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**SMALL BUSINESS ADMINISTRATION
OMBUDSMAN
COMMENT TOOLKIT**

**The Aeronautical Repair Station Association’s**

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# **Preface**

## **Purpose**

ARSA developed this toolkit to help companies submit formal comments to the Small Business Administration’s (SBA) National Ombudsman’s office regarding the inconsistency in the Federal Aviation Administration’s (FAA) policy regarding creation and availability of maintenance manuals. The FAA fails to enforce the regulation requiring design approval holders (i.e., manufacturers) to make maintenance data available ([14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [21.50(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.1.21_150&rgn=div8)), while aggressively enforcing the rule requiring repair stations to possess the most current version of those documents ([14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [145.109(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.3.145_1109&rgn=div8)).

## **General Instructions**

The toolkit is in Microsoft Word (Word) 2016 format. It is compatible with Word 2007, 2010 and 2013.

ARSA encourages users to work with this toolkit in the “[View Paragraph Marks](https://www.bing.com/search?q=view+paragraph+marks&form=EDGNTT&qs=PF&cvid=896cfcf0a4ee4fc68cc9cc0d8988d37c&cc=US&setlang=en-US)” and “[View Table Gridlines](https://www.bing.com/search?q=view+table+gridlines&form=EDGEAR&qs=AS&cvid=2e94d0670ffe4fc9bf2e14d4c70cc72a&cc=US&setlang=en-US)” mode. This permits the user to see the special characters that control the document’s formatting.

This toolkit provides the requirements for submitting a comment to the SBA Ombudsman, a draft comment for users to edit and additional resources.

If a particular word, sentence, paragraph or section of the draft comment does not apply to the repair station’s operation—delete it. Also, change or move words, sentences, paragraphs or sections as necessary to reflect the experience of your company.

## **ARSA Publications**

ARSA has other publications available that will help repair stations comply with domestic and international regulations. These publications can be ordered online at <http://www.arsa.org> and are available for instant download through the association’s secure online portal (<https://arsa.member365.com>).

## **References**

To facilitate an understanding of regulatory compliance, all references to the Code of Federal Regulations (C.F.R) are hyperlinked to the Government Printing Office Web site. Similarly, any reference to the United States Code (U.S.C.) are hyperlinked to the Office of the Law Revision Counsel website. If a hyperlink does not work, go to either <http://ecfr.gpoaccess.gov> or <http://uscode.house.gov/> and search for the needed reference.

*Website Hyperlinks and Internet Addresses*

Electronic Code of Federal Regulations: Title [14](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=79c4e905311cc352d52ebdad7e0b2f5a&c=ecfr&tpl=/ecfrbrowse/Title14/14tab_02.tpl):

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=79c4e905311cc352d52ebdad7e0b2f5a&c=ecfr&tpl=/ecfrbrowse/Title14/14tab_02.tpl>

Federal Aviation Administration:

<http://www.faa.gov>

Federal Aviation Administration certificated repair station list:

<http://av-info.faa.gov/repairstation.asp>

Small Business Administration Ombudsman:

<https://www.sba.gov/ombudsman>

United States Code:

<http://uscode.house.gov/>

North American Industry Classification System:

<https://www.naics.com/>

# **Comment Toolkit**

## **SBA Ombudsman Overview**

The [SBA Ombudsman’s](https://www.sba.gov/ombudsman) mission is “to assist small businesses when they experience excessive or unfair federal regulatory enforcement actions, such as repetitive audits or investigations, excessive fines, penalties, threats, retaliation or other unfair enforcement action by a federal agency.”

The ombudsman is authorized by [15](http://uscode.house.gov/browse/prelim%40title15/chapter14A%26edition%3Dprelim) U.S.C. § [657(b)(2)](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section657&num=0&edition=prelim) to review small business concerns surrounding regulatory compliance and enforcement. It becomes involved in matters based on comments submitted by small businesses experiencing excessive or unfair federal regulatory enforcement actions.

The ombudsman reviews a submitted comment for completeness and relevance before a case file is created and the comment is sent to the relevant agency for review and response. In appropriate circumstances the Inspector General of the affected agency can review the comment. Afterwards, the affected agency’s response is recorded and data is compiled for the SBA Ombudsman’s Annual Report to Congress. Overall, the SBA Ombudsman was created to help solve problems between small businesses and federal agencies.

[ARSA filed its comment on the ICA issue with the ombudsman in August 2018](http://arsa.org/wp-content/uploads/2018/08/ARSA-SBAOmbudsmanICAComment-20180829-Public.pdf). Because the volume of comments the ombudsman receives on any given issue matters and is reported, the association strongly encourages affected member companies to file comments as well. Although the ombudsman’s office cannot overrule FAA policy, it can help elevate issues within the agency, to other agencies and to Congress. The ombudsman’s annual report to Congress about unfair regulatory actions can lay the foundation for future legislation to remedy the problem.

## **Comment Requirements**

A comment must be submitted using the SBA comment form [online](http://web.sba.gov/nocms/client/dsp_welcome.cfm) or by [fax, email or mail](https://www.sba.gov/sites/default/files/files/SBA_Form_1993_3.pdf).

* Fax: 202.481.5719
* Email: ombudsman@sba.gov (If submitting by email, write the following in the subject line: Comment to SBA National Ombudsman re: Unfair FAA Enforcement Policy)
* Mail:

National Ombudsman and Assistant Administrator
 for Regulatory Enforcement Fairness
Office of the National Ombudsman
U.S. Small Business Administration
409 3rd Street, S.W., Suite 7125
Washington, D.C. 20416-0005

Comments must include:

1. Description of the enforcement, inspection or compliance action taken by the federal agency and the result.
2. Any documentation of the action taken if available, such as correspondence, citations, or notices.
3. The business’ specific desired actions or outcomes.

Only small businesses should submit comments; whether you are a small business hinges on different factors depending on your company’s NAICS code. The chart below indicates size standards for aviation-related codes as of August 2018.

Each company needs to use the [NAICS Identification Tools](https://www.naics.com/search/) to review each description in detail – while the general description uses the term “manufacturing,” many of the codes include “overhaul” and other maintenance activities.

|  |
| --- |
| **Aviation Maintenance Related NAICS Codes****and Small Business Size Standards** |
| ***NAICS Code*** | ***General Description*** | ***Small Business Size Standard*** |
| [336411](https://www.naics.com/naics-code-description/?code=336411) | Aircraft Manufacturing, including “overhaul” | Fewer than 1,500 employees |
| [336412](https://www.naics.com/naics-code-description/?code=336412) | Aircraft Engine and Parts Manufacturing, including “overhaul” | Fewer than 1,500 employees |
| [336413](https://www.naics.com/naics-code-description/?code=336413) | Other Aircraft Parts and Auxiliary Equipment Manufacturing | Fewer than 1,250 employees |
| [488190](https://www.naics.com/naics-code-description/?code=488190) | Other Support Activities for Air Transportation | Less than $32.5 million in annual revenues |

The SBA form also requests information about the agency that is the subject of the comment. Write:

* “Federal Aviation Administration” on the line that says “Federal Agency Name”
* “Dorenda Baker, Executive Director (AIR-1)” on the line that says “Agency Contact Person” and
* “Aircraft Certification Service” on the line that says “Agency Office/Division”

We also advise checking the box requesting that your information be kept confidential.

## **Draft Comment**

***Reminder:*** *Copy and paste the document below into the* [SBA Ombudsman comment form](http://web.sba.gov/nocms/client/dsp_welcome.cfm).

*Personalize the draft comment where indicated (text surrounded by brackets); delete bracketed comments from ARSA in the draft comment prior to submitting.*

*Please make a copy of your comment and any supporting documents for your records prior to submitting.*

*Please email one complete copy of your comments to ARSA Executive Vice President Christian Klein at* christian.klein@arsa.org*.* If you have questions, please contact him at 703.739.9543 x 106.

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DATE

|  |
| --- |
| Office of the National OmbudsmanU.S. Small Business Administration409 3rd Street, S.W., Suite 7125Washington, D.C. 20416-0005 |
|  |
| RE: | Small Business Administration Ombudsman Comment Regarding Federal Aviation Administration Enforcement of Instructions for Continued Airworthiness Regulations ([14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [21.50(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.1.21_150&rgn=div8)) |

To Whom It May Concern:

[INSERT NAME OF COMPANY] is a Federal Aviation Administration (FAA)-certificated repair station in [INSERT NAME OF STATE]. Our FAA certificate number is [INSERT FAA CERTIFICATE NUMBER]. Our company has [INSERT NUMBER OF EMPLOYEES] employees and annual revenues of $[INSERT ANNUAL REVENUES].

Our company qualifies as a small business because we fall under NAICS Code [INSERT APPROPRIATE CODE FROM CHART ON PAGE SIX OF THE TOOLKIT].

We request that you review a disparity in the enforcement of aviation safety regulations that results in unfair regulatory actions against our company. Specifically, the FAA fails to enforce the regulation requiring design approval holders (i.e., manufacturers) to make maintenance data available ([14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [21.50(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.1.21_150&rgn=div8)), while aggressively enforcing the rule requiring repair stations to possess that same maintenance data ([14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R.
§ [145.109(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.3.145_1109&rgn=div8)). Due to this inequity, our company and other small businesses face unnecessary administrative and financial burdens and significant loss of business opportunities.

***FAA Regulations Require Design Approval Holders to Produce and Make Maintenance Manuals Available***

The FAA controls design, production, operation and maintenance of civil aviation aircraft in the United States. In order to design and produce a civil aviation product or article, an entity must comply with [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. part [21](https://www.ecfr.gov/cgi-bin/text-idx?SID=7f22b6e6d94e39201db44571c1914255&mc=true&node=pt14.1.21&rgn=div5). Among other things, design approval holders are required to create and furnish Instructions for Continued Airworthiness (ICA) (i.e., maintenance manuals) to the owner of each aviation product and to any other person required by FAA regulations to comply with those instructions.

Despite the clear requirement in the aviation safety regulations that design approval holders create and make vital maintenance information available, the agency has consistently failed to enforce these rules.

***The FAA Strictly Enforces the Requirement that Repair Stations Possess Maintenance Manuals but Does Not Enforce Rules Requiring Design Approval Holders to Make Manuals Available***

In order to perform maintenance, preventive maintenance or alteration as a repair station, the entity must be certificated under [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. part [145](https://www.ecfr.gov/cgi-bin/text-idx?SID=7f22b6e6d94e39201db44571c1914255&mc=true&node=pt14.3.145&rgn=div5). Title [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R
§ [145.109(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.3.145_1109&rgn=div8) requires the repair station to have specified manufacturer maintenance information “current and accessible.”

In order to comply, repair stations must first obtain the manuals. This is a problem in and of itself since the agency’s refusal to enforce [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [21.50(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.1.21_150&rgn=div8) allows manufacturers to avoid the basic obligation to create the documents. If the required documents are created, manufacturers can make them available only to their own repair stations, which is also contrary to the plain language of the regulation. Additionally, the agency will not involve itself in the pricing of the required documents, which allows manufacturers to make manuals constructively unavailable by charging any amount with no fear of retribution.

Second, even when the manuals are available, if the owner/operator or repair station determines that earlier versions of the documents are to be used, the part [145](https://www.ecfr.gov/cgi-bin/text-idx?SID=7f22b6e6d94e39201db44571c1914255&mc=true&node=pt14.3.145&rgn=div5) certificate holder is still required to maintain the most current versions. Third, when the design approval holder no longer supports the product or article, the repair station must still constantly ensure “currency” of manuals and data required by § [145.109(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.3.145_1109&rgn=div8), creating an unnecessary administrative burden.

This disparity in FAA enforcement has affected our company as follows:

[INSERT YOUR COMPANY’S STORY ABOUT ITS EFFORTS TO OBTAIN ICA OR ENFORCEMENT ACTIONS TAKEN BY THE AGENCY FOR FAILURE TO OBTAIN AND MAINTAIN “CURRENT” MANUALS, FOR EXAMPLE:

* THE DESIGN APPROVAL HOLDER REFUSED TO SELL YOU MANUALS—PROVIDE EVIDENCE OF THAT FACT IN A NARRATIVE AND/OR WITH ATTACHMENTS.
* THE DESIGN APPROVAL HOLDER SELLS MANUALS AT PRICES WHICH DO NOT REPRESENT THE VALUE OF THE INFORMATION CONTAINED IN THEM—PROVIDE EVIDENCE OF THAT FACT IN A NARRATIVE AND/OR WITH ATTACHMENTS.
* THE COSTS ASSOCIATED WITH [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [145.109(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.3.145_1109&rgn=div8) COMPLIANCE—HOW MANY MAN HOURS ARE ASSOCIATED WITH FINDING THE MANUALS AND KEEPING THEM CURRENT AND ORGANIZED?
* REGULATORY ACTIONS, EMAILS OR OTHER DOCUMENTATION OF FAA STRICT ENFORCEMENT OF [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [145.109(d)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.3.145_1109&rgn=div8).

MAKE YOUR STATEMENT AS DETAILED AS POSSIBLE. PROVIDE DOCUMENTATION TO SUPPORT THE NARRATIVE—REMOVE INFORMATION THAT MAY BE COMMERCIAL, PROPRIETARY OR CONFIDENTIAL IN NATURE.]

The FAA’s strict enforcement of the requirement that our repair station obtain and maintain these documents, while failing to enforce [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [21.50(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.1.21_150&rgn=div8) and its predecessor requirements, traps small businesses in a regulatory Catch-22.

***Conclusion***

The FAA’s unfair actions create winners and losers in the regulatory arena. We request that the National Ombudsman review FAA’s enforcement of [14](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title14/14tab_02.tpl) C.F.R. § [21.50(b)](https://www.ecfr.gov/cgi-bin/text-idx?SID=6c9fe555b0bf060f790a050074e7801f&mc=true&node=se14.1.21_150&rgn=div8) and predecessor requirements. We also request this comment be sent to the Office of the Inspector General for the U.S. Department of Transportation for review and response.

We also request that you keep the details of this complaint confidential unless we otherwise consent and that you not share our name or other identifying information with the FAA.

If there is any information missing from this comment, please contact me so that the submission can be made complete and properly processed.

Respectfully submitted,

[INSERT NAME]
[INSERT TITLE]
[COMPANY NAME]
[ADDRESS]
T: [PHONE NUMBER]
E: [EMAIL ADDRESS]

[*Draft Comment Ends*]

## **After Comment Submission**

Reach out to your [Regional Fairness Board Member](https://www.sba.gov/ombudsman/regional-regulatory-fairness-board-members) and start a conversation about the issues raised in the comment. A [Regional Fairness Board Member](https://www.sba.gov/ombudsman/regional-regulatory-fairness-board-members) may also bring issues reported to its office to the SBA Ombudsman under [15](http://uscode.house.gov/browse/prelim%40title15/chapter14A%26edition%3Dprelim) U.S.C. § [657(c)(2)(B)](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section657&num=0&edition=prelim).[[1]](#footnote-1)

**Additional Resources**

Chronological history of ARSA’s ICA efforts:

<http://arsa.org/regulatory/faa/design/ica-efforts/>

**Revision History**

|  |  |
| --- | --- |
| 20180831 | Updated to clarify that comment must be filed using SBA form and to include agency information (agency name, contact information, and office) required by SBA form. |

1. The issues brought by the Regional Fairness Board Member must affect a large group of small businesses in the designated region before an action is taken. [↑](#footnote-ref-1)