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RE: Docket No. TSA-2004-17131

The Aeronautical Repair Station Association (ARSA) represents persons and entities that are certificated under 14 CFR part 145<sup>1</sup> 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 takes into account widely divergent organizations, let alone 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, rushing a rulemaking creates more work for both the agency and the industry.

Therefore, the association urges the Transportation Security Administration (TSA) to issue a Supplemental Notice of Proposed Rulemaking (SNPRM) to ensure it has addressed the concerns expressed by the public comments in an appropriate manner. Experience indicates that a SNPRM will be substantially less time consuming in the long run 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 as well as ensuring its rules do not overburden businesses that do not represent a threat to aviation security. However, 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, it 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 concerns the association since the differences between the NPRM and a final rule may

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

be substantial and would therefore require retraining of those 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.<sup>2</sup> 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,"<sup>3</sup> 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."

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<sup>2</sup> 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."

<sup>3</sup> See, Executive Order 12866 Assessment, Introduction and Background at pages 19 and 20.

Unlike the proposal by the TSA<sup>4</sup>, 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 cost is misguided and unrealistic.

Current repair station security measures do not include the requirement to develop an “approved” program<sup>5</sup> or “provide evidence of compliance.”<sup>6</sup> 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.”<sup>7</sup>

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.

The association 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. 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.<sup>8</sup>

- (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.”

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<sup>4</sup> See, proposed section 1554.101(c).

<sup>5</sup> Ibid.

<sup>6</sup> See, proposed section 1554.5(b).

<sup>7</sup> See, proposed sections 1554.101(a) and (c), 1554.103 and 1554.105.

<sup>8</sup> 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”<sup>9</sup> 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.”<sup>10</sup>

- (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.<sup>11</sup> Compliance requires developing a system for identifying the information, identifying and limiting access of that data to “need to know”

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<sup>9</sup> See, proposed section 1554.101(b).

<sup>10</sup> See, proposed section 1554.103(c).

<sup>11</sup> See, 49 CFR section 1520.5.

persons,<sup>12</sup> tracking of documents distributed, having a method for each person with access to lock the information away,<sup>13</sup> and notifying the TSA if anyone requests the information.<sup>14</sup>

The association 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 checks<sup>15</sup> and training. The company would be required to develop a contingency

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<sup>12</sup> See, 49 CFR sections 1520.7 and 1520.11.

<sup>13</sup> See, 49 CFR section 1520.9.

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

<sup>15</sup> 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.

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.

- (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. As mentioned in footnote 15, this does not account for the separation between technicians and administrative personnel.

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 not currently 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. The association 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, the association recommends that the rule only apply to repair stations that work on completed commercial aircraft or have access to aircraft on commercial airports.** 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).<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup>

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.

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<sup>16</sup> 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."

<sup>17</sup> 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 problematic. 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."

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

(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 to certain "foreign repair stations,"<sup>19</sup> TSA would have a direct impact on foreign relations.

The association 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 that point out more issues relative to international trade.

### **Specific Comments on the Regulatory Language**

The following pages contain the association'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*

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<sup>19</sup> 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.



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:

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*

The association 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.

**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.*<sup>13</sup>

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<sup>13</sup> See 14 CFR 1.1 and 145.3(b).  
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Unfortunately, the terminology used 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.”<sup>20</sup>
- (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.”<sup>21</sup>

The association also believes this rule should only apply to repair stations working on completed aircraft or which are located on commercial airports.

Therefore, the association suggests 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 civil aviation articles 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 civil aviation aircraft at domestic and foreign repair stations located on commercial airports, of the civil aviation 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:*

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<sup>20</sup> See, section 43.3.

<sup>21</sup> See, section 145.3(b).

*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.*

**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, the association 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 43<sup>22</sup> 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.***

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<sup>22</sup> 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.

*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;*
- (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.*

**The association requests that the TSA discuss the term “at any time” in its final rule. Does this mean that the agency may contact the security coordinator during off-hours to request access?**

*(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.*

**The association believes the repair station be 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 be 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 aircraft 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.*

The association 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. Therefore, the profile should request the following information:

- Specific location of the repair station
- 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.<sup>23</sup>

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

As mentioned above, the association 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 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

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<sup>23</sup> See the comments to this docket submitted by Coastal Helicopters, Inc., dated December 30, 2009.

security program...may differ depending upon risk factors considered by the TSA.”<sup>24</sup> 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.*

The association 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,<sup>25</sup> 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?

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<sup>24</sup> See, NPRM at 74 Federal Register 59878.

<sup>25</sup> 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”, the association 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 the association’s general comments as well as our request for clarification on 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.*

**The association 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.**

*(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. The association 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?**

**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.<sup>26</sup> 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.<sup>27</sup>**
- **Part 145 requires that supervisors and persons approving work for return to service in the United States be certificated under part 65.<sup>28</sup> 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.<sup>29</sup>**

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

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<sup>26</sup> The law requires the completion of Form I-9, “Employment Eligibility Verification.”

<sup>27</sup> See, section 145.163.

<sup>28</sup> See, sections 145.153 and 145.157.

<sup>29</sup> See, section 145.161(a)(4).

**(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.<sup>30</sup> 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, i.e., a vendor representative, family member or 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
- 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?

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<sup>30</sup> Most repair stations work on components that are installed on aircraft, which makes their threat to completed aircraft used in commercial services very problematic.

*(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.*

**The association requests the agency to 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.<sup>31</sup> 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.*

*(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.*

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<sup>31</sup> See, section 145.3(a).

**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 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.*

**The association 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.**

**The association does 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.<sup>32</sup> 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*

*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.***

*(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.*

**The association believes this paragraph should contemplate the fact that there may not be any deficiencies. The language now reads that the repair station is**

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<sup>32</sup> See, 49 CFR section 1520.5(b)(2).



guilty whether or not the TSA's observation is 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. Therefore, the association 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. The notification shall include an explanation of the basis for the suspension. The suspension shall remain in place until such time as TSA determines that the security deficiencies were incorrectly assessed or have been corrected.***

*(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.*

To ensure consistency with the above concerns, the association recommends the following language for this paragraph:

***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 exist and/or 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.***

*(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.*

**Considering the detrimental impact of a suspension upon a repair station (and considering that the majority of such entities are small businesses), the association requests that the appeal process not be dependent upon an internal determination of good cause. Therefore, we recommend the following language for this paragraph:**

***(f) TSA Review. Not later than 30 calendar days after TSA receives the repair station's request for review, TSA shall review its initial determination and 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.***

***(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.*

**The association notes that there is not paragraph (e) to this section, so 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. The notification shall include an explanation of the basis for the revocation, although TSA does not need to include classified information.***

*(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.*

**The association notes that this 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, it recommends the following language replace that proposed:

***(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 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.*

Once again, the association does not believe that the agency should have the opportunity to extend its review for longer than 30 calendar days, particularly in the event of an immediate threat to aviation security. An immediate review of the determination and the measures that should be taken to mitigate any confirmed threat must be handled in an expedited manner. The association therefore recommends the following language for this paragraph:

***(c) TSA Review. Not later than 30 calendar days after TSA receives the repair station's request for review, TSA shall examine the basis for the determination that the repair station poses an immediate risk to security, the repair station's response, and any other relevant material.***

*(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.*

**The association is concerned that the determination of “immediate threat” is being made by the agency without any independent review whatsoever. Recognizing that the rulemaking must be completed as soon as possible, we recommend that the designee cannot be a person involved in the original determination:**

***(d) Final determination. If TSA determines that the repair station poses an immediate risk to security, 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. 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. If TSA determines that the repair station does not pose an immediate risk to security, TSA shall notify the repair station and the FAA. A Final Determination constitutes a final agency action for purposes of 49 U.S.C. 46111.***

*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; and,
- Exempt all repair stations that—

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- Do not work on completed commercial aircraft; or
- Are not located on commercial airports.

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 blue ink that reads "Sarah MacLeod". The signature is fluid and cursive, with the first and last names being clearly legible.

Sarah MacLeod  
Executive Director

DRAFT --- DO NOT COPY