



### Analysis of Maintenance Provisions of House and Senate FAA Reauthorization Bills

This analysis of provisions of the House and Senate Federal Aviation Administration (FAA) reauthorization bills affecting maintenance providers was prepared by the Aeronautical Repair Station Association. Both bills contain provisions that ARSA considers counterproductive. Requirements concerning inspection of foreign facilities, drug and alcohol testing of foreign repair station employees, and use of non-certificated maintenance providers indicate a move by Congress to micro-manage the operations of an executive agency. The results of such micro-management will be increased costs and regulatory burdens for industry, while producing minimal, if any, safety benefits. For more information about these issues, please contact ARSA Legislative Counsel Daniel Fisher at [daniel.fisher@arsa.org](mailto:daniel.fisher@arsa.org) or 703.299.0784.

Issue	House	Senate	Explanation
<b>Non-certificated Maintenance</b>	Section 310(a) - ISSUANCE OF REGULATIONS. - Not later than 3 years after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue regulations requiring that all covered maintenance work on aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, be performed by individuals in accordance with subsection (b).	Section 522(a) - REGULATIONS. - Not later than 3 years after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall issue regulations requiring that all covered maintenance work on aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, be performed by individuals in accordance with subsection (b).	Bills contain corresponding language.
	Section 310(b) - PERSONS AUTHORIZED TO PERFORM CERTAIN WORK. - Covered maintenance work for a part 121 air carrier shall only be performed by--	Section 522(b) - PERSONS AUTHORIZED TO PERFORM CERTAIN WORK. - No individual may perform covered maintenance work on aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations unless that individual is employed by—	Bills contain corresponding language.
	(1) an individual employed by the air carrier; (2) an individual employed by another part 121 air carrier;	(1) a part 121 air carrier;	Same as existing regulations

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<b>Non-certificated Maintenance (Cont'd)</b>	(3) an individual employed by a part 145 repair station; or	(2) a part 145 repair station or a person authorized under section 43.17 of title 14, Code of Federal Regulations;	Same as existing regulations. Note that both the House and Senate bill prohibit contracting covered work to a person certificated under part 65 <u>unless</u> that person is employed by an air carrier, repair station or a company contractor as identified in (4), below. Also, note that the Senate bill takes into account our BASA with Canada, recognizing that the certification granted by Transport Canada to an Approved Maintenance Organization (AMO) is the equivalent of part 145 approval. The House bill does not.
	(4) an individual employed by a company that provides contract maintenance workers to a part 145 repair station or part 121 air carrier, if the individual— (A) meets the requirements of the part 145 repair station or the part 121 air carrier; (B) works under the direct supervision and control of the part 145 repair station or part 121 air carrier; and (C) carries out the work in accordance with the part 121 air carrier's maintenance manual and, if applicable, the part 145 certificate holder's repair station and quality control manuals.	(3) a person that provides contract maintenance workers or services to a part 145 repair station or part 121 air carrier, and the individual— (A) meets the requirements of the part 121 air carrier or the part 145 repair station; (B) performs the work under the direct supervision and control of the part 121 air carrier or the part 145 repair station directly in charge of the maintenance services; and (C) carries out the work in accordance with the part 121 air carrier's maintenance manual.	These provisions cover two kinds of contract personnel. (1) Both generally recognize that persons employed by temporary maintenance personnel agencies such as STS and AeroTech are treated the same as air carrier or repair station employees. However, (2) workers at non-certificated shops that perform contract maintenance functions would require direct supervision under the House bill whereas the Senate bill is generally consistent with existing regulations (e.g., a repair station must remain directly in charge of the work performed which requires it to be available for consultation on matters affecting airworthiness). However, the air carrier would have to directly supervise the worker.

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<b>Non-certificated Maintenance (Cont'd)</b>	No corresponding language.	(4) by the holder of a type certificate, production certificate, or other production approval issued under part 21 of title 14, Code of Federal Regulations, and the holder of such certificate or approval— (A) originally produced, and continues to produce, the article upon which the work is to be performed; and (B) is acting in conjunction with a part 121 air carrier or a part 145 repair station.	Unlike the House legislation, the Senate bill allows an exemption for original equipment manufacturers (OEM) to perform covered maintenance work without being classified as a non-certificated maintenance provider if the OEM originally produced and continues to produce the article.  The “continues to produce” requirement poses a problem if a repair station needs an OEM to perform covered maintenance on an article it once produced, but no longer does.
	Section 310(c) – PLAN. - (1) Development – The Administrator shall develop a plan to -- (A) require air carriers to identify and provide to the Administrator a complete listing of all non-certificated maintenance providers that perform, before the effective date of the regulations to be issued under subsection (a), covered maintenance work on aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations; (B) validate the lists that air carriers provide under subparagraph (A) by sampling air carrier records, such as maintenance activity reports and general vendor listings; and (C) include surveillance and oversight by field inspectors of the Federal Aviation Administration for all non-certificated maintenance providers that perform covered maintenance work on aircraft used to provide air transportation in accordance with such part 121.	No corresponding language.	The House bill requires the FAA develop a plan to gather information on use of non-certificated maintenance providers and implement surveillance plans.  The requirement would impose a reporting burden on industry and further stress the FAA’s already limited inspector resources without demonstrating a safety benefit.
	Section 310(d) – DEFINITIONS. – In this section, the following definitions apply:	Section 522(d) – DEFINITIONS. – In this section:	Bills contain corresponding language.

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<b>Non-certificated Maintenance (Cont'd)</b>	(1) COVERED MAINTENANCE WORK- The term `covered maintenance work' means maintenance work that is essential, regularly scheduled, or a required inspection item, as determined by the Administrator.	(1) COVERED MAINTENANCE WORK. – The term “covered maintenance work” means maintenance work that is essential maintenance, regularly scheduled maintenance, or a required inspection item, as determined by the Administrator.	Bills contain corresponding language. Note that the term “essential maintenance” (to be defined by the FAA) would replace “substantial maintenance” as defined in Order 8900.1 and air carrier Ops Specs paragraph D091.
	(2) PART 121 AIR CARRIER- The term `part 121 air carrier' means an air carrier that holds a certificate issued under part 121 of title 14, Code of Federal Regulations.	(2) PART 121 AIR CARRIER. – The term “part 121 air carrier” has the meaning given that term in section 44730(f)(1) of title 49, United States Code.	Bills contain corresponding language.
	(3) PART 145 REPAIR STATION- The term `part 145 repair station' means a repair station that holds a certificate issued under part 145 of title 14, Code of Federal Regulations.	(3) PART 145 REPAIR STATION. – The term “part 145 repair station” has the meaning given that term in section 44730(f)(2) of title 49, United States Code.	Bills contain corresponding language.
	(4) NONCERTIFICATED MAINTENANCE PROVIDER- The term `non-certificated maintenance provider' means a maintenance provider that does not hold a certificate issued under part 121 or part 145 of title 14 Code of Federal Regulations.	No corresponding language.	The Senate bill does not contain a definition for “non-certificated maintenance provider.”
	(e) Authorization of Appropriations- There is authorized to be appropriated such sums as may be necessary for the Administrator to hire additional field safety inspectors to ensure adequate and timely inspection of maintenance providers that perform covered maintenance work.	No corresponding language.	

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<b>Inspection of foreign repair stations</b>	Section 303(a) IN GENERAL. – Chapter 447 is amended by adding at the end the following:	Section 521(a) IN GENERAL. – Chapter 447 is amended by adding at the end the following:	<p>Bills contain corresponding language. Chapter 447 is “Safety Regulation.”</p> <p>ARSA is concerned that these provisions represent unnecessary micromanagement of the FAA’s oversight of repair stations. Given the U.S. civil aviation industry’s outstanding safety record, we believe that this is a solution in search of a problem. At best, the Senate language will increase costs to government and the industry; at worst, the House language would violate U.S. treaty obligations and lead to the imposition of trade barriers that will undermine the competitiveness of the U.S. aviation industry.</p>
	No corresponding language.	<p>Within 1 year after the date of enactment of the FAA Air Transportation Modernization and Safety Improvement Act the Administrator of the Federal Aviation Administration shall establish and implement a safety assessment system for all part 145 repair stations based on the type, scope, and complexity of work being performed. The system shall—</p>	<p>The Senate bill requires the FAA to create a safety assessment system for <i>all</i> repair stations, foreign and domestic.</p> <p>A safety assessment system would be a critical step for the FAA to implement a risk-based inspection system. The introduction and implementation of such a system was recommended by the Department of Transportation Inspector General.</p> <p>An implementation of a risk-based system is counterintuitive with the requirement in 521(e) of the Senate bill, which requires twice annual inspections of <i>all</i> repair stations, per U.S. obligations under international agreements.</p>

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<b>Inspection of foreign repair stations (Cont'd)</b>	No corresponding language.	(1) ensure that repair stations outside the United States are subject to appropriate inspections based on identified risk and consistent with existing United States requirements;	
	No corresponding language.	(2) consider inspection results and findings submitted by foreign civil aviation authorities operating under a maintenance safety or maintenance implementation agreement with the United States in meeting the requirements of the safety assessment system; and	
	No corresponding language.	(3) require all maintenance safety or maintenance implementation agreements to provide an opportunity for the Federal Aviation Administration to conduct independent inspections of covered part 145 repair stations when safety concerns warrant such inspections.	
	No corresponding language.	521(b) NOTICE TO CONGRESS OF NEGOTIATIONS. – The Administrator shall notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 30 days after initiating formal negotiations with foreign government agencies on a new maintenance safety or maintenance implementation agreement.	
	No corresponding language.	521(c) ANNUAL REPORT. – The Administrator shall publish an annual report on the Federal Aviation Administration’s oversight of part 145 repair stations and implementation of the safety assessment system required by subsection (a). The report shall –	The Senate bill requires the FAA to submit a report on the progress and certain aspects of the safety assessment system.
	No corresponding language.	(1) describe in detail any improvements in the Federal Aviation Administration’s ability to identify and track where part 121 air carrier repair work is performed;	
	No corresponding language.	(2) include a staffing model to determine the best placement of inspectors and the number of inspectors needed;	

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<b>Inspection of foreign repair stations (cont'd)</b>	No corresponding language.	(3)describe the training provided to inspectors; and	
	No corresponding language.	(4 )include an assessment of the quality of monitoring and surveillance by the Federal Aviation Administration of work provided by its inspectors and the inspectors of foreign authorities operating under a maintenance safety or implementation agreement.	
	(a) In General. – Not later than one year after the date of enactment of this section, and annually thereafter, the Administrator of the Federal Aviation Administration shall—		
	(1) submit to Congress a certification that each foreign repair station that is certified by the Administrator under part 145 of title 14, Code of Federal Regulations, and performs work on air carrier aircraft or components has been inspected by safety inspectors of the Administration not fewer than two times in the preceding calendar year;	(e) BIENNIAL INSPECTIONS. – The Administrator shall require part 145 repair stations to be inspected twice each year by FAA safety inspectors, regardless of where the station is located, in a manner consistent with United States obligations under international agreements.	<p>The House bill requires twice annual inspections of all foreign repair stations.</p> <p>The Senate bill requires twice annual inspections of <i>all</i> repair stations, both foreign and domestic.</p> <p>The Senate bill requires the inspections be carried out in a manner consistent with U.S. obligations under international agreements which, at a minimum, should include the bilateral aviation safety agreement with the European Community, World Trade Organization obligations, and Group of Twenty obligations.</p> <p>The Senate bill's inclusion of a twice annual inspection requirement is counter-intuitive with the bill's earlier establishment of a risk-based approach to inspections.</p>

Issue	House	Senate	Explanation
<b>Drug and Alcohol Testing</b>		(d) ALCOHOL AND CONTROLLED SUBSTANCE TESTING PROGRAM REQUIREMENTS –	
	No corresponding language.	(1) IN GENERAL. – The Secretaries of State and Transportation jointly shall request the governments of foreign countries that are members of the International Civil Aviation Organization to establish international standards for alcohol and controlled substances testing of persons that perform safety sensitive maintenance functions upon commercial air carrier aircraft.	The International Civil Aviation Organization (ICAO) currently recommends drug and alcohol testing of safety-sensitive employees, but does not require testing. ARSA supports working through ICAO for any broad changes to the aviation industry.

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<b>Drug and Alcohol Testing (Cont'd)</b>	<p>(2) modify the certification requirements under such part to include testing for the use of alcohol or a controlled substance in accordance with section 45102 of any individual performing a safety-sensitive function at a foreign aircraft repair station, including an individual working at a station of a third-party with whom an air carrier contracts to perform work on air carrier aircraft or components;</p>	<p>(2)APPLICATION TO PART 121 AIRCRAFT WORK. – Within one year after the date of enactment, the Administrator shall promulgate a proposed rule requiring that all part 145 repair station employees responsible for safety-sensitive functions on part 121 air carrier aircraft are subject to an alcohol and controlled substance testing program determined acceptable by the Administrator and consistent with the applicable laws of the country in which the repair station is located.</p>	<p>The House bill requires individuals performing a safety-sensitive function at foreign repair stations to be included in the Department of Transportation's (DOT) drug and alcohol testing program. The bill contains no language addressing the legal impediments in certain foreign countries to implementation of the DOT testing procedures. In addition, the bill does not address the logistics of implementing such a requirement (i.e., transportation of samples to DOT approved test facilities).</p> <p>The Senate bill requires the FAA to issue a proposed rule requiring that all part 145 repair station employees responsible for safety-sensitive functions on part 121 air carrier aircraft are subject to a drug and alcohol program acceptable to the Administrator.</p> <p>The Senate language does not require that individuals be subject to the DOT drug and alcohol testing program.</p> <p>In addition, the Senate language respects the applicable laws of the country in which a repair station is located when determining if the facility's drug and alcohol testing program is acceptable.</p>

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<b>Harmonization</b>	(3) continue to hold discussions with countries that have foreign repair stations that perform work on air carrier aircraft and components to ensure harmonization of the safety standards of such countries with those of the United States, including standards governing maintenance requirements, education, and licensing of maintenance personnel, training, oversight and mutual inspection of work sites.		The House bill requires the FAA to continue efforts to harmonize all regulations related to repair station operations. Harmonization of international standards has been, and continues to be, a priority for the FAA, regardless of congressional dictation.
<b>Authority</b>	(b) REGULATORY AUTHORITY WITH RESPECT TO CERTAIN FOREIGN REPAIR STATIONS. – With respect to repair stations that are located in countries that are party to the agreement entitled “Agreement between the U.S. and EC on Cooperation in the Regulation of Civil Aviation Safety”, dated June 30, 2008, the requirements of subsection (a) are in exercise of the rights of the United States under paragraph A of Article 15 of the Agreement, which provides that nothing in the Agreement shall be construed to limit the authority of a party to determine through its legislative, regulatory, and administrative measures, the level of protection it considers appropriate for civil aviation safety.	No corresponding language.	<p>The House bill states that the language requiring twice annual inspections and drug and alcohol testing of safety-sensitive employees at foreign repair stations is in compliance with the bilateral aviation safety agreement (BASA) between the United States and the European Community (EC). The EC has stated, however, that these provisions are not in accordance with the BASA and will lead to the agreement’s collapse.</p> <p>The House language does not address international obligations outside of the BASA, including the World Trade Organization and Group of Twenty.</p>