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RE: Policy Statement, PS-AIR-21.50-01: Inappropriate DAH Restrictions on the Use
and Availability of ICA
AIR-100-11-100-002
Order 8110.54A

Dear Dave:

Please excuse the lateness of the association's comments on the above-referenced document. We are hopeful our observations will reach the appropriate parties in a timely manner.

We are encouraged that the Federal Aviation Administration (FAA) has taken an interest in the subject of instructions for continued airworthiness (ICA); however, it must address the *fundamental* issues associated with ICA before tackling their "availability." Specifically, the FAA must:

- (1) Set the standard for the nature and extent of information that is "essential" to the continued airworthiness of an aviation product.** Today, such clarity does not exist; while the agency states that maintenance information relating to components are deemed ICA in very limited circumstances,¹ it includes component maintenance manuals in airworthiness limitations.² As a result of the agency's failure to set a standard for exactly what information is "essential" to the continued airworthiness of each aviation product and the articles installed thereon, gaps have been filled by

¹ See Order 8110.54A, chapter 6, paragraph 4(b), which states, in part, that:
...the DAH [design approval holder] must have identified the CMM or repair information in its ICA (aircraft, aircraft engine, or propeller ICA) as the source of information for continued airworthiness actions. If the ICA contain "remove and replace" instructions for the components, and don't refer to CMM [component maintenance manual] or specific repair procedures for necessary airworthiness actions, then the aircraft's airworthiness can be maintained by replacement action, and CMM or repair documentation is not part of the ICA for the product. (Emphasis added)

² CMMs are identified as critical design configuration control limitations (CDCCL) in the airworthiness limitation section (ALS) for many commercial airplane types.

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creating “special” regulations.³ The FAA can, and should, do better; complete ICA information is directly related to safety.

- (2) **Set the standard for the content of ICA documents.** There are several industry standards on development, content and language for technical documents which could be utilized; in any event, it is essential to first determine what must be included in ICA before determining how to disseminate the information.
- (3) **Determine exactly who is “required to comply” with the ICA.** The vast majority of maintenance, preventive maintenance and alteration performed under the jurisdiction of the FAA is not done by or for air carriers.⁴ In all cases work performed on aircraft with U.S. certificates of airworthiness must comply with § 43.13. The regulatory relationship is clear that the design approval holder (DAH) develops basic methods, techniques and practices to maintain “its” article and it must provide that information to those required by 14 Code of Federal Regulations (14 CFR)⁵ §§ 43.3, 43.5, 43.7, 43.9 and 43.13 to perform, inspect and approve that work for return to service. Further, all maintenance providers must comply with the airworthiness limitations of an ICA.⁶ To ensure uniform and consistent application of the design regulations vis-à-vis the maintenance rules, the agency must acknowledge that persons “required to comply” with ICA are those contained in part 43.
- (4) **Determine exactly how ICA should be “made available.”** The draft policy is attempting to dictate contractual terms on unknown data. If and when the agency defines (1) what ICA are, (2) the nature and extent of their contents, (3) how and when they must be updated and (4) to whom they must be disseminated, it may be able to dictate contractual obligations of parties. Now is not that time.

The requirement that a DAH develop and disseminate certain information does not give the recipient any “rights” to, or in, that data except as dictated by contractual terms. The FAA has steadfastly refused to delve into the economic terms of ICA dissemination; it likewise must refrain from entering the contractual realm of ICA “sharing.” As the FAA knows, the terms under which information essential to the

³ Specifically, the creation of 14 Code of Federal Regulations (14 CFR) part 26, SFAR-88 and other “post-ICA” specifications for information “essential to the continued airworthiness” of civil aviation products.

⁴ If the Department of Transportation’s Office of Inspector General is to be believed, over 75% of the work on completed aircraft is accomplished by contract maintenance providers. While the work is under the auspices of the air carrier, the repair station must establish that it has the data appropriate for its ratings *before* it can be certificated.

⁵ All references are to 14 CFR.

⁶ See, § 43.16.

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design and maintenance of government-mandated articles is disseminated has been handled differently by other safety-oriented governmental agencies.⁷

Currently, there is an international civil aviation working group devoted to this issue. The European Aviation Safety Agency (EASA) has delayed the delivery of its work product until 2012 or later and there is no reported progress from the FAA.

ARSA asks that the Aviation Rulemaking Advisory Committee (ARAC) be tasked to fully examine the regulations and current industry practices. That will enable the agency to draw the proper lines between regulatory compliance and business realities.

Discussion of the Policy

The stated goals of the policy are:

- 1) Reduce the burden on maintenance providers in determining and maintaining appropriate maintenance instructions to apply to a given product or article.
- 2) Reduce the possibility of maintenance error caused by application of incorrect ICA due to confusion of instructions.

It is unclear how the policy achieves those purposes.⁸ The policy is directed at prohibiting certain terms in contracts between DAH and owner/operators of aircraft. It appears the agency is claiming these contractual terms are void as a matter of public policy, a necessary prerequisite to the FAA's determination that inclusion of those terms in contracts are "unacceptable" to finding compliance with a regulation.

Unfortunately, a DAH can enter into a contract that limits the "rights"⁹ of a customer receiving information without running afoul of compliance with § 21.50.¹⁰ That section

⁷ Examples include the Environmental Protection Agency's handling of emission-related design and maintenance requirements, the Department of Transportation's (DOT's), Pipeline and Hazardous Materials Safety Administration handling of design and maintenance pressure cylinders and the DOT's U.S. Coast Guard handling of required marine equipment.

⁸ Indeed, the "summary" of the policy states a different intent.

⁹ If any such "rights" even exist; the ICA may be created under regulation, but the 14 CFR does not dictate, interfere or control the "ownership" of those data, indeed, the data submitted to show compliance is deemed trade secret and/or commercially valuable when requested under the Freedom of Information Act.

¹⁰ Lack of data from the DAH may create a potential violation of an air carrier's continuous airworthiness maintenance manual and program; however that possibility is not addressed by this draft policy.

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merely requires that limited maintenance information be developed;¹¹ it does not dictate how the data will be delivered, nor does it indicate exactly what “made available” entails. Therefore, if the DAH develops information that satisfies the minimal requirements contained in the applicable airworthiness standard, as “interpreted” by the agency’s orders and advisory material, the agency must find the ICA acceptable.

If the DAH includes limiting “contractual” language in the ICA, the FAA must just refuse to recognize or enforce it; there is no 14 CFR requirement associated with the limitations. In other words, § 43.13(a) requires that the maintenance provider follow the methods, techniques and practices recommended by the DAH. If those ICA suggest that only DAH replacement parts are “acceptable”, it is simply incorrect under the regulations and unenforceable by the FAA.¹²

Likewise, if the owner/operator and the DAH enter into contracts limiting the dissemination of ICA to maintenance providers, the agency can ensure that the information being obtained and disseminated meet the requirements of §§ 43.13(c), 121.1(b) and similar regulations when work is performed for an air carrier. It need not delve into how the air carrier or maintenance provider obtained the information, it need only ensure the information is available when the rating is issued and the work is performed.

Alternative Language for the Policy

The association has suggestions for alternative policy language that accomplishes two purposes: 1) it establishes the agency’s position that its regulations will not be used to justify unacceptable contractual restrictions; and, 2) it strongly discourages such practices.

For ease of reference, the FAA’s draft policy is set forth in *italics* with ARSA’s comments in **bold** along with suggested alternative language in ***bold italics***. A red-line and final, “clean” version of the document is enclosed.

¹¹ As mentioned previously, the agency does not have a clear standard for determining the exact documents that make up ICA and does not deem most component maintenance manuals and other information required by § 43.13(a) part of the ICA for the civil aviation product.

¹² Similarly, requiring repairs or alterations only by the DAH or a DAH-authorized source and statements limiting the dissemination of the data between the “operator” and its chosen maintenance provider are enforceable under the provisions of 14 CFR. Indeed, regulatory compliance discourages such activity.

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Summary

This policy memorandum addresses inappropriate actions taken by some Design Approval Holders (DAH's) to restrict the availability, distribution, and use of Instructions for Continued Airworthiness (ICA) through contractual agreements or restrictive language in the ICA itself. This guidance is intended to help:

- 1) FAA employees determine whether DAH actions for distributing ICAs meet the requirements of Title 14 Code of Federal Regulations (14 CFR) § 21.50(b), and*
- 2) DAHs determine whether their practices meet the requirements of the CFR.*

The policy is actually requiring a review of contracts, an inappropriate action for agency employees; rather, the policy should make clear what the FAA can and will enforce. Therefore, ARSA suggests the paragraphs be replaced with:

This policy memorandum addresses how some Design Approval Holders (DAHs) restrict the availability, distribution and use of Instructions for Continued Airworthiness (ICA).

The guidance is intended to help:

- 1) FAA employees determine the nature and extent of those restrictions, and***
- 2) DAHs understand that contracts restricting ICA usage will not be enforced by the FAA.***

Background

ICA constitute only those maintenance instructions recommended by a DAH in compliance with the airworthiness standards (e.g., § 25.1529, § 33.4) that are acceptable to or approved by the FAA as necessary to maintain a type certificated product in an airworthy condition. 14 CFR § 21.50(b) requires the DAH to "furnish at least one set of complete Instructions for Continued Airworthiness to the owner of each type aircraft, aircraft engine, or propeller.... Thereafter, the holder of a design approval must make those instructions available to any other person required...to comply with any of the terms of those instructions." The same regulation requires that "changes to the Instructions for Continued Airworthiness shall be made available to any person required...to comply with any of those instructions."

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The first sentence does not mirror the regulatory requirement and therefore it should be changed to read:

ICA constitute only those maintenance instructions recommended by a DAH in compliance with the airworthiness standards (e.g., § 25.1529, § 33.4) that are acceptable to or approved by the FAA as essential to the continued airworthiness of a type-certificate product.

The intent of § 21.50(b) is to provide for the development and distribution of the information necessary for owners/operators to maintain their products in an airworthy condition. The scope of § 21.50(b) is limited to owner/operators and those authorized by the FAA to perform maintenance on those products (or components thereof). It is not intended to require that ICA be made available to any person seeking ICA for purposes other than preventative maintenance, maintenance, or alteration, unless that person has a regulatory requirement to comply with the ICA.

The intent of the section was to provide persons required to comply with maintenance instructions a means of obtaining that basic safety information. The FAA has taken a position that the “only” person required to comply is the owner/operator. The regulations belie that position. Persons authorized to perform maintenance is limited;¹³ every person performing maintenance must comply with the manufacturer’s instructions or “other methods, techniques and practices” acceptable to the agency.¹⁴ Finally, all maintenance providers must comply with airworthiness limitations.¹⁵

Therefore, the second paragraph should read as follows:

The intent of § 21.50(b) is to provide for the development and distribution of information essential to the continued airworthiness of a civil aviation article. It is not intended to require that ICA be made available to any person seeking ICA for purposes other than preventative maintenance, maintenance, or alteration, unless that person has a regulatory requirement to comply with the ICA.

Making ICA Available to FAA Repair Stations

¹³ See, § 43.3.

¹⁴ See, § 43.13.

¹⁵ See, § 43.16.

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Recent questions have emerged regarding requirements for a DAH to make ICA available to a maintenance provider. FAA Order 8110.54A, paragraph 6-4(a), explains the criteria that must be met if the person requesting the ICA is not the product owner or operator. For example, if a repair station lacks the proper rating, but desires to perform maintenance for an owner/operator, the repair station would need to obtain the necessary ICA directly from the owner/operator. The owner/operator has the right under § 21.50(b) to obtain the ICA from the DAH and then provide it to the maintenance provider(s) of its choice. The repair station could then seek the proper rating from the FAA under the provisions of Part 145.

The policy should not restate or explain another document; doing so merely creates confusion and additional questions. Further, § 21.50(b) does not confer any “right” in the “owner/operator;” it requires DAHs to perform actions, not other certificate holders. Therefore, the paragraph should stop after the second sentence.

Recent questions have emerged regarding requirements for a DAH to make ICA available to a maintenance provider. FAA Order 8110.54A, paragraph 6-4(a), explains the criteria that must be met if the person requesting the ICA is not the product owner or operator.

It is not appropriate for a DAH to place limitations on the use of its ICA between the owner/operator and the repair station, whether the repair station is rated or not to perform that maintenance. This means a repair station could seek the appropriate FAA rating to perform the maintenance on the owner/operator’s products with the owner/operator support. In such cases, once the repair station obtains the FAA rating, FAA Order 8110.54A, paragraph 6-4(a), states that the DAH would be required to make the ICA and any subsequent revisions available directly to the repair station upon its request.

While seemingly inappropriate, until the FAA declares such contractual provisions void as a matter of public policy, a DAH may limit the use of its ICA. The agency’s attempt to link contractual limitations to the “make available” language in § 21.50(b) is not within its authority. Additionally, unless the FAA intends to read every contract between an owner/operator and a DAH supplier, the policy is unenforceable.

Rather, the FAA should make it absolutely clear that such limitations will not be enforced by the agency. Additionally, it may state that if any non-technically

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justified language is included in ICA, the FAA will not support the implementation of those provisions. Therefore, the paragraph should read:

Some DAHs place limitations on the use of their ICA. The FAA does not support these measures and cautions that such restrictions could become potential violations because of an owner or operator's failure to make appropriate data available to its maintenance providers. Further, the FAA will not enforce clauses that attempt to limit the owner or operator from sharing ICA with its maintenance provider. This means a repair station could seek the appropriate FAA rating to perform the maintenance on the owner/operator's products with the owner/operator support. In such cases, once the repair station obtains the FAA rating, FAA Order 8110.54A, paragraph 6-4(a), states that the DAH would be required to make the ICA and any subsequent revisions available directly to the repair station upon its request.

Regulatory Justification for Owner/Operator Distribution of ICA to Maintenance Providers

From the Final Rule discussion, Federal Register Volume 45, No. 178, Page 60168, dated September 11, 1980, it is clear that the regulations intended for owners/operators to be able to share ICA with those who they seek to perform their maintenance.

While the preamble does make it clear that the owners and operators were going to share ICA with maintenance providers, the intent does not stop there. The FAA clearly planned for the dissemination of information "essential to the continued airworthiness" of products to persons required to follow those instructions. Therefore, the first paragraph should read:

From the discussion in the final rule, Federal Register Volume 45, No. 178, Page 60168, dated September 11, 1980, it is clear that the regulations intended for ICA to be appropriately developed and disseminated.

"The Instructions for Continued Airworthiness must be furnished to the aircraft owner/operator who is the person responsible for maintaining the aircraft (including the propeller). The owner/operator may not be authorized to maintain the propeller, but the owner/operator can place the instructions in the hands of persons who are authorized."

Although this particular FAA response to a comment concerns propellers, it is clearly applicable to all aspects of maintenance. Few, if any, owners, operators, or

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maintenance entities are qualified to perform maintenance on all kinds of aircraft and related products and articles, creating the need for owners and operators to be able to pass the instructions to their maintainers.

The paragraph does not add substantially to the discussion and can be stricken without detracting from the policy.

Based on the above discussion, a DAH may not inhibit via contractual provisions an owner/operator from distributing ICA to current or potential future maintenance providers. Therefore, it is not acceptable for a DAH to limit the distribution of ICA by imposing contractual requirements or adding restrictive language that would control the use of ICA by an owner/operator with respect to the maintenance of its product.

The “above discussion” does not prevent two parties from entering into a contract that restricts the distribution and use of ICA. Unless and until the FAA is ready to deem such contractual clauses void as a matter of public policy, it has no jurisdiction to comment. Therefore, the entire paragraph must be struck.

In addition, while a DAH must identify the applicability of its ICA, the FAA will not accept restrictive statements or terms in ICA documents or related licensing agreements that purport to limit the appropriate availability (distribution) or use of the ICA where the FAA has determined the ICA continue to be acceptable for maintaining a DAH’s product or article with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items). While not exhaustive, the FAA does not find the following DAH practices acceptable under the provisions of 14 CFR § 21.50(b) and related ICA airworthiness requirements:

- 1) Requiring the use (installation) of only DAH-produced or authorized replacement parts, articles, appliances, or materials.*
- 2) Requiring that alterations or repairs must be provided or otherwise authorized by the DAH.*
- 3) Requiring the use of only repair stations or other persons authorized by the DAH to implement the ICA.*
- 4) Establishing, or attempting to establish, any restriction on the right of the owner/operator to disclose or provide the ICA to persons authorized by the FAA to implement the ICA.*

The agency can certainly declare that such “restrictions” be removed from ICA. However, equally clear is that a DAH can make and declare certain business determinations, such as refusal to honor warranties, if PMA parts are installed

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and/or declare that the DAH's ICA are only to be used on their products since the information was not determined valid for any other usage. Therefore, the paragraphs should read:

While a DAH must identify the applicability of its ICA, the FAA will not find acceptable or enforce restrictive statements or terms in ICA documents that purport to limit the appropriate availability (distribution) or use of the ICA. This is particularly true where the FAA has determined the ICA continue to be acceptable for maintaining a DAH's product or article with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items). While not exhaustive, the FAA does not find the following DAH practices acceptable or enforceable under the provisions of 14 CFR:

- 1) *Requiring the use (installation) of only DAH-produced or authorized replacement parts, articles, appliances, or materials.*

The FAA has specifically determined that certain articles are eligible for installation as direct replacement parts. Therefore, any such restriction in an ICA or contract is not a matter of regulatory enforcement.

- 2) *Requiring that alterations or repairs must be provided or otherwise authorized by the DAH.*

Unless this particular step is required by an AD, the regulations allow independently developed repairs and alterations.

- 3) *Requiring the use of only repair stations or other persons authorized by the DAH to implement the ICA.*

Even when a DAH "requires" certain repairs or articles be returned to "authorized" sources, the persons performing the maintenance, preventive maintenance or alteration must be authorized as set forth in § 43.3.

- 4) *Establishing, or attempting to establish, any restriction on the ability of the owner/operator to disclose or provide the ICA to persons authorized by the FAA to implement the ICA. These restrictions are solely commercial in nature.*

Under the regulations, the owner or operator may be required to ensure the instructions are available to a maintenance provider. If the restriction in a contract forbids the proper dissemination of information it will not be enforced by the FAA.

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This policy has two goals. The first is to reduce the burden on maintenance providers in determining and maintaining appropriate maintenance instructions to apply to a given product or article. The second is to reduce the possibility of maintenance error caused by application of incorrect ICA due to confusion of instructions.

The policy fails to accomplish either goal; further, they are not in line with the purpose of the policy contained in the Summary. Therefore, the paragraph immediately above should be stricken.

It is understood that there are situations where the installation of PMA articles, or the incorporation of certain repairs or alterations, may not clearly be addressed in the existing ICA. In these situations it is the responsibility of the owner/operator to maintain the necessary records to allow maintenance providers to determine the appropriate ICA to be used in the repair or alteration at issue.

ARSA is unsure of what the agency is trying to address with this last paragraph. Further, it seems to be out of place in a policy aimed at DAH contractual restrictions. Therefore, we recommend its removal.

This policy was coordinated with the Aircraft Maintenance Division, AFS-300. If you have any questions or comments, please contact John Cerra, AIR-110, at (405) 954-7075 or at john.cerra@faa.gov.

Conclusion

The current policy must be rewritten to ensure proper coordination with current regulations to—

- (1) Ensure the regulations are not used to justify contractual restrictions; and, thus
- (2) Strongly discourage such practices.

To ease the agency's review, ARSA has enclosed its suggested policy changes in both a red-line and final, "clean version" format.

The Association strongly encourages the agency to task the ARAC with reviewing the regulations and current industry practices with respect to the creation, updating, and dissemination of ICA and recommending appropriate agency action.

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To ensure the agency fully understands the association's concerns, we will be
contacting you in the near future to set up a meeting to discuss this matter in more
detail.

Your Servant,

A handwritten signature in blue ink, appearing to read "Sarah MacLeod". The signature is fluid and cursive, with the first name "Sarah" being the most prominent.

Sarah MacLeod
Executive Director

Enclosure Policy Statement
 Policy Statement

Red-line version
Final version

cc: John Cerra
 Steven Douglas
 Rebecca MacPherson

Summary

This policy memorandum addresses ~~inappropriate actions taken by how~~ some Design Approval Holders (DAH's) ~~to~~ restrict the availability, distribution, and use of Instructions for Continued Airworthiness (ICA) ~~through contractual agreements or restrictive language in the ICA itself.~~

This guidance is intended to help:

- 1) FAA employees determine ~~whether DAH actions for distributing ICAs meet the requirements of Title 14 Code of Federal Regulations (14 CFR) § 21.50(b)~~ the nature and extent of those restrictions, and
- 2) DAHs ~~determine whether their practices meet the requirements of the CFR~~ understand that contracts restricting ICAs usage will not be enforced by the FAA.

Background

ICA constitute only those maintenance instructions recommended by a DAH in compliance with the airworthiness standards (e.g., § 25.1529, § 33.4) that are acceptable to or approved by the FAA as ~~necessary essential to maintain a type-certificated product in an airworthy condition.~~ the continued airworthiness of a type-certificate product. 14 CFR § 21.50(b) requires the DAH to “furnish at least one set of complete Instructions for Continued Airworthiness to the owner of each type aircraft, aircraft engine, or propeller.... Thereafter, the holder of a design approval must make those instructions available to any other person required...to comply with any of the terms of those instructions.” ~~—~~ The same regulation requires that “changes to the Instructions for Continued Airworthiness shall be made available to any person required...to comply with any of those instructions.”

The intent of § 21.50(b) is to provide for the development and distribution of the information ~~necessary for owners/operators to maintain their products in an airworthy condition~~ essential to the continued airworthiness of a civil aviation article. ~~—~~ The scope of § 21.50(b) is limited to owner/operators and those authorized by the FAA to perform maintenance on those products (or components thereof). It is not intended to require that ICA be made available to any person seeking ICA for purposes other than preventative maintenance, maintenance, or alteration, unless that person has a regulatory requirement to comply with the ICA.

Making ICA Available to FAA Repair Stations

Recent questions have emerged regarding requirements for a DAH to make ICA available to a maintenance provider. ~~—~~ FAA Order 8110.54A, paragraph 6-4(a), explains the criteria that must be met if the person requesting the ICA is not the product owner or operator. ~~For example, if a repair station lacks the proper rating, but desires to perform maintenance for an owner/operator, the repair station would need to obtain the necessary ICA directly from the owner/operator. The owner/operator has the right under § 21.50(b) to obtain the ICA from the DAH and then provide it to the maintenance provider(s) of its choice. The repair station could then seek the proper rating from the FAA under the provisions of Part 145.~~

~~It is not appropriate for a~~ Some DAHs ~~to~~ place limitations on the use of its/their ICA ~~between the owner/operator and the repair station, whether the repair station is rated or not to perform that maintenance.~~ The FAA does not support these measures and cautions that such restrictions could become potential violations because of an owner or operator's failure to make appropriate data available to its maintenance providers. Further, the FAA will not enforce clauses that attempt to limit the owner or operator from sharing ICA with its maintenance provider. This means a repair station could seek the appropriate FAA rating to perform the maintenance on the owner/operator's products with the owner/operator support. ~~—~~ In such cases, once the repair

station obtains the FAA rating, FAA Order 8110.54A, paragraph 6-4(a), states that the DAH would be required to make the ICA and any subsequent revisions available directly to the repair station upon its request.

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1) Requiring the use (installation) of only DAH-produced or authorized replacement parts, articles, appliances, or materials.

The FAA has specifically determined that certain articles are eligible for installation as direct replacement parts. Therefore, any such restriction in an ICA or contract is not a matter of regulatory enforcement.

2) Requiring that alterations or repairs must be provided or otherwise authorized by the DAH.

Unless this particular step is required by an AD, the regulations allow independently developed repairs and alterations.

3) Requiring the use of only repair stations or other persons authorized by the DAH to implement the ICA.

Even when a DAH “requires” certain repairs or articles be returned to “authorized” sources, the persons performing the maintenance, preventive maintenance or alteration must be authorized as set forth in § 43.3.

4) Establishing, or attempting to establish, any restriction on the right-ability of the owner/operator to disclose or provide the ICA to persons authorized by the FAA to implement the ICA. These restrictions are solely commercial in nature.

Under the regulations, the owner or operator may be required to ensure the instructions are available to a maintenance provider. If the restriction in a contract forbids the proper dissemination of information it will not be enforced by the FAA.

~~This policy has two goals. The first is to reduce the burden on maintenance providers in determining and maintaining appropriate maintenance instructions to apply to a given product or article. The second is to reduce the possibility of maintenance error caused by application of incorrect ICA due to confusion of instructions.~~

~~It is understood that there are situations where the installation of PMA articles, or the incorporation of certain repairs or alterations, may not clearly be addressed in the existing ICA. In these situations it is the responsibility of the owner/operator to maintain the necessary records to allow maintenance providers to determine the appropriate ICA to be used in the repair or alteration at issue.~~

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This guidance is intended to help:

- 1) FAA employees determine the nature and extent of those restrictions, and
- 2) DAHs understand that contracts restricting ICA usage will not be enforced by the FAA.

Background

ICA constitute only those maintenance instructions recommended by a DAH in compliance with the airworthiness standards (e.g., § 25.1529, § 33.4) that are acceptable to or approved by the FAA as essential to the continued airworthiness of a type-certificate product. 14 CFR § 21.50(b) requires the DAH to “furnish at least one set of complete Instructions for Continued Airworthiness to the owner of each type aircraft, aircraft engine, or propeller.... Thereafter, the holder of a design approval must make those instructions available to any other person required...to comply with any of the terms of those instructions.” The same regulation requires that “changes to the Instructions for Continued Airworthiness shall be made available to any person required...to comply with any of those instructions.”

The intent of § 21.50(b) is to provide for the development and distribution of the information essential to the continued airworthiness of a civil aviation article. It is not intended to require that ICA be made available to any person seeking ICA for purposes other than preventative maintenance, maintenance, or alteration, unless that person has a regulatory requirement to comply with the ICA.

Making ICA Available to FAA Repair Stations

Recent questions have emerged regarding requirements for a DAH to make ICA available to a maintenance provider. FAA Order 8110.54A, paragraph 6-4(a), explains the criteria that must be met if the person requesting the ICA is not the product owner or operator.

Some DAHs place limitations on the use of their ICA. The FAA does not support these measures and cautions that such restrictions could become potential violations because of an owner or operator's failure to make appropriate data available to its maintenance providers. Further, the FAA will not enforce clauses that attempt to limit the owner or operator from sharing ICA with its maintenance provider. This means a repair station could seek the appropriate FAA rating to perform the maintenance on the owner/operator's products with the owner/operator support. In such cases, once the repair station obtains the FAA rating, FAA Order 8110.54A, paragraph 6-4(a), states that the DAH would be required to make the ICA and any subsequent revisions available directly to the repair station upon its request.

Regulatory Justification for Owner/Operator Distribution of ICA to Maintenance Providers

From the discussion in the final rule, Federal Register Volume 45, No. 178, Page 60168, dated September 11, 1980, it is clear that the regulations intended for ICA to be appropriately developed and disseminated.

“The Instructions for Continued Airworthiness must be furnished to the aircraft owner/operator who is the person responsible for maintaining the aircraft (including the propeller). The owner/operator may not be authorized to maintain the propeller, but the owner/operator can place the instructions in the hands of persons who are authorized.”

While a DAH must identify the applicability of its ICA, the FAA will not find acceptable or enforce restrictive statements or terms in ICA documents that purport to limit the appropriate availability

(distribution) or use of the ICA. This is particularly true where the FAA has determined the ICA continue to be acceptable for maintaining a DAH's product or article with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items). While not exhaustive, the FAA does not find the following DAH practices acceptable or enforceable under the provisions of 14 CFR:

- 1) Requiring the use (installation) of only DAH-produced or authorized replacement parts, articles, appliances, or materials.

The FAA has specifically determined that certain articles are eligible for installation as direct replacement parts. Therefore, any such restriction in an ICA or contract is not a matter of regulatory enforcement.

- 2) Requiring that alterations or repairs must be provided or otherwise authorized by the DAH.

Unless this particular step is required by an AD, the regulations allow independently developed repairs and alterations.

- 3) Requiring the use of only repair stations or other persons authorized by the DAH to implement the ICA.

Even when a DAH "requires" certain repairs or articles be returned to "authorized" sources, the persons performing the maintenance, preventive maintenance or alteration must be authorized as set forth in § 43.3.

- 4) Establishing, or attempting to establish, any restriction on the ability of the owner/operator to disclose or provide the ICA to persons authorized by the FAA to implement the ICA. These restrictions are solely commercial in nature.

Under the regulations, the owner or operator may be required to ensure the instructions are available to a maintenance provider. If the restriction in a contract forbids the proper dissemination of information it will not be enforced by the FAA.

This policy was coordinated with the Aircraft Maintenance Division, AFS-300. If you have any questions or comments, please contact John Cerra, AIR-110, at (405) 954-7075 or at john.cerra@faa.gov.