



121 North Henry Street
Alexandria, VA 22314-2903
T: 703 739 9543 F: 703 739 9488
arsa@arsa.org www.arsa.org

**Office of Management & Budget Repair Station Security Rules Meeting
September 13, 2013**

Agenda

- I. Introductions
- II. Intro to ARSA/Experience with OMB Sarah MacLeod
 - ARSA membership
 - Quarterly Utilization Report (QUR)
 - Regulatory Flexibility Act (RFA)
- III. Concerns with NPRM Sarah MacLeod/Eric Byer
 - Solution in search of problem
 - International issues (Canada, BASAs) (see pg. 7-8 of ARSA comments)
- IV. Impact of Delay Daniel Fisher
 - Economic Impact
 - World leadership at stake
- V. Closing Thoughts/Questions

Supporting Documents: About ARSA Brochure
ARSA Letter to OMB on QUR Clarification, March 30, 2010
ARSA Congressional Testimony on RFA, March 30, 2011
ARSA Comments to NPRM
Economic Impact of Foreign Repair Station Ban
Industry Letter to DHS, November 22, 2011
TSA Response, December 19, 2011
TSA Letter to Chairman Don Young, August 24, 2004





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arsa@arsa.org www.arsa.org

Docket Management Facility
U.S. Department of Transportation
400 Seventh Street, S.W.
Nassif Building, Room PL-401
Washington, DC 20590-0001

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RE: Docket No. TSA-2004-17131

The Aeronautical Repair Station Association (ARSA) represents persons and entities that are certificated to perform maintenance, preventive maintenance and alterations on civil aviation articles under 14 CFR part 145¹ and other national aviation authority regulations around the world. Our members range from large corporations that also design, produce and operate aircraft to small family-owned businesses.

We appreciate the difficulty in promulgating a security regulation for repair stations that accounts for widely divergent organizations and the variety of the work these entities perform. We also recognize that the agency has been criticized for taking too long in this rulemaking activity. Indeed, the association finds itself in the unique position of needing expedited action on a rule it does not believe is necessary. Unfortunately, hastening a rulemaking creates more work for both the agency and the industry.

Therefore, ARSA urges the Transportation Security Administration (TSA) to issue a Supplemental Notice of Proposed Rulemaking (SNPRM) to ensure it has fully and properly addressed the concerns raised in the public comments. Experience proves that a SNPRM will be substantially less time consuming than passing a regulation that does not work!

General Comments

We commend the TSA's efforts to promulgate regulations that comply with the requirements of its congressional mandate while ensuring those rules do not overburden businesses that pose no threat to aviation security. That said, we are deeply concerned that the current Notice of Proposed Rulemaking (NPRM) does not take into account the true nature of the majority of entities certificated by the Federal Aviation Administration (FAA) under part 145. Further, the proposal does not account for approved maintenance organizations that are allowed to work on U.S.-registered aircraft and articles without being certificated by the FAA, namely, those repair stations that are domiciled in Canada.

We understand the agency is currently in the process of training its inspectors to oversee the security measures taken by repair stations in response to a final rule. This

¹ All references are to Title 14 Code of Federal Regulations (CFR) or the proposed sections of this rulemaking (49 CFR) unless otherwise noted.

training is premature. ARSA is concerned that differences between the NPRM and a final rule may be substantial and would therefore require retraining security inspectors. Therefore, we urge the agency to provide draft guidance material to its inspectors and the public at the same time it issues a SNPRM. Alternatively, we urge that the guidance material be made available as soon as possible so that the final rule will reflect the needs of the agency, the industry and the public.

Comments on the Preliminary Regulatory Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment and Unfunded Mandate Assessment (Preliminary Evaluation)

The Preliminary Evaluation contains three specific threat scenarios; the highest is based upon access to completed aircraft at airports.² The agency's evaluation contemplates a "breakeven" proposition; the estimates are based upon several misconceptions, which are further explained in these comments. Even though the TSA states that the rule and analysis take into account "factors that may affect the security risks at a particular repair station location,"³ the cost and benefit tables do not address these differences with any specificity. Further, since the basic premise is that the majority of repair stations have access to aircraft or airports, the entire analysis is problematic.

The vast majority of certificated repair stations do not have access to completed aircraft on airports; indeed, most are not located on or even near airports. Since there is no method for the public to determine exactly what security measures will be imposed based upon a repair station's "profile", the association, like the agency, can only estimate the actual impact of the rule. However, small businesses will be impacted to an unreasonable extent especially since they are not located on or near airports and do not have access to completed aircraft. Further, they do not have the resources necessary to establish the official systems required to comply with these regulations.

Some of the areas of particular concern contained in the Preliminary Evaluation are:

- (1) The statements on page 26 that "As part of implementing these proposed regulations, TSA expects security to be integrated into actions the same way safety has, and to become an integral component of doing business rather than adding layers or extra program costs. In fact, public comments very clearly demonstrate that much of what TSA is proposing is already considered good practice and is mandated by either safety or insurance requirements."

² Please refer to the Benefit portion of the referenced report at page 11, which appears to base the entire cost benefit analysis on the premise that all "repair station personnel have direct access to all parts of an aircraft, the potential exists for a terrorist to seek to commandeer or compromise an aircraft when the aircraft is at one of these facilities."

³ See, Executive Order 12866 Assessment, Introduction and Background at pages 19 and 20.

Unlike the proposal by the TSA⁴, repair station quality control requirements (safety programs) are not "canned" manuals provided by a government agency (i.e., the FAA) that cannot be changed without approval. Most repair stations and their personnel do not constitute a security threat and therefore will not be able to use a canned program that is essentially aimed at entities with access to completed aircraft or located on airports. Consequently, expecting the proposed security measures to be integrated without adding layers or costs is misguided and unrealistic.

Current repair station security measures do not include the requirement to develop an "approved" program⁵ or "provide evidence of compliance."⁶ They do not include requirements to conduct training, verify employment information, appoint security coordinators, establish a contingency plan, protect sensitive security information (SSI) or respond to "security directives."⁷

It is true that repair stations with access to airports and aircraft have many of these measures in place. Indeed, the requirements for employee background checks under the airport security measures are more stringent than those contained in this proposed rule. On the other hand, the current airport security regulations do not require that employees be restricted from aircraft and aircraft parts; rather, the rules prohibit access to the airport's restricted area, which often does not include the repair station's hangar, parts rooms and other areas where aircraft parts are worked on and/or stored.

ARSA strongly supports the TSA's desire to accept without further showing a repair station security program that is required by another federal agency or by the commercial airport operator. However, it is essential that any disparities between the proposed repair station rules and the airport security requirements are reconciled. If a repair station has adopted the airport's security requirements for its entire operation, the TSA must find that program in full compliance with this proposed rule in order to ensure complete integration without confusion, duplication and added expense.⁸

- (2) The assumption on page 37 "that repair stations calculated to be within one mile of the associated airport were very likely on airport property."

⁴ See, proposed section 1554.101(c).

⁵ Ibid.

⁶ See, proposed section 1554.5(b).

⁷ See, proposed sections 1554.101(a) and (c), 1554.103 and 1554.105.

⁸ Please reference comments submitted to this docket by The Boeing Company that set forth specific examples of potential duplicative requirements that can confuse employees and government officials.

If the address of a repair station is not exactly the same as the airport it is more than likely not on the airport and would not have access to aircraft. As an obvious example, there are numerous repair stations located within one mile of Miami International Airport that do not have access to the airport or aircraft. Therefore, the assumption that 2,164 repair stations located in the United States are "on or adjacent to an airport" is fundamentally flawed. Further, even if a repair station is "adjacent" to an airport, it does not normally have access to the airport (and/or aircraft). Indeed, if it has access to an airport, it will most likely be under the auspices of that entity's security requirements.

- (3) The disparity between the statement on page 43 that "[r]epair stations would need to review and implement the applicable sections of the security program and the attached required appendices" and the mandate to implement the TSA standard program "unless otherwise authorized"⁹ by the agency.

The association appreciates the agency's desire to balance the risk associated with "on airport" versus "off airport" repair stations, yet the entire premise of the proposal is that most repair stations have access to aircraft. We find it hard to comprehend how a "canned program" could possibly cover the wide variety of repair stations, particularly small businesses. If the "canned" program can be implemented under various scenarios, the final rule must define these scenarios with enough specificity to ensure evenhanded application in the field. The agency must make it absolutely clear that it is "authorizing" individual repair stations to determine the extent and nature of the "applicable sections of the security program", since the plain language of the rule requires the TSA be notified of "any amendment to the standard security program."¹⁰

- (4) The conclusion on page 48, that the cost of setting up a program to meet SSI requirements is "*de minimis*."

This is simply not true, particularly for a small business that must develop a method of identifying and protecting SSI to the extent required by the regulations. The original SSI evaluation was not directed at small businesses that often do not have software programs allowing a protective statement to be established with "a few keystrokes". Indeed, the SSI is much more extensive than mere application of a distribution limiting statement on information developed by the repair station; it applies to myriad data.¹¹ Compliance requires developing a system for identifying the information, identifying and limiting access of that data to "need to know" persons,¹² tracking of documents distributed, having a method for each person with

⁹ See, proposed section 1554.101(b).

¹⁰ See, proposed section 1554.103(c).

¹¹ See, 49 CFR § 1520.5.

¹² See, 49 CFR §§ 1520.7 and 1520.11.

access to lock the information away,¹³ and notifying the TSA if anyone requests the information.¹⁴

ARSA reviewed the SSI requirements and found them intricate and extensive; we estimate the cost of developing and maintaining a compliance program to include:

- Eight to ten hours of research to find and understand the regulations and guidance material. This work must be done by the security coordinator who must also understand the repair station security regulations; therefore the cost will be at least \$350.00.
- 10 to 15 hours to develop a basic program that will ensure compliance and an additional 10 to 15 hours to incorporate the program into the business documents and procedures. Again, this work would need to be done by the security coordinator; therefore the cost would be at least \$950.00.
- 10 hours a month per year to ensure the program remains in continued compliance; therefore the ongoing costs would be at least \$4,500.00.

A small business' security coordinator will be someone with other duties and responsibilities essential to the financial success of the entity. Ensuring compliance with an additional requirement is an extra layer, which is not contemplated by the Preliminary Evaluation.

- (5) Beginning on page 50, the Preliminary Evaluation contemplates the cost of controlling access to the facilities and work areas. Compliance with the requirement goes beyond merely identifying the employees and vendors; it also requires ensuring a separation between those persons that have access to the general or administrative areas of the repair station and those with access to aircraft and aircraft parts.

This would require all employees of the repair station to undergo background checks¹⁵ and training. The company would be required to develop a contingency plan for identifying when unauthorized persons have access and take steps to ensure the repair station and the aircraft parts were not compromised. This latter requirement is not specifically defined by the preamble or the plain language of the rule and is therefore particularly troubling to the association.

¹³ See, 49 CFR § 1520.9.

¹⁴ See, proposed section 1554.103(b)(2) and 49 CFR section 1520.9(a)(3).

¹⁵ The Preliminary Evaluation only contemplates the turnover of "mechanics" (see page 51), not all employees. Small businesses often do not have a physical separation between the administrative and work areas of the facility; therefore, the businesses that can least afford additional requirements will be required to either create the physical barrier or otherwise prevent administrative employees from entering work areas.

- (6) Beginning on page 54, the Preliminary Evaluation contemplates the measures necessary to control access to the repair station and the articles under work. Whereas the plain language of the regulation requires any authorized person to be identified, undergo a background check and be trained, the analysis only contemplates that non-authorized persons will need control. This does not account for the separation between technicians and administrative personnel (as previously mentioned in footnote 15).

Additionally, while the public comments referenced in the analysis discussed the normal business practice of providing escort, small repair stations that are not located on airports normally do not have official escort requirements for regular visitors or vendors. Indeed, the majority of these companies consist mainly of technicians whose productivity is essential to the continued financial success of the organization. These companies will most likely have at least weekly visits from customers and vendors who are currently not "officially" escorted through the facility. The requirement to escort known individuals during routine visits will disproportionately impact small businesses.

- (7) On page 56, the Preliminary Evaluation begins discussing the cost of training. It estimates that it will require one hour of training per employee per year. ARSA does not believe that one hour of training will cover the extent and nature of all the information that employees must know to ensure compliance with the security program, the protection of SSI and the measures that must be taken under a contingency plan. We estimate that all employees of the repair station must be trained for at least one hour; however, escorts, persons developing or having access to SSI and the security coordinator will require at least two hours of training. Again, since the persons in small organizations will have other duties and responsibilities, the additional training will impact productivity. We request the agency at least double the cost of training for small businesses.

- (8) With respect to the explanation of the three threat scenarios, which begin on page 63, two of the three contemplate repair station personnel having direct access to a completed aircraft. The remaining scenario contemplates placement of a bomb on an aircraft in commercial service.

Relatively few repair stations are located on commercial airports (or any airport) or have direct access to completed aircraft or perform work which would enable a person to place a bomb on a commercial aircraft. Indeed, the probability that a person would be able to place a bomb in a component and know when that component would be installed on a commercial aircraft is so remote as to be incalculable.

Therefore, ARSA recommends that the rule only apply to repair stations that work on completed commercial aircraft or have access to aircraft on commercial airports. In addition to this assessment, additional consideration should be given to the exact nature and extent that a repair station and/or its personnel has direct and continuous access to the airport and/or aircraft, the extent of the access and the type of aircraft. As the "threat level" increases, the security measures required would increase.

This would reduce the impact of the rule substantially since most repair stations on commercial airports have implemented programs that would be more stringent than those contemplated by the rule (and which the preamble indicates would be found in compliance without further showing).¹⁶

Further, it would exempt repair stations that will be or are under the general aviation security requirements and those posing the least risk to aviation security.¹⁷ It would also have less of an international impact since it would be in line with the International Civil Aviation Organization's security requirements for commercial airports.¹⁸

This alternative would also allow a higher degree of security since repair stations that work on aircraft or are located on commercial airports normally have a separation between administrative and work areas. Additionally, the personnel with direct access to the aircraft and its parts could be subjected to a full criminal background check as opposed to merely requiring an employment check. Indeed, most repair stations with direct access to commercial aircraft have already adopted more stringent security measures.

(9) On page 87, the Preliminary Evaluation discusses the rule's impact on international trade. It concludes that the proposal would not unreasonably target foreign repair stations. What it fails to mention is that the rule would not apply to any repair stations located in Canada. It would seem that by creating a rule that does not apply

¹⁶ See, NPRM at 74 *Federal Register* 59877, which states: "If the repair station is already incorporated within an airport's security program and uses the airport's security access control measures, TSA will consider the repair station to be in compliance with the security measures proposed in these regulations."

¹⁷ The TSA is already contemplating exempting repair stations that work on small aircraft (those 12,500 pounds or less). Unfortunately, this distinction does not exempt "off airport" repair stations who pose the least risk to security. Even if a repair station works on an engine or propeller or other large component, the likelihood that a terrorist would know when that article was actually installed is highly improbable. This is supported by the TSA's observation on page 75 of the Preliminary Evaluation which states in pertinent part that the TSA "...is convinced that the quality control procedures required by FAA adequately address the threat of a part sabotaged at an off-airport repair station being installed on an aircraft."

¹⁸ See concerns expressed in the comments submitted to this docket by the Aerospace Industries Association, the Boeing Company and the European Commission.

to certain "foreign repair stations,"¹⁹ TSA would have a direct impact on foreign relations.

ARSA appreciates that the TSA would have a difficult time applying these regulations to entities located in Canada since the bilateral agreement does not contemplate access to those repair stations by U.S. officials. However, we believe it is essential that this disparity be discussed in any changes to that bilateral and in this rulemaking.

Additionally, the association supports the comments submitted by the Aviation Industries Association, the Boeing Company and the European Commission as well as its members that point out more issues relative to international trade.

Specific Comments on the Regulatory Language

The following pages contain ARSA's comments on the agency's notice of proposed rulemaking; the TSA's regulatory language is in *italics*, with our observations in **bold**. When the association offers alternative regulatory language, it is represented in **bold italics**.

49 CFR Part 1554

Aircraft, Aircraft repair stations, Aviation safety, Reporting and recordkeeping requirements, Security measures.

The Proposed Amendment

In consideration of the foregoing, the Transportation Security Administration proposes to amend Chapter XII of Title 49, Code of Federal Regulations, to read as follows:

Subchapter B—Security Rules for All Modes of Transportation

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

1. The authority citation for part 1520 continues to read as follows:

Authority: 46 U.S.C. 70102-70106, 70117; 49 U.S.C. 114, 40113, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

2. In Sec. 1520.5, revise paragraph (b)(1)(i) to read as follows:

¹⁹ The rule defines a foreign repair station as one that is "...located outside the fifty states, the District of Columbia, or the territories and possessions of the United States."

Sec. 1520.5 Sensitive security information.

(b) ***;

(1) ***;

(i) *Any aircraft operator, airport operator, fixed base operator, repair station, or air cargo security program, or security contingency plan under this chapter;*

3. *In Sec. 1520.7, add paragraph (o) to read as follows:*

Sec. 1520.7 Covered persons.

(o) *Each operator or owner of an aircraft repair station required to have a security program under part 1554 of this chapter.*

The words “operator” and “aircraft” before repair station are not consistent with either 14 CFR or the proposed language in this rule; therefore, the association recommends:

(o) *Each owner of a repair station required to have a security program under part 1554 of this chapter.*

Subchapter C—Civil Aviation Security

PART 1554—AIRCRAFT REPAIR STATION SECURITY

ARSA believes the title for this section should be consistent with the law that requires all repair stations be covered by the regulation, not just “aircraft” repair stations. Therefore, we propose:

PART 1554—REPAIR STATION SECURITY

Subpart A—General

1554.1 Scope and purpose.

1554.3 Terms used in this part.

1554.5 TSA inspection authority.

Subpart B—Security Program

1554.101 Adoption and implementation.

1554.103 Security Program content, availability, and amendment.

1554.105 Security Directives.

Subpart C—Compliance and Enforcement

1554.201 Notification of security deficiencies; suspension of certificate.

1554.203 Immediate risk to security; revocation of certificate and review process.

1554.205 Nondisclosure of certain information.

Authority: 49 U.S.C. 114, 40113, 44903, 44924.

Subpart A—General

Sec. 1554.1 Scope and purpose.

This part applies to domestic and foreign repair stations that are certificated by the Federal Aviation Administration pursuant to 14 CFR part 145 except for a repair station certificated by the Federal Aviation Administration at which the U.S. Government has assumed responsibility for security. The purpose of this part is to provide for the security of maintenance and repair work conducted on aircraft and aircraft components at domestic and foreign repair stations, of the aircraft and aircraft components located at the repair stations, and of the repair station facilities, as required in 49 U.S.C. 44924.

Despite the broad claim contained in the preamble that the rule is being issued to provide security at “domestic and foreign repair stations,” the association notes that the proposed definition will omit repair stations located in Canada. Those entities are not certificated by the FAA pursuant to part 145; rather, they are authorized to perform maintenance, preventive maintenance and alteration on civil aviation articles under the jurisdiction of the United States through a Bilateral Aviation Safety Agreement (BASA). That document allows each country’s approved maintenance organizations to perform work without having the other country issue a certificate. Future BASAs may also be negotiated to allow similar reciprocal arrangements with other countries.

The preamble states:

In addition, for purposes of this rulemaking, the term “component” includes any article, airframe, aircraft engine, propeller, appliance, or part that is under repair. The term is used broadly to encompass both articles and appliances as defined by the FAA.¹³¹

¹³¹ See 14 CFR 1.1 and 145.3(b).

Unfortunately, the terminology is not consistent with the definitions contained in the cited regulations and therefore will create confusion. Specifically:

- (1) The work authorized under part 145 is “maintenance, preventive maintenance and alteration”; not “maintenance and repair.”²⁰
- (2) Section 1.1 defines aircraft, aircraft engines, propellers and appliances but does not contain a definition for “component”.
- (3) Part 145 defines article as “an aircraft, airframe, aircraft engine, propeller, appliance, or component part.”²¹

ARSA also believes this rule should only apply to repair stations working on completed aircraft or located on a commercial airport.

Therefore, we suggest the following language:

This part applies to domestic and foreign repair stations authorized by the Federal Aviation Administration to perform maintenance, preventive maintenance and alteration on commercial aircraft or that are located on commercial airports except for repair stations at which the U.S. Government has assumed responsibility for security. The purpose of this part is to provide for the security of maintenance, preventive maintenance and alteration conducted on commercial aircraft at domestic and foreign repair stations located on commercial airports, of the commercial aircraft located at the repair stations, and of the repair station facilities, as required in 49 U.S.C. 44924.

Sec. 1554.3 Terms used in this part.

In addition to the terms in sections 1500.3 and 1540.5 of this chapter, the following terms apply in this part:

Repair station means a domestic or foreign facility certificated by the Federal Aviation Administration pursuant to 14 CFR part 145 that is authorized to perform maintenance, preventive maintenance, or alterations of an aircraft, airframe, aircraft engine, propeller, appliance, or component part.

(1) Domestic repair station means a repair station located within the fifty States, the District of Columbia, or the territories and possessions of the United States.

(2) Foreign repair station means a repair station located outside the fifty States, the District of Columbia, or the territories and possessions of the United States.

²⁰ See, section 43.3.

²¹ See, section 145.3(b).

Consistent with the comments regarding section 1554.1, immediately above, the proposed language is inaccurate and therefore will either be construed incorrectly or omit repair stations located outside the United States that are not issued certificates by the FAA. Additionally, the terminology should be consistent with the regulations issued by the FAA.

Therefore, ARSA recommends the following language:

Article means any civil aviation aircraft, aircraft engine, propeller, appliance or component part.

Commercial aircraft means aircraft operated for compensation or hire under 14 Code of Federal Regulations parts 121, 125, 129 or 135.

Commercial airport means an airport operator as that term is defined in section 1540.5 of this chapter.

Repair station means a domestic or foreign facility authorized by the Federal Aviation Administration pursuant to 14 CFR parts 43²² and 145 to perform maintenance, preventive maintenance, or alterations of civil aviation aircraft located on a commercial airport.

(1) Domestic repair station means a facility located within the fifty States, the District of Columbia, or the territories and possessions of the United States.

(2) Foreign repair station means a facility located outside the fifty States, the District of Columbia, or the territories and possessions of the United States.

Sec. 1554.5 TSA inspection authority.

(a) General. Each repair station must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, conduct any audits, assessments, tests, or inspections of any property, facilities, equipment, and operations; and to view, inspect, and copy records as necessary to carry out TSA's security-related statutory or regulatory authorities, including its authority to—

(1) Assess threats to transportation security;

(2) Enforce security-related regulations, directives, and requirements;

²² See, section 43.17 that allows a Canadian approved maintenance organization to perform maintenance, preventive maintenance and alteration on aircraft with a U.S. certificate of airworthiness.

- (3) Inspect, maintain, and test security facilities, equipment, and systems;*
- (4) Ensure the adequacy of security measures;*
- (5) Verify the implementation of security measures;*
- (6) Review security programs; and,*
- (7) Carry out such other duties, and exercise such other powers, relating to transportation security as the Assistant Secretary of Homeland Security for the TSA considers appropriate, to the extent authorized by law.*

ARSA requests that the TSA discuss the term “at any time” in its final rule. For example, does this mean that the agency may contact the security coordinator during off-hours to request access?

The association also requests that the TSA make it very clear that its access does not include review and comment on issues that are outside its jurisdiction, for example, issues relative to areas that are not considered part of the repair station.

(b) Evidence of compliance. At the request of TSA, each repair station operator must provide evidence of compliance with its security program and with this part, including copies of records.

(1) All records required under this part must be available in English.

(2) All responses and submissions provided to TSA or its designee, pursuant to this part, must be in English, unless otherwise requested by TSA.

(c) Access to repair station.

(1) TSA and DHS officials working with TSA may enter, without advance notice, and be present within any area without access media or identification media issued or approved by the repair station in order to inspect, test, or perform any other such duties as TSA may direct.

(2) Repair stations may request TSA inspectors and DHS officials working with TSA to present their credentials for examination, but the credentials may not be photocopied or otherwise reproduced.

ARSA requests that the agency make it clear that repair stations are allowed to request the TSA inspectors and DHS officials working with the TSA to follow any security measures required by this rule during their visit to the repair station.

Specifically, they should not protest if they are asked to sign a visitor's log, be provided repair station identification (if any) and are escorted.

Subpart B—Security Program

Sec. 1554.101 Adoption and implementation.

(a) General. Each repair station must adopt and carry out a security program to safeguard aircraft and aircraft components located within the repair station and its facilities, the repair and maintenance work conducted at the repair station, and the repair station facility itself.

The association requests that the TSA use the same terms used by the FAA and apply them consistently in each section of the regulations. In this paragraph, the TSA only uses the terms “aircraft components” and “repair and maintenance work”, the correct terminology is civil aviation articles and maintenance, preventive maintenance and alteration. Therefore, the paragraph should read:

(a) General. Each repair station must adopt and carry out a security program to safeguard civil aviation articles located within the repair station and its facilities, the maintenance, preventive maintenance and alteration conducted at the repair station, and the repair station facility itself.

(b) Repair station profile. No later than 30 calendar days after final rules are published in the Federal Register or no later than 30 calendar days after FAA certification, each repair station must submit a profile in a manner prescribed by TSA. Each repair station must report changes in profile information as specified by TSA within 30 calendar days of the date of the change.

ARSA appreciates that the TSA must promulgate regulations that cover all foreign and domestic repair stations; however, we are also recommending that any repair station that does not work on completed aircraft or is not located on a commercial airport be exempt from the regulation. Additionally, for those repair stations that are working on commercial aircraft or located on commercial airports should be further assessed to determine the nature and extent of threat that may be represented. Therefore, the profile should request the following information:

- **The air agency certificate number issued by the Federal Aviation Administration**
- **The physical address of the fixed location of the repair station, including all additional fixed locations listed in the FAA-issued certificate (no post office boxes can be allowed)**

- The mailing address of the repair station and each additional fixed location if other than the physical address previously supplied
- Whether the location has direct access to an airport
- The type of airport to which the repair station personnel have access (i.e., whether it is a commercial airport or only serves general aviation)
- Whether the location is under the jurisdiction of a commercial airport's security program
- The exact nature and extent to which the repair station has access to or works on completed aircraft (whether or not it is located on an airport)
- The type of aircraft upon which the work is performed by make and model
- The total number of employees at the location
- The number of administrative employees that have access to the work areas or aircraft parts
- The number of technicians that:
 - Have access to completed aircraft; and,
 - Have access to aircraft parts of those completed aircraft

This information would provide a realistic profile of the repair station and the type and extent of any potential aviation security risk.

It should be kept in mind that there are repair stations that work on completed aircraft even if they are not located on an airport. Normally, these repair stations work on rotorcraft that can land at locations other than airports, and most of these aircraft are not used to provide commercial service. Additionally, there are locations that contain both repair station and manufacturing activities.²³

Finally, it is essential that the TSA make it absolutely clear that its regulations do not cover work away from the fixed location,²⁴ but only the physical locations of a repair station subject to the final regulations.²⁵

(c) Repair station security program. Unless otherwise authorized by TSA, each repair station must use the TSA standard repair station security program.

As mentioned previously, ARSA is deeply concerned about this "canned" program. The TSA's preamble indicates that it recognizes "a 'one size fits all' approach would not appropriately address the diversity of repair station characteristics" and that "[w]hile TSA would provide a standard security program

²³ See the comments to this docket submitted by Coastal Helicopters, Inc., dated December 30, 2009, as well as comments related to manufacturer/repair station facilities contained in the comments submitted by the General Aviation Manufacturers Association.

²⁴ See, section 145.203.

²⁵ See the comments submitted by The Boeing Company that further explain the concern of the industry regarding working away from the repair station's fixed location.

which would contain the majority of security measures that a repair station must adopt to comply with the proposed regulations, certain measures in the standard security program...may differ depending upon risk factors considered by the TSA.”²⁶ The association is at a loss to understand how this can be reconciled with the requirement that the standard program must be adopted “unless otherwise authorized by TSA”. Our experience establishes that these types of fluid “requirements” create confusion in an agency’s workforce and result in arbitrary and capricious application of a regulation.

Sec. 1554.103 Security program content, availability, and amendment.

(a) Content of security program. Each security program must—

(1) Include measures to identify all individuals who are authorized to enter the repair station to prevent unauthorized individuals from entering the repair station.

ARSA requests that a clearer definition of what “identify” and “enter the repair station” means with respect to this requirement. For example, will identification of individuals and employees having access to the administrative areas of the repair station be different than access to areas where the aircraft or other civil aviation articles are stored or worked?

Additionally, will the standard program differentiate between authorizing employees and other individuals, such as specific individuals from vendor organizations, TSA, DHS and FAA employees?

Part 145 requires that the repair station have the housing and facilities necessary to ensure the applicable maintenance, preventive maintenance or alteration work is performed properly. The parameters of those rules are not exactly the same as is needed or intended by the TSA. Part 145 requires that the entity prepare a description of the housing and facilities,²⁷ but does not require any description of the parking lots and other areas that might be “controlled” by this rule (see comments directly below applicable to “movement of vehicles into and within the repair station”).

The association believes the TSA needs to provide a definitive explanation of exactly what area is covered by the term “repair station.” Is it what is covered by the lease or property description? Is it only the housing described in part 145? Is it something else altogether? Will the regulations cover work being performed “away from the fixed location” as is allowed under section 145.203?

²⁶ See, NPRM at 74 *Federal Register* 59878.

²⁷ See, section 145.209(c).

(2) Include measures to control access to the repair station. Such measures must be designed to prevent, detect and resolve any unauthorized entry, presence, and movement of individuals and vehicles into or within the repair station.

In addition to the general concern regarding the different areas to which personnel and other persons would have "authorized access", ARSA is particularly concerned with the reference to "vehicles into or within" the repair station. Determining how to authorize and control access to the physical building with known entrances is one matter; access to areas such as parking lots or other areas that are not under the control of the company is another. The rule should only deal with areas within the repair station that would permit further access to the aircraft or other articles.

(3) Include measures to control access to the aircraft and aircraft components to allow only authorized individuals to have access to the aircraft and aircraft components within the repair station.

As mentioned in our General Comments as well as the requests for clarification in the preceding paragraphs, the requirement to distinguish between administrative and technical personnel would be particularly burdensome to small businesses. Most repair stations allow all employees to have access to all areas of the repair station. In order to do so under this rule all those individuals would have to have access to and control SSI and would have to be trained.

(4) Include measures to challenge any individual entering the repair station or who is present in the repair station to ascertain the authority of that individual to enter or be present in the area and measures to escort an unauthorized individual while within the repair station.

ARSA is a bit confused by requirement to "challenge any individual entering the repair station". Since paragraph (1) requires the identification of authorized persons and paragraph (2) controls access, then logically there must be an "entry" point at which persons can be "authorized" or obtain an escort. Additionally, it is particularly troubling that the rule does not allow identified vendor representatives and other regular visitors (such as family members) access to administrative areas without escort.

It is evident by the plain language of the rule as well as the preamble that the agency assumed that all repair stations would have some sort of perimeter fence between the general public and the "repair station." Unfortunately, this is far from the truth; the association requests the agency clearly understand and

explain in its final rule the fact that most repair stations are buildings with open parking lots and reception areas.

Additionally, there are repair stations on non-commercial airports that may be entered from the “airport” side by known persons (such as customers and vendor representatives) as well as unknown persons such as pilots or other potential customers. Under the plain language of the rule, unless these persons are “listed” by the repair station, they will be considered “unauthorized” even if they represent no threat—indeed, they may represent an income potential.

If the area in question is on a commercial airport and the person is appropriately authorized under that entity’s procedures, ARSA questions the need for further query by the repair station. However, it does raise the question as to how these individuals may be identified by the repair station as being “authorized” other than a particular class, such as any individual otherwise authorized by a program approved by the TSA (those authorized by other repair stations on the airport or by the airport itself).

(5) Include measures to conduct initial and recurrent security training of all individuals with authorized access to aircraft and components on the provisions of this part and the security program and to maintain a record of training completed by each employee.

This paragraph seems to contemplate that only employees would be authorized access to aircraft and articles, when indeed, there may be customer or vendor representatives and other “individuals” that would be allowed authorized access. ARSA requests clarification on exactly which “individuals” would need to be trained, only employees or all persons with “authorized access”? Or do all individuals need to be trained but records need only be kept on employees?

Also, does this paragraph allow a distinction between administrative areas where more individuals may have access but need not be trained unless authority is extended to where aircraft or parts are stored or worked? Do escorts need to be trained differently than other employees? What about persons that may need to escort a person that is accessing the repair station from the “airport” side as discussed in the comments under paragraph (4)?

Does the recurrent training need to take place on a regular basis or only when the nature of the program changes? The preamble indicates that there needs to be an hour of training every year, yet if the program is as simple as recognition of new employees and turnover is low, then recurrent training would seem to be unnecessary unless the program becomes more complex.

(6) Include measures to verify employee background information through confirmation of prior employment and any other means as appropriate to validate employee information.

The association requests clarification of this paragraph. Does this requirement apply to all employees or only those with authorized access to aircraft and articles?

The open ended phrase “any other means as appropriate to validate employee information” is troublesome. Besides prior employment and citizenship, what other “employee information” is being sought under this paragraph?

The agency must be aware that the extent and nature that prior employers will confirm “prior employment” is problematic; the concern over lawsuits has reduced the information to dates of employment and possibly the last “title” the former employee held.

It must be noted that current laws and part 145 already require verification of citizenship and other information, specifically—

- **All United States employers must verify that employees are eligible to work in the country under the Immigration Reform and Control Act of 1986.²⁸ This law also requires positive identification of United States citizens.**
- **Part 145 requires an approved training program that ensures each technical employee is capable of performing their assigned tasks.²⁹**
- **Part 145 requires that supervisors and persons approving work for return to service in the United States be certificated under part 65.³⁰ Before the FAA issues a Part 65 certificate, it will confirm the identification and citizenship of the applicant.**
- **Part 145 requires that the repair station keep a summary of managers, supervisors, inspectors and persons authorized to issue approvals for return to service. That summary must include a summary of employment which must include the total years of experience and the type of maintenance work performed along with the past relevant employment with names of employers and periods of employment.³¹**

Finally, if the repair station has adopted the requirements for employee background verification demanded by the airport security regulations, those

²⁸ The law requires the completion of Form I-9, “Employment Eligibility Verification.”

²⁹ See, section 145.163.

³⁰ See, sections 145.153 and 145.157.

³¹ See, section 145.161(a)(4).

programs should be specifically recognized as a method of compliance since they are more stringent.

(7) Include the name, means of contact on a 24 hour basis, duties, and training requirements of the security coordinator(s) who will serve as the primary and immediate contact for security-related activities and communications with TSA.

The association strongly recommends that all training requirements be included in one place. This paragraph indicates that the training required for the “security coordinator(s)” will be different than that required by paragraph (5). The extent and nature of any and all training should be specified under one paragraph.

The association also would like the agency to define the difference between the expectations of these personnel and those that would be listed under paragraph (11) below. If the security coordinators are to be in contact with the TSA, don't they also have to be on the “emergency response contact list”?

(8) Include a contingency plan.

The association can only assume that the “contingency plan” involves the measures the repair station must take if it discovers someone had “unauthorized access” to either the repair station or to the articles undergoing work or in storage. The preamble indicates that this may include use of outside sources and an extensive description of exactly what steps individual employees would be expected to take in the event of a “breach.”

This seems to be another example of how the TSA has misunderstood the extent and nature of most repair stations' involvement with the three threat scenarios contemplated by the agency.³² The extent and nature of the threat that most repair stations represent is minimal; therefore, the extent and nature of any “contingency plan” and the measures it must embrace should be based upon—

- **The person who was discovered having unauthorized access, (i.e., was it a regular and known visitor, such as a vendor representative, family member, potential customer or existing or previous customer)**
- **What can be determined about the reason for the unauthorized access**
- **The amount of time the access was undetected**
- **The length of time of the unauthorized access**
- **The exact area where the access was undetected (e.g., was it in an area that had aircraft or articles or merely the administrative area)**
- **The other persons in the area when the unauthorized access was discovered**

³² Most repair stations work on components that are installed on aircraft, which makes their threat to completed aircraft used in commercial services very problematic.

- **The extent and nature of the work being performed (if any) in the area that the person had unauthorized access**

(9) Include a diagram with dimensions detailing boundaries and physical features of the repair station.

The association references the agency back to the concerns expressed in paragraphs (1) and (2); does this "diagram" include the parking lots and other "areas" that may or may not be considered part of the repair station under part 145?

(10) Include a list and description of all repair station entry points.

This paragraph seems to be limited to the physical plant, rather than what is indicated by paragraphs (1), (2) and (9). These disparities will create confusion in the minds of certificate holders as well as TSA representatives.

(11) Include an emergency response contact list.

ARSA requests the agency clarify the difference between the expectations of the security coordinators versus the persons on this "emergency response contact list." What type of activities would constitute an emergency? Would this be limited to known breaches of security or other instances of concern?

(12) Be in writing and signed by the operator, owner, or any person delegated authority in this matter.

The term "operator" is not appropriate; we suggest that the person who would sign the written security program be defined in the same manner as the term Accountable Manager.³³ Therefore, the following language is suggested:

(12) Be in writing and signed by the person designated by the repair station who has responsibility for and authority over the security program required by this part.

(b) Availability.

(1) The repair station security program must—

(i) Be written both in English and in the official language of the repair station's country.

³³ See, section 145.3(a).

(ii) Be accessible at each facility.

(2) Each repair station must restrict the distribution, disclosure, and availability of sensitive security information (SSI) as defined in part 1520 of this chapter to persons with a need to know and refer all requests for SSI by other persons to TSA.

As already stated in these comments, SSI is more than the repair station's security program; therefore paragraph (2) should read:

(2) Each repair station required to develop a security program under this part must comply with part 1520 with respect to the development, distribution, disclosure, and availability of sensitive security information (SSI).

(c) Amendment.

(1) A repair station must notify TSA of any amendment to the standard security program.

This paragraph makes little sense; the TSA is providing the standard program to the repair station and unless otherwise allowed by the TSA, the repair station must adopt that program. If the TSA issues an amendment to the standard program, why would the repair station have to notify the TSA of its adoption of that change?

(2) If TSA finds that there is a situation requiring immediate action to respond to a security threat, TSA may issue an emergency amendment to the standard security program. TSA will provide an explanation of the reason for the amendment. Each repair station must acknowledge receipt and adopt the emergency amendment within the time prescribed. If a repair station is unable to implement the emergency amendment, the repair station immediately must notify TSA to obtain approval of alternative measures.

The association is deeply concerned about the manner and extent to which this paragraph will be implemented. The "standard" program has yet to be made available; the extent and nature of each repair station's threat is obviously misunderstood.

The TSA does not have the resources and is not contemplating obtaining the resources to respond to over 5,000 repair stations and to ensure that there is a method of documenting those contacts. If the "emergency amendment" is not applicable to the particular repair station's activities, how will that be communicated? How will the repair station verify that it received the information

and responded in a timely manner? How will the TSA ensure the repair station actually received the information? How would the TSA expect the repair station to record compliance (see, section 1554.5(b)).

Sec. 1554.105 Security Directives.

(a) General. When TSA determines that additional security measures are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a Security Directive setting forth mandatory measures.

(b) Compliance. Each repair station required to have a security program must comply with each Security Directive TSA issues to the repair station within the time prescribed. Each repair station that receives a Security Directive must—

(1) Verbally acknowledge receipt of the Security Directive.

(2) Specify the method by which security measures have been or will be implemented to meet the effective date.

(3) Notify TSA to obtain approval of alternative measures, if the repair station is unable to implement the measures in the Security Directive.

ARSA is concerned about the difference in language between section (a) and (b); does the TSA anticipate providing each repair station a different Security Directive? Paragraph (b) states that the repair station must comply with “each Security Directive TSA issues to the repair station” (emphasis added). This verbiage seems to indicate that each repair station may receive a different directive. If this is correct, it should be made clear that Security Directives may be specific to the repair station rather than to the industry.

We do not believe that “verbally” acknowledging the receipt of the Security Directive is sufficient to ensure that either the TSA or the repair station has actually delivered or received this important information. Under this proposal, the TSA has no method of documenting the “verbal” acknowledgement, whereas the repair station is required to have records of its compliance (see, proposed section 1554.5(a)(2), (4) and (5)).

The association is also concerned about the difference in language between (b)(2) and (3); IF the Security Directive contains measures, why would the repair station have to specify the method of compliance?

(c) Availability. Each repair station that receives a Security Directive and each person who receives information from a Security Directive must—

(1) Restrict the availability of the Security Directive and the information contained in the document to persons who have an operational need to know.

(2) Refuse to release the Security Directive or the information contained in the document to persons other than those who have an operational need to know without the prior written consent of TSA.

If the repair station has to comply with part 1520, that regulation requires restriction of SSI, which includes Security Directives.³⁴ Therefore, the section should read:

(c) Availability. Each repair station that receives a Security Directive and each person who receives information from a Security Directive must treat that information as required by part 1520 of this chapter.

Subpart C—Compliance and Enforcement

This entire subpart is particularly troublesome to ARSA. It does not contain due process procedures commensurate with those contained in the general TSA regulations.³⁵ Indeed, it cannot be reconciled with the processes mandated by Congress with respect to revocations of 14 CFR certificates.³⁶ Additionally, the TSA proposal does not indicate whether the suspension or revocation is to be on a “regular” or “emergency” basis. In the case of a regular suspension or revocation, the entire National Transportation Safety Board (NTSB) appellate process is completed before work must cease; whereas under an emergency suspension or revocation, the repair station must cease work immediately upon delivery of the certificate action.

ARSA strongly disagrees with the contention that TSA has anything but limited jurisdiction over the air agency certificate appellate process.³⁷ The NTSB has

³⁴ See, 49 CFR § 1520.5(b)(2).

³⁵ See, 49 CFR part 1503 entitled “Investigation and Enforcement Procedures”, which includes a host of options for handling suspected violations of the agency’s regulations. The agency should also allow repair station’s to self-disclose potential violations.

³⁶ See, 49 U.S.C § 1133(1) and 49 CFR part 821, subpart D entitled “Special Rules Applicable to Proceedings Under 49 U.S.C. § 44709”, which require appeals of certificate actions, including suspensions, but excluding emergency actions, to be made to the NTSB within 20 days. Subpart I—Special Rules Applicable to Proceedings Involving Emergency and Other Immediately Effective Orders, contains even more stringent deadlines, including a two day statutory time line delineated in § 821.54 entitled “Petition for review of Administrator’s determination of emergency.”

³⁷ See, 49 U.S.C. § 44924(c)(3), which states: “The Under Secretary, in consultation with the Administrator, shall establish procedures for appealing a revocation of a certificate under this subsection.” (Emphasis added.)

jurisdiction over appeals from FAA decisions to suspend or revoke air agency certificates.³⁸ The repair station security statute requires the TSA to establish procedures, in consultation with the FAA, for appealing certificate revocations, not suspensions. The TSA's limited jurisdiction over certificate actions directs the FAA to take action;³⁹ and 49 U.S.C § 46111 only provides an appellate process for "individuals".

The association also shares the concern expressed by The Boeing Company that the current proposal does not contemplate having more than one fixed location on a repair station's certificate. If only one location of the repair station accused of failing to comply, it should not impact all the locations listed on the certificate. The law and resulting regulations allow the FAA to amend, revoke or suspend any part of a repair station's certificate, while the TSA's proposed language does not.

For the forgoing reasons, ARSA believes that TSA must reconcile its suspension and revocation appellate processes with the FAA and NTSB to ensure efficient, effective and speedy due process.⁴⁰ The association submits that the TSA must rewrite the sections dealing with reviews of certificates and direct repair stations to the appellate procedures in 49 CFR part 821.

Even though ARSA strongly disagrees with these proposed enforcement procedures it has provided comments and alternative language for each section.

Sec. 1554.201 Notification of security deficiencies; suspension of certificate.

(a) General. Each repair station that does not establish and carry out a security program, as specified in this part, may be subject to suspension of its FAA certificate, as provided by 49 U.S.C. 44924(c)(1).

(b) Notice of security deficiencies. TSA provides written notification to a repair station and to the FAA of any security deficiency identified by TSA.

This paragraph should read:

(b) Notice of security deficiencies. TSA shall provide written notification to a repair station and to the FAA of any security deficiency identified by TSA.

³⁸ See, 49 U.S.C. § 1133 and 14 CFR § 13.19(d).

³⁹ See, 49 U.S.C. § 44924 and 49 U.S.C. § 46111.

⁴⁰ See, 49 U.S.C. § 114(g)(2) for a general limitation on TSA jurisdiction, as well as the mandate for the TSA to coordinate and cooperate with other agencies, including the FAA and ICAO (49 U.S.C. § 114(f)(13)-(14)) and the NTSB (49 U.S.C. § 114(i)).

(c) Response. A repair station must provide TSA with a written explanation in English of all efforts, methods, and procedures used to correct the security deficiencies identified by TSA within 45 days of receipt of the written notification described in paragraph (b) of this section.

ARSA believes this paragraph must contemplate the fact that there may not be any deficiencies. The language now reads that the repair station is guilty whether or not the TSA's observations are correct. Therefore, the association recommends that the paragraph read:

(c) Response. A repair station must provide TSA with a written explanation in English of the reasons why it believes there are no deficiencies and/or all efforts, methods, and procedures used to correct the security deficiencies identified by TSA within 45 days of receipt of the written notification described in paragraph (b) of this section.

(d) Suspension of certificate. If the repair station does not correct security deficiencies within 90 days of the repair station's receipt of the written notice of security deficiencies, or if TSA determines that the security deficiencies have not been addressed sufficiently to comply with this section, TSA provides written notification to the repair station and to the FAA that the station's certificate shall be suspended. The notification includes an explanation of the basis for the suspension. The suspension remains in place until such time as TSA determines that the security deficiencies have been corrected.

This paragraph does not contemplate the fact that the TSA can be wrong about its assessment and/or in the application of its "appeal" process. Nor does it contemplate that the suspension of the certificate can be appealed to the NTSB. Further, the rules applicable to the appeal of non-emergency suspensions contemplate a stay of the suspension. Therefore, ARSA will assume that the TSA will request an emergency suspension of the certificate and recommends that the paragraph read:

(d) Suspension of certificate. If the repair station does not correct security deficiencies within 90 days of the repair station's receipt of the written notice of security deficiencies, or if TSA determines that the security deficiencies have not been addressed sufficiently to comply with this section, TSA shall provide written notification to the repair station and to the FAA that the station's certificate shall be suspended on an emergency basis. The notification shall include the reasons for the emergency suspension.

(e) Reply. No later than 20 calendar days after the date of receipt of the notification of suspension, the repair station may serve upon TSA a written request for review of the basis for the determination that the security deficiencies have not been addressed

sufficiently. The request must be in English and may include any information that the repair station believes TSA should consider regarding its determination. The suspension remains in effect until the review is complete.

Under the plain language of the statute (see footnote 37) it does not appear that the TSA has authority to review suspensions of air agency certificates. That process would still be under the purview of the NTSB, therefore the paragraph should read:

e) Appeals. Appeals of the emergency suspension of the repair station air agency certificate shall be handled under 14 CFR part 821, subpart I.

Alternatively, if the TSA believes that it has the authority to handle suspensions it still must work with the FAA and NTSB to change the rules contained in 14 CFR part 13 and 49 CFR part 821. The agency must ensure there is a rapid process for an independent tribunal to review its actions.

(f) TSA Review. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the repair station's request for review, TSA reviews its initial determination and issue a Final Determination on the repair station and the FAA in accordance with this paragraph.

(1) TSA considers the initial notification, the repair station's reply, and any other relevant materials before issuing the Final Determination.

(2) If TSA determines that security deficiencies exist and have not been addressed, TSA serves upon the repair station and the FAA a Final Determination. The Final Determination shall include a statement that TSA has reviewed all of the relevant information available and has determined that the repair station is not in compliance with this section.

(3) If TSA determines that security deficiencies do not exist or have been corrected in a manner consistent with the requirements of this part, TSA notifies the repair station and the FAA that the repair station's certification may be reinstated.

ARSA believes these paragraphs need to be stricken in their entirety. Air agencies have the right to appeal suspensions to the NTSB.

Alternatively, if the TSA determines it may handle suspensions in cases of aviation security, it must consider the detrimental impact of a suspension upon a small business. Therefore the appellate process should be similar to the expedited review process afforded any other emergency suspension or revocation actions.

(f) TSA Review. Not later than 15 calendar days after TSA receives the repair station's request for review, TSA shall issue a Final Determination on the repair station and the FAA in accordance with this paragraph.

(1) TSA shall consider the initial notification, the repair station's reply, and any other relevant materials before issuing the Final Determination.

(2) If TSA determines that security deficiencies did exist and have not been addressed, TSA shall serve a Final Determination upon the repair station and the FAA. The Final Determination shall include a statement that details the relevant information TSA has reviewed and the reasons that TSA has determined that the repair station is not in compliance with this part. The Final Determination constitutes a final agency action.

(3) If TSA determines that security deficiencies do not exist or have been corrected in a manner consistent with the requirements of this part, TSA shall notify the repair station and the FAA that the repair station's certification may be reinstated.

Sec. 1554.203 Immediate risk to security; revocation of certificate and review process.

(a) Notice. TSA determines whether any repair station poses an immediate risk to security. If such a determination is made, TSA provides written notification of its determination to the repair station and to the FAA that the certificate must be revoked. The notification includes an explanation of the basis for the revocation. TSA does not include classified information or other information described in paragraph (e) of this section.

Again, ARSA believes that review of a revocation, particularly an emergency revocation must be reconciled with the procedures in 14 CFR part 13 and 49 CFR part 821, subpart I. The association also notes that there is no paragraph (e). To ensure the certificate action is reviewed in an appropriate manner, we recommend language for this paragraph:

(a) Notice. TSA determines whether any repair station poses an immediate risk to security. If such a determination is made, TSA shall provide written notification of its determination to the repair station and to the FAA that the certificate must be revoked on an emergency basis.

(b) Request for review. Not later than 30 days after receipt of the notice, a repair station may file a request for review of the determination that the repair station poses an immediate risk to security. The revocation remains in effect until the review is complete.

The request must be made in writing, in English, signed by the repair station operator or owner, and include—

- (1) A statement that a review is requested; and*
- (2) A response to the determination of immediate risk to security, including any information TSA should consider in reviewing the basis for the determination.*

As noted above, the congressional mandate to develop repair station security regulations and for the FAA to issue a revocation of the air agency certificate did not provide TSA with the total authority over the appellate process. Therefore, ARSA recommends that the currently recognized process of appeal be followed. It ensures an expedited review by an independent tribunal. We recommend the following language:

(b) Appeals. Appeals of the emergency suspension of the repair station air agency certificate shall be handled under 14 CFR part 821, subpart I.

If the TSA determines that it has the statutory authority to conduct reviews of emergency revocations without reconciling its regulations with those contained in the FAA and NTSB rules, ARSA notes that the proposed request for review must be signed by the repair station “operator or owner”; since the TSA is not demanding that person sign the security program document, we recommend different language. Additionally, since an emergency revocation stays in effect until the appellate process is complete, we recommend the following language:

(b) Request for review. Not later than 20 days after receipt of the notice, a repair station may file a request for review of the determination that the repair station poses an immediate risk to security. The request must be in English, be signed by the repair station representative, and include—

- (1) A statement that a review is requested; and,***
- (2) A response to the determination of immediate risk to security, including any information TSA should consider in reviewing the basis for the determination.***

(c) TSA Review. Not later than 30 calendar days, or such longer period as TSA may determine for good cause, after TSA receives the repair station's request for review, TSA examines the basis for the determination that the repair station poses an immediate risk to security, the repair station's response, and any other relevant materials.

ARSA believes that paragraphs (c) and (d) need to be struck in their entirety due to lack jurisdiction without appropriate coordination with the FAA and NTSB. However, if TSA determines that it has appropriately followed all of its congressional mandates, the association does not believe that the agency should have the opportunity to withhold expedited action. This is particularly true when the revocation will be so detrimental to small businesses and the event is based upon an "immediate threat" to aviation security. ARSA believes an equally urgent review of the determination and the measures that need to be taken to mitigate any confirmed threat must be conducted. The association therefore recommends the following language:

(c) TSA Review. Not later than 15 calendar days after TSA receives the repair station's request for review, TSA shall issue a Final Determination to the repair station and the FAA in accordance with this paragraph.

(1) The TSA Assistant Secretary or a designee that was not involved in the original determination shall review the notification, the materials upon which the notification was based, the repair station's response and any other available information before issuing the Final Determination.

(2) If the TSA Assistant Secretary or the designee determines that the repair station continues to pose an immediate risk to security, the TSA Assistant Secretary or the designee shall submit to the repair station and to the FAA a Final Determination. The Final Determination shall include a statement that the TSA Assistant Secretary or the designee personally reviewed all of the relevant information available and has determined that the repair station poses an immediate risk to security. The Final Determination shall include a statement that details the relevant information TSA has reviewed and the reasons that TSA has determined that the repair station is not in compliance with this part. The Final Determination constitutes a final agency action.

(3) If TSA determines that security deficiencies do not exist or have been corrected in a manner consistent with the requirements of this part, TSA shall notify the repair station and the FAA that the repair station's certification may be reinstated.

(d) Final determination. If TSA determines that the repair station poses an immediate risk to security, the TSA Assistant Secretary or his or her designee reviews the notification, the materials upon which the notification was based, the repair station's response and any other available information. If the TSA Assistant Secretary or his or her designee determines that the repair station continues to pose an immediate risk to security, the TSA Assistant Secretary or his or her designee submits to the repair station and to the FAA a Final Determination. The Final Determination includes a

statement that the TSA Assistant Secretary or his or her designee personally has reviewed all of the relevant information available and has determined that the repair station poses an immediate risk to security. If TSA determines that the repair station does not pose an immediate risk to security, TSA notifies the repair station and the FAA. A Final Determination constitutes a final agency action for purposes of 49 U.S.C. 46111.

As stated above, this paragraph should be struck in its entirety. 49 U.S.C. § 46111 does not contain appellate processes for certificate holders, only for “individuals”; the association failed to find any regulations associated with FAA-issued certificate actions other than those of 14 CFR part 13 and 49 CFR part 821.

If the TSA determines that it can handle the appellate process regarding emergency revocations of the repair station certificate without changing 14 CFR part 13 and 49 CFR part 821, we request it adjust its process to ensure the determination of “immediate threat” is made with some degree of independence. Additionally, 49 U.S.C. § 46111 does not seem appropriate with respect to certificate actions, which would be issued by the FAA and not reviewed by the TSA (only appeals from individuals are covered by that statute). In the alternative language immediately above, ARSA recommends that the designee not be a person involved in the original determination.

Sec. 1554.205 Nondisclosure of certain information.

In connection with the procedures under this subpart, TSA does not disclose classified information, as defined in Executive Order 12968 section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law or regulation.

Conclusion

In addition to the specific recommendations on sections and paragraphs of the proposed rule, the association recommends that the TSA—

- Issue a SNPRM after incorporating the public's comments
- Exempt all repair stations that—
 - Do not work on completed commercial aircraft; or
 - Are not located on commercial airports.
- Remove all appellate procedures from this rule and reference the proper procedures in 14 CFR part 13 and 49 CFR part 821.

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If the agency wishes to obtain further information on the association's comments or observations, please do not hesitate to contact us.

Your Servant,

A handwritten signature in black ink, appearing to read "Sarah MacLeod". The signature is written in a cursive, flowing style with a large initial "S" and a distinct "M" and "L" at the end.

Sarah MacLeod
Executive Director



121 North Henry Street
Alexandria, VA 22314-2903
T: 703 739 9543 F: 703 739 9488
arsa@arsa.org www.arsa.org

March 30, 2010

Kristy Daphnis
FAA Analyst
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Sent via email: kdaphnis@omb.eop.gov

Re: Clarification of the Quarterly Utilization Report

Dear Ms. Daphnis:

The Aeronautical Repair Station Association (ARSA) requests your assistance in clarifying a subject of interest to our members. ARSA has researched the creation and function of the Quarterly Utilization Report (QUR), Office of Management and Budget (OMB) control number 2120-0708, and three primary concerns have emerged. First, ARSA questions the process by which the QUR was approved. Second, the practical application of the QUR is unclear. Third, ARSA would like to clarify the current and future status of the QUR.

I. OMB's approval process

The QUR was approved in 2005 as an emergency collection. In re-creating the paper trail for the approval of this collection, ARSA has encountered obstacles resulting from a lack of transparency. For example, the Federal Aviation Administration's (FAA) original QUR application is not in OMB's database, and the database contains only one undated supporting statement for the QUR.

In addition to missing documents, the sole guidance as to Office of Information and Regulatory Affairs's (OIRA) standards and processes is found in the Paperwork Reduction Act (PRA).¹ The PRA contains only broad references to "necessity" and "utility," and fails to define these terms. There is no OMB/OIRA internal guidance available to the public that defines the standards OIRA uses in evaluating information collection requests, or the situations where emergency clearance is deemed appropriate. Regarding the QUR, online research and telephone conversations with FAA and OMB employees has failed to shed light on why the OMB decided to approve a duplicative collection under emergency status, with an unconvincing and inconsistent supporting statement. With little documentation and guidance, the public is deprived of the tools needed to discern why this or any other collection merits approval.

Because no explanation of OMB's rationale for approving this collection is accessible, ARSA has attempted to re-create the process through which an agency seeks approval

¹ 44 U.S.C. § 3506.

of a collection of information. As outlined in § 3506(c)(1) of the PRA, an agency seeking to collect information from the public must first conduct a 10-point review. The following discussion is an evaluation of the available QUR supporting documents in the PRA framework.

The first criterion for approval is that the collection is necessary and has a practical utility. Paragraphs 1 and 2 of the FAA's supporting statement claim that the QUR is necessary to target those leading outsource maintenance providers that may have a higher risk level. The finding of higher risk would merit an increase of FAA surveillance to ensure the areas of potential risks are mitigated. Paragraph 6 states that the consequences to the FAA's inability to analyze the QUR data could result in degraded surveillance analysis and delay identification of an outsource maintenance provider that may be a high-level risk provider.

ARSA's position is that the QUR cannot fulfill its purpose of helping the FAA target surveillance and therefore neither the utility nor the necessity element of the PRA has been met. The QUR application fails to meet the necessity element because the data requested is already available through vendor manual requirements.² As for utility, the data is not helpful because it is focused on the past and does not address forward-looking threats. Moreover, it asks respondents to report their leading outsource providers by volume, and volume providers are not necessarily providers of crucial maintenance services.

Second, the agency must determine the collection is not duplicative of information otherwise accessible to the agency. Paragraph 1 states that an air carrier certificate holder is required to maintain this information as part of their Continuing Analysis and Surveillance System (CASS). Paragraph 4 states that there is no duplication of information.

The statements in paragraphs 1 and 4 contradict each other. ARSA believes rather than a statement of fact, paragraph 4 merely recites what OMB would need to hear before approving the collection request. As admitted in paragraph 1, the QUR data is required by CASS, and the compilation of this information is also required by 14 CFR part 121.369(a), which provides the manual requirements for part 121 carriers.

Third, the agency must describe its collection attempts to reduce the burden on the persons providing information to or for the agency. Paragraph 5 asserts that the information submission is requested from part 121 air carriers only, that these requirements are the absolute minimum necessary to ensure effective compliance with part 121 requirements, and that there is no burden to small business organizations.

ARSA challenges the logic that a duplicative information collection reduces the burden on information providers or is "no burden to small business organizations." In an amendment to the burden hours, FAA explains in paragraph 15 that it raised the estimated time to complete each response from six minutes to one hour. FAA's

² 14 CFR § 121.369(a).

response provides no justification for increasing the burden tenfold or why the initial estimate of the time burden was so inaccurate. This evasiveness gives the appearance that the numbers in the original application were intentionally minimized so approval would be granted.

Fourth, the collection documentation must be written using plain, coherent, and unambiguous terminology. As described in the Flight Standards Information System (FSIMS),³ the QUR “[p]rovides the largest volume of outsourced maintenance activities for the repair station. In the case of the repair station, reporting is not limited to a specific category of maintenance or alteration.”

ARSA believes the QUR does not enable FAA to obtain the information it needs. By its own description of “highest volume maintenance activity” as unlimited to any specific kind of maintenance, the QUR data does not provide a risk assessment, or even indicate maintenance of a particular object.

Finally, to the maximum extent practicable, the collection is to be implemented in ways compatible with the existing reporting and recordkeeping practices of those who are to respond. ARSA believes that the QUR collection merely requests a duplication of obligations that are already in place. Specifically, 14 CFR part 121, § 369(a) requires the operator to maintain the listing of maintenance providers in its air carrier maintenance manual. With § 121.369(a), the FAA can obtain this information in real time. In contrast, the QUR does not enable FAA to obtain the information they need because the open-ended description of “highest volume maintenance activity” does not provide a risk assessment, or even indicate maintenance of a particular object.

II. Ambiguous application – who are the QUR’s respondents?

The Supporting Statement of the QUR does not clearly define who is to respond to the QUR. Paragraph 5 states that the respondents are limited to part 121 air carriers only. However, in paragraph 12 calculations are based on 121 respondents. While it may have been coincidence that there were exactly 121 part 121 carriers when the Supporting Statement was written, no list provides the actual number of respondents. Further uncertainty arises when other documents are consulted. In addition to part 121 carriers, FSIMS includes part 145 repair stations as respondents to the QUR.⁴

Another point of confusion is whether the QUR is mandatory or voluntary. In box 12 of the Paperwork Reduction Act Submission, the QUR is marked mandatory. In FSIMS it is mandatory for part 121 carriers. In contrast, in a 2007 statement, Department of

³ FAA Order 8900.1, vol. 3, chapter 55, section 2, *available at* http://fsims.faa.gov/wdocs/8900.1/v03%20tech%20admin/chapter%2055/03_055_002.htm.

⁴ FAA Order 8900.1, vol. 3, chapter 55, section 2, *available at* http://fsims.faa.gov/wdocs/8900.1/v03%20tech%20admin/chapter%2055/03_055_002.htm.

Transportation Inspector General Scovel refers to the “voluntary process for air carriers to report the top 10 critical maintenance providers used each quarter.”⁵

If reporting is mandatory, ARSA believes that the QUR is incapable of fulfilling its stated goals. To stay ahead of the perceived risks, FAA needs to know about future contracts and who is performing maintenance in real time. Quarterly reports listing where maintenance was performed three months prior is wasted attempt at real risk management. Further, reporting this data is already mandated by § 121.369(a).

If the report is voluntary, ARSA is concerned about the disconnect between the OMB, FAA, and DOT IG. There is a need for clearer communication among the agencies, departments, and the public.

III. The future of the QUR

ARSA also requests clarification as to the current status of the QUR. In April 2009, OMB approved a renewal of the QUR. Collection frequency was changed to “on occasion” and the affected public was changed from “121” to an “estimated 121 respondents.” Despite these amendments, OMB referred to this renewal as an “extension without change,” and no supporting statement or other documentation was provided to the public. In an effort to shed light on these changes, a recent conversation between ARSA and FAA revealed that the agency considers this collection to be “in abeyance”.

ARSA seeks to determine whether the FAA in fact intends to continue using the QUR. If so, the documents should reflect whether the collection is mandatory, as stated on the form, or voluntary, as communicated by FAA.

We appreciate your taking the time to consider and respond to our inquiry. If you have any questions, please feel free to contact ARSA at the number above.

Sincerely,

Sarah MacLeod
Executive Director

⁵ *Aviation Safety: FAA’s Oversight of Outsourced Maintenance Facilities: Hearing Before the Transportation and Infrastructure Comm., Subcomm. on Aviation.* (Mar. 29, 2007) (statement of Calvin L. Scovel III).



121 North Henry Street
Alexandria, VA 22314-2903
T: 703 739 9543 F: 703 739 9488
arsa@arsa.org www.arsa.org

**Reducing Federal Agency Overreach:
Modernizing the Regulatory Flexibility Act**

**Testimony of Craig Fabian
Vice President of Regulatory Affairs & Assistant General Counsel
Aeronautical Repair Station Association
Before the United States House of Representatives
Committee on Small Business**

March 30, 2011

Chairman Graves, Ranking Member Velázquez, and members of the Committee, thank you for the invitation to testify this afternoon.

My name is Craig Fabian and I am the vice president of regulatory affairs and assistant general counsel to the Aeronautical Repair Station Association (ARSA). ARSA is the premier association for the international maintenance industry; it also represents certificated aviation design, production, and maintenance facilities before Congress, the Federal Aviation Administration (FAA), and other national aviation authorities.

The efforts of ARSA's certificated repair station members facilitate the safe operation of aircraft worldwide by providing expert maintenance services for general and commercial aircraft. Overall, these types of services generate over \$39.1 billion of economic activity in the United States and, according to a recent study, employ more than 274,000 workers in all 50 states.¹ On a global scale, North America is a major net exporter of aviation maintenance services, enjoying a \$2.4 billion positive balance of trade.

Although ARSA members represent a wide cross-section of the aviation industry, the vast majority of these companies are small businesses. In fact, recent surveys confirmed that nearly three quarters of our members employ fewer than 50 people and nearly half of the businesses are owned by a single individual or family. In light of that data, and due to the heavily regulated nature of the aviation industry, agency rulemaking activities have a significant impact on a substantial number of ARSA members. As a result, the protections afforded by the Regulatory Flexibility Act (RFA) are particularly meaningful to our members.

Today, I will discuss ARSA's experience challenging an agency rule under the RFA. I will also propose ways that Congress can improve the RFA and avoid creating barriers to a full and proper RFA analysis.

¹ For details, see the "Aviation Maintenance Industry Employment and Economic Impact" table, found on ARSA's Web-site at the following link: <http://www.arsa.org/files/ARSA-StatebyStateOnePager-20100505.pdf>. That information is also attached to this written testimony.

Rulemaking that failed to fulfill RFA requirements

When an agency engages in rulemaking, the RFA requires it to prepare an initial regulatory flexibility analysis describing the impact of the proposed rule on small businesses; the agency must make this analysis available for public comment. When the final rule is issued, the agency is required to prepare a final analysis describing the steps the agency took to minimize economic impact on small businesses, including reasons for selecting or rejecting alternatives to the final rule. Unfortunately, as ARSA has learned first-hand, agencies have at times ignored these RFA requirements.

ARSA's experience contesting a rule under the RFA began with a decision by the Federal Aviation Administration (FAA) to expand the scope of its drug and alcohol (D&A) testing requirements. The FAA's desired result was to mandate testing for not only air carriers and repair stations working on air carrier aircraft – as required by the D&A rules at that time – but also for the employees of maintenance contractors at any tier in the process. Once revised, the D&A rules would suddenly impact metal finishers, machine shops, electronic repair shops, and a host of other traditional small companies that repair stations rely on for ancillary services.

To effect this change to the D&A rules, the FAA published a notice of proposed rulemaking (NPRM) which contained a tentative RFA analysis on February 28, 2002. That NPRM was followed by a supplemental notice of proposed rulemaking (SNPRM) on January 12, 2004 which reasoned that most if not all repair stations and their contractors fit the definition of "small entity". The FAA received detailed comments from ARSA and other organizations throughout the rulemaking process raising significant concerns about the initial RFA analysis.

However, the agency decided in its final rule, issued on January 10, 2006, that no RFA analysis was required because repair stations and their contractors were not entities directly covered under the regulation. In reaching its conclusion that the rule was only aimed at air carriers - who by and large were not small entities - the agency believed it was relieved of its RFA obligations.

ARSA challenged the rule in court

The far reaching impact of the expanded D&A rule (ARSA had concluded that as many as 22,000 contractors were affected), and the fact that aviation work represented a small portion of the overall business for many of those firms, was of great concern to the industry. The choice faced by many small businesses was to either implement a U.S. Department of Transportation-approved drug and alcohol testing program for their employees or stop serving the aviation industry altogether. Although it was theoretically possible for contractors to be absorbed into an air carrier or repair station testing

program, that option was impracticable for many reasons, including the fact that the small businesses performed work for a multitude of repair stations and may not have even been aware of the ultimate users.²

Due to these concerns, ARSA filed a lawsuit in the U.S. Court of Appeals for the District of Columbia Circuit on March 10, 2006, challenging the new D&A rules on several grounds, including the FAA's violation of the RFA. In a 2-1 decision issued in July 2007, the court agreed with ARSA and found that the FAA violated the RFA by not properly considering the impact of its drug and alcohol testing rules on small businesses. The court stated that despite the FAA's assertions to the contrary, repair stations and their contractors were directly affected by the expanded rule. It reasoned that although the regulations are immediately directed at air carriers, the employees of their maintenance contractors and subcontractors at any tier are required to be tested. Thus, the rule imposed responsibilities directly on the small businesses to which the expanded rule applies. As a result, the FAA was instructed to perform an analysis to comply with the RFA.

Despite the mandate from the court, for over three years the FAA made no effort to perform the required analysis. This blatant disregard of the court's order once again forced the association to take action. On Feb. 17, 2011, ARSA filed a petition for *writ of mandamus* with the U.S. Court of Appeals for the District of Columbia Circuit to compel the FAA's compliance. In response, on March 1, 2011, the FAA was ordered by the court to show cause and explain why ARSA's petition should not be granted. The court's order noted that if the writ were issued, only a final regulatory flexibility analysis would be required within 90 days and the D&A rules applicability to contractor employees at any tier would be stayed pending completion of the analysis.

ARSA is currently in the process of reviewing what the FAA has characterized as a "supplemental regulatory flexibility determination" which was published in the Federal Register on March 8, 2011. That supplement purports to "preliminarily certify" that the D&A rule will not have a significant impact, and therefore a full and complete RFA analysis is not required.

² For instance, a certificated repair station may perform engine maintenance for several air carriers; in turn, when disassembling the engines received from those carriers, the gearbox assemblies may be shipped to another certificated repair station. The contracting chain may continue as a variety of assemblies are broken down into subassemblies and piece parts, which are sent to repair stations specialized in repairing the various items. Along the way, a small part may require metal plating and a shop dedicated to performing that specialized service may be used. The metal plating shop is most likely a small business and not a certificated repair station; the majority of its customers are probably not involved in aviation. Although a certificated repair station receiving the newly plated part will inspect, certify and install it into an aircraft component, which will then be received by another certificated repair station for inspection and installation on the engine, the small plating shop may be unaware of that contracting chain.

Improving the RFA

The foregoing example provides a sense of the challenges facing small business advocates who are seeking to improve the quality and effectiveness of federal regulations. We believe the time has come to improve the RFA.

ARSA's experience in dealing with federal agencies reveals that the RFA is treated as an annoying burden to the rulemaking process. The agency's objective seems to be finding a way to avoid engaging in the daunting task of compiling the economic data and considering alternatives to a proposed rule. Indeed, even when specifically commanded by a court of law to carry out an analysis, federal agencies are prone to engage in foot dragging in the apparent hope that the requirement will just go away. The following are a few suggestions on how to improve the RFA so agencies will be more compelled to comply.

- **Create consequences for failure to comply with the RFA.** Small businesses and the nonprofit associations that represent them have the greatest stake in seeing agencies comply with the RFA. However, unlike the government and large corporations, these groups often lack the resources to challenge agency action in court. Congress should therefore allow small businesses and nonprofit associations that *successfully* mount RFA challenges to recover court costs and legal fees. With this potential burden hanging over an agency (and its budgets), it is certain to be more mindful of the RFA obligations.
- **Ensure agencies account for indirect impacts.** The RFA requires agencies to analyze the direct impact a rule will have on small businesses. However, by merely evaluating the direct impact of a rule, agencies fail to account for the true repercussions of the regulation. Agencies should be required to assess direct and indirect costs for small companies in order to accurately measure the impact of a rule.
- **Prevent agency backpedaling on small business impact statement.** The RFA could be amended to prevent agencies from reversing determinations made during its threshold analysis as to what entities are affected by a proposed rule. During ARSA's battle with the FAA, the agency initially indicated that repair stations and their contractors at all tiers were affected by the rule and most were small businesses. Once the FAA realized the multitude of entities it had to account for in a full RFA analysis, it quickly reversed course in its final rule and stated that repair stations and their contractors were not even regulated. This sort of mid-stream reversal should not be an option. It gives the agency ample opportunity to devise a

plan to get out from under the RFA if it determines proper compliance is too daunting.

- **Better statement of congressional intent.** Congress could ensure that any legislation it passes contains language, either in the bill itself or in legislative history, that it does not intend the law to have adverse effects on small businesses. This would show Congress' clear and unambiguous intent to protect small companies from unintended costs associated with regulatory compliance.
- **Further empower SBA OA.** Throughout ARSA's struggle with the FAA's expanded drug and alcohol testing rule, the Small Business Administration's Office of Advocacy (SBA OA) always acted as a neutral party in its analysis of the rule. In the end it determined that the FAA was clearly attempting to abrogate its duties and called on the agency to conduct a full, proper RFA analysis. The SBA OA provided the agency with comments on the class of small businesses that would be affected and demonstrated how the prior RFA analysis the FAA provided was flawed. The agency still chose to ignore the SBA OA and performed absolutely no RFA analysis. This situation could be avoided if Congress empowered the SBA OA to make small business determinations for agencies. An agency would be forced to conduct an analysis when the SBA said one was warranted, it would be forced to consider the class (or classes) of affected small businesses the SBA determines is appropriate, and would have to clear the initial and final regulatory flexibility analysis with the SBA.

Congressional complicity in bypassing the RFA

In addition to the aforementioned adjustments to the RFA, Congress must refrain from setting strict timelines that agencies must meet to complete the rulemaking process. It is critical that small businesses, like ARSA members, have ample opportunity to respond to proposed rulemakings to help agencies understand the real impact of new regulations. Consequently, agencies must be permitted sufficient time to consider the impact these rules will have on regulated parties or the RFA will be undermined.

RFA analysis and compliance is a process that must be done right rather than fast. It takes time for small businesses to digest proposed regulations and efficiently determine the extent of potential impact. Therefore agencies must be allowed time to review, consider, and dispose of those small business comments while altering regulatory proposals accordingly. Unfortunately, Congress does not always make this possible.

Conclusion

Small businesses are a critical part of the aviation industry and the U.S. economy. When it enacted the RFA, Congress created an important mechanism to protect small businesses from unnecessarily restrictive and intrusive federal regulations. However, the small businesses in your districts will only benefit from the protections of the RFA if federal agencies obey the law. As I have described today, agencies have been reluctant to do so, even when specifically ordered by a federal court. That situation is not improved when congressional mandates force agencies to take shortcuts and circumvent rulemaking procedures.

As a small organization, ARSA knows that scoring a win for small business costs big money. Congress needs to step up to the plate, and not only add teeth to the RFA, but make a conscious effort to ensure that agencies are given the time and resources to conduct the proper analysis.

Thank you for your time, for holding this hearing, and for inviting ARSA to be a part of it. I would be happy to answer any questions.



121 North Henry Street
 Alexandria, VA 22314-2903
 T: 703 739 9543 F: 703 739 9488
 arsa@arsa.org www.arsa.org

Aviation Maintenance Industry Employment and Economic Impact

State	Aviation Maintenance Industry Employment			Aviation Maintenance Industry Economic Activity (\$M USD)	
	Maintenance, Repair and Overhaul (MRO)		Total Employment (MRO plus Parts Manufacturing/Distribution)	MRO	Total Economic Activity (MRO plus Parts Manufacturing/Distribution)
	FAA-Certificated Repair Station	Air Carrier (Base and Line Maintenance)			
AK	518	912	1,435	\$147.9	\$149.6
AL	5,836	112	6,046	\$615.2	\$656.5
AR	3,254	22	3,351	\$338.8	\$363.8
AZ	5,849	2,227	13,445	\$835.3	\$2,700.0
CA	30,670	2,709	37,566	\$3,452.5	\$5,004.6
CO	1,340	614	2,008	\$202.1	\$220.1
CT	7,503	89	12,109	\$785.3	\$2,290.9
DE	1,122	0	1,170	\$116.1	\$132.1
FL	16,658	1,659	20,191	\$1,894.6	\$2,683.9
GA	11,173	1,414	13,741	\$1,301.9	\$1,704.9
HI	140	718	863	\$88.7	\$90.4
IA	3,003	68	5,156	\$317.6	\$1,019.3
ID	471	103	593	\$59.4	\$65.7
IL	4,121	1,810	6,833	\$613.5	\$937.5
IN	3,127	180	3,888	\$342.0	\$535.7
KS	7,029	98	9,792	\$737.2	\$1,647.2
KY	709	904	1,657	\$166.8	\$181.5
LA	2,354	127	2,589	\$256.6	\$292.6
MA	1,740	746	2,659	\$257.1	\$314.8
MD	1,338	128	1,622	\$151.6	\$203.6
ME	884	25	984	\$94.0	\$119.0
MI	4,322	705	5,676	\$520.0	\$749.6
MN	2,235	561	3,054	\$289.2	\$375.2
MO	2,349	367	2,852	\$280.9	\$326.3
MS	838	45	964	\$91.3	\$118.3
MT	363	14	393	\$39.0	\$44.3
NC	3,601	1,131	5,504	\$489.4	\$746.8
ND	187	17	261	\$21.1	\$40.1
NE	1,205	69	1,311	\$131.8	\$144.1
NH	554	34	690	\$60.8	\$94.8
NJ	2,593	196	3,522	\$288.5	\$564.3
NM	604	67	729	\$69.4	\$88.7
NV	671	384	1,122	\$109.1	\$131.5
NY	6,112	2,260	9,462	\$865.9	\$1,275.1
OH	4,710	1,885	8,382	\$682.1	\$1,277.8
OK	13,090	99	13,485	\$1,364.2	\$1,462.8
OR	1,508	435	1,978	\$201.0	\$212.6
PA	2,904	1,219	4,661	\$426.5	\$605.8
RI	294	0	402	\$30.4	\$66.4
SC	2,358	185	2,661	\$263.0	\$302.4
SD	66	24	188	\$9.3	\$42.0
TN	2,049	2,520	5,109	\$472.6	\$734.1
TX	25,057	4,523	32,673	\$3,059.5	\$4,430.0
UT	338	722	1,301	\$109.6	\$215.0
VA	1,287	108	2,635	\$144.3	\$588.5
VT	169	22	363	\$19.8	\$77.1
WA	8,353	841	13,898	\$951.0	\$2,585.6
WI	1,728	212	2,085	\$200.7	\$249.0
WV	1,448	0	1,470	\$149.8	\$157.1
WY	81	14	105	\$9.8	\$13.2
Total	199,913	33,324	274,634	\$24,124	\$39,032

Last update: April 2010. Developed by AeroStrategy for ARSA based on analysis of 2009 federal government and industry data. For more information, contact ARSA Legislative Counsel Daniel Fisher at daniel.fisher@arsa.org or 703.739.9543.



121 North Henry Street
Alexandria, VA 22314-2903
T: 703 739 9543 F: 703 739 9488
arsa@arsa.org www.arsa.org

ARSA "Lift the Ban" Survey Results

ARSA's "Lift the Ban Survey" was open to all aerospace companies from Sept. 28-Oct. 26. Companies were requested to complete one survey each. The final results yield important insights on the FAA foreign repair station certification moratorium's impact on aerospace companies. In total, there were 36 respondents (including 25 U.S.-based companies). Among the findings—

- **The ban is hurting small to medium-sized businesses.** Half (50 percent) of respondent companies employ fewer than 500 workers. Of these, an overwhelming majority (83 percent) are seeking to open new foreign repair stations.
- **Companies want to tap into rapidly expanding international aviation markets.** Three quarters of respondents (75 percent) indicated their company has an application for FAA foreign repair station certification pending or will submit an application when the moratorium is removed.
- **U.S. companies are losing revenue.** U.S.-based companies responding to the survey report they are losing more than \$18 million in combined revenues annually because of the FAA's inability to certificate new foreign repair stations.
- **The ban is stifling job growth.** Over half of respondents (55 percent) said their companies would hire new U.S.-based employees if they could obtain FAA foreign repair station certification. Two companies anticipated hiring more than 100 new U.S.-based employees.
- **Anonymous comments from U.S.-based companies tell a more complete story on the ban's impact—**
 - "How is it that our industry continues to gain more and more roadblocks that hinder our ability to do business? Overseas business is the bulk of aviation maintenance growth to look forward to for the next 20 - 30 years. Asian business alone is going to require more training, maintenance, aircraft, materials, etc. than they can handle. Additionally, our ability to export becomes exponentially more difficult."
 - "Some overseas customers will not use U.S. repair stations because of the ban."
 - "It has prevented us from growing our business in Africa and serving our customer base in that area."
 - "We cannot meet our customers' needs and we are missing out on lost revenue in these rough times where we really need the work."
 - "Inability to provide maintenance services for our customers while they are out of the country. Lack of growth opportunity causing job loss here in United States."
 - "We are unable to take advantage of the expanding aviation sector growth in the Asia Pacific region, which is the largest growth region for the near future. The expansion for sale, use and support of U.S.-manufactured aviation products is stifled."

November 22, 2011

The Honorable Janet Napolitano
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretary Napolitano:

We the undersigned companies and associations are writing to express our concern with the lack of progress on the Transportation Security Administration's (TSA) rulemaking regarding repair station security.

This rulemaking is the direct result of congressional mandates contained within the 2003 *Vision 100 – Century of Aviation Reauthorization Act*, and the 2007 *Implementing the Recommendations of the 9/11 Commission Act*. The former act required TSA to issue "final regulations to ensure the security of foreign and domestic aircraft repair stations" within 240 days while the latter act specifically prohibits the FAA from certifying any new non-domestic repair stations after August of 2008 if the TSA had not yet promulgated the required regulations.

TSA first held a public meeting on this rulemaking in 2004 and issued a Notice of Proposed Rulemaking (NPRM) five years later in November of 2009. The aviation industry provided TSA with comprehensive comments on the nature and diversity of repair station operations and how to make this rule an effective, risk-based security regulation. The public comment period for this NPRM closed in February of 2010 and work on a final rule has been ongoing for the past 21 months.

The United States has long been the world leader in aviation and American aircraft and parts remain one of our key exports with aerospace contributing positively to our nation's balance of trade. The extensive delay in promulgation of a final rule regarding repair station security has a negative impact on our industry and the U.S. economy. American companies seeking to expand their markets overseas are hindered relative to foreign competitors due to the inability to get new repair stations certified.

We respectfully request that your department work with TSA and others in the federal government to finalize the rulemaking by Dec. 31, 2011. The publication of a final rule will enhance security and also remove a regulatory roadblock that is currently damaging American companies. We urge your department to move quickly on this rule.



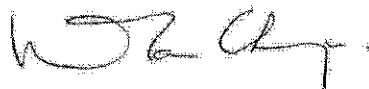
Sarah MacLeod
Executive Director
Aeronautical Repair Station Association



Craig Fuller
President and CEO
Aircraft Owners and Pilots Association



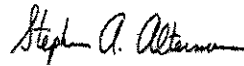
Nicholas E. Calio
President and CEO
Air Transport Association



W. Ian Cheyne
Chief Technical & Regulatory Officer
BAA Aviation, Engine Repair and Overhaul Group



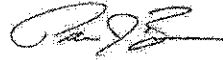
Danny Maldonado
Senior Vice President, Customer Support
and Chief Services Officer
Bell Helicopter



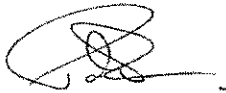
Stephen A. Alterman
President
Cargo Airline Association




David W. Brant
Senior Vice President, Customer Service
Cessna Aircraft Company



Peter Bunce
President and CEO
General Aviation Manufacturers Association



Paul McElhinney
President and CEO, Services
GE Aviation




Marshall O. Larsen
Chairman, President and Chief Executive Officer
Goodrich Corporation



Mark Burns
President, Product Support
Gulfstream Aerospace Corporation



Bob Blouin
Vice President, Government And Industry
Relations
Hawker Beechcraft Corporation



Matt Zuccaro
President
Helicopter Association International



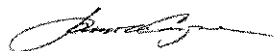
Adrian Paull
Vice President, Customer & Product Support
Honeywell Aerospace



Douglas E. Lavin
Regional Vice President, North America
International Air Transport Association



Dr. Hans Juergen Loss
Vice President Quality Management
Lufthansa Technik



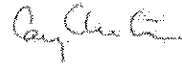
James K. Coyne
President and CEO
National Air Transportation Association



Henry M. Ogrodzinski
President and CEO
National Association of State Aviation Officials



Edward Bolen
President and CEO
National Business Aviation Association



Greg Churchill
Executive Vice President
International & Service Solutions
Rockwell Collins, Inc.



DEC 19 2011

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598



Transportation
Security
Administration

Ms. Celeste Clark
National Air Transportation Association
Government and Industry Affairs
4226 King Street
Alexandria, VA 22302

Dear Ms. Clark:

Thank you for your letter of November 22, 2011, to Secretary Napolitano signed by several of your colleagues concerning the Transportation Security Administration's (TSA) Notice of Proposed Rulemaking (NPRM) for Aircraft Repair Station Security. The proposed regulation requires that certain repair stations adopt and implement a security program and comply with security directives issued by TSA.

As a result of the comments received during the NPRM public comment period, TSA has worked closely with the Federal Aviation Administration (FAA) and conducted extensive research into security measures already in existence at aircraft repair stations. TSA has also completed the review of all pertinent information available to adequately finalize the ongoing rulemaking.

While TSA is sensitive to the issues created by the delay in the publication of the final rule, we have been working diligently to complete this task and to address the issues raised by all industry partners. We anticipate approval and publication of the final rule in the fourth quarter of calendar year 2012 and look forward to working with all industry associations in the implementation of this new regulation.

I appreciate that you took the time to share your concerns with us and hope this information is helpful. If you need additional information, please do not hesitate to contact me personally or Mr. James Clarkson, Acting General Manager for the Intermodal Security Support Division, at (571) 227-3554.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John S. Pistole".

John S. Pistole
Administrator

U.S. Department of Homeland Security

Office of the Administrator
601 South 12th Street
Arlington, VA 22202-4720

AUG 24 2004



Transportation
Security
Administration

The Honorable Don Young
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Section 611(b)(1) of Vision 100—Century of Aviation Reauthorization Act, P.L. 108-176, 117 Stat. 2490 (Vision 100), amended title 49 by adding a new provision regarding Repair Station Security. See 49 U.S.C. § 44924. That provision requires, among other things, that not later than 240 days after the date of enactment of this section the Under Secretary of Border and Transportation Security,¹ in consultation with the Administrator of the Federal Aviation Administration, “shall issue final regulations to ensure the security of foreign and domestic aircraft repair stations.” 49 U.S.C. § 44924(f). Further, the provision requires that if TSA “does not issue final regulations before [August 8, 2004], the Under Secretary shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing an explanation as to why the deadline was not met and a schedule for issuing the final regulations.” 49 U.S.C. § 44924 (g). The purpose of this letter is to fulfill this reporting requirement.

TSA is drafting a Notice of Proposed Rulemaking (NPRM) to fulfill its statutory obligation. Given the considerable interest of many parties, both in the U.S. and abroad, in this issue, TSA has researched, evaluated and analyzed the security needs of repair stations to determine how security issues can best be addressed. On February 7, 2004, TSA held a public listening session regarding this Vision 100 provision at which stakeholders from industry and labor spoke (See Table 1). In response to our request for written comments, TSA has received 21 sets of written comments, which we have reviewed and will address in the NPRM. Through these means, TSA gained valuable information from stakeholders regarding repair station characteristics, security measures currently deployed, existing security vulnerabilities, and security requirements that TSA should adopt. Data gathered during this preparation period indicates that characteristics of domestic and foreign repair stations vary significantly, rendering it extremely complex to develop security requirements to address each variation and provide a comparable level of security to safeguard the repair station, the aircraft and/or components located at the repair station, and the work performed at each repair station.

¹ The Under Secretary for Border and Transportation Security has delegated operational responsibility for this requirement to the Transportation Security Administration (TSA).

Table 1: Speaker List TSA Foreign Repair Station Public Meeting (February 27, 2004)

Name	Title	Organization
Bob Robeson	VP, Civil Aviation	Aerospace Industries Association
Christian A. Klein	Legislative Counsel	Aeronautical Repair Station
Ric Peri	Vice President	Aircraft Electronics Association
Rich MacKulsky	FAA Liaison, Regulatory Compliance	Pratt & Whitney, UTC
Edward Wytkind	Legislative Counsel	Transportation Trades Department AFL-CIO
Roger Tauss	International VP, Legislative Director	Transport Workers Union of America
James Varsel	IAM Airline Coordinator	International Association of Machinists and Aerospace Workers
Gerald A. Zerm	Crew Chief Avionics	Transport Workers Union of America
Michael Mertens	Chief Inspector	Duncan Aviation
Ed Green	VP/General Manager	Garrett Aviation
Dave Lotterer	VP/, Technical Services	Regional Airline Association
Mary Brooks Clark	Director of EHS, Security & Facilities	Gulfstream

For example, repair stations vary widely in size, type of repair work performed, number of employees, and proximity to an airport. There are small stations located in industrial parks or in private residences that work on small components such as radios, and there are large stations that perform major aircraft overhauls located in close proximity to an airport runway. Because repair stations' characteristics vary, security risks associated with them also vary. Many large repair stations have already implemented extensive security precautions. TSA recognizes that the measures used to safeguard security will vary as well. Although it has been time consuming, we anticipate that the research and data collection period recently undertaken will permit a more expeditious completion of the rulemaking process, which in turn, will permit TSA to begin executing its responsibilities.

To address the diversity identified among repair stations and to allow them some flexibility to implement measures that will be effective, economic, and efficient, TSA is considering general security requirements that allow flexibility in the specific measures, facilities, and equipment used to comply with the requirements. In accordance with 49 U.S.C. 44924(e), TSA intends to give priority in conducting inspections to those foreign repair stations located in countries that pose the greatest risk to security.

TSA will work aggressively to complete development of an NPRM and begin a public comment period. We are planning for a final rule to be in place in 2005.

I am sending identical letters to Ranking Member Oberstar, the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation; and the House Select Committee on Homeland Security.

I hope this information is helpful. If you need further information or assistance, please call Mr. Peter Iovino, Director, Office of Legislative Affairs at (571) 227-2717.

Sincerely yours,

A handwritten signature in black ink, appearing to read "David M. Stone", written in a cursive style.

David M. Stone
Assistant Secretary

