

January 9, 2015

Submitted per 14 CFR section 11.63(a)(1) 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 Rulemaking on 14 CFR section 145.55
Direct Final Rule

To Whom It May Concern:

Pursuant to Title 14 Code of Federal Regulations (CFR)¹ part 11,² the undersigned respectfully petitions for an amendment to 14 CFR part 145. We urge the change be issued as a direct final rule.

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

Proposed Action and Purpose³

To petition the agency to remove the words “and the FAA accepts it for cancellation,” from sections 145.55(a) and (b); the phrase was unnecessarily added by a final rule effective November 10, 2014.⁴

The repair stations’ ability to voluntarily surrender a certificate without positive action from the agency must be restored. The requirement that the agency accept the “surrender”⁵ of a certificate lacks necessity and reasonableness and is not needed to achieve the agency’s stated safety objective. Further, there is no nexus between it and the safety objective, a fact supported by the reality that the requirement for acceptance is not applied to any other certificate holder; even those that must achieve the highest degree of safety, i.e., air carriers.⁶

As a result the requirement to await the agency’s acceptance of repair stations’ surrendered certificates—

¹ All regulatory references are to 14 CFR unless otherwise indicated.

² See §§ [11.61\(a\)](#), [11.63\(a\)\(2\)](#), and [11.71](#).

³ See § [11.71\(a\)\(2\)](#).

⁴ See 79 Fed. Reg. 46971.

⁵ Commonly defined as “to give the control or use of (something) to someone else.”

⁶ See 49 U.S.C. § 44702(b)(1)(A).

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 2 of 8

- Does not comport with DOT Order 2100.5,⁷ as it is unnecessarily overbroad and needlessly diverts scarce agency resources;
- Is arbitrary and capricious under the Administrative Procedure Act (APA); and
- Exceeds the statutory grant of authority under the Federal Aviation Act.

Proposed Language for Amended Rule⁸

Restore § 145.55(a) and (b) to:

- (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.

The Proposed Action is in the Public Interest⁹

The ability for a repair station to immediately surrender its certificate serves the public interest for both safety and economic reasons.

Any threat to air safety is automatically removed when a repair station certificate is voluntarily surrendered without any required action by the agency. Whenever a certificate holder is no longer able or willing to meet the safety requirements set forth in part 145, it must be allowed to immediately cease operations in the most efficient and effective manner. Requiring an affirmative agency action creates an unnecessary delay in eliminating the safety threat. The immediate cessation of work on civil aviation articles is the agency's foremost aim, particularly when individuals working for the repair station are in fact "bad actors."

⁷ See "Policies and Procedures for Simplification, Analysis, and Review of Regulations," Department of Transportation, Order 2100.5. (*Hereinafter* "DOT Order 2100.5").

⁸ See § [11.71\(a\)\(3\)](#).

⁹ See § [11.71\(a\)\(4\)](#).

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 3 of 8

Uncertainty in when, how and why the agency may accept or reject the voluntary cessation of work creates logistical, administrative, and financial burdens on the agency, the industry and the public. Namely:

- Logistically, the vast majority of repair station certificates are surrendered in the normal course of business with no associated misbehavior on the part of the repair station or any individuals. Adding a delay in the process punishes thousands of repair stations without any added safety benefit.¹⁰
- The unnecessary administrative burden on the FAA's workforce requiring a positive action in a timely manner is contrary to efficiency and effectiveness.
- The business costs associated with awaiting 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 (or amendment) of the repair station certificate. Financial institutions are extremely paranoid of potential government issues and would demand assurance that there was no pending investigation before monetary support would be forthcoming. That fact can only be confirmed or denied by the government, which it is reluctant to provide. Without certainty in the surrender process, the cost of business would increase.

The public interest in safety and economic efficiency justifies ARSA's petition.

Information, Arguments,¹¹ Facts, and Circumstances¹²

Rulemaking justification insufficiency

The provision of the final rule removing repair stations' ability to surrender a certificate stems from two National Transportation Safety Board (NTSB) safety recommendations suggesting that:

- FAA "[i]ssue 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."¹³ **and**

¹⁰ With the thousands of repair station certificates issued, amended, revoked and surrendered, the final rule was justified by only one example of "bad actors." (See NTSB Safety Recommendations A-04-01 and A-04-02). By simple logic, the overwhelming majority of transactions do not warrant special treatment by the agency.

¹¹ See § [11.71\(a\)\(5\)](#).

¹² See § [11.71\(a\)\(6\)](#).

¹³ See NTSB recommendation A-04-01 (Feb. 9, 2004).

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 4 of 8

- In circumstances where allegations can provide grounds for revocation of an air carrier, operating, or repair station certificate, and the certificate is surrendered prior to the completion of the enforcement investigation, “the FAA should nonetheless complete the investigation to the extent necessary to document all available facts **relating to the fitness of the involved individuals**”¹⁴ (Emphasis added).

FAA responded to the first recommendation by adding § 145.51(e) to the “Repair Stations” final rule.¹⁵ This new section mimics the agency’s denial authority over air carriers and commercial operators.¹⁶

In response to the second recommendation, the FAA altered the language of § 145.55 to include the phrase “and the FAA accepts it for cancellation.” Unlike any other certificate holder, this language removed the ability of a repair station to surrender its certificate without agency approval and affirmative action. This change ignores the longstanding practice urging surrender of certificates that are in the process of being revoked to prevent further potential unsafe practices.

No equivalent requirement for acceptance of surrender was implemented for mechanic, pilot, other air agency, air carrier or operator certificates.¹⁷ In those cases, the FAA recognized that its ability to continue a safety investigation and issue a final order against “bad actors” was unaffected by the surrender of the certificate.

The requirement lacks a rational connection to the facts

While NTSB safety recommendations are required to be taken into consideration by the Secretary of Transportation,¹⁸ the FAA is bound to act under its congressionally delegated authority,¹⁹ and must make decisions that are rationally related to the facts.²⁰

¹⁴ See NTSB recommendation A-04-02 (Feb. 9, 2004).

¹⁵ See 79 Fed. Reg. 46971.

¹⁶ See § [119.39](#).

¹⁷ See §§ [61.27](#), [63.15](#), [65.15](#), and [119.61](#).

¹⁸ See 49 U.S.C. § 1135

¹⁹ While 49 U.S.C. §§ 44702 and 44709 give the Administrator the power to issue, amend, modify, suspend or revoke certificates. Congress provided no authority to deny a surrender. All authorized actions are subject to the standards of the statutes, and to due process protections; not so with the denial of a surrender. Denying surrender simply exceeds the statutory grant of authority.

²⁰ Courts find agency actions arbitrary where the government has made a “clear error of judgment,” (*Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)), where it did not “articulate any rational connection between the facts found and the choice made,” (*Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)), and where it “offered an explanation for its decision that runs counter to the evidence before the agency.” (*Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 5 of 8

The agency's stated authority, and claimed justification for the rule is air safety.²¹ Thus the rule should bear a rational connection to furthering the interest of safety. Yet the requirement for affirmative agency acceptance of a surrendered certificate runs counter to that purpose. Where there are in fact "bad actors," the agency's aim is the immediate cessation of work on civil aviation articles.²² By requiring the agency to accept surrender, the certificate remains effective longer, and work (or operations) may continue to potentially jeopardize safety.

FAA's explanation in the preamble to the final rule that this new provision "will prevent a repair station under investigation from attempting to circumvent a possible enforcement action,"²³ conflates the bad actors with the corporation. The language of § 145.51(e) 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.**"²⁴ (Emphasis added).

The 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. The absence of a requirement that air carriers or any other certificate holders await the agency's acceptance of a surrender highlights that very concept.

Most importantly, individuals are entirely separate from a repair station or an "applicant." That fact is reinforced by the amendment to part 13 allowing individual bad actors to participate in an informal conference with an FAA attorney prior to the FAA issuing an order against that person.²⁵

Thus, eliminating the voluntary surrender only for repair station certificate holders bears no rational connection to the aim of ensuring aviation safety through the investigation and banishment of individual bad actors.

²¹ See Title 49, subtitle VII, part A, subpart III, chapter 447, sections 44701 and 44707 (79 Fed. Reg. 46971).

²² With notices of proposed certificate action the FAA provides an option to immediately surrender the document in lieu of pursuing an appeal; it is inconsistent with that option to refuse the same action at the advent of the legal enforcement process. (See, e.g. "Information with Respect to Notice of Proposed Certificate Action," Federal Aviation Administration, Southern Region, *available at* http://www.faa.gov/about/office_org/headquarters_offices/agc/operations/regional/ASO/links/view/nopca.pdf).

²³ See 79 Fed. Reg. 46973.

²⁴ See 79 Fed. Reg. 46984.

²⁵ See 79 Fed. Reg. 46964.

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 6 of 8

Lack of necessity, clarity, and reasonableness

Further supporting the fact that the rule is not rationally related to the agency's aims, it fails to satisfy the Department of Transportation's (DOT's) own rulemaking directives. The DOT order on regulatory policies and procedures²⁶ commands that the FAA pursue several objectives when engaging in rulemaking, including consideration of the necessity and reasonableness of a proposed rule.²⁷

The requirement to await the agency's acceptance of a repair station certificate is neither necessary²⁸, nor reasonable²⁹ by the standards set forth in the DOT order, nor does it provide the clarity to regulated parties required by due process.³⁰

The requirement that the agency affirmatively accept only a repair station's certificate surrender clearly imposes an unfair, unequal and unnecessary burden on the industry and agency, and does not solve any articulated or articulable problem. The expressed problem of removing bad actors from the repair station industry is accomplished by the agency's changes to section 145.51(e) and part 13.

The regulation is neither a feasible nor effective means for "producing the desired results."³¹ Identifying bad actors and preventing them from controlling repair stations in the future should be accomplished in the most limited manner. In this case it should mirror the agency's requirements for all other certificates.

Justification for direct final rule

Direct final rulemaking is recommended where the "unnecessary" prong of the APA good cause exemption³² is available.³³

²⁶ DOT Order 2100.5.

²⁷ *Id.* at p. 4.

²⁸ For necessity see DOT Order 2100.5, p. 4.

²⁹ For reasonableness see *Ibid.*

³⁰ The void for vagueness doctrine "addresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. See *Grayned v. City of Rockford*, 408 U. S. 104, 108–109 (1972)." (*FCC v. Fox Television Stations, Inc.*, slip. op., 567 U.S. ___ (2012)).

³¹ DOT Order 2100.5, p. 4.

³² See 5 U.S.C. § 553(b)(3)(B).

³³ See Recommendation 95-4, *Procedures for Noncontroversial and Expedited Rulemaking*, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES (adopted June 15, 1995).

January 9, 2015
U.S. Department of Transportation
Docket Operations

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 7 of 8

Here, good cause exists; reverting the regulatory language back to its previous form, allowing for voluntary surrender of repair station certificates, is both rational and uncontroversial, and is unlikely to receive adverse comment.

Conclusion

To prevent unnecessary actions and reactions, align its practices with DOT rulemaking directives, and comply with the APA, ARSA requests FAA accept this petition and issue a direct final rule removing the words “and the FAA accepts it for cancellation,” from § 145.55(a) and (b).

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January 9, 2015
U.S. Department of Transportation
Docket Operations

RE: Petition for Rulemaking on 14 CFR section 145.55
Direct Final Rule
Page 8 of 8

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