



# News from the Hill

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## *The FAA Funding Bill And How It Affects You*

**T**he Federal Aviation Administration had good reason to celebrate the New Year. Just prior to the holiday recess, the Senate approved the bill funding the agency's operations for the next four years, ending several months of rancorous debate. Titled "Vision 100—Century of Aviation Reauthorization Act," the law provides a record \$59 billion for the FAA, funding a variety of measures designed to improve capacity, security, and service in the United States airspace system. Among other things, the Act ensures that Aviation Trust Fund revenues are fully and properly spent, boosts Airport Improvement Program spending, clarifies funding for airport security measures, extends and expands the availability of war risk insurance, and provides financial assistance to some of the general aviation businesses hardest hit by the post-9/11 security measures.

What makes Vision 100 particularly interesting for AEA members, however, is a number of provisions that are likely to directly affect repair stations and their customers. These provisions were unaffected by the intense debate that surrounded the bill throughout the summer and fall—a dispute focused exclusively on provisions that would have allowed the FAA to hire private-sector controllers at up to 69 additional VFR towers at small airports—but have been on hold along with the rest of the bill. Now that the bill has been signed into law by the President, the

clock begins running for a number of these measures, many of which feature deadlines for FAA action. Here is an overview of some of the more significant features of Vision 100 that may affect the AEA community:

### **Design Organization Certificates**

The new law could have far-reaching effects on the way the public interacts with FAA designees. Vision 100 directs the FAA to develop and implement a plan for certifying a new type of entity called a design organization (DO). These organizations would certify compliance with the requirements and minimum standards set forth in the Federal Aviation Regulations. This is a function very similar to that undertaken by Designated Engineering Representatives (DERs) today. Individual designees would certify regulatory compliance under the authority of the DO's certificate, much as qualified maintenance technicians approve articles for return to service under the authority of a repair station certificate today.

AEA led the way in demonstrating the viability of this concept. In recent years the Association has worked with the FAA on a demonstration project known as the AEA Designated Engineering Organizational Service, or ADEOS. Under the ADEOS program, the FAA granted a higher level of discretion to the DER organization

to approve data and issue other approvals. The FAA closely monitored the project and found the results to be quite positive—FAAACO man-hours were saved and it was shown that a system could be devised to assure an equivalent level of safety to actual ACO review of data and issuance of approvals. The establishment of DOs will help to ease the burden on the FAA's Aircraft Certification Service, which has been struggling for the last several years to keep up with its design approval workload. The new arrangement will allow the FAA to leverage its approval expertise more effectively.

This system offers a number of potential advantages over the current state of affairs. As certificated organizations, DOs would enjoy a measure of security that individual designees currently do not have from the potential loss of their authorities and privileges. Recent court decisions have once again confirmed that designees can be terminated or "non-renewed" at virtually any time for any reason the FAA finds appropriate. This has led some designees to be reluctant to "make waves" by, for example, questioning the regulatory interpretations of their supervising FAA officials, even where those interpretations differ from the interpretations prevailing in other FAA regions. The result has contributed to inconsistent policies in different parts of the country and competitive disadvantages for repair sta-

tions vis-à-vis their competitors in other states.

The FAA, of course, would have the authority to suspend or revoke a DO's certificate just like any other certificate. Certificate action, however, involves a higher level of due process than individual designees currently enjoy. The FAA could only take certificate action against a DO for just cause and after proper due process. DOs would therefore be in a better position to challenge local regulatory interpretations that varied from those in other parts of the country. In the end, this could lead to greater uniformity in regulatory interpretations nationwide.

The FAA would also retain full discretion to refuse to grant DO status to unqualified applicants.

Congress has given the FAA sufficient time to do its homework and come up with a good policy for governing this program. The FAA will have four years to develop a plan for certificating design organizations—this four-year time period is further enhanced by the fact that the FAA has already developed draft regulations for organizational delegated privileges through the ARAC process. The draft regulations proposed by ARAC would eliminate the traditional link between a FAA certificate and organizational delegated privileges, permitting independent organizations to hold delegated privileges.

The FAA must begin issuing DO certificates within seven years.

### **Foreign Repair Station Oversight and Security Requirements**

Oversight of foreign repair stations has been an issue of some concern in the last few years. In July 2003, the Department of Transportation's Office of the Inspector General (DOT OIG) completed an audit of air carriers' use of repair stations that concluded that

the FAA needed to do a better job overseeing foreign repair stations, since it was often impossible to be certain that either the FAA or the relevant foreign airworthiness authorities were doing an adequate job of ensuring that Part 145 certificated repair stations in their countries were fully complying with FAA standards. The OIG made several recommendations to the FAA on how to improve its oversight of foreign Part 145 repair stations, including developing a system to better capture the results of FAA and foreign authority inspections of repair stations; developing procedures to ensure foreign authorities are adequately emphasizing FAA standards when conducting inspections; clarifying requirements for foreign repair stations to seek FAA approval of changes to their operations; and clarifying FAA policy concerning the number of sample inspections that would be considered adequate to monitor overall compliance.

Vision 100 reflects many of these same concerns. The Act requires the FAA to develop a plan containing an implementation schedule to strengthen oversight of domestic and foreign repair stations and to ensure that foreign repair stations certified under Part 145 are subject to "an equivalent level of safety, oversight and quality control" as those located in the United States. The FAA must transmit this plan to the Senate Committee on Commerce, Science and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 90 days after the date of enactment of the Act—that's March 11. The clock is running, and the plan will soon be transmitted.

Security at foreign repair stations that perform work for U.S. carriers is another area of significant concern. The DOT OIG concluded an audit of security at domestic and foreign repair stations in February 2003. The final

report was never made public owing to the sensitive nature of the security information it contained, but the OIG did explain that it recommended that TSA conduct risk-based security assessments as a first step in determining the actions needed to address repair station security.

Vision 100 vigorously follows up in this area as well. The Act requires the Under Secretary for Border and Transportation Security of the Department of Homeland Security, in consultation with the FAA Administrator, to issue final regulations "to ensure the security of foreign and domestic aircraft repair stations" within 240 days of Vision 100's enactment (Monday, August 9, is the 241-day mark), so the industry can expect to see proposed regulations quite soon. Within 18 months of the issuance of these final regulations, the Department of Homeland Security is to conduct audits of the security measures in place at all foreign Part 145 repair stations that perform work on air carrier aircraft and components, with priority given to foreign repair stations located in "countries identified by the Government as posing the most significant security risks." Where DHS finds security vulnerabilities, DHS will notify the FAA and the foreign repair station, and the repair station will have 90 days to correct the issues or vulnerabilities identified in the audit. If, on the 90th day following notification, DHS finds that the foreign repair station does not maintain and carry out effective security measures, DHS will notify the FAA, and the FAA must suspend the repair station's certificate until DHS determines that the security problems have been rectified. In the event that DHS finds that a foreign repair station poses an "immediate security risk," the FAA must immediately revoke the repair station's certificate, although the Act

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does require DHS and the FAA to develop a procedure by which such a revocation can be appealed. (There appears to be no such appeal provision for suspended certificates.)

DHS and the FAA have only a few months to publish a final security regulation for repair stations, so opportunity for comment is likely to be short. This rule has the potential to create significant problems and impose significant expense on repair stations, especially those located off airport premises. Although the FAA will have some input and hopefully will be able to exert a moderating influence, the statute essentially leaves it to DHS to determine what sort of security measures are necessary at repair stations servicing air carriers. Much will depend on the rule that eventually comes out. **Every repair station that is adversely affected should be prepared to submit comments once the proposed rule is published!** Security issues carry so much weight today that AEA may need to be supported by a huge volume of comments to be able to make a dent in a bad rule, if the proposed rule is flawed.

The good news, for now at least, is that the final version of these security provisions in Vision 100 is actually less burdensome for foreign repair stations than some of the original proposals. Both the original House and Senate versions of the bill included provisions that would have required the FAA to ensure that foreign repair stations meet the same security standards applicable to domestic repair stations. The Senate version went a step further and would have required foreign repair stations to submit to FAA inspections (in addition to inspections by their own national authorities) and implement drug and alcohol testing programs as well. These requirements posed a wide

range of sovereignty issues that could have hurt bilateral relations with a number of countries' civil aviation authorities and invited retaliation in kind from foreign authorities. It is to be hoped that the final DHS/FAA security regulations do not create more problems of this nature.

### Due Process Improvements For Airmen

Vision 100 does offer some more positive security provisions. The Act improves due process protection for United States citizens who face certificate revocation on national security grounds. Recent FAA and TSA regulations permit the FAA to take certificate action against individuals deemed to pose a threat to aviation security or safety. The regulations would have permitted effectively unappealable certificate actions based on mere allegations of a threat. The law will now ensure that U.S. citizens facing certificate revocation are entitled to a hearing before an administrative law judge, the result of which may be appealed in federal court. Although a positive step, this due process provision could still prove hard to implement in practice because the regulations and the bill permit actions to be brought on the basis of classified information that the individual involved may not be able to see or properly respond to. Experience will show how effective these protections turn out to be.

### Civil Penalty Increases

Compliance with federal regulations has become even more important following increases in the civil penalties the FAA may impose. Before this bill, the maximum civil penalty was \$1,100 per violation for most regulatory infractions by AEA members. Vision 100 increases the maximum to \$25,000 per violation. Fortunately, Congress did show some leniency for individuals and small business concerns as defined

in the Small Business Act (a repair station qualifies as a small business if it takes in annual revenues of \$6 million or less). An exemption to the new limit caps the maximum civil penalty for individuals and small businesses in many cases to a more reasonable \$1,100 per violation. Civil penalties of \$5,000 or even \$10,000 per violation may nonetheless be applied to certain violations, including violations of the terms of FAA certificates, selected infractions involving the transportation of hazardous materials, or the improper disposition of life-limited aircraft parts.

Vision 100 also adjusts the threshold above which the FAA is obliged to refer a regulatory enforcement action to the Department of Justice for civil prosecution. Previously, such referral was required where the amount in controversy in the action was more than \$50,000. The \$50,000 threshold remains in effect for violations committed before Vision 100 was enacted, and remains in effect for violations committed by individuals or small business concerns even after enactment. For any other violators, however, the FAA retains administrative authority to pursue the violation as long as the amount in controversy is \$400,000 or less. This will give the agency greater involvement in actions involving significant proposed fines, and will also likely result in more civil penalties being proposed above the \$50,000 mark.

### Counterfeit or Fraudulently Represented Parts Violations

The Aviation Safety Act of 2001 authorized the FAA to revoke any certificates held by a person convicted in a court of law of a violation of a federal law relating to the installation, production, repair, or sale of a counterfeit or fraudulently-represented aviation part or material. Vision 100 tightens this policy by prohibiting the FAA

from issuing a certificate to any person who had a certificate revoked in this manner. This closes a potential loophole that would have allowed a person who had a certificate revoked under this law from re-applying for another certificate of the same or a different type later on.

### **A&P Curriculum Updates**

Perhaps no type of aircraft technology has seen greater change over the last several decades than avionics and other electronic systems. Sophisticated modern avionics have capabilities that were unimaginable 30 or 40 years ago. Unfortunately, the curriculum in most training programs for aviation maintenance technicians has not kept pace with modern developments, either with respect to new technologies or current maintenance practices. Concerned observers such as AEA, the Professional Aviation Maintenance Association, and other industry groups have long argued that A&P training needs to be brought up to date with present-day technologies and practices. Vision 100 addresses this problem. The Act requires the FAA to develop and publish revised curriculum standards within one year of the law's enactment, and to review the standards every three years to ensure they remain current. The manner of publication is left to the agency's discretion, leaving it free to issue an advisory circular, a new regulation, or some other form of guidance. Whichever route the FAA chooses, changes can be expected within the next year.

### **Studies of FAA Inspector Training, Staffing, and Workload**

A well-trained and adequately staffed inspector force is essential to ensuring safety and regulatory compliance. Vision 100 notes the "Sense of the House," that chamber's official

position on an issue, that FAA safety inspectors should take the most up-to-date training at a location convenient to the inspector and that the training should have a direct relation to the inspector's job requirements. Accordingly, the Act directs the Comptroller General to undertake a study of the training of FAA's safety inspectors. The study is expected to include: (1) an analysis of the type of training provided to FAA inspectors; (2) actions that the FAA has undertaken to ensure that FAA inspectors receive up-to-date training on the latest technologies; (3) the extent of FAA inspector training provided by the aviation industry and whether such training is provided without charge or on a quid-pro-quo basis; and (4) the amount of travel that is required of FAA inspectors in receiving training. The Comptroller General is to submit its report to Congress within one year. The Act also directs the FAA to arrange for the National Academy of Sciences to study the staffing standards the FAA uses for its inspector workforce. The ultimate goal of these two studies is to help ensure that the FAA has an adequate number of appropriately trained inspectors to meet its growing obligations in the years ahead.

### **Type Certificate Protection**

Many of us are familiar with the law that restricts the use of Supplemental Type Certificates to the STC holder and persons who have obtained the holder's written approval. Under that law, it is illegal to use an STC to perform an alteration on an aircraft without the STC holder's authorization. Vision 100 extends this same legal protection to type certificates. It is now illegal to manufacture a new aircraft, aircraft engine, propeller, or appliance based on a type certificate unless the TC holder provides written permission to do so. This is good news for TC holders. It is less good news for those

in the industry who support older model aircraft where the TC holder is out of business or no longer actively supports the TC. In such cases, it may be necessary to try to use data that is in the public domain to support the aircraft of other article in question. This provision may yet have unintended consequences for those who perform fabrication in the course of maintenance, since such activities may be construed as manufacturing under intellectual property laws. Time will tell whether this provision becomes problematic.

### **Proposals That Were Eliminated**

Despite some valiant lobbying efforts, there were a number of provisions that would have benefited repair stations that did not make it into the final version of Vision 100.

The House version of the Bill called for the creation of a Small Business Ombudsman within the FAA, an official who would report directly to the Administrator and represent the interests of small businesses. The idea was strongly supported by AEA. The Senate version of the bill contained no comparable provision, and the final compromise version dropped the proposal entirely. The Senate proposal for an ombudsman concerned with small community air service was also eliminated.

Despite a tenacious campaign by the Aeronautical Repair Station Association, the House-Senate conference committee that drafted the compromise version of the bill rejected a provision in the original House version that would have required manufacturers of aeronautical products to make maintenance manuals available at reasonable cost to those parties (such as repair stations) required by regulation to make use of them. The measure faced determined opposition from

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manufacturers. The manufacturers argued that the legislation could force them to compromise valuable proprietary information, and moreover that legislation was unnecessary because FAA regulations already contained a requirement to provide maintenance information (14 CFR 21.50(b)) – although in reality, the FAA does not actively enforce this regulation.

On the whole, Vision 100 contains a significant number of good provisions and supports many important projects and initiatives. It lays the groundwork for a safer and more robust domestic aviation industry and is likely over time to make life easier in many respects for the flying public. Although some provisions are troubling and will bear watching, AEA joins with other trade associations and the entire aviation industry to applaud passage of the bill. The safety and convenience of the flying public, the security of our aircraft and airports, the rights of airmen, the economic viability of aviation businesses, and the smooth functioning of the FAA all stand to benefit as a result. □