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

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

MAR 31 2014

Mike McPhaul
Chief Inspector
Piedmont Propulsion Systems, LLC
4400 Lansing Street
Winston Salem, NC 27105

Re: Request for Legal Interpretation Concerning (1) Whether a Design Approval Holder (DAH) May Restrict the Availability of the Details of Mandatory Inspections and Repairs that are Part of the Instructions for Continued Airworthiness (ICA) to Require that those Inspections and Repairs be Performed Only at a DAH-Specified Facility, and (2) What Can the FAA Do to Enforce the 14 C.F.R. § 21.50(b) Requirement That Design Approval Holders Provide Instructions for Continued Airworthiness (ICA) to Persons Required to Comply with Those Instructions

Dear Mr. McPhaul:

This is in response to your letter dated June 17, 2013, and clarified by E-mail on November 12, 2013, in which you asked for a legal clarification of Federal Aviation Administration (FAA) Order 8110.54A and "the FAA's disclosure expectations related to ICA [Instructions for Continued Airworthiness] repair/inspection instructions which are developed by the DAH [design approval holder]." Piedmont Propulsion Systems, LLC (Piedmont) is an FAA-certificated repair station with a propeller rating. Your issue arose because certain DAH's (whose propellers Piedmont maintains and overhauls) require in their ICA that certain mandatory inspections and repair procedures be performed exclusively by the DAH at the DAH's facilities. Thus the portions of the ICA that would enable Piedmont to complete the required maintenance and approve the product for return to service as airworthy are not being made available to you. At the conclusion of your letter, you framed your question as:

> Does a DAH have the right to require that certain inspections or repairs which are mandatory under the ICA be performed exclusively at a DAH-specified facility, effectively allowing the DAH to maintain complete control over all major inspections, or must they make the details of mandatory repairs and inspections part of the published ICA?

On November 12, 2013, by E-mail, you further clarified your request to ask specifically what actions the FAA can take to enforce the "make ICA available" requirement.

The answer to the first part of your question is **no**—the holder of a design approval may not restrict the performance of "mandatory" inspections and repairs to only facilities it specifies. By *mandatory* inspections and repairs contained in the ICA, we assume you mean those specified in the Airworthiness Limitations section of the ICA, because only that section of ICA is FAA-approved and mandatory. As a matter of law, both the Airworthiness Limitations section and the rest of the ICA must be made available to those persons required by the Federal Aviation Regulations to comply with the terms of the instructions. The FAA documents referenced in your letter[1] state clearly the FAA's position on this issue—A DAH may not place such restrictions in its ICA or otherwise not make them available to authorized persons who are required to comply with them. The 2012 FAA policy statement you referenced 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.

In an August 9, 2012 letter interpretation addressed to the Aeronautical Repair Station Association (ARSA) (copy enclosed), we stated our concurrence with the above-quoted AIR Policy Statement on 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." We also addressed who is an authorized person in contemplation of the regulation. The question at issue was whether all properly rated repair stations were included in the class of those persons to whom a DAH must provide ICA. Because § 21.50(b) requires that the instructions be made available to "any other person [other than the owner of the product[2]] required by this chapter to comply with any of the terms of those instructions," we concluded that merely being a properly rated repair station was not enough. If a properly rated repair station does not have an impending need to comply with the instructions (*i.e.*, ongoing work on the product that requires the instructions), the regulation does not require the DAH to make the ICA available. Your scenario, however, is based on Piedmont's need to comply with inspection and repair instructions on certain DAH's propellers. Under the circumstances you posited, § 21.50(b), requires the DAH to make the complete ICA available to Piedmont.

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[1] FAA Order 8110.54A and the Aircraft Certification Service Policy Statement PS-AIR-21-50-01 (dated March 23, 2012).

[2] The first sentence of § 21.50(b) requires the DAH to furnish at least one set of complete ICA to the product owner.

Neither this response nor the above-referenced ARSA interpretation answers the question of what would be appropriate compensation to the DAH for providing ICA. Clearly an issue could arise where a fee charged by a DAH could be so exorbitant as to effectively make the ICA unavailable. Some of the considerations surrounding this issue are discussed in the enclosed ARSA interpretation.

Your final question of what action the FAA can take to enforce the *make available* provision in § 21.50(b) is one we cannot answer in detail with the information you provided. This is a fact- and circumstance-specific question—each case would be considered on its own merits. The FAA may take enforcement action against a DAH that does not make complete ICA, that meets the criteria set forth in § 21.50(b), available to persons with a need to comply with them, as discussed above. Enforcement actions the agency could take include issuing an order of compliance, issuing a cease and desist order, or imposing a monetary civil penalty.

This response was prepared by Edmund Averman, an attorney in the Regulations Division in the Office of the Chief Counsel, and coordinated with the FAA's 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,

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

Enclosure