

## ARSA Regulatory Alert | July 14, 2006 | <http://www.arsa.org>

**TO:** ARSA Members

**SUBJECT:** Report On FAA/Industry Meeting To Discuss Drug & Alcohol Testing Rule

### EXECUTIVE SUMMARY

FAA on July 12 hosted representatives from key industry organizations, including ARSA, to discuss aspects of the new drug and alcohol testing (D&A) rule. The agency said that guidance for the rule was nearly complete and indicated it would be released in the coming weeks. Agency officials said the guidance will focus on the definitions of maintenance and preventive maintenance in the Federal Aviation Regulations (FARs) and on case-by-case determinations to advise whether the D&A rules apply to specific employees or subcontractors. The guidance would offer a few specific examples that will help industry determine whether a certain person is performing maintenance or preventive maintenance and therefore, under the new rules, must be tested. It is clear that much confusion remains as to who is expected to comply with the new rule. ARSA will keep its members updated.

### DETAILED REPORT

The FAA's Aircraft Maintenance Division (AFS-300) on July 12 hosted industry representatives to discuss the agency's drug and alcohol rule and its application in the maintenance world. ARSA Associate Counsel Broderick Grady represented the Association.

Guidance—specifically discussing who is and is not covered by the rule—was the meeting's major topic. The agency said it plans to disseminate internal guidance for its airworthiness and drug abatement inspectors via memorandum, and external guidance via a "Guidance Alert" bulletin from its Drug Abatement Division and Flight Standards Service. The agency did not provide a date for release of the guidance, but officials indicated it is largely written and suggested that it will be out in the coming weeks.

FAA officials indicated that, in terms of determining whether a certain function is maintenance or preventive maintenance—and therefore a "safety-sensitive" function covered by the new D&A rule—the guidance will lean heavily on the regulatory definitions and offer a few specific examples. (Maintenance is defined in 14 CFR Part 1; preventive maintenance is defined there as well as in Part 43, Appendix A; overhaul is defined in Part 43.2).

The agency also plans to maintain a D&A question-and-answer (Q&A) section on the FAA Web site. This section will house real-world examples pertaining to the rule's applicability and enforcement, drawn largely from case-by-case basis scenarios it expects to handle as industry complies with the rule's expanded requirements. During the meeting, the FAA offered a few samples of the types of case-by-case maintenance-related scenarios it plans to compile to help guide industry:

- A repair station wants to get a blade X-rayed. It sends the blade to the manufacturer, and the manufacturer does the X-ray. If the manufacturer makes a determination from the X-rays that the part is airworthy, then the person making that determination must be tested. But if the manufacturer merely sends the data back and the repair station makes the determination, then the person performing the X-ray does not need to be tested. (This example is troubling to ARSA since the FAA specifically rejected the Association's argument that the determination of testing should be based upon the persons approving the maintenance for return to service (i.e., the repair station's employees), not on the person performing the activity as a subcontractor.)

- An avionics manufacturer has a repair station and uses engineers on the maintenance side. It uses its engineers in the repair station world to examine and assess software anomalies. Those engineers would be covered by the D&A testing rule, and therefore must be tested. (The Association is equally confused by this example since, under the Part 1 definition, the engineer is not performing maintenance by examining and assessing. Performing corrective actions based upon the assessment would be maintenance.)

The FAA also offered samples of the general guidance it plans to offer regarding what functions constitute maintenance:

- The agency said that persons performing the initial inspection/test on an article to determine what needs to be repaired would not, in most cases, be covered by the D&A rule (which seems to be contrary to its example of the engineer). Conversely, persons performing the final test to ensure the work had been done correctly would, in most cases, be covered by the D&A rule.
- Washing an aircraft general is not considered maintenance; washing an engine typically is considered maintenance.
- Dry-cleaning flame-resistant seat covers is not maintenance, nor is performing flammability tests on them. However, inspecting them to make sure they were cleaned correctly is maintenance, as is reinstalling them.

The agency clarified that its guidance will cover how the D&A rule affects parts fabricators working under AC 43-18, "Fabrication of Aircraft Parts By Maintenance Personnel." Officials indicated that the guidance will explain that persons fabricating the parts are not performing maintenance and therefore are not covered by the D&A testing requirements, while the persons installing the fabricated part are performing maintenance, and therefore must be tested.

It is clear that much confusion exists regarding the rule and its applicability. ARSA will continue to work with the FAA on clarifying those issues and will keep its members informed.

For more on the FAA's D&A testing rule, see: [http://www.arsa.org/taxonomy\\_menu/10/18](http://www.arsa.org/taxonomy_menu/10/18)

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