



Aeronautical Repair Station Association

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the hotline

June 2013

Latest News

Sarah Says: It's Just Ugly Folks

By Sarah MacLeod, ARSA Executive Director

There is nothing pretty or easy about a political process that directly impacts regulations.

The Office of Management and Budget, charged with making sure federal rules don't cost too much money, usually reviews rules within a ninety-day period. Of course, in the case of the Transportation Security Administration's (TSA) repair station rule, the deadline has come and gone.

This example of governmental wrongheadedness started ten years ago with the passage of a law demanding the TSA issue a repair station security rule. The congressionally mandated security requirements apply to all FAA-repair station certificate holders. Of course, those located in Canada will not be impacted because they are not issued certificates from the FAA, so the U.S. government has no hook to demand compliance. The TSA could find little legitimate safety or national security reason for such a regulation. The nonsense was exacerbated by more political action in 2007, when the Congress established a hard deadline for the rule's passage. The TSA's failure to act on something it didn't want or need to do in the first place resulted in the ban on another agency, the FAA, issuing new foreign repair station certificates. Due to the impact of the agency's failure on the public, business, foreign relationships, and the continued operational safety of N-registered aircraft, ARSA found itself in the unenviable position of begging, pleading, and demanding a rule be passed that neither it nor its membership want or need.

The focus now is on bipartisan legislation that will "Lift the Ban." Even if you believe foreign repair stations should not exist—you shouldn't support the government punishing industry for an agency's failure to act. THINK ABOUT THAT for a minute—how in the heck is the industry supposed to make the TSA act if the arm of government that created the agency can't?

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Sarah Says, continued

Congress created the TSA, an executive agency, and demanded action of its creation. When the creation failed to act, the creator punished innocent and basically helpless parties—the public, the FAA and the industry.

The FAA must certificate repair stations around the world if N-registered aircraft are going to fly the globe. The next time someone transfers to a foreign air carrier on an overseas trip, it may be because there is no place to perform maintenance on a U.S.-registered aircraft at the destination. That doesn't just impact business, it also impacts the safety of the American forced to fly on a foreign air carrier that may or may not maintain its aircraft to the same standards as the U.S. and its bilateral partners. If the FAA cannot spread its standards of aviation safety, the agency loses leadership and prestige, another blow to the public.

The outcome of inappropriate congressional action is just incredibly ugly all the way around.

Clock Strikes Zero: TSA Once Again Misses Deadline

The Transportation Security Administration (TSA) once again failed to meet its deadline to finalize the repair station security rule, expected by today. TSA's inaction means the Federal Aviation Administration (FAA) still faces a moratorium on certifying foreign aviation repair stations, plaguing the industry since 2008.

During a March 14 oversight hearing before the House Transportation Security Subcommittee, TSA Administrator John Pistole confirmed that the rule was under a mandatory 90-day examination period by the Office of Management & Budget after work was completed by TSA and the Department of Homeland Security. In response, the Aeronautical Repair Station Association (ARSA) launched a countdown clock to ensure TSA is held accountable to the most recent deadline. ARSA is now working with Congress to resolve the issue.

"Time after time TSA misses its deadlines and the only ones paying the price are aviation maintenance companies seeking to expand internationally," said Christian A. Klein, ARSA's executive vice president. "We have maintained from the beginning that mandating repair station security rules were a solution in search of a problem. TSA's inaction after nearly a decade shows that security was never truly an issue."

"The aviation maintenance industry is done sitting by and hoping the government will follow Congress' ill-advised directive – we're taking action to ensure our businesses can build and grow their markets," said ARSA Vice President of Government Affairs Daniel B. Fisher. "The ban is costing U.S. companies millions of dollars in lost revenues, stifling domestic growth and job creation that would support overseas expansion. Congress created this problem and now it should fix it."



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Gary M. Fortner
President

Gary Jordan
Senior Vice President

Jim Perdue
Treasurer

Sarah MacLeod
Executive Director

Marshall S. Filler
Managing Director & General Counsel

Christian A. Klein
Executive Vice President

Keith Mendenhall
Editor, **the hotline**

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In 2003, Congress first mandated TSA finalize repair station security rules. After years of inaction, in 2007, lawmakers once again required the agency to complete work on the regulations, prohibiting the FAA from approving new foreign repair stations after Aug. 3, 2008 if TSA didn't comply.

For more on the history of Congress' repair station security rules mandate and ARSA's "Lift the Ban" campaign, visit <http://arsa.org/legislative/issues/aviation-policy/lift-the-ban/>.

ARSA Seeks Consistency In EASA SMS Requirements

On May 22, ARSA submitted [comments](#) to a European Aviation Safety Agency (EASA) Notice of Proposed Amendment (NPA) incorporating safety management system (SMS) requirements into EASA part 145.

While supporting a single SMS covering multiple regulated activities (e.g., design, production, maintenance), ARSA suggested numerous changes that would ensure requirements are clear, consistent, and in line with industry standard practices. For instance, the NPA uses the terms "compliance monitoring" and "safety" in places where "quality" would be better understood. Furthermore, the association encouraged EASA to clarify that the portion of the regulation dealing with Fatigue Risk Management does not apply to facilities outside the European Union.

To view other ways ARSA has advocated for the aviation maintenance industry, visit arsa.org/arsa-action.

ARSA Urges FAA to Clarify Technical Data Requirements

On June 9, ARSA submitted [comments](#) to Federal Aviation Administration (FAA) [draft order 8300.X](#) providing guidance on requirements for the approval of technical data associated with major repairs or alterations.

Citing Advisory Circular (AC) 120-77, an FAA letter to Erickson Air-Crane, Inc. under the Consistency and Standardization Initiative (CSI), and Title 14 of the Code of Federal Regulations (CFR), ARSA suggested a number of changes to the draft order that would eliminate confusion over the interpretation of the new guidance.

ARSA's comments focused on changing language inconsistent with AC 120-77, the CSI letter, and 14 CFR, requesting clarification of potentially confusing terms, and suggesting the definitions of specific terms be consistent throughout.

To view ARSA's past regulatory advocacy efforts for the aviation maintenance industry, visit arsa.org/arsa-action.

Government Watchdog Knocks FAA on Safety

On June 20, the U.S. Department of Transportation's Office of the Inspector General (OIG) released a [report](#) criticizing the Federal Aviation Administration (FAA) for the way the agency determines the number of flight standards safety inspectors needed to maintain a robust air carrier network.

The OIG found that while the FAA introduced a new inspector staffing model more than three years ago the agency has failed to rely fully on the model's results to determine the needed number and location of part 121 air carrier inspectors and continues to utilize incomplete and outdated metrics. Different staffing processes across regions result in inconsistent and subjective staffing decisions that leave potential gaps in safety, according to the report.

The watchdog also outlined deficiencies in the FAA's geographic surveillance program, which supplements regular inspections by allowing inspectors to request assistance from other regional offices. The OIG highlighted that many inspectors are reluctant to participate in certain aspects of the program since they are not always trained in the specific operations of the assigned air carrier and the process for requesting outside assistance is burdensome.

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To address these concerns, the OIG recommended developing a plan with milestones to correct the staffing model's shortcomings, particularly with regard to data collection and accuracy; implementing training programs to ensure managers and inspectors follow the model; establishing guidance to enhance staffing model analysts' understanding of their role and responsibilities; and developing a process to ensure inspectors participating in the geographic surveillance program are trained on specific air carrier policies and procedures.

Preparing for the ACA

Beginning January 2014, the employer mandate under the Affordable Care Act (ACA) ([Public Law 111-148](#)) goes into effect, establishing different requirements for businesses depending on the number of full-time employees, the number of workers eligible for federal health insurance subsidies, and the quality of coverage the employer offers.

As companies across the nation scramble to adjust their business plans to ensure compliance with the new regulations, ARSA created a guide for repair stations of all sizes to understand the law better and know exactly what will be expected of their businesses.

While the guide is meant to serve as a resource in crafting an overall tax strategy, the association encourages repair stations to consult with an accountant or tax professional given the complexity of the law.

[Click here](#) to view the ACA Repair Station Guide.

Office of Management and Budget Recognizes Importance of Industry Relationships

On May 28, the White House Office of Management and Budget (OMB) issued a [memo](#) to federal agencies offering guidance on best practices for approving travel and conference expenses. The memo acknowledges the importance of government and industry interaction, highlighting the need for agencies to limit unnecessary expenditures while maintaining relationships with industry stakeholders.

Emphasizing the effects of sequestration on budgetary resources, the OMB urges agencies to review travel and conference-related activities to verify those activities are mission-specific to the agency, warning that federal employee attendance at conferences and association-hosted events will necessarily decrease as a result of budget constraints.

While not official guidance, the memo suggests keeping hotel costs within government guidelines for per diem rates; requiring heads of agencies or deputy secretaries approval for conferences more than \$500,000 and \$100,000 threshold, respectively; and inquiring about "no frills" pricing options for all conferences and events. The OMB's latest action represents a step in the right direction to ensure the federal government remains accessible to industry associations.

In June 2012, ARSA joined [nearly a thousand organizations](#) urging Congress to modify proposals that would strictly limit federal employees' ability to attend conferences hosted by associations. ARSA regularly invites government employees to events like the [Annual Repair Symposium](#) and values the opportunity to serve as a resource to government officials.

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Charles Taylor Bust, Database to Honor Awards Recipients

In the coming weeks, the Aviation Maintenance Technicians Association (AMTA) will donate a bust of Charles E. Taylor, the “father of aviation maintenance,” to the Wright-Patterson Air Force Base Museum.

A kiosk containing a database of past recipients of the Federal Aviation Administration’s [Charles Taylor Master Mechanic Award](#), which recognizes the lifetime accomplishments of senior mechanics, will accompany the bust to raise public awareness of the men and women who have led successful careers in the aviation maintenance industry.

AMTA is currently collecting biographies and pictures of past recipients to include in the database. If you have received the Charles Taylor Master Mechanic Award, please send your bio and a picture to: Ken MacTiernan, Director AMTA, 11772 Carmel Creek Road #107, San Diego, CA 92130, or send an email to jetdr@san.rr.com. Family members of recipients who have passed away are also encouraged to forward the winners’ biographical information to the address above.

ARSA Publications: Summer Sale

From June 21 through September 20 take advantage of the ARSA summer publications sale!

All summer, ARSA is offering a special two for one price on publications. Buy one publication, and get another one absolutely free!

Summer is all about lazy days with a good book. We don’t have romance or mysteries, but who says an ARSA publication isn’t just as good to read while lying on the beach?

[Click here](#) for more information on ARSA publications.

To purchase a publication, [click here](#).

The fine print: Sale ends 5:00 p.m. EDT on Friday, September 20, 2013. Free publication must be of equal or lesser value to paid publication. Delivery of materials is made after receipt of payment (purchase orders are not accepted or considered as payment). Please allow time for processing. ARSA publications are copyrighted and licensed to the purchaser for use at a specific location. Copying and/or distribution of ARSA publications is permitted only to the extent authorized by the license.



Fabian Joins GE Aviation

ARSA Vice President of Regulatory Affairs and Assistant General Counsel Craig Fabian concluded his tenure at [Obadal, Filler, MacLeod & Klein](#) (OFMK) to join GE Aviation in Cincinnati, OH. Fabian worked for OFMK from 2006 to 2007 and rejoined the firm in 2009 after serving as director of technical operations for the Air Transport Association. He was previously an attorney in the aerospace practice of another Washington, D.C., law firm.

Before practicing law, Mr. Fabian spent nearly 15 years in the aviation maintenance industry; first as an aircraft mechanic and avionics technician for Northwest Airlines, then as a maintenance control supervisor for US Airways.

“Craig has been an integral part of the OFMK team for five years handling a vast array of technical and legal issues for ARSA and the law firm’s clients,” ARSA Executive Director Sarah MacLeod said. “We will certainly

miss his expertise and presence within our office but wish him the very best as he takes on this exciting, new opportunity at GE Aviation.”

New Gallup Poll is Bad News for Congress, but Good News for Us

By Christian Klein, ARSA Executive Vice President

The results of a [recent Gallup poll](#) reinforce what ARSA's been saying for a long time: Small business owners are highly credible messengers. That's good news for the aviation maintenance industry's public relations efforts.

The poll conducted in early June found that 65 percent of Americans had either “a great deal” or “quite a lot” of confidence in “small business,” second only to “the military,” which scored 76 percent. The only other institution to score above 50 percent was “the police” (it scored 57 percent, which is likely attributable to the fact they haven't been touring as regularly in recent years as Sting pursued a successful solo career).

Who scored lowest? “Newspapers” (23 percent), “big business” (22 percent), “organized labor” (20 percent), and “health maintenance organizations” (19 percent). And what's the least credible institution? You guessed it: “Congress,” which scored an abysmal 10 percent.

So what does it all mean? ARSA has been working for years through our Positive Public Campaign to improve the public relations capabilities of the small-business-dominated repair station industry. Our primary objective has been to change the narrative about contract maintenance in the popular media. The hard work is paying off. The poll helps explain why.

The old storyline – pitched by organized labor (20 percent credibility), perpetuated by newspapers (23 percent credibility) and blindly accepted by Congress (10 percent credibility) was that repair stations, no matter where they're located, couldn't possibly do the job as well as the airlines' own mechanics. That narrative has had real and damaging consequences for the industry (for proof, look no further then Congress' ill-conceived repair station security rule mandate and resulting ban on new foreign repair stations.)

The new storyline is that highly-specialized maintenance companies in the United States and around the world are helping air carriers reduce costs and improve their safety margin. The fact that industry leaders like ARSA's current president Gary Fortner of Fortner Engineering – who are themselves small business owners – are helping deliver the new message, is one of the reasons it's resonating in the media, on Capitol Hill, and with the public in general.

The Gallup poll is proof that people trust you and want to hear what you think. So don't hesitate to talk to the media about the economic and regulatory issues facing our industry. Don't hesitate to talk to elected officials about how their decisions will impact your business and workforce. And don't hesitate to talk to your employees and others in your community about local, state, and federal issues.

Now get out there and start talking!



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companies, fixed base operators, aircraft completion centers, airlines, MRO facilities and part distribution / redistribution companies. Quantum is installed in over 50 countries and can be deployed as a single-site or multinational solution.

For more information, [please click here!](#)

The Big 5-0

By Josh Pudnos, ARSA Communications Manager

A June 16 Wall Street Journal [article](#) brings some exciting news: the Affordable Care Act is igniting a small boom in jobs! Unfortunately, those jobs are going to lawyers – lawyers who specialize in regulatory compliance, Medicare, and insurance.

ARSA recently created an [issue page](#) about the employer mandate section of the Affordable Care Act. This section of the law requires “large” businesses to provide healthcare coverage that is both minimally essential and affordable, or risk paying a penalty. The healthcare law involves a lot of math to determine whether the plans offered are affordable, what constitutes a full-time employee, and whether the company is, in fact, considered a large employer.

Ultimately the employer mandate comes down to one number: 50, the amount of “full-time equivalent” (FTE) employees on a large company’s payroll. FTE employees are those who work an average of 30 hours per week (130 total monthly hours); part-time employees’ hours will be converted into FTE employees to determine employer size and subjectivity to penalty (part-time employees are only used to determine a company’s size and are not guaranteed minimum essential coverage by large employers). Many ARSA members teeter on that line and must now make decisions regarding the growth of their businesses versus ensuring they can afford to provide the required health coverage to employees.

While some companies are staffing up on in-house legal counsel, I foresee many repair stations making sure their CFOs and accountants are up for the job. I believe in the spirit of the Affordable Care Act, but after the regulatory rollercoaster many companies are about to encounter, I can’t help but wonder if lawmakers’ next stab at healthcare reform might separate coverage from the employer.

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Creating Jobs Throughout the World

By Daniel Fisher, ARSA Vice President of Legislative Affairs

When I tell lawmakers and staffers on Capitol Hill about the aviation maintenance industry, most don’t even realize you’re out there. They realize a company makes the plane, a couple of others fly it, and at least another person throws their bags underneath the plane before takeoff. What is often overlooked are the men and woman maintaining the aircraft. However, the days of anonymity are about to end.

Every day I read reports about new aviation maintenance facilities opening in communities both in America and throughout the world. In Rockford, IL, the hope is that attracting an MRO company will “create hundreds of well-paid jobs,” will be “the impetus for specialized education to supply labor to an MRO and other companies in a growing aerospace cluster that is short of qualified mechanics,” and would “be the most significant development at the 2,900 acre airport since UPS established a domestic package sorting hub” in 1994.

Halfway across the world, in Dubai, United Arab Emirates, the economy is bracing for great things as “the planned Aviation District at Dubai World Central, or DWC, the world’s first purpose-built aerropolis, is designed to be the home of the world’s leading MROs looking to benefit from the rapid growth of the industry in the region.”

This is great news for an industry that has been attacked by self-interested organizations more focused in self-preservation than economic growth. It is a growing sector creating jobs and opportunities across the world. This will surely get the attention of policymakers.

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As the industry continues to grow, the need to engage, particularly legislatively, is even more important. ARSA is here to advocate on the aviation maintenance sector's behalf to ensure continued growth, job creation, and prosperity. But we can't do it without you. Contact us to get involved today!

Legislative News

ARSA Presses for Support of Bipartisan House, Senate Regulatory Accountability Bills

In June 4 letters to members of the [House](#) and [Senate](#), ARSA joined the business community in urging lawmakers to pass the Regulatory Accountability Act of 2013 ([H.R. 2122](#); [S. 1029](#)). Introduced by Rep. Goodlatte, R-Va., and Sen. Portman, R-Ohio, the bipartisan legislation aims to reform the current federal rulemaking process, lower costs, and improve the quality of new regulations.

The Regulatory Accountability Act would increase transparency and ensure the public has a greater role in the rulemaking process. The legislation would build well-recognized best practices for regulatory analysis into each step of the rulemaking process and require agencies to adopt the "least costly" regulatory alternative that would achieve the policy goals set out by Congress.

Those affected by high-impacting rules (regulations priced at \$1 billion per year to implement) would have access to an administrative hearing to test the accuracy of the evidence and assumptions underlying the agency's proposal. Additionally, courts would apply substantial evidence review to high-impact rules to ensure an agency's justifications are supported by reasonable evidence.

A [similar bill](#) passed the House last Congress but died in the Senate.

Stay tuned for more on Congressional efforts to reform the regulatory system.

Legal Briefs

*Editor's note: Over the next several editions of **the hotline**, Legal Briefs will outline the association's top regulatory issues including the topic's history and current status. The information will thereafter be available on www.arsa.org along with a news feed containing latest developments.*

Instructions for Continued Airworthiness: Where Do We Stand?

Since its inception, ARSA has worked to ensure that basic safety information (i.e., Instructions for Continued Airworthiness (ICA) or component maintenance manuals (CMM)) is developed by all design approval holders (DAH) and that they are made available at a fair and reasonable price to operators, maintenance providers, and any other person required by the regulations to comply with those instructions.

[Title 14 Code of Federal Regulations \(CFR\) § 21.50\(b\)](#) requires holders of design approvals to prepare instructions for continued airworthiness (ICA) and "make them available" to persons required to comply with the terms of the instructions, including owners and repair stations that perform maintenance on the products.

Notwithstanding the clear language of that section, the Federal Aviation Administration (FAA) has been slow to enforce the DAHs' obligation to make ICA available to maintenance providers. On the other hand, the agency has vigilantly enforced the requirement that those performing maintenance do so in accordance with the ICA (see §§ [43.13](#), [145.51](#) and [145.109](#)).

The association has taken numerous steps to combat this "double standard" of enforcement; most notably, the ARSA took aim at the FAA and the European Aviation Safety Agency (EASA) in an attempt to hold the agencies accountable for failing to properly enforce their respective regulations. Between 2003 and 2008,

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ARSA filed four separate complaints with the aviation authorities regarding DAHs' failure to provide maintenance instructions. While EASA's response acknowledged that type certificate (TC) holders must provide ICA to persons required to comply, including repair stations holding EASA approvals, it stopped short of taking any action against the TC holders. The FAA has yet to respond to the complaints.

Nevertheless, ARSA continues to encourage the development of uniform ICA policy. Two recently-released FAA documents are a step in the right direction and may assist repair stations to obtain ICA in certain situations—

- In 2009, ARSA asked the FAA to issue an interpretation that CMMs referenced in the Airworthiness Limitations section (ALS) of the ICA were part of the ICA. In August 2012, the FAA finally **responded**, confirming that all CMMs referenced in an ALS are part of the ICA and that modifications to the ALS trigger **§ 21.50(b)** requirements that must be made available to properly rated repair stations with a need to comply with the ALS. However, the FAA declined to extend CMM availability to all properly rated repair stations absent a statement of need (e.g., possession of component, contract, work order).
- A March 29, 2012 **FAA ICA Policy** (PS-AIR-21.50-01) addressed “prohibitions” on distribution. Specifically, it states that “the FAA will not accept restrictive statements or terms in ICA documents, or restrictive access or use agreements that limit the appropriate availability or use of the ICA.” The policy effectively maintains that it is inappropriate for DAHs to distinguish the use of the ICA between the product owner and the maintenance provider, or place any limitations on such use. While this policy was certainly a step in the right direction, it did not include many ARSA **recommendations** that would have aligned the proposed policy with existing regulations.

The legal interpretation and ICA policy were important steps in the continued fight to ensure the availability of safety information. But, it remains to be seen whether the FAA will give teeth to the policy and/or interpretation by taking enforcement measures against DAHs who fail to provide the necessary information upon request.

For a summary of all ARSA efforts on the ICA front, visit <http://arsa.org/regulatory/faa/design/ica-efforts/>.



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ARSA on the Hill

By Daniel Fisher, ARSA vice president of legislative affairs

In June, ARSA's legislative team continued implementation of the “lift the ban” lobbying effort. The initiative has gained new momentum after the Office of Management & Budget's 90-day mandatory review period concluded on June 14 without a final repair station security rule. ARSA informed House and Senate lawmakers of the 90-day review period expiration and the urgent need to allow the FAA to certificate new foreign repair stations. If you're interested in joining our push to get legislation introduced this summer to remove the prohibition on FAA foreign repair station certifications, please contact ARSA's Vice President of Legislative Affairs **Daniel Fisher**.

The association also announced its revamped **Government Affairs Committee**. Thank you to the leaders willing to serve for the benefit of the entire industry. The committee's initial focus is to schedule August lawmaker visits to member facilities. If you are interested in hosting a lawmaker or staffer at your facility (or if you already have one scheduled), please contact ARSA's Communication Manager **Josh Pudnos**.

Did you miss the webinar on engaging lawmakers and becoming an effective advocate? If so, you can still download a recorded copy [here](#).

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On June 27, ARSA PAC delivered campaign support to Congressman Mike Pompeo (R-Kan.). A tireless advocate for the aviation industry on Capitol Hill, he received ARSA's Legislative Leadership Award during the 2013 Legislative Day.

Be sure to provide ARSA PAC solicitation consent by visiting <http://arsa.org/about-arsa-pac/>.

Final Documents/Your Two Cents

"Final documents": This list includes Federal Register publications such as final rules, Advisory Circulars (ACs), policy statements and related material of interest to ARSA members. For proposals opened for public comment, see **"Your two cents."** The date shown is the date of publication or other official release.

"Your two cents": This is your chance to provide input on rules and policies that will affect you. Agencies must provide the public notice and an opportunity for comment before their rules or policies change. Your input matters. Comments should be received before the indicated due date; however, agencies often consider comments they receive before drafting of the final document begins.

"Final documents" and **"Your two cents"** are available at <http://arsa.org/final-documents-your-two-cents/>.

Quality Time

Editor's note: The views and opinions expressed by contributing authors do not necessarily state or reflect those of ARSA, and shall not be used for endorsement purposes.

Legal Waypoints

"Pay when Paid" v. "Pay if Paid" – a Subcontractor's Nightmare

By [Steven E. Pazar](#), attorney at Law, 11 Carriage House Lane, Boxford, Massachusetts 01921. © 2013 Steven E. Pazar ALL RIGHTS RESERVED.

Steven is an experienced counselor to businesses operating in many industries, including aviation. He provides templates, tools, and training to improve contracting efficiency, close deals faster, and control costs.

"Everything was going along fine and then I stopped getting paid. Because I had a prior relationship with the prime contractor I just kept working. Then I found out the project was shut down and the owner was out of cash. What do I do now?"

This is a common scenario for many subcontractors. In many instances it can turn into a subcontractor's worst nightmare – no payment, unexpected legal costs, and yet a continuing obligation to make payroll or pay lower tier vendors and suppliers. The first step in the legal assessment is to review the contract documents between the subcontractor and the prime contractor. Specifically, the payment provisions are usually the focus of that initial assessment. Is it a "pay **when** paid" or a "pay **if** paid" provision? Does the payment provision merely fix a time for payment or does it actually shift the risk of the owner's insolvency to the subcontractor?

Examples of typical "pay **when** paid" and "pay **if** paid" provisions commonly used by prime contractors in their standard form subcontracts are presented below:

Paid when Paid: *Subcontractor shall submit to Prime invoices for services rendered either monthly or at completion of the services. Prime shall review each invoice and shall promptly notify Subcontractor if it objects to any portion of the invoice. Prime shall invoice Owner/Client monthly on account of approved Subcontractor's amount and shall pay Subcontractor within fifteen (15) days of receipt of payment from Owner/Client. It is intended that payments to Subcontractor will be made as Prime is paid*

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by Owner/Client and that Prime shall exert reasonable and diligent efforts to collect prompt payment from Owner/Client.

Paid if Paid: Prime shall pay the Subcontractor in accordance with the unit costs specified in Exhibit C – Commercial Basis. Payment will be made based on monthly billings invoiced to Prime no later than fifteen (15) days after the end of each month. Prime will review such invoices and, upon approval, process for payment. Prime shall not be required to pay Subcontractor any portion of the unit costs, and/or any adjustments thereto, including those requested by Subcontractor under change orders, unless and until Prime receives the applicable payment from the Owner/Client. Receipt of such payment from the Owner/Client by the Prime is considered a condition precedent to any obligation of Prime to make payments to Subcontractor under this Agreement.

These provisions can vary greatly from contract to contract. Additionally, the interpretation and enforcement are usually guided by state case law. For this reason, drafting provisions requires careful understanding of the applicable law, the roles of the parties, and the goals of the prime and/or the subcontractor in any particular contract. In most instances the summary points below provide a basic contract guide:

- A pay **when** paid provision merely fixes the time for payment and does not shift the risk of the Owner/Client's insolvency to the subcontractor
- Properly drafted, a pay **if** paid provision shifts the risk of the Owner/Client's insolvency to the subcontractor
- Typically, use of the words "condition precedent" is required to craft an enforceable paid if paid provision
- Pursuant to a paid when paid provision, courts will generally require a Prime to make payment to a subcontractor after a reasonable waiting or time period, even if the Prime has not been paid by the Owner/Client

Note: The sample provisions above are for illustration purposes only and are not intended for use without appropriate review in your jurisdiction.



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Employment Law & Repair Stations

Two Interesting Twists on “Reasonable Accommodation” Under the Americans with Disabilities Act

By [Jonathan W. Yarbrough](#), Constangy, Brooks & Smith, LLC, 80 Peachtree Rd., Ste. 208, Asheville, NC 28803-3160. © 2013 Jonathan W. Yarbrough ALL RIGHTS RESERVED

Jonathan is experienced representing employers in employment law issues; his pragmatic approach helps keep relationships with employees from becoming difficult. Please contact him for questions regarding employment relationships.

Under the Americans with Disabilities Act (“ADA”), an employer is required to provide a disabled employee with a reasonable accommodation that will enable the employee to perform the essential functions of the job unless the employer can show that the requested accommodation would result in an “undue hardship” to the employer.

Case 1:

United Airlines had “Reasonable Accommodation Guidelines” to deal with employees who were no longer able to perform the essential functions of their jobs. The guidelines noted that although “transfer to an equivalent or

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lower-level vacant position” might be a reasonable accommodation, but the employee would not automatically be placed into a vacant position. However, the employee would be given preferential treatment in the form of a guaranteed interview and priority consideration over a similarly qualified applicant.

The Americans with Disabilities Act (ADA) includes “reassignment to a vacant position” as a possible “reasonable accommodation” for disabled employees. Earlier cases held that the ADA did not require an employer to reassign a disabled employee to a job for which there was a better qualified applicant, provided the employer’s consistent and honest policy was to hire the best applicant for the position.

The Equal Employment Opportunity Commission (EEOC) filed a lawsuit against United, arguing that United’s “reassignment” policy violated the ADA. The EEOC contended that “reassignment” under the ADA required an employer to appoint an employee losing his current position due to disability to a vacant position for which the employee is merely qualified – not the most qualified or even equally qualified, but simply qualified. The court in this case agreed and held that the disabled person must be advanced over a more qualified nondisabled person, as long as the disabled employee is at least minimally qualified to do the job, and unless the employer can show undue hardship.

The court adopted a “two-step case specific” process, which it borrowed from a seniority case involving reassignment under the ADA. In this two-step process, the employee need only show that the accommodation seems reasonable “on its face.” The burden then shifts to the employer to show some special (case specific) circumstance that provides evidence of undue hardship.

Case 2:

In a second case, an employee with an arthritic condition had requested to be transferred to another location so that she would be closer to her physical therapist’s office and could attend therapy after work. Her request was denied and she eventually resigned. The employer made a motion to dismiss the case. The court denied the motion. The employee argued that the employer’s failure to accommodate her request to move to a different location was an “adverse employment action” in that she was forced to resign due to her pain; that is, she was “constructively discharged.” The court concluded that while the employee may not ultimately be able to prove that the employer constructively discharged her due to her disability, she should at least be allowed to go forward with her ADA claim.

The take away from these two cases is, once again, to think outside the box when dealing with accommodation requests. Simply concluding that an accommodation request is not reasonable without seriously looking at whether the request would constitute a hardship may very well result in a violation of the ADA.

Membership

New Government Affairs Committee Launched

In order to ensure ARSA’s legislative program continues to build upon its recent successes, the Association unveiled a new government affairs committee (GAC) that represents a diverse range of regions and sectors of the aviation maintenance industry.

The members of the GAC include:

- David Albert, vice president of external affairs at Sequa/Chromalloy in Columbia, Md.
- Bob Arnett, vice president of quality at Barfield, Inc. in Miami, Fla.
- Kip Blakeley, vice president of industry and government relations at TIMCO in Greensboro, N.C.
- Paul Creider, sr. director of global engineering and quality at Nordam in Tulsa, Okla.
- (Ex Officio) Gary Fortner, vice president of quality control & engineering at Fortner Engineering in Glendale, Calif.

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- Paul Hawthorne, director of global support quality at Moog Aircraft Group in East Aurora, NY
- Gary Jordan, president & CEO at Jordan Propeller Services in San Antonio, Texas
- Jennifer Weinbrecht, vice president of compliance at Component Repair Technologies in Mentor, Ohio

Participants will serve as the association's "go-to" people for legislative issue grassroots and response efforts. Among other activities, GAC members will be asked to host facility visits for elected officials, call on industry colleagues to use ARSAaction.org, write local lawmakers regarding legislative issues, and participate in conference calls.

For more information about the GAC, please contact ARSA Communications Manager [Josh Pudnos](#).

— ADVERTISEMENT —

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Member Spotlight

Chromalloy – Palm Beach Gardens, Fla.

Chromalloy began in the 1950's providing protective coatings for turbine airfoils, later becoming the first independent firm to repair gas turbine engine components. Today, it is one of the world's largest non-OEM providers of advanced coatings, repairs, and replacement parts for gas turbine engines and the only non-OEM company in the world that provides coatings, repairs, castings, manufacturing, and overhauls all from a single source. It services commercial airlines and militaries around the world, power providers with industrial gas turbines, and aeroderivative engine users.

Chromalloy employs more than 4,000 and has facilities across the United States and the world, including Australia, Canada, China, France, Indonesia, Israel, Korea, Mexico, the Netherlands, Saudi Arabia, and the UK.

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Chromalloy's employees have played a vital role in ARSA's programming throughout the years; the association's Government Affairs Chairman David Albert and member of the PPC committee Cathy Gedvilas are both employees of Chromalloy and its parent company Sequa.

For more information, visit <http://www.chromalloy.com/about/>

Are you an ARSA member who would like to be in the "Member Spotlight?" If so, please contact Keith Mendenhall <Keith.Mendenhall@arsa.org>.



The International Aerospace Quality Group (IAQG) is a cooperative global organization that brings aviation, space and defense companies together to deliver more value at all levels of the supply chain. The Americas Aerospace Quality Group (AAQG) is a cooperative organization within the aerospace industry in the Americas (including North, Central and South Americas). Its processes are established in a set of agreed, documented, operational procedures.

For more information, [please click here!](#)

Have You Seen This Person?

Each month, ***the hotline*** spotlights key regulatory, legislative, and business leaders making important contributions to the aviation industry. This month we look at Charles Taylor, the mechanic for Orville and Wilbur Wright heralded as the "father of aviation maintenance."



Charles Taylor, the mechanic who built the engine for the first powered aircraft, was born outside of Decatur, Ill. on May 24, 1868.

He first started working for Orville and Wilbur Wright at their bicycle repair shop in 1901. His previous experience as a machinist in a farm equipment and bicycle manufacturing facility give him the skills he would need to design and build an engine worthy of flight.

Taylor began working directly with the Wright Brothers on their flight experiments in 1902. Using only the tools and materials in the bicycle shop, he built a small wind tunnel necessary to measure air pressures on curved surfaces, providing Orville and Wilbur with critical data to refine their theories.

After their experimental aircraft had been assembled, the Wright brothers recruited Taylor to build an engine light, yet powerful enough to lift the plane and its pilot off the ground. In six weeks, he built the aluminum water-cooled engine that would allow the Wright brothers to make history at Kitty Hawk, N.C., in 1903.

Taylor continued to work for the Wrights until 1911, when he joined Cal Rodgers in his attempt to make the first transcontinental flight across the United States.

Taylor died on January 30, 1956, exactly eight years after Orville Wright.

A Member Asked

Q: We received an Airworthiness Directive (AD) that we don't agree with. How are ADs adopted and can I comment on them?

A: ADs are substantive rules issued by the Federal Aviation Administration (FAA) to correct an unsafe condition in a product. ADs are required to comply with the [Administrative Procedures Act \(APA\)](#), part 11 of the Federal Aviation Regulations, and Department of Transportation (DOT) Regulatory Policies and Procedures.

There are three main processes by which an AD may become a final rule. First, under the standard procedure proscribed by [Section 553\(b\)](#) of the APA, the AD will go through a notice and comment period during which interested parties are invited to comment on the proposed AD. Taking into account the comments received, a final rule will be adopted, published in the Federal Register, and distributed to registered owners and known operators of the product(s) affected.

Second, in certain situations an AD may be immediately adopted without prior notice. Since this is an exception to the standard procedure, it is used only in instances in which an action must be taken more quickly than a typical notice and comment period would allow. The AD is immediately published in the Federal Register, and is distributed to registered owners and known operators of the product(s) affected.

This process for adoption of an AD is allowed under [Section 553\(b\)\(3\)\(B\)](#), which permits immediate adoption of a rule when notice and comment are impracticable, unnecessary, or contrary to the public interest. Despite this leniency under the APA, it is DOT and FAA policy to invite comments to immediately adopted final rules, after which a change in the final rule may result from a significant issue raised in a comment.

Third, emergency ADs may be issued if an unsafe condition exists that requires immediate action by the owners or operators. This type of AD applies only to those who physically receive a copy of the AD, and only applies to the public once it becomes a final rule. It usually becomes a final rule by being published in the Federal Register as an immediately adopted final rule (the second process described above).

Similarly, there are three ways to alter an existing AD. First, if the change is immaterial (i.e. typographical error), a correction to the AD will be published in the Federal Register. Second, any type of substantive change to an AD must be issued as a superseding AD and must comply with the processes for issuing an AD described above. Third, a revised AD will be issued for relief from an AD, or an unsubstantive change such as a change in contact information, change in address, etc. Revised ADs will be redistributed to owners and known operators.

For more information on ADs, see DOT's [Airworthiness Directives Manual](#).

Check Out ARSA's Library of Recorded Webinars and Online Training Classes

ARSA is pleased to announce that recorded online training classes and webinars are now available for member purchase. Check back often as courses will be continually added. The next live webinar, on July 10, titled "Part 145 Primer" will feature [Sarah MacLeod](#), managing member, Obadal, Filler, MacLeod & Klein, and executive director, ARSA. *Read more and register at <http://arsa.org/training-2/online-training/>*

Get 10% Off on Membership Dues by Utilizing ARSA's Members Getting Members Program

The best form of advertising is word of mouth. Use the [Members Getting Members Toolkit](#) to recruit an ARSA member and your company will receive a discounted membership rate for your next membership term. *Get more information at <http://arsa.org/membership/members-getting-members/>*

Advertise Today in ARSA's Newsletters and Website!

ARSA recently updated its menu of advertising opportunities for arsa.org, *the hotline* and the *ARSA Dispatch*. Take advantage of these great opportunities today to showcase your company, a new product or event. For more information go to <http://arsa.org/advertise/>

Interested in Exhibiting or Sponsoring the 2014 Repair Symposium?

As the maintenance industry's top event devoted exclusively to regulatory compliance, the ARSA Symposium attracts a highly qualified professional audience. Use this opportunity to promote your company while showing support for ARSA. Get more information at <http://arsa.org/news-media/events/arsa-annual-repair-symposium-sponsorship/>

Positive Publicity

As part of ARSA's ongoing [Positive Publicity Campaign](#) (PPC), the association is actively working to enhance the media's understanding of our \$65 billion industry and its vital importance to global civil aviation. To accomplish this goal, ARSA monitors media coverage on aviation maintenance to spread the word about the valuable role repair stations provide their communities in jobs, economic opportunities, and community involvement.

[Aviation Program to Take Flight at Ivy Tech](#) (*Indiana Daily Student*)

[Snecma America Engine Services Donates Engine Parts to Embry-Riddle](#) (*AIN Online*)

[Class Offers Aerospace Maintenance Training Overview](#) (*Columbia Basin Herald*)

[RVC Aviation Maintenance Program Announces Expansion](#) (*MyStateline.com*)

[\\$500k Secured to Build New Hangar](#) (*The Tullahoma News*)

[The Booming Field of Aviation Technology](#) (*Huffington Post*)

[MRO Deal Could Propel Rockford Economy](#) (*Rockford Register Star*)

[West Start Aviation Launches New and Improved "Experience on Call" App](#) (*D.O.M*)

[U.S. Airline Industry to Maintain Profitability in 2013](#) (*PCB Design 007*)

[Boeing Plans \\$28-million Expansion](#) (*AviationPros.com*)



International News

IATA Moves to Reduce Aircraft Emissions

On June 3, the International Air Transport Association (IATA) adopted a [resolution](#) calling for the development of a single, market-based mechanism that would seek to reduce aviation emissions.

The market-based mechanism would be part of a comprehensive strategy to achieve global carbon-neutral growth by 2020 with an emphasis on alternative fuels. According to IATA, the mechanism should be designed to be cost-efficient, preserve fair competition, and maximize environmental integrity.

The resolution also outlines other responsibilities for aircraft operators, including emissions data reporting, ensuring data integrity, and undergoing regular performance reviews.

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Finally, the decree calls on member states to continue working within the International Civil Aviation Organization framework to reduce emissions and improve global annual average fuel efficiency.

International Roundup

Editor's Note: To provide more international coverage, ARSA presents a monthly roundup of world events pertaining to the industry.

[Direct Maintenance Expands Line Maintenance Capability in Tanzania](#) (*AviTrader*)

[Line Maintenance Expansion for Monarch Aircraft Engineering](#) (*AviTrader*)

[Lufthansa Maintenance Arm Targets Fast-Growing Discount Carriers](#) (*Bloomberg Business*)

[Wanted: 2,000 Qualified Aviation Personnel](#) (*Borneo Post Online*)

[MTU Aero Engines Expands Facility in Poland](#) (*AviTrader*)

Welcome New Members

[Air Dallas Instruments, Inc.](#), Lewisville, Texas

[Aviation Safety Products, Inc.](#), Blairsville, Ga.

[Calspan Corporation](#), Niagara Falls, N.Y.

[Hahn Law Firm, PC](#), Dallas, Texas

[High Tech Avionics and Accessories](#), Miramar, Fla.

[Miami Air International](#), Miami Springs, Fla.

[Missionary Maintenance Services dba MMS Aviation](#), Coshocton, Ohio

[Timberline Helicopters, Inc.](#), Sandpoint, Idaho

Upcoming Events

- July 9-11, 2013: Aviation Suppliers Association (ASA) Annual Conference, Four Seasons Hotel – Las Vegas, Nev.
- October 23-24, 2013: ARSA Strategic Leadership Conference, St. Regis Hotel, Washington, D.C.
- November 21-22, 2013: Aviation Maintenance Magazine (AVM) Summit, USA, Royal Plaza, Orlando, Fla.

ARSA Regulatory Compliance Training—Questions

Part 1: General comprehension

Level 1: For anyone working in aviation

§ 145.51: Application for certificate.

(a) An application for a repair station certificate and rating must be made in a format acceptable to the FAA and must include the following:

- (1) A repair station manual acceptable to the FAA as required by § 145.207;
- (2) A quality control manual acceptable to the FAA as required by § 145.211(c);
- (3) A list by type, make, or model, as appropriate, of each article for which the application is made;
- (4) An organizational chart of the repair station and the names and titles of managing and supervisory personnel;
- (5) A description of the housing and facilities, including the physical address, in accordance with § 145.103;
- (6) A list of the maintenance functions, for approval by the FAA, to be performed for the repair station under contract by another person in accordance with § 145.217; and
- (7) A training program for approval by the FAA in accordance with § 145.163.

(b) The equipment, personnel, technical data, and housing and facilities required for the certificate and rating, or for an additional rating must be in place for inspection at the time of certification or rating approval by the FAA. An applicant may meet the equipment requirement of this paragraph if the applicant has a contract acceptable to the FAA with another person to make the equipment available to the applicant at the time of certification and at any time that it is necessary when the relevant work is being performed by the repair station.

(c) In addition to meeting the other applicable requirements for a repair station certificate and rating, an applicant for a repair station certificate and rating located outside the United States must meet the following requirements:

(1) The applicant must show that the repair station certificate and/or rating is necessary for maintaining or altering the following:

- (i) U.S.-registered aircraft and articles for use on U.S.-registered aircraft, or
- (ii) Foreign-registered aircraft operated under the provisions of part 121 or part 135, and articles for use on these aircraft.

(2) The applicant must show that the fee prescribed by the FAA has been paid.

(d) An application for an additional rating, amended repair station certificate, or renewal of a repair station certificate must be made in a format acceptable to the FAA. The application must include only that information necessary to substantiate the change or renewal of the certificate.

Question 1: When applying for a repair station certificate, the applicant can include either a repair station manual or a quality control manual.

A—True.

B—False.

Question 2: An applicant for a repair station certificate and rating does not need to actually own the equipment required for certification or rating approval.

A—True.

B—False.

Question 3: An applicant may use the repair station certificate and/or rating for the purpose of maintaining U.S.-registered aircraft OR foreign-registered aircraft operated under the provisions of part 121 or part 135.

A—True.

B—False.

Question 4: An application for an additional rating, amended repair station certificate, or renewal of a repair station certificate must include as much information as the applicant can readily make available.

A—True.

B—False.

ARSA Regulatory Compliance Training—Answers

Correct answers are in **bold**

Part 1: General Comprehension

Level 1: For anyone working in aviation

§ 145.51: Application for certificate.

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(b) The equipment, personnel, technical data, and housing and facilities required for the certificate and rating, or for an additional rating must be in place for inspection at the time of certification or rating approval by the FAA. An applicant may meet the equipment requirement of this paragraph if the applicant has a contract acceptable to the FAA with another person to make the equipment available to the applicant at the time of certification and at any time that it is necessary when the relevant work is being performed by the repair station.

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| <p>Question 1: When applying for a repair station certificate, the applicant can include either a repair station manual or a quality control manual.</p> | <p>Question 2: An applicant for a repair station certificate and rating does not need to actually own the equipment required for certification or rating approval.</p> |
| <p>A—True.</p> <p>B—False. (The applicant must include both the repair station manual and the quality control manual)</p> | <p>A—True. (A contract acceptable to FAA making the equipment available to applicant may be sufficient to meet the equipment requirement)</p> <p>B—False.</p> |
| <p>Question 3: An applicant may use the repair station certificate and/or rating for the purpose of maintaining U.S.-registered aircraft OR foreign-registered aircraft operated under the provisions of part 121 or part 135.</p> | <p>Question 4: An application for an additional rating, amended repair station certificate, or renewal of a repair station certificate must include as much information as the applicant can readily make available.</p> |

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A—True. (The applicant must prove that the certificate and/or rating is necessary to maintaining either U.S.-registered aircraft OR foreign-registered aircraft operated under part 121 or part 135)

B—False.

A—True.

B—False. (The application must include only the information necessary to substantiate the change or renewal of the certificate)

Name _____ Date _____
Clearly Print the Name of the Person Taking the Test Date Test was Completed

Score _____ Hours _____
Enter as x (number correct) of y (number of questions) Time Credited for Test

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