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

Office of the Chief Counsel
800 Independence Avenue, S.W.
Washington, D.C. 20591

NOV -5 2014

Department of the Navy
Naval Air Systems Command (NAVAIR)
Program Management Air (PMA)
D.J. Dawson, Manager, PMA-207
AIR ASW Assault and Special Mission Programs
47123 Buse Road, Bldg. 2272, Suite 162
Patuxent River, MD 20670-1547

Re: Request for Legal Interpretation of 14 C.F.R. § 21.50(b) Concerning Whether Design Approval Holders (DAH) Must Make Complete Instructions for Continued Airworthiness (ICA) for an Aircraft or its Propulsion System Available to an Owner Who Operates the Aircraft Only as a Public Use Aircraft When the Aircraft Has Never Been Issued an FAA Standard Airworthiness Certificate

Dear Mr. Dawson:

This responds to your letter dated June 24, 2014, asking whether the provisions in 14 C.F.R. § 21.50(b) that require design approval holders (DAH) to furnish complete Instructions for Continued Airworthiness (ICA) to the owner of each type aircraft, engine, or propeller apply to the Lockheed Martin C-130J aircraft operated by NAVAIR. Your letter states that NAVAIR operates these aircraft only as public use aircraft for which the FAA has never issued a standard airworthiness certificate. You also asked a secondary question concerning whether an aircraft owner who has received ICA from a DAH may distribute them to a third party maintenance provider despite restrictions from the DAH to disallow such distribution. As explained below, the answer to your primary question is no—§ 21.50(b) does not apply at all to the C-130J aircraft because it is not an aircraft that has an FAA-issued type certificate. As to your secondary question, under current FAA regulations, a product owner may distribute whatever ICA the owner possesses to third party maintenance providers.

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, 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 FAA's Aircraft Certification Service has advised us that the FAA issued an amended type certificate (No. A1SO) to Lockheed Martin Corp. for the Model 382J aircraft on September 9, 1998. That office confirmed that the Lockheed Martin C-130J aircraft is a militarized version of the company's 382J aircraft; however, the C-130J aircraft is not an approved model under FAA Type Certificate No. A1SO or any other FAA-issued type certificate. Section 21.11 (Applicability) provides, in pertinent part, that subpart B (which includes § 21.50(b)) prescribes the rules governing the holders of type certificates. Because Lockheed Martin does not hold a type certificate for the C-130J aircraft, the company is not a DAH subject to the ICA requirements of § 21.50(b).

You advised our office that NAVAIR's request is prompted by its desire to receive bids from what it terms "potential third party maintenance providers," specifically for maintenance services on the C-130J's propulsion system—its engines and propellers. These consist of the Rolls-Royce AE2100D3 engine and the Dowty R391 propeller, both of which have FAA-issued Type Certificates, but have been flown only on the C-130J aircraft and have never been sold commercially or flown on a civilian aircraft. Rolls-Royce is the DAH for the engines, and Dowty is the DAH for the propellers. Previously both products have been maintained for NAVAIR through a sole-source contract with Rolls-Royce.

Two means for product maintainers to obtain ICA are provided by this regulation. The first would be for the aircraft owner to be furnished complete ICA by the DAH(s), either upon delivery of the product, or *upon issuance of the first standard airworthiness certificate for the affected aircraft, whichever occurs later*, and then for the owner to provide those instructions to the maintenance provider of the owner's choice. The second would be for a person maintaining the product to request the ICA from the DAH who, under the regulation, is required to make them available to persons required by the FAA's regulations to comply with any of their terms.[1]

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[1] Note that for the kind of aircraft at issue here, FAA's maintenance rules (14 C.F.R. part 43) apply only to aircraft having a U.S. airworthiness certificate and to aircraft engines, propellers, appliances, and component parts of such aircraft. Accordingly, on the facts presented, third party maintenance providers would not be entitled under § 21.50(b) to have a DAH make the ICA available because they are not "any other person required by this chapter [14 C.F.R. parts 1-199] to comply with any of the terms of those instructions."

Appropriate compensation to the DAH for making the ICA available to the maintenance provider would be a matter of negotiation between the parties.

The reasons underlying our opinion are twofold. First, the FAA's authorizing statute tasks the agency with promoting safe flight of *civil* aircraft by, among other things, prescribing minimum standards and regulations for this class of aircraft. (*See* 49 U.S.C. § 44701 (General requirements).) The statute provides that a "'civil aircraft' means an aircraft except a public aircraft." (49 U.S.C. § 40102(a)(16).) It defines "public aircraft" in 49 U.S.C. § 40102(a)(41) as including aircraft owned or operated by the armed forces, referencing 49 U.S.C. § 40125(c). For purposes of this interpretation, based on the information you provided, NAVAIR is operating its C-130J aircraft as public aircraft operations (PAO). When operating as a public aircraft, the type and airworthiness certification regulations of 14 C.F.R. are not applicable.

Second, the first prong of § 21.50(b) provides that a DAH must furnish the applicable ICA "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 C-130J (being the 'affected aircraft') is not eligible for an FAA standard airworthiness certificate; therefore, the engine and propeller DAHs are not be required by § 21.50(b) to furnish a complete set of ICA for their respective products.

As to whether a product owner may distribute ICA to a chosen maintenance provider, under current FAA regulations and policy the owner may and is encouraged to do so. FAA Policy Memo No. AIR-11-100-002, dated March 23, 2012, which you referenced in your letter, articulates this policy. A pertinent excerpt from the policy memo states, on page 3:

> [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.

We understand that NAVAIR has been furnished at least some ICA for these C-130J aircraft, including for the engines and propellers. Whether NAVAIR may provide those ICA to maintenance providers of its choice would have to be resolved in a particular case as a civil matter between the parties, and the result may depend on the terms of the contract between them. The FAA's regulatory scheme does not apply to those aircraft.

I hope this letter is responsive to your needs. It was prepared by Edmund Averman, an attorney in the International Law, Legislation and 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 on (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
Legislation and Regulations