U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel
800 Independence Ave., SW.
Washington, DC 20591

AUG - 3 2009

Aeronautical Repair Station Association
Attn: Sarah MacLeod, Executive director
121 North Henry Street
Alexandria, VA 22314

Re: Request for Legal Interpretation Concerning Availability of Component Maintenance Manuals Referenced in Airworthiness Limitations Sections of Instructions for Continued Airworthiness

Dear Ms. MacLeod:

This is in response to your letter dated May 18, 2009, in which you asked for a Federal Aviation Administration (FAA) legal interpretation confirming:

(1) The Airworthiness Limitation Section (ALS) and any Component Maintenance Manuals (CMMs) referenced in the ALS are part of the Instructions for Continued Airworthiness (ICA).

(2) That any changes to the ALS and/or CMMs incorporated by reference made after January 28, 1981 are changes to type design which trigger the requirements of 14 CFR § 21.50(b) to make the ICA available to appropriately rated repair stations.

As you know, the ICA availability issue is a complex and controversial one—nevertheless, we apologize for the delay in answering your inquiry. At the conclusion of your letter, you clarified the above two postulates by framing them as the following three. These are:

(1) All CMMs referenced in an ALS are a required part of the ICA;

(2) Modifications to the ALS made after January 28, 1981 are changes in type design which trigger the requirements of § 21.50(b); and therefore,

(3) Design approval holders must make the ALS and referenced CMMs available to properly rated repair stations.

Section 21.50(b) states:

> 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, must furnish at least one set of complete Instructions for Continued Airworthiness to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later. The Instructions must be prepared in accordance with §§ 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4, 35.4, or part 26 of this subchapter, or as specified in the applicable airworthiness criteria for special classes of aircraft defined in § 21.17(b), as applicable. . . . Thereafter, the holder of a design approval must make those instructions available to any other person required by this chapter to comply with any of the terms of those instructions. In addition, changes to the Instructions for Continued Airworthiness shall be made available to any person required by this Chapter to comply with any of those instructions.

The discussion that follows is in contemplation of current 14 C.F.R. § 21.50(b); that is, any ICA developed by a design approval holder (DAH) is for a product (aircraft, aircraft engine, or propeller) for which application for a type certificate or supplemental type certificate was made after January 28, 1981.

The answer to your first postulate is **yes**—all CMMs referenced in an ALS are a part of the ICA subject to the requirements of § 21.50(b). That section requires, in pertinent part, that the ICA "must be prepared in accordance with § 23.1529, § 25.1529, § 25.1729, § 27.1529, § 29.1529, § 31.82, § 33.4, § 35.4, or part 26 . . . ." For ease of illustration, we will address only one of these sections (§ 25.1529) because it, like the others (including part 26), requires that the applicant (DAH) must prepare ICA in accordance with a specified appendix (appendix H, in this case). Paragraph H25.4 of appendix H, entitled Airworthiness Limitations section states, in paragraph (a) "the instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document."[1] Therefore, the ALS is a required part of the ICA.

If the product maintenance information references the use of a CMM as the appropriate location for the ICA for the component, those applicable instructions are incorporated by reference and become part of the complete set of ICA. And, if the DAH developed the CMM information to comply with § 21.50(b), then the CMM, or the parts of it that were referenced in the higher level ICA, are part of the product ICA. Therefore, it follows that if any part of a CMM is referenced in the ALS, at a minimum that referenced portion must also be a part of that ICA, and it must be

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[1] By their terms, these appendices specify that the ALS must set forth, among other things, each mandatory replacement time, inspection interval, and related inspection procedures.

furnished to the product's owner and made available to any other person required to comply with those instructions.

If, however, the CMM is not referenced in the higher level ICA, and the DAH's ICA indicates that the airworthiness of the product can be maintained by removing and replacing the component at issue, then any CMM that exists or is developed by the component manufacturer (*e.g.*, a supplier to the DAH) does not constitute ICA for purposes of § 21.50(b), and the CMM is not subject to the rule's distribution and availability requirements.[2]

The answer to your second postulate is **yes**—modifications [*changes*] to the ALS made after January 28, 1981 [*by virtue of the fact that those ALS are part of the ICA*], are changes in type design which trigger the requirement of § 21.50(b). From your initial framing of the issues (addressing only changes to the ALS and/or CMMs), it is clear that the § 21.50(b) requirement to which you refer is the final provision requiring that "changes to the Instructions for Continued Airworthiness shall be made available to any person required by this chapter to comply with any of those instructions." As you observed in your letter, under § 21.31(c), the ALS of the ICA are part of the type design; however, the "shall be made available" references in the ICA regulation apply generally to the ICA and changes to the ICA (irrespective of their type design status). Consequently, not only are changes to the ALS subject to the requirement, but so are subsequent other (non-ALS) changes to the ICA.

Finally, your third postulate is framed too broadly for a simple yes or no answer. This begs the question whether *all* "properly rated repair stations" are included in the class of "any other person required by this chapter to comply with any of those instructions." Only persons in that class would be entitled to receive ICA from a DAH pursuant to § 21.50(b).[3] To the extent your postulate broadly means that *all* "properly rated repair stations," without restriction, are entitled to receive ICA under § 21.50(b), our answer is **no**. If it means a *properly rated repair station* with a *need* to comply with the ALS, *i.e.*, a repair station in possession of a component to be worked on, or a repair station with some other indicia of the *need* for (required to comply with) the ALS for the component, *i.e.*, a contract, a work order, etc., which would demonstrate such need, then our answer is **yes**. We offer no opinion on what minimum indicia of need would trigger the *make available* requirement. Perhaps the FAA and industry could work together to establish a reasonable threshold criteria to be published in an Advisory Circular or in other guidance material.

In a November 22, 2005 letter interpretation addressing the issue of whether a DAH was required, under § 21.50(b), to provide ICA to an organization that did not perform maintenance, but that supplied web-based maintenance scheduling and tracking services to aircraft owners and

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[2] *See* FAA interpretation letter to Mr. David Rain, Vice President, Alcor Engine Company, Inc., dated April 14, 2003, signed by Richard McCurdy, Manager AGC-210 (Airworthiness Law Branch) setting forth conditions that must be met in order for ICA to be made available under 14 C.F.R. § 21.50(b).

[3] Even though your postulate includes only the ALS and CMMs referenced in the ALS, our answer addresses the availability of full ICA because that is what the regulation covers. Those persons entitled to receive ICA would necessarily receive the associated ALS, which, as noted above, would include referenced CMMs.

operators, the FAA's Chief Counsel concluded that a DAH was not so required because the requesting organization was not a maintenance provider, and therefore was not a person required to comply with terms of the ICA.[4] In his letter the Chief Counsel provided this background information on the regulation's meaning:

> Our requirement that each design approval holder provide at least one set of complete ICA to an owner or person required to comply with those instructions is intended to facilitate the performance of maintenance on a product either by the owner or an appropriately certificated person authorized by the owner. . . . The FAA considers it contrary to the intent of the regulation for a design approval holder to restrict the ability of an owner to use those instructions to either perform, or facilitate the performance of, required maintenance on a product.
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> Section 21.50(b) also imposes a continuing obligation on a design approval holder to make ICA available to persons required to comply with any of the terms of those instructions. Such persons include the owners or operators of a product, and those persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations as specified in § 43.3, such as mechanics, repairmen, repair stations, air carriers, persons working under the supervision of those certificate holders, pilots(when performing preventive maintenance only), and manufacturers.

Repair stations are in the same stead as any other person authorized to perform maintenance on a product. Any of these persons performing maintenance, alteration, or preventive maintenance on an aircraft product or appliance must, under 14 C.F.R. § 43.13(a) "use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness . . ., or other methods, techniques, or practices acceptable to the Administrator, except as noted in § 43.16." As a general rule, under § 43.16, each person performing an inspection or other maintenance specified in the ALS *must* perform the inspection or other maintenance in accordance with that section.[5] It follows that any person performing an inspection or other maintenance specified in the ALS would be a "person required . . . to comply with any of those instructions."

The overriding intent of § 21.50(b) is to assist aircraft owners and operators in maintaining the airworthiness of their aircraft. It is not enough to say that because § 43.13(a) permits the use of "other methods, techniques, and practices" in lieu of following ICA (except, of course, the ALS) that a maintenance provider is *not required* to comply with ICA because of the permissible alternative and therefore a DAH is not required to make the ICA available to that person. In the preamble to the 1980 Final Rule, the FAA made note of the fact that the recommended maintenance procedures required by the then current regulations were "frequently inadequate in

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[4] November 22, 2005, letter from the FAA's Chief Counsel addressed to Robert P. Silverberg.

[5] The exceptions also require approvals, *i.e.*, "in accordance with operations specifications approved by the Administrator under part 121 or 135, or an inspection program approved under § 91.409(e)."

scope and content, and often do not provide a sound basis for the operator/owner to maintain the airworthiness of the aircraft. The FAA . . . concluded that the lack of such recommended maintenance procedures can best be remedied by requiring that they be made available to owners and operators by the type certificate or supplemental type certificate holder." (45 FR 60157, Sept. 11, 1980.) In the context of § 21.50(b), the FAA did not draw a distinction between the ALS and other portions of the ICA; the DAH was required to make all ICA available.

In response to a comment on the proposal, the FAA stated further:

> [W]hile it is true that not all operators/owners are required to establish and comply with a continuous airworthiness program, those that voluntarily wish to set up such a program are often handicapped by the lack of comprehensive instructions, which would be remedied by § 21.50(b). On the other hand, those required to establish a program will benefit from the more detailed and comprehensive instructions made available to them under § 21.50(b). (Id.)

The reference to "comprehensive instructions" makes it clear that the FAA intended the new requirement to apply to all of the ICA, not just the ALS. Given the complexity of today's modern aircraft, it would strain credulity for a DAH to argue that it will not provide ICA, irrespective of ALS issues, to a maintenance provider because that person is free to develop alternative methods, techniques, and practices.

In a March 23, 2012 Policy Memorandum issued by the Aircraft Engineering Division, AIR-100, in the FAA's Aircraft Certification Service, the agency addressed inappropriate restrictions by DAHs in their agreements to provide ICA to product owners. The Memorandum included the following explanation of the intent of the regulation:

> 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.

We concur with the Aircraft Engineering Division's assessment of the regulation's intent, so long as the required distribution of the ICA is limited to those authorized persons with an impending need to comply with the terms of the ICA. If the requestor, whether a "properly rated repair station" or any other authorized and otherwise qualified person, is not at the time of the request required to comply with the ICA terms, the FAA likely would not consider it a violation of § 21.50(b) if a DAH refused to provide the requested ICA. Along these lines, this opinion is consistent with the final paragraph 3 of our 2003 interpretation letter to Alcor Engine Company, Inc. (see Footnote 2), which stated:

> The FAA does not regulate competition between repair stations but rather

> safety. The FAA's intent for 21.50(b) was to facilitate owner/operator's ability to manage their own maintenance, and to insure that those *required* to accomplish continued airworthiness actions would have access to continues airworthiness instructions, in the interest of safety. It was not intended to assure that any person wishing to enter the repair/overhaul business is provided with repair manuals.

An unanswered question neither asked nor answered in this opinion is the question of reasonable reimbursement to the DAH who would provide the ICA. Clearly, a DAH could make ICA effectively *unavailable* by charging an exorbitant fee. The issue was broached in the preamble to the Part 26 Notice of Proposed Rulemaking titled "Damage Tolerance Data for Repairs and Alterations," where we stated: [6]

> Throughout this proposal, the term "make available" is used in the same sense that it is currently used in 14 CFR 21.50, which requires DAHs to make ICAs available to operators and others required to comply with them. . . . We anticipate that DAHs would be allowed reasonable compensation for developing all of the required documents, which is consistent with current practice." (71 FR 20583, April 21, 2006.)

We also stated in the preamble to the Part 26 final rule: "[A]s with other requirements for TC holders to support operators, this rule is not intended to require TC holders to provide this support without compensation." (72 FR 70495, Dec. 12, 2007.) Similarly, we would expect DAHs to provide ICA at a reasonable fee to requestors required to comply with terms of the ICA. We offer no opinion here as to what the level of unreasonableness might be such that the FAA would deem them "unavailable" in order to conclude that a violation of § 21.50(b) had occurred.

A related and timely issue of considerable importance is that of DAHs denying current ICA based on claims of *trade secrets* or *proprietary data*. With regard to potential enforcement of § 21.50(b), the FAA would not view favorably a DAH's denial of necessary maintenance instructions (ICA) to a maintenance provider with a valid need for them based on a claim of unwillingness to disclose trade secrets or proprietary information. A DAH may not limit who may perform maintenance on its products to a select few maintenance providers with whom it has made exclusive arrangements to provide those ICA. We also discussed this issue in the Part 26 final rule preamble, where we stated:

> The ATA said the FAA should work with DAHs to establish a narrow and clear definition of proprietary data. . . . For many years, the FAA has required DAHs to disclose to affected persons information they might otherwise consider proprietary. For example, since 1981, DAHs have been required to provide Instructions for

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[6] The NPRM actually proposed amendments to 14 C.F.R. part 25, but the new requirements were placed in a new part 26. (72 FR 70489, Dec. 12, 2007.)

Continued Airworthiness, including DT data, which DAHs may have considered proprietary. However, because we have determined that this information is essential to maintaining the airplanes in an airworthy condition, we have required DAHs to make it available as a condition for obtaining and retaining their certificates. (72 FR 70497, Dec. 12, 2007.)

This response was prepared by Edmund Averman, an attorney in the Regulations Division in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division (AFS-300) in the Flight Standards Service, and with the Aircraft Engineering Division (AIR-100) in the Aircraft Certification Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200