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

800 Independence Ave., SW.
Washington, DC 20591

Fran DeJoseph
Southern Jet Management, LLC
1800 Airport Road
Kennesaw, Georgia 30144

Dear Mr. DeJoseph:

In a letter dated October 24, 2005, you expressed disagreement with a letter of interpretation that you received from our Drug Abatement Division and asked us three additional questions. We have noted your disagreement and now answer your three additional questions in the sequence you presented.

1. If an [sic] FAR 135 aircraft had maintenance done by a mechanic that does not meet the Drug and Alcohol Requirements of FAR 135 and 121, what does the FAR 135 Certificate holder have to do before he can use that aircraft on a FAR 135 charter?

Our answer: An aircraft that is listed on the operation specifications of a certificate holder conducting flights under Title 14, Code of Federal Regulations (14 CFR) Part 135 must be maintained under the certificate holder's maintenance program. That such an aircraft is owned and periodically operated under 14 CFR part 91 by a person other than the certificate holder does not lessen that obligation in any way. 14 CFR § 135.251(c) contemplates a situation in which an aircraft requires emergency maintenance and there are no maintenance providers subject to appendix I of part 121 at the airport. In that case, the certificate holder must provide written notification of the emergency maintenance within 10 days while retaining copies for at least two years. In addition, the certificate holder must also have the aircraft inspected when it is next at an airport where drug-tested personnel are available. Other than in the circumstance described in section 135.251(c), maintenance by persons not tested pursuant to appendix I of part 121 is prohibited on aircraft operated under part 135.

If non-emergency maintenance was performed on the aircraft by a person not meeting the drug and alcohol testing requirements, it would be a violation of the regulations, which could result in penalties and require corrective actions, including the possible removal of the aircraft from the certificate holder's operations specifications. (See: 14 CFR § 119.51) The primary maintenance inspector or principal operations inspector or both, as applicable, would determine what remedial actions would be necessary in order for the airplane to return to part 135 service. Remedial actions may include a full conformity inspection.

2. In the response from the Drug Abatement Division, they state, "The requirement to have an FAA-mandated drug and alcohol testing program applies to any individual who performs safety-sensitive functions on Parts 121, 135, and 135.1(c) aircraft". Does that mean a pilot who flies an aircraft for an owner under FAR 91 has to meet the Drug and Alcohol Requirements of FAR 135 or 121 if that same aircraft is used FAR 135 charter? If not, why?

Our answer: If that pilot to whom you refer also operates or is available to operate *any* flights under part 135 on behalf of the certificate holder then he or she must meet the applicable drug and alcohol testing requirements. (See: 14 CFR §§ 135.249-135.255). However, if that pilot performs no safety-sensitive functions for the certificate holder in any capacity whatsoever then the drug and alcohol testing requirements do not apply.

We take this opportunity to point out that the term "FAR 135 aircraft" is a misnomer as you use it above and may reflect a misunderstanding. We appreciate the opportunity to clarify. If an aircraft is listed on the operation specifications of a part 135 certificate holder, certain part 135 requirements, such as compliance with approved maintenance programs, apply continuously without interruption.

On the other hand, the applicability of certain portions of part 135 regulations to a specific flight operation, such as those found in subparts B and D, depends upon whether a flight is conducted for compensation or hire. If a specific flight is not conducted for compensation or hire, (e.g. a ferry flight, positioning flight, or a flight conducted by the owner of the aircraft for his or her private use) then the flight may be conducted pursuant to part 91 operating rules.

We add another clarification. If the owner of the aircraft elects to use the provisions of section 135.1(c) to operate under part 91 operating rules, he or she would be required to comply with the drug and alcohol testing requirements of sections 135.249-135.255 and also section 135.353.

3. If an [sic] FAR 135 aircraft had maintenance done by a mechanic that does not meet the drug and alcohol requirements of FAR 135 and 121, is that FAR 135 operator in violation of FAR 135 and 121 if he does not fly? If yes, why?

Absent the circumstances described in section 135.251(c), any such maintenance would be a violation. The violation would occur at the time such maintenance is performed and whether the aircraft is flown is not relevant.

We trust that this answers your questions. Thank you for your inquiry.

Sincerely,

Rebecca MacPherson
Assistant Chief Counsel, Regulations