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Docket Management Facility  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
West Building Ground Floor, Room W12-140  
Washington, DC 20590-0001

Docket No. TSA-2004-17131 - Notice of Proposed Rulemaking, Aircraft Repair Station Security

To Whom It May Concern,

EAA represents *The Spirit of Aviation*<sup>™</sup> through an active community of aviation enthusiasts, pilots, and aircraft owners. More than 160,000 EAA members worldwide share knowledge, camaraderie, and rewarding experiences that draw on their common passion for flying, building, and restoring recreational aircraft. EAA members unite through more than 900 chapters worldwide to promote the continued growth of aviation. Toward this end, they annually organize more than 10,000 aviation events and activities that promote aviation safety and education, encourage innovation, and create an environment for advancing the future of personal flight. These events include EAA AirVenture Oshkosh, among the world's premier gatherings for aviation technology, commerce, innovation, entertainment, and policymaking.

EAA has a long and demonstrated history of partnership with regulatory agencies. These relationships have developed from a reasonable approach to the challenges faced by the government and EAA's preference to work toward common solutions. We have long supported efforts to enhance aviation security through reasonable regulation and the implementation of industry-based programs to raise security awareness and activity on general aviation airports. However, these regulations and programs must be compatible with the economic viability of the general aviation community and the small businesses that support it, and the protection of our members' access to airports, freedom of movement and right to personal privacy.

## **Overview**

EAA is deeply concerned with the adverse impact the proposed Aircraft Repair Station Security Program would have on the general aviation community as a whole, but particularly on the thousands of small repair stations that serve as the backbone of general aviation aircraft maintenance. It is our view that the proposed security programs for aviation repair stations will not be economically viable for many of these small aviation businesses. Repair station owners have consistently indicated that they would be forced to choose between one of two paths should the TSA proposal become final. The first option would be to avoid the regulation entirely by surrendering their repair station certificate to the Federal Aviation Administration (FAA) and continue maintaining aircraft under the authority of an individual airmen certificate such as an Airframe and Powerplant Mechanic and/or Inspection Authorization. The second, and more commonly expressed option, would be to close the business entirely. The repair stations that maintain general aviation aircraft or their components are very small businesses, often with

regulatory and administrative requirements and costs. Tragically for general aviation, there is often only one existing repair station authorized to maintain a particular product or component, so the loss of a single repair station could in some instances ground entire fleets of aircraft for lack of available maintenance and parts. None of these costs and their ripple effects have been contemplated under the Notice of Proposed Rulemaking.

EAA does not believe that the risk posed by light general aviation aircraft, let alone unauthorized access to their components or parts, rises to the level of property loss or life hazard necessary to warrant the robust and costly international security program contemplated in this proposal. TSA's own risk assessment data bears this out. The cost to implement this program, combined with the potential risk to flight safety through loss of maintenance infrastructure, far exceeds any potential benefit derived under the proposed repair station security program.

### **Legislative Intent**

Clearly, TSA did not undertake the initiative to regulate aviation repair stations as a unilateral action. We appreciate the dilemma in which the agency finds itself, since the action is not based on any known security threat or credible risk assessment. The NPRM was developed by TSA in response to a mandate under the Vision 100 - Century of Aviation Reauthorization Act that legislated TSA oversight at certain repair stations. However, TSA far exceeded the intent of Congress when it released a proposal to implement security programs at all repair stations – foreign and domestic – without regard to the type of equipment they maintain, size of the business, the proximity to an airport, or even an aircraft.

EAA has carefully reviewed the Vision 100 - Century of Aviation Reauthorization Act and supporting legislative reports and hearing testimony. It is clear from this review that Congress intended the legislation to apply specifically to foreign repair stations performing work on large commercial air carrier aircraft. House Report 108-334 affirms that it was the will of Congress to ensure that foreign repair stations be subject to an equivalent level of safety, oversight, and quality control as those located in the United States, and that procedures be developed for the suspension and revocation of foreign repair station certificates that do not meet U.S. safety standards. It is important to point out that the deliberations in Congress were being driven by foreign competitive, labor and safety issues – not fundamental discussions of homeland security risk.

Recent hearings in both the House and the Senate clearly restated that the intent of the Vision 100 legislation was to secure foreign repair stations being used by U.S. domestic air carriers. There was no indication of intent to regulate general aviation repair stations either domestic or foreign, or any domestic repair station for that matter.

EAA refers the TSA to testimony and hearing proceedings of the House Subcommittee on Transportation Security and Infrastructure Protection held on November 18, 2009. In her closing statement, committee Chairwoman Jackson-Lee asked the members of the panel whether they would be comfortable limiting the focus to foreign repair stations. The panel members agreed. In a similar hearing on December 2, 2009, the Senate Commerce Committee held a discussion on securing repair stations during which the entire focus was on securing foreign repair stations that provide maintenance services to U.S. Domestic

air carriers. EAA strongly urges the TSA to reconsider its proposal and limit the implementation of new security programs to foreign repair stations specifically providing maintenance services to commercial scheduled air carriers. We believe that doing so would focus TSA resources on the security concerns expressed by Congress without stretching the capability of the agency for conducting oversight of thousands of small general aviation repair facilities that pose little or no security risk.

### **Diversity of Repair Stations**

The aviation repair station industry is an extremely diverse collection of businesses that does not lend itself well to any form of standard security program. Indeed, the Federal Aviation Administration Part 145 regulations governing repair stations are very complex, due in large measure to the diversity of the organizations involved and the work they perform. There seems to be a pervasive perception that aeronautical repair stations are large organizations on airports, and have access directly to large aircraft that could pose a security threat or could otherwise be endangered. While there are some repair stations that fit this description, the vast majority are small entities that conduct highly specialized work, often never see an entire aircraft, and are frequently not even located on an airport.

In general aviation, one of the most common forms of repair station is the radio shop. These are typically located on or near a general aviation airport and may consist of two to ten employees. These shops install and maintain electronic equipment in general aviation aircraft. Other common forms of repair station are those that overhaul and repair components such as carburetors, generators, propellers, engines, instruments, and a variety of specialized accessories. More often than not, these repair stations are not located on an airport and only have the components shipped to them for maintenance, repair or overhaul. The personnel in these facilities rarely if ever actually see an entire aircraft.

Other repair stations are part of larger organizations, and as such, are barely distinguishable from the larger entity. For example, corporate flight departments will often hold a repair station certificate solely for the purpose of maintaining and inspecting the pitot static systems on their aircraft, a task for which a repair station certificate is required. In these instances, the "repair station" may well be a bench or desk in the flight department facility that houses necessary documentation and any test equipment. All other maintenance functions in the flight department have nothing to do with the repair station and are not covered under the proposed regulations.

Another common scenario is the repair station certificate held by a manufacturer. Manufacturing approvals and repair authorizations are separate functions under the FAA regulatory scheme. A manufacturer does not necessarily have the authority to overhaul and repair the products they produce without an additional repair station certificate. In this instance, an entire manufacturing facility would exist outside the requirements of the security proposal while some small portion of the manufacturing facility, as small as a workbench, would be subject to the proposal. It is difficult to envision how a standard security program would be applied in such instances.

The vast majority of general aviation repair stations are small businesses with very few employees where everyone knows each other and their quality of work. Strangers are readily recognized and are not given

unsupervised or prolonged access to the facilities. Little would be accomplished in the way of security by developing and enforcing elaborate new security regulations.

### **Threat Not Identified/Risk Not Evaluated**

EAA is very concerned that the proposed regulations are being promulgated solely in response to a Congressional mandate focused on foreign trade and domestic labor issues and not any security risk or threat, real or perceived. We acknowledge that some form of security program should exist for maintenance facilities working directly on large commercial air carrier aircraft and in most instances they already do. However, we cannot see how the hundreds of millions of dollars spent administering security programs at thousands of small general aviation repair stations would benefit security in a meaningful way. The drain on Homeland Security budget and human resources would not benefit national security, but it would be a significant drain on federal tax revenue and likely harm the economy through business closures and loss of jobs. To our knowledge, no threat assessment has been performed to determine where this proposal ranks in the priority scheme of security threats yet to be addressed. No study has been performed to determine the potential result of a breach of security at a general aviation repair station facility. As far as we can tell, the threat is virtually non-existent and the risk extremely low.

Some have argued that a component at a repair station could be tampered with in such a manner as to cause a failure and bring down an aircraft. This is highly unlikely. Each component that is installed on an aircraft must receive several inspections: At the repair station, upon receipt by the installer, and upon installation and operational testing. Many eyes are laid upon an aeronautical product or component before it is signed off as fit for flight. Additionally, from a security standpoint, tampering with a part or product would likely not result in predictable timing or outcome and thus, would be of little interest to anyone wanting to use sabotage of an aircraft as an act of terror.

### **Standard Security Program is Not Defined**

The NPRM, as currently written, does not define what a Standard Security Program for a repair station would require or how these requirements might vary based on the size, location, and type of work being performed. There is an indication that TSA intends to tailor the security plans based on these and other variables, however, a template for such security plans is not presented in the NPRM for public consideration or for comment by the repair stations themselves. EAA is very concerned that this represents something of a regulatory blank check. Industry is being asked to comment on and comply with security requirements that will be determined at a later date, without benefit of public or industry review. This is a significant breach of the Administrative Procedures Act that governs the development of rulemaking by Federal agencies. We are at a loss to provide constructive specific comment to a proposal that we cannot review.

### **Redundant Security Requirements**

We believe that the proposed repair station security program is redundant in many areas to procedures that are already in place at the airports of high security importance because of ongoing commercial air

carrier operations on the field. Aeronautical repair stations located outside of the airport operations area (AOA) or away from airports entirely do not pose even a measurable threat to aircraft security. We maintain that the provisions of Security Directive 1542-04-08G, which requires security threat assessments and airport ID for all personnel with unescorted access to the AOA, already covers employees of repair stations at Part 1542 airports with commercial service and where large commercial

aircraft could be accessed. To require an additional security program for repair stations at 1542 airports would be a significant waste of industry and government resources to develop, maintain, oversee and audit such programs. Security Directive 08G already sets forth background verification, badging, access control and procedures for challenging individuals who do not display proper ID or who otherwise appear to be out of place. Additional requirements would only serve to increase compliance cost and divert government resources from areas of significant security risk.

### **Compliance Cost**

We believe that the repair station security program proposal grossly underestimates the compliance costs associated with its implementation, administration and oversight. However, since no standard security program is presented in the NPRM for public evaluation it is impossible to put hard numbers on the cost of implementing the rule.

Repair station operators have indicated that for every additional labor hour necessary to comply with regulatory requirements, a business needs to generate an additional two thousand dollars in revenue. If each repair station only expends 100 hours per year (two man-hours per week) on the implementation, administration, oversight and auditing of their security program, more than \$800 million per year in additional revenue would have to be generated by the 4,000 plus repair stations subject to this proposal. This is a staggering sum that would only be passed on to the aircraft owners themselves, many of whom are EAA members. The general aviation industry has been struggling under the weight of increased regulation, liability and insurance costs, high fuel costs, and a declining pilot population for several decades. The industry cannot afford another billion dollars per year for little or no gain in security, real or perceived.

The NPRM does not account for the impact on aviation safety or the availability of maintenance should businesses choose to surrender their repair station certificates or close their doors for good as a result of this rule. As pointed out earlier in these comments, many repair stations represent a single source for inspection, repair and overhaul of critical and widely used components in general aviation. If any of these facilities close their doors or surrender their repair station certificates, entire fleets of general aviation aircraft would be effectively grounded for lack of parts or service. For example, there is only one repair station authorized to overhaul and repair carburetors used in a large percentage of the general aviation piston aircraft fleet. Should that facility find it cost prohibitive to undertake the proposed program, perhaps as much as fifty percent of the general aviation fleet could be impacted. The security program cost analysis makes no attempt to quantify these effects, nor does it attempt to ascertain the impact the rule could have on the availability of professional maintenance services and its impact on aviation safety.

### **Aircraft Weight as Criteria for Regulation**

TSA is seeking public input regarding whether or not aircraft weight should be a discriminating factor in determining which repair stations should be subject to a security program or the degree and level of compliance that should be applied. EAA agrees with the basic premise that the larger an aircraft is the greater its potential as a tool of terrorism can be and this has been studied and discussed at great length during deliberations over the proposed Large Aircraft Security Program since its release in 2008. These studies have clearly shown that piston powered aircraft of most any size do not possess the mass,

fuel carrying capacity and speed to cause catastrophic physical damage with high loss of life and thus are not likely terrorist targets. It has also become clear that a weight threshold far in excess of 12,500 pounds must be exceeded for turbojet and turboprop aircraft before they pose any catastrophic threat to even unhardened targets. On that basis, we believe that at a minimum, repair stations that do not have direct access to airworthy large aircraft (as opposed to their sub assemblies or components) should be exempt from any repair station security program. There is little use in requiring airport-like security programs for repair stations not located on the AOA of a part 1542 airport or located off-airport entirely and work solely on components, sub-assemblies, products, and parts of aircraft with no access to entire airworthy aircraft. Finally, we believe that in addition to weight, the inherent operational differences between private and commercial air travel should be taken into consideration.

### **Access Control**

EAA agrees that public access control via a repair station from landside at an airport to the AOA should mirror that of the airport as a whole. If the airport in its entirety has physical barriers and restricted access control capabilities then a repair station with access to both landside and airside operations should meet the same level of standard as the rest of the airport. However, at no time do we believe that a repair station should be held to a higher standard or be required to provide greater security or barrier to entry than other operations or the airport perimeter as a whole. When the TSA Security Guidelines for General Aviation Airports indicates that perimeter fencing and restricted access control of the airport is not required, it makes little or no sense to require the repair station to be any more physically secure as a barrier to airport entry than anywhere else.

Another area of stated interest by TSA is the issue of "open access" to the AOA from repair stations. We maintain that this is not an area of significant concern. Naturally repair stations with access to the AOA are located there specifically for the conduct of their business and need open access to aircraft on the field. Hangar doors are routinely left open during business hours in the warmer months for environmental needs such as light, cooling and airflow as well as the ease of moving aircraft in and out of the facility. In addition, it is vital that aircraft owners and pilots have unfettered access to their aircraft in hangars from the AOA and to maintenance personnel and facilities. It can be assumed that with effective perimeter control, access between the AOA and the repair station itself should not be an issue. Unescorted access to the AOA at Part 1542 commercial airports is already covered by Security Directive 08G.

In general, aircraft that are located in hangars at repair stations are there for maintenance, inspection or repair and thus are most frequently in an unairworthy condition. These aircraft in various states of disassembly would present a very unattractive target for terrorists as they are by definition inoperable. Therefore, access from the AOA to the repair station is of limited concern and access from the repair station/landside to the AOA should be consistent with the airport security program as a whole.

### **Use of Security Directives**

This proposal would mandate that repair stations comply with Security Directives currently in force and any future directives issued by the TSA. EAA is strongly opposed to this requirement in light of recent events where security directives have been used to implement sweeping changes and additions to airport security by policy, without the opportunity for public input or even review. In effect, security directives have been used by TSA to circumvent the rulemaking process.

The security directive process was established to give the TSA latitude to address specific threats of a finite duration in as close to real-time as possible. It was an avenue for communicating rapidly and effectively threats to transportation infrastructure and immediate additional actions that should be taken by effected parties to protect that infrastructure. These directives are deemed to be Security Sensitive Information (SSI) and their distribution is limited to only those entities that TSA believes has a need to know the information. Recent expansion and abuse of the Security Directive process demonstrates that industry has legitimate reason to be concerned that yet another segment would be subject to compliance with these edicts. Under the repair station program, TSA would have authority to issue an unlimited number of new requirements with no advance notification or opportunity for input from industry or their representative organizations. TSA has already demonstrated a penchant for doing this in other areas. These changes have not been short-term mitigation strategies against a known threat but rather implementation of permanent broad-based security programs to address no specific threat.

EAA is very concerned about the economic, administrative and access burdens posed by security directives which by their very nature are geared toward Part 1542 airports serving commercial air carrier operations. Under the repair stations proposal, these commercial airport standards would be extended to repair stations on general aviation airports and potentially even repair stations that are nowhere near an airport. We believe that this will have a significant economic impact on thousands of repair stations with little or no increase in real or perceived security.

### **Maintaining SSI Information**

The proposal would establish a requirement that repair stations develop and maintain a process for the receipt, management and controlled access to Security Sensitive Information (SSI) distributed by TSA under the "Standard Security Program." EAA is concerned that there is no proposal or guidance contained in the NPRM that outlines what TSA considers to be an adequate and secure information management system. This could be as simple as a locked file cabinet or very complex like a secure

computer system. It is impossible to gauge and comment on the cost of compliance in terms of capital and administrative expense without additional information from TSA.

The NPRM also calls for a means for repair stations to insure and acknowledge receipt of Security Directives and other SSI information from TSA. TSA proposes a form of verbal acknowledgement of receipt of this information. With nearly 5,000 repair stations, both foreign and domestic, proposed to be covered by this NPRM we do understand how TSA proposes to track the distribution of SSI information using a verbal pass-down system. In the absence of this, we fear that the economic and administrative burden of tracking and confirming receipt of TSA-issued SSI information has not been accounted for under the proposal. This should be reviewed and addressed in the cost-benefit analysis.

### **Trade Organization Access to Programs and SSI Information**

Since the TSA was created, a communication gap has existed between the regulator and the regulated industry, brought about by restrictions on the review of information to only regulated parties. This

restriction on sharing SSI material has produced an unreasonable burden on the aviation industry because the professional organizations charged with representing various facets of that industry are prevented from reviewing and commenting on the documents and directives. The repair station security program is another dramatic example of this communication gap. The NPRM proposes a Standard Security Program but does not make a template of the program available for public review claiming that this information is SSI and available only to the regulated parties after the rule goes into effect. Repair stations and their customers look to professional representative organizations for advice and counsel about how this proposed rule will affect them and whether the program will pose a significant burden on their businesses. Under the proposal, even the regulated parties have no idea what the "Standard Security Program" will look like for their business.

TSA undertook an effort to provide security clearances to some staff at the industry representative organizations for the very purpose of being able to share and discuss sensitive information to arrive at the best possible solutions to security concerns. Despite this, we find that once again TSA is planning and implementing sweeping industry-wide security regulations and policies that it will not share with the organizations charged with representing and informing the industry being regulated.

### **TSA Open Access to Regulated Entities**

Under the proposed Standard Security Program, TSA is seeking the authority to enter, audit and inspect regulated repair stations at will. EAA is concerned that this sort of open access is vulnerable to abuse. We urge the TSA to limit open access to normal business hours and only seek entry to these private businesses outside of normal business hours in extreme circumstances when there is a known specific threat involving a particular facility. In addition, we would like the TSA to make it clear that audits will only be performed by appointment because such audits are disruptive to small businesses and result in significant loss of revenue.

## **Suspension, Revocation and Appeals**

The proposed regulations seek to establish a procedure for suspension or revocation of an FAA issued repair station certificate in the event that TSA makes a determination that a repair station is in non-compliance with its security program or somehow poses a risk to aviation security. EAA is deeply concerned with this new proposed authority given the history of such actions taken against individual airmen by TSA and the Department of Homeland Security. In these instances, airmen certificates have been suspended or revoked while the facts and documentations supporting TSA's actions are withheld, leaving the airman virtually defenseless against the charges being levied against him or her.

Suspension or revocation of a repair station certificate is an extremely serious matter and in all likelihood would force the repair station out of business in a matter of days. When the FAA suspends or revokes a repair station certificate it is only after a number of steps are taken to inform the repair station of any discrepancies and an opportunity is provided to rectify any outstanding issues. If disagreement exists between the certificate holder and the regulator the matter can be immediately appealed to an administrative law judge and appealed still further to the National Transportation Safety Board. This independent third-party appeal process is crucial to preventing abuses of authority or misinterpretation of regulation and policy from bankrupting businesses and crippling industry.

Under the NPRM, we are pleased to see that the TSA has acknowledged the need for an appeals process for security-based suspensions and revocations. However, under the proposal, the repair station would be effectively shut down during the process and most small businesses do not have the resources to support a lengthy appeal process. We maintain that TSA should mirror the FAA appeal process and further ensure that all data leading to and supporting the TSA decision to suspend or revoke a certificate be made openly available to the repair station and their counsel. There is no reason why TSA cannot implement the intent of the Vision 100 legislation while still providing repair stations with the due process and independent third-party appeals historically afforded to holders of FAA issued certificates.

## **Conclusion**

As outlined in these comments, EAA asserts that Congress never intended this rule to apply to the diverse range of repair stations both domestic and foreign covered under the proposal but rather, focus on foreign repair stations providing maintenance services to large air carrier aircraft. If TSA feels that it is imperative for domestic repair stations to also be regulated we maintain that only those repair stations physically located on airports serving large air carrier aircraft should be subject to regulation. In instances where these air carrier repair stations are located on Part 1542 airports we believe that the existing requirements of Security Directive 08G cover these operations and their access to the AOA and no further regulation is required. At no time do we believe that security requirements at a given repair station should be required to exceed those in place at the airport as a whole.

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Thank you for the opportunity to provide comment to this proposal and we stand ready to work with the TSA to develop security procedures that are appropriate and proportionate to the risk and threat posed by specific entities. We would encourage that this be considered as an area of discussion for the forthcoming Aviation Security Advisory Committee General Aviation Working Group due to be established in March. Should you have any questions or need additional information, please do not hesitate to call on us.

Respectfully,

A handwritten signature in black ink, reading "Douglas C. Macnair". The signature is written in a cursive style with a large, stylized initial 'D'.

Douglas C. Macnair  
Vice President, Government Relations  
Experimental Aircraft Association