

May 9, 2011

U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590

RE: DOCKET NO.FAA-2002-11301, ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES; SUPPLEMENTAL REGULATORY FLEXIBILITY DETERMINATION

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate, and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air transportation, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation, and the military.

NATA appreciates the opportunity to provide comment on this supplemental regulatory flexibility determination. NATA believes that this proposed regulatory flexibility determination lacks serious analytical rigor, fails to understand fully the diversity and depth of regulated parties and underestimates the costs imposed upon those parties. For those reasons, NATA posits that this proposed determination is materially insufficient to support its finding and should, therefore, be withdrawn until the administration is able to submit a serious analytical document for comment.

Analytical Rigor

NATA asserts that this proposed regulatory flexibility determination is flawed due to its lack of documented and supportable assumptions and conclusions. NATA points to the following issues within the proposed determination:

- **Over reliance on an unscientific survey** – In describing the universe of regulated parties, the Federal Aviation Administration (FAA) has relied heavily upon a member survey conducted by the Aeronautical Repair Station Association (ARSA). The FAA provides no evidence (or even an assertion) that this survey was conducted with the appropriate level of analytical rigor to ensure that the resultant data is representative or even correct. NATA believes that treating an anecdotal survey as a primary source for describing and quantifying regulated parties is unacceptable and may very well represent a violation of the Regulatory Flexibility Act as well as other federal data quality standards and statutes.

May 9, 2011

Page 2 of 4

- **General cost and salary assumptions** – In determining impact, the FAA utilizes completely unsubstantiated assumptions relating to employee salaries, and supervisor-to-employee and instructor-to-employee ratios. The use of completely unsubstantiated assumptions alone makes the findings of this determination utterly unreliable.
- **Training and education assumptions** – Again, the FAA makes assumptions without providing even an attempt at justification. The FAA has estimated training time required to meet the training standard contained within the rule as well as estimating the cost of establishing an educational program without any support.
- **Program development and maintenance** – In this section, the FAA proposes that the establishment of a testing program will require 16 hours at an employee cost of \$21 per hour. The FAA's analysis of the impact of establishing a drug and alcohol testing program is a mere four sentences long and includes new unsupported assumptions and calculations.
- **Annual documentation** – Again, in this section the FAA submits numerous unsupported cost and time assumptions.

NATA is very concerned with the near flippant approach the FAA has taken in regards to analytical rigor in completing this proposed regulatory flexibility analysis. The FAA's failure to provide supporting and justifying data has led to the conclusions made in this determination being completely unreliable and useless in determining impact.

Regulated Parties

As outlined in the previous section, the FAA's description of regulated parties is completely unreliable on data quality concerns alone. However, the FAA further demonstrates that its description of regulated parties is faulty by misclassifying a number of businesses as not ever needing a drug and alcohol program. The classification of the following NAICS codes as never requiring a drug and alcohol program is incorrect:

- **334511 - Rebuild electro-mechanical switches for aviation use**
While the term "rebuild" under FAA definitions is a manufacturer-performed operation and, therefore, not subject to the requirements of the rules under consideration, many non-certified maintenance companies performing "maintenance" of aircraft parts consider their work to be classified as "rebuilding" (general meaning of the term) and, therefore, fall under this NAICS code and the FAA's requirement to establish a drug and alcohol testing program.

May 9, 2011

Page 3 of 4

- **541380 - Hydrostatic testing**
A drug and alcohol testing program is required if operations performed under this NAICS code are performed as “maintenance” of an aircraft.
- **541380 – Inspection**
A drug and alcohol testing program is required if operations performed under this NAICS code are performed as “maintenance” of an aircraft.
- **541380 - Non-destructive testing**
A drug and alcohol testing program is required if operations performed under this NAICS code are performed as “maintenance” of an aircraft.
- **811310 - Precision grinding and testing of various fuel & hydraulic/pneumatic valve assemblies**
A drug and alcohol testing program is required if operations performed under this NAICS code are performed as “maintenance” of an aircraft.

In addition to misclassifying a number of the NAICS codes, the FAA’s reliance upon the ARSA survey and the agency’s failure to conduct its own analysis of affected parties has led to other non-certified maintenance providers not being included as subcontractors. NATA members have pointed out that cabin entertainment repair facilities are not listed as a regulated party despite the fact that they are required to have a drug and alcohol testing program if they are performing maintenance.¹

Impact Analysis

In one calculation relating to impact, the FAA attempts to quantify cost on an employer when employees are taken from their jobs to perform the required testing and training under this rule. The FAA simply multiplies the employees’ computed (and unsupported) salary costs by the amount of estimated time for completing the task to find cost. This method fails to account for the majority of cost to the business. Employee maintenance labor is a fixed asset, every minute that an employee is required by regulation to be away from their assigned duties is lost labor revenue for their employer. Regulations that require maintenance personnel to spend time on other non-maintenance duties, such as testing and related training, reduces the number of billable labor hours that employees may perform in a given year and thus reduces the employer’s revenue. To monetize the impact upon a regulated party accurately, the FAA must account for the reduced revenue experienced by the employer rather than just the costs of employing an individual while he or she is undergoing testing and training.

¹ It should be noted the FAA’s failure to grasp fully those regulated by the rule under consideration in this determination extends to the promulgation of the rule itself, whereby the FAA stated that it did not believe that cabin entertainment repair facilities would be required to maintain a drug and alcohol testing program. In actual practice, the FAA is requiring just that.

May 9, 2011

Page 4 of 4

Additionally the FAA completely fails to account for the costs associated with reduced availability of contractors and subcontractors due to the testing requirements.

Real world experience between the implementation of this rule and the FAA's release of this supplemental regulatory flexibility analysis has shown that one of the greatest costs borne by regulated entities is the reduction of availability of contractor and subcontractor services. As local facilities choose not to perform aircraft and aircraft parts maintenance due to the drug and alcohol testing and training requirements, regulated parties are forced to ship work to non-local facilities, thus incurring shipping and delay costs. The FAA's delay in releasing this determination puts the agency in the rare position of having actual impact data available to it for development of an accurate impact analysis. However, the FAA chose to rely on purely hypothetical calculations. NATA believes that federal requirements on data quality require the FAA to use the highest quality data that is reasonably available when making regulatory flexibility determinations. In this case, actual compliance data is available but the FAA made no effort to obtain that data.

Conclusion

NATA is concerned that the FAA has not given this regulatory flexibility determination the scrutiny and analytical rigor it deserves. NATA concurs with the FAA that the safety benefits of a drug and alcohol training and testing program are important but also believes that a comprehensive regulatory flexibility determination and analysis is vital. This determination falls well short of all established federal standards for data quality and is, therefore, an inadequate certification that the examined rules do not have a significant economic impact. NATA asks that the FAA withdraw this proposed determination and republish, as soon as practical, a comprehensive analysis that meets basic data quality and analytical rigor requirements. NATA further requests that the FAA use, as a basis for its determination, actual compliance cost data, since that will provide the best measure of economic cost.

Respectfully,



Michael France
Director, Regulatory Affairs