

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

Originating Office: AIR-110	Document Description: PS-AIR-21.50-01; Inappropriate DAH Restrictions on the Use and Availability of ICA	Project Lead/Reviewer: John Cerra	Reviewing Office: AIR-110	Date of Review: January 30, 2012
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Commenter	Page & Paragraph or Topic	Comment	Reason for Comment	Suggested Change	Comment Resolution
ACE-116W	1	In the first sentence, Design Approval Holders (plural) is abbreviated "(DAH's)", which is actually singular possessive.	Editorial	To correct this grammar error, please change "(DAH's)" to "(DAH)" or "(DAHs)".	Concur. Corrected grammatical errors with DAH.
ANE-111	1	Incorrect use of possessive (DAH's)	Editorial	Change to: (DAHs)	Concur. DAH's replaced with DAHs.
ANE-111	2	Section symbol not identified prior to 1st use in (14 CFR) §21.50(b).	Editorial	Change to: (14 CFR) Section (§)21.50(b),	Partially concur. First reference changed to: "(14 CFR) 21.50(b)" per FAA writing guidance.
ANM-112	2	ICAs also include the Airworthiness Limitations section, which is "FAA Approved" and operators are required to follow. See Appendix H to part 25, section H25.4.	Clarification	Revise first sentence: "ICA constitute only includes 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 and the Airworthiness Limitations sections which are FAA approved (e.g., § H25.4). "	Partially concur. "Includes" implies that ICA could contain more. The phrase "constitute only" indicates that other maintenance information is not ICA. "or approved by" is added after "acceptable to" in the new draft instead of the suggested language.
BOS AEG	2	This should include all ICA reference regulations. 23, 25, 27, 29, 31, 33 & 35.	Clarification		Concur. Revised to: "14 CFR 23.1529, 25.1529, 27.1529, 29.1529, 31.82, 33.4 and 35.4"
ANE-111	3	Owner should be plural form. owner/operators	Editorial	Change to" owner/operators "	Concur. Changed "owner" to "owners."
ANM-112	3	Last Sentence: It is not intended....comply with the ICA is confusing. A person does not comply with an ICA. They do actions that keep the product in compliance.		Revise as follows: "...maintenance, or alteration, unless that person needs access to the ICA for other regulatory purposes. has a regulatory requirement to comply with the ICA. "	Partially concur. Updated the sentence to reflect the terminology of 21.50 ". . . unless that person has a regulatory requirement to comply with the terms of ICA."
BOS AEG	3	Preventive not Preventative	Typographical error.		Concur. Changed "preventative" to "preventive"

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

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ANE-111	4	Incorrect use of possessive: " provide it the maintenance provider(s) of its choice"	Editorial	Change to: " provide it to the maintenance provider(s) of their choice"	Concur. Changed "its" to "their"
ANE-111	5	Missing comma. "It is not appropriate for a DAR 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"	Editorial	Change to: "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"	Concur. Added "."
ANE-111	5	Operator should be possessive pronoun. " ... owner/operator support"	Editorial	Change to: " ... owner/operator's support"	Concur. However, paragraph wording changed (see next comment).
ANM-106	5	The intent of the 2nd sentence in this paragraph is not clear. The point of the paragraph seems to be regardless of whether a repair station is appropriately rated, it can have access to the ICA either from the owner/operator, or if appropriately rated, directly from the DAH (per our ICA Order). I've proposed a revision to clarify this meaning.	Clarification	"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. A repair station that is not rated, or is seeking the appropriate FAA rating to perform maintenance on the owner/operator's products, may obtain ICA from the owner/operators. For those repair stations that have the necessary 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.	Concur. Based on combined comments paragraphs revised to: "It is not appropriate for a DAH to place limitations on the use of its ICA between the owner/operator and the maintenance provider, whether the maintenance provider is rated or not, to perform that maintenance. A maintenance provider that is not rated, or is seeking the appropriate FAA rating to perform maintenance on the owner/operator's products, may obtain ICA from the owner/operators. For those maintenance providers that have the necessary FAA rating, FAA Order 8110.54A, chapter 6 paragraph 4.a, states that the DAH would be required to make the ICA and any subsequent revisions available directly to the maintenance provider upon its request.

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

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ANE-111	8	<p>These two paragraphs address the same concepts with significant overlap. First sentence in paragraph 2 is also too long and a bit difficult to follow.</p> <p>Need to simplify by consolidating current paragraphs 1 and most of 2 into new paragraph 1.</p> <p>The last sentence of paragraph 2 should remain as a lead-in to the numbered list. But change some of the language to be more direct.</p>	Clarification	<p>Suggest consolidating current paragraphs 1 & 2 into new paragraph 1.</p> <p>The intent of the regulations is that, while a DAH must identify the applicability of its ICA, the DAH may not impose restrictive contractual requirements on owners/operators that would control or limit their distribution of the ICA to FAA approved maintenance acceptable for maintaining a DAH's product or article in an airworthy condition using FAA approved replacement parts, articles, or materials installed (e.g. . Parts Manufacturer Approval (PMA) items). those ICA must be provided to the owners/operators without restrictions.</p> <p>While not exhaustive, the FAA finds the following DAH practices to be unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:</p>	<p>Concur. Based on combined comments paragraphs revised to: "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 restrictive access or use agreements that limit the appropriate availability or use of the ICA where the FAA has determined the ICA are acceptable for maintaining a DAH's product with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items).</p> <p>While not exhaustive, the FAA finds the following practices of using restrictive language in the ICA or through restrictive access or use agreements, unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:"</p>

Clearance Record
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ACE-112	9	<p>Non-concur. Consistent with Order 8110.54, many TCDS & ICA have such limitations to ensure continued compliance to the applicable regulations, such as:</p> <p>“Major structural repairs must be accomplished at FAA certified repair stations rated for composite aircraft structure work, in accordance with Extra repair methods approved by LBA or EASA and accepted by the FAA.”</p> <p>“Rigging specifications are as follows: (Complete maintenance instructions, including detailed rigging information, may be purchased from the Boeing Airplane Company, Wichita Division.)”</p> <p>The memo gives no method of reconciling these existing limitations with the proposed new “requirement” in the memo to remove “restrictive” language..</p>		<p>Suggest removing bullets 1-4, or adding a process for determining appropriate vs. inappropriately restrictive language.</p> <p>Also need a process for requiring revision of all TCDS & approved ICAs to remove the incompatible language if this policy is enacted</p>	<p>Non-concur. The purpose of this memo is to notify FAA personnel and industry that improper limitation information needs to be removed from ICA [improper limitations will also have to be removed from TCDS, but that will be addressed in new TCDS policy), however, the process for aligning with this policy will be left up to each directorate to consider.</p> <p>1-4 are examples only.</p>
AFS-304	9	<p>This sentence contains a double negative, and could be misleading, "While not exhaustive, the FAA does not find the following practices acceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements"</p>		<p>Suggest rewriting to read: While not exhaustive, the FAA finds the following practices unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:</p>	<p>Concur. Revised to "While not exhaustive, the FAA finds the following practices of using restrictive language in the ICA or through restrictive access or use agreements, unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:"</p>

Clearance Record
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ANE-150	9	Confusing wording in second paragraph. The first sentence contains certain clarifications/words that are unnecessary.		Consider rephrasing to "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 limit the appropriate availability 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)."	<p>Concur. Based on combined comments paragraphs revised to: "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 restrictive access or use agreements that limit the appropriate availability or use of the ICA where the FAA has determined the ICA are acceptable for maintaining a DAH's product with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items).</p> <p>While not exhaustive, the FAA finds the following practices of using restrictive language in the ICA or through restrictive access or use agreements, unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:"</p>

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

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ANM-106	9	<p>The first sentence indicates that the FAA will not accept restrictive statements or terms in ICA documents or related licensing agreements. I know the FAA reviews and accepts ICA and therefore could prohibit the use of restrictive statements – do we review and accept related licensing agreements? If not, then this should be reworded to indicate that it is not appropriate to include such statements in related licensing agreements (rather than stating we won't accept such statements in licensing agreements).</p> <p>The first sentence also states: "...the FAA will not accept restrictive statements or terms in ICA documents...that purport to limit the appropriate availability...or use of the ICA where the FAA has determined the ICA continue to be acceptable..." This seems to imply that the FAA will make a post-certification determination that ICA continue to be acceptable, rather than accept the ICA during the certification activity.</p>		Is there a reason that the sentence doesn't just read: "...where the FAA has determined the ICA are acceptable..."	<p>Concur. Based on combined comments paragraphs revised to: "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 restrictive access or use agreements that limit the appropriate availability or use of the ICA where the FAA has determined the ICA are acceptable for maintaining a DAH's product with FAA-approved replacement parts, articles, or materials installed (e.g., Parts Manufacturer Approval (PMA) items).</p> <p>While not exhaustive, the FAA finds the following practices of using restrictive language in the ICA or through restrictive access or use agreements, unacceptable under the provisions of 14 CFR §21.50(b) and related ICA airworthiness requirements:"</p>
ANM-112	9	This paragraph implies that anyone could reverse engineer any part/component and force the DAH to supply the ICA created by the DAH for that part/component?		If this is true; add a statement to that effect or provide a reference to existing policy which describes how an ICA may be used and what availability requirement that places on the DAH.	Non-concur. If a part is reverse engineered to be produced, then the part should fall under PMA rules.
BOS AEG	9	This should be expanded to include a statement that a DAH cannot charge a fee to certain CRS and repair entities to be able to receive repair methods that are not available in current ICAs. Some companies including Rolls-Royce Corp (Allison) calls them "OEM Authorized facilities".			Non-concur. The 4 unacceptable practices listed in this paragraph, while not meant to be inclusive, are what we currently consider as legally enforceable per the advice of our legal counsel. We will consider your recommended addition to this list in future policy such as Order and AC after coordination with our legal counsel.

Clearance Record
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ASW-170	9.1	Can be misinterpreted. 1) "Requiring the use (installation) of only DAH-produced or authorized replacement parts, articles, appliances, or materials."	Clarification	Requiring the user to only install approved parts, articles, appliances, or materials produced by the DAH.	Partially concur. Changed to: "Requiring the owner/operator to only install DAH-produced or authorized replacement parts, articles, appliances, or materials."
ACE-116W	10	This paragraph ("This policy has two goals.") lists two goals. However, these two goals are not the same as the purpose stated in the summary. In fact, I don't see how the second goal is supported or accomplished in this memo. There is nothing in this memo that addresses confusion of ICA instructions.		Delete this paragraph.	Concur. Paragraph deleted.
ANE-111	10	Intent of sentence is not clear. "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." Maintenance providers should not be expected to "maintain" the ICA; just to properly interpret it relative to the product to be maintained.	Clarification	Suggest "The first is to reduce the burden on maintenance providers in determining the appropriate maintenance instructions to apply to a given product or article."	Partially concur. Paragraph has been removed based on public comments.
ANE-111	11	Sentence does not use plain language. "It is understood that there are situations where "	Clarification	Suggest more active, 1st person language "The FAA recognizes that situations may exist in which "	Partially concur. Paragraph has been removed based on public comments.
ACE118W	Enforcement	Using terms such as "appropriate" or "not appropriate", or "acceptable" or "not acceptable", or "may" or "may not", doesn't seem to be mandatory or legally enforceable.	Clarification	Use terms/language that will be legally enforceable or are mandatory since this policy is concerning compliance to regulations.	Non-concur. The terms used in this policy statement have been determined by AGC to be legally enforceable.

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

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ACE118W	General	Does this policy apply to existing ICAs or future ICAs or both? What needs to be done for existing ICAs or contracts that have DAH requirements that this policy is trying to stop, do the DAH need to revise their ICAs or contracts to remove them?		Clarify in the policy if necessary.	Non-concur. This policy statement intends to clarify the requirements of 21.50(b), with no intention to change the rule. The clarification provided by this policy statement applies to all ICAs, past or future, beginning with the effective date of the rule. Although this policy statement does not intend to address or change the process for enforcement, if the FAA identifies an ICA that is in non-compliant with the regulations, we will take the appropriate corrective actions.
ACE118W	General	The policy is spread throughout and mixed in with the different sections and discussions.	Clarification	The policy should be separated and put under its own section heading of "Policy" to make it clear and so it doesn't get lost in the discussions.	Non-concur. The organization of the policy statement is structured not only to convey a clear message to the industry on the interpretation of 21.50(b) but also to ensure that our message is legally enforceable. The structure of the policy statement has been reviewed by our legal counsel to ensure that this objective has been met.
AIR-40	General	Just a general thought /comment. Would it make any difference whether the product or article in question was from a foreign DAH through validation? Would this policy in all its ways still be applicable to the foreign DAH? For example if a foreign country doesn't recognize PMA items and foreign DAH restricts its use on the ICA, what happens then?	Don't have an answer, simply asking the question.		In response to the question: This policy statement applies to all domestic and foreign holders of US design approvals. As long as the foreign holder is holding a US design approval, 21.50(b) applies.

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

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SEA-AEG	General	<p>The distribution information in the ICA is only part of the issue it is also what should be addressed in the distribution program required by H25.1(c). The FAA Order 8110.54A Chapter 6 is very weak in this area (what is required as a distribution program) and most STC holders do not have or have never been required to create nor submit a distribution program as required (H25.1(c)). The ACOs has never requested from STC applicants to submit a complete distribution program for acceptance by the ACO and AEG. Issues identified in the memo including other issues of distribution information within an ICA have been questionable</p>		None.	<p>Non-concur. It is not the intent of this policy statement to address the subject of distribution of ICA. This policy statement is intended to make FAA personnel and the DAH aware of restrictive language in ICA or restrictive access or use agreements for ICA which do not meet the intent of 14 CFR 21.50(b).</p>

Clearance Record
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ACE-110	Intellectual property	<p>The Small Airplane Directorate Standards Staff Manager has chosen to non-concur with the existing content of the draft memo, pending modification.</p> <p>While ACE-110 understands the intent of the policy and can agree with the wording of the "Summary" section of the draft, we believe several detailed items in the body of the memo will lead to significant confusion and non-standardization in the GA fleet for the following reasons:</p> <p>1) A DAH may have very specific limitations regarding who can perform maintenance and the means of accomplishing it for a product or component with unique design and repair aspects. This may lead to justifiably restrictive ICA language. For example highly complex avionics systems are often required to be returned to the OEM for repair, calibration, or service. An OEM may list this requirement in their ICA, drawing attention to the unique aspects of the system and its restriction from being field serviceable.</p> <p>2) Structural repairs for exotic materials may be beyond the capability of a repair station, and the company may require specific training</p> <p>Both are examples where ICA data may be just</p>		<p>Suggest removing the text starting on page 3 with: "While not exhaustive....", including the numbered examples 1-4, and up but not including the words "This policy has two goals".</p> <p>ACE-110 believes making these changes will hone the intent of the policy back to the original intent, without being prescriptive with examples that might confuse readers. ACE-110 believes AVS should not be limiting the applicant's ability to maintain the airworthiness of their product or the instructions they deem necessary to achieve that goal, particularly for highly complex designs and systems.</p> <p>We agree that DAH should not be limiting access to ICA data by contractual restriction, but we also are sensitive to the appearance the FAA is assuming some of the technical liability for determining the proper content of the ICA, particularly when highly complex systems are involved.</p>	<p>Non-concur. This policy statement is intended to make FAA personnel and the DAH aware of restrictive language in ICA or restrictive access or use agreements for ICA which do not meet the intent of 14 CFR 21.50(b). The examples in the policy statement illustrate how a DAH inappropriately limits the use or access of ICA by the owner/operator. The policy statement does not preclude a DAH from recommending a DAH authorized maintenance provider or returning a component back to the manufacturer or qualified repair facility.</p>
ANM-112	Policy Reference		Clarification	Add "Instructions for Continued Airworthiness" after Order 8110.54A	Concur. Title added.

Clearance Record
DOCUMENT COMMENT LOG (FIELD)

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ACE-112	Rulemaking	<p>NON-CONCUR.</p> <p>This appears to be rulemaking by policy, since. Part 21.50 and the ICA Order should be changed to clarify appropriate vs. inappropriate ICA content.</p> <p>This should be a regulation so that it is binding to the DAH and not a memo that may lead to non-standardized implementation of the intent.</p> <p>AEG people who review and accept/approve the ICAs have typically allowed restrictive language for technical reasons if they are related to maintaining compliance to applicable regulations for a design with unique procedures</p>		<p>This memo should not go out until there is a rule change to require this proposal on the DAH. It should also be subject to the public comment process to identify potential pitfalls currently unseen in the proposed language.</p>	<p>Non-concur. It is not the intent of this policy to revise the rule. The practices that have been encountered were not an issue when the rule was originally published. They have only recently become an issue with certain DAHs. This policy statement is intended to make FAA personnel and the DAH aware of restrictive language in ICA or restrictive access or use agreements for ICA which do not meet the intent of 14 CFR 21.50(b).</p>
ACE118W	Rulemaking	<p>Cancel this DRAFT memorandum. This proposed policy memorandum does not carry the weight of a change to CFR part 21, paragraph 21.50 (b). Also, changing the wording in 21.50 (b) would place more of the burden on the DAH rather than the FAA to assure compliance.</p>		<p>At the end of 21.50 (b) add the words: “The DAH must make ICAs available to those who are required to comply with the instructions. The DAH must not impose any restrictions in the ICAs that limit the distribution or disclosure of the ICAs, that limit the authorized maintenance providers, that limit authorized replacement parts, or that control the use of the ICAs.”</p>	<p>Non-concur. It is not the intent of this policy to revise the rule. The practices that have been encountered were not an issue when the rule was originally published. They have only recently become an issue with certain DAHs. This policy statement is intended to make FAA personnel and the DAH aware of restrictive language in ICA or restrictive access or use agreements for ICA which do not meet the intent of 14 CFR 21.50(b).</p>