



Aeronautical Repair Station Association

since 1984

***the hotline***

***October 2013***

## Latest News

### ***Sarah Says: On Planned Growth***

*By Sarah MacLeod, ARSA executive director*

The Aeronautical Repair Station Association (ARSA) formed because of a request from ten repair stations to use the Federal Aviation Administration (FAA) Form 8130-3 for Department of Commerce (DOC) export purposes (instead of having to fill out a DOC form). The association's original board and staff were dedicated to regulatory compliance issues. ARSA became known to the FAA and the European Aviation Safety Agency because of comments to dockets and suggestions for improvement to rules and bilateral agreements. Involvement in long-range issues such as legislative defense or public relations was not contemplated during the first fifteen years of ARSA's existence.

However, during the last ten years, ARSA's brand of substantive knowledge and work has been visited upon the Congress, the international civil aviation community and the media. Most measures have been taken on an as-needed basis and in a reactive manner. While the results are that the association now provides its members and the industry with a multitude of services for an affordable price, the current response methodology is not the most efficient or effective way to run the organization. Since more members and industry support equates to a better return on investment for the association and its supporters, more comprehensive proactive measures are necessary. Additionally, the more successful the association becomes the more it is expected to achieve.

To do more without overtaxing the membership, the association's board directed the creation of Vision 20/20—a strategic plan for future services and accomplishments. While ARSA has had strategic plans in the past, this one will be fully available to members when approved by the board. The ability to perform more services while realigning priorities to meet long-term goals is the result of maturation. The association is not only here to stay, it is planning success in a measured and reportable manner. Since the plan will have definitive metrics to track and report, the success or failure will be obvious, ensuring adjustments can be made rapidly and effectively.

During the development of the strategic plan, it became clear that the association could not and would not be all things to all people. ARSA's focus has to be on enabling good government for the business success of the independent civil aviation maintenance industry. That recognition does not eliminate the key roles played by the original design and production approval holders (those pesky "OEMS"), the operators and other maintenance providers. ARSA will continue to question the agencies and the industry on the proper role of regulations and the association's knowledge will be provided to the legislators and media with vigor. The point of getting older is to do things wiser and with less waste—a good plan is part of that endeavor.

## ARSA Comments on FAA Standardization Delays

Today, the House Subcommittee on Aviation conducted a hearing titled “Review of FAA’s Certification Process: Ensuring an Efficient, Effective, and Safe Process.” The purpose of the hearing was to review progress the FAA has made in implementing provisions from the FAA Modernization and Reform Act of 2012 that require the agency to address inconsistencies with regulatory interpretations and streamline its certification process.

Specifically, Sec. 313 required the agency to convene an advisory panel to determine the root causes of the FAA Flight Standards Service’s and Aircraft Certification Service’s inconsistent interpretation of regulations and develop recommendations to standardize the application of aviation safety rules.

In its statement to the subcommittee, ARSA highlighted the report made by the advisory panel (Consistency of Regulatory Interpretation Aviation Rulemaking Committee) as well as the lack of progress in implementing the recommendations. An excerpt of ARSA’s statement is below:

*“Despite ARC 313’s specific recommendation for a single source of regulatory compliance information that would include not only the regulation and its preamble, but also internal and external guidance (orders, handbooks, advisory circulars, legal interpretations, court decisions, etc.), the FAA’s report to Congress merely “kicks the can down the road.” The agency states that consolidation of its regulatory compliance information would be problematic due to lack of resources to sort through the existing information and eliminate duplicity and inconsistency. The FAA’s wish to “study” methodologies and existing databases to determine which would be most compliant with the recommendation is an example of the agency overcomplicating an ongoing issue rather than seeking an immediate, medium- and long-term solution.*

*The industry cannot wait for the agency; ARSA has developed a simple excel spreadsheet to test a process of consistent issue resolution. That spreadsheet will be used in conjunction with the FAA’s Consistency and Standardization Initiative to refine a regulatory compliance database capable of gathering readily available interpretative material as well as later-discovered information. By constant monitoring and updating, the library will continue to grow while inconsistent, duplicative and incorrect information is identified for change or elimination.”*

[To review ARSA’s complete statement, please click here.](#)

ARSA Vice President of Communications, Policy & Planning Eric R. Byer, who also co-chaired the Consistency of Regulatory Interpretation Aviation Rulemaking Committee, commented on the continuing delays by the FAA in implementing the advisory panel’s recommendations [via the association’s blog.](#)



The hotline is the monthly publication of the aeronautical Repair Station Association (ARSA), the not-for-profit international trade association for certificated repair stations. For a membership application, please call 703.739.9543 or visit [www.arsa.org](http://www.arsa.org).

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## ***New DHS Secretary Nominated, ARSA Eager for Repair Station Security Rule***

On Oct. 17, the White House announced President Obama will nominate Jeh Johnson for secretary of the Department of Homeland Security (DHS). Johnson, a former general counsel for the Department of Defense, will take over for Secretary Janet Napolitano, who left office in September to become president of the University of California system.

Upon Senate confirmation, Johnson will oversee programs including the Transportation Security Agency (TSA) and dictate finalizing the overdue repair station security rule. The TSA's inaction on this issue means the Federal Aviation Administration (FAA) still faces a moratorium on certificating foreign aviation repair stations that has plagued the industry since 2008.

"The TSA is repeatedly missing deadlines on this rule, costing the U.S. repair stations looking to expand millions of dollars in lost potential revenue. We have high hopes the new DHS secretary will come into office ready to lead so we can finally get the rule done," said Christian A. Klein, ARSA's executive vice president. "We look forward to working with Johnson and his team to ensure they understand that our members are committed to safety and security, regardless of whether federal regulators are looking over their shoulders."

In 2003, Congress first mandated the 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 the TSA didn't comply.

Stay tuned to ARSA as Johnson goes through the confirmation process.



## ***Aviation Maintenance Leaders Analyze Landscape of Industry***

Executives from aviation maintenance companies around the world convened in Washington, D.C. today to hear how industry, regulatory, and legislative changes will impact their bottom lines in 2014.

The Aeronautical Repair Station Association's (ARSA) annual Strategic Leadership Conference (SLC) kicked off last night with a dinner and reception featuring House Aviation Subcommittee member Reid Ribble (R-Wis.), who discussed the latest legislative issues under consideration by his panel. This morning, U.S. Department of Transportation Principal Assistant Inspector General for Auditing and Evaluation Lou Dixon delivered the group's keynote address, focusing on the department's audits to ensure the efficiency and effectiveness of the Federal Aviation Administration's safety programs.

A regulatory panel, featuring high-level figures at the Transportation Security Administration and Airlines for America, zeroed in on the latest regulatory and security issues confronting the MRO industry. The second discussion group provided insights from some of Washington's most experienced aviation lobbyists, who discussed current legislative issues affecting the maintenance community. The final segment, led by ARSA Vice President of Communications, Policy & Planning Eric Byer and Executive Vice President Christian Klein, analyzed what the association is doing to capitalize on the Positive Publicity Campaign's victories and what members can do to spread the message of the industry's contributions to safety.

"Aviation maintenance is a dynamic sector constantly adjusting to meet the needs of a growing global market," said Klein. "ARSA's SLC is the only program of its kind to keep the industry's leaders abreast of what's happening in Washington so they can focus more on the important things: business and continued safety."

## ***Government Shutdown Ends, Crisis Averted...For Now***

On Oct. 16, the House and Senate approved legislation ([H.R. 2775](#)) to end the two-week federal government shutdown and permit increasing the debt ceiling. President Obama signed the bill into law almost immediately after it was sent to his desk.

While the continuing resolution (CR) sets discretionary funding at an annualized rate of about \$986 billion, slightly less than the fiscal year 2013 levels after the Budget Control Act's automatic spending cuts (sequestration), the CR increases the Federal Aviation Administration (FAA) operations budget \$100 million higher than the post-sequestration rate (annualized rate at \$9.248 billion). Additionally, the debt ceiling is suspended through Feb. 7, 2014. However, government funding once again expires on Jan. 15, 2014, setting up another showdown early next year.

The deal also requires the House and Senate to appoint conference committee members to negotiate a budget framework by mid-December.

Unfortunately, reopening the federal government doesn't ameliorate the hit ARSA members took during the shutdown. Sixty-one percent of respondents to an [ARSA survey](#) reported experiencing delays due to the FAA's limited resources. Repair stations cited difficulty accomplishing basic requirements such as completing corrective actions assigned during customer pre-award audits and waiting on manual approvals by flight standards district offices. Of those able to calculate the cost of lost productivity due to FAA delays, some repair stations estimated losing \$2,000 each day the government's doors were closed while others expect the interruption's expense to exceed \$100 million.

With the possibility of another shutdown in January, ARSA will continue to educate lawmakers about how not providing the FAA the resources to fulfill congressional mandates has a detrimental impact on the small-to-medium-sized business-dominated aviation maintenance industry.

To see how your House member voted on the CR, [click here](#).

To see how your Senator voted on the CR, [click here](#).

## ***Federal Register Proposes IBR Rule***

On Oct. 2, the Office of the Federal Register (OFR) issued a [proposed rule](#) to update the requirements for incorporation by reference (IBR). The proposal follows the OFR's review of comments to a [petition for rulemaking](#) submitted to the agency last year. An IBR makes materials not published in the Code of Federal Regulations (CFR) but cited in a rule binding. This most often negatively affects the civil aviation community when Airworthiness Directives IBR manufacturer service instructions that are not publicly available.

In April, ARSA submitted [comments](#) pointing out the inadequacies of the current IBR framework. The association noted IBR materials often include unrelated tasks and information, creating uncertainty and making it difficult to establish or enforce compliance. Additionally, essential information is not always supplied through each phase of rulemaking, inhibiting industry participation in the regulatory process.

While the proposal did not incorporate ARSA's recommendation that all information essential to compliance be made available online for free to ensure parties affected can adhere to regulations containing IBR material, the rule would compel agencies to explain incorporated materials in the rulemaking preambles including a discussion of the actions taken to ensure that IBR materials are "reasonably available" to interested parties.

ARSA is in the process of reviewing the proposed rule and will submit comments by the Dec. 31 deadline.

## *Fall Webinars Cover Variety of Government Regulations*

The fall lineup of online training webinars hosted by ARSA covers a wide range of governmental issues that aviation businesses face regularly. On Wednesday, November 6, ARSA Executive Director Sarah MacLeod hosted a webinar on **Answering a Letter of Investigation**. The training session reviewed the regulations, policies and procedures that generate letters of investigation and the best methods for responding to governmental questions.

Following that, on Wednesday, November 13, ARSA Managing Director & General Counsel Marshall S. Filler will host a webinar titled **Public Aircraft Primer** which explains the statutory provisions and FAA guidance governing public aircraft operations. It covers the basic requirements for an aircraft to be operated as a public aircraft on behalf of federal, state and local governments, including the difference between government-owned and government-leased aircraft, what constitutes an eligible governmental function and the practical implications of using the same aircraft to conduct both civil and public operations. It also discusses the recent FAA policy regarding operations conducted under contract for a government entity.

To register for any of these upcoming webinars, [click here](#). For any of ARSA's previously recorded online training sessions, [click here](#).

## *House Gears Up to Strengthen Aviation Security*

On Oct. 29, the House Homeland Security Committee approved legislation that would enable the aviation industry to offer greater feedback on the development and implementation of policies, programs, rulemaking, and security directives.

The Aviation Security Stakeholder Participation Act ([H.R.1204](#)) introduced last March by Rep. Bennie Thompson, D-Miss., would establish an Aviation Security Advisory Committee within the Transportation Security Administration (TSA). The committee, broken down into four subcommittees (Air Cargo, General Aviation, Perimeter Security, and Risk-Based), would provide recommendations to the TSA on ways to remove redundancies and apply a more targeted approach to improving the security of our nation's aviation network.

ARSA's legislative team played a leading role in getting Rep. Richard Hudson, R-N.C., to submit an [amendment](#) including repair stations as participants on the advisory panel. The Homeland Security Committee approved the amendment along with the bill, which will likely be sent to the House floor for a vote in the near future.

Stay tuned to ARSA as the story develops.



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## ***Deviation(s) to FAA Orders 8100.8, 8100.15, and 8120.23 Issued***

On Oct. 24, the Federal Aviation Administration's (FAA) Aircraft Certification Service and Flight Standards Service Offices issued a memorandum allowing field office personnel to extend deadlines for recurrent training and requisite oversight duties. Requirements that were due to be completed in October 2013 may now be granted extensions through January 31, 2014.

According to the FAA:

"This extension is at the discretion of the FAA and is based, among other factors, on the acceptable performance of the individual designee or organization. If notified by the responsible AIR or AFS office, designees and organizations that are due for renewal in the month of October may continue to perform their authorized functions through January 31, 2014. This is not an automatic extension. Please assure that your affected members do not assume that they have the extension. If there is a question as to whether this extension applies to a specific designee or organization, and they have not heard from the responsible FAA office, the designee or organization please encourage them to contact their respective FAA office to inquire as to their status."

To review this memo, [please click here](#).

## **Blogs**

### ***FAA Standardization: Complicating What Is Simple***

*By Eric Byer, ARSA vice president of communications, policy and planning*

Recently, a congressional panel will (among other things) review the Federal Aviation Administration's (FAA) plan to implement the recommendations issued by the FAA Consistency of Regulatory Interpretation Aviation Rulemaking Committee (CRI-ARC) that Sarah MacLeod and I served on for over 18 months.

Without boring you, the main thrust of the CRI-ARC was a recommendation to unite regulatory materials into one centralized, master database available to all. Guidance, letters, interpretations and all other advisory material related to a regulation would be consolidated and cataloged within this master database. By having one centralized, master database, the burden to secure consistent application of regulations would be reduced dramatically because all parties would utilize the same resource. Pretty simple concept, correct? Not so fast; this is the government we are dealing with here, folks.

After the CRI-ARC issued its recommendations, the FAA had to provide its congressionally-mandated strategic plan to implement the items outlined in the report. While there is certainly good intent to accomplish fruition, especially the master database, the fact is the FAA strategic plan does nothing but overly complicate recommendations that are meant to accomplish the exact opposite. The plan includes studies to review studies and proposals to develop more plans; it regularly highlights the lack of resources to execute the recommendations.

The folks at the FAA who served on the CRI-ARC and developed this plan are indeed wanting to standardize regulatory interpretations. FAA leadership must recognize the CRI-ARC's recommendations serve as a means to ease the financial and resource burden on both the agency and industry.

Change is never easy. This is why we have federal bureaucracies that only know how to kick the can down the road, not accept change as the means to resolving problems. It is time for 800 Independence Avenue to stop complicating a report that ultimately set out to achieve one primary mission: simplification.

# ***Private Businesses Get Stiffed With Government Shutdown***

*By Eric Byer, ARSA vice president of communications, policy and planning*

One of the cold, hard facts about government shutdowns is they really aren't "closed." Yes, non-essential government employees are technically "furloughed" but the Congress ultimately ends up paying them for that lost time. Call it congressional guilt.

And the private businesses that rely upon those employees for certain services during the shutdown? Well, they get stiffed. These businesses come to a grinding halt as federal employees are not available to perform certain services. When the government resumes operations, these businesses are not compensated for the time the agencies were shut down as federal employees are.

Who's to blame? Congress and the White House.

I have an easy solution to the whole problem. Every Member of Congress and senior member of the Obama administration should have to donate a year's salary to be put into a pool from which the Small Business Administration would issue grants to small businesses reliant upon government services during the shutdown. Maybe this would teach the President and Congress to recognize this is not a game of Monopoly with fake money. These shutdowns cripple small businesses and stunt economic growth and development.

Remember this shutdown during the mid-term elections next year. Those on Capitol Hill need to be held accountable.

## ***Taking Control***

*By Sarah MacLeod, ARSA executive director*

According to reports, the Federal Aviation Administration's Aviation Safety organization is operating with reduced numbers. For design and production services (Aircraft Certification Services—AIR) that means about 100 employees; for Flight Standards Services (AFS) there are about 200 personnel system-wide. AIR has not halted airworthiness directives but all other activities are virtually at a standstill. The registry is shut down, and Special Flight Authorizations (ferry permits) and import/export activities are suspended.

There should be a bang-up business going on for persons with delegated authority—designated airworthiness representatives, designated engineering representatives and the like. 14 Code of Federal Regulations (CFR) part 183 contains the requirements and power for the FAA to issue delegations of authority to individuals and companies. While the process for obtaining a delegation is slow and painful, when granted within the proper parameters the ability to issue approvals and authorizations without the direct involvement of an FAA employee is essential to the continued operation of a business. We can all stand by and complain because the government we paid for is failing to perform to expectations; that, however, does not get the flight permit or data approved. The government has never been as accountable as a private person or company. When business interests depend solely on an administrative entity that does not allow itself to be sued or questioned without retribution or enormous cost, the risk for failure is extremely high.

Taking control of a company's destiny within a regulated environment requires knowledge and persistence in obtaining the tools necessary for uninterrupted viability. Anyone needing the intervention of a government employee to ensure the continued operation of a business must seriously consider the alternatives available from the regulations. Delegations of authority under part 183 is a great place to start your search for control against, if not independence from, the vagaries of government.

[Please take a moment to complete ARSA's survey on the government shutdown.](#)

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## Legal Briefs

### *Aircraft Parts: Regulations Impacting the Sale*

Title 14 Code of Federal Regulations (C.F.R.) part 3 is short and to the point; it only has two sections. Section 3.1 simply states the part applies to any *person* (which means an individual or a company; see the § 1.1 definition of person) who makes a *record* regarding the sale or advertisement of a type-certificated *product* or a product part, appliance, or material that may be used on a type-certificated product.

Section § 3.5(a) defines the term “product” as an aircraft, aircraft engine, or aircraft propeller. The section also defines “record” as basically any conveyance of information about a civil aviation article, including a part number or marking. Although not specifically defined in part 3, “type-certificated” means the product has a design approval from the FAA in the form of a type certificate.

With applicability and terms defined, the substantive elements prohibit any person from making or forcing someone else to make fraudulent and intentionally false statements (§ 3.5(b)(1)), fraudulent or intentionally false copies or alterations (§ 3.5(b)(1)) and intentionally misleading statements (§ 3.5(c)(1)) or omitting material details (§ 3.5(c)(2)) when conveying information. The prohibitions extend to any statement or omission that relates to the airworthiness of a type-certificated product or the acceptability of any product, part, appliance, or material for installation on a type-certificated product.

The elements necessary to show intentional falsification are: (1) a false statement about a material fact; (2) knowledge that the statement is untrue; and (3) intent to deceive. Fraud comprises those same three elements plus (4) justifiable reliance on the false statement; and (5) resulting harm.

For omissions and intentionally misleading statements, the test is whether the statement is likely to mislead a consumer acting reasonably under the circumstances. In either case, there is no violation if a person can show the product is airworthy or the product, part, appliance or material is acceptable for installation on a type-certificated product (§ 3.5(d)).

Also, the fraudulent or intentionally false provision in § 3.5(b) does not apply to part 43 records (§ 3.1(b)) since § 43.12 prohibits fraudulent and intentionally false statements in maintenance records (i.e., it would result in the same, or similar, charges). However, maintenance records used in sales or advertisements will be subject to scrutiny for omissions or intentionally misleading information under part 3.

There are other regulations specific to transfers of life-limited parts (§ 43.10) and aircraft (§ 91.419), along with U.S. State Department and U.S. Department of Commerce requirements for the sale of “dual use” (i.e., military and civil) parts. In addition, U.S. laws that prohibit the transmission of falsified records or conspiracies to perform illegal acts may apply. Many states have similar laws.

# ARSA on the Hill

By Daniel Fisher, ARSA vice president of legislative affairs

In October, ARSA's legislative team continued implementation of the "[lift the ban](#)" lobbying effort, including working with targeted lawmakers representing districts consisting of interested constituents. Simultaneously, the association continues to engage Capitol Hill allies to pressure the Office of Management & Budget and the Department of Homeland Security to finalize repair station security rules.

Working with Rep. Richard Hudson, R-N.C., the legislative team secured the participation of repair stations on the Aviation Security Advisory Committee, which has been proposed in the Aviation Security Stakeholder Participation Act ([H.R.1204](#)). The legislation, approved by the House Homeland Security Committee on Oct. 29, contains an [amendment](#) introduced by Hudson to ensure repair stations have a seat at that table should Congress enact the bill. It is expected to be approved by the House in the near future and sent to the Senate for consideration.

The association executed a legislative panel discussion during the Strategic Leadership Conference and coordinated the participation of House Aviation Subcommittee member Rep. Reid Ribble, R-Wis., as the reception speaker.

ARSA PAC continues to encourage support from those who have given prior consent. Twenty-one individuals have given \$7,240 so far this year.

## Regulatory Outlook

### *Final Documents/Your Two Cents*

This list includes Federal Register publications, such as final rules, Advisory Circulars, and policy statements, as well as proposed rules and policies of interest to ARSA members. *Read more 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.*

### *How Does "Honest Belief" Work?*

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

Employers can prevail in lawsuits alleging termination contrary to the Family and Medical Leave Act (FMLA) by using an "honest belief" defense. Two different cases with similar facts and reasoning are instructive.

In both cases the employee used intermittent leave for chronic back pain; each sought FMLA leave when the pain became severe. Both employers initiated an investigation based on the employees' potential abusive pattern of requesting FLMA leave.

In one case, the employee's physician stated the exacerbated pain was not predictable. However, the employee would often provide several weeks advanced notice of the need for FMLA leave. The supervisor and co-workers also noticed the tendency to take FMLA leave on Friday's and weekend days when he was scheduled to work, which resulted in three- or four-day weekends.

The company hired a private investigator to observe and record activities of the employee during FMLA leave. The report established the employee had engaged in activities inconsistent with serious back pain – including working in a garage bending down and lifting pieces of wood. The company provided the report and video to an outside medical consultant who concluded the activities were “inconsistent with the physical behavior typical of someone with incapacitating back pain.” Since the company demonstrated it had an honest belief the employee had abused FMLA leave, the court upheld the termination.

In the second case, a physician certified the employee could not reasonably report to work on days when she suffered severe pain. She had been diagnosed among other conditions with osteoarthritis. However, her supervisor began to notice that whenever the employee's annual FMLA benefit had been exhausted she wouldn't call in sick until the leave balance recovered. She also requested leave before and after scheduled days off, but did not call in sick on premium pay shift days. Finally, she scheduled FMLA leave on a Saturday following an off-day Thursday and a vacation-day Friday. Since she was not scheduled to work on either Sunday or Monday of the next week, she gave herself five consecutive days off.

The company hired a private investigator to observe, record and report her activities during scheduled FMLA leave. The investigator's logs and videotape were reviewed by a company-retained physician who stated the employee could have certainly performed her job duties on the days she had been observed. On one occasion, for example, the employee took a two- hour car trip.

The company also confirmed the employee had used FMLA leave on six consecutive Saturdays to attend classes at her church. When confronted, the employee explained she had attended church on Saturday to “receive prayer.” The court upheld termination, concluding there was no need to determine whether the employee had actually abused her FMLA leave. It was only necessary to show the company had an honest belief the employee had done so.

There are a number of lessons to learn from these cases:

- Pay attention to employees who routinely use FMLA leave on an intermittent basis. Watch for a pattern that suggests abuse — for example, if the employee works on a shift basis and can schedule FMLA leave to coincide with other scheduled days off.
- If a pattern indicates potential abuse, confirm those suspicions with logs and video. Hiring an independent investigator provides the best evidence as well as a creditable record for the independent medical review.
- The final step in the development and use the “honest belief” defense is for a medical expert to determine the employee could have performed the job duties on the FMLA leave dates.



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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!](#)

# ***TKC v. Napolitano – A Case Study in Maintenance Responsibility***

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

*Steven is a counselor to businesses operating in high-risk industries, including aviation. He provides templates, tools, and training to improve contracting efficiency, close deals faster, and control costs.*

Aircraft operators are generally familiar with the requirements for “scheduled” or “depot” maintenance on their airframe and engine(s). Technical requirements are in production approval holder and original equipment manufacturer maintenance manuals; operator compliance helps ensure continued airworthiness under Federal Aviation Administration (FAA) regulations.

“Day-to-day” or “routine” maintenance is another side to the airworthiness coin. It is widely accepted that these activities will be performed by FAA-certificated mechanics pursuant to the latest maintenance manuals and accepted industry practices. The mechanics may be employed directly by the operator or by another maintenance provider. In either event, certificated entities are very familiar with their responsibilities to the FAA for performing and recording maintenance properly no matter the title used for the particular activity.

A recent non-precedential opinion in a federal appeal (*TKC Aerospace, Inc. v. Napolitano* (Fed. Cir., 2013)) illustrates how contract language can determine responsibility for maintenance actions, no matter the FAA obligations.

In 2005, TKC Aerospace, Inc. (TKCA) and the U.S. Coast Guard entered into an aircraft lease. As part of the contract, the Coast Guard selected an option to perform day-to-day maintenance with its own personnel; the contract set forth an on-site TKCA maintenance coordinator tasked to “monitor” the work. Scheduled maintenance was to be accomplished under a separate agreement between TKCA and Bombardier, without cost to the Coast Guard.

In 2008, during scheduled maintenance, Bombardier discovered and repaired a small amount of corrosion damage in the aircraft’s seat tracts. In 2009, Bombardier discovered more extensive corrosion beneath the carpet and around the same seats. TKCA had Bombardier make the necessary repairs and the aircraft was approved for return to service in January 2010.

In April 2010, TKCA received a letter from the Coast Guard that it would withhold approximately \$500,000 because the aircraft was unavailable due to required corrosion repairs. TKCA countered that the corrosion was the Coast Guard’s fault as it should have discovered and corrected the discrepancy under its day-to-day maintenance responsibilities. Further, TKCA demanded credit for the downtime and reimbursement for the corrosion repair performed by Bombardier.

The contracting officer denied the counterclaim by TKCA, as did the Civilian Board of Contract Appeals in a subsequent appeal. Ultimately, the Federal Court of Appeals noted:

*“[T]he Board concluded that responsibility for repairing the damage fell on TKCA [a]s part of Bombardier’s depot maintenance program.’ The Board found that ‘TKC was responsible for all maintenance of the aircraft’ under the contract, even if Coast Guard personnel were performing some of it. In support of that conclusion, the Board noted that TKCA had assumed responsibility for the 2009 corrosion repair until after the Coast Guard assessed it for the aircraft’s downtime during the repair period.”*

Under an FAA analysis, the certificated persons performing the work are responsible for completing and recording it properly; however, a contract can turn that obligation on its head. In the final analysis, the on-site TKCA representative’s stated monitoring obligation carried the day on the question of maintenance responsibility despite the fact that Coast Guard personnel were performing the work.

Please feel free to contact me by email if you would like a copy of the decision. It is well worth reading in its entirety.

# Membership

## ***Member Spotlight: Turbine Controls, Inc. – Bloomfield, Connecticut***

Turbine Controls, Inc. (TCI) is an FAA-approved repair station with more than 30 years of expertise. TCI focuses on the overhaul and repair of components and accessories for commercial, military, industrial and airframe applications.

The Connecticut-based company provides a wide range of capabilities including fuel, oil, and pneumatic applications in addition to sub-assembly component repair. TCI also performs machining and grinding to plasma, welding, shot peening, painting and blasting. The maintenance provider also has in house non-destructive testing for both rotating and static engine components. TCI's unique combination of accessory and engine component repair provides customers with a unique one stop alternative to fulfill many of their maintenance requirements.

TCI has been an ARSA member for 25 years. For more information, visit <http://www.tcimro.com>

*Are you an ARSA member who would like to be in the "Member Spotlight?" If so, please contact Matt McKinney at [matthew.mckinney@potomac-law.com](mailto:matthew.mckinney@potomac-law.com).*

## ***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 Rep. Frank LoBiondo, R-N.J., chairman of the House Transportation & Infrastructure (T&I) Subcommittee on Aviation.

### ***Sen. Jay Rockefeller III, chairman of the Commerce, Science & Transportation Committee***

Jay Rockefeller III was first elected as a U.S. Senator from West Virginia in 1984. He is currently serving his fifth term but has announced he will not run for reelection in 2014.

As chairman of the Commerce, Science & Transportation Committee, Rockefeller has embraced a broad agenda that includes protecting consumers, improving the economy, heightening the nation's security, building technology infrastructure and promoting transformative research.

In addition to the Commerce Committee, he is also chairman of the Health Care Finance Subcommittee and serves on the Select Committee on Intelligence where he worked as chairman from 2007-2009 and vice chairman from 2003-2007. He also sits on the Veterans' Affairs Committee.

Rockefeller graduated from Harvard University in 1961 with a B.A. in Far Eastern Languages and History. In 1966, he was elected to the West Virginia House of Delegates and to the office of West Virginia Secretary of State in 1968. He served as president of West Virginia Wesleyan College from 1973 to 1976. Following his tenure at Wesleyan, Rockefeller was elected governor of West Virginia for two terms.



## ***A Member Asked...***

**Q:** *How do repair stations typically deal with the duty time limitations in section 121.377 when performing work for air carriers? Is there a standard rule of thumb? Specifically, is the rule being applied to supervisory personnel who are directly in charge of maintenance?*

**A:** Starting with your second question, the standard rule of thumb should be the regulations! A repair station should clearly differentiate supervisory and directly in charge of maintenance functions from performing the work. The duty time limitation of section 121.377 does not apply to supervisory or directly in charge functions provided no actual work is performed. However, if a supervisor or person directly in charge of maintenance performs maintenance, preventive maintenance or alterations for an air carrier, the duty time limitations apply to those working hours or days.

## ***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. *Read more at <http://arsa.org/training-2/online-training/>.*



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!](#)**

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## ***Target Your Message: 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/>.*

## ***Exhibit, Sponsor 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-symposium/arsa-annual-repair-symposium-sponsorship/>.*

## **AVMRO**

### ***Aviation Maintenance Resource Site Takes Flight***

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### ***AVMRO Industry Roundup***

*ARSA monitors media coverage on aviation maintenance to spread the word about the valuable role repair stations play in their communities by providing jobs and economic opportunities and in civic engagement. These are some of this month's top stories highlighting the industry's contributions.*

[Metro Aviation Expands New Training Center](#) (*RotorNews*)

[AAR Surpasses Hiring Goal for New Duluth Aircraft Maintenance Facility](#) (*Northlands News Center*)

[Building Waiver to Allow Growth of Tucson Aircraft-Repair Firm](#) (*Arizona Daily Star*)

[Landmark Aviation Completes Purchase of Hangar Space at Smith Reynolds Airport](#) (*Winston-Salem Journal*)

[Aviation Companies Unite to Open Williston Jet Center](#) (*The Bakken Magazine*)

[AAR Gives Students Glimpse of Aviation Education, Careers](#) (*RotorNews*)

[MTU Maintenance Dallas Opens New Facility and Signs Contracts for Engine Storage](#) (*AviTrader*)

[HondaJet to Open Customer Service Facility in NC](#) (*Bloomberg Businessweek*)

[Alaska Airlines Dedicates Aircraft to Nation's First College Preparatory, Aviation-Themed High School](#) (*eTurboNews*)

[Three-Week Aviation Mechanics Class Offered at Big Bend College](#) (*iFiberOne News*)

[Western Jet Aviation Opens Reno Location](#) (*AINonline*)

[Dallas Aeronautical Services Breaks Ground on New 50,400 Sq. Ft. Facility](#) (*DOM Magazine*)

# International News

## *Ukraine Complies with Strictest ICAO Standards*

Recently, the Federal Aviation Administration (FAA) [announced](#) that Ukraine now adheres to safety standards set by the International Civil Aviation Organization, based on the results of a July FAA review of the country's civil aviation authority.

The FAA upgraded the eastern European country to Category 1, meaning Ukraine conforms to the highest safety standards. The nation's air carriers can now add flights and services to the United States. Ukraine was downgraded to Category 2 in 2005 because the country either lacked laws or regulations necessary to oversee air carriers in accordance with minimum international standards or the civil aviation authority was deficient in one or more areas.

Under a Category 2 rating, a country's airlines are allowed to maintain existing service to the United States but cannot establish new services. Ukraine does not currently provide services to the United States, meaning the country was unable to expand into the American market as a Category 2 nation.

## *International Roundup*

*To provide more international coverage, ARSA presents a monthly roundup of world events pertaining to the industry:*

[Haeco Buys Timco for \\$389 Million to Expand Maintenance](#) (*Bloomberg*)

[SriLankan Commissions a New A320 Hangar](#) (*News 360*)

[Najib: New Airbus Customer Services Facility Will Put Malaysia on International Map](#) (*Economic Transformation Programme*)

[ICAO Assembly Reaches Aviation Emissions Accord](#) (*Air Transport World*)

[MRO Firms at Full Throttle to Serve Domestic Market](#) (*Jakarta Post*)

[Flying Colours Breaks Ground on Phase 1 of a \\$3.5m Expansion Plan](#) (*AviTrader*)

[Lufthansa Technik Malta Expands Overhaul Capacity](#) (*AviTrader*)

[ST Aerospace Books \\$600 Million in New Orders in 3Q](#) (*Air Transport World*)

[BBA Aviation's Ontic Strengthens MRO Support](#) (*AInonline*)

[New Commercial Aircraft Maintenance Agreement Expands BAE Systems' Presence in Asia](#) (*The Wall Street Journal*)

# Welcome New Members

Robert Ross, Charlottesville, VA

[Meggitt, Inc.](#), Irvine, CA

[Aero Tire & Tank](#), Farmers Branch, TX

## Regulatory Compliance Training

[Test your knowledge on §145.59 Ratings.](#)

## Upcoming Events

[International PMA Summit](#) – London, UK –  
Nov. 8-9, 2013

[AMT Society IA Renewal Training Seminar](#)  
(Sarah MacLeod presenting) – Houston, TX –  
Nov. 20, 2013

[AVM Summit, USA](#) (Marshall Filler presenting)  
– Orlando, FL – Nov. 21-22, 2013

[AMT Society IA Renewal Training Seminar](#)  
(Marshall Filler presenting) – Atlanta, GA –  
Jan. 8, 2014

[AVM Summit, Europe](#) – London, UK – Jan. 21-  
22, 2014

[MRO Middle East](#) – Dubai, UEA – Feb. 5-6,  
2014

[AMT Society IA Renewal Training Seminar](#)  
(Sarah MacLeod presenting) – Kansas City,  
MO – Feb. 12, 2014

[AMT Society IA Renewal Training Seminar](#)  
(Sarah MacLeod presenting) – Aurora, CO –  
March 5, 2014

[ARSA Annual Repair Symposium and  
Legislative Fly-In](#) – March 19-21, 2014

[AMT Society IA Renewal Training Seminar](#)  
(Sarah MacLeod presenting) – Las Vegas, NV  
– March 25-26, 2014

[AMT Society IA Renewal Training Seminar](#)  
(Sarah MacLeod presenting) – San Antonio,  
TX – April 5, 2014





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