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## Federal Aviation Administration

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### Memorandum

Date:

To: See Distribution List

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

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Subject: Policy Statement, PS-AIR-21.50-01: Inappropriate DAH Restrictions on the Use and Availability of ICA

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

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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.

#### 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 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

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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. 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 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.

### **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.

“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 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.

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.

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.

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](mailto:john.cerra@faa.gov).

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