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

Office of the Chief Counsel

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

SEP 18 2013

Mr. Fred L. Pasternack, M.D.
[redacted]

Dear Dr. Pasternack;

This is in response to your letter of May 6, 2013, requesting an interpretation of which safety-sensitive employees are subject to random drug testing, and what, if any, limitations there are on random drug testing based on the definition of performing as found in 14 C.F.R. § 120.7(k).

As you noted in your letter, our letter to Nancy Mayo from Rebecca MacPherson, April 19, 2013, states that the definition of performing found in § 120.7(k) does not apply to random drug testing. This is because alcohol is a legal substance the use of which is prohibited by regulation only within prescribed periods related to an employee performing a safety-sensitive function. Drugs, however, that are prohibited under the regulations are illegal under federal law and their use by an employee responsible for safety-sensitive functions is never permitted. Thus employees hired to perform a safety-sensitive function are subject to random drug testing regardless of whether they happen to be performing their safety-sensitive functions at the time they are selected for a random drug test.

Consequently, a pilot, who is an employee hired to perform a safety-sensitive function for an aviation employer as defined by the regulations, is subject to random drug testing even if that pilot is not immediately available to perform the safety-sensitive function due to a lapse in currency. We have reviewed the Mayo interpretation, in light of the issues you raise in your letter, but none of those issues change our interpretation. Therefore, this letter reaffirms the Mayo interpretation.

We hope this response is helpful to you. If you have additional questions regarding this matter, please contact my staff at (202) 267-3073. This response was prepared by Neal O'Hara, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and was coordinated with the Enforcement Division of the Office of the Chief Counsel.

Sincerely,

Mark Bury
Acting Assistant Chief Counsel for International Law,
Legislation, and Regulations, AGC-200