

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

UNITED STATE 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

---

Petition for Review of Federal Aviation Administration (FAA) Orders:  
Maintenance Annex Guidance (revision 6)  
and  
FAA Notice 8900.360

---

Reply Brief  
Prepared by Appellant Aviation Suppliers Association, Inc.

---

Counsel for Appellant Aviation Suppliers Association, Inc.:

Jason Dickstein  
Washington Aviation Group, PC and the  
Law Offices of Jason A. Dickstein  
2233 Wisconsin Avenue NW  
Suite 503  
Washington, DC 20007  
jason@washingtonaviation.com  
Tel: (202) 628-6777  
Fax: (202) 628-8948

---

## **CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**

### **A) Parties**

#### Petitioner

The Petitioner in this matter is the Aviation Suppliers Association, Inc.

#### Respondents

The Respondents in this matter are Michael Huerta, Acting Administrator, Federal Aviation Administration, and the United States of America.

### **B) Rulings Under Review**

The rulings under review in this proceeding are the following rulings of the Federal Aviation Administration (FAA) (copies of the rulings are found in the Appendix):

- Maintenance Annex Guidance Between the Federal Aviation Administration for the United States of America and the European Aviation Safety Agency for the European Union (revision six) issued by the Respondents and effective on the 1st day of June, 2016.

- FAA Notice 8900.360 issued by the Respondents on the 2nd day of May, 2016, which sets implementation standards for the Maintenance Annex Guidance.

**C) Related Cases**

The rulings on review have not previously been before this Court or any other court.

**D) Corporate Disclosure Statement**

- The Aviation Suppliers Association, Inc. does not have any parent corporation and no publicly held corporation owns 10% or more of its stock.
- The Aviation Suppliers Association, Inc. is a non-profit trade association that represents the interest of the aircraft parts distribution community.

**TABLE OF CONTENTS**

Contents

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES ...2  
 TABLE OF CONTENTS .....3  
 TABLE OF AUTHORITIES .....5  
 GLOSSARY .....8  
 REFERENCE TO APPENDIX AND ADDENDUM .....9  
 INTRODUCTION .....9

SUMMARY OF THE ARGUMENT .....	10
ARGUMENT .....	13
1. ASA Has Standing; the Government Claim that MAG 6 Merely Restates European Law Ignores the Clearly Elucidated Exceptions in the European Regulations .....	13
a) What Does European Law Really Say?.....	15
b) What Exception is Found in EASA Part 145?.....	17
c) The MAG Imposes a New Documentation Standard that is Inconsistent with European Law.....	18
2. A Longstanding Practice of Entering Into Bilateral Agreements Does Not Authorize this MAG-Based Documentation Requirement.....	19
a) The MAG is not one of the Bilateral Agreements.....	19
b) The MAG Contradicts the Maintenance Annex .....	21
c) There is No Precedent for Imposing a Documentation Requirement on U.S. Domestic Transactions through a Sole Executive Agreement .....	25
3. The Government Still Cannot Find a Statutory Basis for the MAG (Nor for the Maintenance Annex).....	26
4. The MAG is Not a Mere Interpretive Rule.....	28
5. The Government Mischaracterizes the Maintenance Annex and the Remedy in this Case: ASA is Only Seeking Injunction Against the MAG Documentation Requirements.....	29
6. The Government Effort to Expand the Record Should be Rebuffed.	31
7. The Government Uses Superseded Precedent to Mislead the Court About the Language of the Paperwork Reduction Act.....	33
8. ASA’s Constitutional Claims are Valid and Unrefuted.....	36
CONCLUSION.....	38
SUPPLEMENTAL ADDENDUM.....	41
Extract from House Rep. 104-37 (1995) .....	41
CERTIFICATE OF SERVICE.....	45

## **TABLE OF AUTHORITIES**

### **Cases**

** <u>Aid Ass'n for Lutherans v. United States Postal Serv.</u> , 321 F.3d 1166 (D.C. Cir. 2003) .....	37
** <u>Armstrong v. Exceptional Child Ctr.</u> , ___ U.S. ___, 2015 U.S. LEXIS 2329 (2015).....	34
<u>Chamber of Commerce of the United States v. Reich</u> , 74 F.3d 1322 (D.C. Cir. 1996) .....	37
<u>Citizens to Preserve Overton Park v. Volpe</u> , 401 U.S. 402 (1971) .....	32
<u>City of Dania Beach v. FAA</u> , 628 F.3d 581 (D.C. Cir. 2010).....	33
** <u>Consumers Union of U. S., Inc. v. Kissinger</u> , 506 F.2d 136 (D.C. Cir. 1974)...	25
<u>Cousin v. District of Columbia</u> , 142 F.R.D. 574 (D.D.C. 1992) .....	35
<u>Dole v. United Steelworkers of America</u> , 494 U.S. 26 (1990).....	34, 35
** <u>IMS, P.C. v. Alvarez</u> , 129 F.3d 618 (D.C. Cir. 1997) .....	31, 33
** <u>Morton v. Ruiz</u> , 415 U.S. 199 (1974) .....	24
** <u>Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.</u> , 463 U.S. 29 (1983) .....	31
<u>Perez v. Mortg. Bankers Ass'n</u> , ___ U.S. ___, 2015 U.S. LEXIS 1740 (2015) .....	28

Authorities upon which we chiefly rely are marked with asterisks.

<u>Roeder v. Islamic Republic of Iran</u> , 195 F. Supp. 2d 140 (D.D.C. 2002) .....	34
<u>Rogers v. Lincoln Towing Servs., Inc.</u> , 771 F.2d 194 (7th Cir. 1985) .....	35
<u>Shalala v. Guernsey Memorial Hospital</u> , 514 U. S. 87 (1995)).....	28
** <u>United States v. Guy W. Capps, Inc.</u> , 204 U.S. 655 (4 <sup>th</sup> Cir. 1953) .....	25

**Statutes**

104 P.L. 13 § 2 (May 22, 1995).....	35
** 44 U.S.C. § 3501 [Addendum at 22] .....	34
** 44 U.S.C. § 3502 [Addendum at 38] .....	35
44 U.S.C. § 3506 [Addendum at 41] .....	34
44 U.S.C. § 3507 [Addendum at 45] .....	34
49 U.S.C. § 106 [Addendum at 50] .....	26
49 U.S.C. § 40104 [Addendum at 70] .....	26, 27
49 U.S.C. § 40105 [Addendum at 71] .....	27
49 U.S.C. § 40113.....	27

**Other Authorities**

** H. Rep. No. 104-37 (1995) [Supplemental Addendum to this Brief] .....	35
--	----

**Rules**

D.C. Rule of Professional Conduct 3.3.....34

**Regulations**

14 C.F.R. § 1.1 .....27

**Executive Agreements**

Agreement on Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501 [Addendum at 200]. ..... 20, 21, 30

Agreement on Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501, Annex II (Maintenance) [Addendum at 221] ..... 21, 22, 23, 24, 30

**Foreign Regulations**

(EU) Reg. No. 1321/2014, Annex I, M.A.501 [SA at 1]...... 14, 15, 16, 18

(EU) Reg. No. 1321/2014, Annex I, M.A.504 (App’x at 130)......17

(EU) Reg. No. 1321/2014, Annex II, 145.A.42 (App’x at 131)...... 17, 18

**Guidance**

Maintenance Annex Guidance Between the Federal Aviation Administration for the United States of America and the European Aviation Safety Agency for the European Union (June 1, 2016) (revision six) [App’x at 3].2, 3, 8, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 38, 39

## **GLOSSARY**

For the convenience of the Court, all acronyms defined in each of the briefs are included, here.

APA	Administrative Procedures Act (5 U.S.C. 551 et seq.)
BASA	Bilateral Aviation Safety Agreement – in the context of this brief, this means the <u>Agreement between the United States and the European Community on Cooperation in the Regulation of Civil Aviation Safety</u>
EASA	European Aviation Safety Agency
FAA	Federal Aviation Administration
MAG	Maintenance Annex Guidance - in the context of this brief, this means the <u>Maintenance Annex Guidance Between the Federal Aviation Administration for the United States of America and the European Aviation Safety Agency for the European Union</u> (revision six)
PRA	Paperwork Reduction Act (44 U.S.C. 3501 et seq.)
SA	Supplemental Appendix

## **REFERENCE TO APPENDIX AND ADDENDUM**

Pertinent elements of the record are set forth in a separately bound appendix. References to this appendix will be in the form “App’x at <<page#>>.” The Government filed a supplemental appendix. References to this supplemental appendix will follow the format established in the government brief: “SA at <<page#>>.”

Pertinent statutes, regulations and other materials are set forth in a separately bound Addendum. References to this Addendum will be in the form “Addendum at <<page#>>.”

## **INTRODUCTION**

In its brief, the Government goes to considerable lengths to avoid confronting ASA’s arguments. The Government mischaracterizes European law by emphasizing one half of a regulation and ignoring the second half (the second half references the exceptions that are described in ASA’s Opening brief), and then claims that the Maintenance Annex Guidance (MAG) at issue in this case is consistent with the mischaracterized regulation and therefore ASA does not have standing to bring its claims.

The Government also ignores ASA's Constitutional arguments by recharacterizing them as statutory strawmen – and knocking down the statutory strawmen. Even when knocking down the statutory strawmen, though, the Government must turn to laws and precedent that were changed twenty years ago in order to support its position. Reading the law as it is written, and as it exists today (not as it existed before it was changed), makes it clear that the Government is defending a documentation requirement in the Maintenance Annex Guidance that violates fundamental Constitutional standards.

### **SUMMARY OF THE ARGUMENT**

In its response brief, the Government resorts to ignoring relevant regulations and citing to superseded precedent. This brief addresses each of the Government claims, and shows that they do not undermine the conclusion that the Maintenance Annex Guidance, or MAG, violates both U.S. Constitutional clauses and U.S. statutes.

The Government claims that ASA does not have standing because the MAG merely restates European law and thus an effect cannot be attributed to the FAA. This Reply explains that the MAG is inconsistent with European law, and also inconsistent with the US/EU Maintenance Annex that it is supposed to explain. Consequently, it does not 'merely' restate European law, it does have an effect,

and the FAA (as publisher and enforcer of the MAG) remains responsible for that effect.

The Government also attempts to insulate its MAG action by claiming that the issuance of bilateral agreements is a long-standing practice. The MAG is not a bilateral agreement. The MAG is a guidance document for one Annex to a bilateral agreement. Further, the documentation language at the heart of this case neither exists, nor is authorized by, the Bilateral Agreement nor the Annex.

The government adds three more statutory references in its effort to find a basis for the documentation provisions in the MAG. The additional provisions, like the ones addressed in ASA's Opening Brief, don't even authorize any maintenance agreement, let alone the specific documentation requirements found in the MAG (remember – those documentation requirements conflict with Congressional intent reflected in statutory law).

The Government claims that the MAG is a mere interpretive rule and so it should be exempt from the APA Notice-and-Comment requirements. But an agency only has the power to issue interpretive rules related to the statutes that the agency administers. Congress has issued no statute that can be interpreted here and the FAA admits that this MAG documentation language interprets European regulations. The FAA has no power to issue an interpretive rule to interpret foreign laws that Congress has not delegated to the FAA.

The Government mischaracterizes the FAA's role under the US/EU Maintenance Annex by suggesting that the FAA inspects to enforce all EASA repair station regulations. This position contradicts the US/EU Maintenance Annex, which directs the FAA to only inspect to the Special Conditions (to the exclusion of other European standards, which have been characterized in the Annex as insufficiently "significant").

The Government also mischaracterizes ASA's litigation position, and in reply ASA explains that ASA is only seeking an injunction against the enforcement of the MAG-based requirement that repair stations must always obtain an 8130-3 document for each part produced by a US producer.

The Government claims that the Paperwork Reduction Act does not regulate disclosures to third parties. The government relies on a 25 year-old case that was superseded by statute over 20 years ago. Either Shepardizing that case, or reading the plain language of the current statute (which very explicitly includes disclosure to third parties within its scope), would have shown the government that its argument is simply wrong.

And finally, the government claims without any supporting argument that ASA's Constitutional arguments restate the statutory arguments that the Government has chosen to attempt to refute. The Constitutional arguments are actually the primary arguments in ASA's Opening Brief. As there is no supporting

argument for the Government's bald claims, ASA merely references its earlier Constitutional arguments and asks the Court to rule in its favor.

## **ARGUMENT**

### **1. ASA Has Standing; the Government Claim that MAG 6 Merely Restates European Law Ignores the Clearly Elucidated Exceptions in the European Regulations**

The Government claims that ASA does not have standing because ASA's case fails to exhibit injury, causation and redressability. ASA addressed all three of these elements in its opening brief. ASA Opening Brief at 26-28. Rather than directly dispute the ASA claims about injury, causation and redressability, the Government instead alleges that the harm in this case comes from the European Regulations, alone, and alleges that the MAG has done nothing to change the European Regulations.<sup>1</sup> The Government concludes that the FAA is therefore not the cause of the injury (and therefore cannot be the source of a remedy).

The Government's argument relies on the incorrect assumption that the documentation requirement of the MAG is consistent with the European

---

<sup>1</sup> The essence of this claim is later repeated when the government alleges that the MAG is not a rule, and it merely "informs interested parties of actions they can take to comply with [EU] regulatory requirements." Brief for Respondents at 17.

Regulations. As discussed in the opening brief, the MAG provisions are inconsistent with the plain language of the European regulations, and the MAG is also inconsistent with the US/EU Maintenance Annex (as discussed in section 2(b) of this brief).<sup>2</sup>

The Government argues that the MAG is consistent with the European regulations. Brief for Respondents at 11-12. The Government is only able to reach this conclusion by conveniently ignoring half of the language of the relevant regulation. This omission is both misleading and prejudicial.

The Government quotes the relevant regulation, M.A.501 (which calls for documentation), and ignores and/or omits the relevant second half of that regulation (which incorporates the exceptions to the documentation paradigm). If one examines the entire rule (including the explicit exceptions), then it is obvious that the MAG provision requiring 8130-3 tags for all US-produced parts is inconsistent with European law (and therefore does more than merely ‘report’ European law).

---

<sup>2</sup> As discussed in ASA’s opening brief, the other problem with the Government’s argument is that the FAA administers and enforces the MAG; so it cannot disclaim its role in enacting the requirements of the MAG.

a) What Does European Law Really Say?

The Government argues that the MAG merely restates European law. Brief for Respondents at 18. They cite to EASA M.A.501 and claim European regulation “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.” Brief for Respondents at 20; see Brief for Respondents at 3, 4, 7, 12, 13 (citing M.A.501 and repeating the notion that this regulation only permits EASA Form One or equivalent – while omitting the second half of the rule).<sup>3</sup>

But the European rule does not end, there. If one reads the **entire** rule, then one can see that the second half of the rule includes exceptions. This “unless clause” describes the exceptions to the rule and opens up the “safety valve”<sup>4</sup> that permits other categories of parts to be received by repair stations (including categories of parts that may be received without 8130-3 tags).

---

<sup>3</sup> In footnote 6 of the Brief for Respondents, the Government pledges to address the exceptions found in Annex II, but then, instead, the Government examines the obligation for a repair station to document the completion of the work it performs (which is a wholly different use of documentation). It is unclear whether this is a deliberate misdirection or simply a misunderstanding of the EU regulations.

<sup>4</sup> The regulatory mechanism of the safety valve is described in ASA’s Opening Brief at 20-22.

The safety valve is inconsistent with the MAG’s simple ‘documentation-only’ approach; and the safety valve is referenced in the second half of the rule that the Government cites:

**M.A.501 Installation**

(a) 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 Annex I (Part-21), Subpart Q, *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 [emphasis added] [SA at 1].*

When you examine the entire rule, you see that the rule requires “EASA Form 1 or equivalent ... unless otherwise specified in ... Annex II (Part-145) ....”

So the European law recognizes that there are exceptions to this general rule of component documentation – and that those exceptions can be found in Part 145.

The Government’s entire standing argument – that ASA lacks standing because the MAG merely reports European law – relies on reading only the first half of M.A.501 and ignoring the second half of that rule. The argument falls apart when one notices the ‘unless’ clause of the regulation.

b) What Exception is Found in EASA Part 145?

EASA 145.A.42 is one of the rules in Annex II of the EU regulations. See (EU) Reg. No. 1321/2014, Annex II, 145.A.42 (App'x at 131). This rule is an element of EASA Part 145. As ASA noted in the opening brief, EASA 145.A.42 includes important 'safety valves' to the European documentation requirements. Those safety valves allow repair stations to accept new parts without an EASA Form One under several different categories; one of those categories is the 'unserviceable' category.

Some Americans find themselves confused by the notion of accepting a new part under the 'unserviceable' category because in the United States the term often connotes something that is not in working order; but in the European regulatory system "unserviceable" is a specifically defined term – and the European definition includes those parts that do not bear the proper documentation. (EU) Reg. No. 1321/2014, Annex I, M.A.504(a)(3) (App'x at 130).

When a part is accepted as "unserviceable," it must be segregated from serviceable parts. (EU) Reg. No. 1321/2014, Annex I, M.A.504(b) (App'x at 130). It may then be inspected to confirm its condition and if its airworthy condition can be verified then it may be stored as serviceable. The repair station is expected to record the inspection as a maintenance activity and may issue an 8130-3 for the previously 'unserviceable' component. AMC M.A.613(a) ¶1 [Addendum at 279].

By ignoring the second half of M.A.501 – the half that exists within the “unless” clause – the Government is misleading the Court of Appeals as to the true requirements of the EASA regulations. While the Government may be comfortable ignoring the “unless” clause, the industry cannot ignore it without grounding aircraft (because they would be unable to receive and use many of the parts that are required for safe flight, but that do not bear an EASA Form One or an 8130-3 tag). And the Court cannot ignore it, either.

c) The MAG Imposes a New Documentation Standard that is Inconsistent with European Law

The MAG insists that each new part produced in the United States must bear an 8130-3 in order to be accepted by the repair station. MAG at Section B, App’x 1, para. 10(k)(1)(a)(i) (App’x at 102) .

By requiring 8130-3 tags on all new parts produced in the United States, the MAG closes the safety valves found in EASA 145.A.42. These are the exceptions to the general rule of documentation that are cross-referenced by the “unless” clause in M.A.501.

Because the European regulations provide the safety valves (like the unserviceable safety valve) but the MAG does not, the MAG differs from European regulations in an important way. This difference – and the implementation of that difference that is being enforced by the FAA - is the cause

of the injury being felt by aircraft parts distributors who are now unable to sell US-produced aircraft parts without 8130-3 tags to U.S.-based dual-certificated repair stations.

**2. A Longstanding Practice of Entering Into Bilateral Agreements Does Not Authorize this MAG-Based Documentation Requirement.**

The Government argues that the FAA has a longstanding practice of entering into bilateral agreements, and that therefore the introduction (through the MAG) of documentation requirements for domestic transactions is permissible. Brief for Respondents at 15-17. The mere fact that the FAA enters into bilateral aviation safety agreements is immaterial to our case for the following three reasons:

a) The MAG is not one of the Bilateral Agreements

The first problem with this Government argument is that the MAG is not one of the FAA's bilateral agreements.

The bilateral agreement recognizes that the EU and US systems are sufficiently similar that we can rely on each other's systems.<sup>5</sup> The Annex describes the specific standards for such reliance.<sup>6</sup>

The MAG was not designed to be a medium for setting new standards nor coming to new agreements – it was meant to “detail[] EASA, FAA, and applicant actions required to be taken in order for an FAA-certificated 14 C.F.R. part 145 repair station primarily located in the U.S. to be approved to EASA Part-145.”

MAG Introduction [App'x at 14] . The MAG is supposed to be a mere explanation of the standards that were set in the US/EU Maintenance Annex to the bilateral agreement.

The Government lists a series of bilateral agreements and their TIAS citations. Brief of Respondents at 15. There is a bilateral agreement between the U.S. and the European Union. Agreement on Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501 [Addendum at 200]. The MAG is not this agreement. The fact that the FAA enters into such bilateral agreements has no

---

<sup>5</sup> The Bilateral Agreement explains that:

“[T]he Parties agree that each Party's civil aviation standards, rules, practices and procedures are sufficiently compatible to permit reciprocal acceptance of approvals and findings of compliance with agreed upon standards made by one Party on behalf of the other as specified in the Annexes.”

Agreement on Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501, Article 5(A) [Addendum at 209].

<sup>6</sup> “The Parties also agree that there are technical differences between their civil aviation systems and they are addressed in the Annexes.” Id.

bearing on the MAG, because those agreements do not establish illegal collections of information that violate the letter and the spirit of the US Constitution and statutes, and because the MAG is a mere handbook and consequently is a fundamentally different thing from those bilateral agreements.

b) The MAG Contradicts the Maintenance Annex

ASA is not raising an objection to the actual Agreement on Cooperation in the Regulation of Civil Aviation Safety with Europe. The offensive documentation provision is not found in this Bilateral Agreement; nor is the provision found in the US/EU Maintenance Annex. In fact, the language of the Bilateral and the US/EU Maintenance Annex appears to *prevent* this MAG language.

The MAG language that is at the heart of this appeal is contradicted by the plain language of the Annex that it is supposed to reflect.

The Government suggests that the FAA audits repair stations to the EASA regulations. Brief of Respondents at 19. This not accurate, because the FAA only audits to the Special Conditions of the Maintenance Annex (and not to all of the EASA regulations); the Maintenance Annex clarifies that a US repair station must meet three conditions to obtain a European repair station certificate: (1) compliance with the FAA repair station regulations (2) compliance with the EASA Special Conditions found in the US/EU Maintenance Annex and (3) the FAA must recommend and endorse the repair station's application. Agreement on

Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501, Annex II, at ¶ 4.4.1 [Addendum at 227] [hereinafter, this Annex II shall be called “US/EU Maintenance Annex”]. The FAA inspects for compliance to these standards; and these are the only criteria: the FAA is not authorized, under the bilateral agreement or under the US/EU Maintenance Annex, to inspect for compliance to other European standards beyond the EASA Special Conditions.

So the list of EASA Special Conditions is very important to our analysis, because that list is the limit of the additional criteria for FAA compliance investigation under the US/EU Maintenance Annex. The US/EU Maintenance Annex lists the EASA Special Conditions and it also describes the criteria under which requirements become Special Conditions. The EASA Special Conditions each meet two criteria:

- First they are in the European regulations but not in the US regulations (e.g. they are differences), and
- Second they are “significant enough that they must be addressed.” See US/EU Maintenance Annex at ¶ 2.5 (defining the term “Special Conditions” for the purpose of the Maintenance Annex) [Addendum at 223].

This means that differences that are not EASA Special Conditions have not been identified as significant enough to need to be addressed (even though those additional differences may exist). By limiting the Special Conditions only to ‘significant’ items, the FAA and EASA have eliminated from consideration those

items that were not important – this elimination helps to streamline the dual-certification process.

The documentation requirement from the MAG, which is at the heart of this litigation, is not one of the EASA Special Conditions. See US/EU Maintenance Annex App’x 1 (listing the EASA Special Conditions) [Addendum at 237-39]. None of the EASA Special Conditions even suggest that a documentation requirement is a potential Special Condition. Id.

The MAG is not an authorized method of amending the Annex. See id. at Article 19(B) (committing the power to amend the annexes the Bilateral Oversight Board)<sup>7</sup> [Addendum at 219]. Because the Annex was not, itself, amended to include the documentation requirements as a special condition, the documentation requirements have not become part of the EASA Special Conditions that are recognized in the Annex.

---

<sup>7</sup> The Government states that the Joint Maintenance Coordination Board (JMCB) has the power to develop “guidance for processes covered by the Annex.” Brief of Respondents at 16. While this is true, the JMCB’s power is limited to guidance on processes covered by the Annex. Agreement on Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501, Annex II, ¶ 3.2.1(a). Documentation requirements for parts is not a subject covered by the Annex, and in fact the Annex does not cover any subject that would be related to such a requirement. The only “Board” that has the power to amend the Annexes is the Bilateral Oversight Board, which was not responsible for the MAG. Id. at Article 3 (defining the term “Board” as the Bilateral Oversight Board for purposes of the Agreement). The JMCB does not have the power to add new requirements to the Annex through the MAG.

Upon renewal, the criteria for qualifying for renewal of the EASA 145 certificate continue to be limited to the FAA’s own regulations and the EASA Special Conditions. See, e.g., US/EU Maintenance Annex App’x 1, ¶ 1.2(a) (explaining that upon application for renewal, the repair station must allow “the FAA on behalf of EASA, to inspect it for continued compliance with the requirements of the 14 CFR part 145 and these Special Conditions”) [Addendum at 240].

So the second problem, in summary, is that the US/EU Maintenance Annex makes it clear that the only additional European requirements that must be met by a dual-certificated repair station in the U.S. are the EASA Special Conditions (not all EU rules). The EASA Special Conditions published in the Maintenance Annex do not include the documentation requirements found in the MAG. The EASA Maintenance Annex does not allow for expansion of the Special Conditions by changing the MAG language. Thus, by imposing the MAG documentation requirements, the FAA is violating the terms of the US/EU Maintenance Annex which limits the additional FAA inspection criteria to the EASA Special Conditions.<sup>8</sup>

---

<sup>8</sup> Adding the documentation requirement through the MAG is also arbitrary and capricious, because this process fails to follow the US/EU Maintenance Annex procedures for how to add new Special Conditions. E.g. Morton v. Ruiz, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent

c) There is No Precedent for Imposing a Documentation Requirement on U.S. Domestic Transactions through a Sole Executive Agreement

The third problem with the Government's argument is that while the medium of bilateral agreements may have some precedent, the specific issue with the MAG – the inclusion of novel documentation requirements – is unprecedented among the FAA's bilateral agreements.

The mere fact that Congress has permitted the FAA to enter into innocuous executive agreements in the past does not mean that Congress has acquiesced to an executive agreement that contradicts stated Congressional goals from a variety of statutory sources (including the Paperwork Reduction Act) and that usurps the Congress' power to regulate Commerce without Congressional authority or delegation. In fact, the courts have stated that this is not permitted. Consumers Union of U. S., Inc. v. Kissinger, 506 F.2d 136, 142 (D.C. Cir. 1974) (explaining that without a delegation of power from Congress, the executive would be constrained from affecting Commerce); United States v. Guy W. Capps, Inc., 204 U.S. 655, 659-60 (4<sup>th</sup> Cir. 1953) (“whatever the power of the executive with respect to making executive trade agreements regulating foreign commerce in the absence of action by Congress, it is clear that the executive may not through

---

upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required”).

entering into such an agreement avoid complying with a regulation prescribed by Congress”).

If the Court were to accept the Government’s argument, then this would mean that the FAA could promulgate *any* standard it wanted to, so long as it did so in a bilateral agreement.

The mere fact that the medium has been authorized in the past does not mean that the specific ruling is insulated from review merely because it appears in that medium (especially in a case like this where the specific ruling is inconsistent with both US and EU legal standards). By analogy, the fact that the FAA has been permitted to issue rules in the past, does not mean that the FAA would be permitted to issue a rule that violated Constitutional and statutory standards.

### **3. The Government Still Cannot Find a Statutory Basis for the MAG (Nor for the Maintenance Annex)**

The Government lists five possible statutory bases that it claims authorize the FAA to enter into cooperative agreements. Brief of Respondents at 14-15. Two of those (49 U.S.C. §§ 106(l)(6) and 40104(b)) were fully addressed in the ASA Opening Brief and do not need to be re-analyzed (neither of them authorizes the FAA to enter into an agreement like the MAG to impose documentation requirements on US-based repair stations).

The other three statutory bases cited by the Government are 49 U.S.C. §§ 40104(a), 40105(b)(1)(A) and 40113.

Section 40104(a) authorizes the FAA to distribute civil aviation information. There is nothing in this clause that authorizes a cooperative agreement, nor the imposition of a documentation requirement on domestic transactions.

Section 40105(b)(1)(A) directs the FAA Administrator to “act consistently with obligations of the United States Government under an international agreement.” This does not provide independent authority to enter into agreements. This clause arises immediately after authority to negotiate agreements “to establish or develop air navigation, including air routes and services.” 49 U.S.C. § 40105(a). Although those are cooperative agreements, they are not cooperative agreements that have anything to do with maintenance or documentation of parts transactions. So this cannot be used as the statutory basis for the MAG documentation provisions.

Section 40113 authorizes the FAA to “provide safety-related training and operational services to foreign aviation authorities.” Obviously, we are not talking about safety-related training when we are talking about the MAG documentation provision. “Operational control” is a term related to the flight of aircraft. 14 C.F.R. § 1.1. Operational services are generally recognized to reflect services related to flight operations, like control tower operation (the Operational Services

Directorate was a name previously used by the FAA to describe a unit within the FAA's Air Traffic Organization). So the authority to provide operational services to foreign authorities cannot be extended to imposing a documentation requirement on domestic transactions.

#### **4. The MAG is Not a Mere Interpretive Rule**

The Government argues that the MAG is a mere interpretive rule because it “informs interested parties of the requirements of European Union.” Brief for Respondents at 18. This is wrong for at least two reasons. First, the MAG imposes a new standard that is inconsistent with European Law. This first point was discussed in ASA's opening brief at Statement of the Case section 5 [pp.20-22] and Argument section 7(f) [p.58], and it is addressed again in section 1 of this Reply Brief.

Second, an interpretive rule must interpret domestic law – not foreign law – because the agency may only interpret the rules it Administers.

“[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.” Perez v. Mortg. Bankers Ass'n, \_\_\_ U.S. \_\_\_, 135 S. Ct. 1199, 1204 (2015) (relying on Shalala v. Guernsey Memorial Hospital, 514 U. S. 87, 99 (1995)).

European law has not been adopted by Congress. The FAA is not authorized by Congress to administer European law. Therefore, if the MAG interprets European law, that is not an “interpretive rule” that is exempt from the APA’s Notice-and-Comment provisions because it is not interpreting a statute or rule that the FAA administers.

**5. The Government Mischaracterizes the Maintenance Annex and the Remedy in this Case: ASA is Only Seeking Injunction Against the MAG Documentation Requirements**

The Government states that

“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 European regulations.” Brief for Respondents at 13.

This statement is a strawman. It is easily erected and easily knocked down.

But it misrepresents ASA’s position, and it misrepresents the FAA’s responsibilities.

First, ASA has not asked for an injunction against repair stations documenting airworthiness. It is normal for a repair station to document their work when the work is complete (for example, a repair station that inspects a part without 8130-3, and then find that the part is airworthy, may issue a document to record that finding). ASA’s concern is with the documentation that must accompany the part in order to get the part into the repair station in the first place.

The offensive MAG provision is the language that requires all US-produced parts that are received for use to have been documented as new parts on an 8130-3 tag. See MAG at Section B, App’x 1, para. 10(k)(1)(a)(i) (App’x at 102) (“For new components from a U.S.-PAH, release must be documented on an FAA Form 8130-3 as a new part”). The MAG provision is inconsistent with the actual European requirements, and also it is not an element that the FAA is supposed to be investigating under the Maintenance Annex. See US/EU Maintenance Annex App’x 1 (listing the EASA Special Conditions – the documentation requirement is not one of them) [Addendum at 237-39].

Second, the FAA does not have the responsibility to assess compliance with all of the European regulations. The philosophy of the bilateral agreement is that the US and EU each accept the systems and findings of the other authority, and the Special Conditions represent the only additional findings that must be made in order to permit such reciprocal acceptance of findings. Agreement on Cooperation in the Regulation of Civil Aviation Safety, TIAS 11-501, Article 5(A) [Addendum at 209]. The US/EU Maintenance Annex states very clearly that the FAA’s responsibility is to assess compliance with (1) FAA regulations and (2) the EASA Special Conditions that are described in the Maintenance Annex. US/EU Maintenance Annex at ¶ 4.4.1 (for initial applications) [Addendum at 227]; US/EU Maintenance Annex App’x 1, ¶ 1.2(a) (for renewal applications) [Addendum at

240]. The FAA does not have any domestic authority to assess compliance with all of the EASA regulations, and the US/EU Maintenance Annex does not assign such responsibility. Therefore, there is no need for the FAA to “be in a position to make determinations that U.S.-based repair stations comply with” all of the European regulations.

## **6. The Government Effort to Expand the Record Should be Rebuffed**

Rather than relying on the record as the sole support for its arguments, the Government relies on the Shaver Declaration. See Brief of Respondent at 3, 4, 5, 6, 7, 11, 12, 17, 21, 22. Shaver’s declaration was created in response to ASA’s Motions in this case. Shaver Declaration at ¶3. This is inappropriate – it is, in fact, the very essence of the sort of post hoc rationalizations that courts reject. Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 50 (1983) (explaining that courts may not accept the agency's *post hoc* rationalization for an agency action); IMS, P.C. v. Alvarez, 129 F.3d 618, 624 (D.C. Cir. 1997) (rejecting “*ex post* supplementation of the record, which is not consistent with the prevailing standards of agency review”).

Because there was no public docket in this case, there was no formal ‘record’ until a record was compiled for litigation. In submitting the record to the Court, the FAA and the Government were permitted to select any items that they

cared to select and to claim that those represented the record on appeal.<sup>9</sup>

Nonetheless, the Shaver Declaration was not submitted as a part of the record.

The Shaver Declaration was specifically prepared after he had seen ASA's Motions in this appeal. Shaver Declaration at ¶3. As a consequence, there is no way that FAA Director John Duncan (who signed the MAG for the FAA) could have relied on that Declaration, and the record reveals no evidence that Shaver shared his thoughts with Mr. Duncan before he signed the MAG.

There is a fundamental lack of fairness in relying on Shaver's Declaration instead of relying on the record. ASA moved to supplement the record in order to show the harm associated with the MAG. The Government opposed that motion – claiming that the court's decision on the MAG should be made solely upon the record. Agency Response to Petitioner's Motions at 8 (filed Aug. 19, 2016) (quoting Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 420 (1971) and stating that “[t]he “whole record” consists exclusively of “the full administrative record that was before the [agency decision-maker] at the time he made his decision”). ASA's motion was denied. Aviation Suppliers Ass'n v. Huerta, Order (Sept. 13, 2016). In the Order denying ASA's Motion to Supplement, the Court

---

<sup>9</sup> When it selected the items that made up the 'record,' the Government did not offer any communications between FAA and EASA. In this age of emails, there were no email communications that were part of the record. There were no notes or minutes from meetings between FAA and EASA. The MAG amendment appears to have sprung up out of thin air.

explained that “[i]f a court is to review an agency’s action fairly, it should have before it neither more nor less information than did the agency when it made its decision.” Id. (quoting IMS, P.C. v. Alvarez, 129 F.3d 618, 623 (D.C. Cir. 1997)).

Here, the Government seeks to supplement the record without a motion as they use Shaver’s Declaration as the factual basis for their brief. His declaration is used to defend the MAG throughout the brief on points that are not supported by the record. The Government has not described any unusual circumstance that would justify supplementing the record with Shaver’s Declaration, and the DC Circuit does “not allow parties to supplement the record unless they can demonstrate unusual circumstances justifying a departure from this general rule.” City of Dania Beach v. FAA, 628 F.3d 581, 590 (D.C. Cir. 2010).

The Government’s effort to engage in a *de facto* supplement of the record should be rebuffed, and all references to the Shaver Declaration (and the claims supported by those references) should be stricken from the Brief for Respondents.

#### **7. The Government Uses Superseded Precedent to Mislead the Court About the Language of the Paperwork Reduction Act**

ASA asked the Court to recognize the explicit statement of Congressional intent printed in the Paperwork Reduction Act, and to recognize that the MAG directly contravenes that explicit statement of intent (and it is therefore a sole executive agreement that contravenes Congressional intent). In this usage, the

Paperwork Reduction Act represents a rule-of-decision (and not an independent cause-of-action) that is analogous to the use of the Supremacy clause in the Armstrong case. Armstrong v. Exceptional Child Ctr., \_\_\_ U.S. \_\_\_, 2015 U.S. LEXIS 2329 (2015). The Act establishes a clear record of Congressional intent. E.g. 44 U.S.C. § 3501 (establishing Congressional intent by describing the purposes of the Act, which include “minimize[ing] the paperwork burden ... resulting from the collection of information”); 44 U.S.C. § 3506 (requiring agencies to reduce information collection burdens on the public); 44 U.S.C. § 3507 (prohibiting any agency from sponsoring a collection of information unless the PRA prerequisites have been met).

Rather than disputing this clear Congressional intent, the Government attempts to sidestep the Paperwork Reduction Act by claiming that the Paperwork Reduction Act does not apply to third party disclosures. It relies on Dole for this conclusion. Brief for Respondents at 23-24 (citing Dole v. United Steelworkers of America, 494 U.S. 26, 40 (1990)).

Dole is no longer valid law on this point.<sup>10</sup> Congress changed the Paperwork Reduction Act in 1995 by adding third party disclosures to the scope of

---

<sup>10</sup> In fact, this may violate D.C. Rule of Professional Conduct 3.3(a)(1), which prohibits false statements of law. Cf. Roeder v. Islamic Republic of Iran, 195 F. Supp. 2d 140, 184 (D.D.C. 2002) (explaining that under this Rule 3.3, attorneys have a “duty to research and acknowledge adverse precedent and law”). It may also rise to the level of a sanctionable offense. E.g. Rogers v. Lincoln

the law. 104 P.L. 13 § 2 (Enacted May 22, 1995). This was a direct response to the Dole decision. See H. Rep. No. 104-37 (1995) (Bill Discussion, section D: explaining that the Paperwork Reduction Act of 1995 is meant to overturn Dole, and explaining three reasons why Congress always intended third party disclosures to fall within the scope of the Paperwork Reduction Act).

Congress specifically changed the way that the Paperwork Reduction Act handles third party disclosures in response to Dole. Id. Today the Paperwork Reduction Act explicitly includes third party disclosures:

(3) the term 'collection of information'--

(A) means the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either--

(i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or

(ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes;

44 U.S.C. § 3502(3)(A) [emphasis added]

---

Towing Servs., Inc., 771 F.2d 194, 205 (7th Cir. 1985) (upholding sanctions against an attorney who cited authority overturned by the Supreme Court); Cousin v. District of Columbia, 142 F.R.D. 574, 576-77 (D.D.C. 1992) (granting plaintiff's motion for sanctions when defendant failed to cite and distinguish relevant controlling authority, and stating that a pure heart does not excuse an empty head).

The Government relied on outdated/superseded precedent, as the basis for disputing ASA's claim that the MAG violates explicit Congressional intent. The Court should reject this Government claim and find that the MAG regulates Commerce and violates explicit Congressional statutory intent, and is therefore unconstitutional.

### **8. ASA's Constitutional Claims are Valid and Unrefuted**

The Government dismisses the Constitutional claims by suggesting that they merely recast the statutory arguments. Brief for Respondents at 24. This is wrong.

The Constitutional claims are based on different (Constitutional) standards, and are supported by different case law. The Government's arguments specifically fail to counter ASA's claim that the FAA's action was a sole executive action that affected Commerce, that was not delegated to the executive branch by Congress, and that violated explicit Congressional statements of intent, so it violated the separation of powers doctrine (ASA Opening Brief at 37-43). In fact, the Government's sole effort to undermine this claim was to suggest that the Paperwork Reduction Act does not apply to third-party disclosures, and therefore they dispute that Congress has spoken to this documentation issue. This is wrong because Congress added third-party disclosures to the Paperwork Reduction Act in 1995. See section 7 of this Reply Brief. Without this wrong argument, the

Government has no argument opposing the claim that the MAG language is a sole executive action that affected Commerce, without delegated authority from Congress, and in violation of explicit Congressional statements of intent, so it violated the separation of powers doctrine.

In light of the Government's failure to offer valid argument to dispute this *separation of powers* claim, the Court should rule in ASA's favor on this point.

The Government only minimally addresses ASA's claim that the FAA failed to have Constitutional or statutory authority for its actions (ASA Opening Brief at 30-37) and that it therefore represented an unauthorized act. They do so by citing to statutes that do nothing to authorize the requirements at issue in this case, and that bear no resemblance to those requirements.

When an agency acts *ultra vires* to its authority, it is the courts' responsibility to reestablish the limits on the agency's authority. Aid Ass'n for Lutherans v. United States Postal Serv., 321 F.3d 1166, 1173 (D.C. Cir. 2003); Chamber of Commerce of the United States v. Reich, 74 F.3d 1322, 1328 (D.C. Cir. 1996) (citing to multiple sources of authority for the Court's equity jurisdiction to reestablish such limits). This rule of reviewability for *ultra vires* acts continues to apply even when the APA appears to otherwise preclude review. Aid Ass'n for Lutherans at 1173. So the Government's claim that their APA discussion addresses ASA's Constitutional claims is simply wrong.

In light of the Government's failure to offer valid argument to dispute this *ultra vires* claim, the Court should rule in ASA's favor on this point.

## **CONCLUSION**

The MAG provision requires each US-produced part that is received for use by a dual-certificated repair station to have been documented as a new part on an 8130-3 tag.

The MAG provision is inconsistent with the actual European requirements, and also it is not an element that the FAA is supposed to be investigating under the explicit terms of the Maintenance Annex.

The FAA had no statutory or Constitutional authority to impose this documentation requirement, and the documentation requirement violates the explicit Congressional intent stated in 44 U.S.C. § 3501. As discussed in the Opening Brief, where an agency rule goes beyond statutory authority, the agency must be prevented from enforcing the rule. Opening Brief, Conclusion.

As also discussed in the Opening Brief, when an agency rule is not validly prescribed, the agency must be enjoined from enforcing the rule. Opening Brief, Conclusion.


ASA requests that the court enjoin the Respondents from enforcing the documentation requirement which requires an 8130-3 tag for aircraft parts, as it is

found in any version of the Maintenance Annex Guidance and in Notice 8900.360. Such an injunction should terminate if such a requirement has been properly promulgated in accordance with appropriate federal requirements.

In addition, though, the FAA has approved repair station manual provisions that implement the documentation requirements, and that will continue to affect commerce even after this injunction is implemented. ASA therefore asks that the Court order the FAA to permit repair stations to change their manuals (including the EASA Supplements), to be consistent with this injunction, without seeking FAA approval of such changes.

RESPECTFULLY SUBMITTED this 5th day of December, 2016.

WASHINGTON AVIATION GROUP, PC AND THE  
LAW OFFICES OF JASON A. DICKSTEIN

By  \_\_\_\_\_

Jason Dickstein  
Washington Aviation Group, PC and the  
Law Offices of Jason A. Dickstein  
2233 Wisconsin Avenue NW  
Suite 503  
Washington, DC 20007  
jason@washingtonaviation.com  
Tel: (202) 628-6777  
Fax: (202) 628-8948

Counsel for Appellant Aviation Suppliers Association, Inc.

**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 6,998 words (excluding words that do not need to be counted under FRAP 32(a)(7)(B)(iii)).

December 5, 2016  
Date

  
\_\_\_\_\_  
Jason Dickstein, Attorney for Appellant

**SUPPLEMENTAL ADDENDUM**

**Extract from House Rep. 104-37 (1995)**

PAPERWORK REDUCTION ACT OF 1995

FEBRUARY 15, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CLINGER, from the Committee on Government Reform and Oversight, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 830]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform and Oversight, to whom was referred the bill (H.R. 830) to amend chapter 35 of title 44, United States Code, to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the introduced bill) are as follows:

On page 12, line 14, strike “and” the second place it appears and insert in lieu thereof “;”.

On page 12, line 15, insert “, and payment” after “acquisition”.

In the proposed section 3505 (page 19, line 9), strike “five” and insert “10”.

In the proposed section 3514 (page 51, line 3), strike “5” and insert “10”.

In the proposed section 3518 strike subsection (f).

## D. THIRD PARTY DISCLOSURE

In 1990, the paperwork/regulatory issues, particularly, took on more urgency when the Supreme Court ruled in *Dole v. United Steelworkers of America*, 49 U.S. 26 (1990), on the scope of the paperwork clearance process.

*Dole* involed an OIRA paperwork clearance disapproval of several provisions in the OSHA Hazard Communication Standard, which requires employers to inform employees of hazardous chemicals in the workplace. After lengthy litigation over the OSHA rule and OIRA's role in its promulgation, the Supreme Court ruled that OIRA's authority to review agency information collection activities was limited to information collected by an agency, and did not extend to third-party information disclosure requirements. The Court's discussion of limits on OMB's ability to affect an agency's "substantive regulatory choice" was seized on by OMB critics as vindication of their decade-long argument that OMB was overstepping its legal mandates. On the other side of the argument were those who claimed that agencies were now using *Dole* to justify sending fewer proposals to OIRA for clearance.

The Committee believes that the Court misreads Congress' intent in enacting the 1980 Act. H.R. 830 overturns the *Dole* decision and includes third party disclosure requirements within its provisions.

The basic reasons to ensure that third party disclosure requirements are clearly within the scope of the Act are threefold. The character of Federal information collection has changed since 1980. Increasingly, Federal agencies are using third party disclosure requirements to meet program needs, instead of directly collecting, processing, and disseminating information itself. Third party disclosures include Federal requirements for labeling, self-certification, public recordkeeping, conveying information between third parties (such as pension data a Federal agency requires employers give their employees); and directly conveying information to State or local governments.

Third party disclosure is increasing partly because agencies, with their own limited resources to collect and analyze information, have discovered that their program objectives may be met by requiring private parties to provide information directly to the intended beneficiary (e.g., an employee of the employer) or enforcer (e.g., the State or local government charged with regulatory enforcement), eliminating the Federal middle-man. In order to decrease the direct cost of Government services, agencies may also adopt third party disclosure in the form of self-certification and recordkeeping by private entities to replace extensive information collections.

In addition, the Federal Government has increased the use of third party disclosure by having private institutions and individuals report to State or local governments. States, for example, are often charged with the responsibility for implementing and enforcing Federal program requirements with extensive information collection. In such situations, a Federal agency may not actually receive the information as collected, but require the States to retain the reports from the public for possible Federal inspection or hav-

ing States send the Federal agency only a summary of information reported to them.

#### E. PRESIDENT BUSH'S COUNCIL ON COMPETITIVENESS

The lack of Congressional support for reauthorizing the Paperwork Reduction Act during the late 1980s and early 1990s resulted in a debilitated OIRA. The Agency suffered from a reducing budget and a lack of political level leadership. The vacuum that was created was largely filled during the administration of President George Bush by the creation of the Council on Competitiveness. The Council was a Cabinet-level body, chaired by Vice President Dan Quayle, and designed to reduce the burdens of excessive regulation and to encourage America's competitiveness.

In a September, 1992 report entitled, "The Legacy of Regulatory Reform: Restoring America's Competitiveness," the council detailed its success in making the regulatory process more efficient and effective.

Some of the report's highlights include:

The Bush/Quayle Administration's reforms to the drug approval process save lives and reduce suffering for millions of U.S. citizens. Experts estimate that more than 33,000 lives will be saved annually in the U.S. The Council's reforms will cut, nearly in half, the time necessary to approve important new drugs to treat cancer, heart disease, Alzheimer's depression, cystic fibrosis, AIDS and other life-threatening diseases. The 76,000 AIDS/HIV patients in the United States can be helped by our rapid approval process.

Health care has benefited from U.S. world leadership in biotechnology that has created more than 750 new drugs, vaccines and devices to address diseases, such as cancer and AIDS. The Council's efforts have supported the development of the U.S. biotechnology industry. This rapid growth section employ approximately 80,000 Americans nationwide.

The Bush Administration's regulatory reform efforts have generated and saved jobs for workers in the U.S. Economists estimate that a regulatory reduction of this magnitude will save or create over 200,000 jobs nationwide. By cutting regulatory red tape, the Bush/Quayle Administration has freed up resources for productive, job-creating uses. These efforts have and will continue to touch the lives of the citizens of the United States.

The Bush/Quayle Administration opposed efforts to expand harmful fuel efficiency (CAFE) regulations that create incentives for American companies to relocate automobile and auto parts manufacturing overseas. Raising the CAFE standard merely 2 mpg would cost over 200,000 jobs nationwide. A much higher CAFE standard, such as the proposed 40 mpg level, would cripple the U.S. automobile industry and threaten some 2.1 million auto-related jobs in America.

The Council on Competitiveness' Report on National Biotechnology Policy sets forth a common sense approach to biotechnological innovations in agriculture. Biotechnology offers the prospect of higher crop yields, reduced pesticide use, improved nutritional characteristics, and healthier crops for

**CERTIFICATE OF SERVICE**

I, Jason Dickstein, hereby certify that the attached

**ASA Reply Brief**

Has been filed through the CM/ECF system on December 5, 2016, and eight copies have also been filed by hand delivery to (on the date indicated below):

Office of the Clerk  
United States Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, N.W.  
Washington, DC 20001

And that I have caused copies to be served on each opposing counsel, through the CM/ECF system (on the date indicated below):

John S. Koppel  
Mark B. Stern  
Lewis Yelin  
U.S. Department of Justice, Civil Division, Appellate Staff  
950 Pennsylvania Ave., N.W., Room 7646  
Washington, DC 20530

December 5, 2016  
Date

  
\_\_\_\_\_  
Jason Dickstein, Attorney for Appellant