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

Office of the Chief Counsel

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

NOV 19 2014

Mr. Edward Schaff
Director of Training
Dynamic Airways, LLC
701 North Terminal Service Road
Greensboro, NC 27409

Re: Section 120.109 of Title 14 of the Code of Federal Regulations, Types of Drug Testing Required

Dear Mr. Schaff:

This is in response to your letter of August 3, 2104, requesting clarification of when a safety-sensitive employee is "hired" for pre-employment drug testing purposes under Title 14 Code of Federal Regulations § 120.109(a).

As you know, Section 120.109 – Types of drug testing required, provides that, "(a) *Pre-employment drug testing* (1) No employer may hire any individual for a safety-sensitive function listed in § 120.105 unless the employer first conducts a pre-employment test and receives a verified negative drug test result for that individual." The FAA discussed exactly what is meant by this language in the preamble to the final rule on Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities, published in the Federal Register on January 12, 2004 (69 FR 1840, 1844, 1845-1848). The FAA determined that, "the event of hiring an employee provides an unambiguous standard for the timing of pre-employment testing." Thus, pre-employment drug testing must be conducted, and a verified negative drug test result received before an individual can be hired for a safety-sensitive function.

The FAA has previously addressed this question in a Legal Interpretation to Deborah McElroy, President, Regional Airline Association, from Rebecca B. MacPherson on May 31, 2005. In that letter, the FAA described the history of pre-employment drug testing, the reasons for the changes in the 2004 final rule, and the phrase "prior to hire." I have enclosed a copy of that interpretation for your review.

I hope this response has been helpful to you. If you have additional questions, or need further information, 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.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law, Legislation
And Regulations, AGC-200