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Federal Aviation Administration
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Washington, D.C. 20591-0001

Re: Request for Interpretation of Drug and Alcohol Rules
Rebuilding, alterations and entertainment systems

Dear Ms. MacPherson:

The Aeronautical Repair Station Association (ARSA) requests a legal interpretation from the Federal Aviation Administration (FAA) on whether persons performing rebuilding and alteration activities are required to be covered by a DOT/FAA drug and alcohol program. In addition, we have a question that relates to the maintenance of in-flight entertainment (IFE) system components performed off the aircraft which is referenced in the preamble to the final rule issued on January 10, 2006.

ARSA is a non-profit trade association whose membership is comprised mainly of repair stations certificated by the FAA under the provisions of 14 CFR Part 145. Many ARSA member repair stations perform aircraft maintenance and alteration activities on behalf of Part 121 and 135 air carriers in the U.S. In addition, some of these companies are FAA production approval holders (PAH) under Part 21 that also rebuild their own articles under 43.3(j).

Need for Legal Interpretation

Pursuant to 14 CFR Part 121, Appendices I and J, employees performing "aircraft maintenance or preventive maintenance" for an air carrier in the United States must be subject to federal drug and alcohol testing. As you are aware, the definition of maintenance is contained in 14 CFR Part 1. It includes inspection, repair, overhaul, preservation and the replacement of parts. On the other hand, an alteration is a change or modification to a product or other article (See FAA Order 8300.10, Volume 2, chapter 1, paragraph 5). Pursuant to § 43.2(b), rebuilding requires disassembly, cleaning, inspection, repairing as necessary, reassembly and testing to the same tolerances as a new item. Under § 43.3, only a PAH or its specifically authorized licensee may rebuild its own articles.

Under Title 14 CFR alterations and rebuilding are separate privileges from maintenance under Parts 21 or 43. For example, a repair station may maintain and alter articles for which it is rated under Part 43, while a production approval holder may rebuild and alter articles it manufactures

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under Part 21 and Part 43. Other certificate holders may also perform alterations, such as air carriers, but may not rebuild.

It is our understanding that neither rebuilding nor alterations is subject to the drug and alcohol testing rules. Please advise if this is correct. (See page 3, question 6).

In normal circumstances, the “maintenance vs. alteration” issue does not arise in a repair station because the same employees who perform maintenance also perform alterations. In that case, the employees would be subject to drug testing because they performed safety-sensitive functions, i.e., maintenance or preventive maintenance. However, if certain repair station personnel only perform alterations, are they subject to the drug and alcohol regulations? (See page 3, questions 1 through 4).

The need for clarification is critical because of the unique nature of this regulatory scheme. A certificate holder must comply exactly with Part 121, Appendices I and J and 49 CFR Part 40; it may not exceed these requirements by covering persons who do not perform safety-sensitive functions. If activities such as troubleshooting and the removal and replacement of components performed during an alteration or rebuild is maintenance, personnel performing these activities must be included in a DOT/FAA drug and alcohol program. On the other hand, if these activities are not maintenance, no federal testing would be authorized and the company would be subject to sanctions if it “erred on the side of caution” and tested such employees.

Entertainment Systems

A separate question about the definition of maintenance was raised by the preamble to the new drug and alcohol testing rule issued on January 10, 2006 (73 FR 1666). On page 1673, the FAA states that, “with respect to the specific assertion that **repairing** an entertainment system could subject an entity to drug testing, we note that **repairing** entertainment system components usually is not considered ‘maintenance’... on the other hand, **removing** the entertainment system component from the aircraft and **reinstalling** the repaired component on the aircraft is maintenance and subject to testing.” (Emphasis added.)

The definition of maintenance in 14 CFR Part 1.1 would indicate a different result since it includes repair and replacement but excludes removal. In addition, during the recent FAA-industry meeting to discuss impending FAA guidance it appeared the agency was considering a different distinction for determining whether work performed on entertainment system components was covered (i.e., whether maintenance manuals or Instructions for Continued Airworthiness were issued by an FAA design approval holder). (See page 3, question 5).

Legal Interpretation Questions

The FAA has indicated that it plans to issue guidance on the new drug and alcohol rules in the near future. Nevertheless, ARSA requests a legal interpretation on these issues as soon as possible. (When answering the questions below, please assume that all activities are accomplished for a Part 121 or 135 air carrier in the United States.)

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1. Are repair station personnel who exclusively perform activities relating to alterations of an aviation product or component subject to the FAA drug and alcohol rules? (Note: Questions 2 through 4 do not have to be answered if the answer to this question is "no.")
2. Does it matter if the alteration is a prototype installation being accomplished prior to the issuance of an STC?
3. Are any of the following activities subject to the drug and alcohol rules when performed during alteration activities?
 - a. Installing equipment and making other alterations in accordance with the FAA-approved STC.
 - b. Troubleshooting.
 - c. Removal of parts.
 - d. Replacement of parts.
4. If engineering personnel provide technical advice during the alteration and also assist in performing any of the activities referenced in question #3 (e.g., performed only alteration activities), would they be subject to the DOT/FAA drug and alcohol testing program?
5. In connection with the preamble statement cited previously, are repair station technicians performing maintenance of entertainment system components off the aircraft subject to the drug and alcohol testing rules?
6. Are persons who engage in rebuilding and alteration activities on behalf of a production approval holder required to be included in a DOT/FAA testing program?

If you have any questions or require additional information please feel free to contact the undersigned at 571 334 7298.

Sincerely,



Marshall S. Filler
Managing Director & General Counsel

cc: Diane Wood, AAM-800
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