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April 30, 2010

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Peter Orszag
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503-0009

RE: Office of Management and Budget (OMB) Control Number 2120-0708
Quarterly Utilization Report Approval

Dear Mr. Orszag:

The Aeronautical Repair Station Association (ARSA) represents persons that are certificated to perform maintenance, preventive maintenance and alterations on civil aviation articles under 14 CFR part 145 and other national aviation authority regulations around the world. Our members range from large corporations that also design, produce and operate aircraft to small family-owned businesses.

The association works hard to ensure "good government"; this effort includes careful review of paperwork associated with regulatory compliance. The aviation industry is subjected to myriad safety regulations requiring the creation of records to establish compliance. Additional obligations, whether duplicative or beyond the scope of existing regulations, are particularly burdensome to small businesses. A case in point is the Federal Aviation Administration's (FAA's) Quarterly Utilization Report (QUR).

ARSA researched the creation and function of the QUR¹, and three issues emerged:

- (1) There is no objective evidence that the process approving the QUR complied with the applicable law;
- (2) The practical application of the QUR is unclear; and
- (3) The current and future status of the QUR is problematic.

We request that this information collection approval be researched to:

- Determine that the process used to issue the original and subsequent approvals complied with the applicable law;
- Ensure the documents that establish the process complied with the law are available to the public; and
- Clarify whether the QUR is still being used by the requesting agency or "cancelled"; and

¹ Approved under OMB control number 2120-0708.

RE: OMB Control Number 2120-0708
Quarterly Utilization Report Approval

- If the collection request is still active, clearly define who is subject to the information collection request and whether the response is mandatory or voluntary.
- If the collection request is cancelled, immediately rescind the approval.

(1) OMB's approval process

The QUR was first approved on November 9, 2005 as an emergency collection. A revision was approved on May 30, 2006, and an extension was approved on September 23, 2009. The QUR approval is set to expire on Sept. 30, 2012.

The justification of the original and subsequent approvals is unattainable. For example, a search of OMB's database² revealed a single un-dated QUR supporting statement; the FAA's original application could not be located and neither could the OMB's review and evaluation. In addition to the missing paperwork, online research and telephone conversations with FAA and OMB employees failed to shed any light on OMB's reasoning for approving the original information collection request under emergency status or any of its subsequent approvals.

No publically available OMB or Office of Information and Regulatory Affairs (OIRA) guidance defines the procedures and standards used to evaluate information collection requests or the situations where emergency clearance is deemed appropriate. Therefore, ARSA turned to the plain language of the Paperwork Reduction Act (PRA).³

The law lists the requirements that ensure the public is not deprived of the tools needed to discern why this or any other agency collection request merits approval. Section 3506(c)(1) of the PRA requires (among other things)—

(A) An evaluation of the need for the collection of information.

The requested collection must be necessary and have a practical utility. Paragraphs 1 and 2 of the FAA's only available supporting statement⁴ claimed that the QUR is necessary to target oversight resources on those leading outsource maintenance providers that may represent a higher risk level. The higher risk providers would merit an increase of FAA surveillance. Paragraph 6 states that the inability to analyze the QUR data could result in degraded surveillance analysis and delay identification of a high-level risk provider.

The QUR information fails to meet the necessity element because the data requested is already required by the applicable regulations.⁵ Additionally, since the data is focused

² Available at <http://www.reginfo.gov/public/do/PRAMain>.

³ 44 U.S.C. § 3506.

⁴ FAA supporting statement for Air Carriers Listing of Leading Outsource Maintenance Providers extension request at http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=200904-2120-003.

⁵ 14 CFR §§ 121.369(a), 121.373, .145.209(h)(2) and 145.217(a)(2)(ii).

RE: OMB Control Number 2120-0708
Quarterly Utilization Report Approval

on the past it has little utility; the regulations allow current data to be obtained. Moreover, the QUR asks for “leading” maintenance providers by volume, which does not help determine whether the contractor accomplishes “crucial maintenance services” that may represent a higher risk.

(B) A determination of whether the collection is duplicative of information otherwise accessible to the agency.

This collection effort is duplicative of information readily available to the agency under its regulations. Paragraph 1 of FAA’s supporting document states that an air carrier is required to maintain the QUR information as part of its Continuing Analysis and Surveillance System (CASS), whereas paragraph 4 states that there is no duplication of information.

These are contradictory statements; indeed, paragraph 4 seems to merely recite what OMB needs to hear before approving a collection request, whereas paragraph 1 contains a reference to regulatory requirements.⁶ In reality, the QUR-listed persons are required under 14 CFR § 121.369(a);⁷ the general description of the work ensures the FAA can readily identify persons performing the most safety-sensitive functions. This information can be used to target the agency’s oversight resources on those maintenance providers that would represent the highest risk.

The QUR information is also required under 14 CFR part 145; these air agencies must keep a list of the maintenance functions that will be contracted as well as a list of the contractors performing those functions. The functions must be approved by the FAA and therefore the agency can evaluate the risk to aviation safety before the approval is issued.⁸ Additionally, the certificate holder’s manual must have a method of providing updates to the FAA.⁹

(C) The agency must describe its collection attempts to reduce the burden on the persons providing information to or for the agency.

The FAA’s only available justification for the collection is disingenuous about the necessity for the information and the burden on small businesses. Paragraph 5 of the

⁶ 14 CFR § 121.373 requires an air carrier to “...establish and maintain a system for the continuing analysis and surveillance of the performance and effectiveness of its inspection program and the program covering other maintenance, preventive maintenance, and alterations and for the correction of any deficiency in those programs, regardless of whether those programs are carried out by the certificate holder or by another person.” (Emphasis added.)

⁷ The referenced section requires the certificate holder’s manual to contain “a list of persons with whom it has arranged for the performance of any of its required inspections, other maintenance, preventive maintenance, or alterations, including a general description of that work.”

⁸ 14 CFR § 145.217.

⁹ 14 CFR § 145.209(h)(2).

RE: OMB Control Number 2120-0708
Quarterly Utilization Report Approval

agency's supporting document asserts that it is only requesting information from 14 CFR part 121 air carriers, that the requirements are the absolute minimum necessary to ensure effective compliance with the air carrier requirements, and that there is no burden on small business organizations.

That assertion is contrary to the agency's regulations requiring the affected certificate holders to maintain the same information, the 2006 request for amendment, subsequent renewals of this collection effort, and its current practice of requiring QURs from 14 CFR part 145 certificate holders (repair stations)¹⁰.

It is clear that the certificate holders expected to complete the QUR are not just those subject to 14 CFR part 121, but also entities certificated under 14 CFR part 145.¹¹ The vast majority of the businesses holding an air agency (repair station) certificate are small businesses.¹²

(D) The collection documentation must be written using plain, coherent, and unambiguous terminology.

The agency claims that it needs the information to assess the risk associated with contract maintenance providers. The information requested, however, relates to the **volume** of work performed by contractors working for air carriers and repair stations, rather than the type of work being performed.

The regulations for both air carriers and repair stations require those certificate holders to maintain lists of persons used to perform maintenance, preventive maintenance or alteration on the certificate holders' behalf. The lists must contain the type of work each contractor is allowed to perform, and must be current and provided to the FAA upon request.¹³

The QUR data does not provide a risk assessment, or even indicate maintenance of a particular type; therefore, it will not achieve the "required" objective.

The FAA is unclear on whether the report is mandatory or voluntary; box 12 of the agency's Paperwork Reduction Act Submission is marked "mandatory". However, the

¹⁰ FAA Order 8900.1, vol. 3, chapter 55, section 2.

¹¹ See, 71 FR 10750 (Thursday, March 2, 2006); the summary to the request for public comment indicates that the amendment will add air agencies to the list of respondents and the estimated respondents jumped from 121 to 5800.

¹² The most recent rulemaking impacting 14 CFR part 145 repair stations was promulgated by the Transportation Security Administration (TSA) (74 FR 59874 (November 18, 2009)). On page 59875, the TSA states that "...there are 4,227 domestic repair stations located in the United States and 694 foreign repair stations located outside the United States that have an FAA certificate under part 145...". At footnote 6 on that page, the agency concludes that "[a]pproximately 2,803 domestic repair stations have fifteen or fewer employees and 1,407 have five or fewer employees."

¹³ See, 14 CFR sections 121.369(a), 145.209(h)(2) and 145.217(a)(2)(ii).

RE: OMB Control Number 2120-0708
Quarterly Utilization Report Approval

information relating to the “volume” of work performed by a maintenance provider is not required by any regulation under 14 CFR. Furthermore, in a 2007 statement, Department of Transportation (DOT) Inspector General (IG) Scovel refers to the “voluntary process for air carriers to report the top 10 critical maintenance providers used each quarter.”¹⁴

If reporting is mandatory, the FAA has certainly failed to explain the nature and extent of the information required by its regulations. Moreover, the additional information requested by the QUR does not fulfill its stated goal; to stay ahead of the perceived risks. FAA needs to know who is performing maintenance functions for part 121 and 145 certificate holders in real time. Quarterly reports listing where maintenance was performed during the preceding three months does not provide that information.

If the report is voluntary, there is a misunderstanding among the OMB, FAA, DOT IG and the “respondents”. The FAA’s internal guidance states that the report is “mandatory” for air carriers,¹⁵ yet when the FAA “cancelled” the collection efforts it indicated that the QUR was “voluntary” and that not all certificate holders provide the information.¹⁶

(E) To the maximum extent practicable, the collection is to be implemented in ways compatible with the existing reporting and recordkeeping practices of those who are to respond.

The QUR collection is a duplication of records, reports and recordkeeping obligations that are already in place.¹⁷

(2) Practical application

The information collection has little practical application. The requested information is a backward look¹⁸ and it is based upon volume—not the type of maintenance being performed. Further, it fails to account for the information required by existing regulations and the FAA’s involvement in the contract maintenance process.

Under 14 CFR parts 121 and 145, the FAA is involved in the process used to choose and accept or approve the certificate holders’ maintenance providers. Under 14 CFR part 121, the FAA has direct oversight on any maintenance provider used by the air carrier and under 14 CFR part 145, the FAA must approve any maintenance function that will be obtained by contract. Both 14 CFR part 121 and part 145 require the certificate holder to provide a list of

¹⁴ *Aviation Safety: FAA’s Oversight of Outsourced Maintenance Facilities: Hearing Before the Transportation and Infrastructure Comm., Subcomm. on Aviation.* (Mar. 29, 2007) (statement of Calvin L. Scovel III).

¹⁵ FAA Order 8900.1, vol. 3, chapter 55, section 2.

¹⁶ See Appendix A.

¹⁷ *Ibid.*

¹⁸ It requests a list of maintenance providers used in the past.

RE: OMB Control Number 2120-0708
Quarterly Utilization Report Approval

persons used to perform maintenance functions. These lists must be made available to the FAA.

The regulations allow the FAA to obtain information on a real-time and regular basis; the QUR does not add any information that cannot be obtained in a less onerous and more timely manner.

(3) The future of the QUR

ARSA requests an immediate determination of the QUR's status. In April 2009, OMB approved a renewal of the QUR. Collection frequency was changed to "on occasion" and the affected public was changed from "121" to an "estimated 121 respondents." Yet, the 2006 "amendment" added "air agencies" as respondents.

Despite these inconsistencies, OMB referred to its latest renewal as an "extension without change." As previously mentioned, no supporting statement or other documentation is available to the public for the original submission, let alone the various "amendments" and "extensions".

To further confuse the issue, recent internal FAA communication reveals that the agency considers this collection to be "cancelled."¹⁹

Conclusion

To summarize, ARSA requests that OMB:

- (a) Determine that the process used to approve the QUR from the original application through its current extension was performed in accordance with the PRA requirements;
- (b) Provide the written application and justifications for each approval as required by that law;
- (c) Clarify whether the QUR is still effective or "cancelled"; and,
 - (i) If the collection efforts are still active, ensure it clearly defines who is subject to the information collection request and whether response is mandatory or voluntary.
 - (ii) If the collection efforts are cancelled, immediately rescind the approval.

If this process cannot be performed or is unnecessary due to the FAA's "cancellation" of the QUR, we request that the OMB immediately rescind its approval of this collection effort.

¹⁹ See Memorandum dated March 3, 2010 from the Director of FAA's Flight Standards Services to all Regional Flight Standards Division Managers, entitled "Cancellation of Quarterly Utilization Report" attached as Appendix A.

Mr. Peter Orszag
April 30, 2010
Page 7

RE: OMB Control Number 2120-0708
Quarterly Utilization Report Approval

We appreciate your taking the time to consider and respond to this appeal; if you are not the proper person to handle this request, please forward it to the appropriate person and inform us of that transfer.

If you have any questions, please feel free to contact me.

Your Servant,

A handwritten signature in blue ink, appearing to read "Sarah MacLeod". The signature is fluid and cursive, with the first name "Sarah" and the last name "MacLeod" clearly distinguishable.

Sarah MacLeod
Executive Director

cc: Cass R. Sunstein, OIRA Administrator jhertz@omb.eop.gov
Kristy Daphnis, OMB FAA Analysis kdaphnis@omb.eop.gov
Carol Giles, FAA Manager of Flight carol.e.giles@faa.gov
Standards Service

Aeronautical Repair Station Association Request

TO: Mr. Peter Orszag

DATE: April 30, 2010

RE: OMB Control Number 2120-0708

Quarterly Utilization Report Approval

Appendix A



Federal Aviation Administration

Memorandum

Date: MAR 4 2010

To: All Regional Flight Standards Division Managers

From:  John M. Allen, Director, Flight Standards Service, AFS-1

Prepared by: Frank J. Wiederman, AFS-330, (202) 385-6443

Subject: Cancellation of Quarterly Utilization Report

This memorandum informs Title 14 Code of Federal Regulations (14 CFR) part 121 and 145 certificate management personnel of the cancellation of the Quarterly Utilization Report (QUR).

The FAA implemented QUR policy in 2006 in response to the Office of Inspector General's (OIG) findings on air carrier and repair station use of outsource maintenance providers. The intended purpose of the QUR was to collect information for surveillance purposes from air carriers and repair stations on the use of outsource maintenance providers.

Because QUR reporting is voluntary and does not include all air carriers and repair stations as intended, we have determined that it does not meet its intended purpose. Approximately 13 percent of the air carriers were participating, and data provided were not sufficient to determine whether surveillance adjustments were needed. Therefore, we have decided to remove the QUR from FAA policy.

Upon receipt of this memorandum, certificate management personnel will cease requiring any new compliance with QUR policy. Within 30 days after receipt of this memorandum, certificate management personnel will provide a copy of this memorandum to any air carrier or repair station that has previously incorporated QUR policy and procedures in its manual. If an air carrier or repair station decides to keep its QUR policy and procedures, inform the air carrier or repair station that FAA policy no longer requires or supports QUR use.

We will update this policy change in FAA Order 8900.1, Flight Standards Information Management System.

Direct any questions concerning this memorandum to the Air Carrier Maintenance Branch at (202) 385-6443.