

**M E M O R A N D U M**

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June 13, 2006

TO: Sarah MacLeod  
Executive Director  
Aeronautical Repair Station Association

FROM: Kirk Van Tine  
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RE: ICA Strategy Options

As discussed, we have prepared a brief summary of the potential avenues your members might pursue to increase the availability of OEM repair information at a reasonable cost. These include legislative approaches, action at the agency, and various litigation options. If you need further information on any or all of these options, or would like to discuss a comprehensive strategy to accomplish your goals, please let us know.

Also, we understand that ARSA possesses a substantial and impressive base of knowledge and experience in this matter. Among other measures, ARSA has pursued legislation and petitioned FAA for regulatory action. We believe it would greatly benefit the strategy formulation if these initiatives and their chronology were memorialized.

**I. Background**

The Aeronautical Repair Station Association (“ARSA”) is made up of civil aviation maintenance facilities known as “part 145 repair stations.” These entities are certificated by the Federal Aviation Administration (“FAA”). Under the FAA’s maintenance regulations, these companies are required to perform repair activities in accordance the original equipment manufacturers (OEMs) maintenance information. Under the FAA’s certification regulations, aircraft and component manufacturers are required to create maintenance manuals called Instructions for Continued Airworthiness (“ICA”) and are required to make ICA available to, among others, the owners of aircraft and part 145 repair stations. 14 C.F.R. § 21.50(b).

A significant number of these OEMs have applied ICA regulations in a restrictive manner by releasing only basic maintenance and replacement information rather than detailed component overhaul manuals. Because they consider this overhaul information to be proprietary, OEMs may only distribute complete overhaul and rework instructions to repair stations that they select and certify, citing safety and liability concerns. To other maintenance providers, OEMs provide either no information at all or only basic ICA that mandate replacement of certain components in lieu of providing repair methods. While OEMs have

justified their actions on safety grounds, it is clear that their main objective is to limit or eliminate competition in the aircraft and aircraft component maintenance industry.

## II. Relevant FAA Regulations And Interpretations

The following sections summarize the key regulations and foundational agency interpretations relevant to ICA and overhaul manuals.

### A. Obligation of Design-Approval Holders to Furnish ICAs.

Under FAR § 21.50(b), the holder of design approval (i.e., the aircraft, engine, propeller, or component manufacturer) must furnish one set of complete Instructions for Continued Airworthiness to the owner of each type of aircraft, aircraft engine, or propeller, and thereafter make those ICA available to any other person required to comply with the terms of the ICA, such as aeronautical repair stations. Manufacturers must also have a method for distribution of any future changes to ICA.

Prior to the FARs, the Civil Aeronautic Regulations also required certain maintenance information from engine and propeller manufacturers.

### B. ICA Regulations Regarding Aircraft Engines.<sup>1</sup>

#### 1. Basic requirements.

Under FAR § 33.4, the applicant for an engine Type Certificate (“TC”) — i.e., the manufacturer — “must prepare Instructions for Continued Airworthiness in accordance with appendix A to this part that are acceptable to the Administrator.” FAR Pt. 33, App. A further specifies that:

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.

#### 2. Content specifications.

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<sup>1</sup> The ICA requirements for propellers are identical under FAR § 35.4 and Pt. 35, App. A. Just as for engines, the ICA for propellers encompass both a maintenance and overhaul manual with specific content requirements.

a. Engine maintenance manual or section.<sup>2</sup>

The engine maintenance manual must contain a number of items relevant to the continued maintenance of the engine, including:

- An explanation of the engine's features and data to the extent necessary for maintenance or preventive maintenance.
- A detailed description of the engine and its components, systems, and installations.
- Installation instructions, including proper procedures for uncrating, deinhbiting, acceptance checking, lifting, and attaching accessories, with any necessary checks.
- 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.
- 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.
- 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 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.
- Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.

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<sup>2</sup> FAR App. A33.3(a).

- 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.
- A list of the tools and equipment necessary for maintenance and directions as to their method of use.
  - b. Engine overhaul manual or section.<sup>3</sup>

An engine ICA must also include an overhaul manual containing the following:

- Disassembly information including the order and method of disassembly for overhaul.
- 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.
- Details of all fits and clearances relevant to overhaul.
- Details of repair methods for worn or otherwise substandard parts and components along with the information necessary to determine when replacement is necessary.
- The order and method of assembly at overhaul.
- Instructions for testing after overhaul.
- Instructions for storage preparation, including any storage limits.
- A list of tools needed for overhaul.

### C. ICA Regulations for Aircraft.

#### 1. Basic Requirements.

Regardless of the type of aircraft involved, the basic requirements for creating and maintaining ICA are identical. *See* § 23.1529; § 25.1529; § 27.1529; § 29.1529.<sup>4</sup> For example, FAR § 23.1529 (Normal, Utility, Acrobatic, and Commuter Category Airplanes) specifies that

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<sup>3</sup> FAR App. A33.3(b).

<sup>4</sup> Note the following aircraft categories: § 23 (Normal, Utility, Acrobatic, and Commuter Category Airplanes); § 25 (Transport Category Airplanes); § 27 (Normal Category Rotorcraft); § 29 (Transport Category Rotorcraft).

“[t]he applicant must prepare Instructions for Continued Airworthiness in accordance with appendix G to this part that are acceptable to the Administrator.” Pt. 23, App. G states:

The Instructions for Continued Airworthiness for each airplane must include the Instructions for Continued Airworthiness for each engine and propeller (hereinafter designated ‘products’), for each appliance required by this chapter, and any required information relating to the interface of those appliance and products with the airplane. If Instructions for Continued Airworthiness are not supplied by the manufacturer of an appliance or product installed in the airplane, the Instructions for Continued Airworthiness for the airplane must include the information essential to the continued airworthiness of the airplane.

2. Content requirements.

a. Airplane Maintenance Manual or Section.<sup>5</sup>

This manual must include a number of items relevant to the continued maintenance of the aircraft, including:

- Introduction information that includes an explanation of the airplane’s features and data to the extent necessary for maintenance or preventive maintenance.
- A description of the airplane and its systems and installations including its engines, propellers, and appliances.
- Basic control and operation information describing how the airplane components and systems are controlled and how they operate, including any special procedures and limitations that apply.
- Servicing information that covers details regarding servicing points, capacities of tanks, reservoirs, types of fluids to be used, pressures applicable to the various systems, location of access panels for inspection and servicing, locations of lubrication points, lubricants to be used, equipment required for servicing, tow instructions and limitations, mooring, jacking, and leveling information.

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<sup>5</sup> See FAR Apps. G23.3(a); H25.3(a); A27.3(a); A29.3(a).

b. Maintenance Instructions.<sup>6</sup>

An aircraft ICA must also contain maintenance instructions, including:

- Scheduling information for each part of the airplane and its engines, auxiliary power units, propellers, accessories, instruments, and equipment that provides the recommended periods at which they 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 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 airplane.
- Troubleshooting information describing probable malfunctions, how to recognize those malfunctions, and the remedial action for those malfunctions.
- Information describing the order and method of removing and replacing products and parts with any necessary precautions to be taken.
- Other general procedural instructions including procedures for system testing during ground running, symmetry checks, weighing and determining the center of gravity, lifting and shoring, and storage limitations.
- Diagrams of structural access plates and information needed to gain access for inspections when access plates are not provided.
- Details for the application of special inspection techniques including radiographic and ultrasonic testing where such processes are specified.
- Information needed to apply protective treatments to the structure after inspection.
- All data relative to structural fasteners such as identification, discard recommendations, and torque values.
- A list of special tools needed.

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<sup>6</sup> See FAR Apps. G23.3(b); H25.3(b); A27.3(b); A29.3(b).

c. Overhaul Manual Requirement.

In 1975, the FAA proposed an overhaul manual or section for aircraft ICA that would have required the inclusion of detailed overhaul information.<sup>7</sup> However, in 1980, based on the comments received, the FAA decided not to include the overhaul manual requirement, stating:

A commenter recommends deletion of the requirement for an overhaul manual or section, contending that—(1) there are many products that, for safety reasons, should not to be overhauled; and (2) the manufacturer must make the technical assessment as to whether a product can be safely overhauled. In the light of these comments, and after further consideration, the FAA finds that those portions of § XX.3(b) that provide for overhaul information only (except for engines), should not be required in the Instructions for Continued Airworthiness. Accordingly, §§ XX.3(b)(1)(i), XX.3(b)(1)(ii), XX.3(b)(1)(iv), XX.3(b)(1)(viii), and XX.3(b)(3), are withdrawn. The other provisions of § XX.3(b) specify information that is needed for purposes other than overhaul.<sup>8</sup>

D. FAA Interpretations of the ICA Requirements.

1. Instructions for Continued Airworthiness, Advisory Circular No. 33.4-1 (Aug. 27, 1999).

FAA Advisory Circular (“AC”) 33.4-1 provides guidance on acceptable methods of compliance with FAR § 33.4 regarding aircraft engines. The AC explicitly states that (1) it is not a mandatory document, and (2) it neither changes any regulatory requirements nor authorizes changes in or deviations from the regulatory requirements.

AC 33.4-1 contemplates manufacturer exclusivity in repair or maintenance of components:

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 instances, when approved by the cognizant ACO [Aircraft Certification Office], only the recommended scheduling periods and the

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<sup>7</sup> See 40 Fed. Reg. 29410, 29415 (July 11, 1975).

<sup>8</sup> 45 Fed. Reg. 60154, 60160-61 (Sept. 11, 1980).

manufacturer's name and address would be referenced in the ICA's.<sup>9</sup>

AC 33.4-1 also appears to authorize "remove and replace" as an acceptable component of the ICA, stating:

The main objective of [A33.3(4)] 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 maintain the continued airworthiness of the engine.* (emphasis added)<sup>10</sup>

The AC goes on to point out that "[t]he FAA may allow, and approve of other repair data that is not part of the TC and is not reflected in the ICA's."<sup>11</sup>

2. Whitlow Letter (Dec. 13, 1999).

Alleging that British Aerospace PLC failed to comply with 14 C.F.R. § 21.50(b) by refusing to provide ICA for seven airframe components, GE Engine Services sought a letter interpretation from the FAA. In a response from Deputy Chief Counsel James Whitlow, the FAA acknowledged that the TC for the aircraft in question fell outside of the purview of § 21.50. However, Whitlow stated that British Aerospace's failure to provide ICA documents based on such a technicality was "puzzling, at best, and, at worst, [was] an artificial obstacle to ensuring that each [aircraft] is maintained in an airworthy condition."<sup>12</sup> He also pointed out that British Aerospace's action was "inconsistent with the objective of § 21.50(b) and [was] not in the best interests of aviation safety."<sup>13</sup>

The Whitlow letter emphasized (1) that manufacturers cannot avoid their obligations to provide ICA through contractual arrangements, and (2) providing ICA to the original aircraft owners or operators does not remove the obligation to also make them available

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<sup>9</sup> AC 33.4-1 (Aug. 27, 1999) at 9.a(d).

<sup>10</sup> *Id.* at 9.b(4)(a).

<sup>11</sup> *Id.* at 9.b(4)(b).

<sup>12</sup> Whitlow Letter at 2.

<sup>13</sup> *Id.*

to “any other person required to comply with any of the terms of the [ICA],”<sup>14</sup> such as aeronautical repair stations.

3. McCurdy Letter (April 14, 2003).

In response to a request from Alcor Engine Company regarding the interpretation of FAR § 21.50(b), the FAA stated that, “If top-level ICA contains ‘remove and replace’ instructions for certain components, rather than referencing CMM’s [Component Maintenance Manuals] 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>15</sup> The letter also stated:

The FAA does not regulate competition between repair stations but rather safety. The FAA’s intent for 21.50(b) was to facilitate owner/operator’s ability to manage their own maintenance, and to insure that those *required* to accomplish continued airworthiness actions would have access to continued airworthiness instructions, in the interests of safety. It was not intended to assure that any person wishing to enter the repair/overhaul business is provided with repair manuals.<sup>16</sup>

The FAA has formalized the interpretive positions outlined in the McCurdy Letter in FAA Order 8110.54, discussed below.

4. Instructions for Continued Airworthiness: Responsibilities, Requirements, and Contents, FAA Order 8110.54 (July 1, 2005).

FAA Order 8110.54 was intended to guide personnel in the Aircraft Certification Service, aircraft evaluation groups, and flight standards district offices who review and accept ICA as required by regulations. The Order repeats language from the McCurdy letter, stating:

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>17</sup>

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<sup>14</sup> *Id.*; 14 C.F.R. § 21.50(b).

<sup>15</sup> McCurdy Letter at 1-2.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> FAA Order 8110.54 (July 1, 2005) at 6-4c.

The Order also reiterates the McCurdy Letter's explanation, stating:

We at the FAA do not regulate competition between repair stations, but rather safety. Our intent for 14 CFR § 21.50(b) was to facilitate owner/operator's ability to manage their own maintenance, and to ensure that those *required* to accomplish continued airworthiness actions would have access to continued airworthiness instructions, in the interests of safety. We did not intend to ensure that any person wishing to enter the repair/overhaul business is provided with a repair manual.<sup>18</sup>

### III. Issue

What options are available to ARSA to compel OEMs to provide repair information to independent repair stations at a reasonable price?

### IV. Regulatory Options

- A. Definition of ICA — ARSA could petition the FAA to clarify or amend the list of required contents of ICA to specifically include repair or overhaul instructions for aircraft components as opposed to mere replacement instructions. Arguably, allowing OEMs to fulfill their obligations by providing only “replacement” instructions avoids the intent of the regulation, which is to make repair information readily available to owners and operators.
- B. Pursue an amendment to § 21.50(b) to clarify that repair/overhaul manuals — if they exist — must be disclosed in addition to ICAs, and to clarify the phrase “make those instructions available.”
- C. Definitions of Overhaul, Repair, Maintenance, and Replacement — Explore how these terms are interwoven throughout the ICA regulations, highlighting inconsistencies and ambiguities for agency clarification or legal attack.
- D. Petition for a change to the FAA's interpretation of §21.50(b) as inconsistent with § 44704 or other applicable sections regarding certification. The argument would be that the statute sets out requirements for certification, and the FAA's interpretation of the ICA regulations makes it unnecessarily difficult and expensive for part 145 repair stations to meet the certification requirements.

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<sup>18</sup> *Id.* at 6-4e.

- E. Alternative Approval of Overhaul Manuals —What processes can independent repair stations pursue to develop their own overhaul procedures without OEM assistance or blessing?

## V. Litigation Options

- A. Suit against OEM alleging violation of applicable regulations — Depending on the facts of individual cases, ARSA may be able to allege that a particular OEM is not complying with existing FAA regulations. The approach here contemplates that ARSA demonstrate in a particular instance that an OEM improperly withheld information required by ICA content regulations, claiming its inclusion would violate a proprietary interest.
- B. Suit against FAA to enforce a non-discretionary duty — ARSA would maintain that the FAA is not enforcing its own regulations. The legal argument must be clear and free of any countervailing interpretation. This is a difficult argument because the agency’s interpretation of its own regulations would be subject to *Chevron* deference.
- C. Suit against FAA challenging existing ICA regulations — ARSA would maintain that current regulations and FAA’s application of those regulations unlawfully reduce safety by encouraging repair stations to develop competing — and obviously less consistent — overhaul procedures than those created and endorsed by OEMs with the benefit of proprietary design and manufacturing data. Instead, independent repair stations must obtain Designated Engineering Representative (“DER”) approval for repairs performed without access to the expert overhaul manuals withheld by OEMs.
- D. U.S. Antitrust Law — There are several theories that, depending on the specific facts and supporting evidence, could provide grounds to assert that an OEM’s conduct in discriminating against independent maintenance providers by withholding necessary maintenance materials and/or parts (or by charging higher prices for such products) violates one or more U.S. antitrust laws. Potential theories include the following:
1. The OEM’s conduct, to the extent that it reflects some price (or possibly other) restraint of trade agreed upon between an OEM and such OEM’s authorized maintenance provider, violates Sherman Act §1 as concerted conduct that unreasonably restrains trade.
  2. The OEM’s conduct, to the extent it may be characterized as conditioning the sale of one product, *e.g.*, maintenance services, on the buyer’s purchase of another, separate product in a market in which the OEM possesses market power, *e.g.*, maintenance documentation or parts, violates Sherman Act §1 and/or Clayton Act §3 as per se illegal tying. *See Eastman Kodak Co. v. Image Technical Services, Inc.* 504 U.S. 451 (1992) (plaintiff, alleging that Kodak had unlawfully tied the

sale of service for its copy machines to the sale of Kodak parts, had presented sufficient evidence of the various required elements of a tying claim to defeat summary judgment).

3. The OEM's conduct, to the extent it may be characterized as willful, exclusionary conduct to acquire or maintain monopoly power in a properly-defined relevant antitrust market (presumably some defined aircraft service market) in which the OEM has monopoly power, violates Sherman Act §2. *See Eastman Kodak Co. v. Image Technical Services, Inc.* 504 U.S. 451 (1992) (denying summary judgment on Sherman Act §2 claim against plaintiff where genuine issues of fact existed as to whether Kodak had monopolized or attempted to monopolize the copier service market by refusing to provide parts to independent service operators); *but see Verizon Communications Inc. v. Trinko*, 540 U.S. 398 (2004) (Verizon's conduct in denying rivals access to local telephone network elements in violation of FCC open access rules "not a recognized antitrust claim" under an "essential facilities" theory or otherwise).
4. The OEM's conduct, to the extent that it may be characterized as selling (but not licensing) the same goods of like grade and quality to two competing buyers in contemporaneous transactions at different price levels — violates the Robinson-Patman Act §2(a).

It is important to note that the likelihood of success on each of these potential claims depends entirely on the relevant facts. A review of the facts may reveal that all the necessary elements are not present or that a particular OEM has defenses available to it, including, perhaps, that it is engaged in what is actually procompetitive, justifiable vertical business conduct with downmarket participants. Whether, ultimately, any of these potential claims may be viable to assert against a particular OEM (and/or possibly their authorized maintenance providers) will turn on a detailed assessment of the facts. The type of additional information required to undertake such an assessment includes, for example: the specific OEM conduct at issue; conditions and competitor shares in affected market categories; product alternatives; the nature of any restrictive terms of agreement between an OEM and its authorized service providers; the OEM's asserted justifications, etc. Further detailed analysis of the FAA rules and their application to a specific OEM's conduct also may be required to determine what, if any, antitrust implications a violation of such rules may have in a specific circumstance. We are prepared to discuss these additional informational needs with you in detail as you find appropriate.

- E. EU Competition Law Theories — In addition, and again depending on the specific facts of each case, there may be basis to assert claims for violations of EU competition law, specifically Articles 81 and 82 of the EC Treaty. Article 81 prohibits agreements and concerted action "which have as their object or effect the prevention, restriction or distortion of competition within the common market." Article 82 prohibits "abuse of a dominant position" in a particular market to the detriment of trade between Member

States. While Articles 81 and 82 are commonly thought of as the rough European equivalents of Sherman Act §§ 1 and 2, respectively, there are differences in their application and, in some cases, they may condemn a wider range of conduct than U.S. courts find violative of U.S. antitrust laws.

The EC has expressly recognized that a firm with a dominant market position in certain circumstances may infringe Article 82 by refusing access to an “essential facility,” *i.e.*, “a facility or infrastructure, without access to which competitors cannot provide services to their customers.” *Sea Containers - Stena Sealink*, D. Comm. Dec. 21, 1993, 1994 OJ L 15/8; *but cf. Verizon Communications Inc. v. Trinko*, 540 U.S. 398, 410-11 (2004) (noting that that Supreme Court has never recognized the essential facilities doctrine and sees no need to recognize or repudiate it in the instant case). Moreover, while outcomes in EU refusal-to-deal cases vary based on the facts, in at least one case, *Volvo/Veng*, ECJ Oct. 5, 1988, 1988 ECR 6211, the EU Court of Justice has recognized that “an arbitrary refusal to supply spare parts to independent repairers” by an auto body repair part supplier holding a dominant position could violate Article 82.

## VI. Government Relations

### A. Competition Issues.

1. DOJ — After a thorough review of the facts, if a legal basis exists, meet with DOJ to discuss the antitrust issues identified above.
2. DOT — Again, after a review of the facts, if a legal basis exists, meet with the DOT General Counsel and competition attorneys to review the competition issues described above. The General Counsel is in a position to influence the FAA to revise its existing rules on the issues identified above.

### B. Legislative Options.

1. The current authorization for aviation programs administered by the FAA expires on Sept. 30, 2007. Several issues are taking shape as the centerpieces of the Congressional debate: current financing mechanisms including whether and how to alter the way the aviation trust fund is financed, such as by proposing user fees, new taxes, or other methods of raising revenue; to what extent to allow foreign ownership of U.S. airlines; and how to develop and pay for the Next Generation Air Transportation System. We propose to add a fourth area of focus to the reauthorization debate by shaping the legislative argument in two ways:
  - a. The first would be to expand the availability of basic repair information as a crucial element of improving aviation safety.



- a. In the House of Representatives' Transportation and Infrastructure Committee, Republican Representatives Young, LaTourette, Petri, Mica, Duncan, and LoBiondo could be sympathetic, and among Democrats, Representatives Costello, DeFazio, and Oberstar would likely be supportive, notwithstanding union issues.

Should control of the House switch from Republican to Democrat as a result of the November 2006 election, Rep. Oberstar would be in a position of great influence as the probable Chairman of the committee. The likelihood of success improves if the control of the House changes hands. Micca, Petri, and Duncan will be contenders for the Chairmanship if Republicans retain control. Young is term-limited and must leave the Chairmanship.

- b. On the Senate Commerce, Science and Transportation Committee, Republican Senator Sununu is approachable, and Senator Hutchison is a natural ally given her past service as a Member of the National Transportation Safety Board. We think Senator Lott would find this issue of interest as well. Union issues could present barriers to locating Democrats interested in taking on this issue, but potential allies nonetheless exist in Senators Dorgan, Pryor, Wyden, and Lautenberg. McCain, who has not been active on the Committee since Chairman Stevens took over, is also approachable.
- c. We note that the House Energy & Commerce Committee has been concerned with motor vehicle owners' "right to repair," and the committee is preparing to act on legislation that has broad, bipartisan support. It is possible the committee would be a sympathetic audience for similar complaints expressed by the aviation repair community, and visits could be made to seek advice and support from Chairman Barton, as well as to advocate for consideration. The fate of the auto vehicle legislation will be clear before this Congress adjourns.

- C. Oversight Agencies – A good case could be made to have the Government Accountability Office ("GAO") and the DOT Office of Inspector General (DOT "OIG") launch a full scale review of the safety concerns and practices in this area. The reviews would have to get underway soon if they are to play a role in the reauthorization debate. Preferably, these offices would undertake the review pursuant to a Chair/Ranking Member request from committees of jurisdiction in both chambers.

## VII. Other Arguments

- A. Are carriers contractually bound to supply part 145 repair stations with ICA and other overhaul manuals for the planes they service? Is this obligation being met? If not, could such a requirement be included in future contracts for repair services? If the ICA and other repair manuals available to the carriers are more detailed than those available to the repair stations, the carriers may be a source for this information.
- B. If the requirements of overhaul manuals/repair instructions have effectively been incorporated into the FAA regulations, there may not be any copyright protection. Does the FAA maintain records of the overhaul manuals and repair instructions they approve? Are they public records and could they be the subject of a FOIA request?
- C. Awareness of developing safety issues and problems — Open access to knowledge about how to repair engines and aircraft parts could lead to advancements in safety and recognition of developing safety issues. Repair stations are a key part of the industry and have an important role to play in advancing knowledge of safety.
- D. Repair Techniques — Open access to overhaul and repair manuals could allow the development of new techniques for cost-effective repairs. The barriers to part 145 repair stations developing these techniques on their own are high enough now. Regulations which reduce those barriers (such as making overhaul and repair information more available) could also encourage greater competition among repair stations.

## VIII. Conclusion

A number of avenues exist to challenge the current practices of OEMs in withholding or limiting distribution of repair instructions. An evaluation of which options present the highest likelihood of success will require a more detailed analysis of the applicable facts and law.