

June 18, 2017

The Honorable Bill Shuster
Chairman
Transportation & Infrastructure Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Thune
Chairman
Commerce, Science & Transportation Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Peter DeFazio
Ranking Member
Transportation & Infrastructure Committee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bill Nelson
Ranking Member
Commerce, Science & Transportation Committee
U.S. Senate
Washington, D.C. 20510

The Honorable Frank LoBiondo
Chairman
Aviation Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Roy Blunt
Chairman
Aviation Operations, Safety, and Security Subcommittee
U.S. Senate
Washington, D.C. 20510

The Honorable Rick Larsen
Chairman
Aviation Subcommittee
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Maria Cantwell
Ranking Member
Aviation Operations, Safety, and Security Subcommittee
U.S. Senate
Washington, D.C. 20510

Urging Reinstatement of Voluntary Surrender of Repair Station Certificates

Dear Chairmen Shuster, Thune, LoBiondo and Blunt and Ranking Members DeFazio, Nelson, Larsen, and Cantwell:

The undersigned organizations, representing a broad cross section of the aviation industry, urge you to include language in the pending Federal Aviation Administration (FAA) reauthorization bill reinstating the right of FAA-certificated repair stations to voluntarily surrender their certificates.

Background

The Federal Aviation Administration (FAA) issues certificates¹ that allow repair stations, subject to their ratings, to perform maintenance, preventive maintenance, or alteration of an aircraft, airframe, aircraft engine, propeller, appliance, or component part used in civil aviation. Prior to November 2014, domestic repair station certificates were valid until voluntarily surrendered by the repair station or suspended or revoked by the FAA. Similar rules apply to foreign repair stations, except their certificates must be periodically renewed.

In a new rule that became effective in November 2014, the FAA took the unprecedented step of subjecting surrendered repair station certificates to “acceptance for cancellation.”² The change means that a repair station may no longer voluntarily surrender its certificate; rather, it must be accepted for cancellation by the FAA.

¹ See [14 C.F.R. part 145](#).

² See [14 C.F.R. Sec. 145.55](#).

Our organizations petitioned the FAA to reinstate voluntary surrender and eliminate the “acceptance” requirement. Such a requirement is unique among aviation certificates, runs counter to the interest of aviation safety, increases regulatory administrative burdens, and undermines due process because the agency has provided no explanation as to how its discretion will be utilized. The FAA rejected the industry petition on July 1, 2015. The coalition filed a petition for reconsideration on Aug. 31, 2015 and has yet to receive a response from the agency.

Why did the FAA remove the voluntary surrender option for repair station certificates?

The provision in the final rule removing a repair station’s ability to unilaterally surrender a certificate stems from two National Transportation Safety Board (NTSB) safety recommendations 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.”³
- 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.”⁴

FAA responded to the first recommendation by adding Sec. 145.51(e) to the “Repair Stations” final rule. This new section mimics the agency’s denial authority over air carriers and commercial operators.⁵ In response to the second recommendation, the FAA altered the language of Sec. 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 unilaterally and voluntarily surrender its certificate.

This change ignores the longstanding practice of urging surrender of certificates that are in the process of being revoked to prevent further potentially-unsafe practices. It also ignores the fact that no equivalent requirement for acceptance of surrender was implemented for mechanic, pilot, other air agency, air carrier or operator certificates. In all cases, the FAA has the ability to continue a safety investigation and issue a final order against “bad actors”; such an action is totally unaffected by the surrender of a certificate.

Why did the FAA deny the industry petition to reinstate voluntary surrender?

In rejecting the petition, the FAA restated the language in the preamble to the new rule and said that, “The new surrender requirement codifies existing FAA policy, and will prevent a repair station under investigation from attempting to circumvent a possible 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 also said that voluntary surrenders would allow “a repair station under investigation [to] avoid the creation of a record of its regulatory violations by surrendering the certificate.”

³ See [NTSB recommendation A-04-01](#) (Feb. 9, 2004).

⁴ See [NTSB recommendation-04-02](#) (Feb. 9, 2004) (emphasis added).

⁵ See [14 C.F.R. Sec. 119.39](#).

In other words, the agency continued to ignore the fact that when a repair station voluntarily surrenders its certificate, the outcome best serves the interests of aviation safety: the company in question must cease operations under its certificate. The voluntary action does not impede the FAA's ongoing investigation of that company or individual "bad actors". The agency can still pursue enforcement for actions that occurred when the certificate was in effect and bad actors can be excluded from the industry pursuant to Sec. 145.51(e).

Why do we believe FAA's action is improper?

The new requirement that the FAA accept a certificate for cancellation lacks a rational connection to the facts. While NTSB safety recommendations are required to be taken into consideration by the Secretary of Transportation,⁶ the FAA is bound to act under its congressionally-delegated authority, and must make decisions that rationally relate to the facts.

The agency's stated authority and claimed justification for the rule is air safety.⁷ 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.⁸ By requiring the agency to accept surrender, the certificate remains effective longer and work (or operations) may continue to jeopardize safety.

FAA's explanation that this new provision "will prevent a repair station under investigation from attempting to circumvent a possible enforcement action"⁹ conflates bad actors with a corporate entity. The language of Sec. 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 another certificate is "revoked, or is in the process of being revoked."¹⁰ 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 face appropriate legal action.

The absence of a similar requirement for air carriers or any other certificate holders to await agency acceptance of a surrendered certificate highlights that very fact. Most importantly, individuals are entirely separate from a repair station or an "applicant." That fact is reinforced by the amendment to part 13 allowing a bad actor to participate in an informal conference with an FAA attorney prior to the agency issuing a final order against that individual.¹¹

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.

⁶ See [49 U.S.C. Sec. 1135](#).

⁷ See Title 49, subtitle VII, part A, subpart III, chapter 447, sections 44701 and 44707 (79 Fed. Reg. 46971).

⁸ 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 https://www.faa.gov/about/office_org/headquarters_offices/agc/operations/regional/ASO/links/view/nopca.pdf). 23

See 7

⁹ See 79 Fed. Reg. 46973

¹⁰ See 79 Fed. Reg. 46984 (emphasis added).

¹¹ See 79 Fed. Reg. 46964.

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 procedures¹² commands that the FAA pursue several objectives when engaging in rulemaking, including considering the necessity and reasonableness of a proposed rule.¹³ The requirement to await the agency's acceptance of a repair station certificate is neither necessary¹⁴ nor reasonable¹⁵ by the standards set forth in the DOT order, nor does it provide the clarity to regulated parties required by due process.¹⁶

Further, the requirement that only a repair station's certificate surrender is subject to acceptance by the FAA imposes an unfair, unequal, and unnecessary burden on the maintenance 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 Sec. 145.51(e) and part 13. The new FAA requirement is neither a feasible nor effective means for "producing the desired results."¹⁷ 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.

Finally, we believe the new FAA requirement imposes unnecessary logistical, administrative, and financial burdens on the agency. 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. With the thousands of repair station certificates issued, amended, revoked and surrendered, the change to the FAA rule was based on the NTSB's investigation of a single bad actor.¹⁸

The new requirement also places additional administrative burdens on the FAA's workforce, which is already resource challenged; requiring an affirmative act by regulators in this case is contrary to efficiency and effectiveness.

Finally, the business costs for repair stations 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 sensitive to 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 costs of doing business for certificated entities – in this case, only repair stations – increase. Those costs are

¹² [DOT Order 2100.5](#).

¹³ *Id.* at 4.

¹⁴ For necessity see [DOT Order 2100.5](#) at 4.

¹⁵ *Ibid.*

¹⁶ 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)).

¹⁷ [DOT Order 2100.5](#) at 4.

¹⁸ See NTSB recommendation A-04-01 and A-04-02.

disproportionately imposed on small businesses because more than 80 percent of repair stations are small and medium-sized enterprises.¹⁹

What are we asking Congress to do?

The undersigned organizations request that you include language in the pending FAA reauthorization bill that would direct the agency to conduct a rulemaking in timely manner to eliminate the regulatory requirement in 14 C.F.R. Sec. 145.55 that the FAA must affirmatively accept a surrendered repair station certificate for cancellation.

Specifically, we propose the following legislative language:

(a) Restoration of Repair Station Certificate Voluntary Surrender. —The Administrator of the Federal Aviation Administration shall ensure that — (1) not later than 60 days after the date of enactment of this Act, a notice of proposed rulemaking is published in the Federal Register amending part 145.55(a) to eliminate the words “and the FAA accepts it for cancellation” and reinstating the right of a repair station certificated under part 145 of title 14, Code of Federal Regulations to voluntarily surrender its certificate; and

(2) not later than 90 days after the date on which the notice of proposed rulemaking is published in the Federal Register, the rulemaking is finalized.

Thank you for your consideration. Please address any questions regarding this issue to Christian A. Klein at christian.klein@arsa.org or 703.739.9543 x 106.

Sincerely,

Aeronautical Repair Station Association
Aircraft Electronics Association
Aviation Suppliers Association
Modification and Replacement Parts Association
National Air Carrier Association
National Air Transportation Association

¹⁹ *Global Fleet and MRO Market Economic Assessment: 2017 to 2027*, Oliver Wyman (2017) at 115.