



FEDERATION OF INDIAN PILOTS

Ref No: FIP/DAS - DGCA/2021 - 12

23rd September, 2021

Shri Sanit Kumar
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Office of Director General of Civil Aviation,
Aurobindo Marg,
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New Delhi - 110003

Sub: Draft CAR on “Procedure for examination of the aviation personnel for consumption of Psychoactive Substances” - Comments Regarding

Sir,

With reference to the subject issue, we hereby submit our comments as under:
(Any point in the draft CAR not specifically addressed through this letter, does not imply endorsement of the same by the FIP)

1) Inadequacy of aviation related regulatory provisions:

Since the proposed CAR is being issued under the provisions of Rule 24 read with Rule 133A of the Aircraft Rules, 1937 - it is pertinent to mention that the said Aircraft Rule specifically pertains only to a period commencing twelve hours prior to a flight and includes the time during which a licence holder actually exercises the privileges of a particular licence or rating.

Similarly, Para 1.2.7.1 of ICAO Annex -1 states that “Holders of licences shall not exercise the privileges of their licences and related ratings while under the influence of any psychoactive substance which might render them unable to safely and properly exercise these privileges”.

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The proposed urine test may reveal only a potential past condition (i.e. the consumption of a psychoactive substance days, if not weeks before the applicable 12 hours prior to a flight) which may have no adverse effect on a person at or near the time of being tested. This would not be consistent with the letter and spirit of the rules, where the purpose of drug tests is to dissuade substance use and intoxication at the current moment in order to ensure an acceptable level of cognitive ability and alertness.

In other words, a past condition that occurred more than 12 hours prior to the commencement of duty and having no bearing on flight safety or the cognitive ability of an individual, is beyond the regulatory scope of Aircraft Rule 24 and para 1.2.7.1 of ICAO Annex 1.

2) Probability of false positive tests due to the passive or involuntary exposure to psychotropic substances / Unjustified mandatory rehabilitation:

There are several legally permitted medications, both prescriptive and nonprescriptive, that may trigger false positive tests without the test subject (eg. licence holder) even being aware. Some of these are cough syrups, pain killers, NSAIDS and many other types of medication that may have been consumed several days before a flight.

Furthermore, there could also be a possibility of the licence holder being unaware of the presence of psychoactive substances in food or beverages products, or may passively ingest smoke containing the same. Examples of such preparations are those made of cannabis related substances which are legally available in many countries such as Canada and USA, that crew members may fly to or visit during vacations.

In addition, there are well documented cases of individuals being falsely implicated in drug tests in competitive sports, through spiked food and beverages. The same could be a distinct possibility in a work environment where catering items pass through the hands of many intermediaries before being served.

Therefore, the imposition of mandatory rehabilitation for the individual in the event of a first time positive test and the presumption of chronic dependency cannot be justified.

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3. Deficient Chain of Custody / Questionable Practices of Accredited Laboratories:

There is no provision either for the tamper proof sealing of the container post collection, no minimum qualification criteria laid out for selection of the sample collecting agency or any regulatory oversight to ensure the quality and integrity of the chain of custody.

Furthermore, NABL accredited labs have also recently been questioned by investigative agencies following a spate of fake RT / PCR test reports in the country. Under these circumstances occurrences of sample contamination, unethical practices (such as the sample collecting agency or laboratory, sub-contracting their tasks to non-accredited agencies) or compromised testing protocols are a distinct possibility.

4. Impractical Process of Obtaining Screening Test Results:

The subject draft CAR states that “The screening test shall be carried out immediately after the sample is collected at the designated facility of the organization and report shall be generated. Screening test on the national sample shall be carried out in a room equipped with video recording facility. The employee undergoing testing will wait in a designated area for the report “.

In the event that the sample collection centre and the testing laboratory are both far apart, either in terms of distance or time (e.g., due to road traffic) the person being tested would have to wait indefinitely after a flight till the sample is transported to the lab and the report is generated. This would be further aggravated in the aftermath of a long duty day.

5) Ambiguous appellate process:

The CAR states that “in case of any disagreement, if considered necessary, DGCA may refer the matter to the MRO for advice”. In other words what is “considered necessary” is left to the discretion of the DGCA, thereby denying the aggrieved personnel an automatic access to natural justice.

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6) **Scope of harassment by law enforcement agencies:**

A positive test, irrespective of whether it is false or not, could attract the provisions of laws such as the Narcotics, Drugs and Psychotropic Substances Act 1985, where other law enforcement agencies outside the scope and jurisdiction of the DGCA would get involved. As a result, persons who test positive could be dragged through a long drawn legal process to prove their innocence, by which time, irreversible damage and harm could be done to their career and reputation.

7) **Privacy and Confidentiality of records:**

Privacy being a fundamental right under the Indian constitution, the lack of safeguards stipulated in the CAR to protect the identity and records of the subject being tested is a matter of great concern.

8) **Additional Expenditure and Loss of Human Resources:**

The additional cost of testing for psychotropic substances would add additional expenditure to an already financially stressed Indian civil aviation industry. Furthermore, the grounding of personnel as a result of false positive tests would result in an avoidable loss of expensive trained manpower causing a huge drain on Human Resources.

9) **Conclusion:**

In view of the above points, our Federation is of the view that random testing for psychoactive substances does little to enforce the letter and spirit of the relevant subsections of Aircraft Rule 24 and ICAO Annex 1. At best this would only serve as an expensive and inherently flawed deterrent which would do little to ascertain the actual level of cognitive impairment and alertness of the personnel at the time of exercising the privilege of the licence or rating.

Such measures, if implemented, would only create an atmosphere of worry and apprehension amongst the majority of aviation personnel for fear of being wrongly implicated or harassed. Such a negative atmosphere by itself would be an impediment to flight safety.

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10) **Suggested solutions:**

As an organisation of 5000 professional pilots across the entire spectrum of civil aviation operations, we hereby suggest a progressive system based on peer intervention and trust.

Furthermore, the underlying objective of achieving flight safety under Aircraft Rule 24 could be better achieved by the use of scientific, non-invasive, inexpensive, software driven cognitive impairment testing of individuals. This can be easily achieved through the use of handheld devices that would not only detect impairment caused by drugs and alcohol but also other factors such as stress, emotional distress, dehydration and fatigue due to sleep loss - which we believe are all cumulative threats to the industry today which were not sufficiently envisaged during the era when the Aircraft Act 1934 and Aircraft Rules 1937 were originally promulgated.

May we request you to grant us an opportunity to further discuss the subject issue in greater detail so that the objective of promulgating an effective and progressive regulatory policy is achieved.

Thanking you

Yours Faithfully,

Capt. Surinder Mehta
President, FIP

cc: Director General of Civil Aviation, New Delhi
cc: Director - Medical Service (CA), New Delhi.
cc: President, Confederation of Indian Industries (CII)

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