U.S. Department
of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

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Lolly Rives, PHR, DER
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Dear Ms. Rives,

This letter responds to your request for an interpretation regarding when a flightcrew member who is on long-call reserve under 14 C.F.R. § 117.21 may be notified to report for random drug or alcohol testing under 14 C.F.R. part 120. The flight and duty requirements of part 117 are completely separate from the employer's duty to ensure the integrity of random drug and alcohol testing under part 120. Accordingly, part 117 does not change the employer's duty to follow the requirements of part 120 concerning the nature of the notification given to a safety-sensitive employee that has been selected for random drug or alcohol testing.

With regard to notification for random drug testing, in a Letter of Interpretation to Ms. Nancy Mayo from Mark W. Bury, Acting Assistant Chief Counsel for International Law, Legislation and Regulations (Apr. 19, 2013), the FAA stated that:

> While FAA regulations do not specify what methods may be used to notify an employee of his or her selection, an employer may not use a method that provides the employee with advance notice (e.g., ACARS, voicemail) (69 FR 1848). All random drug tests must be unannounced. *See* 14 C.F.R. § 120.109(b)(7). Employers must also ensure that an employee who is notified of his or her selection for random drug testing proceeds to the testing facility immediately. 14 C.F.R. § 120.109(b)(8).

Later, in the same interpretation, the FAA further stated that:

> [I]t is the employer's responsibility to ensure that an employee who has been notified of his or her selection for random drug testing proceeds to the testing facility immediately. Accordingly, employers should take care to notify an employee of his or her selection for random drug testing at a time when it can ensure that the employee proceeds to the testing facility immediately (i.e., when

the employee is at work). Once the employee is notified to report for testing and the test does not occur, the opportunity for random testing is over.

As the Mayo interpretation points out, notification of selection for random drug testing should not be given to a flightcrew member who is on long-call reserve unless the employer is able to ensure that the flightcrew member is able to proceed immediately for testing.

With regard to notification for random alcohol testing, as you correctly pointed out, under 14 C.F.R. § 120.217(c)(9), random alcohol testing may only occur while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions. In usual practice, we would expect that a flightcrew member on long-call reserve would be given a report time at least 10 hours in advance in compliance with § 117.21 and then would be notified to report for random alcohol testing either immediately upon reporting for the flight or just after completing the flight.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, Office of the Chief Counsel and coordinated with the Air Transportation Division of Flight Standards Service, the Enforcement Division of the Office of the Chief Counsel and the Drug Abatement Division in the Office of Aerospace Medicine.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law,
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