January 31, 2002

Mr. Terence G. Haglund
Aviation Law Center
295 McLaws Circle, Suite 1
Williamsburg, VA 23185

Dear Mr. Haglund:

I am writing in response to your letter dated October 18, 2001. Writing on behalf of World Airways, Inc. (World), you requested an opinion regarding whether "foreign national Aer Lingus flight attendants are required to comply with World Airways' anti-drug/alcohol misuse prevention program, and must be drug tested." You stated that “[t]he flight attendants are all foreign nationals employed by Aer Lingus, not World Airways, and they perform their flight attendant duties on international flights only (which included arrivals to and departures from the United States).” Further, you explained that “Aer Lingus utilizes those flight attendants on flights operated by World Airways for Aer Lingus.” The Federal Aviation Administration's (FAA) regulations explicitly require that all flight attendants serving on flights operated under 14 CFR part 121 must be drug and alcohol tested in accordance with the FAA's drug and alcohol testing regulations found in 14 CFR part 121, appendices I and J.

Your letter attaches correspondence dated March 5, 1997, from the Program Implementation Branch, Drug Abatement Division. In the 1997 letter, the Drug Abatement Division provided guidance stating that Philippine Airlines flight attendants did not need to be drug and alcohol tested because they were "Philippine Airlines employees, and are not performing a safety sensitive function, either directly or by contract for World Airways." Furthermore, the letter clearly reiterated the requirement for drug and alcohol testing:

> if World should hire foreign nationals, either directly or by contract, to perform any safety sensitive function (including flight attendants), these individuals should be included in World's antidrug/alcohol programs and would be subject to drug testing while they are in the territory of the U.S.(sic)

As stated in the drug and alcohol testing regulations, flight attendant duties are "safety sensitive duties" when they are performed on flights operated under 14 CFR part 121, 135, or 135.1(c). Whenever World performs any flight under its

air carrier operating authority under 14 CFR part 121, it must drug and alcohol test all safety-sensitive employees in accordance with 14 CFR part 121, appendices I and J. According to the March 5, 1997 letter, the Drug Abatement Division provided guidance to World with the understanding that the flight attendants were not performing on flights under World's operational control.

In responding to your October 18, 2001, we gathered information concerning the flights World conducts for Aer Lingus and other foreign carriers. We have spoken with Conrad Mora, the FAA's Principal Operating Inspector assigned to World. Mr. Mora informed us that the flights that World has been conducting for Aer Lingus and other foreign air carriers have been 14 CFR part 121 supplemental operations. Furthermore, Mr. Mora informed us that World maintains operational control over these part 121 flights.

Therefore, these flights are conducted under World's operational control and are performed by World under 14 CFR part 121. It has been World's responsibility, since the drug testing regulations became effective in 1990, to ensure that flight attendants and all other safety- sensitive employees performing, directly or by contract, for World are subject to FAA-required drug and alcohol testing. We understand that these requirements have been repeatedly discussed with World since 1997. As you know, since August of 2001, the FAA's Drug Abatement Division has been investigating World's failure to test foreign flight attendants employed by contract to perform safety sensitive duties on part 121 flights under World's operational control.

Thank you for your inquiry.

Sincerely,

[original signed by]
Donald P. Byrne
Assistant Chief Counsel

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