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March 15, 2016

The Honorable Bill Shuster
Chairman
Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Peter DeFazio
Ranking Member
Transportation & Infrastructure Committee
2163 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John Thune
Chairman
Commerce, Science & Transportation Committee
560 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member
Commerce, Science & Transportation Committee
254 Russell Senate Office Building
Washington, DC 20510

THE AVIATION MAINTENANCE INDUSTRY'S CONCERNS WITH THE HOUSE & SENATE FAA REAUTHORIZATION BILLS

Chairmen Shuster and Thune and Ranking Members DeFazio and Nelson:

I'm writing to express the Aeronautical Repair Station Association's (ARSA) concerns with sec. 402 of the Aviation Innovation, Reform & Reauthorization Act (the AIRR Act, H.R. 4441) and sec. 2502 of the Federal Aviation Administration (FAA) Reauthorization Act of 2016 (S. 2658).

ARSA is an international trade association representing aviation design, maintenance and manufacturing companies. The U.S. civil aviation maintenance industry employs more than 273,000 people and generates more than \$43 billion in economic activity. Unfortunately, the industry's international competitiveness and ability to safely and efficiently serve its customers is directly threatened by the unnecessary and burdensome mandates in both the AIRR Act and the FAA Reauthorization Act of 2016.

Foreign Drug & Alcohol Testing

In the FAA Modernization & Reform Act (P.L. 112-95), Congress mandated the FAA issue a proposed rule requiring all part 145 repair station employees responsible for safety sensitive maintenance functions on part 121 air carrier aircraft be subject to an alcohol and controlled substances testing program consistent with the laws of the country in which the repair station is located. The law also requires the U.S. Secretaries of State and Transportation to request the International Civil Aviation Organization (ICAO) address drug and alcohol testing of maintenance providers.

Pursuant to this mandate, the FAA issued an advanced notice of proposed rulemaking on March 17, 2014, and the agency continues to work through the extremely difficult and complex national sovereignty issues referenced in the statute. Unfortunately, the arbitrary deadlines outlined in the AIRR Act and the FAA Reauthorization Act (requiring a notice of proposed rulemaking within 90 days of enactment and a final rule within a year) will result in a hurried rulemaking with detrimental effects on the international aviation community, including the U.S. air carriers and the business and general aviation operators that benefit from the safe and efficient worldwide maintenance network.

The provision is also in conflict with other laws. First, it contradicts the Administrative Procedure Act (APA) (P.L. 79-404), which outlines a strict rulemaking process that contains protections for regulated entities, including notice and comment, ample consideration of public concerns, and reasonable implementation time. Furthermore, Congress enacted the Regulatory Flexibility Act (RFA) (P.L. 96-354) and the Small Business Regulatory Fairness Act (SBRFA) (P.L. 104-121) to ensure agencies account for a regulation's economic impact on small business and to consider less-burdensome alternatives. By mandating a strict rulemaking timeline, the bills effectively require the FAA to ignore the APA, the RFA, and SBRFA. Rather than mandating a speedy rulemaking (particularly in the absence of an urgent safety justification), Congress should ensure the

agency's final regulation follows proper rulemaking procedure, minimizes impact on small entities, and follows the statutory requirement that the regulation be "consistent with the applicable laws of the country in which the repair station is located."

ARSA respectfully asks the committee to remove this provision from the legislation. As an alternative, the Congress could set a deadline for the Secretaries of State and Transportation to engage ICAO and report on the results. The convention and treaty that created ICAO is the chosen method for the United States to address international issues such as drug and alcohol testing.

Background Investigations

Both reauthorization bills also mandate the FAA require pre-employment background investigations for part 145 repair station employees performing safety-sensitive functions on an air carrier aircraft. This would significantly expand current Transportation Security Administration (TSA) requirements, lacks a safety and security justification, and is contrary to accepted risk-based oversight principles.

Pursuant to a congressional mandate (Vision 100-Century of Aviation Reauthorization Act, P.L. 108-176), on January 13, 2014, TSA released the aircraft repair station security rule (49 CFR part 1554). The regulation requires background verifications for employees deemed by the agency to be in the most critical positions for aviation safety and security. By including sec. 402/sec. 2502 in the FAA reauthorization bills, lawmakers are effectively second-guessing TSA's risk-based determination without any safety or security justification. Adding unnecessary and duplicative regulation and guidance will only add confusion and create uncertainty.

Furthermore, the mandate's expansiveness will prove particularly harmful to smaller aviation maintenance businesses. While larger companies can better absorb expenses of costly background investigations, unnecessary and duplicative regulation has a disproportionate impact on small entities. This effort will merely drive up costs for U.S. job creators. Consequently, ARSA urges the committee to eliminate this language from the proposal.

Risk-Based Inspections

ARSA commends Congress and the FAA for focusing on a risk-based approach to repair station inspections and oversight. However, the provision is duplicative and unnecessary, as the agency already has the authority to focus on foreign repair stations performing scheduled heavy maintenance on part 121 air carrier aircraft. Additionally, the FAA also currently has the authority to access relevant maintenance data when warranted.

Conclusion

The basic nature of the aviation industry demands that safety and security be top priorities. Airlines will not do business with entities that put passengers and valuable business assets (e.g., aircraft) at risk. Put simply, safety is good business. Congress and regulators alike must realize that safety depends not on more legislation and regulation, but on the culture of safety within individual companies and effective partnerships among and between governments and industry.

We look forward to working with you to improve the AIRR Act as the bill moves through the legislative process. While we might disagree on the specifics in sec. 402/sec. 2502, we remain committed to jointly ensuring the aviation industry's global competitiveness and, most importantly, aviation safety.

Sincerely,



Daniel B. Fisher
Vice President of Legislative Affairs

cc: Members of the U.S. House Transportation & Infrastructure Committee