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Aviation Law Made Simple

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Global Changes for Instructions for Continued Airworthiness

The Federal Aviation Administration and the European Aviation Safety Agency met in June to discuss global aviation safety, which included a discussion regarding maintenance manuals and instructions for continued airworthiness (ICA).

Both authorities impose an obligation on type-certificate holders to create such instructions for engines and airframes. There are, however,

The memorandum defined what the regulations mean when they call for a “current” document from a manufacturer. The phrase arises in the context of Section 91.409(f)(3) of the regulations, which permits the operator to rely on “the current inspection program recommended by the manufacturer.”

The FAA chief counsel’s opinion memorandum examines whether or not this phrase means the operator’s

individuals through changes to their inspection programs or maintenance manuals. In essence, they would be making rules that members of the public affected by the change would have to follow.

“If the word ‘current’ in §91.409(f)(3) and other similarly worded provisions did mean an ongoing obligation, when manufacturers make changes to their instructions and programs (which often accompany newly produced models of products, but which also cover the previously produced models), the new requirements could impose financial and other burdens on owners and operators of older aircraft that they did not bargain for.

“An interpretation of the regulation that would allow manufacturers unilaterally to issue changes to their recommended maintenance and inspection programs that would have future effect on owners of their products would not be legally correct. This would run afoul of the APA. It would mean that our regulations effectively authorize manufacturers to issue ‘substantive rules,’ as that term is used in the APA; it would enable them to impose legal requirements on the public. This

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subtle differences in the way each authority regulates ICAs — and a recent FAA legal memorandum could pave the way for an even bigger split between the authorities on ICA policies.

What Does ‘Current’ Mean?

One issue that was not on the agenda during the FAA/EASA meeting was a recent FAA legal memorandum — a memorandum that has shocked certain parts of the industry.

inspection program must reflect all manufacturer amendments to date. The chief counsel’s memo makes it clear this phrase means the program at the time it was initially published, and it does not include the subsequent amendments to the program.

The chief counsel’s memo offers the following explanation:

“If ‘current’ in §91.409(f)(3) and similarly worded regulations could be read to mean an ongoing obligation, manufacturers unilaterally could impose regulatory burdens on

would be objectionable for at least two reasons.

“First, and most significantly, the FAA does not have authority to delegate its rulemaking authority to manufacturers. Second, ‘substantive rules’ can be adopted only in accordance with the notice-and-comment procedures of the APA, which does not apply to manufacturers.”

Because the manufacturer does not have the authority to impose a regulatory obligation, and the FAA cannot delegate to the manufacturer the authority to impose a regulatory obligation in the absence of rulemaking, only the inspection program that was current at the time of initial certification is considered to be “current.” The memo also makes it clear the operator can voluntarily adopt to update the program.

This opinion has caused consternation among people who fear it could permit use of inspection programs considered “outdated.” However, those who fear certain manufacturers have used maintenance manuals as a means to help control the repair market have applauded the opinion.

What Does it Mean for Repair Stations?

This opinion presents a number of important ramifications. First, it illustrates the importance of coordinating maintenance instructions with your customers to ensure you are using the instructions that apply. And, more importantly, it raises the question about what constitutes “current” maintenance instructions.

14 CFR, §145.109(d), requires the repair station to maintain cur-

rent copies of several documents, including ICAs and other maintenance manuals. This traditionally has been thought to mean the repair station is responsible for maintaining a subscription or other service for obtaining all of the manufac-

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turers’ revisions to their manuals. Using the logic of the recent chief counsel’s opinion, however, it would appear the FAA might only have the power to require a repair station to maintain the original manual and any changes to the manual required by an airworthiness directive.

Whether or not this opinion applies to maintenance manuals and other documents is an issue to be addressed in another FAA chief counsel’s opinion letter. But the direction of the chief counsel is clear, and it is likely the FAA will find itself struggling to develop a regulatory structure that allows it to enforce a requirement to maintain manufacturers’ amendments under the term “complete.”

The FAA/EASA ICA Discussion

One important question facing the aviation community is, “What is in the complete ICA and when must it be made available?” This question was a central feature of the ICA discussions during the FAA/EASA meeting.

The FAA permits the ICA to be incomplete at the time the type certificate is issued, as long as the ICA is complete by the time the first aircraft under the type certificate is released.

The European community rules

are even more liberal. Under EASA 21.A.61, the ICA for an aircraft can be delayed until the point at which the particular instruction is needed (when the product reaches the relevant time for the maintenance in question).

In the United States, the ICAs are reviewed by the Aircraft Certification Offices. With the support of the Aircraft Evaluation Group (from the Flight Standards Division), they determine whether or not the ICA is acceptable, and they also approve the airworthiness limitations section of the ICA.

The FAA has determined the guidance used for this process (FAA Order 8110.54) needs to be updated. Earlier this year, the FAA sought public comment on its draft of Order 8110.54A. This is the first major revision to this order, which provides FAA employees with guidance on processing ICAs. Order 8110.54A is very close to being released.

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The FAA also is working on a policy memorandum to introduce an “operational limit” concept. The goal is to better reflect the fact there are issues that may not be covered in the ICAs, such as what specific inspections might be necessary for a “D” check. This likely will impact commercial aviation first; however, it eventually could be used to address issues deemed particular to the general aviation community.

Under this “operational limit” concept, there could be an initial operational limit at the time of the initial version of the ICA. It is more likely, however, the “operational limit” concept would be used during the lifecycle of the aircraft as a means by which to change and update ICAs to support operator safety.

EASA has established a certification working group to address FAA findings of non-compliance with EASA’s own standards. EASA is drafting a checklist to be comparable to FAA Order 8110.54A to better promote compliance.

On the regulatory front, EASA has tasked its working group with addressing ICA issues in its regulations, and it has published terms of reference to guide its investigation. The terms of reference suggest the group might address some of these questions:

- Does an ICA include the referenced component maintenance manuals (CMM)? To what extent should the TC holders who create the ICA control CMMs?
- How much involvement should government authorities have in pre-

paring the ICAs and providing oversight for them?

- What sections of the ICA should the authorities be approving?
- If some parts of the ICA are approved and others are not, which portions are mandatory?
- How do Manufacturing Review Board (MRB) results fit into ICAs? (This is an issue because an MRB can address both safety and economic issues.)
- Should EASA harmonize the time when ICAs need to be made available with the FAA standards?
- Can a designee (DOA) issue, accept or approve ICAs?
- To whom should ICAs be made available?
- How are ICAs used? To what extent can an operator deviate from the ICAs?
- What is an STC holder’s obligation to produce ICAs?

The European group is expected to review related FAA documents while considering harmonization issues.

The recent interpretation regarding the word “current” is consistent with administrative law; however, it is a major departure from past FAA and industry practices. With the Europeans examining U.S. policy to identify targets for harmonization, it is especially important to ensure the industry has reasonable ICA regulations and policies. The next few years could bring changes to the way we all view instructions for continued airworthiness. □

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