**DRAFT FAA Advisory Circular No. 21-DAC**

**Destroyed and Scrapped Aircraft**

Comments on the Advisory Circular published online for public comment.

Sent to
Daniel.gilbert@faa.gov

**Submitted by**

**Aviation Suppliers Association**
**2233 Wisconsin Ave, NW, Suite 503**
**Washington, DC 20007**

**Aircraft Fleet Recycling Association**
**2233 Wisconsin Ave, NW, Suite 503**
**Washington, DC 20007**

**For more information,**
**please contact:**
**Jason A. Dickstein**
**ASA General Counsel**
**(202)-628-6777**

**Aviation Suppliers Association**
**2233 Wisconsin Ave, NW, Suite 503**
**Washington, DC 20007**
**Voice: (202) 347-6899**
**Info@aviationsuppliers.com**

**Respond to: Jason Dickstein:**
**(202) 628-6777**
**Jason@washingtonaviation.com**

**DRAFT FAA Advisory Circular No. 21-DAC**
**Destroyed and Scrapped Aircraft**

Comments on the Advisory
Circular published online for
public comment.

Submitted to the FAA via email at
Daniel.gilbert@faa.gov and
9-AWA-AVS-AIR-DMO@faa.gov

August 15, 2023

Dear Mr. Gilbert,

Please accept these comments in response to the DRAFT FAA Advisory Circular No. 21-DAC Destroyed and Scrapped Aircraft, which was published online for public comment. Thank you again for extending the comment period for this DRAFT Advisory Circular through August 16, 2023.

## Contents



## Who is ASA?

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

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

ASA also actively participates in efforts to increase and support safety. ASA has several programs designed to support aviation safety, like the ASA-100 accreditation program which is coordinated with FAA AC 00-56. 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 removal/installation of aircraft parts.

ASA has 800 global members. Collectively, they lead critical logistics programs, purchasing efforts, and distribution of aircraft parts world-wide. Member companies include: distributors, suppliers, surplus sales organizations, repair stations, manufacturers, airlines, operators, and other companies that provide services to the aviation parts supply industry.

ASA's members "part-out" products, which means that they disassemble aircraft and engines to recover valuable parts that are overhauled and returned to service in the global aviation fleet. ASA's members have a tremendous interest in end-of-life aircraft as well as the Federal Aviation Administration's proposed advisory circular on destroyed and scrapped aircraft.

## Who is AFRA?

The Aircraft Fleet Recycling Association (AFRA) is the leading global organization for developing and promoting the safe and sustainable management of circularity of components and aircraft in the aviation sector.

AFRA is a coalition of manufacturers**,** disassemblers, parts distributors, materials recyclers, leasing & finance companies**,** air centers, research & development facilities and airlines. Through the collective experience of its members, AFRA has developed and published Best Management Practice (BMP) Guides. There are two guides – one for disassembly of aircraft and aircraft engines and one for recycling of aircraft assets. These guides have significantly improved the management of end-of-life aircraft in terms of environmental and sustainable performance, as well as protection/preservation of airworthiness.

AFRA's members own and make use of aircraft that might be deemed unrepairable under the standards proposed in the draft advisory circular, so AFRA has a distinct interest in this proposal. AFRA's members may find that an aircraft is deemed "destroyed" for one purpose (like insurance purposes) but that it can still have remaining economic value, and the aircraft (or its parts) can still be repaired and returned to service. Such an aircraft still retains its essential characteristic as an aircraft that is eligible for registration under U.S. law.

## Comments

### Summary of Objections (and Relationship to FAA Order 8100.19)

There is existing guidance in the form of FAA Order 8100.19 that addresses the same topic as the draft AC. The Order explains that "The regulations do not set forth specific criteria that can be used to determine whether an aircraft is repairable or whether it is destroyed or scrapped." We believe that this statement is important because the lack of statutory or regulatory authority should be a signal to the FAA that it should not set new pseudo-regulatory standards through policy. In this case, the new pseudo-regulatory standards appear to be in conflict with the statutory standards (as discussed below), so we object to those standards being set in an advisory circular.

This advisory circular seeks to set criteria for deciding that an aircraft is destroyed and based upon the "destroyed" criteria the advisory circular sets *de facto* criteria for deregistration. The problem with this is that the FAA is "filling in a gap" that is not related to the FAA's powers under the statutes or the regulations, and the result – the deregistration of the aircraft that has been so-designated – has the potential to create a legal problem for which there is no adequate remedy under the law. One reason that the proposed advisory circular seems unrelated to FAA regulatory powers is because the FAA is diverging from the statutory language for registration.

This advisory circular mirrors guidance issued by the FAA in FAA Order 8100.19. That Order was not open to public comment. Had Order 8100.19 been published for public comment, ASA and AFRA would have responded with comments to the FAA to explain that the airworthiness standards published in the regulations already establish standards that may be used as metrics for repairability, and that the FAA's powers in this area are in the airworthiness sphere rather than the registration sphere. The FAA should continue to rely on the airworthiness regulations for standards in determining repairability.

Relying on the airworthiness standards rather than the registry mechanism is a process that is well-documented and that features due process controls. An aircraft that cannot comply with the FAA's published airworthiness standards is not airworthy (unless the FAA has issued a special condition, exemption, or other variance from the regulations). When an aircraft is unairworthy, the FAA has known remedies. The FAA always has the authority to address airworthiness concerns through its existing enforcement mechanisms, such as by suspending or revoking an airworthiness certificate. This process is well documented in the regulations and in the enforcement guidance (e.g. FAA Order 2150.3). The process includes due process controls that permit an affected party to treat the certificate suspension as a final order of the Administrator and to appeal the FAA's decision through an established and well-understood process.

The Order explains that the regulations do "not specify who makes the determination that an aircraft is destroyed or scrapped." Nonetheless, the Order seems to implicitly delegate such an authority to the FAA. The draft Advisory Circular also seems to assign to the FAA the power to declare an aircraft as destroyed, and to force a deregistration on this basis. This power to declare an aircraft as destroyed (for registration purposes) is one that is not assigned to the FAA under either the statutes nor the regulations, so it would be a new power that the FAA is delegating to itself through policy.

We object to this assignment of power to the FAA for several reasons, which are herein described. These reasons can be summarized as follows: (1) the FAA cannot delegate to itself new powers through advisory circulars that are not assigned to the FAA through statutes and regulations, (2) this new power does not feature adequate due process controls to protect the public, and it could have a serious possibility of enabling arbitrary and capricious FAA actions, and (3) this new power is not needed for the FAA to meet its statutory missions, because the FAA's existing airworthiness authority (and the attendant due process mechanism) is adequate to protect aviation safety.

## FAA's Airworthiness Authority

The FAA has the power to make a determination concerning airworthiness. The FAA has the power to revoke a certificate of airworthiness when the aircraft is not airworthy. This revocation is subject to due process, and there is a formal mechanism for defending against a certificate revocation when the owner disagrees with the FAA's decision.

This airworthiness process is different from the destroyed-aircraft process which does not offer any due process under the FAA's regulations. The existing certificate due process that applies to airworthiness certificates (inter alia) only applies to certificates issued under Chapter 447.[1] The FAA also has correlative authority to amend, modify, suspend, or revoke such certificates.[2]

In comparison, the FAA's authority to suspend or revoke a certificate of registration is limited only to situations where the aircraft no longer meets the requirements of 49 U.S.C. 44102.[3] Thus, any FAA effort that would result in the deregistration of an aircraft must be limited to the standards described in section 44102.

## Limits to the FAA's Registration Authority

The registration statute requires the FAA to register an aircraft when it is eligible.[4] This is not a discretionary function – the statute says that the FAA shall register an aircraft if it meets the statutory requirements.[5]

[1] 49 U.S.C. § 44709.
[2] 49 U.S.C. § 44709(b).
[3] 49 U.S.C. § 44105.
[4] 49 U.S.C. § 44103(a)(1).
[5] *Id.*

The statutory requirements for registration are found in section 44102 and they are simple. An aircraft is entitled to registration in the U.S. registry if (a) it is an aircraft,[6] (b) it is not registered under the laws of a foreign country, and (c) the aircraft owner is a U.S. person or entity (including a US or state government).[7]

The FAA's regulations provide a summary of occurrences that will terminate the registration.[8] In each case, the listed occurrences would make the aircraft ineligible under the statutory provisions. For our purposes, the relevant disqualification states:

> "(a) Each Certificate of Aircraft Registration, AC Form 8050–3, issued by the FAA under this subpart is effective … until the date upon which one of the following events occurs:
>
> * * *
>
> (2) The aircraft is totally destroyed or scrapped."[9]

In this case, we must assume that the destroyed thing is no longer an aircraft, and therefore is no longer eligible for registration. The problem with the FAA's current draft Advisory Circular is obvious: it seems to permit the FAA to make a determination that leads to deregistration based on an opinion about repairability, rather than the fact of whether the thing remains an aircraft.

## Reliance on "Knowledge, Expertise, And Judgment" Without an Objective Standard Will Likely Lead to Arbitrary and Capricious Decisions

The draft Advisory Circular provides very rough parameters under which the FAA can determine that an aircraft is not repairable, and on this basis declare it destroyed.

The draft Advisory Circular suggests that FAA employees use their "knowledge, expertise, and judgment" and admits that the result may be subjective – this is not a matter left to the FAA's discretion under the statutes nor under the FAA's regulations, so it appears to be an invitation for FAA employees to act in an arbitrary and capricious manner.

The draft Advisory Circular provides some guidance but largely leaves the standard as the FAA employee's subjective determination about repairability. So if the wing of a 787 is damaged and

[6] The term "aircraft" is defined at 49 U.S.C. § 40102(6), which explains that "'aircraft' means any contrivance invented, used, or designed to navigate, or fly in, the air." Thus, an aircraft in need of repair remains an aircraft because it was invented and designed to fly in the air. It retains its essential characteristic as an aircraft even though it might currently be unairworthy and thus ineligible for operation, or even ineligible for a certificate of airworthiness.
[7] 49 U.S.C. § 44102(a).
[8] 14 C.F.R. § 47.41(a).
[9] 14 C.F.R. § 47.41(a)(2).

an FAA employee believes that the wing cannot be repaired the FAA employee could declare the 787 to be "destroyed."

Because FAA employees may not be aware of all of the possibilities for repair, this could lead to a repairable aircraft being declared unrepairable and destroyed based on the FAA employee's lack of knowledge of possible repair options.

In addition, it is normal for the private sector to develop novel repairs and to seek DER approval of those repairs, in order to expand the possibility of what can be repaired. This new power would seem to allow an FAA employee to declare an aircraft destroyed based on repairability even while a repair is in the process of being developed.

There is no obligation for the FAA to perform any investigation beyond reliance on the employee's "knowledge, expertise, and judgment" so the FAA is under no specific obligation to prove that the aircraft cannot be returned to an airworthy state, nor is the FAA under any obligation to perform a diligent investigation about whether an appropriate repair exists or is being developed. Thus, an FAA employee with limited "knowledge, expertise, and judgment" could make a "destroyed aircraft" decision that was contrary to facts that could have been ascertained.

Ultimately, focusing the investigation on "repairability" allows the FAA to diverge from the statutory guidelines and potentially force a deregistration of something that still retains its essential characteristics as an "aircraft." If the thing is still an aircraft, and it meets the other standards for registration, then it is entitled to registration even if an FAA employee disputes repairability.

## Lack of Due Process

Being able to declare an aircraft to be destroyed and forcing deregistration has real effects on the rights of the aircraft owner. It appears to therefore be an order of the Administrator that must be subject to norms of due process.

This power to declare an aircraft destroyed assumes a power to the FAA that the FAA does not have under either statutes or under regulations. Because the power does not exist, there is no due process established in the regulations for refuting a declaration of destruction. Under the existing statutes and regulations, it is up to the owner to decide if the aircraft is destroyed (or if the owner intends to have it repaired), and at the time that the owner makes such a decision that the aircraft is destroyed, then the owner incurs an obligation to deregister the aircraft (because it is no longer an aircraft and therefore no longer eligible for registration).[10]

The draft advisory circular fails to describe a process for disputing the FAA's decision. Section 1.1 says that the draft "describes a process that can be used to dispute a determination that an

[10] E.g. 14 C.F.R. § 47.41(b)(3-4).

aircraft has been destroyed or scrapped." Section 4.1 says that "the FAA also provides any interested party an opportunity to dispute" a destroyed or scrapped determination; however the section 9 dispute resolution process fails to provide a mechanism for resolving disputes.

Section 9 of the draft advisory circular admits that there can be a disagreement about whether an aircraft is destroyed. It explains that "an interested party may request that the FAA reconsider this determination." But the formal mechanism for reconsideration requires the petition to be filed with the registry and for it to include several elements that make it a practical impossibility to successfully appeal:

- First, you need a repair scheme. "Repair scheme" is not a defined term and there are no objective standards for what constitutes an acceptable repair scheme. Thus, the registry can arbitrarily reject anything that is submitted as "not an acceptable scheme." Furthermore, repair schemes are not part of the objective statutory standards for aircraft registration,[11] so the FAA cannot refuse a registration for lack of such a scheme. By doing this, the FAA is changing the plain language of the statute without the intervention of Congress.
- Second, the repair scheme must be approved by the FSDO. Because there is no requirement in the regulation to approve a repair scheme, it is unclear what this sort of approval would consist of, and it is likely that any requirements to approve a "scheme" would be rejected because it is not part of the regulations. Thus, it is likely to be practically impossible to fulfill this precondition for the appeal.
- Third, if the determination was made by the NTSB, then you must first appeal through the FAA. NTSB determinations do not take into account repairability so there is no basis for relying on that determination as the basis for saying that the aircraft cannot be repaired. In addition, because this is not a typical use of an NTSB report, the appeal rules are poorly suited to this process (for example, NTSB report language can only be appealed by a party to the investigation, and will only be considered if "new evidence" is presented).[12] Moreover, the NTSB will only consider petitions for modification of findings and determination,[13] so if the word "destroyed" is in the report in dicta, then it may not be subject to appeal.

The appeals process is also aimed at the registry, which does not have its own Administrative Law Judges, so there is no opportunity for a competent and neutral person to judge the merits of the appeal. In sum, the deregistration process described in the draft advisory circular has the potential to deprive an owner of property rights and creates an appeal process that is highly unlikely to yield satisfactory due process.

[11] 49 U.S.C. § 44102(a).
[12] 49 C.F.R. § 845.32.
[13] 49 C.F.R. § 845.32(a)(1).

## Shifting the Burden of Proof Is Inappropriate

The draft Advisory Circular shifts the burden of proof from the FAA to the aircraft owner to prove that the registered aircraft remains an aircraft.

Upon a determination by any FAA employee that the aircraft is unrepairable and is therefore destroyed (remember, the draft AC lets FAA employees make this determination based on their subjective judgment), the draft advisory circular requires notification to the owner and it requires the owner to surrender the registration.

Once this surrender has occurred, the owner's sole recourse seems to be to go through the dispute resolution process, which imposes high bars to access and then provides no metrics for successfully obtaining a just result (so the registry can arbitrarily reject the appeal or it can fail to respond to the appeal and the owner has no recourse under the stated process).

It becomes incumbent on the aircraft owner to force the FAA to re-establish the registration, and it imposes on the owner the obligation to prove that the aircraft is repairable (rather than the normal airworthiness burden in which the FAA bears the burden of proof to justify a certificate action). This flips the FAA's normal burden of proof, and provides a backdoor mechanism by which the FAA can ground aircraft in situations where the FAA might not have had enough evidence to support a certificate action against the airworthiness certificate. This would be unjust.

## Imposing "Repair Scheme" Obligations on Owners is Inappropriate

Section 6.6 of the draft advisory circular imposes on owners an obligation to create a repair scheme and get it approved by the FAA. There is no obligation for "repair schemes" under the regulations, so this is not an appropriate means by which to create such an obligation. If there was such an obligation, it would not have been imposed on owners, who are not competent to perform maintenance, but rather it would have been more proper to impose the obligation on repair stations and other parties entitled to perform maintenance, because they have a greater degree of maintenance competence.

If by "repair scheme," the FAA means a description of the methods, practices and techniques for performing maintenance, then this is described in existing 14 C.F.R. § 43.13, and shifting the power to create such methods, practices and techniques from the manufacturer[14] or the air carrier[15] seems to require a regulatory change and thus should not be performed in an advisory circular.

Section 8.2 also imposes a limit on future registration and requires a repair scheme as a prerequisite to future registration. A repair scheme is not a condition for registration found in the

[14] 14 C.F.R. § 43.13(a).
[15] 14 C.F.R. § 43.13(c).

statute, so it cannot be imposed as an additional qualification. The FAA may not add conditions for refusing to register an aircraft when the aircraft meets all of the standards of registration in the statute.

## This May Reflect a Regulatory Taking in Violation of the Fifth Amendment

The Fifth Amendment Takings clause applies to appropriation of personal property, just as it does to real property.[16] While the courts have distinguished regulatory impediments on property from physical appropriation of property, they have also explained that where a regulation has the same effect as an appropriation of the property, thereby eliminating the economic value of the property, the regulation may reflect a taking for constitutional purposes.[17]

The courts have upheld many FAA safety regulations as valid expressions of the FAA's authority, however this case is different for several reasons. In this case the FAA:

- lacks a safety reason for the new power to force deregistration;
- lacks a regulation that grants to the FAA the power to declare an aircraft destroyed; and
- lacks any statutory authority to refuse to register an aircraft whose ownership meets the statutory requirements.

In light of the lack of authority to take this action, it is reasonable that the courts might find that a deregistration that was forced as a consequence of this advisory circular (against the wishes of an owner who believed the aircraft to be repairable) to be a taking in violation of the Fifth Amendment. An FAA argument that the aircraft was not repairable would be unlikely to save such an FAA decision, because repairability is not one of the statutory standards for registration.

## This AC Seems to Impose Significant new Burdens on Repair, Which Could be Viewed to Impact Component Repair

When an aircraft is deemed destroyed by an owner, it is not unusual for the owner (including an insurance company that takes ownership of the remainder of the aircraft) to contract to have parts removed, inspected, and overhauled in order to recover value from the aircraft and also to return airworthy parts to usefulness in the aviation fleet.

Part 5 of this draft advisory circular appears to impose significant new burdens (in the form of direct FAA oversight of the repair process). The application of these new FAA obligations to

[16] *Horne v. Dep't of Agric.*, 576 U.S. 350, 358-361 (2015) (explaining the jurisprudence that supports this extension of the fifth amendment's protections).
[17] *E.g. Pennsylvania Coal Co v. Mahon*, 260 U.S. 393, 414-15 (1922) (explaining that where a regulation has the same practical effect as eminent domain, it is constitutionally a taking).

component repair is very unclear. This guidance could be read to either impose the same restriction on component repair or it could be read to prevent component repair (because of a lack of specificity).

If these new FAA obligations could be read to impose new restrictions on component repair, then it would effectively shut down repair of such components, because the FAA does not have the resources to carefully review details of every minor repair data to ensure that it produces a structural and operational safety in the context of a particular actual repair (as described in proposed section 5.7). The FAA also does not have the resources to check component repair on an individual component basis (as described in proposed section 5.8).

If this section 5 is published, then we request that the FAA specifically limit the processes so that they do not apply to component repair. The language should explain that the processes associated with this section do not apply to the repair of articles or components removed from destroyed aircraft, and that such repairs remain subject to the FAA's existing regulations and standards concerning article/component repair.

## Moving Dataplates or Identification Plates

The DRAFT Advisory Circular appears to take aim at preventing the removal of dataplates or identification plates from destroyed aircraft and replacing them on other aircraft. This issue is raised repeatedly in the draft advisory circular.

This already violates the regulations.[18]

The regulations that forbid removing an identification plate from one aircraft, engine, or propeller and placing it on another one applies to all aircraft, engines and propellers – not just destroyed ones – so there does not seem to be a need to address this in the specific context of destroyed aircraft.

## In Summary

The reason that a destroyed or scrapped aircraft must be deregistered[19] is because it is no longer an aircraft and therefore no longer eligible for registration. This draft advisory circular seeks to move the standards, so that things that are still aircraft - but that a government employee deems to be unrepairable – would also be deemed destroyed/scrapped and thus they would be deregistered.

When the thing that the FAA deems to be unrepairable is still *an aircraft* that meets the other standards for registration, that thing remains eligible for registration. The FAA is acting

[18] 14 C.F.R. § 45.13(e).
[19] 14 C.F.R. § 47.41(a)(2).

inappropriately when it seeks to create a loophole that would allow the deregistration of aircraft based on criteria that are not found in the registration statute.

In whole, this draft Advisory Circular appears to open the door to FAA arbitrary determinations that an aircraft is unrepairable, having the *de facto* consequence of eliminating much of the value of the aircraft when it is consequently deregistered. This would impose a heavy burden on the aircraft owner that would be difficult to meet at trial without a speculative investment in engineering analysis and repair justification that might be rendered valueless if the owner cannot prove to the satisfaction of the court (or the FAA) that the aircraft is repairable.

## Recommendations

### Subsection to Remove

For the reasons described above, we recommend (at a minimum) removing the following subsections:

| SUBSECTION | TEXT TO REMOVE |
|---|---|
| 4.1 | Even though the FAA may accept the assessment of an accident investigator or other qualified person in classifying an aircraft as destroyed or scrapped, the FAA also provides any interested party an opportunity to dispute this determination. |
| 4.2.4.1 | The FAA considers an aircraft to be destroyed if all of its primary structure is damaged to the extent that it would be impracticable to return the aircraft to an airworthy condition by repair. |
| 4.2.4.2 | The FAA considers an aircraft to be scrapped when it has been discarded and disposed of in a manner that it may not be repaired to an airworthy condition. |
| 4.2.4.3 | Typically, a knowledgeable party makes such a determination with the concurrence of the aircraft owner. Whether an aircraft is |

| SUBSECTION | TEXT TO REMOVE |
|---|---|
| | destroyed or scrapped, however, is a function of the actual condition of the aircraft. The determination by an FAA or NTSB accident investigator that an aircraft is “destroyed” is a determination based on that individual’s knowledge, expertise, and judgment and accordingly, may be subjective. However, this determination may be challenged by other parties with an interest in repairing the aircraft and refuted by evidence that the aircraft is repairable. |
| 6.1 | Establishing FAA definition of destroyed or scrapped aircraft. FAA accident investigators will apply their specialized knowledge, expertise and follow the guidelines in FAA Order 8100.19 and reference in this AC when evaluating aircraft wreckage to determine whether an aircraft is repairable or should be declared destroyed. In some cases, an Aircraft Certification Branch (ACB) engineer may assist in the determination (see FAA Order 8100.19.) |
| 6.3 | When the Registry (AFB-710) receives notice from the NTSB, an FAA inspector, **or any other credible source** showing that an aircraft is destroyed, the Registry notifies the registered owner of the requirement to comply with 14 CFR § 47.41(b) by returning the Certificate of Aircraft Registration to the Registry. |
| 6.4. | Denying registration for destroyed or scrapped aircraft. Upon receipt of an application to register a used aircraft, the Registry (AFB-710) will verify that the aircraft was not previously determined to have been destroyed. If the Registry record shows the aircraft has previously been reported to be destroyed or scrapped, the Registry will send the applicant a letter denying the application for registration. In addition, Registry will inform the owner that the application will not be further processed until the owner provides |

| SUBSECTION | TEXT TO REMOVE |
|---|---|
| | evidence to support revising the earlier determination to show that the aircraft has not been destroyed or scrapped |
| 6.6 | Repairs of aircraft declared destroyed or scrapped. If requested by the owner of an aircraft that has been declared destroyed or scrapped, a FSDO or ACB may assist the owner in determining if the aircraft may be repaired to an airworthy condition. The owner is responsible for developing a repair scheme for the FSDO/ACB to review and approve. It may, not be possible to certificate an aircraft with its original identification if that aircraft has previously been declared destroyed or scrapped and the aircraft's identification plate and records are no longer available. |
| 7 | REMOVE ENTIRE SECTION |
| 8.1 | After receiving an accident report from the NTSB, FAA, **or other credible source** showing that an aircraft has been destroyed or scrapped, the Registry (AFB-710) will inform the registered owner that the agency has received the notification and advise the owner to return the registration certificate pursuant to 14 CFR § 47.41(b)(3). |
| 8.1 | For a source to be considered credible in determining that an aircraft is destroyed, the source should have direct firsthand knowledge of the condition of the aircraft and be able to **supply documentary evidence** showing that all of the aircraft's primary structure is damaged to the extent that it would be impracticable to return the aircraft to an airworthy condition by repair as specified in paragraph 4.2.4 of this AC. |
| 9 | REMOVE ENTIRE SECTION |

### Additional Clarifying Language

The following additions will help clarify the scope and intent of the guidance, to better ensure that it is not used in a way that is inconsistent with the FAA's statutory obligations.

In order to ensure that section 5 does not inhibit article/component repair, we recommend adding the following text as a separate subsection within section 5:

> "The provisions of this section 5 apply to repair of complete aircraft, but are not intended to apply to article or component repair, which remains subject to the requirements and restrictions found in Part 43."

We also recommend that the FAA restructure the language used throughout the draft advisory circular to focus on defining the terms "destroyed" and "scrapped" without giving the FAA the power to declare an aircraft destroyed or scrapped. As admitted in the draft advisory circular, the decision of an FAA Inspector to declare an aircraft destroyed or scrapped is subjective; based on his or her own subjective knowledge. The FAA should not permit property rights to be infringed based on a subjective analysis.

We also suggest that the FAA add the following language:

> "The FAA does not have the authority to declare aircraft destroyed or scrapped."

> "A decision to delegate the authority to an agency to declare an aircraft scrapped or destroyed must come from legislative action and not by an act of the Federal Aviation Administration."

> "All decisions to determine whether an aircraft is scrapped or destroyed must be made in concurrence with the aircraft owner."

Ensure that the draft advisory circular does not imply that FAA personnel have statutory or regulatory authority to declare an aircraft destroyed or scrapped.

## Conclusion

The draft AC creates standards that are inconsistent with the plain language of existing statutory authority that directs the FAA to register aircraft. It creates loopholes by which the FAA can avoid its statutory obligations. Creating a policy-based loophole that allows an agency to avoid the plain language of a statute is inappropriate.

The draft advisory circular also grants to FAA employees the ability to make subjective decisions that affect property rights. Such decisions have not been delegated to the FAA's discretion by Congress. Such decisions are not necessary to advance the FAA's safety mission. This is inappropriate.

A victim of such subjective decisions has a practically impossible hurdle in order to make use of the dispute resolution mechanism described in the draft advisory circular. This means that the FAA's subjective decisions are practically unappealable. This insulates these subjective FAA decisions from review in a manner that is inappropriate.

For all of these reasons, we recommend that the FAA consider withdrawing this draft AC. We also recommend that the FAA consider withdrawing the related Order 8100.19, which was issued without public comment and appears to be inconsistent with statutory authority.

**Respectfully Submitted,**

**Jason Dickstein**
**General Counsel**
**Aviation Suppliers Association**
**2233 Wisconsin Ave, NW, Suite 503**
**Washington, DC 20007**

**Walter Sam O'Connor**
**Interim Executive Director**
**Aircraft Fleet Recycling Association**
**2233 Wisconsin Ave, NW, Suite 503**
**Washington, DC 20007**