

## Airport Services Newsletter

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Airport service providers have received increasing attention from U.S. courts and regulators. Recent activity is set to affect repair stations and employment rights, as well as to provide guidance on Disadvantaged Business Enterprise (DBE) program decisions. In addition, FAA issued several new Advisory Circulars (AC) that affect airports and airport service providers, and several airport series ACs are open for comment.

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### Proposed Amendments to Repair Station Regulations

[In May](#), FAA proposed to amend repair station regulations by revising the system of ratings, repair station certification requirements, and regulations on repair stations providing maintenance for air carriers. The proposed system of ratings would be reduced from eight (8) to five (5) ratings and ratings definitions would be revised to indicate the type of work the repair station is authorized to perform. FAA also proposed to revise recording requirements for repair stations that choose to use a capability list.

With regard to certification requirements, FAA proposed it could deny an application for a repair station certificate if the applicant previously held a repair station certificate that was revoked or if the applicant or certain key individuals who would exercise control over the new repair station materially contributed to circumstances that resulted in a prior repair station certificate revocation action. Further, if a repair station chooses to meet certain certification requirements by contract, FAA proposed the contract only apply to ownership and not the demonstration phase of certification. If a repair station does not permanently possess the required items, it must be able to show that it has made arrangements to provide such items whenever needed, and must display these items and all associated lease agreements during certification.

For repair stations providing maintenance to air carriers, FAA proposed that repair stations must perform work in accordance with the maintenance instructions provided by the air carrier or air operator. In addition, line maintenance will be authorized as a limitation to an airframe rating and the regulations regarding line maintenance authorizations will be deleted. Comments are due on or before **August 20, 2012**.

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### Recent Legal Decisions

In [D.R. Horton, Inc.](#), the National Labor Relations Board (NLRB) was asked to decide whether an employer violated Section 8(a)(1) of the National Labor Relations Act when it required covered employees, as a condition of their employment, to sign an agreement that precluded them from filing joint, class, or collective claims addressing their wages, hours, or other working conditions. The NLRB found that notwithstanding the Federal Arbitration Act, which generally makes employment-related arbitration agreements enforceable, the agreement in this case unlawfully restricted employees' right to engage in concerted action for mutual aid or protection. The decision provides a marked opportunity for employees to contest enforcement of mandatory arbitration and class action waiver provisions.

In [Braunstein v. Arizona Dept. of Transportation, No. 10-16564 \(9th Cir. Jun. 2012\)](#), the owner of a small engineering and land surveying firm alleged the Arizona Department of Transportation's race- and gender-conscious affirmative action program violated his right to equal protection. The court held Braunstein lacked Article III standing to pursue his claims. Braunstein was unable to show that the Department's DBE program affected him or impeded his ability to compete for work when he: 1) did not submit a quote or bid to any of the prime contractors that bid on the government contract; 2) did not present any evidence comparing himself to other subcontractors; and 3) presented no evidence explaining why six prospective prime contractors rejected him as a subcontractor. The 9th Circuit opinion provides a detailed discussion of Article III standing for a state's affirmative action construction program.

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### **Issued Advisory Circulars**

Last month, FAA issued [AC 150/5220-21C, Aircraft Boarding Equipment](#), which contains performance standards, specifications, and recommendations for the design, manufacture, testing, and maintenance of equipment used in the boarding of airline passengers. The AC updates guidance with respect to passenger lift scenarios and associated equipment. The AC also addresses other methods and equipment used to board an aircraft, including passenger boarding bridges, ramps, lifts, and aircraft boarding chairs.

FAA also issued [AC 150/5390-2C, Heliport Design](#), which sets forth standards for the design of heliports serving helicopters with single rotors. The AC provides guidance for touchdown and liftoff areas, turbulence effects, approach/departure airspace, touchdown/position circle marking, and others.

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### **Draft Airports Series ACs**

In addition, current draft ACs, which are open for comment include: 1) [Draft AC 150/5200-37A, Safety Management Systems for Airports](#) (comments due **August 31, 2012**); 2) [Draft AC 150/5300-13, Airport Design](#) (comments due **August 17, 2012**); and 3) [Draft AC 150/5345-53D, Airport Lighting Equipment Certification Program](#) (comments due **July 30, 2012**).

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