



AIRCRAFT OWNERS AND PILOTS ASSOCIATION

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June 27, 2006

Mr. Nicholas A. Sabatini
Associate Administrator for Aviation Safety
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591

Dear Mr. ^{Nicky} Sabatini:

The National Transportation Safety Board (NTSB) recently issued a decision in *Administrator v. Law*, NTSB Order No. EA-5221 (May 4, 2006) that if incorrectly interpreted may have unintended negative consequences to the maintenance and repair of general aviation aircraft. The Aircraft Owners and Pilots Association (AOPA) is concerned that the language used by the NTSB in their decision is contrary to established policy, practice, and law, and that mechanics and possibly Federal Aviation Administration (FAA) inspectors could misinterpret the NTSB's decision to require compliance with all manufacturer's service bulletins and instructions.

Should the FAA deem it necessary to issue a letter of interpretation in the interest of clarity and to avoid misapplication of existing regulations, the agency must reaffirm that service bulletins and service instructions are not mandatory for general aviation, unless they are approved by the FAA in an AD or in the initial FAA-approved airworthiness limitations section of the instructions for continued airworthiness.

In *Administrator v. Law*, the respondent argued that he is not required to comply with manufacturers' service bulletins, instructions, or letters in the absence of an Airworthiness Directive (AD) from the Administrator that specifically requires such compliance. The NTSB however did not find this argument persuasive and stated that, "While compliance with service instructions or service bulletins may not be mandatory in the absence of an Airworthiness Directive, a manufacturer may legitimately incorporate such service publications into a manual by reference. The Lycoming overhaul manual incorporates all future service instructions by reference. ...We conclude that the record supports a finding that, by using a non-certified person to perform the inspection, and by not using the manufacturer's prescribed inspection technique, respondent violated the regulations as alleged in the Administrator's complaint."

This language seems to, in effect, require compliance with service bulletins or service instructions (known AND yet to be issued) when referenced by the manufacturer's maintenance manual. AOPA believes that such a holding is contrary to FAA policy, industry understanding, and law. In fact, the FAA's Small Airplane Directorate, in responding to a letter of interpretation (attached) AOPA requested in 2001, said, "Small airplane design approval holders cannot

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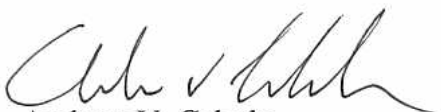
unilaterally impose mandatory compliance with manufacturers' service bulletins." And while the NTSB ruling seemed to say that future service bulletins could be mandatory as well, the FAA's 2001 letter to AOPA said otherwise. "FAA policy does not permit a predetermination that compliance with some future document is mandatory." A 2004 letter of interpretation (attached) to AOPA from the FAA's Aircraft Maintenance Division also said that service bulletins are not mandatory unless the FAA includes these documents in an AD.

The FAA's past and present opinion is that while service bulletins and instructions are not mandatory they may be used by mechanics as an acceptable method, but not the only method, to show compliance with the regulations when performing maintenance, alterations or preventive maintenance. This is, in fact, the FAA's argument in their appeal brief in this case. The FAA's brief clearly states that the respondent was not in violation of the regulations for failing to follow the manufacturer's service bulletins or service instructions, but rather for failing to use acceptable practices. Why NTSB failed to mirror the FAA's language in their decision is a mystery.

Not only is the NTSB's language contrary to FAA policy and practice, but it seems to be contrary to law as well. Under the Administrative Procedure Act, any rule must be subjected to the notice and comment process. Service bulletins and instructions are not subject to such process, therefore cannot be binding on the public. Although incorporation by reference may be allowed, whatever is being incorporated has to be specifically identified, thus has to exist at the time, not some speculative future existence. Another key here is that to legally obligate or bind someone, the information has to be available to the person. Service bulletins and instructions are not generally or easily available, as are regulations or ADs.

Again, should the FAA deem it necessary to issue a letter of interpretation in the interest of clarity and to avoid misapplication of existing regulations, the agency must reaffirm that service bulletins and service instructions are not mandatory for general aviation, unless they are approved by the FAA in an AD or in the initial FAA-approved airworthiness limitations section of the instructions for continued airworthiness. Any letter of interpretation should also make clear that after the FAA has approved the initial airworthiness limitations section, a manufacturer is NOT allowed to unilaterally require compliance with future service bulletins or instructions.

Sincerely,



Andrew V. Cebula
Executive Vice President
Government Affairs

Attachments

cc: Andrew Steinberg, Chief Counsel, Federal Aviation Administration