



A bold voice for transportation workers

July 17, 2014

The Honorable Michael P. Huerta
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

**RE: Drug and Alcohol Testing of Certain Maintenance Provider Employees
Located Outside of the United States
Docket No. FAA-2012-1058; Notice No. 14-02
RIN 2120-AK09
Federal Aviation Administration**

Dear Administrator Huerta:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write to comment on the Federal Aviation Administration's (FAA) Advanced Notice of Proposed Rulemaking (ANPRM) that begins the implementation of section 308(d)(2) of the FAA Modernization and Reform Act of 2012 (PL 112-95). By way of background, TTD consists of 32 affiliated unions that represent workers in all modes of transportation, including the International Association of Machinists and Aerospace Workers (IAM) and the Transport Workers Union of America (TWU), which represent aviation mechanics, and the Professional Aviation Safety Specialists (PASS), which represents FAA inspectors.¹ These unions have been leaders in seeking to improve the safety, security and oversight of contract repair stations and have a vested interest in this rulemaking.

At the outset, we express our strong support for the effort to begin implementation of section 308(d)(2) which helps improve the safety of outsourced maintenance. TTD and our member unions have long sought to ensure that aircraft repair stations located outside the U.S. are held to the same safety, security and oversight rules that govern domestic stations. As part of this effort, we have urged the FAA and Congress to eliminate the double standard that allows foreign repair stations working on U.S. aircraft to evade drug and alcohol testing mandates that apply to workers in the U.S. performing the exact same type of work. We have always argued that if testing rules are needed to ensure the safety and integrity of aircraft repair and maintenance done at U.S. carriers

¹ Attached is a complete list of TTD affiliate unions.

Transportation Trades Department, AFL-CIO

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and domestic repair stations, then these same rules should cover workers at repair facilities located outside the U.S.

We were therefore pleased that Congress, as part of the FAA Modernization and Reform Act, directed the FAA to issue a proposed rule by February 14, 2013 to require all personnel working at part 145 certificated repair stations who are responsible for safety-sensitive maintenance of part 121 aircraft to be subject to an Administrator-approved drug and alcohol testing program. Subsequent to passage of this law, we urged the FAA to swiftly implement this mandate in the interest of safety and to ensure that the agency meet the deadline for a proposed rule as directed by Congress.² We also understand that Members of Congress have raised this matter with the agency.³ Given the clear intent of Congress to move this rulemaking forward and the safety issues implicated when federal rules allow a double-standard to exist, we are disappointed that the FAA is now more than a year late in issuing proposed rule and is just now offering this Advanced Notice of Proposed Rulemaking.

We hope the FAA will now move this rulemaking expeditiously and will do so in a manner that ensures the highest level of safety at foreign repair stations. To assist the FAA in developing this important rulemaking, we provide the following comments and recommendations based on the ANPRM.

Waivers of Drug and Alcohol Testing

The FAA requests feedback on whether it should include in its regulations the ability of a foreign repair station to waive the drug and alcohol testing requirements if its country's laws conflict with the FAA's rulemaking.

We recognize that the statute provides that a testing regime be "consistent with the applicable laws of the country in which the repair station is located." However, the FAA must implement this particular provision cautiously and narrowly while making safety its guiding principle.

Repair stations that seek exemption from the FAA's regulation must not dictate which requirements apply to themselves or be the arbitrator in determining whether such requests are valid. Rather, the FAA must carefully review each request, examining the country's laws and weighing the potential costs of relaxing its important safety regulations.

Program Coverage and Elements of Acceptable Drug and Alcohol Testing

² Attached is a letter signed by TTD, the IAM and TWU to Administrator Huerta urging the FAA to implement 308(d)(2) in a timely manner.

³ Specifically, Representative Peter DeFazio (D-OR) raised the new repair station mandates with FAA Administrator Huerta as part of a House Hearing on May 16, 2013. *Review of the FAA's Progress in Implementing the FAA Modernization and Reform Act*, House Subcommittee on Aviation, Committee on Transportation and Infrastructure, 113th Congress (113-15 at 15).

The FAA also poses several questions about the elements that should be required of drug and alcohol testing regimes in order to receive the Administrator's approval. Simply put, we believe that the stringent testing requirements that are in place and currently applicable to domestic personnel performing safety-sensitive maintenance should be applied to those working at foreign repair stations.

In particular, we believe foreign maintenance personnel must be subject to pre-employment; random; post-accident; reasonable cause; and return-to-duty and follow-up drug and alcohol testing, just as domestic workers are. These tests should screen for the same substances for which domestic personnel are tested. Controlled substance and alcohol tests should be measured, evaluated and conducted in the manner prescribed in 14 CFR Part 120 and 49 CFR Part 40. Similarly, foreign workers who violate drug and/or alcohol regulations should face the same penalties and follow the same return-to-duty procedures as those applied to domestic workers.

Furthermore, while Section 308(d)(2) directs the FAA to issue a rule requiring alcohol and controlled substance testing of foreign maintenance workers performing work on part 121 carriers, such rules should also include testing of foreign maintenance personnel who perform applicable duties on part 135 and 91.147 carriers as well. We are well aware of the practice of part 135 operators sending their aircraft components offshore for repair at foreign repair stations. As the FAA notes, 14 CFR part 120 requires employees performing aircraft maintenance and preventive maintenance duties on part 121, 135 or 91.147 certificated aircraft within the U.S. to be subject to drug and alcohol testing. The same safety concerns dictate testing of foreign personnel working on those categories of aircraft as well.

Random Drug and Alcohol Testing

The FAA explains that domestic maintenance workers are subject to random drug and alcohol tests, and that the element of surprise associated with these tests are an effective deterrent to workers' use of illegal substances or alcohol while at work. The FAA seeks feedback on other countries' laws that permit or prohibit random testing, as well as input on alternatives that could be used if a country does not allow such testing to take place.

As explained above, we do not support separate standards for maintenance workers making the same repairs on the same U.S. aircraft simply because they work in different countries. In order to receive FAA certification and be able to service U.S. aircraft, foreign repair stations and their employees must be held to the same level of accountability as domestic workers, and this includes random drug and alcohol tests.

Testing Procedures for Foreign Repair Station Employees

We also want to ensure that foreign maintenance workers are subject to strong testing procedures. As the agency notes, the Department of Transportation (DOT) and the FAA have several layers of protection in place for domestic workers to ensure the validity and verification of their specimens throughout the testing process. We recognize that the physical location of foreign maintenance personnel complicates the ability to expand the existing testing procedures to those overseas.

However, to help protect personnel samples, we request that the agency consider requiring foreign workers to provide samples at DOT-certified foreign facilities and for those samples to be shipped to U.S. laboratories already performing tests for domestic workers. Doing so will help ensure that regardless of country of origin, samples are guarded against adulteration, mistaken specimen identification, and other potential issues.

Foreign Countries' Laws and Regulations

The FAA requests information regarding the laws and regulations of the countries in which foreign repair stations are located. In particular, the agency asks whether these countries require drug and alcohol testing of aviation personnel; the types of testing permitted; and whether other factors affect the permissibility of testing in a given country.

While the FAA states that 120 certificated foreign repair stations would be affected by the final rule, the specific countries in which they are located are not identified in the ANPRM or available on the FAA's website. Without this information, the ability of private parties to identify the applicable laws and regulations relevant to this proceeding is severely hindered. As a result, a great portion of the substantive data the FAA will receive and use to inform its rulemaking will likely come from foreign government authorities, some of which may have an interest in indicating that a final rule would conflict with their laws that govern testing standards. Consequently, the FAA must ensure the accuracy of this information before it is used as a rationale to create an expansive waiver process under this mandate.

Definition of Maintenance and Preventive Maintenance

We also request the FAA to apply the term "safety-sensitive maintenance" to foreign repair work in a manner identical to its application to domestic work. This will ensure that repairs deemed safety-sensitive when performed in the U.S. will also be deemed as such when performed overseas, thereby ensuring that all maintenance personnel performing those tasks are subject to the same testing requirements.

Applying this Rulemaking to Non-Certificated Foreign Repair Stations

As indicated in the notice, section 308(d)(2) requires that this rulemaking be applied to those performing safety-sensitive maintenance functions at part 145 certificated foreign repair stations. Thus, foreign repair stations that do not hold FAA certificates are not subject to this rulemaking.

However, the FAA is considering requiring part 121 air carriers that outsource their safety-sensitive maintenance work to personnel operating under 14 CFR section 43.17 to ensure that those workers are subject to drug and alcohol testing regimes comparable to programs currently required under part 120. We agree and think this should also be required of part 135 and 91(k) carriers as well. We also believe that this oversight responsibility should be expanded to include not just Transport Canada Civil Aviation Approved Maintenance Organizations, but all other non-certificated repair stations that repair aircraft certificated under parts 121, 135 and 91(k).

We appreciate the FAA's efforts to begin implementing section 308(d)(2) and helping to improve the safety of repair work performed at foreign repair stations. We hope the FAA will take our comments into consideration, and we look forward to continuing to work with the agency to strengthen these efforts.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a horizontal line underneath.

Edward Wytkind
President



Transportation Trades Department, AFL-CIO
A bold voice for transportation workers

TTD MEMBER UNIONS

Air Line Pilots Association (**ALPA**)
Amalgamated Transit Union (**ATU**)
American Federation of Government Employees (**AFGE**)
American Federation of State, County and Municipal Employees (**AFSCME**)
American Federation of Teachers (**AFT**)
Association of Flight Attendants-CWA (**AFA-CWA**)
American Train Dispatchers Association (**ATDA**)
Brotherhood of Railroad Signalmen (**BRS**)
Communications Workers of America (**CWA**)
International Association of Fire Fighters (**IAFF**)
International Association of Machinists and Aerospace Workers (**IAM**)
International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (**IBB**)
International Brotherhood of Electrical Workers (**IBEW**)
International Longshoremen's Association (**ILA**)
International Organization of Masters, Mates & Pilots, ILA (**MM&P**)
International Union of Operating Engineers (**IUOE**)
Laborers' International Union of North America (**LIUNA**)
Marine Engineers' Beneficial Association (**MEBA**)
National Air Traffic Controllers Association (**NATCA**)
National Association of Letter Carriers (**NALC**)
National Conference of Firemen and Oilers, SEIU (**NCFO, SEIU**)
National Federation of Public and Private Employees (**NFOPAPE**)
Office and Professional Employees International Union (**OPEIU**)
Professional Aviation Safety Specialists (**PASS**)
Sailors' Union of the Pacific (**SUP**)
Sheet Metal, Air, Rail and Transportation Workers (**SMART**)
SMART-Transportation Division
Transportation Communications Union/ IAM (**TCU**)
Transport Workers Union of America (**TWU**)
UNITE HERE!
United Mine Workers of America (**UMWA**)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (**USW**)

These 32 labor organizations are members of and represented by the TTD





A bold voice for transportation workers

January 8, 2013

The Honorable Michael P. Huerta
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Dear Administrator Huerta:

We write today to urge the Federal Aviation Administration (FAA) to implement the drug and alcohol testing requirements for foreign mechanics working on U.S. commercial aircraft as mandated by the FAA Modernization and Reform Act of 2012. While we are pleased that Congress moved to address this safety issue, the new mandates will have no effect until they are formally implemented by the FAA which must, by statute, issue a proposed rule by February 14, 2013.

As you know, aircraft mechanics working in the United States either employed at air carriers or at domestic contract repair stations are currently required to undergo various drug and alcohol screening to ensure their ability to perform safety-sensitive repairs. Yet employees working at repair stations based overseas are exempt from these tests despite the fact that they work on the same U.S. aircraft and at repair stations certified by the FAA. We have long argued that the simple location of the repair station should not jeopardize the quality and safety assurances of the work being done on U.S. aircraft. It is in the best interest of U.S. aviation safety for all FAA-certified repair stations to be held to the same safety and security standards regardless of the physical location of the station. Drug and alcohol testing, as the Department of Transportation and the FAA have often noted, is a core safety requirement that should be applied universally.

It is important to note that as part of the multi-year effort to reauthorize the FAA, both the House and Senate specifically moved to close the regulatory loophole that has allowed foreign repair stations and their employees to evade this requirement. In 2007, Representative Ted Poe (R-TX) successfully offered an amendment to the then pending FAA Reauthorization bill that imposed drug and alcohol testing on foreign mechanics. Also that year, Senator Claire McCaskill (D-MO) noted at an oversight hearing on foreign aviation repair stations that “[i]f drug and alcohol testing is important in the United States of America, it should be important in every location where someone has access to the physical operation of an airplane.” Senator McCaskill later asked the Senate Commerce Committee to include in its version of the FAA bill enhancements to repair station safety including drug and alcohol testing rules.

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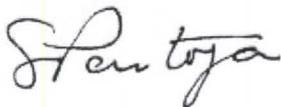


In the final bill, passed last February, House and Senate negotiators eventually agreed to include Section 308(d) "*Alcohol and Controlled Substance Testing Program Requirements.*" Section 308(d)(2) specifically directs the FAA, within one year of enactment, to issue a proposed rule "requiring that all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft are subject to an alcohol and controlled substance testing program..." Separately, Section 308(d)(1) directs the Secretary of Transportation and the Secretary of State to request that member countries of ICAO establish international standards for alcohol and controlled substance testing of persons that perform safety-sensitive maintenance functions on U.S. commercial aircraft.

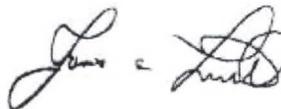
We appreciate that the DOT included a pre-rulemaking notice in its unified agenda for 2013, and we hope that it will help move the process forward in a timely manner. Given the importance of this sorely needed change, as well as the February 14th Congressional deadline, we ask that the FAA prioritize this rulemaking and establish uniform standards for foreign and domestic workers alike.

Thank you for your consideration, and we look forward to working with you on this rule and other initiatives to improve the safety of the U.S. aviation system.

Sincerely,



Sito Pantoja
General Vice President
International Association of Machinists
and Aerospace Workers



James Little
International President
Transport Workers Union of America



Edward Wytkind
President
Transportation Trades Department, AFL-CIO