NOTICE

U.S. Department of Transportation
Federal Aviation Administration

N8130.60

12/20/90

Cancellation
Date: 12/20/91

SUBJ: TERMINATION/NONRENEWAL/APPEAL OF AIRCRAFT CERTIFICATION SERVICE DESIGNATIONS AND DELEGATIONS

1. PURPOSES. This notice establishes Federal Aviation Administration (FAA) procedures for the termination or nonrenewal of a Designated Manufacturing Inspection Representative (DMIR), Designated Engineering Representative (DER), Designated Airworthiness Representative (DAR), Delegation Option Authorization (DOA), or Designated Alteration Station (DAS). These procedures are to ensure due process is accorded before a final decision on termination or nonrenewal of the above designations and delegations.

2. DISTRIBUTION. This notice is distributed to Washington headquarters division levels of the Flight Standards Service; to the branch levels of the Aircraft Certification Service and the Aviation Standards National Field Office; to the branch level in the regional Flight Standards Divisions and Aircraft Certification Directorates; to all Flight Standards District Offices; to all Aircraft Certification Offices and Aircraft Certification Field Offices; to all Manufacturing Inspection District and Satellite Offices; to the Flight Standards branch at the FAA Academy; and to the Brussels Aircraft Certification Division.

3. BACKGROUND.

a. Section 314(a) of the Federal Aviation Act of 1958 empowers the FAA Administrator to delegate to private persons any function relating to examinations, inspections, and testing of aircraft, subject to any regulations, supervision, and review that the Administrator may prescribe. Under this section, the Administrator may also rescind any such delegation at any time for any reason considered appropriate.

b. Conditions for termination or nonrenewal of a DMIR, DER, or DAR certificate are listed in Federal Aviation Regulations (FAR) sections 183.15(d)(1) through (5) with provisions for other reasons considered appropriate under section 183.15(d)(6). The maintenance of eligibility requirements for a DOA and DAS are prescribed in FAR sections 21.245 and 21.445, respectively. These FAR sections provide that designations and delegations may be terminated, but do not include procedures for appeal of such actions. While judicial decisions have found that the Administrator and authorized employees may terminate a

Distribution: A-W(FS)-2; A-W(IR/VN)-3; A-X(CD/FS)-3; A-FFS-7(MAX); A-FAC-1,2(LTD); A-FAC-3,4(ALL); AAC-950(25 copies); AEU-100; A-FDR-1D

Initiated By: AIR-230

designation or delegation according to established legislation, rules, and procedures; the designation or delegation holder must be provided with adequate notice and an opportunity to respond to the proposed action. Therefore, the Aircraft Certification Service has developed procedures for termination and nonrenewal actions. These procedures do not apply when the termination or nonrenewel is at the request of the designation or delegation holder since this decision is entirely within their discretion.

4. DURATION OF DESIGNATIONS AND DELEGATIONS.

a. Duration of DMIR, DER, and DAR Certificates. Appointments of a DMIR, DER, and DAR are for a period not to exceed 1 year and, at the option and discretion of the Administrator, may be renewed annually provided the designee's performance has been satisfactory. The following are conditions for designee termination or nonrenewal as identified in FAR sections 183.15(d)(1) through (5) and reasons considered appropriate under section 183.15(d)(6):

(1) At the written request of the designee, designee's employer, or the production approval holder.

(2) When the designee leaves the employment of the production approval holder or its supplier.

(3) When the Administrator finds the designee has not properly exercised or performed the duties of the designation or that the production approval holder has improperly used the services of the designee.

(4) Suspension, cancellation, or revocation of the production approval.

(5) When a supplier, who employs a designee, is removed from a production approval holder's approved supplier list.

(6) In the case of a maintenance DAR, upon suspension, cancellation, or revocation of a mechanic's or repairman's certificate held by the designee.

(7) When the Administrator finds the designee's qualifications for a specific activity have lapsed and they do not have sufficient activity to warrant continuance.

(8) When the Administrator finds the designee or production approval holder has not demonstrated the care, judgment, or integrity required to maintain their designation.

(9) For any other reason considered appropriate by the Administrator.

b. Duration of DOA and DAS. Delegation Option Authorizations and Designated Alteration Stations are issued for an unlimited period under FAR sections 21.243 and 21.443, respectively, but may be terminated at the option and discretion of the Administrator. The FAA will consider any of the following reasons a basis for termination of a DOA or DAS:

(1) At the written request of an authorized representative of the DOA or DAS.

(2) When the Administrator finds the DOA or DAS has not properly exercised or performed the duties of their designation or delegation.

(3) When the Administrator finds the DOA or DAS does not have sufficient activity to warrant continuance of their designation or delegation.

(4) When the Administrator finds the DOA or DAS has not demonstrated the care, judgment, or integrity required to maintain their designation or delegation.

(5) For any other reason considered appropriate by the Administrator.

5. PROCEDURES FOR TERMINATION/NONRENEWAL OF A DMIR, DER, OR DAR.

a. The FAA will provide written notice (certified mail) to the designation holder, stating the reason(s) for termination or nonrenewal of their designation, at least 30 days before the intended effective date. Sample notification letters are contained in appendix 1 and 2 of this notice.

(1) The reasons will be specific, cite FAA orders or guidance material, and will include examples of unacceptable conduct, when applicable.

(2) The written notification will extend an invitation to respond to the FAA, in writing or in person, and will include a maximum response cut-off date of 2 weeks from the date of receipt. If the designation holder does not respond, the termination or nonrenewal process will continue.

(3) The notification will advise the designation holder that if they respond a record of their response will be maintained. The notification will also inform the designation holder that they may seek legal counsel.

(4) If the termination or nonrenewal is based on misconduct of an employee-designee (DMIR/DER) of a production approval holder, supplier, or engineering organization; notice will be given to the designee and their employer. In this instance, only the designee may appeal and request reconsideration of the proposed action. If the designee wishes, it is permissible to have their employer participate in the appeal process.

(5) If the termination or nonrenewal is based on insufficient activity or misconduct by an organizational DAR, production approval holder, supplier, or engineering organization; the DAR, production approval holder, or engineering organization may appeal and request reconsideration of the proposed action.

(6) If the termination or nonrenewal is based on misconduct of an independent DAR, notice will be given to the DAR who may appeal and request reconsideration of the proposed action. In this instance, only the DAR may participate in the appeal process.

b. If a meeting is held to discuss the proposed action, the FAA will maintain a record of the meeting. If the record consists of written material, a copy will be forwarded to the designation holder to review and submit any proposed comments. In the case of a DMIR or DAR, the meeting will be held with the FAA inspector who made the recommendation to terminate or not renew the designation. In the case of a DER, the meeting will be held with the local Aircraft Certification Office (ACO) Manager and the FAA project engineer who recommended the termination or nonrenewal.

c. Despite whether the designation holder responds to the proposed action, a decision letter will be issued by the appointing office manager restating the reasons and justification for the decision. The decision letter will give the designation holder the opportunity to request reconsideration by the appointing office. At the option of the designation holder, the requested reconsideration may include a review of material submitted by all parties, another meeting as described in paragraph 5b, or both.

d. If after reconsideration, the appointing office manager concurs with the FAA inspector's or engineer's decision, the appointing office manager will send a letter (certified mail) to the designation holder reciting the final decision and justification. The letter will also advise the designation holder that the decision is final as of a specific date and that their legal remedy is as provided by 49 U.S.C. Section 1486(a), by Petition for Review in a United States Court of Appeals within 60 days from the date of receipt of the letter.

6. PROCEDURES FOR TERMINATION/NONRENEWAL OF DOA AND DAS.

a. The FAA will provide the DOA or DAS with a written notice (certified mail) of the reason(s) for the proposed action at least 30 days before the intended effective date. Sample notification letters are contained in appendix 1 and 2 of this notice.

(1) The reasons will be specific, cite FAA orders or guidance material, and will include examples of unacceptable conduct, when applicable.

(2) The written notification will extend an invitation to the representative of the DOA or DAS to respond to the FAA, in writing or in person, and will include a maximum response cut-off date of 2 weeks from the date of receipt. If the DOA or DAS does not respond, the termination or nonrenewal process will continue.

(3) The written notification will advise the DOA or DAS that if they respond by sending a representative to meet with the FAA in person, a record of the meeting will be maintained. The notification will also inform the DOA or DAS that they may seek legal counsel.

b. If a meeting is held to discuss the proposed action, the FAA will maintain a record of the meeting. If the record consists of written material, a copy will be sent to the representative of the DOA or DAS to review and submit any proposed comments. The meeting will be held with the manager of the local ACO and the FAA inspector or engineer who recommended the termination or nonrenewal.

c. When a decision is made to terminate or not renew a DOA, a letter regarding the proposed action will be issued to the DOA holder by the ACO manager for the geographic region in which the manufacturer is located. The letter will restate the reasons and justification for the decision and will allow the DOA the opportunity to request reconsideration by the Directorate Manager for the aircraft product involved. A DAS will be given the same opportunity to request reconsideration by its geographic Directorate. At the option of the DOA or DAS, the requested reconsideration may include a review of material submitted by all parties, another meeting as described in paragraph 6b, or both.

d. If, after reconsideration, the Directorate Manager concurs with the ACO's decision the Directorate Manager will send a letter (certified mail) to the DOA or DAS containing the decision and reciting the justification. The letter will also advise the DOA or DAS that the decision is final as of a specific date, and that their legal remedy is as provided by 49 U.S.C. Section 1486(a), by Petition for Review in a United States Court of Appeals within 60 days of receipt of the letter.

7. IMMEDIATE SUSPENSION. In situations where a designation or delegation holder is suspected of fraud or any other activity deemed inappropriate and an emergency action is necessary to ensure safety, field offices will immediately direct the designation or delegation holder to cease all authorized activity pending FAA investigation of the matter. Upon investigation, the field office will initiate appropriate action according to the above procedures.

8. SURRENDER OF DESIGNATIONS AND DELEGATIONS. All termination and nonrenewal actions concluded in favor of the FAA shall result in the surrendering of certificates pertaining to the designation or delegation.

9. COORDINATION OF TERMINATION/NONRENEWAL DECISIONS.

a. Field offices will coordinate all contemplated actions with their geographic Aircraft Certification Directorate or Flight Standards Division and the regional Assistant Chief Counsel before the initiation of such action. For a DOA, coordination will be with the Aircraft Certification Directorate for the aircraft product involved.

NOTE: The geographic Aircraft Certification Directorate or Flight Standards Division will monitor implementation of such actions and should evaluate field office performance and management of these programs.

b. Questions concerning the guidance contained in this notice pertaining to a DMIR or manufacturing DAR will be directed to the Manager, Aircraft Manufacturing Division, AIR-200. Questions pertaining to a maintenance DAR will be directed to the Manager, Aircraft Maintenance Division, AFS-300. Questions pertaining to a DER, DOA, or DAS will be directed to the Manager, Aircraft Engineering Division, AIR-100.

c. This notice has been coordinated with the Aircraft Maintenance Division, AFS-300, and the Aircraft Engineering Division, AIR-100.

10. BUDGET IMPACT. This notice has no specific budget impact.

The contents of this notice shall be incorporated into the directives system within 12 months of approval.

Ronald T. Wojnar

Ronald T. Wojnar
Manager, Aircraft Manufacturing
Division
Aircraft Certification Service

APPENDIX 1. SAMPLE NOTICE NONRENEWAL FOR MISCONDUCT OF DESIGNEE

May 1, 19__

Designee: Mr. Manfred Wolf
Designation No. _____

Mr. Manfred Wolf
c/o Concise Aircraft Parts
25 Shore Drive
Atlantic City, New Jersey

Dear Mr. Wolf:

This letter is to inform you of my recommendation that your Federal Aviation Administration (FAA) designation as a Designated Manufacturing Inspection Representative (DMIR) will not be renewed when it expires on June 1, 19__. A copy of this letter is being sent to your company.

This recommendation is based upon documentation indicating that you have engaged in conduct inconsistent with the responsibilities of a DMIR; specifically, that on April 20, 19__, you issued an export airworthiness certificate on an engine without having examined the appropriate paperwork to determine conformity.

Although the FAA is authorized to revoke, refuse, or not renew a DMIR designation on this basis, you may request reconsideration of our decision. This request must be made in writing, postmarked no later than May 15, 19__, or in person by the same date. If your request is in writing, you should include any information you wish reviewed. You may discuss this matter with us in person and you may bring an attorney if you so desire. No FAA attorney will be present unless you elect to bring an attorney. An informal record of the meeting will be kept by the FAA.

Unless we hear from you, either in writing, by telephone, or in person on or before May 15, 19__, your designation will not be renewed for the reasons stated above.

Sincerely,

_____
Aviation Safety Inspector

APPENDIX 2. SAMPLE NOTICE TERMINATION OR NONRENEWAL FOR MISCONDUCT OF A PRODUCTION APPROVAL HOLDER OR INSUFFICIENT ACTIVITY BY THE PRODUCTION APPROVAL HOLDER

May 1, 19__

Designee: Charles Bacon
Designation No. _____

Mr. A. Hess, Director of Quality
Concise Aircraft Parts
25 Shore Drive
Atlantic City, New Jersey

Dear Mr. Hess:

This letter is to inform you of my recommendation that Mr. Charles Bacon's Federal Aviation Administration (FAA) designation as a Designated Manufacturing Inspection Representative (DMIR) (will be terminated or will not be renewed when it expires) on June 1, 19__. A copy of this letter is being sent to Mr. Bacon through your office.

Mr. Bacon's designation will (be terminated or not be renewed) because (our records indicate that your organization has not had sufficient activity to warrant continuing the designation or the FAA has learned that your organization has been engaged in selling aircraft parts to repair stations, even though those parts were not produced under your approved quality system).

Although the FAA is authorized to revoke, refuse, or not renew a DMIR designation on this basis, you may request reconsideration of our decision. This request must be made in writing, postmarked no later than May 15, 19__, or in person by the same date. If your request is in writing, you should include any information you wish reviewed. If you wish to discuss the matter with us in person, you may bring an attorney if you so desire. No FAA attorney will be present unless you elect to bring an attorney. An informal record of the meeting will be kept by the FAA.

Unless we hear from you, either in writing, by telephone, or in person on or before May 15, 19__, Mr. Bacon's designation will (be terminated/not be renewed) for the reasons stated above.

Sincerely,

_____
Aviation Safety Inspector