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December 3, 2021

Original Delivered by Email
Delivery and Read Receipts Requested: john.putnam@dot.gov

Mr. John Putnam
Deputy General Counsel
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

RE: FAA Refusal to Consider Substantive Legal Question

Dear Mr. Putnam,

If I understand the hierarchy relating to requests for legal clarification from the public to the operating divisions of the Department of Transportation (DOT), it is your office that could resolve an issue with the Federal Aviation Administration's (FAA) Office of Chief Counsel.

I work for the Aeronautical Repair Station Association (ARSA); one of its main purposes is to educate the public on the plain language and meaning of aviation safety regulations so compliance can be demonstrated. Noticing an anomalous issuance of an airworthiness directive by the FAA, I sent a letter seeking clarification on its authority to issue the rule against a parachute. The inquiry focused on the applicability of Title 14 of the Code of Federal Regulations, part 39, which required review of the statutory and regulatory definitions of an "appliance."

Unfortunately, what began as an exploration of practical regulatory application became a frustrating demonstration of government hardheadedness. The FAA's acting chief counsel – after three month's "deliberation" – repeated the previous incomplete assessment, failing to address the substantive inquiry. "While I regret that my explanation does not meet your particular needs regarding this issue," the acting chief counsel said in rebuffing an attempted follow up. "I will not be devoting additional time or resources into a further review of this matter."

With all due respect to the government's resources, failing to address substantive legal questions from the public merely expends more assets. The question is simple: How can a parachute be an appliance when it fails to meet *all* conditions required by the statutory/regulatory definition(s)?

After you've reviewed the attached correspondence, I am hoping you can provide the answer or an avenue through which it can be obtained besides "the courts."


December 3, 2021

Mr. John Putnam

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RE: FAA Refusal to Consider Substantive Legal Question

Sincerely,



Brett Levanto

Vice President of Operations

M: 703.507.9798

E: brett.levanto@arsa.org

Attachments: FAA/ARSA correspondence between July 2 and Oct. 13, 2021

cc: Marshall S. Filler, Managing Director & General
Counsel, ARSA

marshall.filler@arsa.org

Daniel Cohen, Assistant General Counsel for
Regulation, U.S. Department of Transportation

daniel.cohen@dot.gov

Mark Bury, Acting Chief Counsel, Federal Aviation
Administration

mark.bury@faa.gov

Brett Levanto

From: Bury, Mark (FAA) <mark.bury@faa.gov>
Sent: Wednesday, October 13, 2021 5:57 PM
To: Brett Levanto
Cc: Marshall Filler; Mikolop, Sara (FAA); Kovitch, Samuel (FAA); Peter, Lorelei (FAA)
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Mr. Levanto,

I think my email adequately explains the FAA's authority to issue ADs on parachutes. While I regret that my explanation does not meet your particular needs regarding this issue, I will not be devoting additional time or resources into a further review of this matter.

Mark W. Bury
Acting Chief Counsel

From: Brett Levanto <brett.levanto@arsa.org>
Sent: Wednesday, October 13, 2021 4:42 PM
To: Bury, Mark (FAA) <mark.bury@faa.gov>
Cc: Marshall Filler <marshall.filler@arsa.org>; Mikolop, Sara (FAA) <Sara.Mikolop@faa.gov>; Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>; ARSA <arsa@arsa.org>
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Mr. Bury,

Your response is almost identical to Mr. Kovitch's July 6 message; please address the points made in the attached reply. The definition you cite in 49 U.S.C. does include "parachute" as an example, but the specific device at issue in the AD fails the three-part test critical to determining whether an article is an appliance.

I welcome the opportunity to discuss the issue.

Brett Levanto
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From: Bury, Mark (FAA) <mark.bury@faa.gov>
Sent: Wednesday, October 13, 2021 2:17 PM
To: Brett Levanto <brett.levanto@arsa.org>; Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Cc: Marshall Filler <marshall.filler@arsa.org>; Mikolop, Sara (FAA) <Sara.Mikolop@faa.gov>
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Mr. Levanto,

I write in response to your letter concerning AD 2021-09-09, and specifically the FAA's legal authority for issuing an airworthiness directive for a parachute. Our review of our authorities shows that the 49 USC 40102(a)(11) definition of "appliance," which has its origins in the Civil Aeronautics Act of 1938, specifically includes a reference to parachutes. Section 44701(a)(2) directs the FAA to prescribe regulations and minimum standards "for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and *appliances*." More broadly, section 44702(a)(5) directs the FAA to prescribe "regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security." The FAA relies on those authorities when it issues regulations and airworthiness directives for parachutes, which it—and its predecessor agencies—have been doing since 1940.

Mark W. Bury
Acting Chief Counsel

From: Brett Levanto <brett.levanto@arsa.org>
Sent: Tuesday, September 14, 2021 4:55 PM
To: Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Cc: Marshall Filler <marshall.filler@arsa.org>; Bury, Mark (FAA) <mark.bury@faa.gov>; Mikolop, Sara (FAA) <Sara.Mikolop@faa.gov>
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Thank you, Sam. I'll be sure to connect with you if I do hear anything and will keep asking.

Brett

From: Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Sent: Tuesday, September 14, 2021 2:42 PM
To: Brett Levanto <brett.levanto@arsa.org>
Cc: Marshall Filler <marshall.filler@arsa.org>; Bury, Mark (FAA) <mark.bury@faa.gov>; Mikolop, Sara (FAA) <Sara.Mikolop@faa.gov>
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Hi Brett,

I was wondering the same thing recently, so I asked our legal team last week if they were working on it. They said they will check and see, and I haven't heard anything since. If I do hear anything, I'll be sure to let you know, however you might end up hearing back before I do at this point.

Thank you,
Sam

Samuel Kovitch
Aerospace Engineer, Program Manager
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From: Brett Levanto <brett.levanto@arsa.org>
Sent: Monday, September 13, 2021 3:44 PM
To: Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Cc: Marshall Filler <marshall.filler@arsa.org>; Bury, Mark (FAA) <mark.bury@faa.gov>; Mikolop, Sara (FAA) <Sara.Mikolop@faa.gov>
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Good Afternoon Mr. Kovitch,

Checking in to see if there is an update on our exchange regarding the parachute AD.

Cheers,
Brett

From: ARSA
Sent: Friday, July 23, 2021 2:14 PM
To: Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Cc: Marshall Filler <marshall.filler@arsa.org>; mark.bury@faa.gov; sara.mikolop@faa.gov
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336
Importance: High

Mr. Kovitch,

Your response merited the attached follow up.

Cheers,
Brett

Brett Levanto
Vice President of Operations
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From: Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Sent: Tuesday, July 6, 2021 6:26 AM
To: ARSA <arsa@arsa.org>
Cc: Marshall Filler <marshall.filler@arsa.org>
Subject: RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336

Hi Brett,

In your letter you asked whether or not the FAA has the authority to issue an airworthiness directive (AD) for a parachute. You also correctly identified that 14 CFR Part 39 section 39.3 states that AD's can be issued for appliances. Parachutes are defined as appliances in Title 49 United States Code (U.S.C.) section 40102, thus granting the FAA the authority to issue an AD for a parachute.

49 U.S.C. § 40102 - U.S. Code - Unannotated Title 49. Transportation § 40102. Definitions

(11) “appliance” means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.

Please confirm that this addresses your inquiry.

Thank you,
Sam

Samuel Kovitch
Aerospace Engineer
FAA | AVS | AIR-7A3 | Atlanta ACOB
404-474-5570 | samuel.kovitch@faa.gov
Mail: AIR-7A3 | 1701 Columbia Ave | College Park GA 30337

From: ARSA <arsa@arsa.org>
Sent: Friday, July 2, 2021 1:20 PM
To: Kovitch, Samuel (FAA) <samuel.kovitch@faa.gov>
Cc: Marshall Filler <marshall.filler@arsa.org>
Subject: Re: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336
Importance: High

Mr. Kovitch,

As discussed earlier this week, please find attached a letter requesting clarification of the FAA’s authority to issue the subject airworthiness directive.

Please contact me directly with questions. I look forward to working through the matter.

Cheers,
Brett

Brett Levanto
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July 23, 2021

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Delivery and Read Receipts Requested: samuel.kovitch@faa.gov

Mr. Samuel Kovitch
Aerospace Safety Engineer
Atlanta ACO Branch
Federal Aviation Administration
1701 Columbia Avenue
College Park, GA 30337-2714

RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA–2021–0336
FAA Email Response to ARSA, July 6, 2021

Dear Mr. Kovitch,

Your response to the attached July 2 inquiry focused on the inclusion of “parachute” as an example in the statutory definition¹ of “appliance.” You failed to consider the applicable prerequisites in both that definition and also [14 CFR § 1.1](#), which require the item—

- (1) Be used, capable of being used, or intended to be used in operating or controlling aircraft in flight.
- (2) Be installed in or attached to aircraft during flight.
- (3) Not be a part of an aircraft, aircraft engine, or propeller.

Parachutes utilized by the [Cirrus Airframe Parachute System \(CAPS\)](#) may meet those requirements. However, supplementary information in the [Federal Register](#) for the subject AD noted “the affected parachutes are [UPT Vector 3 SE](#) containers.” According to the [UPT website](#), the Vector 3 is a line of “skydiving harness/container systems.”

¹Under [49 U.S.C. § 40102\(11\)](#) “appliance” means an instrument, equipment, apparatus, a part, an appurtenance, or an accessory used, capable of being used, or intended to be used, in operating or controlling aircraft in flight, including a parachute, communication equipment, and another mechanism installed in or attached to aircraft during flight, and not a part of an aircraft, aircraft engine, or propeller.

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Mr. Samuel Kovitch
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RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA-2021-0336
FAA Email Response to ARSA, July 6, 2021

Since the UPT Vector 3 SE parachute is not installed in or attached to an aircraft nor is it used, capable of being used or intended to be used in operating or controlling an aircraft in flight, please explain how it meets either the statutory or regulatory definition of "appliance."

Sincerely,



Brett Levanto
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Attachments: FAA Email Response to ARSA, July 6, 2021
ARSA Letter to FAA, July 2, 2021

cc: Marshall S. Filler, Managing Director & General
Counsel, ARSA
Mark Bury, Acting Chief Counsel, FAA
Sara Mikolop, Acting Assistant Chief Counsel,
Regulations, FAA

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July 2, 2021

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Aerospace Safety Engineer
Atlanta ACO Branch
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1701 Columbia Avenue
College Park, GA 30337-2714

RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA–2021–0336

Dear Mr. Kovitch,

On April 22, the FAA [issued](#) an Airworthiness Directive (AD) for certain Uninsured United Parachute Technologies, LLC Parachutes, which became effective on May 7. This letter seeks more information regarding the agency’s authority to mandate the action required.

According to [14 CFR § 39.3](#), “FAA's airworthiness directives are legally enforceable rules that apply to the following products: aircraft, aircraft engines, propellers, and appliances.”

It seems that determining applicability of [14 CFR](#) part [39](#) depends upon the general definitions set forth in [§ 1.1](#) for those named items. Section [1.1](#) states—

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft engine means an engine that is used or intended to be used for propelling aircraft. It includes turbosuperchargers, appurtenances, and accessories necessary for its functioning, but does not include propellers.

Appliance means any instrument, mechanism, equipment, part, apparatus, appurtenance, or accessory, including communications equipment, that is used or intended to be used in operating or controlling an aircraft in flight, is installed in or attached to the aircraft, and is not part of an airframe, engine, or propeller.

Propeller means a device for propelling an aircraft that has blades on an engine-driven shaft and that, when rotated, produces by its action on the air, a thrust approximately perpendicular to its plane of rotation. It includes control components normally supplied by its manufacturer, but does not include main and auxiliary rotors or rotating airfoils of engines.

Parachute means a device used or intended to be used to retard the fall of a body or object through the air.

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RE: Authority for Issuance of Airworthiness Directive; Docket No. FAA–2021–0336

In addition to the definitions in § [1.1](#), neither § [91.307](#) or part [105](#) classify a parachute as a product to which part [39](#) is applicable. Though § [105.3](#) explains “[a]pproved parachute means a parachute manufactured under a type certificate or a Technical Standard Order,” the applicability of part [39](#) does not include all articles for which a TC or TSO exists, only those that fit the definition of appliance from § [1.1](#).

Considering the fact part [39](#) does not include parachutes in its applicability, please explain the FAA’s authority to issue the subject AD.

Sincerely,



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