



# TSA ISSUES NEW SECURITY RULE FOR AVIATION REPAIR STATIONS—WHAT DOES THIS MEAN FOR AIRCRAFT MAINTENANCE PROVIDERS?

On January 13, the Transportation Security Administration (“TSA”) issued its long-awaited aviation repair station security rule. 79 Fed. Reg. 2119. The rule, which takes effect on February 27, affects both domestic and foreign aviation repair stations. In marked contrast to the original proposal, the rule imposes only minimal requirements on the repair stations. Its publication also paves the way for lifting the statutorily mandated moratorium on the Federal Aviation Administration’s (“FAA”) processing of foreign repair station certificates, potentially expanding the number of independent repair stations abroad permitted to work on aircraft registered in the U.S. or operated by U.S. air carriers.

## BACKGROUND

Repairs of aircraft registered in the United States and foreign aircraft used by U.S. air carriers are governed by 14 CFR Part 43. Generally speaking, repairs of com-

mercial aircraft are performed in two different ways: the air carrier has its own maintenance unit that is qualified to maintain the aircraft, or the work is sent to a repair station certified by the FAA under Part 145. These independent repair stations have become increasingly important as air carriers strive to reduce costs by contracting out maintenance work. There are more than 4,000 Part 145 repair stations in the United States and roughly 700 Part 145 repair stations located outside of the United States. All of these repair stations are subject to FAA oversight to ensure aviation safety.

Aviation safety and security are integrally linked. However, responsibility for oversight of aviation security rests with TSA, while safety oversight rests exclusively with the FAA. TSA has active and long-standing security programs related to air carrier and airport operations. Until now, however, it has not had a program that actively oversees security risks posed by independent repair stations. This lack of oversight of those repair stations located outside of the United

States has been a matter of particular concern to the U.S. Congress. In order to force TSA to undertake both a safety audit and regulatory action that would codify a system of oversight of these foreign repair stations, Congress imposed a moratorium on the processing of any new applications for Part 145 certification by a foreign repair station until TSA had issued a final rule and audited every existing foreign repair station holding a Part 145 certificate.<sup>1</sup> The January 13 rule provides for that oversight and sets the stage for conducting the required security audits.

The rule only applies to those repair stations certified by the FAA under Part 145 of the Federal Aviation Regulations. The new rule does not apply to Canadian repair stations because those repair stations are subject to a different regulatory oversight scheme as the result of bilateral agreement.<sup>2</sup> The rule also does not apply to repair stations located on military bases. Air carrier-owned and -operated maintenance facilities operating under Part 121 and 135 are not affected by this rule unless they also hold a Part 145 certificate.

## REQUIREMENTS FOR ALL FAA CERTIFIED REPAIR STATIONS

All independent repair stations authorized to work on U.S. air carrier aircraft are affected by three elements of the rule.

First, all covered repair stations may be inspected by TSA personnel. For domestic repair stations, TSA has the authority to conduct a security investigation without advance notice. Investigations of foreign repair stations will first be coordinated with the U.S. Department of State and the appropriate authority within that repair station's home government. The inspection may consist of an audit, assessment, or inspection of the repair station's facilities, property, equipment, operations, or records. A repair station cannot require inspectors to present any credentials other than their TSA credentials, although the repair station may ask the TSA personnel to wear a company visitors badge and may accompany the TSA personnel throughout the inspection. Repair station personnel

are permitted to review the TSA credentials but may not copy them. While all Part 145 repair stations may be inspected, TSA has stated that it does not intend to inspect facilities distant from airports covered by an airport security program unless it has reason to believe there may be a security problem or to ensure compliance with the agency's security directives.

Second, a covered repair station must comply with any security directive that TSA has issued against it. Each directive will provide both an effective date and a method of compliance. Should the repair station be unable to comply in the required manner, it may seek an alternative method of compliance from TSA. A security directive is not subject to notice and comment prior to issuance. Instead, TSA will permit comment after the directive has been issued and may make subsequent changes based on those comments. Because a security directive is considered by TSA to have security-sensitive information, it must be kept under lock and key and may be shared only with individuals who need to know the content of the directive to perform any required maintenance or to otherwise comply with it. Accordingly, repair stations will need to develop procedures to ensure that proper controls are in place to confirm that distribution is limited to those with an operational need to know the directive's contents.

Third, TSA may ask the FAA to suspend or revoke a repair station's Part 145 certificate if the agency determines that there are security deficiencies. If TSA determines that there is an immediate risk to security, it will ask the FAA to revoke the repair station's certificate without advance notice. Under this circumstance, there will be no opportunity to take corrective action before the certificate is revoked. In the case of a suspension, the repair station will initially be notified of the perceived deficiencies and be provided an opportunity to cure. The FAA will suspend the certificate upon notification by TSA that the measures taken to cure the deficiencies are inadequate. The suspension will remain in effect until TSA has determined there has been adequate corrective action. While the FAA takes the actual certificate action, it has no discretion in the matter. With both a suspension and a revocation, TSA has established an appeal process with tight time frames for

---

1 Vision 100—Century of Aviation Reauthorization Act, P.L. 108-176 (December 12, 2003), codified at 49 U.S.C. 44924.

2 There are additional independent repair stations in Canada that are not certified under Part 145 because of a bilateral agreement between the United States and Canada. Those repair stations are subject to the oversight of Transport Canada, even when they are performing maintenance required by Part 43.

both the appeal and for agency review of that appeal. Since TSA directs the FAA to take certificate action, all appeal rights are vested in TSA.

## **REQUIREMENTS FOR REPAIR STATIONS LOCATED ON OR ADJACENT TO AIRPORTS SUBJECT TO A SECURITY PROGRAM**

Additional requirements apply to repair stations that work on large aircraft (i.e., aircraft with a maximum take-off weight greater than 12,500 pounds) when the repair station is located on or adjacent to an airport required to have an airport security program under TSA's regulations (or a comparable program if the repair station is located outside of the United States). If the repair station is not located in the air operations area or the restricted area of the airport and there is no access between these areas and the repair station sufficient to allow for the movement of a large aircraft, the additional rules do not apply. There are repair stations capable of working on large aircraft that are located on or adjacent to airports that are not required to have an airport security program. Repair stations located on or adjacent to these airports are not required to meet the additional requirements. This is because TSA has already determined that the type of operations at these airports do not pose a significant risk. This carve-out presents a theoretical residual risk that the rule does not address.

Large, unattended aircraft must be secured to prevent unauthorized individuals from taking the airplane. Securing the airplane may be as simple as parking a large vehicle in front of the airplane and locking up the vehicle's keys. Alternatively, the airplane could be locked in a hangar and the hangar keys secured, or the repair station could remove the steps to the airplane and secure all cabin and cargo holds, again securing the keys so that only those authorized individuals subject to the background checks discussed below have the ability to release the aircraft. Should none of these options prove viable, the repair station may ask TSA for authority to use another means of securing the aircraft.

The repair station must have the functional equivalent to a compliance officer available at all times to interact with TSA,

ensure compliance with the regulations, and control access to unattended large aircraft. Given the requirement to be available at all times, a repair station may wish to designate multiple people to serve this function. These individuals, as well as any other personnel authorized to secure the aircraft, are subject to a background check. However, the background check imposes only a minimal burden since the rule was designed to take advantage of the credentials that repair station staff located at the affected airports are already likely to have. If the authorized personnel possess an airman's certificate or SIDA credentials, then nothing more is needed. Likewise, TSA will accept security credentials of a foreign country for repair stations located outside of the United States. In the event the authorized personnel do not have these government-issued credentials, TSA will permit the repair station to check the authorized person's employment history over the previous five years or since his or her 18th birthday, whichever is shorter. This method may not be used if there are unexplained lapses in employment greater than six months. The repair station needs to maintain records of a past employment verification for at least 180 days after the individual's employment with the company ends.

## **OTHER IMPACTS OF THE NEW RULE**

Publication of the rule has two additional consequences that are unrelated to the substance of the new regulation.

TSA is required by statute to inspect all existing foreign repair stations holding a Part 145 certificate within six months of publication of the rule (July 2014). Affected repair stations should anticipate hearing from TSA in the near future. TSA has said that it will not charge for these mandatory inspections.

In addition, once the security audits are completed, the FAA is free to entertain new requests for Part 145 certificates for foreign repair stations. This does not mean that the FAA will actually start issuing an appreciable number of certificates. The FAA will not issue a new certificate if it does not have the manpower to adequately oversee the certificate. Although the inspector funding is guaranteed for this year, the impact of previous budget cuts has significantly limited the FAA's ability to adequately oversee existing certificates. Accordingly, the FAA generally will not issue a new certificate until an existing

certificate has expired. Since a maintenance provider may hold more than one Part 145 certificate,<sup>3</sup> it is possible that the FAA could decide that it has the capability to add an additional facility under a new certificate when there is no increase in the number of companies subject to oversight. Even so, the additional costs associated with oversight of a repair station located outside the United States merit only the most cautious optimism on the part of repair stations wishing to acquire a Part 145 certificate. Unless Congress earmarks new funding for the oversight of these facilities, it is unlikely there will be any true increase in the number of foreign repair stations authorized to work on U.S. registered aircraft.

## LAWYER CONTACT

For further information, please contact your principal Firm representative or the lawyer listed below. General email messages may be sent using our "Contact Us" form, which can be found at [www.jonesday.com](http://www.jonesday.com).

### **Rebecca MacPherson**

Washington

+1.202.879.4645

[rmacpherson@jonesday.com](mailto:rmacpherson@jonesday.com)

---

<sup>3</sup> In contrast, a company may not hold multiple air carrier or operating certificates.