(ORAL ARGUMENT SCHEDULED FOR JANUARY 13, 2017)
No. 16-1202

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AVIATION SUPPLIERS ASS'N, INC.,
Petitioner,

v.

MICHAEL P. HUERTA, Administrator, THE FEDERAL AVIATION ADMINISTRATION, and THE UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR REVIEW OF A GUIDANCE AND NOTICE ISSUED BY THE FEDERAL AVIATION ADMINISTRATION

BRIEF FOR RESPONDENTS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Cir. R. 28(a)(1), respondents hereby certify the following information as to Parties, Rulings, and Related Cases:

A. Parties and Amici

Petitioner is Aviation Suppliers Ass'n, Inc. Respondents are Michael P. Huerta (in his official capacity as Administrator), the Federal Aviation Administration (FAA), and the United States of America. There were no amici in the administrative proceedings.

B. Rulings Under Review

The rulings under review are (1) the Maintenance Annex Guidance issued jointly by respondent FAA and the European Aviation Safety Agency (EASA) with an implementation date of October 1, 2016, pursuant to FAA Notice 8900.360, ¶ 6 (May 2, 2016); and (2) the aforementioned FAA notice.

C. Related Cases

This case has not previously been before the Court. Undersigned counsel is unaware of any related cases.

/s/ John S. Koppel
JOHN S. KOPPEL
Counsel for Respondents

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EASA – EUROPEAN AVIATION SAFETY AGENCY

FAA – FEDERAL AVIATION ADMINISTRATION

SA – SUPPLEMENTAL APPENDIX

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BRIEF FOR RESPONDENT

STATEMENT OF JURISDICTION

Petitioner Aviation Suppliers Association, Inc. filed its petition for review under 49 U.S.C. § 46110 on June 22, 2016, seeking review of (1) a September 9, 2015 revision to a paragraph of the Maintenance Annex Guidance (Guidance), a document issued jointly by respondent Federal Aviation Administration (FAA) and the European Aviation Safety Agency (EASA), a foreign governmental organization; and (2) an FAA notice deferring the implementation date of the revision to October 1, 2016. Although 49 U.S.C. § 46110(a) provides for direct review in this Court of

certain FAA orders, petitioners lack standing to challenge the revision to the Guidance, as we argue below.

STATEMENT OF THE ISSUES

Petitioner, an association representing aircraft parts distributors in the United States, challenges a revision to guidance issued jointly by the FAA and EASA that explains certain documentation required under European Union law for aircraft parts used in aircraft subject to European Union jurisdiction. The issues are:

1. Whether petitioner has standing under Article III of the United States Constitution to challenge the Guidance revision; and

2. Assuming that petitioner has standing, whether the FAA's issuance of the guidance jointly with EASA is consistent with statutory and constitutional requirements.

RELEVANT STATUTES

The relevant statutes are set forth in the Addendum to petitioner's brief.

STATEMENT OF THE CASE

1. As part of its obligation to "promote safe flight of civil aircraft in air commerce," 49 U.S.C. § 44701, the FAA is required under United States law to certify the airworthiness of aircraft registered in the United States and of the parts used in those aircraft, and to regulate repair stations located in the United States and abroad that perform maintenance on aircraft registered in the United States. *See generally* 49 U.S.C. §§ 44701-44735. Pursuant to that statutory authority, "the FAA requires any

person performing work on an aircraft registered in the United States to determine the airworthiness of the part prior to installation of the part in such aircraft or in any component of such an aircraft. *See* 14 C.F.R. pt. 43." Declaration of Timothy Shaver (Shaver Dec.) ¶ 5, ECF Doc. No. 1631207, Response Attachment 1 (reproduced in Addendum to this brief). The European Union imposes similar regulatory obligations for work performed on aircraft registered in the European Union. Shaver Dec. ¶ 6. The European Union requires "repair stations to ensure the airworthiness of a part to be used in an aircraft registered in the European Union, or in a component of such an aircraft, by ensuring that the part is documented by EASA Form 1, or its equivalent." *Id.* (citing Commission Regulation (EU) No. 1321/2014, Annex I, M.A. 501(a), available at http://goo.gl/f1M1z5 (EU Reg. No. 1321/2014) (reproduced at Supplemental Appendix (SA) 1).

As a consequence of international travel, governmental aviation agencies are often faced with coordination problems. As examples:

- an aircraft registered in the European Union may require a part while the aircraft is located in the United States;
- a component from an aircraft registered in the European Union may be shipped from the European Union to the United States for work at a repair station here for return to the European Union; and

- repair stations in the European Union may purchase parts from sellers located in the United States.

Shaver Dec. ¶ 7.

Under European Union regulations, in all these circumstances a repair station working on an aircraft registered in the European Union must verify the airworthiness of the part by ensuring that the part is documented by EASA Form 1, or its equivalent. *Id.* ¶ 6 (citing EU Reg. No. 1321/2014, Annex I, M.A. 501(a), SA 1); *see also id.*, Annex II, §§ 145.A.42(a)(1) (App. 131), 145.A.50(d) (SA 3) (imposing same requirement on repair stations located outside the European Union working on aircraft registered in the European Union). By contrast, the FAA does not require that the airworthiness of parts be documented prior to installation. Instead, the FAA requires any repair station performing work on aircraft registered in the United States to determine the airworthiness of a part prior to installation, regardless of whether the aircraft is located in the United States or abroad. *See* 14 C.F.R. § 43.7(c).

Pursuant to the President's foreign affairs authority under Article II of the United States Constitution, and under statutory authority, *see* 49 U.S.C. §§ 106(l)(6), 40104(a), (b), the FAA has entered into international agreements to address regulatory coordination problems such as those described above. *See also id.* at § 40104(a) (directing the FAA Administrator to "encourage the development of civil aeronautics and safety of air commerce in and outside the United States"); *id.* at § 40105(b)(1)(A) (requiring the FAA Administrator to "act consistently with obligations of the United

States Government under an international agreement"); *id.* at § 40113(a), (e) (authorizing the FAA Administrator to perform such acts as are necessary to carry out his statutory powers and duties, including providing operational services to foreign aviation authorities in order to promote aviation safety). One such agreement, at issue in this litigation, is the Agreement between the United States of America and the European Union on Cooperation in the Regulation of Civil Aviation Safety, TIAS No. 11-501 (2011), available at http://go.usa.gov/xjFxk (the Agreement), reproduced in pertinent part at Petitioner's Addendum (Pet. Add.) 200-250. One annex of the Agreement addresses "the reciprocal acceptance of findings of compliance, approvals, documentation, and technical assistance regarding approvals and monitoring of repair stations/maintenance organizations as detailed in appendices hereto." Agreement, Annex II, § 1, Pet. Add. 222.

Under that annex, "the FAA and the EASA jointly issued, and from time to time revise, the Maintenance Annex Guidance," which, in part, "informs repair stations located in one jurisdiction of the actions they must take to comply with the regulatory requirements of the other jurisdiction," and permits "[s]ellers of aircraft parts located in one jurisdiction" to "determine the parts documentation requirements for repair stations using those parts in the other jurisdiction." Shaver Dec. ¶ 9. One provision of the Maintenance Annex Guidance—Section B, Appendix 1, ¶ 10(k) (Paragraph 10(k))—"provides that a repair station located in the United States must ensure that the airworthiness of a part used to repair an aircraft registered in the

European Union, or to repair a component of such an aircraft, is documented by using FAA Form 8130-3." Shaver Dec. ¶ 10 (discussing Maintenance Annex Guidance, Section B, Annex 1, ¶ 10(k)(1)(a)(i) (change 6), available at http://go.usa.gov/xDrtk, reproduced at Petitioner's Appendix (App.) 100). FAA Form 8130-3 is equivalent in all material respects to EASA Form 1, the form the European Union otherwise requires for documentation of a part's airworthiness. Shaver Dec. ¶¶ 6, 10; *compare* Shaver Dec. Attachment 1 (EASA Form 1) *with id.* Attachment 2 (FAA Form 8130-3) (reproduced in Addendum to this brief).

2. Petitioner, an association that "represents the aircraft parts distribution industry," Pet. Br. 3 (Corporate Disclosure Statement), challenges a recent change to the wording of Paragraph 10(k). A previous version of the Guidance stated that the airworthiness release for parts used in aircraft registered in the European Union "should be on the FAA Form 8130-3." Guidance, Section B, Annex 1, ¶ 10(k)(1)(ii) (change 4, 2014). (Paragraph 10(k)(1) from Maintenance Annex Guidance, Change 4 is reproduced in the Addendum to this brief). "Some entities subject to EASA regulation understood that statement, and in particular the use of the word 'should,' to suggest that European Union regulations impose no requirement concerning the use of FAA Form 8130-3." Shaver Dec. ¶ 11; *see, e.g.*, Petitioner's Corrected Opening Brief (Pet. Br.) 21 ("[A]n FAA 8130-3 tag has always been an optional document for US transactions.").

The wording of the paragraph was changed to address that mistaken understanding. The European Union "requires repair stations to ensure the airworthiness of a part to be used in an aircraft registered in the European Union, or in a component of such an aircraft, by ensuring that the part is documented by EASA Form 1, or its equivalent." Shaver Dec. ¶ 6; *see* EU Reg. No. 1321/2014, Annex I, subpt. E, M.A. 501(a), SA 1; *id.* Annex II, §§ 145.A.42(a)(1) (App. 131), 145.A.50(d) (SA 3). Accordingly, "the FAA and the EASA changed the operative language of Section B, Appendix 1, Paragraph 10(k) to clarify that an airworthiness release certificate for a part used in an aircraft registered in the European Union 'must be on the FAA Form 8130-3,'" a form that "is identical in all material respects to EASA Form 1." Shaver Dec. ¶ 12 (quoting Guidance, Section B, Appendix 1, ¶ 10(k)(1)(a)(i) (change 6), App. 100).[1]

On June 22, 2016, petitioner filed a petition for review, contending that the FAA's announcement of the revision of Paragraph 10(k) was ultra vires and violated the Paperwork Reduction Act, the Administrative Procedure Act (APA), and the Due Process Clause. Pet. for Review 1-3, ECF Doc. No. 1621090. Petitioner

[1] The FAA and EASA partially deferred the effective date of that change to October 1, 2016. See Maintenance Annex Guidance, note following Section B, Appendix 1, ¶ 10(k)(1)(a)(i) (change 6); see also FAA Notice 8900.360 (May 2, 2016) (partially deferring the same revision in change 5 of the Maintenance Annex Guidance to October 1, 2016), available at http://go.usa.gov/xjFjz; App. 136-38. Petitioner states that FAA Notice 8900.360 further deferred the effective date of Paragraph 10(k) to August 2017. Pet. Br. 59-60. That assertion is mistaken.

subsequently asked the Court to stay the effect of Paragraph 10(k), ECF Doc. No. 1626568, and also filed a motion for "partial summary judgment," which (along with arguments substantially identical to those in petitioner's motion for stay) raised an additional argument that revision to the Guidance exceeded Congress's authority under the Commerce Clause. Mot. S.J. 14-18, ECF Doc. No. 1627834. This Court denied petitioner's motions for a stay pending review and for summary adjudication. Order, ECF Doc. No. 1635385 (Sept. 13, 2016).[2]

SUMMARY OF ARGUMENT

Petitioner challenges on multiple statutory and constitutional grounds a revision to the Maintenance Annex Guidance, a document issued jointly by respondent FAA and EASA, a European Union agency that is not a party to these proceedings. The challenged provision contains guidance for repair stations subject to EASA jurisdiction that wish to use parts from the United States in aircraft registered in the European Union. The guidance informs those repair stations of the documentation needed with respect to such parts in order to comply with EASA regulatory requirements.

[2] The Court also denied petitioner's motion to supplement the administrative records with several affidavits, although it did allow those affidavits to be filed under seal, and stated that it would consider them "insofar as they provide necessary information for the disposition of the motion to stay." Order, ECF Doc. No. 1635385 (Sept. 13, 2016).

Specifically, petitioner challenges a change in the wording of one provision of the guidance, which clarifies that certain documentation is mandatory under European Union regulations. That change clarifies the obligations under existing European Union law, but it does not impose any independent regulatory obligations under either United States or European Union law. Accordingly, petitioner lacks Article III standing to challenge the change in language. The clarification is not the cause of petitioners' asserted injury and its injury would not be redressed by the injunctive relief petitioner requests.

Assuming *arguendo* that petitioner has standing, its claims are, in any event, without merit. The revision is within the FAA's authority and does not violate the Administrative Procedure Act, the Paperwork Reduction Act, the Due Process Clause, or the separation of powers.

STANDARD OF REVIEW

This Court may "affirm, amend, modify, or set aside" a final order of the FAA. 49 U.S.C. § 46110(c). In reviewing a petition under Section 46110, the Court applies the same standard as that applicable to challenges under the Administrative Procedure Act. *Safe Extensions, Inc. v. Federal Aviation Admin.*, 509 F.3d 593, 604 (D.C. Cir. 2007). Thus, the FAA's decision must be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or "contrary to constitutional right," *id.* at § 706(2)(B). *See City of Santa Monica v. FAA*, 631 F.3d 550, 554 (D.C. Cir. 2011).

ARGUMENT

I. PETITIONER LACKS STANDING TO CHALLENGE THE REVISION TO THE MAINTENANCE ANNEX GUIDANCE.

To satisfy the threshold jurisdictional requirement of Article III standing, a petitioner must seek relief from an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper* v. *Amnesty Int'l*, 133 S. Ct. 1138, 1147 (2013). Here, because the recordkeeping requirement in question is imposed by preexisting European Union regulations rather than by the FAA, petitioners cannot satisfy the injury, causation, or redressability prongs of the Article III standing inquiry. In issuing the revision to Paragraph 10(k) of the Guidance jointly with the EASA, the FAA established no requirements under either United States or foreign law.

A. Petitioner's challenge to the Guidance revision rests on a fundamental misunderstanding of Paragraph 10(k). According to petitioner, European Union regulations permit repair stations that work on aircraft registered in the European Union to install parts in aircraft under two circumstances. First, petitioner contends, repair stations could install "serviceable" parts. Pet. Br. 20. Serviceable parts are those that "are in a satisfactory condition, released on an EASA Form 1 or equivalent," such as FAA Form 8130-3. EU Reg. No. 1321/2014, Annex II, § 145.A.42(a)(1); *see* Pet. Br. 20. Second, petitioner contends that repair stations could install parts previously determined to be "unserviceable," after the unserviceable part

is inspected and determined to be airworthy. Pet. Br. 21-22. In such a circumstance, petitioner believes, Form 8130-3 is not required. *Id.* By requiring a Form 8130-3 for the installation of any part into an aircraft registered in the European Union, petitioner argues, the revision to Paragraph 10(k) closed off the second route for installing parts. Pet. Br. 22.

But the applicable European Union regulations require that a part installed on an aircraft be certified as airworthy using EASA Form 1 or its equivalent (such as FAA Form 8130-3) *regardless* of whether the part is serviceable, or previously classified as unserviceable but later determined to be airworthy after inspection. *See* EU Reg. No. 1321/2014, Annex I, subpt. E, M.A. 501(a), SA 1 ("No component may be fitted unless it is in a satisfactory condition, has been appropriately released to service on an EASA Form 1 or equivalent and is marked in accordance with Part 21 Subpart Q, unless otherwise specified in Part-145 and Subpart F."); *id.* at M.A. 304, SA 1 (providing for inspection and repair, if needed, of unserviceable parts); *id.* at Annex II, §§ 145.A.42(a)(1), App. 131, and 145.A.50(d), SA 2 (imposing same requirement on repair stations located outside the European Union that perform maintenance on aircraft subject to European Union jurisdiction). Petitioner's challenge to revised Paragraph 10(k) is thus based on a misunderstanding that European Union regulations did not require certification of parts with EASA Form 1 or its equivalent in all circumstances. It was precisely that misunderstanding that FAA and EASA intended to correct by revising the language of Paragraph 10(k). Shaver Dec. ¶ 12.

B. Because revised Paragraph 10(k) does not change any legal obligations, the FAA and EASA's joint issuance of that provision caused petitioner and its members no injury. Petitioner's claimed injury is the increased cost of its members' access to the European market due to the Guidance, and its objective is to maintain their current access without incurring that additional expense. *See* Pet. Br. 26-28. But the revision to Paragraph 10(k) of the Guidance itself imposes no legal obligations, and therefore causes no increased costs to petitioner's members. Petitioner therefore has failed to demonstrate that revised Paragraph 10(k) causes any injury.

Insofar as petitioner has identified an injury, it is traceable not to any action by the FAA, but to the European Union regulations imposing the requirement that any part installed into an aircraft registered in the European Union, or component part of such an aircraft, be documented with EASA Form 1 or its equivalent. *See* EU Reg. No. 1321/2014, Annex I, subpt. E, M.A. 501(a), SA 1 (making clear that the use of "EASA Form 1 or equivalent" is a requirement of European Union regulations); *id.*, Annex II, §§ 145.A.42(a)(1), 145.A.50(d) (same).

Finally, any injunction against the operation of Paragraph 10(k) would have no effect on petitioner or its members, because the European Union's regulations would continue to govern the documentation required of parts installed in aircraft registered in the European Union. See Shaver Dec. ¶ 13. Petitioner argues throughout its brief that the FAA "enforces" the European Union requirements specified in the Guidance. *See, e.g.*, Pet. Br. 13, 24, 28, 32-34, 52, 54, 55-57. That description is not

accurate. Rather, EASA has authorized the FAA, in some circumstances, to make determinations respecting compliance with European Union requirements for purposes of European Union law—as part of a U.S.-based repair shop's application for EASA certification, for example. *See*, *e.g.*, Guidance, Section B, I ¶ 3.8 (stating that, if an applicant fails to correct deficiencies identified by the FAA, "the FAA should terminate the application process and notify the EASA").

But if this Court were to enjoin the FAA from monitoring whether United States-based repair stations have documented the airworthiness of parts to be used in aircraft subject to European Union jurisdiction, the FAA would not be in a position to make determinations that U.S.-based repair stations comply with EU regulations. This would not compel EASA to permit installation of parts into EU registered aircraft as to which airworthiness has not been documented consistent with European Union law. *See* EU Reg. No. 1321/2014, Annex I, subpt. E, M.A. 501(a) (SA 1) (generally prohibiting the use of any component unless it "has been appropriately released to service on an EASA Form 1 or equivalent"); *id.*, Annex II, §§ 145.A.42(a)(1) (App. 131), 145.A.50(d) (SA 3) (same for repair stations located outside the European Union that perform maintenance on aircraft subject to European Union jurisdiction). Accordingly, petitioner has not established that a favorable decision from this Court would redress any injury it has identified. *See US Ecology, Inc. v. Dep't of Interior*, 231 F.3d 20, 24 (D.C. Cir. 2000) (party must "demonstrate that it is

likely, as opposed to merely speculative, that [its] injury will be redressed by a favorable decision" (internal quotations omitted)).[3]

II. ASSUMING ARGUENDO THAT PETITIONER HAS STANDING, ITS STATUTORY AND CONSTITUTIONAL CLAIMS ARE DEVOID OF MERIT.

Even if petitioner has standing, its statutory and constitutional challenges to the Guidance lack merit.

A. Paragraph 10(k) of the Revised Guidance is Consistent with Statutory Requirements.

1. Petitioner contends that the FAA lacked authority to issue the revision to Paragraph 10(k). Pet. Br. 31-35. This argument misunderstands the Guidance and its relationship to the Agreement.

The FAA was authorized to enter into the Agreement pursuant to both statutory authority and the President's foreign affairs authority under Article II of the United States Constitution. As noted above, the Agreement provides for mutual monitoring of repair stations/maintenance organizations for compliance with the FAA's and EASA's regulations in the jurisdiction of the other. Congress has expressly authorized the FAA to enter into "cooperative agreements * * * as may be necessary to carry out the functions of" the FAA. 49 U.S.C. § 106(l)(6). Congress

[3] In support of its argument in support of its standing to challenge the revision to Paragraph 10(k), petitioner relies on an affidavit of Michele Dickstein. *See* Pet. Add. 4-13; Pet. Br. 21, 27-28. That affidavit, however, does not address the defects identified in the text above.

also has directed the FAA to "promote and achieve global improvements in the safety, efficiency, and environmental effect of air travel by exercising leadership with the Administrator's foreign counterparts." *Id.* § 40104(b). *See also* 49 U.S.C. §§ 40104(a), 40105(b)(1)(A), 40113.

The FAA entered into the bilateral agreement with EASA pursuant to that authority, and since 1995 has entered into at least 23 similar agreements for the promotion of aviation safety, each of which was transmitted to Congress after its entry into force pursuant to 1 U.S.C. § 112b.[4] These modern aviation safety agreements are the successors to agreements for the reciprocal recognition of airworthiness certificates that have been concluded as executive agreements since the

[4] These include Agreements on the Promotion of Aviation Safety with Australia (entered into force November 28, 2006), TIAS 06-1128; Brazil (entered into force February 27, 2006), TIAS 06-227; Canada (entered into force June 12, 2000) TIAS 13118; China (entered into force October 20, 2005) TIAS 05-1020.1; Denmark (entered into force November 6, 1998) TIAS 12992; Finland (entered into force July 8, 2001) TIAS 13124; France (entered into force May 14, 1996) TIAS 12754; Germany (entered into force July 18, 1997) TIAS 12758; India (entered into force July 18, 2011) TIAS 11-718.1; Ireland (entered into force February 5, 1997) TIAS 12831; Israel (entered into force December 19, 2000) TIAS 13131; Italy (entered into force October 27, 1999) TIAS 13069; Japan (entered into force April 27, 2009) TIAS 09-427.1; Republic of Korea (entered into force February 19, 2008) TIAS 08-219; Malaysia (entered into force May 28, 1996) TIAS 12760; The Netherlands (entered into force December 1, 1996) TIAS 12691; Norway (entered into force June 27, 2001) TIAS 13159; Romania (entered into force October 18, 2004) TIAS 04-1018; Russia (entered into force September 2, 1998) TIAS 12982; Spain (entered into force September 23, 1999) TIAS 13064; Sweden (entered into force February 9, 1998) TIAS 12929; Switzerland (entered into force September 26, 1996) TIAS 12803; and the United Kingdom (entered into force December 20, 1995) TIAS 12714.

1930s.[5] That historic practice, undertaken without objection from Congress, represents the FAA's longstanding interpretation of statutes entrusted to its administration. As such, the FAA's interpretation is entitled to substantial deference. *See, e.g., Anderson Shipping Co. v. Environmental Protection Agency*, 852 F.2d 1387, 1391 (D.C. Cir. 1988) ("We are inclined to give considerable weight to this longstanding Agency interpretation of the statute entrusted to its administration.").

The Agreement, in turn, authorizes the FAA and EASA, through a "Joint Maintenance Coordination Board," to "develop[]" and "revis[e] detailed guidance to be used for processes covered by this Annex." Agreement, Annex II, §§ 3.1.1, 3.2.1, Pet. Add. 224-25. Aircraft maintenance is a process covered by the Annex. *See* Agreement, Annex II, §§ 4.8, 4.9, Pet. Add. 228, 229. The Guidance therefore is squarely within the purview of FAA's statutory authority.

2. Petitioner argues that the FAA violated the rulemaking requirements of the APA, 5 U.S.C. § 553, by issuing Paragraph 10(k) without notice and comment, Pet.

[5] *See, e.g.*, Arrangement Between Belgium and the United States of America Concerning the Acceptance by One of the Parties of Certificates of Airworthiness for Aircraft Imported as Merchandise from the Territory of the Other Party, Entered into Force November 21, 1932, 5 Bevans 564; Arrangement Between Denmark and the United States of America Concerning the Acceptance by One of the Parties of Certificates of Airworthiness for Aircraft Imported as Merchandise from the Territory of the Other Party, Entered into Force April 16, 1935, 7 Bevans 102. While the foregoing agreements are no longer in force, many bilateral airworthiness agreements concluded since the 1930s remain in force.

Br. 29, 47-50, and that the FAA has acted arbitrarily and capriciously, in violation of 5 U.S.C. § 706(2)(A). Pet. Br. 50-52.

a. The APA requires notice-and-comment procedures only when an agency engages in rulemaking subject to the statute. *See* 5 U.S.C. § 553. Those procedures are inapplicable here because Paragraph 10(k) is not a "rule" within the meaning of the APA. A "rule" under the APA is "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency." 5 U.S.C. § 551(4). Paragraph 10(k) does not implement, interpret, or prescribe any domestic law or policy, and it does not describe a procedure or practice of the FAA; rather, it informs interested parties of actions that they can take to comply with regulatory requirements of the European Union. *See* Shaver Dec. ¶ 13.

Even if Paragraph 10(k) did qualify as a "rule" for purposes of the APA, notice-and-comment procedures still would not apply. Agencies must engage in notice-and-comment rulemaking when they promulgate a "legislative rule" but not when they issue "interpretive rules." *See* 5 U.S.C. § 553(b)(A) (exempting interpretive rules from notice-and-comment procedures); *Carter v. Cleland*, 643 F.2d 1, 9 (D.C. Cir. 1980). A legislative rule has "the force and effect of law," *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015) (quotation marks omitted), and is itself "the basis for an enforcement action for violations" of its terms, *National Mining Ass'n v. McCarthy*, 758 F.3d 243, 251 (D.C. Cir. 2014). An interpretive rule does not have such

effect, and is instead issued to advise the public of the agency's construction of preexisting sources of law. *See Perez*, 135 S. Ct. at 1203; *Association of Flight Attendants-CWA, AFL-CIO v. Huerta*, 785 F.3d 710, 716 (D.C. Cir. 2015). By its terms, the Guidance informs interested parties of the requirements of European Union law governing the maintenance of aircraft subject to European Union jurisdiction. Paragraph 10(k) explains an aspect of European Union law, and reflects EASA's determination that FAA Form 8130-3 is equivalent to EASA Form 1. Even if Paragraph 10(k) qualified as a rule, it would therefore at most be an interpretive rule. *See Perez*, 135 S. Ct. at 1204 ("[T]he critical feature of interpretive rules is that they are issued by an agency to advise the public of the agency's construction of the statutes and rules which it administers.") (internal quotation marks omitted).

Citing an FAA regulation, Petitioner argues that the FAA has obliged itself to employ notice-and-comment procedures in issuing Paragraph 10(k), even if it is not otherwise required to do so. Pet. Br. 52 (citing 14 C.F.R. § 11.23). But that regulation merely states that "in general" the FAA "follow[s] the same procedures in issuing all types of rules[.]" 14 C.F.R. § 11.23. That provision does not commit the FAA to use notice-and-comment rulemaking when it issues guidance concerning the regulatory requirements of a foreign governmental agency, even if such guidance were considered to constitute an interpretive rule.

Finally, petitioner notes that the FAA issued a notice of proposed rulemaking in 2006, which proposed making the use of FAA Form 8130-3 mandatory for

documenting the airworthiness of parts used in aircraft subject to FAA jurisdiction. Pet. Br. 54-55; *see* 71 Fed. Reg. 58914, 58920 (Oct. 5, 2006). The FAA abandoned that proposal in its final rule. *See* 74 Fed. Reg. 53368, 53380 (Oct. 16, 2009). Petitioner contends that this past rulemaking demonstrates that the FAA must use notice-and-comment procedures if it wishes to mandate the use of FAA Form 8130-3. *See* Pet. Br. 19, 39, 48, 54, 59. But even assuming that the FAA would be required to use notice-and-comment procedures to mandate the use of FAA Form 8130-3 to satisfy domestic legal requirements, revised Guidance Paragraph 10(k) imposes no obligations under United States law and only informs interested parties of the steps that must be taken to comply with pre-existing European Union law.

b. Equally erroneous is petitioner's argument that FAA acted arbitrarily and capriciously with respect to the Guidance revision. Pet. Br. 50-52; *see also id.* at 18 (arguing that no "contemporaneous reason was published for the [Guidance] documentation changes" and that "the FAA has offered a *post hoc* rationale as part of its litigation position"). The Guidance explains that it identifies the requirements for a "repair station primarily located in the U.S. to be approved" under EASA regulations. Guidance, Intro. (App. 14). It further explains that "[t]he European Union (EU) requirements for maintenance are contained in," among other things, "Regulation (EU) No. 1321/2014, Annex II." *Id.* (App. 14); see *id.* § B, Intro. (App. 78) (same).

The FAA was not required to provide an extended explanation of this statement of European Union requirements, which is supported by the plain text of

the EU Regulations. EU Regulation No. 1321 generally requires "repair stations to ensure the airworthiness of a part to be used in an aircraft registered in the European Union, or in a component of such an aircraft, by ensuring that the part is documented by EASA Form 1, or its equivalent."[6] EU Reg. No. 1321/2014, Annex I, M.A. 501(a). The regulation thus unambiguously prohibits a repair station located in the European Union from installing a part received from the United States into an aircraft subject to European Union jurisdiction unless the part "is documented by EASA Form 1, or its equivalent." *Id.*

The regulation imposes the same requirement on repair stations located in the United States that service aircraft registered in the European Union. The regulation specifies that

> [a] certificate of release to service shall be issued at the completion of any maintenance on a component whilst off the aircraft. The authorized release certificate 'EASA Form 1' referred to in Appendix II of Annex I (Part-M) constitutes the component certificate of release to service except otherwise specified in point M.A. 502(b) or M.A. 502(e).

Id., Annex II, § 145.A.50(d), SA 3; see *id.*, Annex II, § 145.A.42(a)(1), App. 131 (describing serviceable components as ones that are, among other things, "in satisfactory condition" and "released on an EASA Form 1 or equivalent"). Thus, the

[6] That general requirement applies "unless otherwise specified in Annex I (Part-21) to Regulation (EU) No. 748/2012, Annex II (Part-145) or Subpart F, Section A of Annex I to this Regulation." EU Reg. No. 1321/2014, Annex I, M.A. 501(a), SA 1. We discuss Annex II immediately in the text immediately following. The other exceptions are not applicable here.

regulation also unambiguously prohibits a repair station located in the United States from installing a part into an aircraft subject to European Union jurisdiction unless the part is documented by EASA Form 1 or its equivalent.

As revised, Paragraph 10(k) states that repair stations located in the United States that work on aircraft subject to European Union jurisdiction must document the release of new components "on an FAA Form 8130-3 as a new part." Guidance, Section B, Annex 1, ¶ 10(k)(1)(a)(i) (change 6) (App. 102). As noted, *see supra* page 6, FAA Form 8130-3 is equivalent in all material respects to EASA Form 1.

If any doubt exists on this question, the Court may properly consider the Shaver Declaration in evaluating petitioner's challenge to Paragraph 10(k). Although, judicial review of agency action is limited to the record before the agency at the time of its decision, it is permissible for a court to consider a declaration by an agency official that "provide[s] the court with background information" about the administrative scheme that "underl[ies]" the agency's decision and is "well known to the agency and to the parties." *Clifford v. Pena*, 77 F.3d 1414, 1418 (D.C. Cir. 1996). Similarly, the Court may properly consider a declaration that only "illuminate[s]" the reasons for an agency's action and "contains no new rationalizations." *Olivares v. Transportation Sec. Admin.*, 819 F.3d 454, 464 (D.C. Cir. 2016) (first alteration in original; quotation marks omitted).

The Shaver Declaration provides the Court with background information about the European Regulations implicated by the FAA and EASA's revision to

Paragraph 10(k) of the Guidance. Additionally, the Shaver Declaration explains that the FAA and EASA conformed Paragraph 10(k) with the requirements of the applicable European Union regulation. The declaration contains no new rationalization of the agency's action.

As noted, however, petitioner's challenge is properly rejected even without reference to the declaration, which merely explains the documentation requirements of the applicable European Union law and demonstrates how Paragraph 10(k) notifies the public of those requirements.

3. Petitioner's arguments concerning the Paperwork Reduction Act similarly lack merit. That statute requires that all agency "collections of information" be approved of and assigned a "control number" by the Office of Management and Budget, and establishes that "no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if * * * the collection of information does not display a valid control number." 44 U.S.C. § 3507, 3512(a)(1). Petitioner contends that the documentation requirement in Paragraph 10(k) relating to FAA Form 8130-3 constitutes a "collection of information," and is therefore invalid because FAA Form 8130-3 has not been assigned a control number by the Office of Management and Budget. Pet. Br. 38, 44-45. That argument is mistaken for a number of reasons.

First, the Paperwork Reduction Act "does not afford an independent cause of action; it merely serves as a defense to an enforcement action." *Utility Air Regulatory*

Grp. v. Environmental Protection Agency, 744 F.3d 741, 750 n.6 (D.C. Cir. 2014); *see* 44 U.S.C. § 3512(b) (statutory requirements "may be raised in the form of a complete defense, bar, or otherwise during the agency administrative process or judicial action applicable thereto"). And here, the FAA has brought no enforcement action against petitioner or its members, and contrary to petitioner's assertion (Pet. Br. 45-47, 57-58), there has been no "penalty" of any sort imposed on petitioner, within the meaning of the Paperwork Reduction Act or any other federal law. Petitioner's members' alleged lost business due to repair stations' compliance with European Union requirements does not constitute a "penalty" within the meaning of the Paperwork Reduction Act. *See Blanca Tel. Co. v. Federal Commn'c Comm'n*, 743 F.3d 860, 867 (D.C. Cir. 2014) (rejecting Paperwork Reduction Act claim where the agency "did not subject CTC 'to any penalty'" (quoting 44 U.S.C. § 3512(a))).

Second, even assuming petitioner could rely on some other cause of action (*see* Pet. Br. 46 (appealing to the Court's equitable authority)), petitioner misunderstands the statute's definition of a "collection of information" and the purpose of FAA Form 8130-3 within the context of the Guidance and the Agreement. The Supreme Court has made it clear that the Paperwork Reduction Act's requirements apply only to "information-gathering rules," and not to "rules which require disclosure to a third party rather than to a federal agency." *Dole v. United Steelworkers of America*, 494 U.S. 26, 40 (1990). "[I]nformation requests" covered by the Paperwork Reduction Act "share at least one characteristic: The information requested is provided to a federal

agency, either directly or indirectly. Agencies impose the requirements on private parties in order to generate information to be used by the agency in pursuing some other purpose." *Id.* at 33.

FAA Form 8130-3, which is an equivalent to EASA Form 1, does not collect information for use by the FAA. Rather, FAA Form 8130-3 is directed to third parties, like repair stations, aircraft owners, and EASA; it accompanies the part and communicates basic safety information to any future purchaser of the part, namely repair stations and aircraft owners, who otherwise would risk injury from uncertainty about the airworthiness of the part. It is thus directly analogous to the warning labels and "data sheets" at issue in *Dole, supra*, that the Supreme Court held are not subject to the requirements of the Paperwork Reduction Act. 494 U.S. at 40; *see id.* at 41 (holding that the Paperwork Reduction Act's provisions "cannot reasonably be interpreted to cover rules mandating disclosure of information to a third party").

D. Petitioner's Constitutional Claims Are Groundless.

Petitioner's constitutional claims attempt to restate its statutory claims in constitutional terms. Even if the statutory claims had merit, which they do not, they would not implicate constitutional concerns. Petitioner's due process claim essentially restates its APA rulemaking argument. *See* Pet. Br. 37, 40. Its separation of powers argument reprises the claim that the agency failed to comply with the procedural requirements of the Paperwork Reduction Act. *See id.* at 35. Neither asserted statutory violation would rise to the level of a constitutional claim.

CONCLUSION

For the foregoing reasons, the petition for review should be dismissed for lack of subject matter jurisdiction, due to petitioner's inability to satisfy Article III standing requirements. In the alternative, the petition should be denied.

Respectfully submitted,

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NOVEMBER 2016

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Garamond, a proportionally spaced font.

I further certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B) because it contains 6,004 words, excluding exempt material, according to the count of Microsoft Word.

/s/ John S. Koppel

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and that I served counsel for petitioner by the same means.

/s/ John S. Koppel

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ADDENDUM

TABLE OF CONTENTS

Attachments to ECF Doc. No. 1631207, filed August 19, 2016.

Response Attachment 1:
Declaration of Timothy Shaver
with attached EASA Form 1
and FAA Form 8130-3

[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AVIATION SUPPLIERS ASS'N, INC., Petitioner, v. MICHAEL P. HUERTA, Administrator FEDERAL AVIATION ADMINISTRATION, and THE UNITED STATES OF AMERICA, Respondents.	No. 16-1202

DECLARATION OF TIMOTHY SHAVER

I, Timothy W. Shaver, do hereby declare as follows:

1. I am currently the Manager of the Aircraft Maintenance Division (AFS-300) of the Flight Standards Service of the Federal Aviation Administration (FAA).

2. Among its many responsibilities, the Aircraft Maintenance Division develops and recommends national policies, standards, systems, procedures, and program plans for the continued airworthiness of aircraft. AFS-300 also represents the Flight Standards Service in developing

international agreements, arrangements, policies, and practices involving the maintenance of civil aircraft and the certification of foreign air agencies.

3. I have been an assistant manager or manager within this division since August 2009 and am personally familiar with the provisions of all agreements between the European Union and the United States that affect aircraft maintenance and with guidance material associated with those agreements. In particular, I am personally familiar with the provisions of the Agreement between the United States of America and the European Union on Cooperation in the Regulation of Civil Aviation Safety, T.I.A.S. No. 11-501 (2011) (Agreement), and I participated in the development of the Maintenance Annex Guidance, both which are at issue in this litigation. I am also familiar with the contents of the petitioner's pending motions.

4. The purpose of this declaration is to support the government's response in opposition to the petitioner's Motion for Partial Summary Judgment and Motion for Stay Pending Appeal.

5. Pursuant to its statutory authority, 49 U.S.C. § 44701 et seq., the FAA has regulatory authority over the production and repair of parts used in aircraft registered in the United States, see 14 C.F.R. pt. 21. The FAA requires any person performing work on an aircraft registered in the United States to determine the airworthiness of the part prior to installation of the

part in such aircraft or in any component of such an aircraft. See 14 C.F.R. pt. 43.

6. The European Aviation Safety Agency (EASA), an agency of the European Union, generally regulates the installation of parts used in aircraft registered in a European Union member state. Commission Regulation (EU) No. 1321/2014, Annex I (Part-M); Annex II (Part-145). Generally, the European Union requires repair stations to ensure the airworthiness of a part to be used in an aircraft registered in the European Union, or in a component of such an aircraft, by ensuring that the part is documented by EASA Form 1, or its equivalent. Commission Regulation (EU) No. 1321/2014, Annex I, M.A. 501. A copy of EASA Form 1 is attached to this declaration.

7. In light of the international nature of air commerce, governmental aviation regulations impose requirements that sometimes transcend national boundaries. For example, sometimes an aircraft registered in the European Union needs installation of a part while the aircraft is located in the United States. Additionally, an aircraft registered in the United States may need installation of a part while that aircraft is located in the European Union. As another example, sometimes a component part of an aircraft is shipped from the European Union to the United States for work at a repair station here for return to the European Union, or a component part is shipped from the

United States to the European Union for repair there and return to the United States. As still another example, sometimes repair facilities in Europe purchase parts from sellers located in the United States, and sometimes repair stations in the United States purchase parts from sellers located in the European Union.

8. In 2011, the United States and the European Union entered into a bilateral aviation safety agreement as a step toward "developing a comprehensive system of regulatory cooperation in civil aviation safety." Agreement, preamble. The Agreement was intended to address regulatory coordination problems such as those presented by the examples described in paragraph 7, above. The Agreement provides for the reciprocal acceptance of each party's certifications of airworthiness by the other party, including "Authorized Release Certificate[s] for a new part or appliance." Agreement, Annex 1, § 3.5.1(c). The Agreement also provides for the reciprocal acceptance of documentation required of repair stations. *Id*. Annex 2, § 1.

9. Pursuant to the Agreement, the FAA and EASA jointly issued, and from time to time revise, the Maintenance Annex Guidance. Agreement, Annex 2, §§ 3.1.1, 3.2.1(a). Among other things, the Maintenance Annex Guidance informs repair stations located in one jurisdiction of the actions they must take to comply with the regulatory requirements of the other

jurisdiction. Sellers of aircraft parts located in one jurisdiction may also use the guidance to determine the parts documentation requirements for repair stations using those parts in the other jurisdiction.

10. As relevant here, Paragraph 10(k) of Section B, Appendix 1 of the Maintenance Annex Guidance provides that a repair station located in the United States must ensure that the airworthiness of a part used to repair an aircraft registered in the European Union, or to repair a component of such an aircraft, is documented by using FAA Form 8130-3. Maintenance Annex Guidance, Section B, Appendix 1, ¶ 10(k)(1)(a)(i) (change 6, to become effective Sept. 1, 2016; Paragraph 10(k)(1)(a)(i) partially deferred until Oct.1, 2016). Form 8130-3 is identical in all material respects to EASA Form 1, and is attached to this declaration.

11. Petitioner's challenge stems from a recent change to the wording of paragraph 10(k). The previous version of the Maintenance Annex Guidance stated that the airworthiness release certificate "should be on the FAA Form 8130-3" to meet EASA requirements. Maintenance Annex Guidance, Section B, Appendix 1, ¶ 10(k)(1)(a)(i) (change 4, effective Jan. 29, 2014). Some entities subject to EASA regulation understood that statement, and in particular the use of the word "should," to suggest that

European Union regulations impose no requirement concerning the use of FAA Form 8130-3.

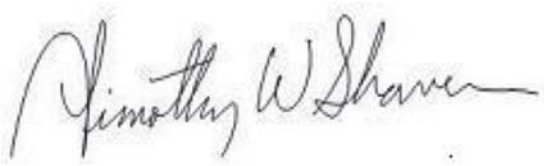
12. The European Union, however, requires the airworthiness of parts used on aircraft registered in the European Union, parts used in components of such aircraft, and parts shipped to repair stations in the European Union for installation on such aircraft to be certified using EASA Form 1, or its equivalent. Commission Regulation (EU) No. 1321/2014, Annex I, M.A. 501, Annex II, 145.A.42. For that reason, the FAA and the EASA changed the operative language of Section B, Appendix 1, Paragraph 10(k) to clarify that an airworthiness release certificate for a part used in an aircraft registered in the European Union "must be on the FAA Form 8130-3." Maintenance Annex Guidance, Section B, Appendix 1, ¶ 10(k)(1)(a)(i) (change 6). As noted above in paragraph 10, FAA Form 8130-3 is identical in all material respects to EASA Form 1.

13. In this litigation, petitioner challenges the change in wording in Paragraph 10(k) and asks this Court to stay the implementation of the change pending this Court's review. But Paragraph 10(k) imposes no legal obligation on any person or entity as a matter of United States law. Rather, it informs persons and entities subject to regulation by the European Union and EASA of the documentation required to certify the airworthiness under

European Union regulations of parts intended for installation on aircraft registered in the European Union. It is, therefore, critical to note that the European Union's regulatory requirements concerning the certification for airworthiness would continue to remain in force as a matter of European Union law, even were the Court to stay the implementation of the change to Paragraph 10(k). Moreover, EASA would continue to be free to investigate any noncompliance with those European Union regulations and to undertake enforcement action to address any violation it finds. Because the FAA does not promulgate European Union regulations or undertake corrective action for violations of those regulations, and because EASA is not a party to these proceedings, an order staying the implementation of the change to Paragraph 10(k) would have no material effect on repair stations installing parts on aircraft registered in the European Union, and thus would have no material effect on petitioner or its members.

I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct to the best of my knowledge.

Dated: August 19, 2016



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Declaration Attachment 1:
EASA Form 1

1. Approving Competent Authority / Country		**2. AUTHORISED RELEASE CERTIFICATE** EASA FORM 1			3. Form Tracking Number
4. Organisation Name and Address:					5. Work Order/Contract/Invoice
6. Item	7. Description	8. Part No.	9. Qty.	10. Serial No.	11. Status/Work
12. Remarks					
13a. Certifies that the items identified above were manufactured in conformity to: ☒ approved design data and are in a condition for safe operation ☒ non-approved design data specified in block 12				14a. ☒ Part-145.A.50 Release to Service ☒ Other regulation specified in block 12 Certifies that unless otherwise specified in block 12, the work identified in block 11 and described in block 12, was accomplished in accordance with Part-145 and in respect to that work the items are considered ready for release to service.	
13b. Authorised Signature		13c. Approval/ Authorisation Number		14b. Authorised Signature	14c. Certificate/Approval Ref. No.
13d. Name		13e. Date (dd mmm yyyy)		14d. Name	14e. Date (dd mmm yyyy)
USER/INSTALLER RESPONSIBILITIES This certificate does not automatically constitute authority to install the item(s). Where the user/installer performs work in accordance with regulations of an airworthiness authority different than the airworthiness authority specified in block 1, it is essential that the user/installer ensures that his/her airworthiness authority accepts items from the airworthiness authority specified in block 1. Statements in blocks 13a and 14a do not constitute installation certification. In all cases aircraft maintenance records must contain an installation certification issued in accordance with the national regulations by the user/installer before the aircraft may be flown.					

EASA Form 1 -MF/145 Issue 2

Declaration Attachment 2:
FAA Form 8130-3

1. Approving Civil Aviation Authority/Country:	2.	3. Form Tracking Number:
FAA/United States	**AUTHORIZED RELEASE CERTIFICATE** **FAA Form 8130–3, AIRWORTHINESS APPROVAL TAG**	
4. Organization Name and Address:		5. Work Order/Contract/Invoice Number:

6. Item:	7. Description:	8. Part Number:	9. Quantity:	10. Serial Number:	11. Status/Work:

12. Remarks:

13a. Certifies the items identified above were manufactured in conformity to:

☐ **Approved design data and are in a condition for safe operation.**
☐ **Non-approved design data specified in Block 12.**

14a. ☐ **14 CFR 43.9 Return to Service** ☐ **Other regulation specified in Block 12**

Certifies that unless otherwise specified in Block 12, the work identified in Block 11 and described in Block 12 was accomplished in accordance with Title 14, Code of Federal Regulations, part 43 and in respect to that work, the items are approved for return to service.

13b. Authorized Signature:	13c. Approval/Authorization No.:	14b. Authorized Signature:	14c. Approval/Certificate No.:
13d. Name (Typed or Printed):	13e. Date (dd/mmm/yyyy):	14d. Name (Typed or Printed):	14e. Date (dd/mmm/yyyy):

User/Installer Responsibilities

It is important to understand that the existence of this document alone does not automatically constitute authority to install the aircraft engine/propeller/article.

Where the user/installer performs work in accordance with the national regulations of an airworthiness authority different than the airworthiness authority of the country specified in Block 1, it is essential that the user/installer ensures that his/her airworthiness authority accepts aircraft engine(s)/propeller(s)/article(s) from the airworthiness authority of the country specified in Block 1.

Statements in Blocks 13a and 14a do not constitute installation certification. In all cases, aircraft maintenance records must contain an installation certification issued in accordance with the national regulations by the user/installer before the aircraft may be flown.

Response Attachment 2:
Maintenance Annex Guidance,
Section B, Annex 1, ¶ 10(k)(1)
(change 4, 2014)

the Agreement, EASA only recognises the dual release FAA Form 8130-3 for component, engine, or propeller maintenance.

g) Please note that the sub clause “except as otherwise specified” is intended for use with two types of deviations as follows:

(1) The case where all required maintenance was not carried out. In this case, list the maintenance not carried out in Block 12 and/or attachments.

(2) The case where the particular maintenance requirement was only EASA-approved and not FAA-approved. Example: an EASA Airworthiness Directive not approved by the FAA.

h) The repair station will identify in the RSM/QCM roster staff authorized to issue the FAA Form 8130-3 on behalf of the repair station.

i) The supplement should include information regarding the acceptability of components authorized for use during maintenance that should comply with the following paragraphs i and j.

j) Component means any component part of an aircraft up to and including a complete powerplant and any operational or emergency equipment.

k) Only the following new and used components may be fitted during maintenance.

(1) New Components.

i) New components should be traceable to the OEM as specified in the Type Certificate (TC) holder’s Parts Catalogue and be in a satisfactory condition for installation. A release document issued by the OEM or Production Certificate (PC) holder should accompany the new component. The release document should clearly state that it is issued under the approval of the relevant AA under whose regulatory control the OEM or PC holder works.

ii) For U.S. OEMs and PC holders, release should be on the FAA Form 8130-3 as a new part.

iii) For all EU Member States, OEMs, and PC holders, release should be in accordance with EASA Part-21 on EASA Form 1 as a new part.

iv) For Canadian OEMs and PC holders release should be on the Canadian Form One as a new part.

v) Standard parts are exempt from the forgoing provisions, except that such parts should be accompanied by a conformity statement and be in a satisfactory condition for installation.

NOTE: EASA Standard Parts Definition: Per AMC M.A.501(c), "Standard Parts are: parts manufactured in complete compliance with an established industry, Agency, competent authority or other Government specification which includes design, manufacturing, test and acceptance criteria, and uniform identification requirements. The specification should include all information necessary to produce and verify conformity of the part. It should be published so that any party may manufacture the part. Examples of specifications are National Aerospace Standards (NAS), Army-Navy Aeronautical Standard (AN), Society of Automotive Engineers (SAE), SAE Sematec, Joint Electron Device Engineering Council, Joint Electron Tube Engineering Council, and American National Standards Institute (ANSI), EN Specifications etc…"

vi) PMA parts may only be accepted as detailed in EASA Part-21 or in Annex 1 of the Agreement.

vii) Engines rebuilt by the production approval holder can be accepted as specified in the Technical Implementation Procedures for Airworthiness and Environmental Certification (TIP- paragraph 5.1.4).

(2) Used Components

i) Used components shall be traceable to maintenance organizations and repair stations approved by the authority who certified the previous maintenance, and in the case of life limited parts, certified the life used. The used component must be in a satisfactory condition for installation and be eligible for installation as stated in the TC holders Parts Catalogue.

ii) An FAA Form 8130-3 issued as a dual maintenance release must accompany used components from EASA-approved U.S.-based 14 CFR part 145 repair stations.

iii) Used components from a 14 CFR part 145 repair station not EASA-approved will not be used even if accompanied by an FAA Form 8130-3.

iv) An EASA Form 1 issued as a maintenance release shall accompany used components from EASA Part-145 approved maintenance organizations not located in the U.S.