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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2007-27758]

Known Icing Conditions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of draft letter of interpretation.

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SUMMARY: This draft letter of interpretation addresses a request by the Aircraft Owners and Pilots Association (AOPA) that the FAA rescind a letter of interpretation dated June 6, 2006 regarding ``known icing conditions''. Because of the controversy surrounding this issue, the FAA is publishing a draft of its response to seek public comment.

DATES: Send your comments on or before May 3, 2007.

ADDRESSES: You may send comments, identified by docket number, using any of the following methods:

1. DOT Docket Web site: Go to <http://dms.dot.gov> and follow the

instructions for sending your comments electronically.

2. Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590-0001.

3. Facsimile: (202) 493-2251.

4. Hand delivery: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Room PL-401, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide.

FOR FURTHER INFORMATION CONTACT: Bruce Glendening, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave., Washington, DC 20591; telephone (202) 267-3073.

SUPPLEMENTARY INFORMATION: On November 17, 2006, Luis Gutierrez, Director of Regulatory and Certification Policy for AOPA, requested the FAA's Office of the Chief Counsel rescind a letter of interpretation issued by the FAA's Office of the Regional Counsel, Eastern Region,

regarding flight in known icing conditions. The letter of interpretation, dated June 6, 2006, responded to a request by Robert Miller that the FAA clarify when ``known ice'' exists for purposes of enforcement action.

The FAA recognizes that the term ``known icing condition'', the term addressed in the June 2006 letter of interpretation, could be misconstrued. Based on one's interpretation of the term, the FAA's prohibitions against flying into known icing conditions under certain circumstances could either have the effect of placing severe constraints on when individuals in aircraft without deicing equipment could fly or allowing these individuals to fly in conditions where there is a real risk of ice accretion with no means of removing the ice. Because the FAA has been asked to rescind the June 6, 2006 letter of interpretation, we have decided to publish a draft of our response in the Federal Register and seek comment on it. Based upon comments received in the docket, the FAA may decide to reevaluate its position on known icing conditions. The text of the draft response is as follows:

Luis M. Gutierrez, Director, Regulatory and Certification Policy,  
Aircraft Owners and Pilots Association, 421 Aviation Way, Frederick, MD  
21701-4798.

Re: Legal Interpretation of Known Icing Conditions

Dear Mr. Gutierrez:

In a letter dated November 21, 2006, to the FAA Chief Counsel's Office, you requested the rescission of a letter of interpretation regarding flight in known icing conditions, issued by this office on June 6, 2006. The Chief Counsel's Office has referred your letter to us for response. After considering the points you and other stakeholders have raised, we are replacing our June 6 letter through the issuance of this revision.

Our letter of June 6, 2006, responded to a request by Robert J. Miller for a legal interpretation of ``known ice'' as it relates to flight operations. We construed the request as seeking clarification of the meaning of ``known icing conditions'' as that term appears in the Airplane Flight Manuals (AFM) or Pilot Operating Handbooks for many general aviation aircraft. That is also the term addressed in legal proceedings involving violations of FAA safety regulations that relate to in-flight icing. The NTSB has held that known icing conditions exist when a pilot knows or reasonably should know of weather reports in which icing conditions are reported or forecast.\1\  
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\1\ See e.g., Administrator v. Boger, N.T.S.B. Order No. EA-4525 (Feb. 14, 1997); Administrator v. Groszer, NTSB Order No. EA-3770 (Jan. 5, 1993); Administrator v. Bowen, 2 N.T.S.B. 940, 943 (1974).  
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While various FAA regulations contain limitations on flight in known icing conditions, the regulatory provision that most commonly affects general aviation operators in this respect applies the term only indirectly. 14 CFR 91.9 precludes pilots from operating contrary

to the operating limitations in their aircraft's approved AFM. The operating limitations identify whether the aircraft is equipped to operate in known icing conditions and may prohibit or restrict such flights for many general aviation aircraft. 14 CFR 91.103 requires pilots to become familiar with all available information concerning their flights before undertaking them.

Permutations on the type, combination, and strength of meteorological elements that signify or negate the presence of known icing conditions are too numerous to describe exhaustively in this letter. Any assessment of known icing conditions is necessarily fact-specific. However, the NTSB's decisionmaking reflects the common understanding that the formation of structural ice requires two elements: visible moisture and an aircraft surface temperature at or below zero degrees Celsius. Even in the presence of these elements, there are many variables that influence whether ice will actually form on and adhere to an aircraft. The size of the water droplets, the shape of the airfoil, or the speed of the aircraft, among other factors, can make a critical difference in the initiation and growth of structural ice.

Whether a pilot has operated into known icing conditions contrary to any limitation will depend upon the information available to the pilot, and his or her proper analysis of that information in connection with the particular operation (e.g., route of flight, altitude, time of flight, airspeed, and aircraft performance characteristics), in evaluating the risk of encountering known icing conditions. The FAA, your own association, and other aviation- or weather-oriented organizations offer considerable information on the phenomenon of aircraft icing. Pilots are encouraged to use this information for a greater appreciation of the risks that flying in potential icing conditions can present. Likewise, a variety of sources

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provide meteorological information that relates to forecast and actual conditions that are conducive to in-flight icing. Pilots should carefully evaluate all of the available meteorological information relevant to the proposed flight, including applicable surface observations, temperatures aloft, terminal and area forecasts, AIRMETS, SIGMETs, and pilot reports. As new technology becomes available, pilots should incorporate use of that technology into their decision-making process.

The ultimate decision whether, when, and where to make the flight rests with the pilot. A pilot also must continue to reevaluate changing weather conditions. If the composite information indicates to a reasonable and prudent pilot that he or she will encounter visible moisture at freezing or near freezing temperatures and that ice will adhere to the aircraft along the proposed route and altitude of flight, then known icing conditions likely exist. If the AFM prohibits flight in known icing conditions and the pilot operates in such conditions, the FAA could take enforcement action.\2\  
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\2\ Enforcement action could also be taken for operation of an aircraft into icing conditions that exceed the certification limitations of the aircraft.

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Pilots should also remain aware that 14 CFR Sec. 91.13(a) prohibits the operation of an aircraft for the purpose of air navigation in a careless or reckless manner so as to endanger the life or property of another. Meteorological information that does not evidence known icing conditions, or the extent thereof, may regardless support a finding that a pilot's operation under the circumstances was careless.

This response constitutes an interpretation of the Chief Counsel's Office and was coordinated with the FAA's Flight Standards Service.

Issued in Washington, DC, on March 27, 2007.  
Rebecca MacPherson,  
Assistant Chief Counsel for Regulations.  
[FR Doc. 07-1620 Filed 4-2-07; 8:45 am]

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