

November 19, 2012

BY ELECTRONIC MAIL

Michael P. Huerta  
Acting Administrator, Federal Aviation Administration  
U.S. Department of Transportation  
800 Independence Avenue, SW  
Washington, DC 20591  
Electronic Address: <http://www.regulations.gov> (Docket No. FAA-2006-26408; Notice No.12-03; RIN 2120-AJ61)

***Re: Comments on FAA's Proposed Repair Stations Rule***

Dear Acting Administrator Huerta:

The U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submits the following comments on the Federal Aviation Administration's (FAA's) *Proposed Repair Stations Rule*.<sup>1</sup> FAA's proposed rule would amend FAA regulations for aviation repair stations by revising the system of ratings, repair station certification requirements, and the regulations on repair stations providing maintenance for air carriers. FAA states that the proposed rule is necessary because portions of the existing repair station regulations do not reflect current repair station aircraft maintenance and business practices, or advances in aircraft technology, and that the proposed rule would modernize FAA regulations to keep pace with current industry standards and practices.<sup>2</sup> A more detailed discussion of the rulemaking is provided below.

**Office of Advocacy**

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration. The Regulatory Flexibility Act (RFA),<sup>3</sup> as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),<sup>4</sup> gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less

<sup>1</sup> 77 Fed. Reg. 30054 (May 21, 2012).

<sup>2</sup> *Id.*

<sup>3</sup> 5 U.S.C. § 601 et seq.

<sup>4</sup> Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. §601 et seq.).

burdensome alternatives. Moreover, Executive Order 13272<sup>5</sup> requires federal agencies to notify Advocacy of any proposed rules that are expected to have a significant economic impact on a substantial number of small entities and to give every appropriate consideration to any comments on a proposed or final rule submitted by Advocacy. Further, both Executive Order 13272 and a recent amendment to the RFA, codified at 5 U.S.C. 604(a)(3), require the agency to include in any final rule the response of the agency to any comments filed by Advocacy, and a detailed statement of any change made to the proposed rule as a result of the comments.

## **Background**

As discussed in the proposed rule, FAA is proposing to amend its regulations governing aviation repair stations in several ways. First, the proposed rule would update Part 145's system of rating repair station capabilities from the current eight ratings to five in order to reflect current practices and technologies.<sup>6</sup> Second, as part of the certification process, the proposed rule would inquire whether the applicant has had a repair station certificate that has been revoked (or voluntarily surrendered during an enforcement proceeding), and that housing and facilities and other items must be in place at the time of certification. Third, the proposed rule clarifies that when a repair station performs work as a maintenance provider to an air carrier, the repair station must perform that work in accordance with the maintenance instructions provided by the air carrier or air operator.

According to FAA, the proposed rule would impact some 4,105 repair stations,<sup>7</sup> of which some 2,354 are considered small entities under North American Industrial Classification System (NAICS) code 488190 (Other Support Activities for Air Transportation), having revenues of \$7 million or less.<sup>8</sup> In its Regulatory Evaluation, the agency also analyzes the impact on firms based on their number of employees, i.e., small, 10 or few employees; medium, 11 – 199 employees; and large, greater than 200 employees.<sup>9</sup> FAA concludes that the initial compliance cost of the proposed rule to a small repair station would average about \$4,000, which would be less than one percent of the average annual revenue of all small firms, and less than two percent of annual revenue for firms that earn more than \$200,000.<sup>10</sup> Accordingly, FAA has certified under the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities.

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<sup>5</sup> Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking* (67 Fed. Reg. 53461) (August 16, 2002).

<sup>6</sup> 77 Fed. Reg. 30056. (The current eight ratings include Airframe Class, Powerplant Class, Propeller Class, Radio Class, Instrument Class, Accessory Class, Limited Rating Specialized Service, and Limited Ratings. The proposed five ratings would include Airframe Category, Powerplant Category, Propeller Category, Component, and Specialized Services.)

<sup>7</sup> 77 Fed. Reg. 30072.

<sup>8</sup> 77 Fed. Reg. 30074. [Note: According to the current SBA Table of Size Standards, effective October 1, 2012, the current size standard for NAICS code 488190 (Other Support Activities for Air Transportation) is \$30 million or less in revenue. See, [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).]

<sup>9</sup> 77 Fed. Reg. 30072.

<sup>10</sup> 77 Fed. Reg. 30074.

## **Small Entities Have Expressed Concerns About the Proposed Rule**

In response to the publication of the proposed rule, Advocacy hosted a small business roundtable on November 5, 2012 to discuss the proposed rule and obtain small business input on it. Staff from FAA and FAA's Repair Station Branch attended the roundtable and provided a background briefing on the proposed rule. In addition, representatives from the Aeronautical Repair Station Association and the Aviation Electronics Association provided their assessment of the proposed rule. The following comments are reflective of the issues raised during the roundtable meeting and in subsequent communications with small business representatives.

### **1. Small entity representatives raised several concerns about the proposed rule.**

Small entity representatives at the roundtable stated that they support certain elements of the proposed rule, such as those that truly "modernize" and "harmonize" the existing rule with international regulatory and business practices. However, they expressed concern with other provisions of the proposed rule that, they say, would have unintended consequences and be problematic to enforce. Specifically:

- The proposed operations specifications are unnecessary and overly complicated for the purposes stated in the preamble;
- The transition from "class ratings" to "capability lists" on operations specifications would be unmanageable given FAA's limited resources;
- Keeping "bad actors" out of the industry without FAA taking responsibility for establishing proper due process places an unnecessary, unfair, and unenforceable burden on the industry. Of particular concern is the "reapplication" process that ignores the industry's burden and the FAA's limited resources; and,
- The current regulations state that a certificate is good until it is surrendered, revoked, or suspended; however, the proposed rule would suspend the certificate if a NEW application is not submitted. Apparently, in the past, the updated manual had to be submitted to FAA on or before the compliance date, but the certificate continued in effect while FAA reviewed and "accepted" the new manual. Attendees suggested that FAA would be able to continue the existing practice if it would scale back the operations specification separation and "bad actor" provisions, which the attendees view as unnecessary and unenforceable.

### **2. Small entity representatives believe FAA has omitted costs and understated the cost of complying with the rule.** FAA's Regulatory Evaluation and RFA certification only include cost estimates for application for the new rating system and revisions to the repair station manual. However, small entity representatives at the roundtable identified several possible omissions or understatements of costs. For example, small entity representatives stated that:

- FAA uses current industry practices rather than compliance with current regulations as the baseline for its cost estimates, which may understate the cost of the proposed rule. It would be helpful if the agency used compliance with existing regulations as the baseline or presented a dual-baseline analysis.
- Cost estimates associated with recertification are understated. For example, small entity representatives stated that the recertification process will involve rewriting repair station manuals, quality control manuals, list of capabilities, and the repair station training program, which will be a time-consuming and expensive effort. Further, attendees noted that the proposed rule states that the repair station manual and quality control manual must be “acceptable to the Administrator,” and the repair station training program must be approved; however, the Agency has not published an updated draft Advisory Circular (AC) that clearly identifies the standards by which the manuals and programs will be evaluated;
- It is unlikely that FAA will be able to process nearly 5,000 ratings applications and repair station manual approvals within the designated twenty-four months, which could lead to significant delays and disruptions that are not accounted for. Existing certifications would no longer be valid twenty-four months after the effective date of the new rule. Small entity representatives recommended that contingency plans be developed in the event that FAA is unable to meet the high demand for approvals;
- FAA states that the cost for maintaining a current list of products would be minimal; however, small entity representatives stated that this process would be time-consuming and would likely be performed by senior managers rather than clerical employees (especially in small repair stations). FAA has not provided cost estimates for these activities;
- The provision that would end space-available housing and facilities practices would be highly problematic and unduly expensive for small repair stations and avionics shops that often lease space from larger entities on an as-needed basis. Further, no cost estimates are provided for securing permanent facilities in advance, which would alter existing practices. The proposed rule suggests that all equipment, materials, personnel, and data must be on-site during the entire application and certification process, which would be costly and impractical;
- No training costs associated with the new certification requirements are provided. Further, the new training mandates are open-ended and vague, making an estimate of their cost difficult or impossible. One attendee stated that the expansion of the current training program could triple current training costs;
- The new supervisory personnel provisions would require supervisors to oversee ALL work (rather than only work performed by individuals who are unfamiliar with the methods, techniques, practices, etc.), which means that either: 1) every task would require a minimum of two people (doubling labor costs); or, 2) every

mechanic would have to be a supervisor. This would represent a significant increase in labor costs that are not included in the analysis;

- Repair stations lack the knowledge and ability to track parties whose certificates have been revoked (or who voluntarily surrendered them during an enforcement proceeding), making the cost of complying with the “bad actor” provisions highly unpredictable or impossible. Repair stations have no way of knowing who these disqualified people are. Small entity representatives suggested that FAA should maintain a list of disqualified persons if the agency adopts this proposal; and,
- FAA states that a “Quality System” requirement could be included in the final rule (or may be addressed in a separate rulemaking), but does not specifically propose such a requirement or provide any cost estimate for it.

**3. FAA’s Regulatory Flexibility Act certification is problematic.** The RFA requires each agency to prepare and publish with each proposed rule an Initial Regulatory Flexibility Analysis (IRFA) unless the head of the agency can certify that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.<sup>11</sup> In order to certify a rule under the RFA, the agency must have a “factual basis” for the certification and publish a statement providing that factual basis with the proposed rule. Based on the above concerns identified by repair station industry representatives at the roundtable, Advocacy is concerned that FAA’s current RFA certification lacks a factual basis and is therefore improper.

Small entity representatives have identified numerous costs (outlined above) associated with the proposed rule that appear to have been omitted or understated. For this reason, Advocacy recommends that the agency reassess the validity of its RFA certification and consider preparing and publishing in the Federal Register for public comment a Supplemental IRFA, including a consideration of significant alternatives that would meet the agency’s objectives in a less burdensome manner for small entities.<sup>12</sup> Advocacy is mindful that FAA’s proposed rule is intended to address important safety issues, and provides this recommendation both to ensure that small entity impacts are fully considered and to ensure that the agency’s regulation is not delayed by having to correct an improper certification later in the process or because of a judicial challenge to any final rule.

In addition, Advocacy notes that while the SBA size standard for NAICS code 488190 (Other Support Activities for Air Transportation) was \$7 million or less in revenue in 2011, the latest edition of that size standard, effective October 1, 2012, is

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<sup>11</sup> 5 U.S.C. 605 (b).

<sup>12</sup> Advocacy defines a “significant” alternative under the RFA as one that: 1) is feasible; 2) meets the agency’s underlying objectives; and 3) minimizes the impact on small entities. (See, *A Guide to Federal Agencies, How to Comply with the Regulatory Flexibility Act*, SBA Office of Advocacy, May 2012, p. 37-40, 71-74 (available at <http://www.sba.gov/advo/laws/rfaguide.pdf>).)

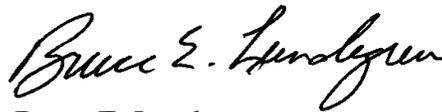
<sup>12</sup> 73 Fed. Reg. 64837.

\$30 million or less in revenue<sup>13</sup> (meaning that many more entities are now considered small). Also, it would have been helpful if FAA had assessed the impact of the rule on various sub-categories of small entities (in order to assess disproportionality among the regulated small entities) rather than simply averaging the impact. Further, Advocacy notes that economic impacts of greater than one percent of revenue can be considered significant under the RFA. Finally, Advocacy notes that the RFA specifically requires “the head of the agency” to provide any certification under the RFA;<sup>14</sup> however, the RFA certification in the proposed rule is signed by the acting director of FAA’s Flight Standards Service, not the head of FAA.

Sincerely,



Winslow Sargeant, Ph.D.  
Chief Counsel for Advocacy



Bruce E. Lundegren  
Assistant Chief Counsel for Advocacy

Copy to: Boris Bershteyn, Acting Administrator  
Office of Information and Regulatory Affairs  
Office of Management and Budget

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<sup>13</sup> See, [http://www.sba.gov/sites/default/files/files/Size\\_Standards\\_Table.pdf](http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf).

<sup>14</sup> 5 U.S.C. 605(b).