

February 19, 2010

Docket Management System
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Room W12-140
Washington, DC 20590-0001

RE: Docket No TSA-2004-17131, Notice Of Proposed Rulemaking, Aircraft Repair Station Security

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

These comments address the Notice of Proposed Rulemaking (NPRM), Aircraft Repair Station Security, issued by the Transportation Security Administration (TSA) and published in the *Federal Register* on November 18, 2009. This NPRM proposed to add a new Part 1554 to Title 49 of the Code of Federal Regulations requiring all Federal Aviation Administration (FAA) Certificated Repair Stations¹ to carry out a standard security program (SSP). This SSP would be required to describe the specific measures the repair station has implemented to:

- Identify individuals with authorized access to the repair station, aircraft, and aircraft components
- Control access to the repair station, aircraft and aircraft components
- Challenge individuals who are not authorized access
- Institute escort procedures for authorized visitors
- Provide security awareness training to employees
- Verify employee background information
- Designate a security coordinator
- Establish a contingency plan

¹ Hereafter referred to as "Repair Stations"

Additionally, this NPRM would:

- Provide inspection authority of repair stations to the TSA
- Require repair stations to comply with TSA-issued security directives
- Establish a process whereby the TSA would notify the FAA to suspend the certificate of non-compliant repair stations and repair stations deemed by the TSA to be an “immediate risk to security”
- Require all repair stations to submit a “profile” to the TSA

The TSA, to its credit, has acknowledged the diversity of repair station operations by recognizing that repair stations operate in varied locations and have differing levels of access to different types and categories of aircraft. This wide ranging diversity in repair stations also represents a varying level of risk. The TSA has acknowledged that the level of risk posed by a particular repair station can be understood in terms of:

1. The size and type of aircraft repair station to which employees have access
2. The type of work permitted by the repair station’s certificate
3. The location of the repair station (i.e., on airport vs. off airport)
4. The number of employees

The NPRM proposes, in its preamble, that the various requirements of the SSP would vary depending on the level of risk associated with a specific or class of repair stations.

These regulatory changes contained within the NPRM have been instituted to “prevent persons from commandeering, tampering, or sabotaging aircraft” and to “mitigate the potential threat that aircraft could be used as a weapon.”

NATA appreciates the opportunity to provide comment on these proposed regulatory changes.

Repair Station Diversity

While the TSA has acknowledged a significant portion of the diversity within the repair station industry, the agency seems to view all repair stations as a single entity contained within a building or homogenous facility. This view fails to identify the portion of repair stations that operate as a unit of a larger facility. Many fixed base operators (FBOs) hold a repair station certificate to allow them to perform additional maintenance tasks. The actual repair station may

only be a single workbench or file cabinet within the larger facility. The majority of the operations at these types of facilities may be completely unrelated to the repair station certificate. Requiring these types of mixed-use facilities to institute the full range of procedures contained within an SSP would place upon them a tremendous administrative and operation burden that has not been examined by the TSA.

Comment – NATA believes that requiring repair stations operating in a mixed use environment to institute security procedures vastly exceeding the prevailing requirements of the larger facility will serve no purpose other than to increase cost. The TSA must ensure that the final regulations address its concerns with security at repair stations and do not, by failing to account for mixed-use facilities, impose unintended burdens on non-regulated entities.

Exemptions

The TSA has asked whether repair stations that only perform maintenance on aircraft with a maximum takeoff weight (MTOW) of 12,500 pounds or less should be exempted from this rulemaking. Additionally, the TSA has asked for comment on whether there are other potential considerations for possible exemptions.

Comment –

1. NATA proposes that the definition of an exemption should be constructed to require repair stations to comply with the provisions of 1554.101(b) and 1554.103(a)(7).
2. NATA agrees that an exemption should be provided to repair stations that are only authorized to perform work on small aircraft. NATA does, however, disagree that designation for small aircraft begins at 12,500 pounds MTOW. NATA proposes that the weight threshold defining small or large aircraft in this regulation should be increased to harmonize with the threshold set with the final version of the TSA's Large Aircraft Security Program.
3. NATA believes that all repair stations located off airport should also be exempted from this rulemaking. These facilities possess no direct access to aircraft of their own accord. The only identifiable threat is that of sabotage. The TSA has made no persuasive argument that existing FAA oversight is insufficient to prevent acts of sabotage.

On-Airport Repair Stations

The NPRM notes that repair stations located on or adjacent to airports pose an airport access threat and therefore must be regulated. The TSA, however, asks whether repair stations located at airports only serving aircraft with a MTOW of 12,500 pounds or less should be subject to less stringent requirements within the SSP.

Comment – NATA agrees that repair stations operating at airports only serving aircraft with a MTOW of 12,500 pounds or less should be subject to less stringent requirements due to the reduced threat from these types of aircraft. However, from a practical stand point, NATA believes that such a distinction between airport operations would be difficult to make. Many airports that currently only serve that smaller category of aircraft may still have the capability to serve larger aircraft. NATA suggests that, rather than evaluate the threat from on-airport repair stations by the weight of aircraft operating at that airport, the TSA should evaluate threat based upon the certification status of the airport. Currently, airports certificated by the FAA under Part 139 are those airports providing airline service and those desiring to do so. Structuring the threat evaluation, and thus the security requirements imposed, in this manner will ensure that repair stations authorized only to provide maintenance to smaller aircraft but located at higher risk airports are required to implement procedures and equipment to prevent unauthorized airfield access. This structure will also better ensure harmonization with existing security requirements.

Off-Site Maintenance

As mentioned in the earlier section regarding mixed-use facilities, the TSA has recognized a significant portion of the diversity in the repair station industry, but not all. Some repair stations have authorizations to conduct some or all of their operations away from their facility.

Comment – The TSA must ensure that the regulations promulgated by this NPRM do not restrict the ability of repair stations to perform maintenance at other locations, if authorized by the FAA. This is necessary to allow for flexibility to deal with unscheduled maintenance and certain specialized maintenance procedures, such as non-destructive testing.

Anti-Competitive Nature of the NPRM

FAA regulations allow for properly rated aircraft mechanics to perform many of the same maintenance tasks as a repair station. The additional costs and operational burdens imposed by this NPRM will put repair stations at a competitive disadvantage to other non-repair station maintenance facilities.

Comment – NATA asks that as a part of its regulatory evaluation the TSA fully analyze the anti-competitive effects of these proposed rules and incorporate the results of that analysis into the final rule.

Sensitive Security Information

The final SSP that repair stations will have to implement will be classified as Sensitive Security Information (SSI). The TSA has advised that it will allow repair stations to view and comment on the SSP prior to its finalization.

Comment – NATA represents the interests of a large number of repair stations and works diligently to assist its members in understanding, interpreting and commenting on proposed regulations. In the past, NATA has been prohibited from reviewing, and thus commenting on, SSI-classified regulations affecting its members. NATA understands the need to limit the disclosure of SSI but asks that the association be allowed to review and provide its comments to the TSA on the proposed SSP.

Certificate Suspension and Appeals

This NPRM proposes allowing the TSA to direct the FAA to suspend the Part 145 repair station certificate of any repair station deemed, by the TSA, an immediate threat to security or of any repair station not correcting deficiency within 90 days of being notified by the TSA of those deficiencies. A repair station that has had its certificate suspended may appeal to the TSA to have that certificate reinstated.

Comment –

(1) 1554.201(c)(1) states:

“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).”

49 U.S.C 44924 (c)(1) states:

*“(c) **Suspensions and Revocations of Certificates.**—*

*(1) **Failure to carry out effective security measures.**— If, after the 90th day on which a notice is provided to a **foreign repair station** under subsection (b), the Under Secretary determines that the **foreign repair station** does not maintain and carry out effective security measures, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall suspend the certification of the repair station until such time as the Under Secretary determines that the repair station maintains and carries*

out effective security measures and transmits the determination to the Administrator.” (emphasis added)

Additionally 49 USC 44924(c)(2) states

*“(2) Immediate security risk.— If the Under Secretary determines that a **foreign repair station** poses an immediate security risk, the Under Secretary shall notify the Administrator of the determination. Upon receipt of the determination, the Administrator shall revoke the certification of the repair station.” (emphasis added)*

49 USC 44924(f) provides the statutory authority for the TSA to regulate both foreign and domestic repair stations. NATA proposes that Congress laid out its intent for the authority given to the TSA to require the suspension and revocation of repair station certificates in the above section c. In both subsection 1 and subsection 2, Congress specifically relates the authority for the TSA to suspend/revoke certificates to foreign repair stations. NATA contends that by specifically naming foreign repair stations as the entity subject to suspension/ revocation it must be inferred that Congress intentionally excluded domestic repair stations from being subject to the suspension/revocation authority provided in this section. NATA believes that the TSA must, as Congress intended, limit its suspension revocation authority to only foreign repair stations.

Additionally, NATA has concerns regarding the appeals process. The current language of the NPRM works on the presumption of guilt on the part of the repair station. The repair station is forced to prove that it is compliant, or does not pose an immediate security risk, as opposed to the TSA providing evidence to an impartial arbiter that a certificate suspension is or was warranted. The final arbiter of appeals is the same agency, still subject to the same institutional biases as the initial accuser. During this process, in which the repair station must prove their innocence, the certificate remains suspended. NATA asks that this process be reexamined and reconstructed taking into account the fact that the TSA is as likely to err in its judgment as the industry is likely to err in compliance. Many of the repair stations affected by this rule are small businesses that would be unable to continue operations in the event of a certificate suspension. The TSA has an obligation to ensure a fair process that does not unduly burden smaller businesses in the event of an erroneous agency determination.

Inspection Authority

This NPRM proposes to give the TSA the authority to inspect any repair station “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.” Agents of the TSA or Department of Homeland Security 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.”

Comment – Due to the inherent safety risks of having untrained individuals near delicate or hazardous aircraft parts, servicing equipment and materials, NATA asks that the TSA’s authority to enter a repair station be limited to normal business hours or after business hours with an escort upon reasonable notice. Additionally, due to the extreme disruption caused by unannounced audits/inspections, NATA believes the TSA should provide reasonable notice when performing routine inspections.

Profile Submissions

Repair stations will be required to submit a profile containing pertinent information about the entities’ operations within 30 days of the final rule is published in the *Federal Register*.

Comment – NATA requests that the deadline for profile submission be increased to 90 days to allow adequate time for all repair stations to be notified and prepare and submit their profile.

Regulatory Balance & Security Directives

NATA is concerned about the vast difference in details between the NPRM preamble and the proposed regulatory text contained in the NPRM. While the preamble contains much useful discussion of the importance of recognizing the diversity of the repair station industry, the proposed regulatory text is noticeably silent on the topic. NATA realizes that it is the intent of the TSA to address security requirements and their applicability to various types of repair station operations within the SSP. Additionally, NATA is aware that there is a need for striking a balance between publicly available information on security and information being classified as SSI. However, NATA feels that the TSA has erred on the side of secrecy. The current structure of the proposed regulatory text provides little, if any, of the protections from unreasonable regulation discussed in the preamble. NATA understands that the TSA intends to address these issues when constructing the SSP, an SSI-classified document. Industry receives little protection from unreasonable regulation from a document that is not publicly reviewable and is also subject to immediate change by security directive.

Comment – NATA is not suggesting that the entire scope of the SSP be incorporated into the regulatory text, only that the agency examine methods to incorporate some of the protections from unreasonable regulation (i.e., SSP provisions not recognizing industry diversity), discussed in the preamble, into the regulatory text.

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Closing

NATA appreciates the work the TSA has put into creating a rule that addresses security at repair stations without over burdening a vital industry. NATA believes that sensible security regulation is possible and offers these comments in a spirit of cooperation. Much of the success or failure of this regulatory effort will be in the construction of the final SSP. NATA would again like to request that the association, as the representative of a large number of repair stations, be allowed to review the SSP and offer the TSA its constructive comment. Through cooperation among NATA, other associations, repair station operators and the TSA, we can create a final rule that further secures our nation and keeps the aviation industry strong.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael France". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael France
Director, Regulatory Affairs
National Air Transportation Association