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Mr. Mark Bury  
Deputy Assistant Chief Counsel, International  
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Office of the Chief Counsel  
Federal Aviation Administration  
800 Independence Avenue SW  
Washington, DC 20591-0001

Re: Incorporation by Reference – Inaccuracy in 8110.103A Appendix A, A-1 to A-2

Dear Mark:

The Aeronautical Repair Station Association (ARSA) requests a legal interpretation confirming that:

(1) The language in Order 8110.103A question “f,” as stated below, is incorrect.

*Question: The AD requires that I accomplish specific instructions in a SB. Those instructions require actions from a manual, and the manual requires actions from a standard practice manual. My operating procedure differs from the standard practice manual. Do I need an AMOC to keep using my operating procedure?*

*Answer: Yes. You must accomplish the specific instructions in the SB specified in the AD, including any second- or third-tier documents that are required to complete the action(s).*

(2) The question and answer will either be corrected or removed from the document forthwith.

## **Regulatory Background**

The Administrative Procedure Act (APA)<sup>1</sup> requires that an agency obtain the approval of the Director of the Federal Register for each document it wishes to incorporate by

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<sup>1</sup> 5 U.S.C. § 552(a)(1).

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reference (IBR) in a final rule. An airworthiness directive (AD) is part of the Code of Federal Regulations, and is therefore subject to the APA requirements concerning IBR.<sup>2</sup>

The regulations governing IBR are clear;<sup>3</sup> the cited language in Order 8110.103A does not comply with these requirements for the following reasons.

- (1) Title 14 Code of Federal Regulations (CFR) § 39.27 makes it clear that a service bulletin (SB) referenced by the AD becomes a part of the AD. The FAA must obtain approval for each and every document that is IBR'd in the AD, not just the SB. The FAA acknowledges this fact in Order 8110.117, which states, "Remember that a reference to another document in an SB that is IBR'd in an AD does not constitute IBR'ing of the other document. The FAA must obtain approval from the OFR for each document that is IBR'd in an AD."
- (2) To be eligible for approval for IBR, Title 1 CFR § 51.7 requires that the material is "published data, criteria, standards, specifications, techniques, illustrations, or similar material," reduces the volume of material published in the Federal Register, and is "reasonably available to and usable by the class of persons affected by the publication."

The "second- and third-tier documents" must conform to these requirements. Merely referring to an SB does not incorporate the documents mentioned in the SB, unless and until each document meets the criteria stated in 1 C.F.R. § 51.7.

- (3) Title 1 CFR § 51.9 requires that the IBR is "as precise and complete as possible and shall make it clear that the incorporation by reference is intended and completed by the final rule document in which it appears."

To qualify, the IBR must use the words "incorporated by reference"; state the title, date, edition, author, publisher, and identification number of the publication; inform the user that the publication is a requirement; and make an official showing that the publication is available "by stating where and how copies may be examined and readily obtained."

## **Conclusion**

The Order 8110.103A answer to question "f," neither makes clear what exactly is "required to complete the action(s)," nor complies with the regulations set forth in Title 1 CFR. part 51.

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<sup>2</sup> See, 14 C.F.R. § 39.13.

<sup>3</sup> See, 1 C.F.R. part 51.

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Congress spoke directly on this issue in section 552(a)(1) of the APA, which states “a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the *Federal Register* and not so published.”

The regulations in part 51 set out clear requirements for material to be IBR'd, which are not contemplated by either the question or the answer to “f.” Thus, allowing the language to remain is inaccurate and misleading to those affected.

ARSA therefore requests an interpretation confirming the language in Order 8110.103A question “f” is incorrect, and that it is immediately changed or removed.

Your Servant,

A handwritten signature in blue ink, appearing to read "Sarah MacLeod". The signature is fluid and cursive, with a large loop at the end.

Sarah MacLeod  
Executive Director

Regulations/Legislation cited:

5 U.S.C. § 552(a)(1)  
1 C.F.R. § 51.7  
1 C.F.R. § 51.9  
14 C.F.R. § 39.13  
14 C.F.R. § 39.27