

August 31, 2015

Submitted per 14 CFR § 11.101 to: <http://www.regulations.gov>

U.S. Department of Transportation
Docket Operations
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

RE: Petition for Reconsideration
Docket No. FAA-2015-0042-0001

To Whom It May Concern:

As provided by Title 14 Code of Federal Regulations (“14 CFR”) part 11,¹ the undersigned associations (collectively, the “Petitioners”) respectfully request the Federal Aviation Administration (“FAA”) to reconsider the July 1, 2015 denial of Petitioners’ petition for rulemaking (the “Petition”).² We again urge the agency to reinstate a repair station’s ability to voluntarily surrender its certificate unilaterally and to do so by issuing a direct and final rule to that effect.

The undersigned represent the aviation industry; many of the principal members of each association are entities certificated by the FAA under Title 14 CFR part 145. As such, our members are directly and significantly impacted by the current rule. While repair stations are the only certificate holders *directly* impacted, disparate treatment creates uncertainty for all certificate holders.

Petitioners request the agency remove the words “and the FAA accepts it for cancellation” from the current rule and restore 14 CFR § 145.55 to read as follows:

- (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 it 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 12th month after the date of issue unless the repair station surrenders the certificate 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.

¹ See 14 CFR §§ 11.61(a), 11.63(a)(2), 11.71, 11.101.

² ARSA Petition for Rulemaking, [FAA Docket No. 2015-0042-0001](#) (Jan. 9, 2015).

Basis for Reconsideration

This petition for reconsideration must be granted because the FAA “did not correctly interpret a law, regulation, or precedent.”³ Specifically, the agency incorrectly interpreted the Federal Aviation Act⁴ and the Administrative Procedure Act (APA).⁵ Beyond misinterpretation, the FAA’s denial of the Petition failed to address those statutes entirely.

Statutory Authority

The authority cited by the FAA in the preamble to the underlying rulemaking⁶ allows the agency to promulgate rules—in the interest of safety—for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances, and to “examine and rate” air agencies, including repair stations. The agency exceeded its authority by requiring the acceptance of a voluntarily surrendered certificate. This requirement does not further safety interests or relate to the FAA’s oversight of an air agency. Indeed, once a *business* determines it no longer wishes to operate as a repair station and surrenders its certificate, it ceases to be an air agency, and thus the FAA’s authority to examine it is no longer relevant.

While Congress explicitly gave the FAA authority to issue,⁷ modify, amend, and revoke⁸ certificates, no statute gives the agency the authority to prohibit a certificate holder from voluntarily surrendering its certificate unless the FAA accepts the surrender. It is a canon of statutory construction that the express inclusion of specific items excludes all others: if Congress intended the agency to have the power to reject a surrendered certificate, it would have expressly included that authority.⁹

³ 14 CFR § 11.101

⁴ 49 U.S.C § 1301 *et seq.*

⁵ 5 U.S.C. § 551 *et seq.*

⁶ Repair Stations, 79 Fed. Reg. 46971 (Aug. 12, 2014) (citing 49 U.S.C. §§ 44701, 44707).

⁷ 49 U.S.C. § 44702.

⁸ 49 U.S.C. § 44709.

⁹ See, e.g. *Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d 881 (9th Cir. 2005) (“The doctrine of *expressio unius est exclusio alterius* as applied to statutory interpretation creates a presumption that when a statute designates certain persons, things, or manners of operation, all omissions should be understood as exclusions.”) (citation and internal quotation marks omitted).

APA Deficiencies

The revisions to § 145.55 were arbitrary and capricious.¹⁰ The APA requires that rulemaking activity bear a rational connection to the facts before the agency.¹¹ The FAA states in the preamble to the rule, and in its denial of the Petition, that the rationale for requiring affirmative agency acceptance of a surrendered certificate is to “establish a record of the repair station’s violation history.”¹²

If the repair station no longer exists because the *business* that held the certificate does not operate as a repair station, and it no longer exercises the privileges the certificate affords, a record of its regulatory violations is unnecessary. As discussed above, the agency’s congressionally delegated authority allows it to promulgate rules in the interests of aviation safety. Yet the safety implications of a surrendered certificate versus one that is revoked are the same—the business may no longer “repair, alter, and maintain aircraft, aircraft engines, propellers, and appliances.”¹³

The agency fails to articulate any appreciable reason that a record of a repair station’s violation history is necessary. Moreover, there is no safety benefit to requiring affirmative agency acceptance of every surrendered repair station certificate; it merely wastes already scarce FAA resources and creates an unnecessary administrative burden.

Furthermore, the FAA has ample recourse to pursue the *individuals* (*i.e.*, bad actors) who violated any regulations, or who are criminally liable for any wrongdoing.¹⁴ Thus, there is no justifiable reason that the agency needs to “accept” a surrendered certificate. This is further demonstrated by the fact that there is no equivalent requirement for the agency to accept voluntarily surrendered certificates from mechanics, pilots, air carriers, other air agencies, design and production certificate holders, or individual operators.¹⁵

¹⁰ See, e.g. *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971) (finding arbitrariness where the government has made a “clear error of judgment”); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962) (holding the agency must articulate a “rational connection between the facts found and the choice made”); and *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (finding arbitrariness where the agency “offered an explanation for its decision that runs counter to the evidence before the agency.”).

¹¹ *Id.*

¹² FAA Denial of Petition for Rulemaking, Docket No. FAA-2015-0042, p. 2 (July 1, 2015).

¹³ 49 U.S.C. § 44707.

¹⁴ See 14 C.F.R. part 13.

¹⁵ See §§ 61.27, 63.15, 65.15, 119.61.

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The agency's denial of the Petition states "[t]he new surrender requirement codifies existing FAA policy";¹⁶ however, this is inaccurate. Requiring each repair station wishing to surrender its certificate to await affirmative acceptance is far more cumbersome than enabling investigative personnel to incorrectly and without authority refuse a *voluntary* surrender based upon evidence that "the surrender is being attempted to avoid certificate action."¹⁷

For the same reasons discussed above, the referenced policy also exceeds the FAA's statutory authority. Bad policy cannot justify bad rulemaking: agency issuance of policy, in the form of an interpretive rule, is not required to undergo notice and comment, and cannot, and does not, have the "force and effect of law."¹⁸ Thus, the agency cannot circumvent the APA's standards for legislative rulemaking by using an interpretive rule as its justification.

Conclusion

The underlying rulemaking exceeds the FAA's statutory authority and violates the APA. The FAA's denial of the Petition misinterpreted those laws and therefore this petition for reconsideration should be granted.

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¹⁶ FAA Denial of Petition for Rulemaking, FAA-2015-0042, p. 2 (July 1, 2015) (citing 79 Fed. Reg. 46973).

¹⁷ FAA Order 2150.3B, Chapter 5, ¶ 10(b).

¹⁸ *Shalala v. Guernsey Memorial Hospital*, 514 U. S. 87, 99 (1995).

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