

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D.C.**

AERONAUTICAL REPAIR STATION
ASSOCIATION,

Complainant,

v.

AIRBUS,

Respondent.

Docket No. 13-03-03

ANSWER

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**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
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AERONAUTICAL REPAIR STATION)	
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ANSWER

Pursuant to Federal Aviation Regulation (FAR) 13.5(f), 14 C.F.R. § 13.5(f), Respondent Airbus hereby submits its Answer to Complainant Aeronautical Repair Stations Association's (ARSA) Complaint. As an initial matter, the component maintenance manuals (CMMs) that Complainant seeks are not essential to continued airworthiness and therefore not considered part of the Instructions for Continued Airworthiness (ICA). Instead, all relevant ICA as required under FAR 25.1529 are located exclusively in the Aircraft Maintenance Manual (AMM).

It appears that Complainant's actions are motivated entirely by competitive and economic interests. Significantly, the Federal Aviation Administration (FAA) has flatly rejected any attempts to regulate competition among repair stations. Accordingly, Airbus respectfully requests that the Administrator of the FAA ("Administrator") issue an order dismissing the Complaint because Complainant seeks to have the Administrator regulate competition between entities and other economic matters – as opposed to safety. In support of its Answer, Airbus states the following:

I. FACTS

On May 14, 2003, Aerotron AirPower, Inc. (Aerotron), a Part 145 repair station, sent an e-mail to Liebherr Aerospace Lindenberg GmbH (Liebherr) requesting a price

quote for a Liebherr CMM 21-52-16 air cycle machine (Liebherr part no. 1263A0000).¹ Liebherr manufactures various aircraft appliances, including the air cycle machine, for installation on Airbus aircraft. The air cycle machine is an “appliance” as defined in FAR 1.1. On May 19, 2003, Liebherr informed Aerotron that it “does not sell such documentation to repair stations. We only deliver to the aircraft operators. Therefore we are not in a position to supply the requested technical publication.”²

In its May 19 letter, Aerotron claims the CMM is required for continued airworthiness. As discussed below, Aerotron is incorrect because the CMM is not necessary for continued airworthiness of the aircraft. The Liebherr CMM provides instructions for off-aircraft overhaul of the air cycle machine, which would enable Aerotron to overhaul and resell the air cycle machine in the spare parts aftermarket. Aerotron’s interest in obtaining the CMM is economic – it is not a safety issue. Indeed, all relevant ICA associated with the air cycle machine are located in the AMM in accordance with FAR 25.1529 and FAR Part 25 Appendix H. Specifically, the AMM provides all maintenance instructions required under Appendix H, Section H25.3(b) and instructs owners that continued airworthiness of the aircraft can be maintained by removing and replacing the air cycle machine.

On August 15, 2003, Aerotron claims to have sent a letter to Airbus requesting the air cycle machine CMM. Airbus never received the letter. Airbus understands that Aerotron is an off-aircraft component repair station that repairs and overhauls aircraft components for resale in the aviation spare parts marketplace.

On August 7, 2003, Texas Pneumatic Systems, Inc. (TPS) sent letters to Liebherr and Airbus requesting price quotes for technical manuals for a flow control valve (Liebherr part no. 1303A0000) and a check valve (Liebherr part no. 2290A050000). Airbus understands that TPS is also an off-aircraft component repair station that repairs and overhauls aircraft components for resale in the aftermarket commercial aviation marketplace. In its letter, TPS noted that it was “interested in performing maintenance, to include overhaul and repair” of the components. On September 17, 2003, TPS claims to have sent an identical letter to Liebherr and Airbus requested the same technical manuals to “overhaul and repair” the components, which would allow TPS to overhaul and resell the components in the spare parts aftermarket. TPS’s interest in obtaining the CMM is also economic – it is not a safety issue.

As is the case with the air cycle machine, both the flow control valve and the check valve are “appliances” as defined in FAR 1.1 and manufactured by Liebherr and installed on various Airbus aircraft. Similarly, the ICA relevant to both parts are located in the associated AMM in accordance with FAR 25.1529 and FAR Part 25 Appendix H. In particular, the AMM provides all maintenance instructions required under Appendix H

¹ Complaint at 4.

² Id.

Section H25.3(b) and instructs owners that continued airworthiness of the aircraft can be maintained by removing and replacing both parts.

On October 3, 2003, pursuant to FAR 13.5, ARSA filed a Complaint with the FAA alleging that Airbus violated FAR 21.50(b) for failing to provide the requested CMMs to Aerotron and TPS. Airbus received the Complaint on November 20, 2003. For the following reasons, Airbus respectfully requests that the Administrator issue an order dismissing the Complaint with prejudice because the Complaint does not warrant an investigation or further action.

II. ANALYSIS

A. Airbus is not required to provide Aerotron or TPS the CMMs because the CMMs are not Instructions for Continued Airworthiness.

FAR 21.50(b) regulatory history and formal FAA guidance clearly establish that Airbus is not required to provide the Liebherr CMMs to Aerotron or TPS because the CMMs are not considered part of the ICA. Specifically, FAR 21.50(b) Final Rule stresses that only information “which is essential to the continued airworthiness of the aircraft, should be provided for each required product.”³ Moreover, in the Final Rule, the FAA specifically rejected any requirement that ICA contain overhaul information, except for engines. The FAA stated that the manufacturer is in the best position to determine whether a particular part should be overhauled and, therefore, “overhaul information should not be required in the Instructions for Continued Airworthiness.”⁴

The sole purpose of the ICA is to allow aircraft owners/operators and those required to comply with the FAR to maintain the airworthiness of the aircraft. An overhaul CMM is not a part of the ICA unless it is required for continued airworthiness. The FAA Office of the Chief Counsel recently addressed the issue of whether CMMs that are not required for airworthiness are considered part of the ICA.

On April 14, 2003, the FAA issued a Chief Counsel opinion letter (the “McCurdy letter”) that provided four conditions to determine whether type certificate (TC) holders are required to make available ICA to authorized requesters, such as repair stations.⁵ TC holders must make ICA available to authorized requesters when all following conditions are met:

- 1) The certificate holder made application for the latest related type certificate (original, amended, or supplemental) after 01/28/81.
- 2) The latest related certification basis includes 2x.1529 or 3x.4 (as

³ 45 Fed. Reg. 60154, 60159 (Sept. 11, 1980).

⁴ *Id.* at 60160-601611.

⁵ Letter from Richard McCurdy, Manager, Airworthiness Law Branch, Office of the Chief Counsel, Federal Aviation Administration, to David Rain, Vice President, Alcor Engine Company, Inc. (Apr. 14, 2003).

applicable) as amended 09/11/80 or later, thus the certificate holder was required to develop (furnish) ICA per 21.50(b) as part of the certification process.

- 3) Any repair station requesting ICA is *currently* rated for the product/part and thus is required by Chapter 1 of 14 CFR to comply with ICA for the product/part.
- 4) If the ICA data requested is a component maintenance manual (CMM), the CMM is referenced in higher-level ICA (airplane or engine ICA) as the appropriate source of information for continued airworthiness actions.⁶

The FAA stressed that “meeting each of the above conditions is necessary to ensure that ICA availability per the 21.50(b) rule is appropriate.”⁷ Condition 3 only applies when a repair station is *required* to perform maintenance per ICA. Here, it is questionable whether the maintenance that Aerotron and TPS seek to perform, i.e., overhaul and off-aircraft, back shop repair, is even “required” per the ICA. Airbus contends that it is not.

Assuming, *arguendo*, that Aerotron and TPS meet the first three conditions, they certainly fail to meet Condition 4, which addresses the validity of particular CMMs as part of ICA. Significantly, the FAA made clear that “[i]f top-level ICA contains ‘remove and replace’ instructions for certain components, rather than referencing CMMs, or specific repair procedures, the aircraft can be maintained in an airworthy condition by replacement action, and the CMM is not considered part of the ICA.”⁸

Here, the CMMs that Aerotron and TPS seek are not part of the ICA because the top-level ICA contains remove and replace instructions and, more importantly, the aircraft can be maintained in an airworthy condition by replacement action. The A320 AMM cited by the Complainant provides that the “AMM contains information required to service, repair, replace, adjust, inspect, and check equipment and systems on the aircraft normally performed on the ramp or in the maintenance hanger.”⁹ Although the AMM Introduction references supplier CMMs, the reference pertains to repairs and overhauls to be performed after the part has been removed from the aircraft. More importantly, the relevant AMM tasks contain “remove and replace” instructions for all of the appliances identified by Aerotron and TPS, and any references to the CMM involve off-aircraft overhaul instructions, which are not considered part of the ICA.¹⁰

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1-2.

⁹ A319/A320/A321 Aircraft Maintenance Manual, Introduction – Description and Operation, Section 1 (Nov. 1, 2003)

¹⁰ Given the highly proprietary nature of Airbus AMMs, Airbus has not provided the AMMs as attachments. However, if the FAA desires, Airbus will make available all requested AMMs for FAA review at a mutually convenient time and location.

The McCurdy letter also provided that:

The FAA does not regulate competition between repair stations but rather safety. The FAA's intent for 21.50(b) was to facilitate owner/operators' ability to manage their own maintenance, and to insure that those *required* to accomplish continued airworthiness action would have access to continued airworthiness instructions, in the interests of safety. It was not intended to assure that any person wishing to enter the repair/overhaul business is provided with repair manuals.¹¹

Airbus understands that Aerotron and TPS are merely entities that have entered the repair/overhaul business and are now seeking non-ICA CMM to overhaul parts for the aftermarket. As noted above, appliance overhaul, which is Aerotron's and TPS's primary business purpose, is not necessary for the continued airworthiness of the aircraft when the ICA provides for remove and replace instructions.

Nevertheless, Complainant claims that Airbus may have violated FAR 21.50(b) because it did not provide the requested CMMs. Despite citing the McCurdy letter, which contradicts its position, Complainant maintains that Airbus was obligated to provide the supplier CMMs because the CMMs "contain maintenance instructions specifically required by Part 25, Appendix H, paragraph H25.3(b)."¹² The CMMs at issue contain nothing "specifically required by Part 25, Appendix H, paragraph H25.3(b)" because all of the relevant maintenance instructions are located in the relevant AMM for each appliance, including the applicable "degree of inspection, the applicable wear tolerances and work recommended at this periods."¹³ Complainant then highlights the fatal flaw in its argument by asserting that "type certificate holders should not be able to circumvent their obligations under section 21.50(b) merely by providing removing and replace instructions for components."¹⁴ On the contrary, the FAA supports remove and replace actions as a valid and acceptable procedure by which to ensure airworthiness.

In its Complaint, Complainant also argues that an FAA Deputy Chief Counsel opinion letter (the "Whitlow letter"), dated December 13, 1999, requiring CMMs to be made available to repair stations, is applicable to the instant matter even though the Whitlow letter addressed a completely dissimilar fact pattern.¹⁵ The Whitlow letter involved a repair station's attempt to obtain engine ICA from an engine manufacturer when the FAA asserted FAR 21.50(b) did not apply because the relevant TC was issued

¹¹ *Id.* at 2 (Emphasis in original).

¹² Complaint at 11.

¹³ FAR Part 25, Appendix H, H25.3(b).

¹⁴ *Id.*

¹⁵ Letter from James W. Whitlow, Deputy Chief Counsel, Office of the Chief Counsel, Federal Aviation Administration to Ronald M. Mrozek, Counsel, GE Engine Services (Dec. 13, 1999).

prior to January 28, 1981.

In sum, Airbus submits that the Complaint does not state facts that warrant an investigation or any further action and requests that the Administrator dismiss the Complaint.

B. Complainant's argument is based on competitive and economic concerns between entities, which the FAA has refused to regulate as a matter of policy.

As clearly stated in the McCurdy letter, the FAA regulates safety and not competition or economic matters between entities. The FAA is responsible for the safety of civil aviation, which entails regulating civil aviation to promote safety.¹⁶ Notwithstanding the FAA stated policy, Complainant now seeks to have the FAA regulate competition between repair stations and part manufacturers by attempting to use the FAA to force Airbus to provide non-ICA CMMs to overhaul repair stations. Complainant admits that it is attempting to obtain overhaul information under FAR 21.50(b) and FAR Part 25 Appendix H because such information is “necessary for the economic operation” of aircraft.¹⁷ Complainant also challenges the aircraft manufacturing process by claiming, “Aircraft manufacturers certainly recognize that operators would not purchase their aircraft if all components that malfunctioned had to be replaced with new ones.”¹⁸

None of the Complainant's economic arguments involve safety or matters that warrant FAA regulation or action under FAR 13.5. Indeed, the economics of aircraft operation or the relationships between a manufacturer and its customers are not something that Congress authorized the FAA to regulate when it enacted the Federal Aviation Action of 1958, recodified at 49 U.S.C. §§ 40101-46101. The FAA's primary concern is safety and Complainant is attempting to expand the FAA's regulatory reach to issues that the FAA would not regulate such as competition between repair stations and, in this case, component manufacturers.

C. Complainant's allegations regarding Airbus AMM Tasks lack any relevance to whether the CMM is part of the ICA.

Complainant alleges “that the AMM specifically refers to the Liebherr CCM and service bulletins for the component. AMM task 21-51-51 describes the servicing of the pack flow control valve. Airbus identifies the component manufacturer by referring both to the Liebherr CMM (21-51-51) and Liebherr service bulletins (SB).”¹⁹ As noted above,

¹⁶ 49 U.S.C. § 40104.

¹⁷ *Id.* at 12.

¹⁸ Complaint at 12.

¹⁹ Complaint at 11.

the test whether a particular CMM is part of the ICA is not whether the AMM is referenced in the CMM, but whether the CMM contains necessary information for continued airworthiness, which is not contained in the AMM.

Here, all of the relevant airworthiness data is contained in the AMM.²⁰ Further, contrary to Complainant's allegation, the current version of AMM task 21-51-51 does not reference the Liebherr CMM in connection with the flow control value. Nonetheless, in one example where a previous air cycle machine AMM referenced the Liebherr CMM, the reference was only relevant to overhaul the particular appliance, and not the airworthiness of the aircraft.

D. Complainant's argument that Airbus must provide the CMM's because repair stations must comply with the FAR is based on faulty logic and inconsistent with the current regulations.

Complainant claims that Airbus must provide CMMs because Aerotron and TPS are required to comply with the FAR when overhauling and repairing the appliances in question. Complainant's argument is misplaced. Significantly, it is a well-established fact that repair stations are obligated to comply with the FAR in that they must repair or overhaul appliances in accordance with the applicable and current technical guidance. However, simply because repair stations have an obligation to comply with the FAR does not mean that Airbus or a particular appliance manufacturer must provide the relevant CMM when no airworthiness justification exists. In other words, if the repair station does not have the CMM, then the repair station must not perform the work.

As noted above, the FAA rejected the language in the FAR 21.50(b) Final Rule that would have required TC holders to supply overhaul CMMs when overhaul is not required to maintain the airworthiness of the aircraft. Again, overhaul and off-aircraft repairs do not affect the airworthiness of the aircraft when an acceptable fix is "remove and replace." In view of the prevalence of suspected unapproved parts, Airbus acknowledges that repair stations must have the appropriate CMM if they choose to enter the aircraft spare parts market. However, the FAA has stated unequivocally that it will not regulate competition between such entities and that it will not require manufacturers to provide CMM data when an aircraft can be maintained in an airworthy condition by replacement action.

Here, Complainant urges the FAA to require manufacturers to supply CMMs when no need exists to perform maintenance off aircraft to maintain the aircraft in an airworthy condition, and replacement is an acceptable procedure in accordance with AMM instructions. To require manufacturers to supply CMM data in such situations is inconsistent with present regulations.

²⁰ See note 10, above.

III. CONCLUSION

For the reasons set forth above, Airbus respectfully requests that the Administrator issue an order dismissing the Complaint because it does not state facts any facts or law warranting an investigation or any further action. Specifically, the CMMs at issue are not part of the ICA because the AMM contains all of the required airworthiness data. In sum, Complainant seeks to have the Administrator regulate competition and economic matters – as opposed to safety even though the Administrator has flatly rejected any attempt to regulate competition among various aviation entities.

Respectfully submitted,

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Dated: December 10, 2003

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer has been sent by First Class U.S. Certified Mail, Return Receipt Requested, on December 10, 2003, to the following recipients:

Hearing Docket

(Original and one copy)

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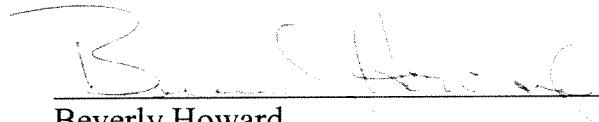
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