Repair Stations

Comments on the Notice of Proposed Rulemaking published at
77 Fed. Reg. 30054 (May 21, 2012).

Submitted to the Federal Aviation Administration online at http://www.regulations.gov.

[Docket Number FAA–2006–26408]

Submitted by the
Aviation Suppliers Association
2233 Wisconsin Ave, NW, Suite 503
Washington, DC 20007

For more information, please contact:
Jason Dickstein
General Counsel
(202) 347-6899

Aviation Suppliers Association
2233 Wisconsin Ave, NW, Suite 620
Washington, DC 20007
Voice: (202) 347-6899
Fax: (202) 347-6894

Info@aviationsuppliers.com

Respond to: Jason Dickstein
Direct Dial: (202) 628-6776
Jason@washingtonaviation.com

Repair Stations
Comments on the Notice of Proposed Rulemaking published at
77 Fed. Reg. 30054 (May 21, 2012).
Submitted to the Federal Aviation Administration online at http://www.regulations.gov.
[Docket Number FAA–2006–26408]

November 19, 2012

Docket Operations, M–30
U.S. Department of Transportation
1200 New Jersey Avenue SE.
Room W12–140
West Building Ground Floor
Washington, DC 20590–0001

Dear Sir or Madam:

Please accept these comments in response to Repair Stations, Notice of Proposed Rulemaking, which was published for public comment at 77 Fed. Reg. 30054 (May 21, 2012). The comment period for this NPRM was extended through November 19, 2012. 77 Fed. Reg. 49740 (August 17, 2012).

Contents

Who is ASA?

Founded in 1993, ASA represents the aviation parts distribution industry, and has become known as an organization that fights for safety in the aviation marketplace.

ASA and ASA's members are committed to safety and seek to give input to the United States Government regarding government policies so that the aviation industry and the government can work collaboratively to create the best possible guidance for the industry and the flying public.

ASA is an active participant in efforts to increase and support safety. ASA has a number of programs designed to support aviation safety, like the ASA-100 accreditation program which is coordinated with FAA AC 00-56A. ASA works with the FAA and other non-US regulatory authorities to develop and maintain programs designed to support aviation safety as it relates to distribution, maintenance and installation of aircraft parts.

ASA has over 500 members. About 25% of ASA's members hold repair station certificates. ASA members distributing rotable components use repair stations in order to overhaul or repair aircraft parts intended for sale to the aviation aftermarket. Nearly all of ASA's members sell aircraft parts to repair stations. ASA's membership has a tremendous interest in repair station quality, safety and efficiency.

ASA's members are typically small businesses. Most of them employ between 2 and 20 employees.

Comments

General

A number of the proposals would waste FAA resources through unnecessary paperwork exercises without gaining any safety benefits. The FAA has complained that the Agency lacks adequate resources on many occasions. Imposing new requirements that use FAA resources without providing any safety benefits actually decreases safety, because it withdraws human resources from oversight and investigation activities that actually would provide a safety benefit.

A number of the proposals appear to name it easier for the FAA to amend, suspend, revoke, or otherwise affect repair station certificates and repair station business models. While it is obvious that government employees would always enjoy greater power over the private sector, there is no showing in the proposed rule that such additional power provides any safety benefit nor is there a showing that such additional power would address any particular safety issue. The FAA's powers over repair stations are generally limited to aviation safety issues, and therefore any effort by the FAA to gain greater control for non-safety reasons should be met with suspicion.

Recertification

Issue

The proposed rule requires that certificated repair stations surrender their existing certificates and have them replaced with new certificates under the new regulatory scheme. This seems like a tremendous burden on the industry, and it appears to be entirely unnecessary.

Analysis

The proposed rule requires that certificated repair stations surrender their existing certificates and have them replaced with new certificates under the new regulatory scheme.

The proposed rule admits that the potential benefits of the rule are difficult to quantify, and it explains that that the potential benefits are as follows:

> "(1) Giving the FAA authority to
>
> (a) deny a repair station certificate to an applicant whose past performance resulted in a revocation, and
>
> (b) revoke all FAA issued certificates held by any person who makes fraudulent or intentionally false entries or records;
>
> (2) defining what operations specifications are and providing a well-defined process for both industry and the FAA to amend them; and
>
> (3) updating the ratings system." 77 Fed. Reg. 30072.

There is no safety justification for the rule. None of the three stated benefits of the rule require the administrative burden of revoking or sun-setting existing repair station certificates. Therefore revocation and replacement of existing certificates is unnecessary.

Furthermore, the United States Code specifies the circumstances under which the Administrator may revoke a repair station certificate. The Administrator may revoke or amend a certificate if it is necessary for safety in air commerce or air transportation and the public interest requires that action. 49 U.S.C. § 44709. In this case, there appears to be no safety justification for a mechanism that revokes and reissues certificates, so such a mechanism appears to exceed the Administrator's statutory authority.

In addition to the substantial and unnecessary burden placed on the industry by requiring all certificates to expire within 24 months of enactment of the final rule, the recertification provision imposes a significant burden upon the FAA.

Certificates issued to repair stations in the United States are effective from the date of issue until the certificate is surrendered, suspended, or revoked. 14 C.F.R. § 145.55(a). Because certificates are not renewed in large quantities on an annual or rotating basis, the Agency will face a substantial and atypical influx of certificate applications as repair stations seek to comply

within the 24-month transition period. Such an influx has the potential to bog down the Agency and delay the recertification process.

Although the proposed rule cautions applicants that waiting until later in the 24-month period may increase the risk of a delay in the issuance of a new certificate, the nature of business is such that there will inevitably be a large number of applications submitted in the latter months of the transition period. This fact, combined with the sheer number of current repair station certificate holders—approximately 5000—suggests that the number of applications received in order to comply with the new rule, may overwhelm the Agency's resources.

Proposed Change

The proposed recertification would represent a significant burden on industry and on the FAA. This significant burden impacts resources that would be otherwise used by both industry and the FAA to support and promote aviation safety.

There is no safety justification for the proposed recertification; but the reallocation of safety resources would reflect a potential diminution in safety. Therefore, it is in the best interest of safety to eliminate the requirement for recertification of existing repair stations.

Certificate Surrender

Issue

The proposed rule would require FAA acceptance of a surrendered certificate in order to make the surrender effective.

Analysis

There is no safety reason for the FAA to refuse to accept the surrender of a certificate.

The text of the preamble explains that "[t]his change would highlight and provide additional notice to the holders of repair station certificates of the FAA's policy against potential violators merely surrendering their certificates to avoid enforcement action." The FAA text suggests that certificate actions are the FAA's only method for achieving enforcement action. This is incorrect. The FAA has very effectively used civil penalty (monetary damage) actions as a means of bringing enforcement actions.

The FAA has failed to achieve its stated goals for two reasons

(1) the text does not put anyone on notice of the described policy; a more effective way to put the public on notice would be to state the policy; and
(2) the surrender of a certificate has no effect on the FAA's ability to impose monetary civil penalties on the holder of the certificate. The FAA has a history of bringing civil penalty actions for monetary damages after certificates have been surrendered;

thus there is no need for the FAA to refuse to accept surrender of a certificate in order to bring enforcement action.

For the FAA to refuse to accept surrender because the FAA wishes to bring a suspension of revocation action is a waste of judicial resources, because the FAA would be attempting to achieve through legal action something that the holder had tried to accomplish without legal action.

Refusal to accept surrender could lead to the Hobbesian choice for the certificate holder between expending resources unnecessarily to remain qualified to hold the certificate, or finding oneself in violation of regulations (and subject to civil penalties) for failure to remain qualified. This can only lead to waste, in the form of compliance resources being wastefully expended by a party that does not want to expend them and should not need to expend them.

Requiring a party to continue to hold a repair station certificate when the party is unable to qualify for the certificate could put the holder in the unusual position of being forced into a regulatory violation by the FAA's refusal to accept surrender.

Thus, this proposal should be eliminated from the final rule.

Proposed Change

Revise proposed section 145.1055(a and b) to read as follows (*proposed additions are shown as underlined words - proposed deletions are shown as struck-out*):

§ 145.1055 Duration and renewal of certificate.

(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 the certificate ~~and the FAA accepts it for cancellation~~, 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 ~~and the FAA accepts it for cancellation~~, 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.

Asset Sale

Issue

The proposed rule requires a repair station to apply for an amended certificate if the holder "sells or transfers its assets." This is ambiguous, in that it does not set a threshold for how much of an

asset sale will trigger the requirement. Also, in cases where the sale of the assets does not affect the repair station's ability to meet its regulatory responsibilities, this seems unnecessary.

Analysis

The proposed rule would add clauses that state:

> "If the holder of a repair station certificate sells or transfers its assets, the new owner must apply for certification in accordance with § 145.1051." (§ 145.57(b)).
>
> "If the holder of a repair station certificate sells or transfers its assets, the new owner must apply for an amended certificate in accordance with § 145.1051." (§ 145.1055(d)).

The trigger for this re-application requirement is the sale or transfer of assets. This is ambiguous, in that it does not set a threshold for how much of an asset sale will trigger the requirement.

In cases where the sale of the assets does not affect the repair station's ability to meet its regulatory responsibilities, this seems unnecessary. This is also true in cases where the entity is sold to a new owner (which appears to be the intended reach of the change). In such cases, if the repair station is not changing the way in which it operates, nor the way that it meets the requirements of the regulations, then there is no need for a re-application. Imposing such a requirement is a waste of resources.

In the past, FAA offices have used the occasion of a new purchase of an existing repair station to impose onerous conditions on the new owners which were not imposed on the prior owners. This violates due process when similarly situated certificate holders are held to different requirements and standards.

Proposed Change:

All references to a requirement to re-apply for certification where there is a new owner, or where there is a substantial sale of assets, should be removed from the regulations, including the above-referenced provisions in subsections 145.57(b) and 145.1055(d).

Ratings

Issue

The ratings proposal does not modernize the ratings system. Instead, the proposed system creates new problems without solving any of the old ones.

Analysis

The proposed rating system fails to meet the FAA's primary objective, which was to modernize the ratings system. Instead, the proposed system creates new problems without really solving any of the old ones.

One example of a new problem is found in the proposed component rating. The preamble to the rule states that the FAA expects that component-rated repair stations would have a list of their components in their operations specifications. Today, most repair stations find it very difficult to amend their operations specifications. In light of the difficulty now faced by repair stations in amending their operations specifications, keeping the component list in the op specs would likely make it very difficult for a component repair station to add new components to their list of permissible components, which in turn would probably cause many smaller component shops to stagnate as new products come out but the operations specification amendment process limited their ability to add them as capabilities.

There is also a fear that some offices might "pencil-whip" operations specifications changes for so-called "OEM repair stations" and for so-called "OEM-authorized repair stations." If this were to happen, then it would impose an even greater burden on independent repair stations that did not benefit from this positive presumption.

A Different Approach

The FAA has made numerous formal and informal proposals to update the ratings system over the past decade-and-a-half. None of them have been useful. Perhaps it is time to consider s different approach.

One radical option would be to do away with the rating system entirely. If the FAA policy-makers believe that repair stations that work on avionics, instruments, appliances, etc. should rely on capabilities lists in order to identify the articles that they are qualified to maintain (which has been the modern trend), then perhaps we should do away with an admittedly out-of-date rating system and simply embrace capabilities lists for all repair stations as the replacement to the current rating system. This would permit repair stations to explain what they are capable of, with specificity, without that capability being interpreted in the light of an admittedly outdated and increasingly irrelevant ratings system.

One problem that could be solved by such a move would be the problem of ratings reinterpretation (FAA policy interpretations of ratings that narrow their apparent scope, without providing repair stations with adequate notice that they need to change their ratings to continue to reflect their normal business practices). A related problem that would be resolved is the repair station that is 100% qualified to perform work (they have the right housing, tooling, equipment, data, personnel, training, etc.) but that finds it has inadvertently violated its rating because (1) the ratings were not updated to reflect the new scope of work or (2) a later inspector had a different interpretation of the limits of the stated ratings (we have seen this arise even where the FAA

approved manual changes that supported the expansion of the business capabilities). By doing away with ratings, repair station would not have to worry about modifying multiple documents when they add capabilities – so the documentation burden associated with business practice changes would be minimized without any adverse effect on safety.

This would also allow better organic growth of repair stations. A repair station with significant Cessna 172 business might have an airframe rating. From a business perspective, an investment in the capabilities to work on Lycoming IO-360 engines (a common engine on Cessna 172 aircraft) would make sense. The repair station might want to invest in additional tooling and trained personnel, but it might be able to obtain engine maintenance data from existing owner/customers. Under the existing system, this would be a significant step, requiring a totally different rating. But for a repair station that is able to perform a self-audit and verify its investment in the capability to work on such engines, it ought not to be such a significant step. The existing capabilities list system ought to be adequate to ensure that the repair station's ability to work on the engines would be sufficiently documented to be reviewed by the FAA at the FAA's discretion.

Proposed Change

The proposed rating system changes should be abandoned.

The FAA should strongly consider abandoning ratings altogether in favor of capabilities lists.

Capabilities Lists in the Operations Specifications

Issue

Under the proposed rule, a component-rated repair station would need to have a capabilities list that would need to be duplicated in the repair station's operations specifications.

Analysis

Section 145.1057(e) of the proposed rule states (in relevant part):

> "For a Component rating, the operations specifications must identify each component or appliance included in the rating by manufacturer, manufacturer-designated nomenclature, and basic part number."

This text comes right after text that has to do with the "optional" capabilities list, so there is some facial ambiguity about the relationship between those two clauses. The facial ambiguity is cleared away by reference to the preambulatory language on page 30059 of the Federal Register which clearly states that the listing of components is expected to be found in the operations specifications.

Changing a repair station's operations specifications is a tremendous burden. By placing a component-rated repair station's list of components in the operations specifications, the FAA imposes a tremendous burden on any changes. The net effect of such an action would be to have a chilling effect on growth, because it would be administratively difficult for repair stations to grow by adding components to their lists, even when the repair station is clearly otherwise qualified to work on the additional components.

This could have an adverse effect on PMA parts. FAA protocols express a preference for PMA parts to be maintained the same way as the TC/PC parts that they replace (see FAA Order 8110.42C). Thus, a repair station that is qualified to repair a TC/PC part is generally qualified to repair the corollary replacement part manufactured under FAA-PMA. By imposing a tremendous administrative burden on repair stations to amend their component lists, the FAA makes it more likely that repair stations will forgo adding PMA parts to their lists of component on which they work, because the relatively small number of PMA parts may not justify the administrative expense and burden of adding such a part to the list. This will naturally have an (unintended) adverse effect on the PMA market by having a chilling effect on repair stations that might otherwise seek to add the PMA parts to their list if components repaired.

This takes the regulations in the opposite direction that they had been moving previously, when the FAA permitted repair stations to change their capabilities lists based on an internal procedure.

Proposed Change

Remove all requirements to keep the capabilities list, or any other list of components, in the operations specifications.

Add text to the rule that states: "A repair station need not list the components on which it works in its operations specifications."

Removing Operations Specifications from the Certificate

Issue

The proposed rule removes the operations specifications from the certificate (other than those specifying ratings and limits to ratings). In doing so, it dilutes the statutory protections for certificate action, by allowing the FAA to impose an effective suspension or revocation by changing or removing operations specifications, without being subject to the statutory protections associated with suspension or revocation of a certificate.

Analysis

Congress has established statutory protections that apply whenever the FAA seeks to suspend, revoke or amend a certificate. See, e.g., 49 U.S.C. § 44709.

Currently and in the past, the operations specifications have been part of certificate. As a consequence, a suspension, revocation, or amendment to an operations specification has been a suspension, revocation, or amendment to a certificate that is subject to the protections of 49 U.S.C. § 44709.

Under the proposal, the operations specifications (other than those specifying ratings and limits to ratings) would no longer be a part of the certificate. This would dilute the statutory protections for certificate action, by allowing the FAA to impose an effective suspension or revocation by changing or removing operations specifications. Effectively, the proposed rule would give the FAA the power to circumvent the protections of 49 U.S.C. § 44709 as they apply to operations specifications.

Modern operations specifications are generally quite necessary to a repair station's business operations, and thus a change to a non-rating operations specification can still have the effect of preventing the repair station from effectively doing business.

Under the proposal, this action by the FAA would be subject to internal FAA review, but there is no standard for that review so the reviewing office could arbitrarily approve the action by the local office without penalty. Such action would not be subject to the statutory protections associated with suspension or revocation of a certificate. Even worse, as written, the local office can declare a change to be an emergency. There is no standard given for this designation and there is no appeal of this designation. In such a case, there appears to be no appeal process for the emergency action, because the appeal process of subpart D does not apply.

This set of rules provides the local office with unwarranted power to change a repair station's operations specification. This power could be exercised capriciously. There is no safety reason to make this change, and there is a tremendous potential cost in terms of wasted resources as well as in the costs of impeding commerce where a repair station is adversely affected by such a change.

Proposed Change

We recommend the deletion of subsection 145.1057(a) and all of section 145.1058.

Capabilities Lists

Issue

The proposed rule would impose a number of capabilities list provisions that do not make sense.

Analysis

The proposed rule provides two options for a repair station to identify the airframe, powerplant, or propeller upon which it can perform maintenance. This list may appear in a capability list as provided in § 145.1215 or if not, must appear in the certificate holder's operations specifications

under § 145.1057. Under § 145.1057, a component-rated repair station must list their components in the operations specifications.

Proposed § 145.1215 would allow a certificated repair station to establish and maintain a capability list that includes all the articles for which it is rated to perform maintenance. Such lists could be modified in two ways. The certificate holder can submit a request to the FAA for approval, or apply to the FAA to request authorization in its op specs to make additions to its capabilities list through internal audit and evaluation.

This proposal would remove repair stations' current ability to modify their capabilities lists after a self-audit confirms their capability. There appears to be no reason for this – nothing in the preamble suggests that the current system has created safety problems. Thus, there appears to be safety justification for removing this ability.

This system creates an uneven playing field where some repair stations are able to easily change their capabilities lists (because they have received the discretionary delegation), while others are forced to wait for sometimes substantial amounts of time for FAA approval of the change to their capability list. There are several problems with this distinction.

First the privilege to change one's own capabilities list is issued without any standards or metrics. Thus it is inherently arbitrary and capricious. The FAA cannot defend this arbitrarily delegated privilege as a delegation because the statutory authority for delegation is related to certification and the capabilities list is not part of the certificate.

Second, there is no real appeal process to a denial of the privilege. Although the denial can be appealed as a denial of an op spec, this is a meaningless appeal, as this proposed regulation is drafted, because there are no metrics for grant or denial so the FAA can issue the privilege arbitrarily, and thus an arbitrarily denied party would have no objective basis on which to appeal.

Third, FAA Flight Standards employees complain that they do not have the resources to accomplish what they need to accomplish under current standards. Without the resources to undertake this new and significant burden, the FAA likely will be unable to process and return capabilities list changes in a timely manner, so this will become one more drag on the industry that inhibits economic growth.

Fourth, for those repair stations that are not authorized to make changes to their capabilities lists, in addition to the required review of the list, a substantial burden is imposed. Some repair stations list as many as 30,000 capabilities. Maintaining such a list may necessitate a full time employee for that exclusive purpose. This would be fundamentally unfair when these repair stations have to compete against other repair stations that are permitted to change their own operations specifications.

The proposed regulation also requires a review of a repair station's capability list every two years to determine upon which articles the repair station is still capable of performing maintenance. Because of the business cycles of the industry, it is possible for a repair station to go several years without seeing a particular component, and then see that component repeatedly after a hiatus. During the hiatus, the capability to perform the work may lapse because it is not central to the repair station's business model. But it is normal practice for a repair station to self-audit current capability when they get a component in for repair. Thus, it is normal practice for a repair station, when they recognize that their resources are inadequate, to take steps to make them adequate before beginning work. For example, because of the high costs of maintenance data, a repair station may allow a subscription to lapse while no work for that component is coming in. But when the repair station gets that component in for maintenance, it will obtain the appropriate version of the manual from the customer or from another source (obtaining maintenance data from the operator has been specifically recognized as a valid practice in guidance like FAA Order 8110.54A, and as a practical matter competitive limits imposed by design approval holders often make this a *de facto* mandatory way to obtain maintenance data).

The bi-annual review does nothing to improve safety – it is a waste of resources that could be better used to promote safety and should be eliminated.

Proposed Change

Eliminate the uneven playing field by allowing all repair stations to modify their own capabilities lists – accomplish this by modifying subsection 145.1215(d)(2).

Eliminate needless and wasteful review by eliminating the biannual capabilities list review found in subsection 145.1215(f).

Quality Systems

Issue

Experience with the text of proposed 145.1211(a) has shown that this text is misinterpreted by some FAA personnel. Our proposed language would align this text with existing regulations in the proposal as well as in Part 43, and would correct a persistent misinterpretation.

Analysis

Experience with the text of proposed 145.1211(a) has shown that this text is misinterpreted by some FAA personnel to mean that the repair station must ensure the airworthiness of the articles on which the repair station performs maintenance, preventive maintenance, or alterations. This text was first introduced into Part 145 under the last major set of changes to the regulations (current subsection 145.211(a)).

Since that time, some FAA employees have interpreted the language to mean that all repairs must return the product or article to an airworthy condition. This is inconsistent with the language of 14 C.F.R. § 43.9, which makes it clear that the approval for return to service approves only the work performed, and it is also inconsistent with past practice which has always permitted a repair station to perform work of limited scope as long as the work is adequately described in the approval for return to service.

For example, the current rule for those performing repairs is that they must ensure that the work performed is done correctly. See 14 C.F.R. 43.9(a)(4) (signature constitutes approval for return to service only for the work performed). So if their workscope does not encompass a finding of airworthiness for the entire article, then they do not need to also verify the airworthiness of the entire article.

As interpreted, this could essentially do away with spot repairs. As a matter of practice, it would require repair stations to overhaul parts every time they get them.

This is a very real concern. We are aware of a repair station that was asked to perform a simple alteration to a helicopter. In their due diligence, they discovered that an AD was necessary for the rotorcraft. When they called the owner, though, the owner said that they already had a contract with another repair station to have the AD work performed. As a matter of their own due diligence and good record-keeping, they made a note that they had communicated to the owner that additional AD work was necessary before the rotorcraft flew. An FAA inspector saw this note and brought an enforcement action against the repair station for failing to ensure that the entire rotorcraft was airworthy. The enforcement action was dismissed because the approval for return to service was limited only to the work accomplished, and not the work that was not described; but this illustrates the issue (the misinterpretation), and the fact that it went to an enforcement action shows that there are very real consequences to this interpretation.

Proposed 145.1211(a) would impose a burden on the repair station's quality system to ensure the airworthiness of each article on which the repair station works. This would preclude spot repairs, and essentially require an overhaul in every component repair situation, in order to be able to ensure the airworthiness of the article.

Let's look at this from a practical point of view. A distributor has an overhauled avionics unit in their inventory. The OEM issues a software upgrade. The distributor wants to send the unit to a local avionics repair station for the sole purpose of installing the software upgrade. The distributor does not want to pay for a complete overhaul of the unit, and a complete overhaul of the unit is not necessary. But the local repair station performing the software upgrade would not be able to ensure the airworthiness of the component without performing a complete overhaul. At first glance, this seems foolish, and some people might ask "why can't the repair station simply rely on the approval for return to service from the earlier overhaul?" The repair station is responsible for making its own findings. The repair station is not automatically allowed to rely

on the earlier approval for return to service because that sort of reliance would reflect a form of subcontracting (which is not permitted unless the task was approved in their subcontracting task list (14 C.F.R. § 217(a)(1)) and the vendor is listed in their approved maintenance subcontracting vendor list (14 C.F.R. § 217(a)(2))).

Contrast proposed § 145.1211 with proposed § 145.1213(b). Section 145.1213(b) would also require a repair station to certify that an article was airworthy, however it is required to certify airworthiness only "with respect to the maintenance, preventative maintenance or alterations performed."

Proposed Change

Modify proposed 145.1211(a) to read as follows in order to clarify the FAA's intent (*proposed additions are shown as underlined words - proposed deletions are shown as struck-out*):

> "A certificated repair station must establish and maintain a quality control system acceptable to the FAA that ensures the airworthiness of the work performed whenever ~~articles on which~~ the repair station or any of its contractors performs maintenance, preventive maintenance, or alterations."

Appropriate Equipment and Tools

Issue

The proposed rule seeks to require that the equipment, tools, and test apparatus necessary for certification be available for inspection at the time of certification. Proposed 14 C.F.R. § 145.1051(b). Although the proposed rule would not require the repair station to own the equipment, this requirement still creates an unreasonable burden for repair stations—particularly small repair stations—seeking certification. The proposed language of § 145.1051(b) also reintroduces a previous ambiguity by removing the second sentence of the current rule, § 145.51(b), which clearly allows for the leasing or renting of equipment.

Analysis

The FAA has recognized that it is not reasonable to require repair stations to purchase expensive equipment that may not be used regularly. It therefore permits "[a]n applicant [to] meet the equipment requirement . . . if the applicant has a contract acceptable to the FAA with another person to make the equipment available to the applicant at the time of certification and at any time that it is necessary when the relevant work is being performed by the repair station." Id.

A 2006 NPRM sought to clarify this provision by inserting language stating that

> the requirement to have the equipment, tools, and test apparatus in place at the time of initial certification or rating approval may be met if the applicant has a contract acceptable to the FAA with another person to make the equipment, tools,

> and test apparatus available to the repair station at any time it is necessary when the relevant work is being performed.

71 Fed. Reg. 70269 (emphasis added). The FAA reasoned that the contract to make the equipment available indicated that the repair station had "assessed its relevant needs, and that it has the means to obtain the pertinent equipment, tools, and test apparatus when necessary." Id. at 70256. In the current proposed rule, the FAA asserts that the proposed 2006 clarification was not consistent with the intent of the rule, which would have required applicants to have basic equipment in place for the initial certification inspection.

The requirement that leased or rented equipment be in place at the time of inspection does not serve to promote safety. As the 2006 NPRM observed, equipment that is in place at the time of inspection "could be returned to the supplier the next day, and not be returned to the repair station until the relevant work is being performed." Id. The time at which the relevant work is performed might be a considerable time in the future. In that time, the placement of the equipment at the facility may have changed, the personnel using the equipment may have changed, and the specific piece of equipment itself may be a different. Therefore, the observations as to "the placement of the equipment, whether the equipment works, and whether the applicant can use the equipment properly," might all be rendered moot.

Additionally, the repair station may never perform the particular repair that would have necessitated the use of the equipment, and therefore there would be no need for the equipment ever to have been present at the facility. To require the presence of equipment, tools, and test apparatus at a facility—which may be large and costly to rent, install, and transport—when that equipment may only rarely, or never, be used, is an unreasonable burden to place on repair stations in terms of both time and resources.

As suggested by the 2006 NPRM, allowing the equipment, tool, and test apparatus requirements to be satisfied by having "a contract acceptable to the FAA with another person to make the relevant equipment . . . available to the repair station any time it is necessary when the relevant work is being performed" promotes safety by ensuring the repair station has assessed its relevant needs while at the same time not burdening the repair station with unnecessary expenses.

Proposed Change

ASA proposes that this language be returned to the current version of the language as found in current § 145.51(b).

> § 1051 (b). "The equipment, personnel, technical data, and housing and facilities required for the certificate and rating, or for an additional rating must be in place for inspection at the time of certification or rating approval by the FAA. An applicant may meet the equipment requirement of this paragraph if the applicant has a contract acceptable to the FAA with another person to make the equipment available to the applicant at the time of

certification and at any time that it is necessary when the relevant work is being performed by the repair station."

Permanent Blacklisting From the Industry under § 1051(e)

Issue

The proposed language for section 145.1051(e) would permit the FAA to deny a certificate to a range of applicants who had been associated with previous revocations.

Analysis

This proposal must be rescinded for a number of reasons.

The effect of this proposal would be to blacklist certain parties from significant participation in the repair station industry. The rule would have a chilling effect on employing repair station personnel with previous association with prior repair stations whose certificates had been revoked. Even though the language is permissive ("may be denied") the expenses of a repair station certificate application would make it impractical to proffer an application that might be denied on a discretionary basis, so the real-world effect will be an effective blacklisting of such persons. This includes management personnel from revoked repair stations who may have had nothing to do with the offenses that caused the prior repair station certificate to be revoked. It would thus have a chilling effect on the subsequent employment of experienced repair station personnel who may have done nothing wrong.

In many cases, a certificate holder (especially a small one) may accept a revocation by the FAA because the certificate holder does not have the resources to fight the proposed revocation. In the past, FAA employees have specifically advised certificate holder to accept the proposed revocation and then to reapply. In such cases, where revocation is accepted, the applicant would be effectively blacklisted from the repair station industry under this proposed language. Under the proposal, a new penalty (being effectively blacklisted from the repair station industry) would be imposed on management and ownership personnel from these repair stations – where the decision to accept revocation was based on lack of resources to fight the action, it would be unfair to impose de facto blacklisting as an additional penalty. In many cases, management officials may have had no control over the revocation, and it is similarly unfair to impose effective blacklisting on them.

For all past revocations, this new rule would effectively impose a new penalty that was unanticipated at the time of the original revocation. The ex post facto imposition of such a penalty on a class of persons represents a Bill of Attainder (or a *Regulation of Attainder*).

This proposed amendment to the regulations acts as a Bill of Attainder in violation of the Article I Section 9 of the Constitution. Because the FAA's power is limited only to those powers

delegated to it by Congress, and Congress is prohibited from passing a Bill of Attainder, the FAA is not empowered to pass such a Bill of Attainder.

Proposed Change

ASA proposes that this entire subsection 1051(e) should be removed from the proposed rule.

Entitlement to Certificate under § 1053(a)

Issue

The proposed language for section 145.1053 would change the traditional regulatory language that states that qualified applicants are entitled to a certificate. It would change the language to state that such parties are eligible for certificates rather than entitled to them. If implemented as proposed, this language would permit applications for certificates to be denied in a manner that violates the Administrative Procedures Act and the Constitution.

Analysis

Under the existing language of 14 C.F.R. § 145.53(a), a person who meets the requirements of part 145 "is entitled to a repair station certificate. . . ." The rule also lists three exceptions under which a repair station is not automatically entitled to a certificate. See § 145.53(b)-(d).

Proposed rule § 145.1053(a) would amend the word "entitled" to read "eligible to be issued." This change is unnecessary and also creates a situation in which an otherwise qualified repair station could be arbitrarily denied a certificate, where before the certificate would have issued because the repair station was "entitled" to it.

The proposed rule explains that because proposed § 145.1051 "would provide a mechanism for the FAA to deny a certificate, an applicant would no longer be 'entitled' to a certificate." 77 Fed. Reg. at 30062. The mechanism to which the NPRM refers is found at proposed § 145.1051(e) (discussed above), which states that "[a]n application for a repair station certificate may be denied if the FAA finds that [the applicant or other certain persons hold a certificate in the process of being revoked, or previously held a certificate that was revoked]."

By permitting FAA employees to deny a certificate to an otherwise qualified applicant, the FAA creates a situation in which employees may act in an arbitrary and capricious manner in responding to repair station certificate applications.

Rule § 145.53(a) as currently in effect provides that a person who meets the requirements of the part is entitled to a certificate unless certain exceptions apply. This is adequate to permit employees to deny certificates for the enumerated reasons, and as the agency identifies new reasons why a certificate should be denied, it is free to promulgate new rules to establish those exceptions. By allowing employees to arbitrarily deny certificates for additional reasons that are not enumerated in the regulations, the agency will effectively devolve to the agency's own

employees the *de facto* rulemaking authority to create exceptions on an *ad hoc* basis. This violates the Administrative Procedures Act, because it permits *de facto* rulemaking in violation of the APA's procedural requirements. It also violates Constitutional requirements by creating a rule that is void for vagueness, because the reasons for certificate denial would be unenumerated, and also because employees would be permitted to deny certificates to otherwise qualified applicants on an arbitrary and capricious basis.

Proposed Change

It is possible to both retain the language entitling a person meeting the requirements of the part to a repair station certificate, and provide an exception for revoked certificates. ASA suggests the following language (*proposed additions are shown as underlined words - proposed deletions are shown as struck-out*):

> **§ 145.1053 Issue of certificate.**
>
> (a) Unless otherwise subject to the provisions of § 145.1051(e) of this part, ~~A~~ a person who meets the requirements of this part is ~~eligible to be issued~~ entitled to a repair station certificate with appropriate ratings prescribing such operations specifications and limitations as are necessary in the interest of safety.

Change to Part 43 Appendix B

Issue

The proposed rule attempts to combine the approval for return to service of section 43.9 and the maintenance release of Part 43 Appendix B into a single record-keeping requirement. While ASA applauds the FAA's attempts to minimize redundancies in documentation, the actual implementation of this change creates problems.

ASA feels that the actual change as proposed (1) fails to accomplish the Administrator's goals, (2) changes an industry standard record-keeping practice (use of the 8130-3 tag) in a way that is inconsistent with FAA guidance and current safe industry practices, and (3) creates needless confusion without accomplishing any ameliorative benefit. An important reason for this unanticipated result is that the rule change fails to modify other related obligations (like the persisting obligation to provide the work order, and the requirement to use the work order to document the required details).

Analysis

Under current law, when anyone performs a major repair, they are required to complete and file a FAA Form 337. This requirement is found in 14 C.F.R. Part 43, Appendix B, Subsection (a). The purpose of the form is to provide the FAA with a record of the work performed. This record-

keeping requirements is *in addition to* the requirement to complete an approval for return to service under 14 C.F.R. § 43.9.

Under current law and standard practice, when a repair station performs a major repair, it is required to complete an approval for return to service to meet the requirements of 14 C.F.R. § 43.9, but it has the option to perform an alternative record-keeping operation instead of filing a FAA Form 337 with the FAA. Instead of that filing, the repair station is permitted to provide the customer with a maintenance release in order to meet the requirements of Appendix B to Part 43 [note that use of a FAA Form 337 remains permitted as a mechanism to meet the requirements of Appendix B, but that Form is more commonly used for Major Alterations in the repair station sector].

Although some repair station have found ways to conflate these two record-keeping requirements into a single document, it is still very common to see two separate records that meet the two separate requirements.

Here is a table that shows some typical methods for meeting the two different documentation requirements in different repair circumstances:

Common Documentation Following A Major Repair		
	Documentation that Constitutes the Approval for Return to Service	*Documentation that Constitutes the Maintenance Release*
Major Repair of a Component	8130-3 Authorized Release Certificate	Maintenance Release language included in the Work Order
Major Repair of a Complete Product	Log Book Entry	(1) Maintenance Release language included in the Work Order OR (2) signed copy of the work order and also a Maintenance Release written into the log book

The table does not describe uniform practices, and many repair stations may have practices that differ, but these represent common ways to meet the two requirements.

The Administrator has proposed to change the Appendix B requirements in order to reference an approval for return to service, rather than a maintenance release.

Under the proposed change, repair stations would still have an obligation to provide the work order, and they would still have an obligation to use the work order to provide the traditional maintenance release language; but the work order would then become the approval for return service document as well. This would mean that the current industry-standard-practice for

documenting component repairs and overhauls, use of the 8130-3 tag, would become inconsistent with regulatory requirements, due to the fact that Appendix B would require the approval for return to service to be created using the work order.

We believe that this is a mistake in drafting, rather than reflecting the actual intent of the Administrator.

The proposed rule provides relatively little discussion to explain this change. The Proposed rule suggests that this change is being made for consistency. 77 Fed. Reg at 30071. The Proposed rule also suggests that the approval for return to service document is identical to the maintenance release described in Appendix B. Id. at 30070. While this latter suggestion is inconsistent with past FAA practice, it nonetheless could reflect good future practice (if properly drafted); the additional text described in Appendix B for major repairs should be described as additional text for the approval for return to service in order to clarify that subsection (b) of the Appendix is merely adding additional elements to the already-required record-keeping obligation of 14 C.F.R. § 43.9.

From the context of the Administrator's preamble, it is obvious that the Administrator wants to conflate these two documents (approval for return to service and maintenance release) in order to minimize burden. ASA applauds this idea, because reducing unnecessarily redundant paperwork obligations is always a good idea; however, ASA feels that the actual change as proposed (1) fails to accomplish the Administrator's goals, (2) changes an industry standard record-keeping practice (use of the 8130-3 tag) in a way that is inconsistent with FAA guidance and current safe industry practices, and (3) creates needless confusion without accomplishing any ameliorative benefit. An important reason for this unanticipated result is that the rule change fails to modify other related obligations (like the persisting obligation to provide the work order, and the requirement to use the work order to document the required details). ASA therefore has an alternative language proposal that we feel may better meet the Administrator's intent.

Proposed Change

In order to accomplish the Administrator's obvious intent, ASA recommends that the language of Appendix B be changed as follows (*proposed additions are shown as underlined words - proposed deletions are shown as struck-out*):

> **Appendix B to Part 43—Recording of Major Repairs and Major Alterations**
>
> * * *
>
> (b) For major repairs made in accordance with a manual or specifications acceptable to the Administrator, a certificated repair station may, in place of the requirements of paragraph (a)—

(1) ~~Use the customer's work order upon which the repair is recorded;~~

~~(2)~~ Give the ~~aircraft owner~~ customer a signed copy of the customer's work order upon which the repair is recorded, and retain a duplicate copy for at least two years from the date of approval for return to service of the aircraft, airframe, aircraft engine, propeller, or appliance;

(~~3~~2) Give the customer ~~aircraft owner~~ ~~a maintenance release~~ an approval for return to service that meets the requirements of section 43.9 of this Part and that ~~signed by an authorized representative of the repair station and~~ incorporate~~s~~ing the following additional information:

(i) Identity of the aircraft, airframe, aircraft engine, propeller or appliance;

(ii) If an aircraft, the make, model, serial number, nationality and registration marks, and location of the repaired area;

(iii) If an airframe, aircraft engine, propeller, or appliance, give the manufacturer's name, name of the part, model, and serial numbers (if any); and

(~~4~~3) Include, as part of the approval for return to service, the following or a similarly worded statement—

> "The aircraft, airframe, aircraft engine, propeller, or appliance identified above was repaired and inspected in accordance with current Regulations of the Federal Aviation Administration and is approved for return to service.
>
> Pertinent details of the repair are on file at this repair station under Order No. ___,
>
> Date_____
> Signed_____
>
> (For signature of authorized representative)
>
> (Repair station name) (Certificate No.)
>
> _____."
>
> (Address)

The FAA may also want to consider more precisely harmonizing the "maintenance release" language of the Appendix to the existing language of FAA Form 8130-3 (although the two are reasonably similar, now).

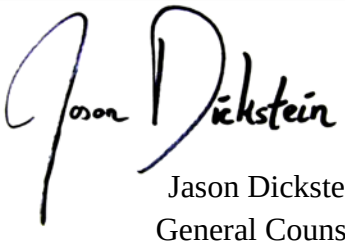
Conclusion

Reducing redundancies in paperwork is a great idea; but right now, the industry recognizes the 8130-3 tag as a standard method for recording maintenance and for approving it for return to service. The proposed language of the regulation, which would require the approval for return to service to be listed on the Work Order, would change this and would require distributors and others to become trained in the recognition of appropriate language on a diverse collection of Work Order formats. This sort of reduction in uniformity would actually decrease safety by making it more likely that unusual language in a Work Order could confuse a receiving inspector in a distributor or operator environment as to the true nature and scope of the approval for return to service. While we applaud the idea of conflating the approval for return to service and the maintenance release, we ask that the FAA carefully draft the language to ensure that industry standard practices, like use of the 8130-3 tag for approval for return to service for component work, can continue to remain in place so long as they are effective in accomplishing the documentation goals.

Conclusion

ASA looks forward to working with the FAA to better improve aviation safety and repair station rules. Your consideration of these comments is greatly appreciated.

Respectfully Submitted,



Jason Dickstein
General Counsel
Aviation Suppliers Association