

November 19, 2012

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Submitted electronically via www.regulations.gov

RE: DOCKET #FAA-2006-26408 - NOTICE OF PROPOSED RULEMAKING, REPAIR STATIONS

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others, such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

NATA's membership consists of a significant number of repair stations certificated under Title 14 of the Code of Federal Regulations (14 CFR), Part 145 (hereafter referred to as repair stations) and an even greater number of aviation businesses that rely on the services provided by repair stations. These repair stations play a vital role in all segments of the aviation industry and contribute greatly to the overall positive impact that aviation has on our nation, economy and lives. It is for these reasons that NATA is pleased to offer these comments.

I. Rule Background and Summary

The Repair Stations NPRM is the culmination of a series of rulemaking projects, proposals and advisory committees that began in 1989. The most recent prior proposal was issued in 2006 and was withdrawn after public comment because it "did not adequately address the current repair station operating environment."¹ In the withdrawal notice, the FAA commented that further rulemaking had begun that would more "fully address the significant changes in the repair station business model[s]"² This proposal is the result of that effort.

¹ 77 Fed. Reg. at 30055

² 77 Fed. Reg. at 30055

Accordingly, the FAA notes that this rulemaking is necessary because the current regulations “do not reflect current repair station aircraft maintenance and business practices, or advances in aircraft technologies.”³ The FAA further indicates that these proposed rule changes would “modernize...regulations to keep pace with current industry standards and practices.”⁴

The changes proposed in this rulemaking address the following major areas affecting repair stations: ratings, certification requirements and maintenance provided to air carriers. The FAA also notes that “several other areas in Part 145” are addressed by this rulemaking.

II. The Repair Stations NPRM Should Be Withdrawn

NATA recommends that the FAA withdraw this rulemaking as it fails to achieve its purpose, its costs are far higher than expected, it is likely that the FAA will not be able to support its envisioned transition process, a majority of the costs it imposes are attributable to non-safety related items, and the proposed rule cannot be rewritten to be acceptable without further public comment.

Rulemaking Fails to Achieve its Purpose

The NPRM preamble outlines the purpose of this rulemaking as making changes that would “modernize the regulations to keep pace with current industry standards and practices.” NATA applauds the FAA for setting this as the goal of this rulemaking as we believe that regulations, much like maintenance methods and techniques, must change along with aircraft technology in order to produce an effective result.

Unfortunately, this rulemaking has failed to achieve its stated purpose of adapting regulations to current industry standards and practice and has, in fact, reversed course and proposed tighter, less flexible prescriptive alternatives that will stifle industry innovation. NATA is concerned by the course the FAA has taken with this rule.

As outlined in the Specific Comments Section below, the following proposals do not move this rule towards achieving its purpose and actually harm existing and future repair stations:

- FAA's proposed scheme for a transition
- Various changes within §145.1051 – Application for Certificate
- Issuance of Certificate
- Housing and Facilities
- Technical Data, Equipment, Tools, Test Apparatus, and Materials
- Supervisory Requirements
- Personnel Authorized To Approve an Article for Return to Service

These changes all move the regulatory structure away from modernization to a more prescriptive environment that in no way supports current industry practices.

³ 77 Fed. Reg. at 30054

⁴ 77 Fed. Reg. at 30054

FAA's Proposed Transition Scheme is Unrealistic and Will Harm the Repair Station Industry

The FAA's scheme for transition from the current regulations to these proposed regulations requires recertification of the entire universe of existing repair stations. Under its proposal, if the FAA has not completed the recertification process for an existing repair station within 24 months, even if that repair station submitted its application early in the process, that repair station would lose its certificate and be required to cease operations. This applies to each and every one of the approximately 5,000 existing repair stations⁵.

The FAA will likely have far fewer than 24 months to complete this massive recertification process as each repair station must first evaluate the effect of the changes on its business and then revise its accepted and required manuals and process to comply with the rule before submitting its application. This process may take as long as 6 to 12 months, leaving the FAA with only 12 to 18 months to recertify existing repair stations.

NATA members, in some cases, currently experience extended delays in processing new and amended applications due to FAA staffing levels and availability of resources. It can be expected that these delays will worsen as the workload on FAA staff dramatically increases during the recertification process. These delays could lead to existing repair stations losing the authorization to operate, placing an extreme burden on the industry and traveling public.

FAA's Cost Estimates Are Vastly Underestimated and Fail to Include Significant Expenses

The FAA's estimate of the costs of implementing this rule is grossly underestimated. This underestimate arises due to faulty assumptions of the hourly rate of various repair station employees and of the number of hours required to complete various tasks required to comply with these rule changes. Additionally, the FAA has failed to consider other significant expenses arising from these proposed rule changes.

The FAA's cost estimate includes costs for repair stations to prepare an application for recertification and costs to revise the repair stations' various manuals. In both categories, according to data obtained by a NATA survey of the repair station industry, hourly labor costs are actually between 10% and 150% higher per repair station and the time required to complete tasks needed for recertification is between 350% and 2,000% higher than estimated by the FAA.

In addition to these faulty assumptions, the FAA failed to consider the following cost areas completely:

- Cost of the requirement to have all items, such as equipment and tooling, "in-place" during certification;
- Cost of compliance for completion of a Letter of Compliance; and
- Cost impact of increased requirements on repair station supervisors and individuals authorized to approve an article for return to service.

⁵ 77 Fed. Reg. at 30055

NATA conducted a survey of its repair station members that considered the cost of the recertification application, manual revisions and tool/equipment rentals for the compliance inspection (tools/equipment are now required as a result of the loss of the prior option to show a contract for tooling.) NATA's survey determined that the total cost of this rulemaking is in excess of \$846 million, which is greater than a 5,000% increase in cost over FAA estimates. This calls into question both the cost/benefit analysis and FAA's regulatory flexibility certification asserting that this rule does not present a significant impact on small businesses. NATA's survey data is presented in further detail in section IV of these comments.

NATA disagrees with FAA's certification that the Repair Stations NPRM will "not have a significant economic impact on a substantial number of small entities."⁶ On the contrary, NATA's survey found that the average cost for a small repair station (as defined by FAA's NPRM as having between one and ten employees) is more than \$60,000 in initial re-certification costs. This is significantly more than the \$1,146 estimated by the FAA in its determination of compliance costs. The NATA finding is also substantially more than the average of \$4,000 used by the FAA in determining that the NPRM has no significant impact on small businesses. (FAA's cost estimate of \$4,000 was based upon the Small Business Administration's definition of small entities as those with less than \$7 million in annual revenues.) The FAA specifically requested comments regarding its determination and, therefore, NATA genuinely hopes that the FAA studies NATA's data carefully and reconsiders its own cost assumptions.

Majority of Costs are Attributable to Non-Safety Related Items

The Initial Regulatory Analysis associated with this rulemaking⁷ identified two major areas of cost, preparation of an application for recertification and the revision of repair station manuals. The benefits of this rule are described as:

*"(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 consist of and providing a well-defined process for both industry and the FAA to amend them; and (3) updating the ratings system"*⁸

Of those benefits, only one, the ability to deny a repair station certificate application, provides safety benefits.

The identified areas of cost include preparing an application for recertification and revising repair station manuals to comply with the changes contained within this rulemaking. NATA notes that neither of these identified cost areas relate to the FAA's ability to deny a certificate application and therefore these cost areas do not provide a safety benefit. All of the costs of this rule, which NATA believes to be significantly higher than expected, relate to non-safety items for which the FAA has not identified a benefit.

⁶ 77 Fed. Red. 30074.

⁷ Initial Regulatory Analysis (IRA), Docket # FAA-2006-26408-0175

⁸ IRA page 32

Also, as described in the previous section, the FAA has failed to identify numerous cost areas contained within this rule. As described in the remainder of these comments, NATA asserts the majority of these costs do not relate to safety related items.

This rulemaking has proposed numerous administrative and oversight requirements that impose a tremendous cost upon the industry without providing safety benefits to the general public. NATA concurs with the FAA's analysis that "it is difficult to quantify the benefits [of this rulemaking]."⁹

Proposed Rule Cannot Be Modified to Be Acceptable Without Further Public Comment

NATA believes that this rulemaking cannot be rewritten to be acceptable and, therefore, must be withdrawn or revised and reissued for public comment. The scope of changes needed to make this rulemaking effective in achieving its purpose in a cost effective manner would so fundamentally alter this rule that the agency would be required to issue a new proposal for public comment.

NATA does believe that there are some positive areas of this rulemaking, as indicated in the applicable section below, but also believes that those items are a small part of the overall scheme proposed in this rulemaking. Therefore, pursuing those positive items would require reissuance and opening of public comment on a new or revised rule.

For this and the other reasons stated above, and detailed below, NATA requests that the FAA withdraw this rulemaking.

III. Specific Comments

Transition Scheme

The FAA has proposed a transition scheme that involves a 60-day period from publication of the final rule to the effective date of the rule changes, coupled with a 24-month period for affected parties to come into compliance with those new rules. The proposed pathway to compliance involves requiring all existing repair stations to submit an application for recertification under the new rules. This application would require the repair stations to make modifications to their manuals and submit those manuals for acceptance by the FAA. Additionally, it is assumed that existing repair stations would be subject to the normal inspections and site visits that occur as part of the certification process.¹⁰ Repair stations would be allowed to continue to operate under the current regulations during the 24-month transition period. The existing regulations, and therefore all current repair station certificates, would expire at the conclusion of the 24-month transition period. Any repair stations that have not completed the recertification process under

⁹ IRA page 32

¹⁰ This assumption is based upon the fact that the proposed regulatory language and preamble text do not provide any assertion to the contrary. Absent such a statement, NATA believes that FAA inspection personnel would likely interpret the regulatory requirement for existing repair stations to submit an application for certification as a requirement for the FAA to conduct a thorough certification investigation.

the new rules would lose their certificates and be required to cease operations at the conclusion of the 24-month transition period.

NATA is concerned that the FAA has developed a transition scheme that places existing repair stations at risk of closure due to circumstances beyond their control. The FAA notes that the recertification process, and thus the 24-month transition time frame, includes the time the FAA needs to review revised manuals and also, it is assumed, to complete any on-site inspections needed. The FAA warns that the workload of reviewing revised manuals could “lead to delays in granting repair stations the approvals they need to operate”¹¹ and that “repair stations...waiting [to submit their application] until later in the 24-month transition period may increase the risk that unforeseen circumstance might result in the repair station not having an active certificate.”¹² This transition scheme places the continued operation of existing repair stations at the mercy of the availability and workload of FAA resources.

NATA members already experience delays ranging from a few months to multiple years when applying for new or revised certificates. NATA recognizes that the FAA has limited resources and must prioritize its oversight and certification roles. We therefore question the decision to offer a transition scheme that places a severe burden on those resources and then ties the continued operation of an existing aviation business to the speed and efficiency by which the FAA can handle the greatly increased workload. NATA believes that it is unlikely, based upon current experience, that the FAA will be able to complete the recertification of the approximately 5,000 existing repair stations prior to the conclusion of the 24-month transition period. The result will be the closure of existing repair stations and a reduced supply of certificated maintenance providers to aircraft owners and operators.

Aside from our concerns regarding FAA's limited resources, NATA believes that the transition scheme may well violate existing law. Under this scheme, a repair station's existing certificate, through no fault of its own, could expire if the FAA does not have the time or resources to recertify the repair station prior to the deadline, in effect putting the repair station out of business. Section 558(c) of the Administrative Procedure Act (APA), which is applicable to the Repair Stations NPRM, was enacted in order to avoid exactly this type of agency inaction.¹³ The

¹¹ 77 Fed. Reg. at 30057

¹² 77 Fed. Reg. at 30057

¹³ 5 U.S.C. § 558(c) states in full:

When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections [556](#) and [557](#) of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

- (1) notice by the agency in writing of the facts or conduct which may warrant the action; and
- (2) opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

(emphasis added)

APA requires that agencies set forth a time frame for accepting, reviewing and acting upon applications for a license, and it prohibits those agencies from “withdraw[ing], suspend[ing], revo[king], or annul[ing] [the existing] license” until the agency has acted upon the application. Licenses that are of a continuing nature, such as a repair station certificate, may not expire until the agency has taken final action on the application. The FAA’s requirement that repair stations re-apply for certificates due to the FAA’s new classification scheme is exactly the scenario described by the APA. (“When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.”)

Accordingly, as long as a repair station submits a timely application for a renewed certificate, its existing certificate shall not expire until the FAA has taken final action on the application. As a result, several provisions of the proposed rulemaking are contrary to the APA. Proposed sections 145.1, 145.53, 145.55, and 145.1055 are affected by this failure to comply with the APA.

For comparison, the Department of Transportation (“DOT”) codified the APA’s ongoing licensing provisions into its regulations governing the issuance of economic authority.¹⁴ Unlike economic authority granted by the DOT, repair station certificates do not expire and remain valid unless suspended, revoked or surrendered. Therefore, section 558(c) of the APA has not previously been relevant to repair station certificates. However, under the proposed transition scheme, in which a current certificate holder is required to reapply for an equivalent certificate, the APA requires that the existing certificate must remain valid until the agency has acted upon the new application.

§145.1003 –Definition of Terms

Subsection (d) revises the definition of line maintenance and adds that line maintenance is “generally performed at the ramp, parking area, or gate, and typically will not exceed 24 continuous hours per aircraft.”

NATA notes that the FAA has not proposed a justification for setting a regulatory requirement on where line maintenance may be performed or how many hours can be spent continuously working on an individual aircraft and therefore concludes that these statements are simply general descriptive statements.

NATA believes that it is inappropriate to include statements about where line maintenance is “generally” performed and time frames in which it is “typically” completed. Such statements add no value to the definition and will likely lead to confusion and misinterpretation. NATA can foresee circumstances where FAA inspectors may believe these explanatory statements are taken as regulatory limitations on line maintenance while other inspectors see them as non-binding descriptive additions.

¹⁴ See 14 CFR § 377.1 et seq.

§145.1051 – Application for Certificate

Letter of Compliance

Subsection (a) (1) sets forth a requirement for all “initial applicants” to submit as part of their application a “letter of compliance detailing how the applicant will comply with all sections of this part.” NATA notes that the FAA has differentiated between an applicant and initial applicant in both the regulatory text and preamble language. NATA assumes the reason for this is that the agency sees no need for existing repair stations to submit a letter of compliance as part of its re-application for a certificate as part of the transition period outlined in other areas of the rule.

The FAA also notes that despite a lack of a regulatory basis for doing so, it has been requiring letters of compliance to be submitted as part of an application for a repair station certificate. The agency then asserts that since this has been a requirement, by policy, the addition of a regulatory requirement to support that policy imposes no cost. NATA strongly objects to this line of reasoning. Under the FAA’s reasoning, cost evaluations of regulatory changes need not be considered as long as the agency first requires the change as a matter of policy. The matter of “regulation by policy” has long been a contentious issue between industry and federal agencies. NATA encourages the FAA to reevaluate its position on whether preexisting policy without a regulatory basis negates the need for cost analysis should the agency pursue a regulatory basis for that policy.

Description of Training Program

The FAA states in the preamble that it is not “proposing any changes to the requirement in current §145.51 (a)(5),(7) and (8).”¹⁵ However, in the proposed regulatory changes the FAA has proposed a change to subsection (a)(7) (also changed to (a)(8)), that requires the submission of “a description of the training program for approval” as opposed to the current requirement that requires submission of “the training program for approval.”¹⁶ This change, when paired with existing requirements contained in the proposed §145.1163 would create a requirement to have both the training program and a description of that program submitted and approved by the FAA. The FAA has provided no justification or reasoning for this, and NATA requests that the original language contained in §145.51(a)(7) be restored. Should the FAA desire to proceed with this change, NATA believes that justification and an evaluation of cost impact must be first provided to the industry for comment.

Availability of Items for Inspection

Section §145.1051(b) would require an applicant to have **all** technical data, housing, facilities, equipment, tools, test apparatus, materials and personnel required for their certificate and rating in place for inspection by the FAA as part of the certification process. This proposed change eliminates the previous exception that allowed a repair station: (1) to contract for certain equipment as opposed to purchasing and owning that equipment exclusively (It should be noted that §145.1109(b) partially reinstates that exemption only for specialized or rarely used tools); and (2) to present such a contract in lieu of having such equipment “in place” for inspection.

¹⁵ 77 Fed. Reg. at 30060

¹⁶ 77 Fed. Reg at 30078

The FAA's justification for this change is based upon text in the preamble to the 2001 repair station final rule that indicated the FAA viewed the regulatory text as requiring items to be "in place during the certification process" even if such equipment is provided under contract by a supplier as opposed to sole ownership by the repair station.¹⁷ The FAA discounts the proposal and the associated preamble text in the 2006 Repair Station NPRM that attempted to clarify that the agency believed that a contract was acceptable for certification. The agency further indicates in this rulemaking that the "FAA believes it should not grant a repair station certificate to an applicant with a virtually empty building based merely on a showing it can get the required equipment by contract when needed"¹⁸

Current regulatory language states:

*"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."*¹⁹

The current regulatory text does not require items covered by a contract to be in place during certification. Rather, the text explicitly allows an applicant to meet the "requirement[s] of this paragraph," having the items in-place, by having a contract to make the items "available" at the time of certification and thereafter. With the FAA pointing to preamble language that interprets the regulatory text one way and discounting preamble text pointing the opposite, one thing is clear: this passage is in need of clarification and such clarification should have a safety basis and consider impact upon the industry.

NATA believes that the FAA has failed to consider its own goals, the lack of benefit and the tremendous cost to the industry with this specific proposal. One of the FAA's stated goals with this rulemaking is to harmonize the regulations with "current repair station... business practices [and] advances in aircraft technologies".²⁰ Rather than increasing the flexibility and ability of repair stations to react to an ever changing market place and customer base, this proposal has applied a rigid prescriptive requirement that provides little safety benefit. As aircraft and maintenance technology advances, the volume of tools, equipment and test apparatuses needed to maintain modern aircraft has expanded exponentially. Modern repair stations have adapted to this expansion by utilizing just-in-time delivery of parts, materials, tools and other equipment in an effort to increase efficiency and reduce cost. Rather than embracing this reasonable business practice, the FAA seeks to return to a hangar full of tools and equipment and a store room packed with parts and materials waiting for work. NATA does not believe this prescriptive vision can coexist with the goals of this rulemaking.

¹⁷ 66 Fed. Reg at 41095

¹⁸ 77 Fed. Reg. at 30061

¹⁹ 14 CFR 145.51(b)

²⁰ 77 Fed. Reg. at 30054

This proposal in §145.1051(b) is also likely to be impossible to achieve given the scope of the other changes in this rule or be so costly that it drives repair stations to surrender their certificates and operate solely under Part 65. This rulemaking proposes a simultaneous recertification of all existing repair stations over a 24-month period. Considering the time frame needed to prepare for and file the recertification application, the FAA will likely have far less than 24 months to complete the recertification process. This proposal creates an impossible situation in which the industry, suppliers and the FAA must be perfectly coordinated to ensure that equipment is delivered (when a repair station uses a contract with a supplier for availability) in time for a certification inspection and then shipped back to the supplier so that it may be delivered to the next repair station in time for their inspection. NATA foresees a situation of cascading delays occurring should even one inspection be delayed due to inspector workload, severe weather or other unforeseen circumstances. Aside from possible delays, the industry will be saddled with an enormous cost to rent, ship and return significant amounts of equipment and materials just to satisfy a certification inspection. NATA recently completed an industry survey and asked for data on the cost for having all contracted material and equipment present for one certification inspection. NATA received 75 responses from repair stations, with the average cost for the §145.1051(b) proposal being between \$40,000 per small repair station and \$1.8 million per large repair station.

While the FAA has argued (originating in the 2001 rulemaking) that “in-place” inspections of equipment are vital to ensure proper placement of the equipment, whether the equipment works, and whether the applicant can use the equipment properly, NATA is unpersuaded. Tasking inspectors with inspecting each item of tooling, equipment, and test apparatus is an inefficient use of FAA resources, especially when considering an inspector's area of expertise is regulatory compliance and oversight, not the day-to-day operation of various maintenance items, tools and equipment. NATA agrees with the FAA's statement in the preamble to the 2006 NPRM, that the FAA receives the most oversight value when it focuses on whether or not an applicant has a “contract acceptable to the FAA to make the equipment available when the relevant work is being performed [thus allowing the FAA] to determine that the repair station has assessed its relevant needs, and that it has the means to obtain the pertinent equipment, tools, and test apparatus when necessary.”²¹

Denial of Certificate Application

Section §145.1051(e) proposes to authorize the FAA to deny an application for a repair station certificate in four specific situations relating to a previous certificate being revoked. The FAA describes a situation in which a repair station had its repair station certificate revoked and then the same company or a different company with one or more of the same personnel subsequently received a new repair station certificate. The FAA asserts that this may have led to a fatal accident. NATA concurs with the FAA's intent to keep potential “bad actors” out of repair station activities. However, the FAA has crafted a proposal that presents some serious issues.

Subsections (e)(2) and (3) allow the FAA to deny an application in situations where a “management” position is filled by someone who held the same or similar position or exercised

²¹ 71 Fed. Reg. at 70256

control over a previous certificate holder “whose repair station certificate was revoked, or is in the process of being revoked, and the individual materially contributed to the circumstances causing the revocation or causing the revocation process.” There are several issues with the way this proposal is constructed.

1. The FAA has not defined “management position.” Without a definition, “management position” is left to an individual inspector and his or her interpretation could extend too far or not far enough down the management chain of a repair station. Similar authority granted in Part 119 specifically denotes the roles that are applicable.²² The public should be afforded an opportunity to comment on the management positions that the FAA believes should be affected by this subsection.
2. This subsection provides a limitation that only individuals that “materially contributed to the circumstances causing the revocation or causing the revocation process” filling management positions would be reason for denial of an application for a certificate. NATA advises extreme caution when punishing an individual for the revocation of a repair station certificate. Enforcement actions leading to the revocation of a repair station certificate are focused on the actions of the entity holding the certificate. The FAA does not adjudicate the particular guilt or culpability of specific individuals within a repair station. Additionally, the FAA provides no procedure whereby an individual may contest any finding that implies that they may have “materially contributed” to a situation that led to a certificate action.
3. Subsections (e)(2) and (3) are very similar and simple language changes would allow for consolidation of these two subsections.

Regarding this entire process, the FAA has indicated that it does not intend to “maintain a tracking list of individuals who might be disqualified under this section” but would ask applicants, under the penalty of § 145.1012, whether their application could be subject to this subsection. NATA is strongly opposed to the FAA placing the industry under the threat of penalty if it does not carry out a duty that rightly belongs with the agency. The FAA makes the determinations to revoke a certificate, outlines who may or may not have materially contributed to that revocation and then decides whether to exercise its authority under proposed §145.1051(e). Placing an applicant, who has the least ability to determine the issue at hand accurately, in the middle of this process is inappropriate. Based upon the vagueness of the terms “management position” and “materially contribute,” an applicant would be likely to err on the side of caution out of fear of being penalized or being denied a certificate and not hire anyone ever connected to a certificate revocation. That is not the goal of this provision; its purpose is to keep “bad actors” out of critical safety-sensitive positions in repair stations. The best pathway to achieving that goal is to have the entire process carried out as a matter of FAA oversight.

§145.1053 – Issue of Certificate

In subsection (a), the FAA proposes changing the phrase “A person who meets the requirements of this part is **entitled** to a repair station certificate” (emphasis added) to “A person who meets the requirements of this part is **eligible to be issued** a repair station certificate”²³ FAA justification for this change is that “since the proposed §145.1051 would provide a mechanism for the FAA to deny a certificate, an applicant would no longer be “entitled” to a certificate.”²⁴

The simple change of “entitled” to “eligible to be issued” represents a significant change in the authority of the FAA and the rights of the applicants. Under the current language (“entitled”), an applicant can only be denied if the application does not meet the requirements of the regulations. The proposed change (to “eligible to be issued”) provides the FAA with the broad authority to not issue a certificate to an applicant who has complied with the regulations for **any reason it chooses**. It is clear from the specific support provided in the preamble and lack of justification of need for broader authority that the agency’s intent with this change is simply to enable the provisions of §145.1051. With that understanding, regulatory language should be chosen carefully to meet the agency’s intent without further affecting its own authority or the rights of the applicant. NATA suggests that section 1053(a) be changed to read “Notwithstanding section 1051 of this part, a person who meets the requirements of this part is entitled to a repair station certificate....”

As the FAA has provided no additional justification of the need to expand its authority beyond what is proposed in section 1051, NATA believes promulgation of the changes proposed in 1053(a) would be inappropriate.

§145.1055 – Duration and Renewal of Certificate

In this section, the FAA proposes to modify language to allow the agency the opportunity to “accept” a surrendered certificate. NATA understands the rationale of this proposal as a mechanism to prevent individuals from escaping the consequences of §145.1051(e). However, NATA does not support the language as written as it allows indefinite postponement of acceptance of a surrendered certificate. NATA believes that the regulations must place a time frame where lack of agency action to accept or revoke a surrendered certificate results in automatic acceptance of the surrendered certificate.

§145.1056 – Amendment or Transfer of Certificate

Many companies currently holding repair station certificates issue stock and such stock can change hands on a daily basis. NATA recommends preamble language indicating that sale or trading of the stock of a company holding a repair station certificate does not necessitate an application for an amended certificate

§145.1057 – Operation Specifications

Section §145.1057(d)(1) states that “The physical address of the certificate holder’s fixed location...shall also serve as the address for mailed paper correspondence between the FAA and the certificate holder.” A repair station certificate holder has no control over the setting of postal

²³ 77 Fed. Reg. at 30078

²⁴ 77 Fed Reg. at 30062

addresses, therefore it is unreasonable to require the physical address also to be the mailing address. In most cases, the U.S. Postal Service will set the mailing address of certain physical locations when it is impractical for a mail carrier to deliver to a certain street address.

§145.1103 - Housing and Facilities

Suitable Permanent Housing

Section §145.1013(a)(1) requires that repair stations must “provide and maintain...suitable permanent housing” whereas current regulations only require the certificate holder to “provide housing.” The rule preamble explains that these changes require the repair station to have “permanent fixed housing” over which the certificate holder has “sole operational control [of] at all times.”²⁵ The FAA’s justification for this change is that it is necessary to protect employees from “unfavorable environmental conditions” that might affect the quality of their work as well as “to protect the articles being maintained from contamination, foreign object debris, or conditions that may promote corrosion or other deteriorating conditions.” The FAA further notes that the regulatory changes being proposed have “long been FAA policy.”²⁶

The use of the term “operational control” is undefined in this context and confusing due to the fact that the term is otherwise defined in Title 14 in terms of aircraft operations. (14 CFR § 1.1 defines operational control “with respect to a flight [as] the exercise of authority over initiating, conducting or terminating a flight.”) The use of the term in respect to repair stations is confusing and unclear since there is no corresponding definition, whereas the same term is already defined in terms of aircraft operations.

The FAA has failed to provide a definition of “maintain.” The industry is left to consider the full ramifications of that word choice. Again the agency has chosen a nebulous prescriptive standard over a performance standard that outlines the agency’s safety concerns.

These proposed changes directly conflict with the purpose of this rulemaking to “modernize...regulations to keep pace with current industry standards and practices.”²⁷ Rather, this proposal creates an undefined, rigid structure to which repair stations must attempt to conform. The FAA has not defined permanent or “must...maintain.” What length of time does the FAA consider permanent? At most public-use airports, the airport sponsor determines the length of a lease that is available to tenant business. Those airport sponsors are bound by the grant assurances they signed with the FAA that prohibit the granting of excessively long leases.²⁸ While history has seen on-airport business leases of 25-30 years, the trend across the nation is for airport sponsors to push for much shorter lease times. Additionally, the FAA has failed to consider storage units that may be used for certain equipment or materials and rather than proposing a performance standard that ensures that the integrity of the equipment is maintained, the FAA has chosen to depart from its purpose and focus on an undefined prescriptive requirement that housing must be permanent.

²⁵ 77 Fed. Reg. at 30078

²⁶ 77 Fed. Reg. at 30078

²⁷ 77 Fed. Reg. at 30054

²⁸ FAA Order 5190.6B, FAA Airport Compliance Manual. Page 12-3

Finally, NATA objects to the agency's assertion that "maintain...suitable permanent housing" requires the certificate holder to maintain sole control over space used as a basis for certification. NATA is curious as to why the agency rejected a more flexible standard, given the objective of this rule. In many cases, small repair stations lease space in a hangar from a larger entity, such as an FBO. The repair station certificate holder works closely with the FBO manager to coordinate use of the floor space in the hangar as various maintenance projects are scheduled. This flexibility allows the small repair station to operate at lower cost than if it had to lease a specific amount of floor space to be always under the certificate holder's "sole control." Such a rigid standard will likely lead to many smaller repair stations surrendering their certificate.

NATA would like to note that these issues (affecting small businesses) were not considered as part of the agency's regulatory flexibility analysis. Also, as noted in other sections of these comments, we do not believe that having existing FAA policy, without a regulatory basis, negates the requirement for the agency to consider cost when it proposes a regulatory basis for that policy.

NATA agrees that there are valid safety and certification concerns for the FAA to consider in repair station housing and facilities, but we strongly disagree with the agency's prescriptive approach that ignores current business models and practices.

Geographic Limitations Upon Additional Fixed Locations

Subsections §145.1103(d)(2) and (3) set forth geographic limitations on the approval of additional fixed repair station locations. In the case of domestic repair stations, the FAA sets a requirement that only additional fixed locations within the geographic boundaries of the Certificate Holding District Office (CHDO) will be approved. The FAA does not provide safety or other justification for this limitation.

The purpose of this rule is to "modernize the regulations to keep pace with current industry standards and practices."²⁹ NATA is concerned that the agency has chosen to apply an artificial location standard on the use of additional fixed locations. A repair station is in the best position to determine the needs of its customers and the flying public. This limitation frustrates the ability of businesses to adapt to the marketplace and, therefore, is counter to the purpose of this rule.

§145.1153 - Supervisory Requirements

Section §145.1153(a) changes the requirements for supervisors to oversee work. Current language requires supervisors to "oversee the work performed by any individuals who are unfamiliar with the methods, techniques, practices, aids, equipment, and tools used to perform maintenance."³⁰ The new language removes the limitation for "overseeing" work only when an individual is unfamiliar with the tasks and requires supervisors to "be present to oversee the work performed" by the repair station. The FAA's justification for this change is that it is "simplify[ing] this requirement."³¹

²⁹ 77 Fed. Reg. at 30054

³⁰ 14 CFR 145.153(a)

³¹ 77 Fed. Reg. at 30069

While this proposal does simplify the rule, it also greatly expands the burden of oversight placed upon supervisors, the number of supervisors a repair station must have and the cost of providing maintenance, all without cost/benefit justification or analysis.

Under this proposal, each and every time maintenance is performed by a repair station a supervisor must be present to oversee the work. This would include overnight shifts, when many small repair stations may have only one or two mechanics working, emergency field maintenance, line maintenance and at additional fixed locations. As the FAA has not defined the meaning of "must be present," we are left without the ability to comment on the appropriateness of this proposal. Does "present" mean in the same room, at the airport, on the same airport or just available by phone? These questions must be answered in order to evaluate this rule.

As the FAA has not offered any safety-based rationale for this change, NATA recommends it be withdrawn. Should the agency desire to move forward with this proposal, NATA requests that the FAA define "present" and incorporate the impact of this proposal into its cost analysis and Regulatory Flexibility Certification.

§145.1157 – Personnel Authorized to Approve an Article for Return to Service

Section §145.1157(e) requires the repair station to ensure that "a person authorized to approve an article for return to service is available to inspect the article any time such approval is made." The FAA provides no justification for this proposal.

As repair stations grow and employees become more specialized, proposal such as this one reduce the flexibility of repair station operations while providing no increase in safety. In many cases, the individual approving an article for return to services is reviewing all paperwork and determining that a qualified inspector performed and documented the inspection of all work performed (including a final inspection of work performed). In cases like this, where the repair station has implemented a specialized process, the individual has no need to inspect the article.

IV. NATA Survey on Impact of This Rulemaking

In an effort to understand the cost impact of the Repair Station NPRM, NATA surveyed its members to attempt to verify the FAA's assumptions related to labor cost and labor hours. In designing this survey, NATA replicated the assumption categories used in the Initial Regulatory Analysis. The survey was released to NATA members and the wider industry on October 16, 2012, and was concluded on November 2, 2012. A total of 75 responses were received. (A selection of survey questions is included as Appendix A.)

Results

NATA’s comprehensive industry survey asked for data on hourly rates, time estimates, and the cost for having all contracted material and equipment present for one certification inspection. The results of NATA’s survey show that the FAA’s estimates generally underestimate all cost factors used by the FAA in analyzing the costs and benefits. NATA received 75 responses from repair stations, with the average cost for the § 145.1051(b) proposal being between \$40,000 per small repair station and \$1.8 million per large repair station. Table 1 compares the large discrepancy between FAA’s estimates and actual industry input.

Table 1: Comparison of Industry One-Time Compliance Cost

Repair Station Size (number of employees)	Number of Repair Stations	FAA Estimate	NATA Survey
		Compliance Cost (millions)	Compliance Cost (millions)
Small (1-10)	1838	\$1.95	\$110.76
Medium (11-199)	1913	\$5.23	\$105.80
Large (200+)	354	\$7.32	\$629.56
Total Industry Cost		\$14.50	\$846.12

Table 2 summarizes the results of the questions asking respondents to indicate the value of one hour of time for certain employee categories. The average value from the NATA survey is 71% percent higher than the FAA estimate. NATA notes values reported by small repair stations tend to have a greater increase over the FAA value than other repair station sizes. NATA believes this is due to the fact that in many small repair stations, the owner may be the sole employee or one of only a few. In those cases, we believe the responses indicate the increased value of the owner's time compared to other employee categories. It appears that the owner may also have estimated the value of his or her time when completing other tasks, such as office work, rather than providing actual values for employee time.

Table 2: Comparison of Cost Factor by Labor Category

Labor Category	Repair Station Size	FAA Estimate	NATA Survey	Increase
General Manager / Owner	Small	\$45.58	\$78.29	72%
	Medium	\$68.45	\$74.86	9%
	Large	\$105.62	\$133.00	26%
1st Line Supervisor/QC Manager	Small	\$29.91	\$55.02	84%
	Medium	\$38.90	\$56.34	45%
	Large	\$49.40	\$89.83	82%
Mechanic/Service Technican	Small	\$23.69	\$45.49	92%
	Medium	\$29.19	\$42.20	45%
	Large	\$35.79	\$70.17	96%
Office Manager	Small	\$18.95	\$46.36	145%
	Medium	\$24.65	\$41.10	67%
	Large	\$32.18	\$66.17	106%
Clerk	Small	\$17.69	\$36.78	108%
	Medium	\$22.15	\$33.15	50%
	Large	\$27.72	\$39.67	43%

The survey produced significant increased estimates of time required by employee type to complete an application for recertification (see Table 3). NATA again notes that values for the small repair stations appear to be unusually large when compared to other repair stations. This may likely be due to the fact that small repair stations do not have the operational efficiency seen in larger repair stations, such as dedicated employee types and ability to task individual employees to a single task.

Table 3: Comparison of Time Required, By Labor Category, to Complete a Recertification Application

Labor Category	Repair Station Size	FAA Estimate	NATA Survey	Increase
General Manager / Owner	Small	2	47	2250%
	Medium	4	22	450%
	Large	8	15	88%
1st Line Supervisor/QC Manager	Small	2	41	1950%
	Medium	4	44	1000%
	Large	8	60	650%
Mechanic/Service Technician	Small	0	18	N/A
	Medium	0	7	N/A
	Large	0	6	N/A
Office Manager	Small	N/A	28	N/A
	Medium	N/A	26	N/A
	Large	N/A	14	N/A
Clerk	Small	1	0	-100%
	Medium	1	18	1700%
	Large	2	50	2400%

Table 4 presents the estimates for time required to complete the required manual revisions. Similar to the estimates to complete the application for recertification, the estimate of manual revision time is significantly higher than FAA estimates. The same issues affecting small repair stations are also apparent in these estimates.

Table 4: Comparison of Time Required, By Labor Category, to Complete Manual Revisions

Labor Category	Repair Station Size	FAA Estimate	NATA Survey	Increase
General Manager / Owner	Small	12	37	208%
	Medium	20	43	115%
	Large	96	14	-85%
1st Line Supervisor/QC Manager	Small	12	32	167%
	Medium	36	74	106%
	Large	192	54	-72%
Mechanic/Service Technician	Small	0	10	N/A
	Medium	0	32	N/A
	Large	0	8	N/A
Office Manager	Small	N/A	15	N/A
	Medium	N/A	23	N/A
	Large	N/A	18	N/A
Clerk	Small	4	10	150%
	Medium	8	32	300%
	Large	20	45	125%

This survey also asked respondents for an estimate of the cost of having all technical data, housing, facilities, equipment, tools, test apparatus and materials in place during certification as this proposed rule eliminates the provision that previously allowed a repair station to present a contract to make those items available. The following average cost estimates were calculated from the survey responses (these estimates include the cost of leasing the items and having them shipped to the repair station and then back to the supplier. The estimate does not include any increased costs or priority handling charges that might result from lack of availability of certain items with all existing repair stations seeking recertification simultaneously.):

- Small repair stations - \$45,073
- Medium repair stations - \$38,482
- Large repair stations - \$1,757,500

Tables 5 and 6 present the total cost per repair station to come into compliance with these proposed rules using FAA figures regarding the number of repair stations.

Table 5: Comparison of One Time Compliance Costs

Repair Station Size	One Time Compliance Cost		
	FAA Estimate	NATA Survey	Increase
Small	\$1,146	\$60,260	5158%
Medium	\$2,848	\$55,308	1842%
Large	\$21,474	\$1,778,430	8182%

Table 6: Comparison of One-Time Industry Compliance Cost

Repair Station Size (number of employees)	Number of Repair Stations	FAA	NATA
		Estimate	Survey
		Compliance Cost (millions)	Compliance Cost (millions)
Small (1-10)	1838	\$1.95	\$110.76
Medium (11-199)	1913	\$5.23	\$105.80
Large (200+)	354	\$7.32	\$629.56
Total Industry Cost		\$14.50	\$846.12

The data in Table 6 does not include cost to the industry from the changes made to housing and facilities requirement, supervisory and personnel authorized to approve an article for return to services or ongoing costs. Please see the specific comments on these items for a better understanding of the cost factors that need to be considered.

NATA has also noted that the FAA describes the cost generated by this rule as “relatively small (\$14.493 million over a 10-year period, spread amongst approximately 5,000 repair stations).”³² NATA believes that this is a misleading statement as the FAA has not considered any ongoing costs³³ and the entire cost impact evaluated by the FAA will impact the industry during the 24-month transition period rather than over a 10-year period.

As clearly indicated by the NATA industry survey, the FAA costs are grossly underestimated and, therefore, the FAA’s cost/benefit analysis erroneously supports the feasibility of and minimizes the industry impact of the Repair Station NPRM.

³² 77 Fed. Reg. at 30072

³³ The following ongoing costs were not considered by the FAA: increased supervisory, return to service, housing and facility and training costs.

V. Positive Areas of This Rulemaking

NATA is pleased with the following components of this rulemaking, although we do not believe the rule as a whole can be modified to be acceptable.

§145.1107 – Satellite Repair Stations

NATA concurs with the FAA's intent to reduce the workload on repair stations when adding a satellite repair stations by allowing the submission of the same manuals as used by the managing repair station and noting processes and procedures specific to the satellite station in appendices or sections of the manuals. For this proposal to achieve the most benefit, FAA will need to provide instruction to its workforce that the accepted manuals submitted as part of a satellite repair station need only be reviewed to assess the acceptability of the processes and procedures added to address the satellite location.

§145.1203 - Work Performed at Another Location

NATA is pleased to see the FAA recognize the value of Field Service Units as a component of repair stations activities. Section §145.1203(b) allows, once authorized by the FAA and in compliance with the required manual components, repair stations to operate field service units that travel from one temporary work site to another to provide maintenance all the while remaining under the control of the repair station.

Significant discrepancies exist among various FAA guidance documents that have created confusion among inspectors regarding the use of field service units. NATA concurs with the comments submitted by the General Aviation Manufacturers Association regarding the need to address these discrepancies.

NATA appreciates the opportunity to comment on this rulemaking and is pleased to see the FAA aim to modernize the regulations governing repair stations to adapt to current repair station business models and practices. Unfortunately, this rulemaking does not achieve that goal and, in fact, moves the regulations in the opposite direction. For the reasons stated throughout these comments, NATA requests that the agency withdraw this rule.



Michael France
Director, Regulatory Affairs

Appendix A – Selected Questions from NATA Industry Survey

The purpose of this survey was not to provide data that would replace FAA assumptions, a much wider survey with higher variable control would be necessary, but rather to provide insight into what NATA believed was a general understatement of cost factors presented in the Initial Regulatory Analysis.

The survey asked the following questions related to the cost factor assumptions provided by the FAA:

- 1. How many employees does your company have?**
- 2. What does one hour of time cost for the following employee positions?**
 - a. General Manager/Owner
 - b. Lead Supervisor / Quality Manager
 - c. Mechanic / Technician
 - d. Office Manager
 - e. Office Support Staff
- 3. Based upon the contents of the proposed rule, how many hours for each employee type [as listed above] would be required to complete an application for a new certificate?**
- 4. Based upon your understanding of the changes that would need to be made to your repair station manual and training program to comply with the proposed rules, how many hours of work would be required from the various employee positions listed [above]?**

The survey also asked other questions of the respondents that were used to inform other areas of these comments.