



121 North Henry Street
Alexandria, VA 22314-2903
T: 703 739 9543 F: 703 739 9488
arsa@arsa.org www.arsa.org

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Delivery by electronic mail: lester.cheng@faa.gov

Mr. Lester Cheng
Federal Aviation Administration
Aircraft Certification Service
Systems and Equipment Standards Branch
470 L'Enfant Plaza, SW, Ste. 4102
Washington, DC 20024

RE: Comments to PS-AIR-20(xxx)-xx-xx: Bonded Repair Size Limits

Dear Mr. Cheng:

The Aeronautical Repair Station Association (ARSA) respectfully requests the withdrawal of the above referenced Draft Policy Statement (hereinafter "the draft" or "the policy"). ARSA is the principal association for the aviation maintenance industry, and the content in this policy is of great importance to its members.

The association requests the withdrawal of this policy because the regulations are clear and correct interpretive materials exist that already address the issues. Specifically, the very Advisory Circular referenced in this policy, AC 20-107B, covers the agency's stated concerns.

Further, the draft policy merely provides general statements asserting regulatory authority. Under the Administrative Procedure Act (APA), the agency may make interpretations, policies, and guidance materials to help the public understand how it construes or applies regulations.¹ However, such interpretive materials may not amend the CFR, set new legal standards, or impose new requirements. When an interpretation alters an existing legislative rule it is invalid for want of proper rulemaking procedures.²

¹ 5 U.S.C. § 553 (b).

² *American Mining Congress v. Mine Safety & Health Administration*, 995 F.2d 1106, 1112 (D.C. Cir. 1993) (establishing a four-part test for whether a prospective interpretive rule has legal effect and is thus legislative in nature).

Accordingly, insofar as our cases can be reconciled at all, we think it almost on the basis of whether the purported interpretive rule has "legal effect," which in turn is best ascertained by asking (1) whether in the absence of the rule there would not be adequate legislative basis for enforcement action or other agency action to confer benefits or ensure the performance of duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, or (4) whether the rule effectively amends a prior legislative rule. If the answer to any of these question is affirmative, we have a legislative, not an interpretive rule.

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This draft seeks to amend existing legislative rules and is thus invalid. For example, the policy and AC 20-107B reference the definition of critical structure as:

Critical Structure: A load bearing structure/element whose integrity is essential in maintaining the overall flight safety of the aircraft. This definition was adopted for this policy because there are differences in the definitions of primary structure, secondary structure, and principle structural elements (PSE) when considering the different categories of aircraft. For example, PSE are critical structures for Transport Category Airplanes.³

However, the policy continually references “repairs to critical structure,” which has no regulatory definition.

14 Code of Federal Regulations (C.F.R.) part 1 defines both major and minor repairs and alterations, there is no such regulatory definition for “critical repair.”⁴ By creating new category of repairs with additional requirements beyond those established for major repairs in 14 C.F.R. parts 1, 65, 121, 135, and 145, the agency goes beyond mere interpretation of regulation and instead seeks to amend the rule.

Additionally, the agency presents unsubstantiated assertions as justification for the basis of this draft. Throughout the draft, the agency makes statements such as “service experience shows these past repairs were not always successful, resulting in unexpected repair bond failures” and “there are no currently available non-destructive inspection (NDI) techniques to ensure a bonded assembly has achieved full strength.” Without documented support, these allegations are merely unfounded generalities not grounded in facts and as such do not provide adequate justification for such a policy.

For the reasons stated above, ARSA respectfully requests the withdrawal of Draft Policy PS-AIR-20(xxx)-xx-xx because it fails at all levels to meet the standards of an interpretive document. The contents are redundant with other guidance material; there is legal effect in the same manner as legislative rules; and the underlying assertions for the necessity of the policy are unsubstantiated by documentation.

We appreciate your consideration in this matter.

Respectfully submitted,



Zach F. Bruckenstein
Advocacy Manager

³ Fed. Aviation Admin., AC 20-107B, Composite Aircraft Structure (2010).

⁴ 14 C.F.R. § 1.1.