



**COMMENTS OF THE
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE
TRANSPORTATION SECURITY ADMINISTRATION
DEPARTMENT OF HOMELAND SECURITY
REQUEST FOR COMMENTS
AIRCRAFT REPAIR STATION SECURITY
Docket No. TSA-2004-17131**

MARCH 29, 2004

The Transportation Trades Department, AFL-CIO (TTD)¹, on behalf of its 35 affiliated unions, and in particular the nation's premier airline mechanic unions – the International Association of Machinists (IAM), the Transport Workers Union (TWU) and the International Brotherhood of Teamsters (IBT) – appreciates this opportunity to comment on the Transportation Security Administration's (TSA) request for public input regarding the security of foreign and domestic aircraft repair stations. At the outset, we want to commend the TSA for responding to the Congressional mandate included in Section 611 of the Vision 100 – Century of Aviation Reauthorization Act and for moving forward with this rulemaking in such an expedited manner.

Indeed, TTD affiliates, particularly the IAM, the TWU, and the IBT have long sought to bring one level of safety and security to contract maintenance operations, especially those facilities located in foreign countries. Our concerns have only grown in the aftermath of the September 11 terrorist attacks as we have fought to bring heightened awareness to the many security problems that remain unaddressed at contract repair stations. We therefore look forward to participating in this rulemaking and to ensuring that new regulations are issued without delay and that the audits required of foreign stations make real and lasting improvements to aviation security.

¹TTD, which consists of 35 affiliated unions, is the transportation labor umbrella of the AFL-CIO. A complete list of TTD affiliated unions is attached at 1.



Problems with the Current Regulatory Regime

As stated above, TTD has long made the point that the Federal Aviation Administration (FAA) regulations governing the certification of aircraft repair stations (FAR 145) allow foreign repair stations to be certified to work on U.S. aircraft without meeting the same standards as those required of domestic stations. This double-standard jeopardizes safety and security and must be eliminated. In addition, given the practical problems surrounding the inspection and oversight of foreign repair stations, it makes little sense to certify stations that are not needed to repair and maintain U.S. aircraft that provide air services abroad. There are currently over 650 foreign repair stations certified by the FAA – an increase of 325 percent since FAR 145 rules were amended in 1988.² Current practice allows a foreign station to become certified if it can simply demonstrate that it will serve one U.S. aircraft or component. If the TSA wants to manage the security risk of foreign repair stations, the regulations should be altered to require foreign stations to demonstrate that they are genuinely needed to work on and repair U.S. aircraft that are actively engaged in international operations.

While the recent changes to FAR 145 did make some needed improvements, the reality is that the modifications do not go far enough. For example, the FAA still authorizes a foreign station to work on U.S. aircraft without subjecting any of its employees to drug and alcohol testing requirements.³ Policy makers in this country have made a determination that it is important from a safety perspective to impose a drug and alcohol testing regime on U.S. mechanics (as well as other transportation workers). Yet the FAA continues to give-away certifications to foreign stations without any such requirement. We are not saying, as some have claimed, that foreign countries must change their laws to institute wide-spread testing. But we are saying that in the interest of achieving one level of safety, if foreign stations want the right to work on U.S. registered aircraft that operate in **this** country, there is nothing wrong with requiring those stations to meet the same standards that are imposed by our government on U.S. domestic stations.

Indeed, the U.S. often imposes security and safety requirements on foreign airlines and aircraft operating into this country, a trend that has only increased since September 11. The reality is that security breaches

²According to the FAA, there were approximately 200 foreign aircraft repair stations certified in November, 1998. *See*, 53 Fed. Reg. 47362, 47369 (November 22, 1988).

³We should note that Section 611(a) does require the FAA, 90 days after the enactment of the Act, to transmit to Congress a plan containing an implementation schedule to ensure that foreign repair stations that are certified by the FAA are subject to an equivalent level of safety, oversight and quality control as those stations located in the U.S. It is our hope that the FAA will follow this mandate and finally require foreign stations to meet the highest safety standards, including an equivalent drug and alcohol testing regime.

at foreign aviation facilities can jeopardize aviation operations in this country – a fact that we have long recognized in regard to contract repair facilities. From a security standpoint, it is not hard to imagine how certified foreign aircraft repair stations, working on U.S. aircraft, could provide terrorists with an opportunity to sabotage U.S. aircraft or components that will eventually re-enter the U.S. for domestic service.

Increased Use of Repair Stations

This concern is heightened by the fact that U.S. airlines are relying more and more on contract repair stations, including those located overseas, to maintain and oversee aircraft. This point was highlighted by last year's Department of Transportation Inspector General (IG) report on air carriers' use of aircraft repair stations.⁴ Specifically, the IG found that "the use of repair stations to complete aircraft maintenance is becoming as fundamental to air carriers' maintenance programs as their own internal maintenance facilities."⁵ According to the IG, in 1996 major air carriers⁶ spent \$1.5 billion (37 percent of their total maintenance costs) for outsourced aircraft repair work. By 2002, that number had ballooned to \$2.5 billion – now 47 percent of their total maintenance costs. And there is little doubt, given the ongoing pressure to contain costs, that the amount and percentage of outsourced work has only increased since 2002. Indeed, the IG report conceded that the industry's trend towards contracting out more and more repair work has largely been driven by airline managements' drive to secure cost savings.

Temporarily Revoke Certain Foreign Certificates

Given these realities, TTD is renewing its call, first made in April 2003⁷, to temporarily prevent certain foreign stations certified under 14 CFR Part 145 from working on U.S. aircraft or components until the TSA can conduct thorough security audits of these stations and complete the rules subject to this proceeding. While we understand that the audits of foreign stations will occur pursuant to Section 611, these reviews are not required to be completed until 18 months after the regulations are issued. We find this delay extremely troubling in light of continuing terrorist threats around the world. At a minimum, the

⁴Office of Inspector General, Department of Transportation, *Review of Air Carriers' Use of Aircraft Repair Stations*, Rpt. Number AV-2003-047 (July 8, 2003).

⁵*Id.* at ii.

⁶Major carriers examined by the IG are: Alaska Airlines, America West Airlines, American Airlines, Continental Airlines, Delta Airlines, Northwest Airlines, Southwest Airlines, United Airlines, and US Airways.

⁷Unfortunately, TTD's petition was denied by then TSA Administrator Admiral J.M. Loy by letter dated June 4, 2003. Attached at 2 is a copy of the petition submitted by TTD and the AFL-CIO.

TSA and the FAA should immediately begin to review the security vulnerabilities of stations located in countries that represent the most significant risk as determined by U.S. homeland security and intelligence officials.

Specific Recommendations

As the TSA seeks to craft regulations to govern the security at contract repair stations we would make several recommendations for items and criteria to include.

Employee Background Checks

In the interest of enhancing aviation security, Congress and the TSA require extensive background checks of all aviation workers, including mechanics, who have unescorted access to a secure area of an airport. In addition, the FAA and the TSA issued rules last year that require the FAA to revoke airman certificates, which includes a Part 65 mechanic certification, of any individual determined by the TSA to pose a threat to aviation security.⁸

Again, these rules have been put in place because policymakers believe it is important to conduct background checks on workers in these sensitive positions. Yet neither the FAA, the TSA, nor any other U.S. government agency requires any type of background checks for workers at foreign stations who repair or maintain U.S. aircraft. At least at domestic contract repair stations Part 65 mechanics are covered by the TSA/FAA rule. While in theory the TSA/FAA rules apply to Part 65 mechanics located overseas, foreign stations are allowed to work on U.S. aircraft without having any certified mechanics; as such, from a practical standpoint, this rule does not apply to foreign stations.

As a general matter, we would maintain that mechanics at contract repair stations should be subject to the same type of background checks and worker identification procedures and practices that mechanics at U.S. airports face everyday. At a minimum, TSA must establish some process to review the background of foreign mechanics working at FAA certified repair stations to ensure that these individuals do not pose a security threat to U.S. aircraft. As background checks are conducted on foreign workers, there must be procedures in place to ensure that the information collected by the TSA – presumably from foreign governments and other sources – is reliable and can be verified.

⁸See, 68 Fed. Reg. 3722, 3762 (Jan. 24, 2003). We should note that the TTD and our aviation unions are challenging the Constitutionality of these rules because they do not provide workers with sufficient due process protections and procedures. Nonetheless, the FAA and the TSA, acting pursuant the Aviation Transportation Security Act (P.L. 107-11), have issued these rules for the stated purpose of enhancing aviation security.

Access Control

We would also request that domestic and foreign contract repair facilities comply with the same type of access control and perimeter security requirements that exist at maintenance bases at U.S. airports. Obviously, the background checks and worker identification requirements will mean little if individuals can enter a repair station without being checked or challenged. We would note that in the absence of a serious commitment of resources to this type of surveillance, these requirements will be especially difficult to enforce at foreign stations since constant vigilance and attention must be maintained.

Proper Security Oversight and Inspection

The TSA must ensure that there are sufficient inspection resources dedicated to enforcing the security regulations and conducting the audits of foreign stations. It is troubling that as we seek to impose new security requirements on contract repair stations, we still have problems and lapses in oversight of current requirements. Despite the increased use of repair stations found by the IG (and discussed above), the FAA has continued to concentrate its inspection and oversight resources on air carriers' in-house maintenance operations. Indeed, the IG found, by way of example, that at one carrier, the FAA completed 400 inspections of the carrier's in-house operations while only seven inspections were conducted of the repair stations used by that same carrier. This double-standard in oversight procedures must be corrected, especially as our government embarks upon new regulations aimed at protecting against security breaches at foreign and domestic contract repair stations.

The fact is that this lack of oversight has consequences. Specifically, the IG review discovered weaknesses in 86 percent of the contract repair stations visited. The IG found repair stations that did not: (1) use the parts required by the maintenance manual; (2) properly calibrate tools and equipment that were being used in repairs; (3) have information on file to show that mechanics approving completed repairs had the necessary training and qualifications to do so; and (4) correct deficiencies previously identified by FAA inspectors. The IG determined that "left uncorrected, these deficiencies could lead to an erosion of safety...and went undetected by FAA surveillance because of the weaknesses in FAA's oversight structure."⁹

These concerns are not just academic. On January 8, 2003 Air Midwest flight 5481 (doing business as US Airways Express) crashed shortly after take-off at Charlotte-Douglas International Airport killing two crew members and 19 passengers. The National Transportation Safety Board found that a contributing cause of the accident was the lack of oversight, both by the FAA and the carrier, of work being performed at a contract repair facility in Huntington, West Virginia.¹⁰

⁹IG Report at xiv.

¹⁰NTSB Aircraft Accident Report, *Loss of Pitch Control During Takeoff Air Midwest Flight 5481 Raytheon (Beechcraft) 1900D, N233YV, Charlotte, North Carolina, January 8, 2003* adopted Feb. 26, 2004 at 131.

In relation to foreign aircraft repair stations, the concern over oversight is even greater. The IG found that while foreign stations were widely used by U.S. carriers, some FAA-certified foreign repair stations are not inspected at all by FAA inspectors because civil aviation authorities review these facilities on FAA's behalf. TTD has, in the context of FAR 145 enforcement, long argued that it is irresponsible to turn over inspection responsibilities to foreign countries. If a foreign station wants the authority to display the FAA seal of approval, it should expect to be inspected and held accountable by FAA inspectors. If resources do not exist to hire the needed inspectors, then additional foreign stations should not be certified.

Again, there are consequences when foreign inspectors are utilized. The IG determined that foreign inspectors do not provide the FAA with sufficient information to determine what was inspected, what problems existed and how they were addressed. The IG reported that one foreign authority representative explained that "they did not feel it was necessary to review FAA-specific requirements when conducting repair inspections."¹¹ This cavalier attitude that foreign inspectors have with regard to enforcing our regulations is endemic of the numerous problems associated with our ability to hold foreign stations to U.S. standards.

In light of these current problems, the TSA must specifically explain how these new security requirements and audits are going to be enforced. In particular, there must be sufficient inspection resources dedicated to this task. These resources should not, and cannot, come from the already inadequate resources used to enforce current FAR 145 requirements. Furthermore, security inspectors that are charged with enforcing these new requirements must be trained in identifying security problems. Finally, we would note that TTD has long argued that inspection of foreign facilities is jeopardized by the fact that the U.S. government gives foreign countries advance notice when their stations will be inspected. Thus, surprise inspections, so common and crucial in enhancing safety in the U.S., are impossible to conduct at foreign stations. We would urge the TSA to ensure that at least security audits and inspections are not subject to this double-standard.

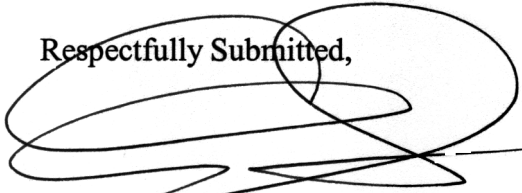
Security Awareness Training

At the public hearing held in this proceeding, the TSA asked for comments on whether contract repair employees should receive security awareness training. To the extent that such training will allow employees to identify and report security lapses, we would support this requirement. However, ultimate security and safety inspection responsibilities of all repair stations must rest with responsible U.S. government employees and not air carriers or repair station management.

¹¹IG Report at v.

For the first time, Congress has specifically mandated that security regulations be promulgated for aircraft repair stations and that foreign stations be subject to security audits. This is an excellent opportunity to enhance the level of security at these facilities and to address many of the problems that TTD and our mechanic unions have been raising for over a decade. It is our expectation that the TSA will work with us to craft a regulatory regime—including a rigorous audit process—that meets clear and explicit congressional mandates and in the process enhances the security standards found at contract repair facilities here and around the globe. At a time when America remains at high alert for security threats, the flying public, business travelers and airline workers deserve nothing less.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read 'Edward Wytkind', is written over the text 'Respectfully Submitted,'. The signature is stylized with loops and a horizontal line at the end.

Edward Wytkind, President
Larry I. Willis, General Counsel
Transportation Trades Department, AFL-CIO
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TTD AFFILIATES

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
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 Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employees (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
Hotel Employees and Restaurant Employees Union (HERE)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Brotherhood of Teamsters (IBT)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
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 Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Retail, Wholesale and Department Store Union (RWDSU)
Service Employees International Union (SEIU)
Sheet Metal Workers International Association (SMWIA)
Transportation • Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
United Steelworkers of America (USWA)

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April 10, 2003

The Honorable Norman Y. Mineta
Secretary of Transportation
U.S. Department of Transportation
400 Seventh Street, SW
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The Honorable Marion Blakey
Administrator
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

The Honorable James M. Loy
Under Secretary for Security
Transportation Security Administration
400 Seventh Street, SW
Washington, DC 20590

Dear Secretary Mineta, Administrator Blakey and Admiral Loy:

On behalf of the 13 million members of the AFL-CIO and the Transportation Trades Department, AFL-CIO (TTD) we urge you to take immediate action to temporarily revoke the certification of certain foreign-based aircraft repair stations until such time as thorough security audits are conducted by responsible agencies and rules are put in place to ensure that these stations do not pose an imminent national and aviation security risk. As you know, there are currently over 600 foreign aircraft repair stations, certified under 14 CFR Part 145 (Subpart C), that are permitted to work on U.S. registered aircraft. Because of the unique combination of national security and economic conditions that currently exist in the aviation industry, as outlined below, we believe that the Department of Transportation (DOT), the Federal Aviation Administration (FAA), and the Transportation Security Administration (TSA) are required to act upon this petition in the interest of aviation safety.

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It is well known that this nation continues to be the target of terrorist intentions both domestically and abroad. In fact, the U.S. State Department and other government agencies have frequently warned about threats occurring outside the U.S. but directed at U.S. citizens and interests. We are concerned that certified foreign aircraft repair stations that are eligible to work on U.S. aircraft, could provide terrorists with an opportunity to jeopardize U.S. aviation safety without having to physically enter this country. At a time of heightened alert around the globe, our government must do everything possible to protect against terrorist agents infiltrating foreign repair stations and sabotaging air operations headed back to the United States.

While there is no publicly known evidence that terrorists have pursued this agenda, it makes little sense for the Bush Administration to leave it to chance. In fact, the DOT's Inspector General recently announced that as part of a larger audit of air carriers' use of aircraft repair stations, it found security vulnerabilities at stations located at commercial and general-aviation airports and off airport property. While the IG recommended that the TSA conduct risk-based security assessments as a first-step in determining the actions needed to address repair station security, we would maintain that until the security "fitness" of foreign stations can be assured, their FAR 145 rights to work on U.S. aircraft should be suspended.

The security risks posed by foreign stations is compounded by the unprecedented financial distress faced by the commercial aviation industry. Two major carriers have declared bankruptcy, others have announced severe workforce and service cuts, and virtually every airline has been forced to institute dramatic cost cuts to satisfy lenders and to keep flying. In this environment, U.S. carriers will undoubtedly pursue, over the strong objections of the International Association Machinists and Aerospace Workers, the Transport Workers Union and the International Brotherhood of Teamsters, the outsourcing of major overhaul and other repair work to lower cost, potentially substandard third party contractors including those based overseas. A real life illustration of these concerns are the management rights secured by Northwest Airlines in its 2001 collective bargaining agreement with its mechanics union under which the airline can contract out almost 40 percent of repair and overhaul work to outside contractors around the globe. In fact, Northwest Airlines already relies on a Singapore-based repair operation for significant overhaul work on its DC-10 aircraft and the carrier could use the freedoms it secured in its 2001 collective bargaining agreement for mechanics to ship significantly more of that work abroad.¹ And with the lax FAA oversight and surveillance of unknown security procedures at many foreign stations, the potential for terrorist security breaches grows as these stations see more work from the U.S.

¹We should note that Northwest mechanics are currently not represented by an AFL-CIO union and the information on their collective bargaining agreement is provided only to illustrate the type of maintenance work that can be contracted out to foreign stations.

It is interesting that in the pursuit of aviation security the FAA and the TSA recently issued rules that require the FAA to revoke the airman certificate, which includes a Part 65 mechanic certification, of any individual who the TSA determines poses a threat to aviation security.² But from a practical standpoint these rules will only affect mechanics at domestic stations since only domestic stations, and not foreign stations, are required to have FAA-certified employees on premise.³ Furthermore, there are a number of oversight activities that occur at domestic facilities, both formally and informally, that simply do not occur at foreign facilities.

Indeed, the AFL-CIO, TTD and its mechanics union affiliates have long been concerned that foreign aircraft repair stations can receive FAA certification and then work on U.S.-registered aircraft without meeting the same safety and security standards imposed on domestic facilities and their employees.⁴ In addition to regulatory differences, we know that the oversight of foreign stations pales in comparison to the surveillance performed on domestic stations, especially those managed within major air carrier operations. For example, FAA inspectors, represented by the Professional Airways Systems Specialists (PASS), do not have the same type of access to foreign stations as they do with domestic facilities. This reality is complicated by the fact that insufficient FAA inspector staffing levels do not allow for proper oversight of stations located outside the U.S. Given this situation, it is troubling that the effective date for modifications to Part 145 was recently and inexplicably postponed at the request of industry trade groups and that such postponement was granted without giving the public any notice or opportunity to comment.

For these reasons we urge the DOT, the FAA, and the TSA to issue an emergency order to temporarily prevent certain foreign stations certified under 14 CFR Part 145 from working on U.S. aircraft or components. The FAA should use these temporary revocations to conduct thorough security audits of foreign stations and to promulgate rules that impose security procedures at these facilities. In particular, the FAA should focus on ensuring that mechanics and other workers who

²See, 68 Fed. Reg. 3722, 3756, 3762 (Jan. 24, 2003). We should note that TTD and our aviation unions object to these rules because they do not provide sufficient due process protections and procedures to workers. Nevertheless, the FAA and the TSA, acting pursuant to the Aviation Transportation Security Act (P.L. 107-11), have issued these rules for the stated reason of enhancing aviation security.

³Under current rules, at a domestic station, a person directly in charge of the maintenance functions of a repair station must be certified as a mechanic or repairman under part 65. 14 CFR § 145.39(d).

⁴Examples of this double standard include FAA failure to mandate drug and alcohol testing of mechanics in FAA-certified facilities abroad and a suspect inspection regime that, unlike the procedures used by the FAA in the United States, for all practical purposes do not employ unannounced inspections and audits at these facilities.

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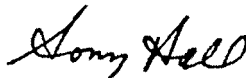
come into contact with U.S. aircraft or components do not pose a security risk and that other precautions are taken to ensure the integrity of the aircraft maintenance work performed. We would suggest that Joint Aviation Authority members and certain countries that have current Bilateral Aviation Safety Agreements with the U.S. may already meet many of the security standards needed and would not need to have their FAR 145 rights suspended while rules are being drafted.⁵

As you know, the Secretary of Transportation is charged with the responsibility of "assigning and maintaining safety as the highest priority in air commerce." 49 U.S.C. § 40101(a)(1). Furthermore, when the Administrator is of the "opinion that an emergency related to safety in air commerce requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency..." 49 U.S.C. § 46105(c). We would maintain that a unique confluence of factors described above create a situation that necessitates federal government action in the public interest and to maintain aviation safety.

Thank you for your immediate attention to this matter and we look forward to your response.

Sincerely,


Richard L. Trumka
Secretary-Treasurer
AFL-CIO


Sonny Hall
President
Transportation Trades Department, AFL-CIO

cc: Thomas Ridge, Secretary, Department of Homeland Security

⁵Of course, it may be determined that this is not the case and the DOT, the FAA and TSA should take whatever steps, in addition to the request made in this letter, are needed to address aviation safety and security concerns.