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Can FAA's Acceptable Methods Be Used in Lieu of Manufacturer's Manual Provisions?

When are you permitted to use the methods, techniques and practices published in the FAA's advisory circular AC 43.13-1B regarding acceptable methods? Recent FAA guidance suggests some long-held beliefs about when you can use this AC might be incorrect.

Within AC 43.13-1B, "Acceptable Methods, Techniques and Practices for Aircraft Inspection and Repair," some standards for inspection and repair are published. The "Purpose" paragraph of this AC appears to impose a limit on when the data in this AC is considered "acceptable" to the FAA.

For many years, the industry has been of the opinion this guidance can be used only in accordance with the guidance of the "Purpose" paragraph, which prohibits the use of the AC data if it is contrary to a manufacturer's manual. A recent FAA legal opinion, however, suggests the scope established in the "Purpose" paragraph might be wrong. It even goes so far as to suggest the "Purpose" paragraph of AC 43.13-1B should be changed.

The current "Purpose" paragraph of AC 43.13-1B states:

PURPOSE. *This advisory circular*

contains methods, techniques and practices acceptable to the Administrator for the inspection and repair of non-pressurized areas of civil aircraft, only when there are no manufacturer repair or maintenance instructions. This data generally pertains to minor repairs. The repairs identified in this AC may only be used as a basis for FAA approval for major repairs. The repair data may also be used as approved data, and the AC chapter, page and paragraph listed in Block 8 of FAA Form 337 when:

- a. the user has determined that it is appropriate to the product being repaired;*
- b. it is directly applicable to the repair being made; and*
- c. it is not contrary to manufacturer's data.*

Under the aviation regulations, repair and inspection both are defined as forms of maintenance. The FAA's regulations require maintenance to be performed according to acceptable methods, techniques or practices. These same regulations specify instructions found in manufacturer's maintenance manuals are considered to be acceptable.

This AC appears, on its face, to restrict the use of the data in the publication only to cases in which the manufacturer's

maintenance manual is silent concerning the repair or inspection needing accomplished. This can be a difficult constraint, especially with older manuals that might rely on outdated repair/inspection procedures (such as manuals for aircraft no longer actively supported). In such cases, the AC might provide better methods, techniques or practices for performing the anticipated tasks.

The FAA Office of the Chief Counsel investigated the "the authority of the AC to restrict the use of data that has been found to be acceptable to the Administrator, if the manufacturer has also provided acceptable instructions for continued airworthiness."

Internally, the FAA raised the concern that this creates a paradox in which instructions from the advisory circular could be acceptable to the FAA if the manufacturer had not published contrary instructions; however, upon such a publication by the manufacturer, the previously acceptable instructions would become unacceptable.

This seemed wrong within the FAA because it means the private sector has the power to make an FAA-acceptable instruction unacceptable without actually

making any real changes to the aircraft for which the procedure previously was acceptable. It seems to delegate to the private sector the ability to countermand the FAA's finding that a procedure is acceptable.

FAA attorneys agreed the mere publication of manufacturer's instructions does not automatically make the data in the AC unacceptable. In fact, the FAA specifically said such a conclusion "is not correct, as a matter of law."

The FAA's analysis goes back to the regulation, 14 CFR §43.13(a), which provides for a person performing maintenance to use the current manufacturer's maintenance manual "or other methods, techniques and practices acceptable to the Administrator."

Thus, if a person performs aircraft maintenance and uses a method, technique or practice that differs from those specified in the applicable manufacturer's maintenance manual or instructions for continued airworthiness, the FAA would need to show the maintenance done, even though different from the steps outlined in the manual, was not acceptable to prove a violation of the regulation.

This statement might seem obvious to AEA members because they know the FAA bears the burden of proof in an enforcement action. But actually, it is an important but subtle difference from the way the courts have treated these cases in the past. In the past, the administrative law judges have held, when a repair station performs maintenance in a manner that differs from the manufacturer's manual, the mere fact the method is different from the manual is enough to prove a violation of 14 CFR §43.13(a).

The FAA Office of the Chief Counsel has recommended the limitations in the AC be changed to make it clear that the procedures in the AC are considered "acceptable to the FAA for performing inspections and minor repairs of non-pressurized areas of civil aircraft unless the repair at issue is recommended against in the applicable manufacturer's mainte-

nance or repair instructions."

The fact the FAA's attorneys recommended this change does not mean the AC will be changed — this decision lies with the policy personnel in the FAA's Maintenance Division. However, it does cast light on the use of the AC. Most particularly, it suggests it might be acceptable to the FAA to use the guidance in the advisory circular as acceptable data for the inspection and repair of non-pressurized areas of civil aircraft, even when the same type of repair or inspection is addressed in the manufacturer's manual, as long as:

- 1) the instructions from the AC are appropriate to the product being inspected or repaired;
- 2) the instructions from the AC are appropriate to the work being performed; and
- 3) the manufacturer's manual has not "recommended against" the instructions from the AC.

The guidance from the FAA Office of the Chief Counsel represents an agency interpretation of its own rules, and as such, it should be granted some deference by the courts. However, there still is previous case law suggesting that merely using maintenance practices that are different from those in the manual can be a violation. Therefore, it is wise to seek additional FAA confirmation of the acceptability of the AC provisions you intend to follow before you follow them. Such additional confirmation can help ensure you are following appropriate instructions rather than creating a situation in which your business could be subject to enforcement action.

The FAA Office of the Chief Counsel's memo might help convince hesitant PAIs that admitting acceptability of otherwise-acceptable AC instructions is consistent with FAA headquarters policy. □

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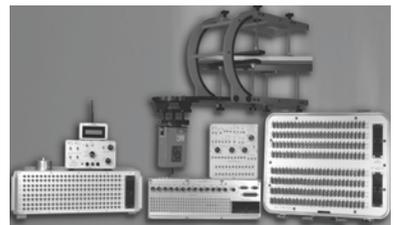
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