



U.S. Department
of Transportation
Federal Aviation
Administration

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

DEC 13 1999

Mr. Ronald M. Mrozek, Counsel
GE Engine Services
GEAE Legal Operation
One Neumann Way
Cincinnati, OH 45215-6301

Dear Mr. Mrozek:

This responds to your letter, dated May 28, 1999, to Thomas McSweeney, Associate Administrator for Regulation and Certification, in which you reported a possible non-compliance with 14 CFR § 21.50(b).¹ Because your letter raised regulatory interpretation and enforcement questions, I am responding on behalf of Mr. McSweeney.

In your letter, you raised a particular concern with the refusal of British Aerospace PLC ("BAe") to provide Instructions for Continued Airworthiness (ICAW) to GE Accessory Services - Grand Prairie, Inc. (GE - Grand Prairie), an FAA-certificated repair station. You stated that: (1) BAe has refused to provide ICAW for seven airframe components of the BAe-146 airplane; (2) BAe's refusal is based on their claim that they are not obligated to provide the subject ICAW because the airframe components are vendor components; (3) BAe claims that to provide copies of the subject ICAW would breach contracts between BAe and those vendors and would breach copyrights in the ICAW documents; (4) BAe has instructed GE - Grand Prairie to contact the subject vendors to obtain the ICAW; and (5) the subject vendors have refused to provide ICAW, stating, at least in two instances, that GE - Grand Prairie is not a BAe-146 owner or operator and is not on the lists of "BAe- or vendor-approved" repair stations.

If one were to assume only the following, one would conclude that BAe is in violation of § 21.50(b). First, that the subject airframe components are part of the BAe type design, and were not added by someone other than BAe pursuant to a supplemental type certificate. Second, that the FAA has rated GE - Grand Prairie to perform inspections and maintenance on the components. In that case, BAe would be required to provide ICAW for the components to GE - Grand Prairie, because FAA-certificated repair stations are "other persons required by [Chapter I of Title 14 of the CFR] to comply with any of the terms of the[] instructions."²

The fact that BAe has historically used vendors to supply components would not obviate its obligation to comply with § 21.50(b); that section clearly states that the obligation to provide ICAW rests with the holder of the design approval.

¹ Section 21.50(b) states, in pertinent part:

The holder of a design approval, including either the type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness prepared in accordance with §§ 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, or 35.4 of this chapter...to the owner of each type of aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later, and thereafter make those instructions available to any other person required by this chapter to comply with any of the terms of these instructions....

² See, e.g., 14 CFR § 43.16, which states, in pertinent part: "Each person performing an inspection or other maintenance specified in the Airworthiness Limitations section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness shall perform the inspection or other maintenance in accordance with that section...."

BAe may not avoid its obligations under FAA regulations by entering into contracts that conflict with the regulations. Furthermore, the fact that BAE and some of its vendors have supplied the original owners or operators with ICAW would not obviate the design approval holder's obligation to also provide ICAW "thereafter, .to any other person required to comply with any of the terms of [the ICAW]."

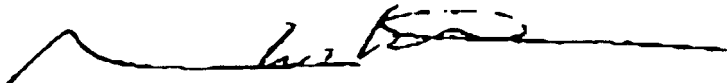
However, as later discussed with your counsel, Mr. Kenneth Quinn, the application for the type certificate for the BAe-146 was filed prior to January 28, 1981, and the BAe-146 is not subject to the provisions of 14 CFR § 21.50(b). Notwithstanding that technicality, ICAW apparently are available for the subject components, as described in your letter.

Thus, in light of GE - Grand Prairie's offer to pay reasonable reimbursements to BAE for the costs of providing the ICAW documents, BAE's apparent refusal is puzzling, at best, and, at worst, is an artificial obstacle to ensuring that each BAe-146 airplane is maintained in an airworthy condition. BAE's refusal to provide ICAW, while technically not a violation, is inconsistent with the objectives of § 21.50(b) and is not in the best interests of aviation safety.

On August 31, 1999, Carey Terasaki of my staff and Mr. Renton Bean of the Aircraft Engineering Division met with Mr. Quinn and his associate, Ms. Maren Lee. Mr. Quinn and Ms. Lee stated that other original equipment manufacturers similarly have refused to provide ICAW for products that are subject to § 21.50. I will discuss this with Mr. McSweeney, and will renew with him our commitment to enforce this important provision in the regulations.

If you wish to discuss this further, please do not hesitate to contact us.

Sincerely,



James W. Whitlow
Deputy Chief Counsel