U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

MAY 29 2015

Mr. Ryan Gucwa
President, Odyssey Airways, LLC
1111 N. West Shore Blvd., Suite 400
Tampa, FL 33607

Re: Sections 120.35 and 120.39 of the Code of Federal Regulations, Testing for Prohibited Drugs and Testing for Alcohol

Dear Mr. Gucwa:

This is in response to your inquiry of February 7, 2014, seeking clarification of provisions of Title 14 Code of Federal Regulations part 120 concerning drug and alcohol testing. Your letter indicates that you are a part 135 single-pilot on-demand operator conducting domestic and international operations.

You present two hypothetical questions, and this response addresses each of them. In the first hypothetical, you fly to the Bahamas, and upon post-flight inspection, you discover a damaged part which, "must be addressed prior to the next flight." For purposes of this interpretation this repair is considered "emergency maintenance" under 14 C.F.R. § 120.35(d) and § 120.39(d). The airport has a licensed A&P mechanic, who has the part in stock and can perform the work. The mechanic is not in a DOT/FAA drug and alcohol testing program since employees who perform safety sensitive work outside of the United States are not subject to testing, according to § 120.123 and § 120.227. May this mechanic perform the work? Yes. As described in your hypothetical, the licensed A&P mechanic may perform the work as emergency maintenance under § 120.35(c) and (d) and § 120.39(c) and (d). You, as the operator, must comply with the notice and re-inspection requirements of §§ 120.35(c) and 120.39(c).

With regard to your second hypothetical, the scenario you presented is essentially the same as the scenario in your first hypothetical, with the exception that the airport is now within the United States. The location of the airport does not change the answer. If there is no maintenance provider available who is subject to a DOT/FAA drug and alcohol testing program a non-covered maintenance provider may perform the emergency maintenance, as defined in § 120.35(c) and (d) and § 120.39(c) and (d), and you, as the operator, must comply with the notice and re-inspection requirements of §§ 120.35(c) and 120.39(c).

In either of your hypothetical situations, § 120.35(c) authorizes the certificate holder to operate the aircraft for one leg, including an on-demand operation, to a place where the emergency repairs can be inspected by a mechanic who is in a drug and alcohol testing program.

We hope this response has been helpful to you. If you have any additional questions or require further information, please contact my staff at (202) 267-3073. This response was prepared by Neal O'Hara, an attorney in the Regulations Division of the Office of the Chief Counsel. This response was coordinated with the Air Transportation Division of the Flight Standards Service, and the Drug Abatement Division of the Office of Aerospace Medicine.

Sincerely,

Lorelei Peter
Deputy Assistant Chief Counsel, Regulations Division