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## **Don't Punish Maintenance Industry for FAA Rulemaking Delays**

ARSA is the trade association representing the aviation maintenance and manufacturing industry. More than 288,000 Americans work in our sector, which contributes more than \$50 billion annually to the U.S. economy.<sup>1</sup>

### ***Congressionally-Mandated Rulemakings Present Challenges for the FAA***

Past FAA authorization laws have directed the agency to undertake rulemakings to extend drug and alcohol (D&A) testing to foreign repair stations and require pre-employment background investigations for all repair station employees performing safety-sensitive functions on air carrier aircraft.<sup>2</sup>

Crafting D&A rules for foreign repair stations is no easy task and presents both legal and practical challenges. A sampling of the issues confronting the FAA were laid out in the agency's advanced notice of proposed rulemaking on the subject issued in 2014.<sup>3</sup> For example, the congressional mandate directs that testing programs be consistent with the laws of the country in which the repair station is located. This principle is important because some countries' laws prohibit or limit random drug testing. A one-size-fits-all testing requirement would have forced repair stations in those countries to surrender their certificates. This would have caused massive disruptions for U.S. air carriers that rely on foreign repair stations for maintenance services when operating internationally and significant economic losses for U.S. companies that own facilities abroad. The FAA must also consider International Civil Aviation Organization activity in this area. The task Congress has given the FAA is to craft a rule that establishes consistent standards that can be applied in every country in which FAA-certificated repair stations are located. Congress should recognize that doing so properly will take time.

The pre-employment background investigation requirement poses similar challenges. The congressional mandate requires pre-hiring background screening for employees performing safety-sensitive functions on air carrier aircraft at all repair stations, not just those located outside the United States. Transportation Security Administration (TSA) rules already require criminal background checks for those with unescorted access to designated security areas at air carrier airports as well as previous employment checks for those responsible for implementing repair station security measures. Aside from creating redundancies and possibly contradictory requirements, the new rules mandated by Congress will impose additional costs, not just on the roughly 4,940 FAA-certificated repair stations, but likely also on every contractor and subcontractor those facilities use to provide specialized services. Because more than 80 percent of the companies in our sector are small and medium-sized entities<sup>4</sup>, the rules will disproportionately impact small businesses.

If Congress truly believes the risks warrant agency action in these areas, Congress should give regulators the time necessary to get the job done right and consider how best to fulfill the congressional mandates while causing the least possible disruption for the aviation maintenance industry's thousands of small companies and hundreds of thousands of workers.

<sup>1</sup> For state-by-state snapshot of the aviation maintenance industry's economic and employment footprint, please visit <http://arsa.org/news-media/economic-data/>.

<sup>2</sup> See, e.g., [FAA Extension, Safety, and Security Act of 2016, Sec. 2112, Pub. L. No. 114-190](#).

<sup>3</sup> [Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States, 79 Fed. Reg. 14621 \(March 17, 2014\)](#).

<sup>4</sup> Oliver Wyman, *Global Fleet and MRO Market Assessment: 2017 to 2027* (2017) at 115.

***Repair Station Certification Ban: Don't Repeat Mistakes of History***

Recent history shows that punishing repair stations and their employees for agency rulemaking delays would be a major mistake. In 2003, Congress enacted VISION 100<sup>5</sup>, which included a provision requiring the TSA to issue repair station security rules by August 2004 and to audit for compliance with the regulations within 18 months. The agency failed to meet its deadline. In 2007, lawmakers approved the Implementing Recommendations of the 9/11 Commission Act.<sup>6</sup> The legislation again mandated TSA to finalize repair station security rules but also demanded the regulations be completed by August 3, 2008. If they were not, the FAA would be prohibited from issuing new foreign repair station certificates. When TSA missed the deadline, in large part because the agency was focusing on other, real threats to transportation security, the ban took effect.

TSA finally issued the rules in 2013 and the ban was lifted after almost five years. In the meantime, it caused chaos for companies seeking to open repair stations outside the United States and raised the specter of retaliation against U.S. facilities with foreign certificates and approvals.

ARSA recognizes that Congress wants the FAA to issue the rules; however, it would be an enormous mistake to punish industry because the FAA has not yet done so or to force FAA to rush complicated rulemaking processes. Much of the aviation sector's growth in the coming years will be overseas. Many U.S. companies operate foreign repair stations and plan to open more to serve customers in areas (particularly Asia) where the aviation sector is growing. Banning new certifications would hamstring the ability of U.S. companies to tap into those markets and provide aftermarket support for U.S. aircraft sold overseas.

A ban on new foreign certificates would also have practical consequences for U.S. airlines. Because U.S.-registered aircraft and related components need to be maintained by a facility or person approved by the FAA, fewer repair stations – whether foreign or domestic – makes it harder for U.S. carriers to operate.

There is also the risk of retaliation against U.S. companies serving international customers. For example, more than 1,500 U.S. facilities are approved by the European Aviation Safety Agency (EASA) to work on European-registered aircraft and related components.<sup>7</sup> Banning new foreign repair stations could lead the European Union, China, and others to withdraw or restrict certifications in the United States.

Those who do not learn the lessons of history are doomed to repeat them. Punishing industry would do nothing to motivate executive branch action but would instead undermine growth in a globally-competitive sector of the U.S. economy, undermine the FAA's ability to pursue reciprocal acceptance of U.S. certifications abroad (a major objective of the recent reauthorization legislation), and further jeopardize the U.S. aviation industry's global leadership.

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<sup>5</sup> [Pub. L. No. 108-176.](#)

<sup>6</sup> [Pub. L. No. 110-53.](#)

<sup>7</sup> [Aeronautical Repair Station Association, "Study Finds U.S. Companies Serving Global Aviation Customers", June 13, 2019.](#)