



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

JUL 1 2015

Mr. Marshall S. Filler  
General Counsel  
Aeronautical Repair Station Association  
121 North Henry Street  
Alexandria, VA 22314-2905

RECEIVED  
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800 Independence Ave., S.W.  
Washington, DC 20591

Dear Mr. Filler:

This is in response to the January 9, 2015, letter sent to the public docket (No. FAA-2015-0042). In that letter, ten aviation-related organizations jointly filed a petition for rulemaking with the Federal Aviation Administration. Petitioners included: Aeronautical Repair Station Association, Aerospace Industries Association, Aircraft Electronics Association, Aviation Suppliers Association, Helicopter Association International, Modification and Replacement Parts Association, General Aviation Manufacturers Association, National Air Carrier Association, Regional Airline Association, and National Air Transportation Association (collectively, the "Petitioners").

The regulation at issue in your petition, as amended effective November 10, 2014, in pertinent part reads as follows:<sup>1</sup>

§ 145.55 Duration and renewal of certificate.

- (a) A certificate or rating issued to a repair station located in the United States is effective from the date of issue until the repair station surrenders the certificate *and the FAA accepts it for cancellation*, or the FAA suspends or revokes it.
- (b) A certificate or rating issued to a repair station located outside the United States is effective from the date of issue until the last day of the 12<sup>th</sup> month after the date of issue unless the repair station surrenders the certificate *and the FAA accepts it for cancellation*, or the FAA suspends or revokes it. The FAA may renew the certificate or rating for 24 months if the repair station has operated in compliance with the applicable requirements of part 145 within the preceding certificate duration period.

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<sup>1</sup> 79 FR 46971 (Aug. 12, 2014) (emphasis added).

In your petition you request the FAA to remove the words “and the FAA accepts it for cancellation” from § 145.55(a) and (b), thereby restoring the text to its pre-amended version. The FAA added the new phrase so a repair station certificate would remain *effective* for enforcement purposes until the FAA accepted it for cancellation, even if the repair station surrendered the certificate to the FAA.

As you observed in your petition, the FAA added the phrase in the 2014 amendment at least partially in response to two National Transportation Safety Board (NTSB) recommendations (A-04-01 and A-04-02; Feb. 9, 2004), which, in pertinent part, recommended:

Issue a regulation . . . so the FAA can prevent individuals who have been associated with a previously revoked repair station from continuing to operate through a new repair station. (A-04-01)

If an air carrier, operating, or repair station certificate is surrendered prior to completion of an enforcement investigation that is based on charges that could be grounds for revocation, the FAA should nonetheless complete the investigation to the extent necessary to document all available facts relating to the fitness of the individuals; . . . (A-04-02)

The essence of your petition appears to be that the amendment at issue is not necessary because the action the FAA took in response to recommendation A-04-01 (new paragraph (e) to § 145.51) “specifically allows for denial of a repair station certificate where key positions will be filled with individuals who materially contributed to the circumstances where a repair station certificate is ‘revoked, or **is in the process of being revoked.**’” (Emphasis in your petition.) You reasoned that “[t]he lack of a certificate does not change the fact that it was ‘in the process of being revoked,’ and that any individual bad actor can and should still face appropriate legal action.” (Emphasis in your petition.)

We do not agree that the purpose of new § 145.51(e) can be fully met whether or not the repair station certificate at issue was still in existence during the FAA’s investigation. The FAA believes that all pertinent facts can be better developed if the investigation of the repair station continues in order to determine if revocation of its certificate is warranted. If a repair station is being investigated for serious violations of the FAA’s safety regulations, the agency believes it important to establish a record of the repair station’s violation history, and if revocation is warranted, that revocation should be a matter of record. The new provision that requires FAA acceptance for cancellation of the certificate ensures that a repair station cannot circumvent an enforcement action simply by surrendering its certificate. We said as much in the preamble<sup>2</sup> to the new rule:

The new surrender requirement codifies existing FAA policy, and will prevent a repair station under investigation from attempting to circumvent a possible

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<sup>2</sup> 79 FR at 46973.

enforcement action that could result in a revocation of the repair station certificate by surrendering its certificate to stop the investigation before it is completed.

The FAA policy referenced in the preamble is longstanding, and is found in the FAA's Compliance and Enforcement Program (FAA Order 2150.3B) in Chapter 5, Paragraph 10.b. Surrender of FAA Certificate for Cancellation. This paragraph, in pertinent part, states:

FAA investigative personnel, however, refuse the voluntary surrender of a certificate if it appears the surrender is being attempted to avoid certificate action. FAA investigative personnel should be alert for indications that a certificate holder is attempting to avoid a certificate action through the voluntary surrender of a certificate, including whether the certificate holder is the subject of an enforcement investigation or enforcement action. . . . FAA investigative personnel refuse the certificate holder's attempt to voluntarily surrender a certificate and continue with an investigation and recommend enforcement action, if appropriate.

Your petition argues that removal of the phrase at issue is in the public interest for both safety and economic reasons. However, your safety argument lacks merit because it appears to be premised on your statement that: "Any threat to air safety is automatically removed when a repair station certificate is voluntarily surrendered without any required action by the agency." While the repair station may cease operations, including those that may violate safety regulations, upon its surrender of the certificate, your statement does not support a conclusion that safety is enhanced by not requiring FAA acceptance of the certificate for cancellation. Were the FAA to pursue your proposed action, a repair station under investigation could avoid the creation of a record of its regulatory violations by surrendering its certificate.

Your related economic argument is to the effect that repair stations "must be allowed to immediately cease operations in the most efficient and effective manner . . ." because "immediate cessation of work on civil aviation articles is the agency's foremost aim, . . ." In that regard, you argue:

The business costs associated with waiting uncertain and unnecessary agency action are potentially substantial. The sale of assets and cessation of a business entity is a delicate operation. When a business wishes to cease operations and/or sell its assets, there must be certainty regarding the surrender . . . of the repair station certificate.

The FAA finds no merit in this argument. A repair station may cease operations, close its doors, and sell its assets any time it wants to, whether or not it has surrendered its certificate and whether or not the FAA has accepted it for cancellation.

We do not believe aviation safety would be enhanced by the agency's granting your petition. On the contrary, we believe granting the petition would result in a derogation of safety, as repair stations that commit serious violations of the FAA's safety regulations to an extent that would demonstrate a lack of qualifications to hold the certificate, could avoid completion of the enforcement action, resulting in no record of the revocation. For the reasons noted above, we are denying your petition for rulemaking

Sincerely,

A handwritten signature in black ink, appearing to read "John S. Duncan", with a long horizontal flourish extending to the right.

John S. Duncan  
Director, Flight Standards Service