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Ms. Mina Wales
Deputy National Ombudsman
Office of the National Ombudsman
U.S. Small Business Administration
409 3rd Street, S.W., Suite 7125
Washington, D.C. 20416-0005

RE: Small Business Administration Ombudsman Comment Regarding Federal
Aviation Administration Enforcement of Instructions for Continued Airworthiness
Regulations ([14 C.F.R. § 21.50\(b\)](#) and [14 C.F.R. § 145.109\(d\)](#))

Dear Ms. Wales:

The Aeronautical Repair Station Association (ARSA) is the trade association for the global aviation maintenance and manufacturing sector. Its primary members are Federal Aviation Administration (FAA)-certificated repair stations. There are approximately 4,000 throughout the United States,¹ the vast majority of which are small businesses with no more than 250 employees and annual revenues of less than \$32,500,000.²

The association requests you review a disparity in the enforcement of aviation safety regulations that results in unfair regulatory actions for aviation maintenance industry small businesses. Specifically, the FAA fails to enforce the regulation requiring design approval holders (i.e., manufacturers) to make maintenance data available ([14 C.F.R. § 21.50\(b\)](#)), while aggressively enforcing the rule requiring repair stations to possess that same maintenance data ([14 C.F.R. § 145.109\(d\)](#)). Due to this inequity, many 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 C.F.R. part 21](#). Among other things, design approval holders

¹ See complete list of [FAA certificated repair stations](#).

² Information acquired from page 101 of the [Global Fleet & MRO Market Economic Assessment](#) and FAA Regulatory Flexibility Act [evaluation](#) in Docket ID: [FAA-2006-26408](#).

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are required³ 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.

Since 1941, aviation safety regulations have required engine manufacturers to create and make maintenance instructions available; manufacturers of rotorcraft and propellers have been subject to comparable requirements since 1950 and 1952, respectively.⁴ In 1981, the FAA promulgated [14 C.F.R. § 21.50\(b\)](#) to standardize the requirements for creating and making ICA's available and added requirements for fixed-wing aircraft.

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 C.F.R. part 145](#). Title [14 C.F.R. § 145.109\(d\)](#) requires the repair station to have specified manufacturer maintenance information "current and accessible."⁵

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 C.F.R. § 21.50\(b\)](#) 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.⁶

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](#) certificate holder is still required to maintain the most current versions. Third, when the

³ See [14 C.F.R. 21.50\(b\)](#) and predecessor regulations outlined in the [Memorandum](#) on the historical regulations governing the creation and availability of maintenance information.

⁴ *Id.*

⁵ See legal interpretations issued to [Andrew V. Cebula](#) (2006), [Christopher Witkowski](#) (2008), [David M. Schultz](#) (2009), [Manager, Sacramento FSDO](#) (2010), [Paul N. Sissons](#) (2010), [Albert T. MacMillan](#) (2011), [Steven Tomer](#) (2012), [Charles Willette](#) (2013), [Carcano-Swift Avionics Services, Inc.](#) (2017), [W. Harvey Cash](#) (2017), and [Daniel Murphy](#) (2017).

⁶ See [Memorandum](#) on how other agencies have addressed the issue of costs for required documents.

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design approval holder no longer supports the product or article, the repair station must still constantly ensure “currency” of manuals and data required by [14 C.F.R. § 145.109\(d\)](#), creating an unnecessary administrative burden.

The FAA’s strict enforcement of the requirement that repair stations obtain and maintain these documents, while failing to enforce [14 C.F.R. § 21.50\(b\)](#) and its predecessor requirements, traps small businesses in a regulatory Catch-22. Not surprisingly, the lack of availability of maintenance information was identified as the most pressing risk by respondents to ARSA’s 2018 member survey.

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 C.F.R. § 21.50\(b\)](#) 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.

If there is any information missing from this comment, please contact Christian Klein at the telephone number or email below so that the submission can be made complete and properly processed.

Respectfully submitted,



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