

FEDERAL AVIATION ADMINISTRATION  
OFFICE OF THE CHIEF COUNSEL  
800 Independence Avenue, SW  
Washington, DC 20591

AERONAUTICAL REPAIR STATION  
ASSOCIATION

Complainant,

v.

ROLLS-ROYCE CORPORATION

Respondent,

Enforcement Docket (AGC-10)  
Docket No. 13-05-02

**ANSWER OF ROLLS-ROYCE CORPORATION TO PART 13 COMPLAINT  
SUBMITTED BY THE AERONAUTICAL REPAIR STATION ASSOCIATION**

Submitted: February 28, 2006

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By letter dated December 20, 2005, the Federal Aviation Administration ("FAA") advised Rolls-Royce Corporation ("Rolls-Royce") that counsel for the Aeronautical Repair Station Association ("ARSA") had filed a formal complaint ("the Complaint" or "ARSA's Complaint") against Rolls-Royce in accordance with Federal Aviation Regulation ("FAR") § 13.5.<sup>1</sup> ARSA's Complaint asks the FAA to find Rolls-Royce in violation of FAR § 21.50(b). In keeping with

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<sup>1</sup> Letter from Allan H. Horowitz, Manager, Enforcement Division, to President, Rolls-Royce Corporation (Dec. 20, 2005); *see also* Part 13 Formal Complaint of the Aeronautical Repair Station Association ("ARSA Complaint"), submitted to Federal Aviation Administration (November 23, 2005). A copy of the letter from Mr. Horowitz and its attached ARSA Complaint are attached to this Answer as Attachment "A."

FAR § 13.5(f), Rolls-Royce hereby responds to ARSA's Complaint ("this Answer"), and asks that the FAA: (i) determine that there are no reasonable grounds for investigating the Complaint, and (ii) dismiss the Complaint without a hearing.<sup>2</sup>

## I. INTRODUCTION.

Rolls-Royce believes that ARSA's Complaint is part of an organized and ongoing political effort to change both the law and the competitive landscape of the industry as they relate to furnishing and making available Instructions for Continued Airworthiness ("ICA"). ARSA's practical goal is to enable ARSA's members to obtain proprietary maintenance information to which neither ARSA nor its members have any right under the existing FAR. ARSA's political and economic goal is to create a socialistic repair and overhaul marketplace where those who invest risk capital are forced to turn over valuable property developed with that risk capital to other parties who are unwilling to similarly invest their own risk capital. The basis for this forced property transfer is a perceived entitlement to the valuable property based merely on the fact that a service may be provided more efficiently by the other party's use of the investor's valuable property, even though the net benefit from the other party's use of that valuable property is strictly an economic benefit to the other party,<sup>3</sup> rather than any increase in safety. ARSA seeks this forced

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<sup>2</sup> See FAR § 13.5(g), (h). A copy of relevant FAR provisions is attached to this Answer as Attachment "B." Rolls-Royce is submitting this Answer in keeping with the February 28, 2006 deadline for submission agreed to by Allan H. Horowitz on January 11, 2006. Telephone conversation between Allan H. Horowitz and William L. Elder, Jan. 11, 2006.

<sup>3</sup> ARSA admits the economic, rather than airworthiness, nature of its argument by noting the "competitive disadvantage" and "more costly means of compliance" [ARSA Complaint, at 13, para. III.D.3], about which it is concerned, while being unable to raise any airworthiness concern regarding an engine maintained with information that Rolls-Royce already makes available to H.E.R.O.S.

property transfer from Design Approval Holders (“DAHs”) to others even though the FAR allow for other parties, including the parties to whom ARSA seeks to have the DAH’s property transferred, to develop their own economically-beneficial procedures and obtain FAA approval of those procedures, and despite the fact that the FAR do not require that any such procedures developed by them be made available to the DAH or other third parties.

Unsatisfied with the longstanding regulatory and competitive landscape, ARSA for several years has pursued a strategy to achieve this political and economic goal, most recently by taking its issue: (1) to the Congress in 2003, when ARSA lobbied unsuccessfully for a legislative amendment regarding the availability of maintenance documents;<sup>4</sup> (2) to the FAA in 2003 by using the FAR Part 13 Complaint process against Airbus;<sup>5</sup> (3) to the FAA in 2004, when ARSA argued unsuccessfully for the FAA to implement policy changes through a new FAA Order regarding ICA;<sup>6</sup> and (4) to the FAA in the current Part 13 complaint process

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<sup>4</sup> See H.R. 2115, 108<sup>th</sup> Cong., Flight 100—Century of Aviation Reauthorization Act (Engrossed as Agreed to or Passed by House), sec. 420 (2003) (proposing amendment to 49 U.S.C. 44728 addressing the availability of maintenance information). An excerpted copy of this draft legislation is attached to this Answer as Attachment “C.”

<sup>5</sup> See *Aeronautical Repair Station Association vs. Airbus*, Part 13 Formal Complaint (Oct. 3, 2003).

<sup>6</sup> See Letter from Marshall S. Filler, ARSA Managing Director and General Counsel and Christopher Durocher, ARSA Associate Counsel, to Michael Reinert, FAA Aircraft Engineering Division (Aug. 20, 2004) (hereinafter “ARSA Comments to FAA Order 8110.ICA”). A copy of this letter and its attachments, is attached to this Answer as Attachment “D.” ARSA may view its efforts as unsuccessful. Commenting on the issuance of FAA Order, 8110.54, ARSA said: “[u]nfortunately, the Order fails to adopt many of the proposals in the Joint Industry Policy developed by the ARSA ICA Committee,... Consequently, the FAA squandered the opportunity to provide greater clarity and fairness to its ICA enforcement policies.” See <http://www.arsa.org/taxonomy/term/22> (Feb. 21, 2006). A copy of this webpage from the ARSA website is attached to this Answer as Attachment “E.”

against Rolls-Royce.<sup>7</sup> ARSA has publicly committed to continuing this fight,<sup>8</sup> and no doubt plans further such Part 13 complaints against DAHs as a way of furthering its political objectives while using the FAA to force DAHs to spend valuable time and resources defending such groundless complaints.

Motivated by its strategic and political goals, ARSA seeks to have the FAA change its longstanding interpretation of the FAR. By using the Part 13 complaint process, ARSA seeks to achieve, through an FAA determination in a narrow case, what ARSA has been unable to achieve (and is not likely to be able to achieve) on the legislative front or through an FAA notice and comment rulemaking. The FAA should not let itself be used in this way, nor should it permit the time-consuming and costly harassment of DAHs through the Part 13 complaint process. In fact, the FAA should take strong action in response to this Complaint to end once and for all this gamesmanship by ARSA, H.E.R.O.S., and their allies.

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<sup>7</sup> Ironically, this Complaint concerns maintenance documents for the Rolls-Royce Model 250 series engines, which have a 40-year operational record. Despite this long history, including the production of more than 29,000 engines and the logging of more than 170 million flight hours, ARSA has provided absolutely no evidence that any person has been unable to maintain the continued airworthiness of a Rolls-Royce Model 250 series engine due to the insufficiency of any information regarding continued engine airworthiness made available to them by Rolls-Royce.

<sup>8</sup> See ARSA Files Part 13 Complaint Against ICA Withholding, Aviation Today, at 3 of 3 (Jan. 1, 2006) [www.aviationtoday.com/cgi/am/show\\_mag.cgi?pub=am&mon=0106&file=news.htm](http://www.aviationtoday.com/cgi/am/show_mag.cgi?pub=am&mon=0106&file=news.htm) (stating that "ARSA will pursue this issue by filing more complaints, including in Europe, and may take it up with Congress."); Legislative Day 2006 Is Fast Approaching—Join the Fight for Fair Access to ICA!, <http://www.arsa.org/node/241> (Feb. 21, 2006). A copy of these articles is attached to this Answer as Attachments "F" and "G."

## II. BACKGROUND.

### A. ARSA's Complaint.

In its Complaint, ARSA requests, on behalf of Helicopter Engine Repair Overhaul Services, Inc. ("H.E.R.O.S."), that the FAA institute an investigation<sup>9</sup> and issue an order finding Rolls-Royce in violation of FAR § 21.50(b).<sup>10</sup> ARSA alleges that Rolls-Royce refused to make ICA "available to persons required to comply with those instructions when performing maintenance on articles for which Rolls-Royce holds the design approval."<sup>11</sup>

ARSA states that H.E.R.O.S. is a Part 145 certificated repair station that is appropriately-rated to perform maintenance on Rolls-Royce Model 250 series engines.<sup>12</sup>

### B. Factual background.

Rolls-Royce holds Type Certificate ("TC") Number E4CE, covering certain Rolls-Royce Model 250 engines, including models 250-C20, 250-C20S, 250-C20R/1, 250-C20R/2, 250-C20R, 250-C20R/4, and 250-C20W. According to the Type Certificate Data Sheet ("TCDS") for TC No. E4CE, revision 39 dated June 11, 2001, the certification basis for these model engines is:

Part 13 of the Civil Air Regulations effective June 15, 1956, as amended by 13-1, 13-2 and 13-3, and Exemption No. 219A from CAR 13.211, Regulatory Docket 1337 issued August 6, 1962, and

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<sup>9</sup> ARSA requests that the FAA either complete an informal investigation or issue an order of investigation. See FAR § 13.5(i) and FAR Part 13, Subpart F.

<sup>10</sup> ARSA Complaint, at 1.

<sup>11</sup> ARSA Complaint, at 1.

<sup>12</sup> ARSA Complaint, at 2.



amended May 12, 1980. Application for Type Certificate dated September 15, 1961. Type Certificate No. E4CE issued December 19, 1962, for Model 250-C10; Models 250-C10B, 250-C18 and 250-C18A added September 9, 1965; Models 250-C18B and 250-C18C added September 25, 1967; Model 250-C19 added April 29, 1968; Model 250-C10D added November 15, 1968; Model 250-C20 added April 22, 1970; Model 250-C20B added February 28, 1974; Model 250-C20C added June 9, 1976; Model 250-C20F added March 2, 1979; Model 250-C20J added September 15, 1981; Model 250-C20S added December 30, 1983; Model 250-C20R/1 added September 12, 1986; Model 250-C20R/2 added March 5, 1987; Models 225-C10 and 225-C10A added March 20, 1987; Model 250-C20R added September 29, 1989; Model 250-C20R/4 added December 5, 1989; Model 250-C20W added April 20, 1990.<sup>13</sup> (Emphasis added.)

By letter dated May 28, 2002, H.E.R.O.S. requested “a full set of the Parts Modification Instructions” (“PMI”).<sup>14</sup> According to the ARSA Complaint, this request pertained to the Model 250-C20 series engines.<sup>15</sup> The ARSA Complaint characterizes the information requested as including “[d]etails of fits and clearances relevant to overhaul; details of repair methods...’ and instructions for testing after overhaul.”<sup>16</sup> By letter dated June 21, 2002, Rolls-Royce responded, saying that:

PMI’s are Rolls-Royce proprietary documents which specifically identify unique component repair instructions and are only disclosed to Rolls-Royce approved [Authorized Maintenance

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<sup>13</sup> TCDS for TC No. E4CE, at 5 (emphasis added). A copy of the TCDS was included in the ARSA Complaint as Item of Proof 1, and is attached to this Answer as Attachment “H.”

<sup>14</sup> See Letter from Armen M. Kajberouni, Program Manager, H.E.R.O.S., to Tim McGrath, Rolls-Royce (May 28, 2002) (hereinafter “the May 28, 2002 Letter”).

<sup>15</sup> ARSA Complaint, at 2, para. II.

<sup>16</sup> ARSA Complaint, at 2-3.

Centers ("AMCs")] with fully executed non-disclosure agreements.<sup>17</sup>

Rolls-Royce's June 21, 2002 Letter also said that:

Rolls-Royce, through its exclusive Model 250 Distributor, Aviall, Inc., distributes to all customers all the necessary technical data to provide continued airworthiness for all the Model 250 series engines. These technical publications are as follows:

- Commercial Engine Bulletins (CEB's)
- Commercial Service Letters (CSL's)
- Operations and Maintenance Manuals
- Illustrated Parts Catalogs
- Overhaul Manuals

Rolls-Royce has verified through Aviall, that your company is currently updated with annual revision services for the above mentioned continued airworthiness technical documentation.<sup>18</sup>

By letter dated April 2, 2003, Rolls-Royce advised H.E.R.O.S. that "CEB 75-3024 complies with the requirements of Appendix A of FAR 33, part 33.3 and FAR 21, part 21.99(b), because it provides the information necessary for continued airworthiness."<sup>19</sup> ARSA alleges that the CEB did not contain the "rework and re-identification instructions needed to perform maintenance" on the Model 250 Series III & IV bleed valves.<sup>20</sup> Rolls-Royce's April 2, 2003 Letter advised H.E.R.O.S. that "[t]here is no requirement for Rolls-Royce to provide rework and

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<sup>17</sup> Letter from Tim J. McGrath, Director, Commercial Aftermarket Business—Helicopters, Rolls-Royce, to Mr. Kajberouni, H.E.R.O.S. (June 21, 2002) (hereinafter "Rolls-Royce's June 21, 2002 Letter").

<sup>18</sup> Rolls-Royce's June 21, 2002 Letter, at 1.

<sup>19</sup> Letter from Gary Souza, Manager, Model 250 Service Engineering to Mr. Armen M. Kajberourai, Engine Shop Supervisor (Apr. 2, 2003) (hereinafter "Rolls-Royce April 2, 2003 Letter"). The ARSA Complaint alleges that this letter responded to a H.E.R.O.S. request for "overhaul instructions for Model 250 Series III & IV Bleed Valves." See ARSA Complaint, at 3. The ARSA Complaint provides no copy of the H.E.R.O.S. letter(s).

<sup>20</sup> ARSA Complaint, at 3.

reidentification instructions for engine components as part of the instructions for continued airworthiness.”<sup>21</sup>

By letter dated September 27, 2005, H.E.R.O.S. requested “the inspection criteria, flow and target data, tolerances, fits and clearances, and all other overhaul data for the Oil Piccolo Tube, Part Numbers (P/N) 23038221, 23065827 and 23034102, the Gearbox Cover Assembly, P/N 23037418, and the Gearbox Housing Assembly, P/N 6877181 used on Rolls Royce engine Models 250-C20S, 250-C20R/1, 250-C20R/2, 250-C20R, 250-C20R/4, and 250-C20W.”<sup>22</sup> By letter dated October 14, 2005, Rolls-Royce advised H.E.R.O.S. that, with respect to the oil delivery tube, CEB A-1351 “addresses replacement and offers an alternative flow and targeting test by a Rolls-Royce Authorized Manufacturing Center (‘AMC’)” and that “the operator may choose to replace the tube entirely and this is covered by the ICA.”<sup>23</sup> With respect to the Gearbox Cover Assembly and the Gearbox Housing Assembly, Rolls-Royce advised H.E.R.O.S. that “inspection and repair procedures applicable to these components [are included] in the overhaul manuals,” but that “Rolls-Royce has developed some more complex and critical repair procedures for these components that it makes available only to AMC’s with which Rolls-Royce has business arrangements and oversight capability,” and that these “procedures are proprietary, do not affect ICA and do not represent a FAR noncompliance.”<sup>24</sup>

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<sup>21</sup> Rolls-Royce April 2, 2003 Letter.

<sup>22</sup> Letter from Heroes Kajberouni, President, H.E.R.O.S., Inc., to Thomas P. Dale, Vice President and General Counsel, Rolls-Royce North America, Inc. (Sep. 27, 2005).

<sup>23</sup> Letter from W. Eric Pedersen, Vice President & Legal Counsel, Rolls-Royce Corporation, to Mr. Heros Kajberouni, President, H.E.R.O.S., Inc. (Oct. 14, 2005) (hereinafter “Rolls-Royce October 14, 2005 Letter”).

<sup>24</sup> Rolls-Royce October 14, 2005 Letter, at 1.

**C. Applicable law and guidance material.**

The FAR impose on DAHs certain obligations related to providing ICA. FAR § 21.50(b) provides:

*The holder of a design approval, including either a type certificate or supplemental type certificate for an aircraft, aircraft engine, or propeller for which application was made after January 28, 1981, shall furnish at least one set of complete Instructions for Continued Airworthiness, prepared in accordance with [§ 33.4] 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, and thereafter make those instructions available to any other person required by [Chapter I of Title 14] to comply with any of the terms of these instructions.*<sup>25</sup> (Emphasis added.)

FAR Part 33 provides the airworthiness standards for aircraft engines. FAR § 33.4 requires the applicant for a TC to “prepare Instructions for Continued Airworthiness in accordance with appendix A to this part that are acceptable to the Administrator.”<sup>26</sup> (Emphasis added.)

FAR Part 33, Appendix A (“Appendix A”) provides:

The Instructions for Continued Airworthiness for each engine must include the Instructions for Continued Airworthiness for all engine parts. If Instructions for Continued Airworthiness are not supplied by the engine part manufacturer for an engine part, the Instructions for Continued Airworthiness for the engine must include the information essential to the continued airworthiness of the engine.<sup>27</sup>

Section a33.3 (Content) of Appendix A provides in pertinent part:

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<sup>25</sup> FAR § 21.50(b) (emphasis added).

<sup>26</sup> FAR § 33.4.

<sup>27</sup> FAR Part 33, Appx. A, a33.1(b).

The Instructions for Continued Airworthiness must contain the following manuals or sections, as appropriate, and information:

(a) *Engine Maintenance Manual or Section*. ....

(b) *Engine Overhaul Manual or Section*. ....<sup>28</sup>

Section a33.3(a) of Appendix A provides that the *Engine Maintenance Manual or Section* must include:

(1) Introduction information that includes an explanation of the engine's features and data to the extent necessary for maintenance or preventive maintenance.

(2) A detailed description of the engine and its components, systems, and installations.

(3) Installation instructions, including proper procedures for uncrating, deinhibiting, acceptance checking, lifting, and attaching accessories, with any necessary checks.

(4) Basic control and operating information describing how the engine components, systems, and installations operate, and information describing the methods of starting, running, testing, and stopping the engine and its parts including any special procedures and limitations that apply.

(5) Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, locations of lubrication points, lubricants to be used, and equipment required for servicing.

(6) Scheduling information for each part of the engine that provides the recommended periods at which it should be cleaned, inspected, adjusted, tested, and lubricated, and the degree of inspection the applicable wear tolerances, and work recommended at these periods. However, the applicant may refer to an accessory, instrument, or equipment manufacturer as the source of this information if the applicant shows that the item has an exceptionally high degree of complexity requiring specialized maintenance techniques, test equipment, or expertise. The recommended overhaul periods and necessary

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<sup>28</sup> FAR Part 33, Appx. A, a33.3(a) and (b).

cross references to the Airworthiness Limitations section of the manual must also be included. In addition, the applicant must include an inspection program that includes the frequency and extent of the inspections necessary to provide for the continued airworthiness of the engine.

(7) Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

(8) Information describing the order and method of removing the engine and its parts and replacing parts, with any necessary precautions to be taken. Instructions for proper ground handling, crating, and shipping must also be included.

(9) A list of the tools and equipment necessary for maintenance and directions as to their method of use.<sup>29</sup> (Emphasis added.)

Section a33.3(b) of Appendix A provides that the *Engine Overhaul Manual or Section* must include:

(1) Disassembly information including the order and method of disassembly for overhaul.

(2) Cleaning and inspection instructions that cover the materials and apparatus to be used and methods and precautions to be taken during overhaul. Methods of overhaul inspection must also be included.

(3) Details of all fits and clearances relevant to overhaul.

(4) Details of repair methods for worn or otherwise substandard parts and components along with the information necessary to determine when replacement is necessary.

(5) The order and method of assembly at overhaul.

(6) Instructions for testing after overhaul.

(7) Instructions for storage preparation, including any storage limits.

(8) A list of tools needed for overhaul.<sup>30</sup> (Emphasis added.)

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<sup>29</sup> FAR Part 33, Appx. A, a33.3(a).

Section a33.4 (Airworthiness Limitations Section) of Appendix A provides:

The Instructions for Continued Airworthiness must contain a section titled Airworthiness Limitations that is segregated and clearly distinguishable from the rest of the document. This section must set forth each mandatory replacement time, inspection interval, and related procedure required for type certification. If the Instructions for Continued Airworthiness consist of multiple documents, the section required by this paragraph must be included in the principal manual. This section must contain a legible statement in a prominent location that reads: "The Airworthiness Limitations section is FAA approved and specifies maintenance required under §§43.16 and 91.403 of the Federal Aviation Regulations unless an alternative program has been FAA approved." <sup>31</sup> (Emphasis added.)

FAA Advisory Circular ("AC") 33.4-1 addresses compliance with FAR § 33.4 and Appendix A. With respect to the general ICA requirements as found in Appendix A, a33.1, the AC states:

- a. The ICA's should include instructions for all engine parts. The instructions should provide for the continued airworthiness of the entire engine to the extent that the lack of specific instructions for any given part should not adversely affect an operator's ability to maintain the engine in an airworthy condition.
- b. The determination of need for instructions regarding parts, subassemblies, assemblies or modules should include consideration of airworthiness limitations, safety assessments, classifications of parts, and compliance requirements. Each part needs to be addressed either individually or as part of a group or system.<sup>32</sup>

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<sup>30</sup> FAR Part 33, Appx. A, a33.3(b).

<sup>31</sup> FAR Part 33, Appx. A, a33.4.

<sup>32</sup> FAA Advisory Circular 33.4-1, at Section 3, para. 7 (hereinafter "AC 33.4-1"). A copy of AC 33.4-1 is attached to this Answer as Attachment "I."

With respect to ICA content requirements for the *Engine Maintenance Manual or Section*, as found in Appendix A, a33.3(a), the AC states:

Complete installation instructions are required for those parts and accessories that are a part of the engine type design.<sup>33</sup>

\* \* \* \*

Scheduling information need not be provided for 'every part', but rather the scheduling information should provide for the continued airworthiness of the entire engine to the extent that the lack of specific scheduling information on any part will not adversely affect the continued airworthiness of the engine.<sup>34</sup>

\* \* \* \*

There may be instances where only the original equipment manufacturer (OEM) is approved to work on a part or component due to the complexity of the maintenance task. In such instance, when approved by the cognizant ACO, only the recommended scheduling periods and the manufacturer's name and address would be referenced in the ICA's.<sup>35</sup>

With respect to ICA content requirements for the *Engine Overhaul Manual or Section*, as found in Appendix A, a33.3(b), the AC states:

The main objective of this requirement is that worn or substandard parts that do not meet the ICA's inspection limits can not be returned to service. Such parts should be either replaced or repaired in order to make the engine airworthy. While the ICA's need not contain repairs for all engine parts, the ICA's should identify when or under what conditions parts must be replaced or repaired. If a part or component fails to meet the requirements in the Inspection/Check section of the ICA's.

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<sup>33</sup> AC 33.4-1, at sec. 3, para. 9.a(2) (providing information regarding FAR Part 33, appx. A, a33.3(a)(3)).

<sup>34</sup> AC 33.4-1, at sec. 3, para. 9.a(5)(a) (providing information regarding FAR Part 33, appx. A, a33.3(a)(6)).

<sup>35</sup> AC 33.4-1, at sec. 3, para. 9.a(5)(d) (providing information regarding FAR Part 33, appx. A, a33.3(a)(6)).



replacement is an acceptable alternative to repair in order to maintain the continued airworthiness of the engine.<sup>36</sup>

Repairs in the ICA's should be complete, and may include personnel training requirements, but should not contain provisions driven solely by economic concerns. When the repair is accomplished in accordance with the ICA's, the result is a part that conforms to the approved type design data, and if it is safe for operation would constitute an airworthy part.<sup>37</sup> (Emphasis added.)

FAA Order 8110.54 is titled "Instructions for Continued Airworthiness: Responsibilities, Requirements, and Contents."<sup>38</sup> With respect to the FAR § 21.50(b) requirements imposed on DAHs for furnishing or making available ICA, the Order states:

a. ... Therefore, if the person requesting the ICA is not the product owner or operator, they must meet these four conditions before we will require the design approval holder to make the ICA available to them:

(1) Application for the latest related TC (original, amended, or supplemental) was made after January 28, 1981.

(2) The latest related certification basis includes 14 CFR § 21.50 as amended September 11, 1980 or later (and §§ 23.1529, 25.1529, 29.1529, 31.82, 33.4, and 35.4 as applicable). That is, the certificate holder was required to develop and furnish ICA as part of the certification process.

(3) The requestor (repair station) of the ICA is *currently* rated for the product/part, has the product/part listed in their limitations, and is required by Chapter 1 of 14 CFR to comply with ICA for the product/part.

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<sup>36</sup> AC 33.4-1, at sec. 3, para. 9.b(4)(a) (providing information regarding FAR Part 33, appx. A, a33.3(b)(4)).

<sup>37</sup> AC 33.4-1, at sec. 3, para. 9.b(4)(b) (providing information regarding FAR Part 33, appx. A, a33.3(b)(4)).

<sup>38</sup> FAA Order 8110.54 (Jul. 1, 2005). A copy of FAA Order 8110.54 is attached to this Answer as Attachment "J."

(4) The requestor (individual) of the ICA is performing work for the product owner under their 14 CFR part 65 certificate.<sup>39</sup>

b. If the requested ICA data are a CMM or specific repair information, the design approval holder must refer to the CMM or repair information in higher-level ICA (airplane, engine, or propeller ICA) as the source of information for continued airworthiness actions.

c. Meeting each condition in paragraphs 6-4a(1) through 6-4a(4) is necessary to ensure enforcement of the 14 CFR § 21.50(b) rule. Conditions (1) and (2) are self-evident about whether the rule applies. Condition (3)<sup>40</sup> is the only case in which a repair station or individual is required to perform maintenance per ICA. Condition (4)<sup>41</sup> covers how to vouch for the validity of some CMMs as part of ICA. If top-level ICA contain 'remove and replace' instructions for certain components, and don't refer to CMMs or specific repair procedures for necessary airworthiness actions, then the:

- Aircraft can maintain its airworthiness by replacement action, and
- CMM or repair documentation is not part of the ICA.<sup>42</sup> (Emphasis added.)

With respect to ICA content requirements for the *Engine Overhaul Manual or Section*, the Order states:

This manual or section offers the owner information on inspecting, repairing, or replacement information necessary to restore the airworthiness of the product. It covers engine disassembly, overhaul, reassembly, and necessary cautions or warnings. The manual or section also gives: ... (2) Details on all

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<sup>39</sup> FAA Order 8110.54, at 25-26, para. 6-4.a (emphasis in original).

<sup>40</sup> The reference in paragraph 6-4.c to “Condition (3)” appears to refer to both Conditions (3) and (4).

<sup>41</sup> The reference in paragraph 6-4.c to “Condition (4)” appears to refer to the circumstances in paragraph 6-4.b, dealing with information in Component Maintenance Manuals (“CMM”).

<sup>42</sup> FAA Order 8110.54, at 26, para. 6-4.c.

fits and clearances of the engine and components, and structural integrity and functionality for new and worn parts[,] (3) Details of repair methods for worn or otherwise substandard parts and components along with information necessary to determine when replacement is necessary....<sup>43</sup>

With respect to requirements imposed on the FAA's aircraft and engine certification offices, the Order states:

You are also responsible for approving the [Airworthiness Limitations Section] of the ICA (and the [Certification Maintenance Requirements] if applicable). You must determine if the remainder of the ICA is acceptable with concurrence from the [Aircraft Evaluation Group] on maintenance requirements.<sup>44</sup>

The four conditions in FAA Order 8110.54 were drawn from a letter dated April 14, 2003, that was issued by the Manager of the FAA's Airworthiness Law Branch, Mr. Richard McCurdy, in response to a request for an interpretation of FAR § 21.50(b) in the context of a request for ICA for the Rolls-Royce 250-C20C model engine ("the McCurdy Letter").<sup>45</sup> The McCurdy Letter concluded that four conditions must be satisfied for the FAA to conclude that ICA must be provided to a repair station under FAR § 21.50(b), including the following:

- 1) Application for the latest related type certificate (original, amended, or supplemental) was made after 01/28/81.
- 2) The latest related certification basis includes 21.50 as amended 09/11/80 or later (and 2X.1529 or 3x.4 as applicable), i.e., the certificate holder was required to develop (furnish) ICA as part of the certification process.

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<sup>43</sup> FAA Order 8110.54, at 16, para. 4-7.a.

<sup>44</sup> FAA Order 8110.54, at 21, para. 5-1.

<sup>45</sup> See letter from Mr. Richard McCurdy, Manager, AGC-210, Airworthiness Law Branch, AGC-210, to Mr. David Rain, Vice President, Alcor Engine Company, Inc. (Apr. 14, 2003) (hereinafter "the McCurdy Letter"). A copy of the McCurdy Letter is attached to this Answer as Attachment "K."

3) The requestor (repair station) of the ICA is *currently* rated for the product/part and is required by Chapter I of 14 CFR to comply with ICA for the product/part.

4) If the ICA data requested is a component maintenance manual (CMM) or specific repair information, the CMM or repair information is referenced in higher-level ICA (airplane or engine ICA) as the appropriate source of information for continued airworthiness actions.<sup>46</sup>

The McCurdy Letter further stated: “[l]et me emphasize that meeting each of the above conditions is necessary to ensure that enforcement of the 21.50(b) rule is appropriate” and “[i]f top-level ICA contains ‘remove and replace’ instructions for certain components, rather than referencing CMM’s or specific repair procedures, the aircraft can be maintained in an airworthy condition by replacement action, and the CMM or repair documentation is not part of the ICA.”<sup>47</sup> (Emphasis added.) The McCurdy Letter concluded that: “[f]or Rolls Royce to be required to provide OILs, ILs and PMIs on model 250 engines certified after 01/28/81 you would need to show that the overhaul manual required by 14 CFR 33.4, appendix A refers to these documents as the method in which work is accomplished.”<sup>48</sup> (Emphasis added.)

### III. ANALYSIS.

ARSA’s Complaint alleges that FAR § 21.50(b) obligates Rolls-Royce to make certain maintenance documents available to H.E.R.O.S. as ICA for various engine models for which Rolls-Royce is the DAH and that Rolls-Royce has failed to

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<sup>46</sup> McCurdy Letter, at 1 (emphasis in original). The first two requirements deal with the date of the application and the certification basis for the product. The fourth deals with the situation where the ICA data requested is a component maintenance manual (CMM) or specific repair information.

<sup>47</sup> McCurdy Letter, at 1-2.

<sup>48</sup> McCurdy Letter, at 2.

make these maintenance documents available in keeping with that obligation. As explained more fully below, Rolls-Royce is under no regulatory obligation to make this information available to H.E.R.O.S. for the engine models at issue in the ARSA Part 13 complaint because (i) the certification basis for these engine models precludes the applicability of FAR § 21.50(b), and (ii) even for engine models that are subject to the ICA requirements of FAR §§ 21.50(b), 33.4, and Appendix A, the FAR do not require that the specific maintenance documents at issue in the ARSA Complaint be included in ICA because they concern the overhaul or repair of specific engine parts. Despite being under no regulatory obligation to make ICA available under FAR § 21.50(b), Rolls-Royce already makes available to H.E.R.O.S. all information essential to the airworthiness of the engine models at issue in the ARSA Complaint. Any decision by the FAA either to require Rolls-Royce to make available the requested maintenance documents, or to require the inclusion of such information in ICA would represent a fundamental change from the FAA's longstanding position regarding DAH obligations and ICA requirements which would have broad impacts across the entire industry. ARSA acknowledges this in the Conclusion of its Complaint where it states:

Complainant urges the FAA to consider the Complaint in the broadest possible terms. In the Association's view, it would make little sense for the Administrator to issue a ruling favorable to H.E.R.O.S. without recognizing the same issues apply throughout the aviation industry.<sup>49</sup> (Emphasis added.)

Such a fundamental change would constitute poor public policy, and even if the FAA were to decide to consider such a step, this should be pursued through a notice and comment rulemaking that allows broad input from industry, rather than through a back-door Part 13 complaint process involving only one DAH.

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<sup>49</sup> ARSA Complaint, at 17.

- A. There is no regulatory requirement for Rolls-Royce to make ICA available for the engine models at issue in the ARSA Complaint because the certification basis for these engine models does not include FAR §§ 21.50 or 33.4 as amended September 11, 1980 or later.

FAA Order 8110.54 addresses four conditions that must be met before the FAA “will require the design approval holder to make the ICA available.”<sup>50</sup> The second of these conditions:

- (2) The latest related certification basis includes 14 CFR § 21.50 as amended September 11, 1980 or later (and § ... 33.4...). That is, the certificate holder was required to develop and furnish ICA as part of the certification process.<sup>51</sup>

To incorporate the amendments to FAR Parts 21 and 33 that were issued by the FAA on September 11, 1980, including FAR §§ 21.50(b) and 33.4, the latest related certification basis must include amendments 21-51 and 33-9 or later amendments.<sup>52</sup> Regardless of whether the other three conditions<sup>53</sup> are satisfied,

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<sup>50</sup> FAA Order 8110.54, at 25-26, para. 6-4.a.

<sup>51</sup> FAA Order 8110.54, at 25-26, para. 6-4.a.

<sup>52</sup> See 45 Fed. Reg. 60154 (Sep. 11, 1980). A copy of this Federal Register provision is attached to this Answer as Attachment “L.”

<sup>53</sup> The first of these conditions deals with the date of application for the latest related TC and the third and fourth deal with the qualifications of the person requesting the information. With respect to the dates of application, ARSA states that the dates of application for six engine models was after January 28, 1981, including models 250-C20S, 250-C20R/1, 250-C20R/2, 250-C20R, 250-C20R/4, and 250-C20W. See ARSA Complaint, at 9. ARSA does not include Model 250-C20 in this context, even though that model is mentioned in conjunction with the H.E.R.O.S. request for the PMI. This might be due to the fact that the date of amendment for the Model 250-C20 engine is April 22, 1970, which is before January 28, 1981, therefore precluding the possibility that the date of application for the amendment could have been after January 28, 1981. If this is the case, this engine model falls short of both the certification basis condition and the date of application condition. ARSA’s failure to include engine Model 250-C20 may also be due to the fact that ARSA and H.E.R.O.S. intend to refer to all model engines that are variants on the Model 250-C20 engine, including the six engines named in the Complaint, as

these amendments must be included in the certification basis in order for the DAH to be obligated by FAR § 21.50(b) to make ICA available.

The "Certification Basis" in TCDS for TC No. E4CE states that the certification basis for the engine models at issue in the ARSA Complaint is:

Part 13 of the Civil Air Regulations effective June 15, 1956, as amended by 13-1, 13-2 and 13-3, and Exemption No. 219A from CAR 13.211, Regulatory Docket 1337 issued August 6, 1962, and amended May 12, 1980.<sup>54</sup> (Emphasis added.)

Although the "Certification Basis" section of the TCDS provides additional information about the application for the initial TC and the dates that specific models were added to the TC, it provides no other information to suggest

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well as engine models 250-C20, 250-C20B, 250-C20C (T63-A-720), 250-C20F, and 250-C20J. If this is the case, the amendment dates for all but one of these engine models (including models 250-C20 (April 22, 1970), 250-C20B (February 28, 1974), 250-C20C (T63-A-720) (June 8, 1976), and 250-C20F (March 2, 1979), but not 250-C20J (September 15, 1981) falls before the January 28, 1981 cutoff, therefore precluding the possibility that the date of application for the amendment to add these engine models could have been after January 28, 1981. For additional discussion of this issue, *see* footnote 57. The dates of amendment for the six engine models specifically addressed in the ARSA Complaint are:

250-C20S	December 30, 1983
250-C20R/1	September 12, 1986
250-C20R/2	March 5, 1987
250-C20R	September 29, 1989
250-C20R/4	December 5, 1989
250-C20W	April 20, 1990

We note that, although the TCDS for TC No. E4CE refers to these dates as the date of amendment, the Complaint treats them as the date of application for the respective amendments.

<sup>54</sup> TCDS for TC No. E4CE, at 5 (emphasis added).

that the certification basis has been amended to include any regulation other than: “Part 13 of the Civil Air Regulations effective June 15, 1956, as amended by 13-1, 13-2 and 13-3, and Exemption No. 219A from CAR 13.211, Regulatory Docket 1337 issued August 6, 1962, and amended May 12, 1980.”<sup>55</sup>

Thus, the certification basis for TC No. E4CE does not refer to amendments 21-51 or 33-9 or later amendments. In fact, the certification basis does not even refer to FAR § 21.50 or 33.4, or, for that matter, to the FAR. Instead, the certification basis refers only to the predecessor Part 13 of the Civil Air Regulations (“CAR”).<sup>56</sup>

Because the certification basis for TC No. E4CE does not include the necessary amendments to Parts 21 or 33, the certification basis condition is not satisfied. Since this is one of the four conditions set forth in FAA Order 8110.54, Rolls-Royce is not obligated to provide ICA for any of the engine models at issue in the ARSA Complaint or for any other engine model that is covered by TC No. E4CE.<sup>57</sup> Instead, Rolls-Royce complies with the obligations of CAR Part 13, including amendments 13-1 through 13-3.

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<sup>55</sup> Further, neither ARSA nor H.E.R.O.S. suggest that any TC other than E4CE is at issue in the ARSA Complaint or the H.E.R.O.S. requests.

<sup>56</sup> A copy of CAR Part 13, including amendments 1-3, is attached to this Answer as Attachment “M.”

<sup>57</sup> With respect to ARSA/H.E.R.O.S.’s request for the PMI for the “250-C20 series engines,” see ARSA Complaint, at 2-3, and June 6, 2002 Letter, at 1 (requesting PMIs for the C20 engine), the TCDS shows “Model 250-C20 added April 22, 1970.” TCDS, at 5 (showing certification basis). Thus, with respect to the ARSA/H.E.R.O.S. request for PMI for the 250-C20 engine, neither the condition related to the certification basis nor the condition related to the date of application are satisfied.



**1. The certification basis requirement is independent of the application date requirement.**

Both FAA Order 8110.54 and the McCurdy letter point out that the application date requirement and the certification basis requirement are independent conditions that must each be satisfied. FAA Order 8110.54 states that a requestor that is not the owner or operator of a product “must meet these four conditions before we will require the design approval holder to make ICA available to them”<sup>58</sup> and that “[m]eeting each condition in paragraphs 6-4a(1) through 6-4a(4) is necessary to ensure enforcement of the 14 CFR § 21.50(b) rule.”<sup>59</sup> The McCurdy Letter stated “[l]et me emphasize that meeting each of the above conditions is necessary to ensure that enforcement of the 21.50(b) rule is appropriate.”<sup>60</sup>

Thus, even if an application for the latest related amendment to the TC for an engine model was made after January 28, 1981, as ARSA claims to be the case with the six engine models it raises in its Complaint, the FAA has determined that the certification basis requirement must independently be satisfied before there is any requirement for a DAH to make ICA available under FAR § 21.50(b). As noted above, the certification basis in the TCDS for the engine models at issue in the ARSA Complaint does not satisfy this required condition.<sup>61</sup> As a result, Rolls-Royce is not obligated to provide ICA for any of the engine models at issue in the

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<sup>58</sup> FAA Order 8110.54, at 25, para. 6-4.a.

<sup>59</sup> FAA Order 8110.54, at 25, para. 6-4.c.

<sup>60</sup> McCurdy Letter, at 1 (emphasis added).

<sup>61</sup> As noted above, with respect to engine Model 250-C20 or engine models in the 250-C20 series, the condition related to the date of application, in addition to the certification basis condition, might not be satisfied since the date of application for the latest related amendment to the TC for this model engine was April 22, 1970. For additional information, please see the discussion in footnote 53.

ARSA/ H.E.R.O.S. requests, regardless of the date of application for the latest related amendment to the TC for those engine models.<sup>62</sup>

**2. The certification basis requirement is an essential component of the obligation to make ICA available under FAR § 21.50(b).**

The FAA policy that the DAH's obligation under FAR § 21.50(b) is conditioned on the certification basis of the TC (as amended), in addition to the date of application and the status of the requestor, is a sound interpretation of the regulations. It ensures that DAHs will not be required to furnish or make available ICA unless the DAH had been required to prepare ICA in connection with its application for the TC or amended TC. Such a policy is essential to preclude requiring DAHs to distribute maintenance documents (including proprietary documents) that were prepared with no understanding that they would be subject to a mandatory distribution. The establishment of a certification basis is an essential

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<sup>62</sup> The relationship of the certification basis condition to the FAR § 21.50(b) obligation imposed on DAHs to furnish or make available ICA should not be confused with the requirement imposed on DAHs to develop ICA. With respect to the regulatory requirement to develop ICA, FAA Order 8110.54 states that:

We do not use the original certification basis to determine if ICA are required. We use the date of the application for design approval.

FAA Order 8110.54, at 3, para. 2-1.b. Thus, for the purposes of an FAA inspector trying to determine whether an applicant for an amended TC is required to develop ICA, FAA Order 8110.54, Chapter 2 (Regulatory Requirements for ICA) indicates that the date of application is the critical factor, rather than the certification basis. This is in keeping with the 2000 amendment to FAR § 21.101, which expresses a preference to revising the certification basis to the regulations in effect at the time of an application. See footnote 63 and accompanying text. This reliance on the date of application (with no reference to the existing certification basis) in Chapter 2 does not apply when the question deals with the requirement to furnish or make available the ICA, which is separately addressed in FAA Order 8110.54, Chapter 6 (Distributing ICA and Changes). As noted above, Chapter 6 spells out several conditions (including the certification basis condition), all of which must be met before the FAA will find an obligation on the part of the DAH to make the ICA available.

part of the process that allows a DAH to know the standards that apply to its product/part. The certification basis may, or may not, be revised at the time a change is made to the TC. This is a determination made by the FAA at the time of the change to the TC.

Specifically, FAR § 21.101 addresses the designation of the applicable regulations where there are changes to a TC. Although this regulation was substantially revised in 2000 to require applicants to demonstrate compliance with the airworthiness requirements in effect on the date of the application for the change,<sup>63</sup> an earlier version of FAR § 21.101 was in place at the time of the applications for the latest related amendments to TC No. E4CE for the engine models at issue in the ARSA Complaint (April 20, 1990).<sup>64</sup> That earlier version of FAR § 21.101 stated that: “an applicant for a change to a type certificate must comply with either—(1) [t]he regulations incorporated by reference in the type certificate; or (2) [t]he applicable regulations in effect on the date of the application, plus any other amendments the Administrator finds to be directly related.”<sup>65</sup> Thus, the earlier version of FAR § 21.101 provided the FAA the discretion to determine to retain the same regulations in the certification basis for the amended TC as the regulations contained in the certification basis for the original TC.

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<sup>63</sup> See 65 Fed. Reg. 36244 (Jun. 7, 2000) (issuing final rule for type certification procedures for changed products). Consistent with this amendment, the FAA generally requires the applicant to demonstrate compliance with the airworthiness requirements in effect on the date of the application for the change in the TC. FAR § 21.101(a) (2005); *see also* 65 Fed. Reg. at 36248. FAR § 21.101 as amended offers a number of exceptions to this general rule. Thus, even following the amending of FAR § 21.101, the contents of the certification basis of a changed product with an amended TC is ultimately determined by FAA officials and evidenced in the TCDS.

<sup>64</sup> See TCDS for TC No. E3CE, at 5 (noting that “Model 250-C20W added April 20, 1990”); *see also* ARSA Complaint, at 10 (noting application for the 250-C20W on April 20, 1990).

<sup>65</sup> FAR § 21.101(a) (1990).

As an example of how this process played out with a typical amendment to TC No. E4CE, we have attached correspondence related to the amendment of the TC to include Model 250-C20R/1. This correspondence involves Rolls-Royce's predecessor, the Allison Gas Turbine Division of General Motors Corporation ("Allison"); a Designated Engineering Representative ("DER") who acted on the FAA's behalf in conjunction with that amendment; and the FAA.<sup>66</sup> In

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<sup>66</sup> See Letters from E. T. Porter, Chief Project Engineer, Advanced Engines, to Mr. Walter F. Horn, FAA Central Region (Aug. 26, 1986) (first letter submitting Operation and Maintenance Manual; second letter submitting preliminary draft of the Overhaul Manual) (hereinafter "Allison Porter Letters"); letter from L. D. Esenwein, DER, to Mr. W.F. Horn, Jr., Manager, Chicago Aircraft Certification Office (Aug. 27, 1986) (hereinafter "DER Esenwein August 27 Letter"); letter from L. D. Esenwein, DER, to Mr. W.F. Horn, Jr. (Aug. 28, 1986) (submitting Overhaul Manual) (Aug. 28, 1986) (hereinafter "DER Esenwein August 28 Letter"); letter from W.F. Horn, Manager, Aircraft Certification Office, to Mr. E.T. Porter, Allison Gas Turbine Division, General Motors Corporation (Sep. 17, 1986) (hereinafter "FAA Horn Letter"). Copies of these Letters are attached to this Answer as Attachments "N" (Allison Porter Letters), "O" (DER Esenwein August 27 Letter), "P" (DER Esenwein August 28 Letter), and "Q" (FAA Horn )

The attachments to this Answer that are related to the 1986 amendment to the TC to include Model 250-C20R/1 omit portions of the full set of documents that were submitted to the FAA in conjunction with the application for the TC amendment, including the Operation and Maintenance Manual and the Overhaul Manual for the Model 250-C20R/1 engine as approved by the FAA. As noted in the correspondence with the FAA, this information was "commercial information submitted in confidence to the FAA." See DER Esenwein August 27 Letter, at 1.

Similarly, this sample of correspondence is related to the amendment to the TC for Model 250-C20R/1. Rolls-Royce believes that this sample is typical of the pertinent correspondence for other amendments to TC No. E4CE. Rolls-Royce obviously would prefer to avoid the extremely costly and time-consuming process of researching the pertinent correspondence for all the relevant amendments to TC No. E4CE.

Rolls-Royce does not believe that re-submission to the FAA of all of the documents associated with the original application, or all of the applications for amendments to the TC, as Attachments to this Answer is necessary to an FAA resolution of ARSA's Complaint. However, if the FAA believes that it would be helpful to review any of these documents, Rolls-Royce would be willing to work with the FAA to ensure that

submitting the Operation and Maintenance Manual (“OMM”) and the preliminary Overhaul Manual (“OHM”) to the FAA via the DER, the Chief Project Engineer stated that the submissions were “[i]n conformance with the requirements of CAR 13.21.”<sup>67</sup> The DER, in submitting the Operation and Maintenance Manual and a preliminary draft of the Overhaul Manual to the FAA, noted that the “Applicable Requirements” were “CAR 13.”<sup>68</sup> In issuing the amended TC dated September 12, 1986, the FAA stated that “[t]he previously submitted technical data ... are accepted as substantiating the type design of the Model 250-C20R/1 engine in accordance with Part 13 of the Civil Air Regulations.”<sup>69</sup> The amended TC No. E4CE, as issued to Allison Gas Turbine Division made clear that the applicable airworthiness regulations were “Part 13 of the Civil Air Aviation [sic] Regulations.”<sup>70</sup>

The entire process for amending the TC to include Model 250-C20R/1 thus took place under the airworthiness standards of CAR Part 13, even though the application to amend the TC was made on March 26, 1986,<sup>71</sup> more than five years after amendments incorporated into the FAR the ICA requirements of FAR §§ 21.50(b), 33.4, and Appendix A.

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the FAA has the opportunity to review any such document, so long as Rolls-Royce is provided adequate assurance that the confidential commercial information included in them would be protected from further disclosure to ARSA or to any third parties to the extent permitted by law.

<sup>67</sup> Allison Porter Letters, at 1.

<sup>68</sup> DER Esenwein August 27 Letter, at 2 and DER Esenwein August 28 Letter, at 2.

<sup>69</sup> FAA Horn Letter, at 1 (emphasis added).

<sup>70</sup> See Type Certificate as attached to FAA Horn Letter (emphasis added).

<sup>71</sup> FAA Horn Letter, at 1.

The process for amending the TC to include Model 250-C20R/1 is typical of the process followed for all of the amendments to this TC. At no point has the certification basis for TC No. E4CE been revised to include the amendments regarding the ICA requirements implemented by the FAA in 1980.

As noted above, it is entirely consistent with the FAR and with FAA policy that the FAA determined to retain the CAR as the certification basis for TC No. E4CE. The certification basis represents an FAA determination regarding the airworthiness requirements applicable to a product. The DAH's understandings of its obligations under the FAR (or CAR) depend on this FAA determination. In this case, the fact that the certification basis does not include the 1980 amendments to FAR Parts 21 and 33 means that a required condition for any obligation to be imposed by FAR § 21.50(b) on a DAH is not satisfied. As a result, Rolls-Royce is not obligated to provide ICA for any of the engine models at issue in the ARSA/H.E.R.O.S. requests.

- B. The FAR would not require the specific documents at issue in the ARSA Complaint to be included as part of ICA, even for engine models that are subject to the ICA requirements, because those specific documents are overhaul or repair information for engine parts.**

With respect to aircraft engines, FAR § 33.4 determines what must be included in ICA. FAR § 33.4 states that, in connection with an application for a TC, "[t]he applicant must prepare Instructions for Continued Airworthiness in accordance with appendix A to this part that are acceptable to the Administrator."<sup>72</sup> Thus, there are two components to this requirement: (i) that ICA must be prepared in accordance with Appendix A, and (ii) that ICA must be acceptable to the FAA.

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<sup>72</sup> FAR § 33.4 (emphasis added).

Appendix A provides the specific requirements for preparation of ICA.

Appendix A states:

The Instructions for Continued Airworthiness for each engine must include the Instructions for Continued Airworthiness for all engine parts. If Instructions for Continued Airworthiness are not supplied by the engine part manufacturer for an engine part, the Instructions for Continued Airworthiness for the engine must include the information essential to the continued airworthiness of the engine.<sup>73</sup>

Thus, the engine ICA must address all engine parts and, for each of those parts, include either: (i) ICA provided by the engine part manufacturer or (ii) the information essential to the continued airworthiness of the engine.<sup>74</sup>

AC 33.4-1 further clarifies this requirement:

a. The ICA's should include instructions for all engine parts. The instructions should provide for the continued airworthiness of the entire engine to the extent that the lack of specific instructions for any given part should not adversely affect an operator's ability to maintain the engine in an airworthy condition.

b. The determination of need for instructions regarding parts, subassemblies, assemblies or modules should include consideration of airworthiness limitations, safety assessments, classifications of parts, and compliance requirements. Each part needs to be addressed either individually or as part of a group or system.<sup>75</sup> (Emphasis added.)

Again, with respect to instructions for engine parts, each part must be addressed, with the instructions for each part sufficient to ensure the airworthiness of the entire engine.

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<sup>73</sup> FAR Part 33, Appx. A, a33.1(b).

<sup>74</sup> FAR Part 33, Appx. A, a33.1(b) (emphasis added).

<sup>75</sup> FAA AC 33.4-1, at Section 3, para. 7 (emphasis added).

Appendix A requires that ICA contain two manuals or sections: (i) the Engine Maintenance Manual, and (ii) the Engine Overhaul Manual, and provides content requirements for each. With respect to these two manuals, ARSA states that: “[t]he ICA required by Part 33 contains two parts, the Engine Maintenance Manual, which H.E.R.O.S. receives, and the Engine Overhaul Manual, which Rolls-Royce provides, but which does not include the required information.”<sup>76</sup> Thus, ARSA accepts that the maintenance documents Rolls-Royce produces and makes available include both an Engine Maintenance Manual and an Engine Overhaul Manual, but alleges that the Engine Overhaul Manual is deficient. ARSA restates it this way: “[b]ecause Rolls-Royce has failed to include all of the required overhaul and repair information in its ICA, it has failed to make complete Instructions for Continued Airworthiness available.”<sup>77</sup>

ARSA alleges that the Rolls-Royce manuals that are made available are deficient because they do not include overhaul or repair information for engine parts.<sup>78</sup>

**1. The FAR do not require that ICA include overhaul or repair information for engine parts.**

In suggesting that ICA must include overhaul or repair information for engine parts, ARSA seems to be mixing together two concepts: overhaul or repair

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<sup>76</sup> ARSA Complaint, at 11, para. III.D.

<sup>77</sup> ARSA Complaint, at 13, para. III.D.2.

<sup>78</sup> ARSA Complaint, at 11-14, para. III.D. For instance, on page 13 of its Complaint, ARSA alleges that Rolls-Royce engine overhaul instructions are deficient because they do not include overhaul information for the oil piccolo, gearbox cover assembly, and gearbox housing; on page 13-14, ARSA alleges that the PMI include repair “information necessary for overhaul and maintenance of the engine and all of its accessory parts.” ARSA Complaint, at 13-14, para. D (emphasis added).



information for the engine, and overhaul or repair information for specific engine parts.

Appendix A requires that the engine ICA address each part of the engine.<sup>79</sup> Further, the engine ICA must address the overhaul or repair of the engine itself<sup>80</sup> and the information provided in the engine ICA for the engine and for each engine part must provide “information essential to the continued airworthiness of the *engine*” (or provide for ICA for an engine part if such ICA for the part are supplied by the part manufacturer).<sup>81</sup>

None of these requirements, however, require that the engine ICA include either overhaul or repair information for engine parts. Regulatory requirements for engine ICA are satisfied so long as each engine part is addressed in the engine ICA and sufficient information for each engine part is provided to allow the engine to be maintained in an airworthy state. With respect to engine parts, this engine airworthiness requirement is satisfied by a combination of: (i) providing airworthiness limits (e.g., the limits below which an engine part is no longer airworthy),<sup>82</sup> and (ii) providing information for bringing that engine part back to airworthiness. This information may be as simple as “remove and replace” instructions, with no part overhaul or repair information at all.

Thus, while the FAR require engine overhaul information (including requiring a separate *Engine Overhaul Manual or Section* as part of the ICA),<sup>83</sup> they

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<sup>79</sup> FAR Part 33, Appx. A, a33.1(b).

<sup>80</sup> FAR Part 33, Appx. A, 33.3(b).

<sup>81</sup> FAR Part 33, Appx. A, a33.1(b).

<sup>82</sup> FAR Part 33, Appx. A, a33.3(6) (requiring “[s]cheduling information for each part of the engine...” ) and a33.4 (providing requirements for airworthiness limitations section).

<sup>83</sup> FAR Part 33, Appx. A, a33.3(b).

do not require overhaul or repair information for specific engine parts. Even within the *Engine Overhaul Manual or Section* requirements, there is no requirement that overhaul or repair instructions extend to engine parts. The absence of such a requirement is even more telling when viewed in the context of FAR that are explicit in requiring certain information related to engine parts, such as “[i]nformation describing the order and method of removing the engine and its parts and replacing parts, with any necessary precautions to be taken.”<sup>84</sup> The fact that the FAA states in its guidance materials that “[t]he ICA’s should include instructions for all engine parts”<sup>85</sup> makes the absence of such explicit language related to overhaul or repair information for specific engine parts in the FAR and FAA guidance materials even more notable.

The closest that the FAR come to imposing a requirement for information regarding the overhaul or repair of engine parts is the requirement that the *Engine Overhaul Manual or Section* include: “[d]etails of repair methods for worn or otherwise substandard parts and components along with the information necessary to determine when replacement is necessary.”<sup>86</sup> The FAA explains this requirement in AC 33.4-1:

The main objective of this requirement is that worn or substandard parts that do not meet the ICA’s inspection limits can not be returned to service. Such parts should be either replaced or repaired in order to make the engine airworthy. While the ICA’s need not contain repairs for all engine parts, the ICA’s should identify when or under what conditions parts must be replaced or repaired. If a part or component fails to meet the requirements in the Inspection/Check section of the ICA’s, replacement is an acceptable alternative to repair in order to

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<sup>84</sup> FAR Part 33, Appx. A, a33.3(a)(8).

<sup>85</sup> FAA AC 33.4-1, at sec. 3, para. 7.a.

<sup>86</sup> FAR Part 33, Appx. A, a33.3(b)(4).

maintain the continued airworthiness of the engine.<sup>87</sup>  
(Emphasis added.)

The FAA also notes that remove and replace instructions for specific parts are all that is necessary in ICA in FAA Order 8110.54:

If top-level ICA contain 'remove and replace' instructions for certain components, and don't refer to CMMs or specific repair procedures for necessary airworthiness actions, then the:

- Aircraft can maintain its airworthiness by replacement action, and
- CMM or repair documentation is not part of the ICA.<sup>88</sup>  
(Emphasis added.)

Thus, the FAA guidance material make clear that the goal is that the engine be maintained in an airworthy condition. The guidance material also leaves no doubt that the airworthiness of an engine may be maintained through ICA instructions for the removal and replacement of unairworthy parts.

This is not to say that removal and replacement are always the most efficient way to perform maintenance. However, removal and replacement instructions for an engine part, when coupled with the information necessary to determine when that part is unairworthy, satisfy the requirement that ICA include information essential to the continued airworthiness of an aircraft engine.

This leaves both repair stations and DAHs free to develop procedures that might improve the economics or efficiency of maintaining engine airworthiness. Any organization that develops such supplemental maintenance procedures or

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<sup>87</sup> AC 33.4-1, at sec. 3, para. 9.b(4)(a) (providing information regarding FAR Part 33, appx. A, a33.3(b)(4)).

<sup>88</sup> FAA Order 8110.54, at 26, para. 6-4.c (emphasis added); *see also* McCurdy Letter, at 1-2.

specific repair information<sup>89</sup> is under no obligation to share these procedures or information with other entities, and indeed may have a proprietary right in the procedures or information.<sup>90</sup> In the case of a repair station or an airline, they may develop supplemental procedures or specific repair information and have them approved by the FAA (such as through the use of a DER). If a repair station or airline develops such procedures or information, it is under no obligation to share its procedures or information with other entities. The same is true of any supplemental maintenance procedures or specific repair information developed by a DAH. Even though a DAH is subject to an obligation to furnish and make available ICA under FAR § 21.50(b), that obligation does not extend to any supplemental maintenance procedures or specific repair information that are not part of ICA, and DAHs, just like any other entity that develops such procedures, are free to make available, or not make available, those procedures or information as they see fit.<sup>91</sup>

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<sup>89</sup> FAA Order 8110.54 and the McCurdy Letter refer to these type of procedures as specific repair information. See FAA Order 8110.54, at 26, para. 6-4.b (concluding that such “repair documentation is not part of the ICA” so long as it is not referenced in “top-level ICA”) and McCurdy Letter, at 1-2 (same).

<sup>90</sup> In addition, such procedures or information would give rise to potential liability of the entity that develops those procedures or information and a corresponding concern on the part of that entity about the entity’s liability if those procedures or information were required to be made available for use by another party to conduct repair or overhaul work. In such a circumstance, the developer of the procedures or information would have no contractual agreement with the other party, receive no benefits or compensation from the other party, and have no right to audit the other party’s repair or overhaul facility, and yet would stand exposed to significant potential liability because of the use of these procedures or information by the other party.

<sup>91</sup> The FAA has also made clear that there may be instances where only the OEM is approved to work on a part or component. In AC 33.4-1, the FAA states that:

There may be instances where only the original equipment manufacturer (OEM) is approved to work on a part or component due to the complexity of the maintenance task. In such instance, when approved by the cognizant

Thus, DAHs are under no obligation to include in ICA procedures or information regarding the overhaul or repair of engine parts, but are free to develop such procedures or information and make their own decisions regarding making them available or not.

**2. The specific documents at issue in the ARSA Complaint are overhaul or repair information for engine parts.**

Despite the longstanding FAA policy that remove and replace instructions for engine parts suffice as ICA to maintain the airworthiness of an aircraft engine, ARSA and H.E.R.O.S. seek to obtain from Rolls-Royce information that goes well beyond this type of information and that Rolls-Royce would not be required to include in ICA. ARSA/H.E.R.O.S. raise the following three requests in the Complaint.

**a) The H.E.R.O.S. request for the full set of PMI.**

The Complaint alleges that Rolls-Royce improperly refused a H.E.R.O.S. request for “a full set of the Parts Modification Instructions.”<sup>92</sup> ARSA characterizes the requested information as including “[d]etails of fits and clearances

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ACO, only the recommended scheduling periods and the manufacturer’s name and address would be referenced in the ICA’s.

AC 33.4-1, para. 9.a.(5)(d).

ARSA’s argument that DAHs must make available overhaul or repair information in excess of that “essential to the continued airworthiness of the engine” is based on the fact that economic benefits may be available from information that exceed the information that are “essential to the continued airworthiness of the engine.” As is discussed more fully in footnote 124 below, this same logic, if taken to its extreme, would imply that any such information should be required to be made available, even if developed by an entity other than the DAH, such as an airline or by a repair station. Rolls-Royce believes that any such conclusion that would require making available information in excess of that “essential to the continued airworthiness of the engine” would inappropriately force proprietary information to be disgorged in circumstances where there is no safety justification for such a requirement.

<sup>92</sup> The May 28, 2002 Letter.

relevant to overhaul; details of repair methods... and instructions for testing after overhaul.”<sup>93</sup> Such details and instructions are required to be included in ICA where they pertain to the overhaul or repair of the entire engine.<sup>94</sup> However, the information requested by H.E.R.O.S. seeks these details and instructions as they pertain to the overhaul or repair of specific engine parts. As noted above, overhaul or repair information for specific engine parts is not required to be included in ICA, so long as sufficient information is provided in the ICA to allow maintenance providers to determine when specific parts are unairworthy and to provide instructions (including instructions to remove and replace an engine part) as necessary to return the engine to airworthiness.

In its Complaint, ARSA suggests that PMI are essential to continued airworthiness. As will be discussed below, Rolls-Royce makes available to H.E.R.O.S. the information essential to the airworthiness of the engine models at issue in the ARSA Complaint. In addition to this information, Rolls-Royce has developed supplemental information, such as the PMI, to provide an alternative way to maintain the airworthiness of the aircraft engine through the use of overhaul or repair instructions for specific engine parts. PMI are Rolls-Royce proprietary documents and are treated as supplemental maintenance procedures or specific repair information.<sup>95</sup> Rolls-Royce does not submit PMI to the FAA as part

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<sup>93</sup> ARSA Complaint, at 2-3.

<sup>94</sup> See Appendix A, a33.3(b)(3)-(5).

<sup>95</sup> See FAA Order 8110.54, at 26, para. 6-4.b (concluding that such “repair documentation is not part of the ICA” so long as it is not referenced in “top-level ICA”) and McCurdy Letter, at 1-2 (same).

PMI are only disclosed to Rolls-Royce approved AMC’s with fully executed non-disclosure agreements. See Rolls-Royce’s June 21, 2002 Letter.

of the documents it submits that correspond to the documents that the FAR would require as ICA for engine models that are subject to ICA requirements.<sup>96</sup>

Rolls-Royce spends significant man-hours and invests substantial funds in the development of PMI. The devotion of these resources to the development of PMI is based solely on the possible economic benefit that may be realized through the use of such supplemental maintenance procedures or specific repair information. PMI are not required to maintain the airworthiness of an engine, and they are not required to be included in ICA.<sup>97</sup> When PMI are used to repair a part, the resulting level of airworthiness of the engine is no greater than that obtained when the engine is repaired using the procedures or information

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<sup>96</sup> Technical aspects of PMI may, of course, be approved by the FAA.

<sup>97</sup> The sole exception to this requirement occurs where the document with the repair details is referenced in higher-level ICA. On this point, FAA Order 8110.54 is clear:

If the requested ICA data are a CMM or specific repair information, the design approval holder must refer to the CMM or repair information in higher-level ICA (airplane, engine, or propeller ICA) as the source of information for continued airworthiness actions. (Emphasis added.)

FAA Order 8110.54, at 26, para. 6-4.b. The McCurdy letter stated: “[f]or Rolls Royce to be required to provide OILs, ILs and PMIs on model 250 engines certified after 01/28/81 you would need to show that the overhaul manual required by 14 CFR 33.4, appendix A refers to these documents as the method in which work is accomplished.” McCurdy Letter, at 2 (emphasis added).

However, ARSA makes no such allegation in its Complaint. In its Complaint, ARSA suggests that PMI are essential to continued airworthiness. In support of this point, ARSA reviews a series of National Transportation Safety Board (“NTSB”) and FAA cases. All involve a failure of a maintainer to comply with maintenance instructions to which the maintainer was entitled and had access. None of these cases suggest that any lack of access to any instructions resulted in an unairworthy product. Thus, these cases do not support the proposition that PMI are essential to continued airworthiness.

“essential to the continued airworthiness of the engine” that are made fully available to H.E.R.O.S. and others.

In sum, the FAR would not require the PMI to be included as part of ICA, even for engine models that are subject to the ICA requirements, because those specific documents involve the overhaul or repair of engine parts. Information in the PMI is not essential to the continued airworthiness of the engine.

**b) The H.E.R.O.S. request for “overhaul instructions” on the Model 250 Series III & IV bleed valves.**

The Complaint alleges that Rolls-Royce improperly refused a H.E.R.O.S. request for overhaul instructions for the Model 250 series III and IV bleed valves.<sup>98</sup> The Complaint alleges that the CEB that H.E.R.O.S. had obtained for the bleed valves were deficient because they “did not contain rework and re-identification instructions needed to perform maintenance.”<sup>99</sup> ARSA does not provide any details regarding why the CEB were insufficient.

ARSA concedes that H.E.R.O.S. had been provided a CEB, but does not include a copy of that CEB as an Item of Proof. We have attached CEB-75-3024 for the 250-C30 series, “Engine, Air System—Bleed Valve With Improved Durability.”<sup>100</sup> The CEB notes that it provides “the procedure to remove bleed valve assemblies (23005366 and 23005367) and replace them with new or overhauled and reidentified bleed valve assemblies (23074227, Series III and 23073353, Series IV).”<sup>101</sup> The accomplishment instructions call for the replacement of the compressor

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<sup>98</sup> ARSA Complaint, at 3.

<sup>99</sup> ARSA Complaint, at 3.

<sup>100</sup> CEB-75-3024, Engine, Air System—Bleed Valve With Improved Durability (Jan. 30, 2003). A copy of CEB-75-3024 is attached to this Answer as Attachment “R.”

<sup>101</sup> CEB-75-3024, at 1 of 3, para. 1.C.



bleed valve.<sup>102</sup> In doing so, they reference the OMM.<sup>103</sup> With respect to the bleed air valve, the OMM provides information about cleaning; inspecting; testing; conditions that, if exceeded, require the replacement of the bleed air valve; and replacing the bleed control valve.

Thus, the information in the CEB and the OMM<sup>104</sup> provides all of the information that is essential to maintaining the airworthiness of the engine with respect to the compressor bleed air valve. The CEB and OMM address the compressor bleed air valve as part of the engine, provide airworthiness limitations that must be maintained, and remove and replace instructions to be used if the airworthiness limitations cannot be maintained. As a result, there is no FAR requirement for Rolls-Royce to provide rework and reidentification instructions for engine components as part of ICA, and Rolls-Royce properly denied this request.<sup>105</sup>

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<sup>102</sup> As part of the instructions, the CEB offers the maintainer the choice of either purchasing a new bleed valve or sending the removed bleed valve to an AMC for overhaul and reidentification. CEB, Engine, Air System—Bleed Valve With Improved Durability, at 2 of 3, para. 2.A.

<sup>103</sup> See Operation and Maintenance Manual: Allison Gas Turbines, Turboshift Models 250-C20R/1, at 3-193 (Aug. 1, 1986) (hereinafter “OMM”). We have attached to this Answer an excerpt from OMM, pages 1-17, 1-18, 3-29 through 3-31, 3-190, and 3-193 as Attachment “S.”

<sup>104</sup> As discussed in section III.C, below, Rolls-Royce already makes these documents available to H.E.R.O.S.

<sup>105</sup> See Rolls-Royce April 2, 2003 Letter.

- c) The H.E.R.O.S. request for “the inspection criteria, flow and target data, tolerances, fits and clearances, and all other overhaul data for the specific part numbers of the Oil Piccolo Tube, the Gearbox Cover Assembly, and the Gearbox Housing Assembly used on Rolls Royce engine Models 250-C20S, 250-C20R/1, 250-C20R/2, 250-C20R, 250-C20R/4, and 250-C20W.

The Complaint alleges that Rolls-Royce improperly refused a H.E.R.O.S. request for “the inspection criteria, flow and target data, tolerances, fits and clearances, and all other overhaul data for the Oil Piccolo Tube, Part Numbers (P/N) 23038221, 23065827 and 23034102, the Gearbox Cover Assembly, P/N 23037418, and the Gearbox Housing Assembly, P/N 6877181 used on Rolls Royce engine Models 250-C20S, 250-C20R/1, 250-C20R/2, 250-C20R, 250-C20R/4, and 250-C20W.”<sup>106</sup>

As Rolls-Royce has advised H.E.R.O.S., with respect to the oil piccolo tube, CEB A-1351 (which is made available to H.E.R.O.S.) “addresses replacement and offers an alternative flow and targeting test by a Rolls-Royce Authorized Manufacturing Center (‘AMC’)” and offers the option to replace the tube entirely.<sup>107</sup> We have attached CEB 75-1351 for the 250-C20 series engines, “Engine, Gearbox Assembly—Oil Delivery Tube—Replace.”<sup>108</sup> The CEB provides remove and replace instructions.<sup>109</sup>

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<sup>106</sup> Letter from Heroes Kajberouni, President, H.E.R.O.S., Inc., to Thomas P. Dale, Vice President and General Counsel, Rolls-Royce North America, Inc. (Sep. 27, 2005).

<sup>107</sup> Letter from W. Eric Pedersen, Vice President & Legal Counsel, Rolls-Royce Corporation, to Mr. Heros Kajberouni, President, H.E.R.O.S., Inc. (Oct. 14, 2005) (hereinafter “Rolls-Royce October 14, 2005 Letter”).

<sup>108</sup> See CEB A-1351, Engine, Gearbox Assembly—Oil Delivery Tube—Replace (Jun. 14, 1999). A copy of CEB A-1351 is attached to this Answer as Attachment “T.”

<sup>109</sup> See CEB-A-1351, at 3 of 4.

The CEB are part of the documents that Rolls-Royce would consider to be ICA if ICA were required for the engine models at issue in the ARSA Complaint and, together with the other maintenance documents that Rolls-Royce makes available to H.E.R.O.S., provide all of the information essential to the airworthiness of the engine.

With respect to the Gearbox Cover Assembly and the Gearbox Housing Assembly, Rolls-Royce advised H.E.R.O.S. that “inspection and repair procedures applicable to these components [are included] in the overhaul manuals” that are available to H.E.R.O.S. Even though Rolls-Royce has developed supplementary more detailed repair procedures for these components, these detailed repair procedures are not essential for maintaining the airworthiness of the engine, and are proprietary. Rolls-Royce makes these procedures available only to AMCs with which Rolls-Royce has business arrangements and oversight capability.<sup>110</sup>

We have attached CEB-72-3212 for the 250-C30 series, “Engine, Gearbox Assembly—Oil Delivery Tube, Improved Targeting.”<sup>111</sup> The CEB notes that it provides instructions to “[r]eplace the Gearbox Power and Accessory Housing Assembly, Gearbox Power and Accessory Cover Assembly, Oil Delivery Tube Assembly, Oil Screen, and Preformed Packing.”<sup>112</sup> The accomplishment instructions call for the installation of a new or serviceable oil delivery tube.

Thus, all of the documents requested by ARSA/H.E.R.O.S. contain information that would not be required to be included in ICA, even for engine

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<sup>110</sup> See Rolls-Royce October 14, 2005 Letter, at 1.

<sup>111</sup> CEB-72-3212, Engine, Gearbox Assembly—Oil Delivery Tube, Improved Targeting (Dec. 16, 2004). A copy of CEB-72-3212 is attached to this Answer as Attachment “U.”

<sup>112</sup> CEB-72-3212, at 1 of 3, para. 1.C.

models for which ICA are required by the FAR. The information in the CEB and the OMM<sup>113</sup> provides all the information that is essential to maintaining the airworthiness of the engine with respect to these components. As a result, there is no FAR requirement for Rolls-Royce to provide the requested information, and Rolls-Royce properly denied this request.

**C. Rolls-Royce already makes available to H.E.R.O.S. the maintenance documents essential to the continued airworthiness of the engine models at issue in the ARSA Complaint.**

Despite the fact that there is no regulatory obligation to make ICA available under FAR § 21.50(b) for the engine models at issue in the ARSA Complaint, Rolls-Royce makes certain maintenance documents related to the continued airworthiness of these particular engine models<sup>114</sup> available to requestors through a fee-based system handled by Aviall, Inc. ("Aviall"). These documents include the information essential to the continued airworthiness of the engines, but do not typically include information that would not be required to be included in

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<sup>113</sup> As discussed in section III.C, below, Rolls-Royce already makes these documents available to H.E.R.O.S.

<sup>114</sup> As noted above, Rolls-Royce was not required to develop ICA in accordance with FAR § 33.4 and Appendix A to FAR Part 33 for the engine models at issue in the ARSA Complaint because the original application for TC preceded those regulations and because the certification basis does not include those regulations or the amendments to the FAR necessary to incorporate them. Rolls-Royce was, of course, obligated to develop certain maintenance documents in keeping with existing CAR requirements and continues to be subject to those standards. Thus, the maintenance documents developed for these model engines are not "ICA" that were developed to meet regulatory requirements such as those in FAR § 33.4 and Appendix A to FAR Part 33. Nevertheless, there are references in some documents related to these maintenance documents that refer to them as "Instructions for Continued Airworthiness" or "ICA." Where these terms are used in these documents, they are used in a broad, descriptive sense, rather than to imply that these documents are part of the ICA required by FAR § 33.4 or that there is any obligation to make them available under FAR § 21.50(b).

ICA if the engines were subject to ICA requirements, such as the supplemental maintenance procedures or specific repair information addressed in section III.B above. With respect to the engine models at issue in the ARSA complaint, the maintenance documents are made available through Aviall to any requestor, including H.E.R.O.S. Rolls-Royce advised H.E.R.O.S. of this fact in the June 21, 2002 letter from the Director of Rolls-Royce's Commercial Aftermarket Business—Helicopters.

The Model 250 engine information available through Aviall includes the following:

- Commercial Engine Bulletins (CEB's)
- Commercial Service Letters (CSL's)
- Operation and Maintenance Manuals
- Illustrated Parts Catalogs
- Overhaul Manuals<sup>115</sup>

These documents include all of the technical data that is essential to maintain the continued airworthiness of any of the Model 250 series engines. As noted above, the Operation and Maintenance Manuals and Overhaul Manuals are typically provided to the FAA during the process leading up to the issuance of a TC or amended TC. Revisions to these manuals and additional documents, such as the CEBs and CSLs are submitted to the FAA on a periodic basis (typically once per year), and approved by the FAA prior to publishing and being made available through Aviall.

In the course of applying for an amendment to a TC and providing periodic information to the FAA, Rolls-Royce has provided to the FAA the above-mentioned specific maintenance documents (CEBs, CSLs, OMM, IPC, and OHM). These maintenance documents are provided to the FAA for review and acceptance or approval.

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<sup>115</sup> See Rolls-Royce's June 21, 2002 Letter, at 1.

Taken together, these documents represent the documents that would be developed (in accordance with FAR § 33.4), made available (in accordance with FAR § 21.50(b), and updated and made available (in accordance with FAR § 21.50(b)) as ICA if these engine models were subject to ICA requirements. These documents were created and submitted to the FAA in a process that ensures that appropriate maintenance documents are created by the DAH and reviewed by the FAA (in accordance with CAR § 13.21) through a process that is analogous to, but predated, the process created in 1980 for the creation, submission, review, and furnishing or making available of the specifically defined set of maintenance documents known as "ICA." The FAA accepted or approved each of these documents.

In an effort to support Rolls-Royce customers, and in keeping with CAR § 13.21 and the spirit that underlies FAR § 21.50(b), Rolls-Royce makes these documents available to at least the same extent as if these documents were ICA developed for the engine in keeping with FAR § 33.4 and Appendix A for the engine models at issue in the ARSA Complaint.

Thus, Rolls-Royce has already made available to H.E.R.O.S. maintenance documents that contain all of the information that FAR § 33.4 and FAR Part 33, Appendix A would require as ICA for the engine models at issue in the ARSA Complaint.

- D. If the FAA were to accept ARSA's views on the information that is required to be included in ICA, it would represent a fundamental change from the FAA's longstanding position regarding DAH obligations and ICA requirements.**

Through its Complaint, ARSA seeks to have the FAA make a fundamental change in two longstanding FAA positions, namely that: (i) maintenance documents developed under regulations in existence before 1980 are

not subject to the regulations implemented in 1980, and (ii) the DAH may provide, as part of ICA, remove and replace instructions for engine parts so long as the airworthiness limitations for those engine parts are provided and the remove and replace instructions suffice to maintain the airworthiness of the entire engine.

If the FAA were to change its longstanding position on either of these issues, it would cause far-reaching changes throughout the industry. ARSA recognizes and encourages the sweeping extent of these changes.<sup>116</sup> In fact, ARSA makes clear its intent in the following comments in its Complaint:

Complainant urges the FAA to consider the Complaint in the broadest possible terms. In the Association's view, it would make little sense for the Administrator to issue a ruling favorable to H.E.R.O.S. without recognizing the same issues apply throughout the aviation industry.<sup>117</sup> (Emphasis added.)

It has been on the basis of the FAA's longstanding interpretation of the FAR that DAHs, such as Rolls-Royce, decide the content of the maintenance documents they develop to assist owners and maintenance providers in maintaining the continued airworthiness of their products, and determine their policies for making these documents available to requestors.

In this case, Rolls-Royce has held TC No. E4CE for more than 40 years. During that time, Rolls-Royce has developed and made available certain maintenance documents with the understanding that the engines models and those documents were subject to the requirements of CAR 13, rather than the requirements of FAR § 21.50(b).<sup>118</sup> Numerous business decisions involving millions

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<sup>116</sup> One significant example of the far-reaching changes that would result is the negative effect such a change would have on the incentives that companies have to develop products. For additional information on this issue, see footnote 124.

<sup>117</sup> ARSA Complaint, at 17.

<sup>118</sup> As noted in footnote 7, above, despite this 40-year history, ARSA points to no instances where any person was unable to maintain the continued airworthiness of

of dollars of resources have been based on the FAA's longstanding position, which is evidenced in FAA guidance materials and interpretations on the pertinent regulations.

Like Rolls-Royce, countless other businesses have invested time and money into developing products<sup>119</sup> and the accompanying documents that provide for continued airworthiness of those products.

It would be fundamentally unfair for the FAA now to change its longstanding position and require DAHs to divulge technical data that was developed with the understanding that it would not be required to be made available under FAR § 21.50(b).

**E. It would be very poor public policy for the FAA to grant ARSA's request.**

For several reasons, it would be very poor public policy for the FAA to grant ARSA's request or to concur with ARSA's views.

As noted above, the documents at issue in the ARSA Complaint are not essential to the continued airworthiness of an engine. Further, documents of this nature are typically proprietary documents, as are the ones being requested by ARSA/H.E.R.O.S. The policy underlying FAR §§ 21.50 and 33.4 is sound, since it ensures that those obligated to maintain the continuing airworthiness of a product have made available to them at least the information essential to fulfilling that obligation.

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a Rolls-Royce Model 250 series engine due to the insufficiency of any information regarding continued engine airworthiness made available to them by Rolls-Royce.

<sup>119</sup> As an example of the amount that businesses spend on product engineering, Rolls-Royce's predecessor, Allison Gas Turbine Division, as a division of General Motors, spent nearly half a billion dollars of its own funds on engineering for four major engine programs between 1986 and 1991.



However, it would be very poor public policy to require that DAHs provide information beyond this essential documentation to repair stations or others required to comply with ICA. To do so would seriously interfere with the competitive balance among potential maintenance providers, because it would require a DAH to give up proprietary information developed at great expense to the DAH despite the fact that the use of this information would make the engine no more airworthy than it would be if the engine were repaired using the maintenance information already made available by the DAH. The proprietary information merely makes the performance of the maintenance more efficient—it does not result in a more airworthy engine. Thus, there is no safety-based need to force DAHs to give up their proprietary data. Further, the inability of a repair station to obtain proprietary data or procedures does not preclude the repair station from investing the time and money necessary to develop its own data or instructions and obtain FAA approval of these procedures. ARSA admits that the issue is driven by economics and not airworthiness when it notes that “[t]he failure of Rolls-Royce to provide required overhaul information to persons outside its AMC network creates a competitive disadvantage for H.E.R.O.S. and similarly situated repair stations” and that H.E.R.O.S. is forced to find “more costly means of compliance.”<sup>120</sup> The FAA should not permit itself or the FAR to be used as a weapon to advance the economic interests of one segment of the industry.

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<sup>120</sup> ARSA Complaint, at 13, para. III.D.3.

- F. Because any FAA decision to accept ARSA's views would likely force fundamental changes in the entire industry, if the FAA were to decide to consider such a step, this should be pursued through a notice and comment rulemaking with full industry participation rather than in the context of a Part 13 complaint process involving only a few parties.

As noted above, any FAA decision on ARSA's Complaint that accepted ARSA's views would represent a fundamental change in the FAA's longstanding interpretation of the FAR. This is clearly ARSA's intent, as it admits when it states: "[i]n the Association's view, it would make little sense for the Administrator to issue a ruling favorable to H.E.R.O.S. without recognizing that the same issues apply throughout the aviation maintenance industry."<sup>121</sup> Thus, ARSA expects the resolution of this Part 13 Complaint to affect the treatment of this issue throughout the industry.<sup>122</sup>

ARSA suggests that it initiates the Part 13 Complaint because the FAA is "slow to enforce the regulations." ARSA implies that the FAA concurs with its views, but is merely reluctant to enforce that interpretation. In fact, what ARSA characterizes as FAA reluctance to enforce the regulations is perhaps more accurately described as a continuing FAA disagreement with ARSA over the meaning of the relevant regulations. Because of the FAA's disagreement with ARSA, ARSA has engaged in a political campaign to encourage legislators to

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<sup>121</sup> ARSA Complaint, at 17, para. IV.

<sup>122</sup> ARSA also seems aware that it is calling for a change in the current regulations or at least in the way the current regulations are interpreted by the FAA. In submitting comments to the draft FAA Order 8110.ICA, ARSA stated that "current regulations require design approval holders to provide only basic maintenance and overhaul information that is essential to the continued airworthiness of the product." ARSA Comments to FAA Order 8110.ICA, at 3.

“compel enforcement by enacting legislation to clarify and codify regulations related to the availability of maintenance information.”<sup>123</sup>

If the FAA were to accept the position urged by ARSA, this would have a very significant and negative impact on DAHs. Even if the FAA were inclined to consider such a step, it should not be considered in the narrow context of a Part 13 complaint proceeding. The Part 13 process is designed to bring before the FAA specific issues of compliance with the current FAR and allow the accused the opportunity to defend itself. This process is not an appropriate forum for the FAA to utilize to review (and consider changing) longstanding general interpretations of the FAR, or the FAR themselves.

If the FAA were to decide to consider accepting ARSA's views, this should be pursued through a notice and comment rulemaking with full industry participation. Such a forum would allow for, and encourage, broad input from the wide variety of entities that would be significantly impacted by the issue.<sup>124</sup>

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<sup>123</sup> See Legislative Priorities, 109<sup>th</sup> Congress, 1<sup>st</sup> Session, in ARSA Legislative Action Handbook: 109<sup>th</sup> Congress, 2005-2006. A copy of this Handbook is attached to this Answer as Attachment “V.”

<sup>124</sup> If the FAA were to review this issue in a notice and comment rulemaking, and if ARSA were to continue to pursue its political and economic goal of obtaining proprietary data from DAHs, the FAA would be compelled, in the interest of fairness, to review whether proprietary information developed by entities other than DAHs must also be made available merely because that information relates to engine airworthiness, even if it is not essential to the continued airworthiness of the engine. If the FAA were to conclude that information beyond that “essential to the continued airworthiness of the engine” must be made available, either by the DAH or by any other developer of such information, such as an airline or major repair station, Rolls-Royce believes that the result would be disastrous for the aviation industry. FAR § 21.50(b), together with FAR § 33.4, adequately ensures that information “essential to the continued airworthiness of the engine” is available to persons required to comply with that information. To require any additional information to be made available, either by the DAH or by any other entity that develops such information (including overhaul or repair information about engine parts), would be to require that proprietary information developed at substantial

In sum, the Part 13 complaint process is an inappropriate forum for the FAA to undertake the regulatory and policy revision sought by ARSA, because the Part 13 complaint process requires specific alleged violators to defend themselves based on existing FAR and FAA policies. In Rolls-Royce's view, this misuse of the Part 13 process by ARSA is part of a continuing pattern of harassment of the DAHs by ARSA used as a weapon to pursue its political and economic goal of obtaining proprietary information to which its members have no right.

#### IV. CONCLUSION

For the reasons set forth in this Answer, Rolls-Royce respectfully requests that the FAA determine that the Complaint does not state facts that warrant an investigation or action, and that the FAA accordingly dismiss the Complaint without a hearing.

If the FAA determines that further review of this matter is warranted, Rolls-Royce requests that the FAA review the matter in a forum more appropriate

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expense by the owner thereof be given up by that owner despite there being no safety necessity for doing so. Such a step would undermine the incentive for investing risk capital into developing such information. This incentive is at the heart of any OEM's willingness to invest risk capital in developing and improving its products. The competitive marketplace for aviation products often makes it difficult for an OEM to derive sufficient revenue from initial sales of its new product to justify the immense amount of capital invested in developing those products. It is often only because of the potential for additional revenue from providing additional replacement parts and services, based on the unique knowledge developed by OEMs, that the investment of risk capital to develop new product lines appears warranted. Requiring OEMs or others to make available more information than that essential for the continued airworthiness of the engine would seriously undermine any incentive for an OEM to develop new product lines. And, as noted in the text accompanying footnote 89, other entities such as airlines and repair stations are still free to develop their own supplemental maintenance procedures or specific repair information and obtain FAA approval of those procedures or information.

than the Part 13 Complaint process, which is designed to review allegations of a violation of the current regulations by a particular entity. Here, Rolls-Royce's actions are in compliance with the existing FAR and consistent with the industry norm, and ARSA is actually advocating a change to the FAR and/or the FAA's longstanding interpretation of the FAR and related FAA policy. In these circumstances, the FAA should determine that an investigation of an individual entity in the context of a Part 13 complaint is not the appropriate forum for reviewing this matter, and dismiss the Complaint without a hearing. In dismissing this Complaint, and in light of the continuing pattern of efforts by ARSA to harass the DAHs, it is imperative that the FAA make a definitive statement that does not leave this matter open to the filing of yet other complaints as a vehicle for pursuing ARSA's political agenda.

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February 28, 2006