



Federal Aviation Administration

Memorandum

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To: See Distribution List

From: David W. Hempe, Manager, Aircraft Engineering Division, AIR-100 D.Hempe

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Subject: Policy Statement, PS-AIR-21.50-01: Type Design Approval Holder Inappropriate Restrictions on the Use and Availability of Instructions for Continued Airworthiness

Memo No: AIR-100-11-100-002

Regulatory Reference: Title 14 of the Code of Federal Regulations (14 CFR) 21.50

Policy Reference: Order 8110.54A, *Instructions for Continued Airworthiness*

Summary

This policy statement addresses actions taken by some Type Certificate (TC) and Supplemental Type Certificate (STC) Design Approval Holders (DAHs), hereafter referred to as DAHs, to inappropriately restrict the availability, distribution, and use of Instructions for Continued Airworthiness (ICA) through restrictive language in the ICA or through restrictive access or use agreements. This guidance is intended to help:

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

Background

ICA constitute only those maintenance instructions recommended by a DAH in compliance with the airworthiness standards (e.g., 14 CFR 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4 and 35.4) that are acceptable to or approved by the FAA to maintain a type certificated product in an airworthy condition. Section 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 to maintain products in an airworthy condition. The scope of who ICA is distributed to is limited to owners/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 preventive maintenance, maintenance, or alteration, unless that person has a regulatory requirement to comply with the terms of ICA.

Making ICA Available to Maintenance Providers

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 maintenance provider lacks the proper rating, but desires to perform maintenance for an owner/operator, the maintenance provider would need to obtain the necessary ICA directly from the owner/operator. Once the DAH furnishes ICA to the owner/operator, the owner/operator can provide it to the maintenance provider(s) of their choice. The maintenance provider could then seek the proper rating from the FAA under the provisions of Part 145.

It is not appropriate for a DAH to place limitations on the use of its ICA between the owner/operator and the maintenance provider, whether the maintenance provider is rated or not, to perform that maintenance. A maintenance provider that is not rated, or is seeking the appropriate FAA rating to perform maintenance on the owner/operator's products, may obtain ICA from the owner/operator. For those maintenance providers that have the necessary FAA rating, FAA Order 8110.54A, chapter 6 paragraph 4.a, states that the DAH would be required to make the ICA and any subsequent revisions available directly to the maintenance provider 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 whom they seek to perform their maintenance.

“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 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.

Based on the above discussion, a DAH may not inhibit 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 through restrictive access or use agreements, or by adding restrictive language that would control the use of ICA by an owner/operator with respect to the maintenance of its product.

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 restrictive access or use agreements that limit the appropriate availability or use of the ICA where the FAA has determined the ICA are acceptable for maintaining a DAH's product with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items).

While not exhaustive, the FAA finds the following practices of using restrictive language in the ICA or through restrictive access or use agreements unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:

- 1) Requiring the owner/operator to only install 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 maintenance providers or other persons authorized by the DAH to implement the ICA.
- 4) Establishing, or attempting to establish, any restriction on the owner/operator to disclose or provide the ICA to persons authorized by the FAA to implement the ICA.

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.

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