

August 8, 2017

Original Delivered by Email: tim.shaver@faa.gov

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RE: Treatment of New Commercial Parts and COTS Parts under the Bilateral Agreement between the European Union and United States

Dear Mr. Shaver:

The undersigned organizations submit the enclosed draft FAA Notice dealing with Commercial Parts and Commercial-Off-the-Shelf (COTS) Parts in the context of the FAA-EASA Maintenance Annex Guidance (MAG), Change 6. The draft was developed in follow up to the industry coalition's letters to the FAA dated Feb. 3, 2017 and April 18, 2017 (also enclosed) as well as subsequent discussions with agency personnel.

The draft Notice allows U.S. repair stations to perform a part 43 inspection and issue Form 8130-3 with a right-side signature for new Commercial Parts and COTS parts received without an Authorized Release Document (ARD). The repair station must establish (1) traceability to an approved design (rather than to a production approval holder) and (2) suitability for installation.

The undersigned look forward to assisting the agency as it evaluates this draft guidance.

Sincerely,

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Enclosures: (1) Draft 8900.XXX, Maintenance Annex Guidance, Change 6, Performing Part 43 Inspections of New Commercial Parts and Commercial Off-the-Shelf (COTS) Parts Received Without an Authorized Release Document (e.g., Form 8130-3)
(2) Feb. 3, 2017 Letter to the FAA
(3) April 18, 2017 Follow Up Letter to the FAA

NOTICE

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

N 8900.XXX

National Policy

Effective Date:

August xx, 2017

Cancellation Date:

August xx, 2018

SUBJ: Maintenance Annex Guidance, Change 6, Performing Part 43 Inspections of New Commercial Parts and Commercial Off-the-Shelf (COTS) Parts Received Without an Authorized Release Document (e.g., Form 8130-3)

1. Purpose of this Notice. This Notice provides Aviation Safety Inspectors (ASI) with information to assist FAA-certificated repair stations in the U.S. that also hold European Aviation Safety Agency (EASA) Part-145 approvals. This Notice is intended to address recent concerns raised by industry regarding documentation requirements for new commercial parts and COTS parts subject to the Maintenance Annex Guidance (MAG) change 6 (MAG CHG 6) Section B, Appendix 1, paragraph 10: "Release and Acceptance of Components".

2. Audience. This notice is intended for ASIs responsible for the oversight of U.S.-based repair stations with EASA Part-145 approval when performing maintenance, preventive maintenance, and/or alterations on articles subject to the FAA/EASA Bilateral Aviation Safety Agreement (BASA). The secondary audience includes Flight Standards District Office (FSDO) managers and other Flight Standards (AFS) organizations responsible for overseeing these activities.

3. Where You Can Find This Notice.

a. FAA Personnel. You can find this notice on the MyFAA employee Web site at https://employees.faa.gov/tools_resources/orders_notices. Inspectors can access this notice through the Flight Standards Information Management System (FSIMS) at <http://fsims.avs.faa.gov>. Operators can find this notice on the FAA's Web site at <http://fsims.faa.gov>. This notice is available to the public at http://www.faa.gov/regulations_policies/orders_notices.

b. Air Agencies and the Public. Air Agencies and the public can find this notice on the FAA's Web site at <http://fsims.faa.gov> or at http://www.faa.gov/regulations_policies/orders_notices.

4. Background. In accordance with Notice 8900.380, a repair station may inspect and approve for return to service new parts that are not accompanied by Form 8130-3, EASA Form 1 or TCCA

Form One as required by the MAG. Such an inspection occurs under 14 CFR part 43 and the repair station may issue Form 8130-3 with a right-side signature after verifying that the part is traceable to a production approval holder (PAH) and is in satisfactory condition for installation.

In accordance with paragraph 6(b), below, this Notice extends a similar privilege to repair stations to issue Form 8130-3 for new Commercial Parts and new COTS parts as defined below.

MAG rev. 6, Section B, Appendix 1, paragraph 10(k)(1) currently provides, in pertinent part:

[NOTE: The language below also appears in Section C, Appendix 1, paragraph 7(c)(1), which applies to EU-based repair stations. However, as with Notice 8900.380, this document would apply only to U.S.-based repair stations. EASA may implement it in the EU by issuing its own guidance.]

(1) New Components

(a) New components must be traceable to the Production Approval Holder (PAH) and be in a satisfactory condition for installation. An authorized release document, as detailed below, must accompany the new component. (emphasis added)

i) For new components from a U.S.-PAH, release must be documented on an FAA Form 8130-3 as a new part.

NOTE: New parts that were received into inventory prior to October 1, 2016 must, at a minimum, have a document or statement (containing the same technical information as an FAA Form 8130-3) issued by the PAH or supplier with direct ship authority. These parts in inventory, documented with the required information, will be grandfathered and remain suitable for installation into EU articles, provided the certification/release date of these parts is prior to October 1, 2016.

(ii) For new components released by an EU-PAH, release must be documented on an EASA Form 1, as a new part.

(iii) For new components released by a Canadian-PAH, release must be on the Transport Canada Civil Aviation (TCCA) Canadian Form One as a new part.

(iv) Fabricated parts, produced by an appropriately rated repair station with a quality system, for consumption into a repair or alteration of a product or article in accordance with 14 CFR part 21, section 21.9(a)(6), and part 43, are not subject to the foregoing provision.

(v) Standard parts are not subject to the foregoing provisions, provided such parts are traceable to the manufacturer,

accompanied by a conformity statement, and are in a satisfactory condition for installation.

* * *

5. Definitions.

- a. Authorized Release Document (ARD) means an FAA Form 8130-3, an EASA Form 1 or a TCCA Form One.
- b. Commercial Part means an article listed on an FAA-approved Commercial Parts List (CPL) included in a design approval holder's Instructions for Continued Airworthiness in accordance with § 21.50(c).
- c. Commercial-Off-the-Shelf (COTS) Part means a part that (1) is not a commercial part or standard part as defined in this paragraph (i.e., it is not on a CPL), (2) was not manufactured specifically for aviation use, and (3) is traceable to an approved design as reflected in the appropriate FAA-approved or acceptable data (e.g., drawings, specifications, Instructions for Continued Airworthiness, Component Maintenance and Overhaul Manuals, Illustrated Parts Catalogue, Illustrated Parts List, Illustrated Provisioning Documents or other data acceptable to or approved by the FAA).
- d. Production Approval Holder means the holder of an EU Production Organization Approval (POA), FAA Production Approval (PC, PMA and TSOA), and Transport Canada Civil Aviation (TCCA) Manufacturer Certificates (MCH).
- e. Standard Part means an article defined in Section B, Appendix 1, paragraph 10(k)(1)(v).

6. Discussion.

a. Current TIP and MAG Requirements

The U.S.-EU Technical Implementation Procedures (TIP) requires that new replacement and modification parts (other than standard parts) be accompanied by an ARD when exported to the EU. Exports also include new parts when installed during maintenance and alteration in articles subject to the MAG (i.e., when a dual or triple release will be issued).

Except for standard parts and fabricated parts, the MAG requires that new parts be traceable to a PAH. This also includes new articles received without an ARD that a repair station inspects under part 43 and subsequently issues Form 8130-3 in accordance with Notice 8900.380.

Notwithstanding the requirement that such parts be traceable to a PAH, the vast majority of commercial and COTS parts are not produced under a PAH's quality system and consequently

are not accompanied by an ARD. As a result, affected maintenance providers are currently prohibited from installing these parts during maintenance and alteration subject to the MAG.

b. What This Notice Accomplishes

This Notice allows a repair station to perform a part 43 inspection of a new Commercial Part or COTS part and issue an ARD with a right-side signature if it can be shown that the article is traceable to an approved design. In accordance with the MAG and Notice 8900.380, the part must also be in satisfactory condition for installation. Therefore, this Notice would allow a repair station to inspect a Commercial Part or COTS Part and issue Form 8130-3 with a right-side signature in the same manner as described in Notice 8900.380 for other new articles received by a repair station without an ARD.

Traceability to an approved design may be established through drawings, specifications, Instructions for Continued Airworthiness, Component Maintenance and Overhaul Manuals, Illustrated Parts Catalogue, Illustrated Parts List, Illustrated Provisioning Documents or other data acceptable to or approved by the FAA.

In accordance with section 21.50(c)(2)(ii), Commercial Parts must be produced only under the commercial part manufacturer's specification and marked only with the commercial part manufacturer's markings. Therefore, traceability to an approved design may be established by showing that the commercial part manufacturer's part number is referenced on a CPL provided by the design approval holder under section 21.50(c).

However, this is not the case with COTS parts which may have multiple part numbers (i.e., the COTS manufacturer's part number and/or a different number assigned by a design approval holder.). Therefore, traceability to an approved design for a COTS part is not solely dependent on its part number; it may also be established by showing the part meets the technical specifications contained in the approved design.

c. What This Notice Does Not Change

This Notice does not affect new Standard Parts or Parts Fabricated by a Repair Station under part 43. Because such articles are excepted from the requirements that they be accompanied by an ARD, a part 43 inspection is neither necessary nor appropriate.

All other parts installed in articles subject to the MAG, including those described in Notice 8900.380, must continue to be traceable to a PAH.

d. Coordination with EASA

This Notice has been coordinated with EASA.

7. Disposition. The information contained in this notice will *not* be incorporated into FAA Order 8900.1. It will be incorporated into the MAG CHG 7. Direct questions regarding this notice to the Aircraft Maintenance Division, Repair Station Branch (AFS-340), at 202-267-1675.

John S. Duncan
Director, Flight Standards Service

February 3, 2017

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RE: Treatment of Commercial Parts and COTS Parts under the Bilateral Agreement
between the European Union and United States

Dear Ms. Baker and Mr. Duncan:

We are requesting rectification of an issue created by the definition of commercial parts in 14 CFR § [21.1\(b\)\(3\)](#). Under the United States' regulatory framework, such parts do not require a production approval¹ and consequently are not usually accompanied by Form 8130-3 when used domestically. However, under the FAA-EASA Technical Implementation Procedures (TIP) and Maintenance Annex Guidance (MAG) commercial parts do require a Form 8130-3. We request the FAA work with EASA so that commercial parts need not be accompanied by Form 8130-3 as a condition for installing them in maintenance subject to the MAG.

We are seeking similar relief for "Commercial-Off-the-Shelf" (COTS) parts. These parts do not meet the definition of commercial part in § [21.1\(b\)\(3\)](#) because they are not on a commercial parts list issued by the design approval holder,² yet are included in the approved design. However, prior to 2010 these parts did not require a production approval because the manufacturer was not substantially certain at the time of production that a particular part would be installed on a type-certificated product. In the Matter of Pacific Sky Supply, Inc., FAA Order No. 93-19, (June 10, 1993).

Indeed, commercial and COTS parts are not produced and sold for aviation use. They are however, normally referenced in a design approval holder's design and maintenance data such as drawings and specifications, Instructions for Continued Airworthiness, Illustrated Parts Catalogues (IPC), Illustrated Parts Lists (IPL), Illustrated Provisioning Documents (IPD), maintenance and overhaul manuals or other data approved by or acceptable to the FAA. Like commercial parts,³ COTS parts are typically produced and sold only under the manufacturer's specification and marked only with the manufacturer's markings.

¹ See § [21.9\(a\)\(4\)](#).

² Most design approval holders have chosen not to create a commercial parts lists; many will never create such lists.

³ See § [21.50\(c\)\(2\)\(ii\)](#), which requires commercial parts to be sold only under the manufacturer's specification and marked only with the manufacturer's markings.

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In its 2006 Notice of Proposed Rulemaking to amend part 21 ([71 Fed. Reg. 58920, October 5, 2006](#)), the FAA acknowledged the existence and use of COTS parts, although it did not use that term.

For years, industry has used the term, “commercial parts,” in referring to parts that are not designed or manufactured specifically for aviation use such as light bulbs, fire axes, smoke detectors, and so on. Whereas a standard part specification is developed by a consensus standards organization and is publicly available, the design for a commercial part is developed privately.

The FAA recognizes that it is unrealistic to expect manufacturers making thousands of non-aviation parts per day and relatively few aviation parts to obtain a PMA. Enforcement of PMA violations is difficult because the FAA has often been unable to show that these manufacturers are producing with the intent to sell their parts for installation on a type-certificated product. (emphasis added)

When the final rule was adopted,⁴ the FAA narrowly defined commercial part under § [21.1\(b\)\(3\)](#) and established a new methodology for a DAH to designate commercial parts under § [21.50\(c\)](#). While acknowledging that COTS parts could be installed under [part 43](#),⁵ the FAA included language in § [21.9\(a\)](#) that a COTS part manufacturer would need a production approval if it knew or should have known that it was reasonably likely its part would be installed on a type-certificated product. This statement is diametrically opposed to the agency’s acknowledgement in the above-referenced preamble.

Six years later, few DAH’s have chosen to designate commercial parts under § [21.50](#), while COTS parts are included in the design in the same manner as they were prior to 2010, i.e., without a corresponding production approval. Like commercial parts, COTS parts may be accompanied by a manufacturer’s Certificate of Conformance (C of C) and are routinely installed under [part 43](#). Unfortunately, in the absence of Form 8130-3 such parts are ineligible for installation in articles subject to the MAG.

Many of the undersigned entities, while working closely with the FAA and EASA during the agencies’ review of MAG Changes 5 and 6, requested that commercial parts (and COTS parts) be excepted from the Form 8130-3 requirement. EASA rejected this proposal because that agency’s regulations do not recognize commercial parts or COTS parts. In Europe, such parts must be accompanied by an EASA Form 1 like any other part

⁴ Production and Airworthiness Approvals, Part Marking, and Miscellaneous Amendments, [74 Fed. Reg. 53368 \(Oct. 16, 2009\)](#).

⁵ *Id.* at [53,374](#) (explaining that “[t]hose parts that are generally recognized by industry as commercial, but have not been designated on a Commercial Parts List, must be approved for installation in accordance with part 43”).

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produced under a production organization approval (POA) holder's quality system.⁶ While we have doubts about enforcement, we recognize the rejection was based solely on the fact that the two regulatory systems treat these parts differently.

Differences in the agencies' rules and systems must be negotiated to ensure the result does not create an impossible situation for either authority's industry and certificate holders. In this case, the failure to address the difference in the design regulations has created an untenable situation on both sides of the Atlantic.

Commercial parts exported from the U.S. to the EU can only be documented with Form 8130-3 if they have been brought under a PAH's quality system, a rare occurrence (see paragraph 11 of [AC 21-45](#)). This is because the PAH must either stock the parts in its own inventory or arrange for a commercial or COTS parts manufacturer to issue the form on its behalf. Either option is unreasonably costly, unduly burdensome and impractical.

COTS parts producers are in a similar position but have the added problem of potentially violating § [21.9\(a\)](#) if the manufacturers knew or should have known that their parts are installed on type-certificated products. Since this legal standard is, by the agency's own admission, unrealistic for COTS parts we urge the FAA to use newly-adopted § [21.9\(a\)\(7\)](#)⁷ to except these parts from § [21.9\(a\)](#).⁸

Maintenance providers subject to the MAG cannot install new commercial parts or COTS parts on articles undergoing maintenance because they are not accompanied by Form 8130-3. Similarly, neither designated airworthiness representatives nor repair stations can qualify an otherwise airworthy commercial or COTS part because the MAG requires traceability to the PAH unless otherwise excepted. A commercial or COTS part traceable only to the DAH does not comply with the MAG.

The undersigned parties are aware that EASA may undertake rulemaking on "required" parts documentation generally, including consideration of commercial parts and possibly COTS parts. In the meantime, U.S. producers of commercial parts and COTS parts cannot issue FAA Form 8130-3 and, without that document, U.S. repair stations and European approved maintenance organizations cannot install these parts in compliance with the TIP and the MAG. This situation must be addressed.

⁶ It is our understanding that some COTS-like parts are used in Europe without EASA Form One, despite the general requirement for EASA Form One.

⁷ Section [21.9\(a\)\(7\)](#) is scheduled to become effective August 30, 2017.

⁸ An exception could be drawn consistent with the scope of the Pacific Sky Supply discussion of intent under tort law.

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We urgently request the FAA initiate talks with EASA to resolve this small but important regulatory difference. The TIP must acknowledge the differences in and the equivalency of the regulatory systems and address the type of documentation that will be acceptable to EASA for different articles. We believe mutual recognition of regulatory differences is a fundamental principle of bilateral agreements and must be applied in this case.

In the meantime, the undersigned recommend that U.S. repair stations and EU approved maintenance organizations be excepted from the Form 8130-3 requirement for U.S.-manufactured commercial parts and COTS parts when installed in articles subject to the MAG. This would treat such parts in the same manner as standard parts and parts fabricated during maintenance.

For the foregoing reasons, the undersigned urge the agencies to revise the TIP and the MAG as set forth below:

- (1) Add the following new definitions to paragraph 1.7 of the TIP and re-designate existing subparagraphs 1.7(h) through 1.7(mm) as required:
 - h. Commercial part – as defined by the FAA in 14 CFR § 21.1(b)(3) means an article listed on an FAA-approved Commercial Parts List included in a design approval holder's Instructions for Continued Airworthiness required by §21.50.
 - i. Commercial Off-the-Shelf (COTS) part – a part that (1) is not a commercial part or standard part as defined herein, (2) was not manufactured specifically for aviation use, (3) was produced only under the part manufacturer's specification and marked only with the part manufacturer's markings, and (4) is referenced in the design approval holder's design or maintenance data (e.g., Instructions for Continued Airworthiness, Component Maintenance and Overhaul Manuals, Illustrated Parts Catalogue, Illustrated Parts List, Illustrated Provisioning Documents or other data acceptable to or approved by the FAA).
- (2) Section V, paragraph 5.1.10 of the TIP be revised by (i) revising the title of the section to read "New Modification, Replacement, Standard, Commercial and COTS Parts" and (ii) adding new subparagraph (d) to read as follows:
 - (d) The AA shall accept commercial parts and COTS parts exported from the U.S. (i) with FAA Form 8130-3 signed on the left side, or (ii) when traceable to the manufacturer, accompanied by a conformity statement and in a satisfactory condition for installation.

Dorenda Baker
John Duncan
February 3, 2017
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(3) Section B, Appendix 1, paragraph 10(k)(1)(a) of the MAG be revised by (i) adding new subparagraph (vi) to read as follows, and (ii) by re-designating existing subparagraphs (vi) and (vii) as subparagraphs (vii) and (viii), respectively:

(vi) Commercial parts and COTS parts exported from the U.S. may only be accepted as detailed in subparagraphs 5.1.10(d) of the Technical Implementation Procedures (TIP).

(4) Section C, Appendix 1, paragraph 7(c)(1)(a) of the MAG be revised by (i) adding a new subparagraph (vi) to read as follows, and (ii) by re-designating existing subparagraphs (vi) and (vii) as subparagraphs (vii) and (viii), respectively:

(vi) Commercial parts and COTS parts exported from the U.S. may only be accepted as detailed in subparagraph 5.1.10(d) of the Technical Implementation Procedures (TIP).

Please let us know if you have any questions or desire additional information.

Sincerely,

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April 18, 2017

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Dear Ms. Baker and Mr. Duncan:

On February 3, 2017, nine industry stakeholders requested FAA work with EASA to resolve the issues associated with "commercial" and "commercial-off-the-shelf" (COTS) parts. The letter specifically asked the agencies to address the need for these parts to be accompanied by an FAA Form 8130-3 or EASA Form 1 when used in work subject to the Maintenance Annex Guidance (MAG). As the letter describes in further detail, such parts do not require these forms when installed on civil aviation articles controlled by the United States.

Differences in the agencies' rules and systems must be negotiated to ensure the result does not create an impossible situation for either authority's industry and certificate holders. In this case, the failure to address the difference in the design regulations has created an untenable situation on both sides of the Atlantic.

It seems time for the FAA to acknowledge receipt of the February 3, 2017 letter and to schedule a meeting among and between the stakeholders on this side of the Atlantic to discuss the issue. Given that EASA's Engineering and Maintenance Stakeholder Technical Body (STeB) meeting will take place on May 9, 2017 followed by the FAA-EASA conference in June, this is a perfect opportunity to address how the FAA views the commercial/COTS parts issue.

Please contact me at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Marshall S. Filler". The signature is written in a cursive, flowing style.

Marshall S. Filler
Managing Director & General Counsel

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