of operations: "Private Part 91, Commercial Part 91, or Part 135.[1]" At the conclusion of your letter, you list five FAA legal interpretations you reviewed that, presumably, helped you formulate your questions. We believe the answers to your questions are found in the five interpretations you reviewed; however, for additional clarification, we are including reference to an interpretation we recently issued on May 23 (*see* footnote 4). Nevertheless, we are responding in summary fashion to the issues you raised.

> **Question 1**: Has a manufacturer overstepped its authority by creating or amending an Instructions for Continued Airworthiness manual, making non-regulatory material now regulatory in nature, and placing additional economic burden on operators, all possibly in violation of the Administrative Procedure Act?

FAA Response: Note that 14 C.F.R. § 43.13(a), the FAA's overarching maintenance performance rule states. In pertinent part:

> Each person performing maintenance, . . . on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the

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[1] In your Note 1, you asked that, with respect to operations under 14 C.F.R. part 135, our answers address only operations conducted with aircraft "type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, and maintained under parts 91 and 43." Those categories of aircraft must be maintained as provided in § 135.411(a)(1). Note, however, that § 135.411(a)(1) provides that aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, and operated under part 135, must be maintained under parts 91 and 43, *and also* §§ 135.415, 135.417, 135.421, and 135.422. In addition, an approved aircraft inspection program may be used under § 135.419. For this interpretation, we are not addressing the aging airplane inspection requirements of § 135.422 because we do not believe your questions contemplate those special requirements.

> current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16.

By the plain meaning of that text, with the exception regarding § 43.16, using the methods, techniques, and practices in a manufacturer's Instructions for Continued Airworthiness (ICA) is not required so long as other methods, techniques, and practices used by the maintenance provider are acceptable to the FAA. Section 43.16 provides that inspections and other maintenance specified in an Airworthiness Limitations section (ALS) of a manufacturer's maintenance manual or ICA are mandatory, unless something different is specified in operations specifications approved under part 121 or 135, or an inspection program approved under § 91.409(e). As discussed in more detail below, however, a revision of the ALS is mandatory only if it is part of the type design of the aircraft when it receives its airworthiness certificate, if it is part of an applicable approved inspection or maintenance program, or if it is mandated by FAA regulation. Therefore, a manufacturer does not overstep its authority by adding to or otherwise amending its ICA, so long as it does not unilaterally amend the ICA's Airworthiness Limitations section, which is FAA approved.

> **Question 2**: Are the instructions, practices, inspections, or other data in a new manual by the manufacturer, which is described by it to be a supplement to its ICA, to be considered regulatory or otherwise mandated by the FAA, and required to be complied with by either Private Part 91, Commercial Part 91, or part 135 operators?

FAA Response: For part 91 operators, this could depend on the size and type of their aircraft.[2] Operators of small aircraft for which § 91.409(a) and (b) applies[3] are required to have annual or 100-hour inspections of their aircraft in accordance with part 43. Unless otherwise required by an airworthiness directive (AD) or other FAA rule, any maintenance required as a result of those inspections would have to be done in accordance with part 43, and non-FAA-approved additions to a manufacturer's ICA would not be mandatory, so long as other methods, techniques, and practices that were used were acceptable to the FAA.

It could be different for operators of large or turbine-powered multiengine airplanes and turbine-powered rotorcraft for which § 91.409(e) applies. Those operators must select and follow an inspection program under § 91.409(f). For most operators of aircraft under part 91 (private or commercial), the program provided by paragraph (f)(3) is the option of choice: "A current inspection program recommended by the manufacturer." This program is considered "current" as of the date the owner/operator selects and adopts it as the inspection program it will follow. Requirements added by the manufacturer after that date are not mandatory from an FAA regulatory perspective, unless made so by an AD or other FAA rule.

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[2] This interpretation does not address the progressive inspection option provided by § 91.409(d) as we do not deem that option within the scope of your request.

[3] This would exclude those for which § 91.409(e) applies (Large airplanes (to which part 125 is not applicable), turbojet multiengine airplanes, turbopropeller-powered multiengine airplanes, and turbine-powered rotorcraft).

Alternatively, a part 91 operator could select an inspection program under paragraph (f)(4): "Any other inspection program established by the registered owner or operator of that airplane or turbine-powered rotorcraft and approved by the Administrator under paragraph (g) of this section." In this case, whether after-added changes by a manufacturer would be mandatory would depend on what the owner or operator and the FAA agreed upon when the inspection program was approved. For example, if the program included after-added items, their accomplishment would be mandatory as part of the FAA-approved program.

As noted above for small aircraft, any maintenance necessitated by the inspection results, unless otherwise required by an AD or other FAA rule, would have to be done in accordance with part 43, and non-FAA-approved additions to a manufacturer's ICA would not be mandatory, so long as other methods, techniques, and practices that were used were acceptable to the FAA.

The situation may be different for operators of aircraft maintained as provided in § 135.411(a). In addition to the requirement that these aircraft be maintained under parts 43 and 91, the "Additional maintenance requirements of" § 135.421 also apply. Section 135.421(a) provides:

> Each certificate holder who operates an aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, must comply with the manufacturer's recommended maintenance programs, or a program approved by the Administrator, for each aircraft engine, propeller, rotor, and each item of emergency equipment required by this chapter.

Therefore, for the items covered in this section, whether the "instructions, practices, inspections, or other data in a new manual [described by you as a "supplement" to the manufacturer's ICA]" is considered mandatory by the FAA depends on which option the certificate holder selected (a manufacturer's recommended program *or* a program approved by the Administrator), and what the terms of the applicable program require. In either case, if the program in use specifically requires inclusion of after-added items (either because that provision was in effect when the program was selected, or because that was what the FAA approved), then they would be considered mandatory by the FAA. If the manufacturer's recommended program did not contain such a provision, the after-added items would not be considered mandatory—again, unless mandated by an AD or some other rule.[4]

> **Question 3**: Can compliance with a newly-issued manual, ICA, service bulletin, *etc.* be imposed against any private part 91, commercial part 91, or part 135 operator that has already selected and identified in the aircraft manufacturer's records a "current inspection program recommended by the manufacturer," or has selected and identified, "any other inspection program… [that has been] approved by the Administrator…" or otherwise selected "current" maintenance data?

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[4] This issue is explained in greater detail in an FAA legal interpretation: *Response to Request for Interpretation of 14 C.F.R. § 135.421(b)*, dated May 23, 2017, addressed to John S. Duncan, Director Flight Standards Service, from Lorelei A. Peter, Assistant Chief Counsel for Regulations.

FAA Response: We believe your question confuses inspection programs that prescribe inspection procedures and intervals with documents such as maintenance manuals and ICA that provide the "how to" methods, techniques, and practices for performing maintenance activities on aircraft. See our responses to your questions 1 and 2, above, for when after-added changes to maintenance manuals would be considered by the FAA to be mandatory. We have previously addressed when changes made by a manufacturer to its "current" inspection program would be mandatory for an owner or operator who selected and adopted the "current" program at a point in time before those changes were made.[5]

> **Question 4**: Does any FAA regulation, policy or legal opinion regarding Time Between Overhauls (TBO), either by hours or years in service, mandate that these TBOs must be adhered to by either private part 91, commercial part 91, or part 135 operators?

FAA Response: We cannot provide a definitive answer to such a broad-based question, but we offer the following. First and foremost, if a TBO is specified as a mandatory replacement time in an FAA-approved ALS of a maintenance manual or ICA, it would be mandatory by virtue of §§ 43.16 and 91.403(c). Also, if the TBO was specified in the manufacturer's current maintenance program for the aircraft engine, propeller, rotor, or item of emergency equipment for a part 135 operator who is utilizing the manufacturer's program, or if the TBO is included as a requirement in a part 135 maintenance program approved by the FAA for that operator, the TBO would be mandatory. Finally, if a TBO is required by an AD or other FAA rule, it would be mandatory. If a TBO is referenced in a Note in a type certificate data sheet (TCDS), whether the TBO would be mandatory depends on whether that reference was supported by a reference to a rule (such as an ALS). The mere fact that a TBO is included in a manufacturer's maintenance manual or ICA does not make it mandatory, unless one of the above situations applies that would make it so.

> **Question 5**: Are manufacturer's service bulletins, service letters, or other maintenance missives by their many names, ever a regulatory requirement for either private part 91, commercial part 91, or part 135 operators, other than as noted in the following reference materials:
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> > FAA Order 8620.2 Applicability and Enforcement of Manufacturer's Data (Nov. 2, 1978)[6]
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> > FAA Advisory Circular (AC) 20-77A (April 6, 2007)[7]

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[5] *See* FAA *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)*, dated August 13, 2010, addressed to Manager, AWP-230, from Assistant Chief Counsel for Regulations, AGC-200, and FAA *Legal Interpretation of 14 C.F.R. § 91,409(f)(3)*, dated December 5, 2008, addressed to Manager, Aircraft Maintenance Division, AFS-300, from Assistant Chief Counsel for Regulations, AGC-200.

[6] FAA Order 8620.2 was superseded by FAA Order 8620.2A on November 5, 2007.

[7] Advisory Circular (AC) 20-77A was cancelled on January 4, 2016, and replaced by AC 20-77B.

FAA Response: We have reviewed the current versions of the two documents referenced in your question, and in general we concur with the advice and pronouncements provided therein. In the future, if you have a question involving specific pertinent facts, please feel free to request a legal interpretation at that time.

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 contact us at your convenience at 202-267-3073.

Sincerely,

Robert A. Hauck

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

28 JAN 2017

Office of Chief Counsel
Federal Aviation Administration
800 Independence Ave, SW
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Re: Legal Interpretation of Maintenance Regulations or Policy

Sirs:

Today while attending an IA Refresher seminar, Mr. Neil George, a representative of Teledyne Continental Motors (TCM), made remarks in his presentation that I require the FAA legal opinions on.

Mr. George announced that TCM has issued a new manual, M-0, Standard Practice Maintenance Manual. He said that the content of M-0 includes material from many Service Bulletins and Service Letters, and is a "supplemental to the existing Instructions for Continued Airworthiness." This description is in agreement with TCM Service Instruction Letter 16-2, dated 04/15/2016.

I opined to Mr. George that it appears what TCM has done is to move non-regulatory instructions into a new document in an attempt to make them regulatory in nature, and thus imposes a legal requirement on the public - which TCM does not have authority to do.

Mr. George stated that the Instructions for Continued Airworthiness is not mandatory for Part 91 operators; only for Commercial Operations. This statement seems incorrect on many levels, but at this point in the presentation the topic was dropped.

My questions for the Office of Chief Counsel are as follows:

1. §43.13 states, in part, that "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 prepared by its manufacturer..."

Has TCM overstepped it's authority by creating or amending an Instructions for Continued Airworthiness manual, making non-regulatory material now regulatory in nature, and placing additional economic burden on operators, all possibly in violation of the Administrative Procedures Act?

1b. Are the instructions, practices, inspections, or other data in the new manual by TCM, which is described by them to be a supplement to their ICA, to be considered regulatory or otherwise mandated by the FAA, and required to be complied with by either Private Part 91, Commercial Part 91, or Part 135[(1)] operators?

2. Can compliance with this new TCM manual, or any new manual, ICA, service bulletin, etc, be imposed against any Private Part 91, Commercial Part 91, or Part 135 operator that has already selected and identified in the aircraft maintenance records a "current inspection program recommended by the manufacturer," or has selected and identified "any other inspection program ... [that has been] approved by the Administrator ... " or otherwise selected "current"[(1)] maintenance data?

Addressing another topic that Mr. George brought up, I would like to ask...

3. As has been noted in previous legal opinions, the piston engine Time Between Overhauls (TBO) is a manufacturers recommendation - not an airworthiness limitation. Does any FAA regulation, policy, or legal opinion regarding TBO, either by hours or years in service, mandate that these TBOs must be adhered to by either Private Part 91, Commercial Part 91, or Part 135 operators?

My final question regards a topic that has been belabored many times.

4. Are manufacturers service bulletins, service letters, or other maintenance missives by their many names, ever a regulatory requirement for either Private Part 91, Commercial Part 91, or Part 135 operators, other than as noted in the following reference materials?

A) FAA Order 8620.2, Applicability and Enforcement of Manufacturers' Data, published on Nov. 2, 1978, states, "There exists a difference of opinion among field inspectors concerning the manner in which manufacturer maintenance manual material including service letters and service bulletins, could be enforced by the FAA. FAR 43.13 requires all persons to use methods, techniques, and practices acceptable to the Administrator while performing aircraft maintenance. The manufacturer's maintenance manuals, service bulletins, and service letters have always been regarded as a source of acceptable data for complying with 43.13(a)(b), however, *such acceptability does not, in itself, impose an enforcement or mandatory compliance requirement*.

In the summary paragraph of the order it states that compliance with manufacturer's maintenance instructions is only required when:
1. Made mandatory by an AD or other specific rule within the FAR.
2. Made mandatory by a change to the type certificate data sheet.

B) AC 20-77A lists only 4 instances where Service Bulletins would be mandatory for an operator:

1. All or a portion of a SB is incorporated as part of an Airworthiness Directive
2. The SB is part of the FAA-approved Airworthiness Limitations section of the manufacturer's manual or the type certificate
3. SBs are incorporated directly or by reference into some type of FAA-approved inspection program, such as an Approved Aircraft Inspection Program or CAMP
4. SBs are listed as an additional maintenance requirement in the certificate holder's OpSpecs

Notes:
(1) For every mention of Part 135 operations within this letter, I would like to confine answers to be pertinent to operations using only aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less, and maintained under parts 91 and 43.
(2) 2010 Memorandum, "Legal Interpretation of 'Current' ..."

Other material reviewed:
2015 Siilats Interpretation
2011 MacMillan Interpretation
2010 Furnas Interpretation
2010 Memorandum, "Legal Interpretation of 'Current' ..."
2006 Busch Interpretation

Thank you for your time on these issues.

Regards,

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