

Aircraft Repair Station Security



By Kent S. Jackson
kjackson@jetlaw.com

While most people knowledgeable about aviation matters believe that the “attractive” aircraft targets for terrorists would be much heavier than 12,500 pounds, it is still difficult to persuade the lay press, politicians or regulators of that.

Throughout the development of this NPRM, the TSA has solicited and incorporated input from the industry; perhaps these rules can be further simplified. NPRM comments are due by Jan. 19, 2010. Go to www.tsa.gov to see the NPRM and comment procedures.

IN THE INTEREST OF FAIRNESS TO THE TSA, I NEED TO state my bias: I fly about 300 hours a year, and half of the airports that I use don't have a fence. I enjoy the freedom of driving straight to my airplane to load and unload, but I do recognize the threat. I want fences at these airports: Far too often have I had to conduct go-arounds at unfenced airports because of deer on their runways. Undoubtedly the TSA's ever-lengthening reach will eventually extend to all of these airports. And the resulting fences (and perhaps background checks) will keep the deer away.

That aside, the feverish pace of TSA growth seems to have slowed to a reasonable, deliberative pace. An indication of that could be found within the Notice of Proposed Rulemaking for repair station security that was issued last November. It recognized that there are many different kinds of repair stations and there is not a “one size fits all” security solution. This kind of sensible acknowledgement can only occur when security is not a hot topic.

When the demand for “one level of safety” throughout aviation was echoing through the halls of Congress, it was difficult to explain why FAR Part 121 regulations couldn't be applied to each and every aircraft. Similarly insisting upon “one level of security” among all aviation elements could needlessly weaken general aviation's commercial interests while they are waiting for their customers to return to the skies.

What is the threat to repair stations? According to the NPRM, the new rules are necessary “to prevent persons from commandeering, tampering or sabotaging aircraft.” The NPRM doesn't cite any examples of such things occurring at a repair station, but it does point out that Congress created the statutory authority for these rules in 2003.

The proposed rules would require repair stations to adopt and carry out a “standard” security program. They would be required to describe the specific measures implemented to: identify individuals authorized access to the repair station, aircraft and aircraft components; control access to the repair station, aircraft and aircraft components; challenge individuals who are not authorized access and use escort measures for authorized visitors; provide security awareness training to all employees; verify employee background information; designate a security coordinator; and establish a contingency plan.

The NPRM concluded that off-airport repair stations pose less of a threat than those on the airport because the only issue is sabotage and that threat is already dealt with through the FAA-required procedures for return-to-service.

In addition, the TSA would not require repair stations on or adjacent to airports that only serve aircraft with a maximum certificated takeoff weight of 12,500 pounds or less to include the same security measures in the standard security

program as repair stations located on or adjacent to airports that serve larger aircraft. The NPRM states: “The TSA has long recognized that aircraft with an MTOW over 12,500 pounds pose a greater risk to security because such aircraft are of sufficient size and weight to inflict significant damage and loss of lives. Smaller aircraft may be a less-attractive target for terrorists.” The TSA also stated that it would consider whether to exempt repair stations that only perform maintenance on aircraft with an MTOW of 12,500 pounds or less.

Many repair stations already have security measures in place that meet or exceed the program requirements proposed by the TSA. Generally, these measures were implemented against the threat of theft, not terrorism. The new rules proposed by the TSA come with sharper teeth. The rules require each repair station to comply with Security Directives issued by the TSA. The rules spell out the authority of TSA and Department of Homeland Security officials “to enter, inspect, audit and test property, facilities and records relevant to repair stations.”

According to the NPRM, if the TSA doesn't like what it sees when performing an inspection, it has the ability to “notify” the FAA to suspend or revoke the repair station's certificate. There is no provision for civil penalties in lieu of a suspension. If the TSA finds noncompliance that doesn't present an “immediate risk,” then it provides written notification to a repair station and to the FAA of any security deficiency. A repair station must provide the TSA with a written explanation of all efforts used to correct such deficiencies within 45 days. Then if the TSA determines that the security deficiencies have not been addressed sufficiently to comply with its rules, it is to provide written notification to the repair station and to the FAA that the station's certificate shall be suspended. The FAA doesn't get a veto. The suspension remains in place until the TSA determines that the security deficiencies have been corrected.

However, if the TSA determines that a repair station poses an immediate risk to security, it provides written notification to the repair station and to the FAA that the certificate must be revoked. Again, the FAA does not get a veto.

A repair station may request a review of the “immediate risk” determination, but the revocation remains in effect until the review is complete. Not later than 30 calendar days, “or such longer period as the TSA may determine for good cause,” the agency is to examine the case. If the TSA still determines that the repair station poses an immediate risk to security, the TSA assistant secretary (or a “designee”) reviews the situation and either issues a “Final Determination” or informs the repair station and the FAA that the repair station does not pose an immediate risk to security. ■