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

Office of the Chief Counsel

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

JAN 11 2016

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

Re: Drug and Alcohol Testing Requirements for Emergency Maintenance under §§ 120.35 and 120.39 of Title 14 of the Code of Federal Regulations

Dear Mr. Gucwa:

This letter supersedes and revokes the legal interpretation sent to you on May 29, 2015. That response contained an error that has been corrected in this letter. Your inquiry of February 7, 2014, sought clarification of provisions of Title 14 Code of Federal Regulations (14 C.F.R.) 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).

The letter of May 29, 2015, stated that § 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. That requirement is not in the regulation.

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
Acting Assistant Chief Counsel for Regulations

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Odyssey Airways, LLC

February 7, 2014

Federal Aviation Administration
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To Whom It May Concern:

I am writing today to get clarification on a few interpretations of the FARs, specifically Part 120: Drug and Alcohol Testing. I'd like to present a few hypothetical situations to help us determine future corrective actions, should the hypothetical situations, one day, become reality.

We are a Part 135 single-pilot on-demand operator with domestic and international authorizations. For background purposes, we fly a Piper PA-31-350 aircraft. I have read Part 120 several times and consulted with our Principal Operations Inspector (POI) at our local FSDO. After some discussion, I am still confused on some specific regulations within this Part.

Hypothetical #1

Let's say that we are operating a Part 135 on-demand flight to an airport in the Bahamas. After the landing, a post-flight inspection finds that we have a crack in one of our spinners. It must be addressed prior to the next flight. There is a licensed A&P on the field that has the part in stock and can replace the spinner, at his facility. He is not on a drug and alcohol program. I see two possible solutions to this, however, due to my confusion of some specific regulations that I will cite, I am unsure of the correct way to address this hypothetical issue.

1. One solution. We, the employer (as defined in §120.7(i)), can contract this licensed A&P mechanic to remove and replace the spinner. After the work is completed by the contracted employee (as defined in §120.7(h)), a logbook entry is obtained and we can continue to legally operate, immediately, under Part 135 rules to return the passengers to the United States without any further required action. I could find a conclusion that this action would be with full compliance of this Part of the FARs. Here is why:
    a. Subpart E (Drug Testing Program Requirements) states that the contracted A&P mechanic from the Bahamas is performing a "safety-sensitive function" as defined in §120.105 and must be subject to drug

testing. However, it is my understanding that because the replacement of the spinner is not being done within the territory of the United States, that this particular mechanic is not required to be subject to drug testing as stated in §120.123(b).

b. Subpart F (Alcohol Testing Program Requirements) seems to have the same exemption in §120.227(b), which also states that the provisions of Subpart F are not applicable outside the territory of the United States.
c. Due to the above, this solution seems to fall within the full compliance of this Part. ***Am I correct in thinking that this solution would be in full compliance with Part 120?***

2. Another possible solution. In this hypothetical, I have heard a different interpretation of the rules which would provide the following solution. This would be considered "emergency maintenance", as defined in §120.39(d) and since no maintenance personnel are available at the airport in the Bahamas that are on an alcohol testing program (Subpart F), the mechanic in the hypothetical can perform the work. However, after the work is performed, the aircraft must be re-inspected by maintenance personnel on an alcohol program at the next available airport with such personnel. I'm unclear as to whether this flight to the next available airport can be done under Part 135 rules with passengers, or not. The rules do not seem to specify. I will present hypothetical #2 that will seek clarification of this. I disagree with the interpretation in this solution for the following:
    a. In §120.39(c), it states that if "… no maintenance providers are available that *are subject to the requirements of subpart F*…" Since this work is performed outside the territory of the United States, this would exempt this work from the rules of §120.39(c). Furthermore, it would be my interpretation of the rules to have an exemption from having to have the aircraft re-inspected, nor would the operator have to report to the repair to the Drug Abatement Division of the FAA. This would lead me to lean towards solution 1 being accurate. ***Am I incorrect in this interpretation?***

Hypothetical #2

We are at a rural airport in Georgia and no maintenance personnel are available that are on a drug and alcohol program, as mandated in Part 120. There is, however, a licensed A&P mechanic who could perform aircraft repairs on our aircraft. We have an alternator failure that must be addressed prior to flight. In this case, I would agree that this falls under the definition of "emergency maintenance", as defined in §120.39(c). I would also agree that we can contract the work of this repair to the licensed A&P that is referred to in this hypothetical, provided that we notify the Drug Abatement Program Division within 10 days and have the work re-inspected by maintenance personnel on a drug and alcohol program at the next airport in which they are available. My confusion, however, is after this "emergency maintenance" is performed, ***are we able to perform the flight immediately following this maintenance under Part 135 flight rules, provided that we***

adhere to the requirements of §120.39(c)(1) & (c)(2)? Or, does this have to be done without passengers and under the flight rules of Part 91 until such re-inspection can be completed?

Another issue that I notice in this regulation is that paragraph c only addresses maintenance personnel that are not on an alcohol testing program (Subpart F), that they can perform the emergency maintenance. The regulation does not seem to offer any exemption on the requirements that maintenance personnel are required to be on a drug testing program (Subpart E). If that understanding is correct, the maintenance personnel conducting the emergency maintenance does not have to be on an alcohol testing program but *does* have to be on a drug testing program? ***Is that the intention of this rule?***

I hope that I have been clear in presenting the areas of the regulations that I may have an incomplete understanding. Thank you very much for your time in reading this and answering my questions. It is my wishes that these hypotheticals don't become reality, however, your interpretation will help our contingency planning of our operations should these issues, one day, have to be addressed.

Thanks again for your time.

Sincerely,

Ryan Gucwa
President