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

Office of the Chief Counsel

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

MAY 30 2017

Marshall Filler
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RE: 14 CFR part 120 safety-sensitive employees

Dear Mr. Filler:

This is in response to your letter of February 15, 2017 requesting a legal interpretation of Title 14 Code of Federal Regulations part 120 rules for drug and alcohol testing to individuals performing tasks associated with receiving articles for stock. The question arises from differing interpretations of whether accepting articles for stock constitutes maintenance or preventative maintenance under §§ 120.105(e) and 120.215(a)(5).

Sections 120.105 and 120.215 list the employees who must be tested. Among those listed are employees who perform "[a]ircraft maintenance and preventative maintenance duties." To better understand which employees are performing maintenance and preventative maintenance duties requires reading the definition of both of these terms under 14 CFR § 1.1. Section 1.1 defines maintenance as "inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventative maintenance." Preventative maintenance is defined as "simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

Also, 14 CFR part 43 applies to the performance of maintenance and preventative maintenance. Sections 43.9 and 43.11 establish recordkeeping requirements for tasks associated with maintenance and preventative maintenance. These recordkeeping requirements have never been applied to tasks associated with receiving articles for stock. Individuals who perform receiving tasks ensure that there is no visible damage to the packaging or the enclosed items, and that the articles were obtained from an approved or acceptable source. Persons performing these tasks compare part numbers, serial numbers, quantity, etc. with the purchase order and confirm that the items match the purchase order and that they are not damaged. These tasks are not maintenance or preventative maintenance activities. Therefore, employees receiving items for stock are not safety-sensitive employees under part 120 and should not be included in the pool of employees subject to drug and alcohol testing.

We hope this response has been helpful to you. If you have additional questions or need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Neal O'Hara, an attorney in the Office of the Chief Counsel, Regulations Division and was coordinated with the Flight Standards Service, Aircraft Maintenance Division.

Sincerely,

Lorelei Peter
Assistant Chief Counsel, Regulations Division

February 15, 2017

Delivered by email; read receipt requested: lorelei.peter@faa.gov

Original Delivered by Certified Mail
Return Receipt Number: 70141200000028716782

120.105(e) - maintenance?

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RE: Receiving Functions under Drug and Alcohol Testing Regulations, part 120[1]

Dear Ms. Peter:

The undersigned companies and organizations request a legal interpretation regarding the applicability of the drug and alcohol testing rules[2] to individuals performing tasks associated with receiving articles for stock. For the reasons described below, we submit that receiving tasks are not safety-sensitive functions because they are not, nor have they ever been considered, maintenance functions.

It has come to our attention that auditors from the Federal Aviation Administration's (FAA) Drug Abatement Division have informally opined that personnel conducting tasks associated solely with receiving items for stock are performing maintenance and are therefore engaged in safety-sensitive functions.[3] This expansive interpretation would result in the misclassification of employees, thereby diluting random testing pools with non-safety-sensitive personnel. For that reason, clarification is needed.

Pertinent Regulations

Part 1 defines maintenance as inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance.[4] Preventive maintenance includes simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.[5] Part 43 applies to the performance of maintenance and preventive maintenance, i.e., safety-sensitive functions; according to § 43.5, maintenance and preventive maintenance tasks must be appropriately

[1] All citations are to Title 14 CFR unless otherwise noted.
[2] Part 120.
[3] §§ 120.7, 120.105, 120.215 (defining safety-sensitive functions to include maintenance and preventive maintenance duties).
[4] § 1.1.
[5] § 1.1.

documented under §§ 43.9 or 43.11. These recordkeeping regulations have never been applied to tasks associated with receiving items for stock and later use or sale.

Except for § 145.211(c)(1)(i), which is limited to raw materials, there is no explicit 14 CFR requirement to perform a review of new and maintained articles before they are placed in stock for later use by a repair station, air carrier or mechanic, or offered for sale under part 3. However, the enforced standard requires a receiving process that enables certificated persons to meet their obligation to install items that will comply with § 43.13(b).[6]

Indeed, before the current part 145 became effective, § 145.45 provided more clarity than current § 145.211 in distinguishing between receiving processes used before placing items into stock and preliminary inspections on used items which are about to undergo maintenance or preventive maintenance by the repair station:

* * *

> (c) The applicant must provide a satisfactory method of inspecting incoming material to insure that, before it is placed in stock for use in an aircraft or part thereof, it is in a good state of preservation and is free from apparent defects or malfunctions.
> (d) The applicant must provide a system of preliminary inspection of all articles he maintains to determine the state of preservation or defects. He shall enter the results of each inspection on an appropriate form supplied by it and keep the form with the article until it is released to service. (emphasis added)

* * *

The old rule (which is the basis for the current standard) recognized that maintenance and preventive maintenance under part 43 begins with a preliminary inspection and ends with an approval for return to service. It draws a distinction between reviewing an article to determine its suitability to be placed in inventory (i.e., a receiving function) vs. its suitability for installation during maintenance (a maintenance and therefore safety-sensitive function).

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[6] See AC 20-154, Guide for Developing a Receiving Inspection System for Aircraft Parts and Material.

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Guidance Material and Treatment of Other Entities Performing Receiving Functions

AC 20-154, Guide for Developing a Receiving Inspection System for Aircraft Parts and Material, paragraph 1 provides:

> This advisory circular (AC) provides guidance and information for incorporation into operators' existing receiving/inspection systems to help prevent the introduction of unairworthy parts into inventories. The aim is to establish sufficient traceability to establish that the part(s) were manufactured under Title 14 of the Code of Federal Regulations (14 CFR) part 21, were previously determined to be airworthy under 14 CFR part 43, produced to established industry or U.S. Government standards or accepted foreign standards. (emphasis added.)

Receiving tasks are those that ensure there is no visible damage to the packaging and/or the enclosed items and that the articles were obtained from an approved or acceptable source. Persons performing these tasks compare the part number, serial number (if applicable), quantity, and specifications referenced in the purchase order with the information reflected on the supplier's documents, such as a certificate of conformance, packing list and/or invoice. If discrepancies are noted during the receiving process, the article will be quarantined pending further evaluation, including whether the item should be returned to the vendor or if maintenance is needed before the item may be placed into stock. These tasks are not maintenance or preventive maintenance activities.

Additionally, other entities not covered by part 120 (including but not limited to production approval holders[7] and accredited distributors[8]) routinely perform the same receiving functions as certificated operators and repair stations. The FAA has previously stated that distributing an aircraft part is not a safety-sensitive function[9]; thereby clarifying that receiving for the purpose of inducting a part into inventory is not maintenance or preventive maintenance. The same is true for receiving functions conducted under part 21.

Conclusion

A receiving process simply verifies that incoming parts or materials are what they purport to be and that there are no obvious reasons to question a previous determination of airworthiness. If no discrepancies are found, the articles are placed into stock for use in

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[7] See § 21.137(c)(1) and (g).
[8] See AC 00-56B, Voluntary Industry Distributor Accreditation Program, para. 6(b)(1) (May 27, 2015).
[9] Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities, 71 Fed. Reg. 1666, 1668 (Jan. 10, 2006).

performing future safety-sensitive functions on an entirely different article. These receiving activities do not require the creation of a maintenance record because no tasks to which part 43 apply are being performed; therefore, they are not safety-sensitive functions under part 120.

For the foregoing reasons, the undersigned request the FAA verify that the performance of tasks associated solely with receiving items for stock are not maintenance and, as such, are not safety-sensitive functions subject to drug and alcohol testing regulations. We recognize that some personnel doing receiving functions also perform maintenance and preventive maintenance tasks and, if so, would have to be in a DOT-FAA Drug & Alcohol Testing Program.

We appreciate your assistance with this issue and look forward to your timely response.

Sincerely,

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