

## **TITLE 14: AERONAUTICS AND SPACE**

### **PART 120—DRUG AND ALCOHOL TESTING PROGRAM**

(Updated April 23, 2019)

#### **Subpart A—General**

- § 120.1 Applicability.
- § 120.3 Purpose.
- § 120.5 Procedures.
- § 120.7 Definitions.

#### **Subpart B—Individuals Certificated Under Parts 61, 63, and 65**

- § 120.11 Refusal to submit to a drug or alcohol test by a Part 61 certificate holder.
- § 120.13 Refusal to submit to a drug or alcohol test by a Part 63 certificate holder.
- § 120.15 Refusal to submit to a drug or alcohol test by a Part 65 certificate holder.

#### **Subpart C—Air Traffic Controllers**

- § 120.17 Use of prohibited drugs.
- § 120.19 Misuse of alcohol.
- § 120.21 Testing for alcohol.

#### **Subpart D—Part 119 Certificate Holders Authorized To Conduct Operations under Part 121 or Part 135 or Operators Under § 91.147 of This Chapter and Safety-Sensitive Employees**

- § 120.31 Prohibited drugs.
- § 120.33 Use of prohibited drugs.
- § 120.35 Testing for prohibited drugs.
- § 120.37 Misuse of alcohol.
- § 120.39 Testing for alcohol.

#### **Subpart E—Drug Testing Program Requirements**

- § 120.101 Scope.
- § 120.103 General.
- § 120.105 Employees who must be tested.
- § 120.107 Substances for which testing must be conducted.
- § 120.109 Types of drug testing required.
- § 120.111 Administrative and other matters.
- § 120.113 Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.
- § 120.115 Employee Assistance Program (EAP).
- § 120.117 Implementing a drug testing program.
- § 120.119 Annual reports.
- § 120.121 Preemption.
- § 120.123 Drug testing outside the territory of the United States.
- § 120.125 Waivers from 49 CFR § 40.21.

**Subpart F—Alcohol Testing Program Requirements**

- § 120.201 Scope.
- § 120.203 General.
- § 120.205 Preemption of State and local laws.
- § 120.207 Other requirements imposed by employers.
- § 120.209 Requirement for notice.
- § 120.211 Applicable Federal regulations.
- § 120.213 Falsification.
- § 120.215 Covered employees.
- § 120.217 Tests required.
- § 120.219 Handling of test results, record retention, and confidentiality.
- § 120.221 Consequences for employees engaging in alcohol-related conduct.
- § 120.223 Alcohol misuse information, training, and substance abuse professionals.
- § 120.225 How to implement an alcohol testing program.
- § 120.227 Employees located outside the U.S.

**Authority:** 49 U.S.C. 106(f), 106(g), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101–45105, 46105, 46306.

**Source:** Docket No. FAA-2008-0937, 74 FR 22653, May 14, 2009, unless otherwise noted.

## **Subpart A—General**

### **§ 120.1 Applicability.**

This part applies to the following persons:

(a) All air carriers and operators certificated under part 119 of this chapter authorized to conduct operations under part 121 or part 135 of this chapter, all air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; and all operators as defined in 14 CFR § 91.147.

(b) All individuals who perform, either directly or by contract, a safety-sensitive function listed in subpart E or subpart F of this part.

(c) All part 145 certificate holders who perform safety-sensitive functions and elect to implement a drug and alcohol testing program under this part.

(d) All contractors who elect to implement a drug and alcohol testing program under this part.

### **§ 120.3 Purpose.**

The purpose of this part is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

### **§ 120.5 Procedures.**

Each employer having a drug and alcohol testing program under this part must ensure that all drug and alcohol testing conducted pursuant to this part complies with the procedures set forth in 49 CFR part 40.

### **§ 120.7 Definitions.**

For the purposes of this part, the following definitions apply:

(a) *Accident* means an occurrence associated with the operation of an aircraft which takes place between the time any individual boards the aircraft with the intention of flight and all such individuals have disembarked, and in which any individual suffers death or serious injury, or in which the aircraft receives substantial damage.

(b) *Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

(c) *Alcohol concentration (or content)* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under subpart F of this part.

(d) *Alcohol use* means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

(e) *Contractor* is an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

(f) *Covered employee* means an individual who performs, either directly or by contract, a safety-sensitive function listed in §§ 120.105 and 120.215 for an employer (as defined in paragraph (i) of this section). For purposes of pre-employment testing only, the term “covered employee” includes an individual applying to perform a safety-sensitive function.

(g) *DOT agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug and alcohol testing (14 CFR parts 61, 65, 121, and 135; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance

with 49 CFR part 40.

(h) *Employee* is an individual who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined in paragraph (i) of this section. An employee is also an individual who transfers into a position to perform a safety-sensitive function for an employer.

(i) *Employer* is a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. An employer may use a contract employee who is not included under that employer's FAA-mandated drug and alcohol testing program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated drug and alcohol testing program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)

(j) *Hire* means retaining an individual for a safety-sensitive function as a paid employee, as a volunteer, or through barter or other form of compensation.

(k) *Performing* (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.

(l) *Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under subpart E of this part, plus the number of refusals of random drug tests required by subpart E of this part, divided by the total number of random drug test results (i.e., positives, negatives, and refusals) under subpart E of this part.

(m) *Prohibited drug* means any of the drugs specified in 49 CFR part 40.

(n) *Refusal to submit to alcohol test* means that a covered employee has engaged in conduct including but not limited to that described in 49 CFR § 40.261, or has failed to remain readily available for post-accident testing as required by subpart F of this part.

(o) *Refusal to submit to drug test* means that an employee engages in conduct including but not limited to that described in 49 CFR § 40.191.

(p) *Safety-sensitive function* means a function listed in §§ 120.105 and 120.215.

(q) *Verified negative drug test result* means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

(r) *Verified positive drug test result* means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

(s) *Violation rate for random alcohol testing* means the number of 0.04, and above, random alcohol confirmation test results conducted under subpart F of this part, plus the number of refusals of random alcohol tests required by subpart F of this part, divided by the total number of random alcohol screening tests (including refusals) conducted under subpart F of this part.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010; 84 FR 16773, Apr. 23, 2019]

## **Subpart B—Individuals Certificated Under Parts 61, 63, and 65**

### **§ 120.11 Refusal to submit to a drug or alcohol test by a Part 61 certificate holder.**

(a) This section applies to all individuals who hold a certificate under part 61 of this chapter and who are subject to drug and alcohol testing under this part.

(b) Refusal by the holder of a certificate issued under part 61 of this chapter to take a drug or alcohol test required under the provisions of this part is grounds for:

(1) Denial of an application for any certificate, rating, or authorization issued under part 61 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate, rating, or authorization issued under part 61 of this chapter.

### **§ 120.13 Refusal to submit to a drug or alcohol test by a Part 63 certificate holder.**

(a) This section applies to all individuals who hold a certificate under part 63 of this chapter and who are subject to drug and alcohol testing under this part.

(b) Refusal by the holder of a certificate issued under part 63 of this chapter to take a drug or alcohol test required under the provisions of this part is grounds for:

(1) Denial of an application for any certificate or rating issued under part 63 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under part 63 of this chapter.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010]

### **§ 120.15 Refusal to submit to a drug or alcohol test by a Part 65 certificate holder.**

(a) This section applies to all individuals who hold a certificate under part 65 of this chapter and who are subject to drug and alcohol testing under this part.

(b) Refusal by the holder of a certificate issued under part 65 of this chapter to take a drug or alcohol test required under the provisions of this part is grounds for:

(1) Denial of an application for any certificate or rating issued under part 65 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under part 65 of this chapter.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010]

## **Subpart C—Air Traffic Controllers**

### **§ 120.17 Use of prohibited drugs.**

(a) Each employer shall provide each employee performing a function listed in subpart E of this part, and his or her supervisor, with the training specified in that subpart. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the employer, and his or her supervisor, with the training specified in subpart E of this part.

(b) No employer may knowingly use any individual to perform, nor may any individual perform for an employer, either directly or by contract, any air traffic control function while that individual has a prohibited drug, as defined in this part, in his or her system.

(c) No employer shall knowingly use any individual to perform, nor may any individual perform for an employer, either directly or by contract, any air traffic control function if the individual has a verified positive drug test result on, or has refused to submit to, a drug test required by subpart E of this part and the individual has not met the requirements of subpart E of this part for returning to the performance of safety-sensitive duties.

(d) Each employer shall test each of its employees who perform any air traffic control function in accordance with subpart E of this part. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with subpart E of this part.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010]

### **§ 120.19 Misuse of alcohol.**

(a) This section applies to covered employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the US military.

(b) Alcohol concentration. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) On-duty use. No covered employee shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) Pre-duty use. No covered employee shall perform air traffic control duties within 8 hours after using alcohol. No employer having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform air traffic control duties.

(e) Use following an accident. No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under subpart F of this part or the employer has determined that the employee's performance could not have contributed to the accident.

(f) Refusal to submit to a required alcohol test. A covered employee may not refuse to submit to any alcohol test required under subpart F of this part. An employer may not permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

### **§ 120.21 Testing for alcohol.**

(a) Each air traffic control facility not operated by the FAA or the U.S. military must establish an alcohol testing program in accordance with the provisions of subpart F of this part.

(b) No employer shall use any individual who meets the definition of covered employee in subpart A of this part to perform a safety-sensitive function listed in subpart F of this part unless that individual is subject to testing for alcohol misuse in accordance with the provisions of that subpart.

**Subpart D—Part 119 Certificate Holders Authorized To Conduct Operations under Part 121 or Part 135 or Operators Under §91.147 of This Chapter and Safety-Sensitive Employees**

**§ 120.31 Prohibited drugs.**

(a) Each certificate holder or operator shall provide each employee performing a function listed in subpart E of this part, and his or her supervisor, with the training specified in that subpart.

(b) No certificate holder or operator may use any contractor to perform a function listed in subpart E of this part unless that contractor provides each of its employees performing that function for the certificate holder or operator, and his or her supervisor, with the training specified in that subpart.

**§ 120.33 Use of prohibited drugs.**

(a) This section applies to individuals who perform a function listed in subpart E of this part for a certificate holder or operator. For the purpose of this section, an individual who performs such a function pursuant to a contract with the certificate holder or the operator is considered to be performing that function for the certificate holder or the operator.

(b) No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while that individual has a prohibited drug, as defined in this part, in his or her system.

(c) No certificate holder or operator shall knowingly use any individual to perform, nor shall any individual perform for a certificate holder or operator, either directly or by contract, any safety-sensitive function if that individual has a verified positive drug test result on, or has refused to submit to, a drug test required by subpart E of this part and the individual has not met the requirements of that subpart for returning to the performance of safety-sensitive duties.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010]

**§ 120.35 Testing for prohibited drugs.**

(a) Each certificate holder or operator shall test each of its employees who perform a function listed in subpart E of this part in accordance with that subpart.

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in subpart E of this part unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that subpart.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of subpart E of this part and emergency maintenance is required, the certificate holder may use individuals not meeting

the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, SW., Washington, DC 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

### **§ 120.37 Misuse of alcohol.**

(a) General. This section applies to covered employees who perform a function listed in subpart F of this part for a certificate holder. For the purpose of this section, an individual who meets the definition of covered employee in subpart F of this part is considered to be performing the function for the certificate holder.

(b) Alcohol concentration. No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No certificate holder having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) On-duty use. No covered employee shall use alcohol while performing safety-sensitive functions. No certificate holder having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) Pre-duty use.

(1) No covered employee shall perform flight crewmember or flight attendant duties within 8 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No covered employee shall perform safety-sensitive duties other than those specified in paragraph (d)(1) of this section within 4 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform or to continue to perform safety-sensitive functions.

(e) Use following an accident. No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under subpart F of this part, or the employer has determined that the employee's performance could not have contributed to the accident.

(f) Refusal to submit to a required alcohol test. A covered employee must not refuse to submit to any alcohol test required under subpart F of this part. A certificate holder must not permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.



### **§ 120.39 Testing for alcohol.**

(a) Each certificate holder must establish an alcohol testing program in accordance with the provisions of subpart F of this part.

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any individual who meets the definition of covered employee in subpart A of this part to perform a safety-sensitive function listed in that subpart F of this part unless that individual is subject to testing for alcohol misuse in accordance with the provisions of that subpart.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of subpart F of this part and emergency maintenance is required, the certificate holder may use individuals not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, SW., Washington, DC 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

### **Subpart E—Drug Testing Program Requirements**

#### **§ 120.101 Scope.**

This subpart contains the standards and components that must be included in a drug testing program required by this part.

#### **§ 120.103 General.**

(a) *Purpose.* The purpose of this subpart is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

(b) *DOT procedures.*

(1) Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 91, 121, and 135 comply with the requirements of this subpart and the “Procedures for Transportation Workplace Drug Testing Programs” published by the Department of Transportation (DOT) (49 CFR part 40).

(2) An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

(c) *Employer responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this subpart and 49 CFR part 40.

(d) *Applicable Federal Regulations*. The following applicable regulations appear in 49 CFR or 14 CFR:

(1) 49 CFR Part 40—Procedures for Transportation Workplace Drug Testing Programs

(2) 14 CFR:

(i) §67.107—First-Class Airman Medical Certificate, Mental.

(ii) §67.207—Second-Class Airman Medical Certificate, Mental.

(iii) §67.307—Third-Class Airman Medical Certificate, Mental.

(iv) §91.147—Passenger carrying flight for compensation or hire.

(v) §135.1—Applicability

(e) *Falsification*. No individual may make, or cause to be made, any of the following:

(1) Any fraudulent or intentionally false statement in any application of a drug testing program.

(2) Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this part.

(3) Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this part.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010]

#### **§ 120.105 Employees who must be tested.**

Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this subpart must be subject to drug testing under a drug testing program implemented in accordance with this subpart. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

(a) Flight crewmember duties.

(b) Flight attendant duties.

(c) Flight instruction duties.

(d) Aircraft dispatcher duties.

(e) Aircraft maintenance and preventive maintenance duties.

(f) Ground security coordinator duties.

(g) Aviation screening duties.

(h) Air traffic control duties.

(i) Operations control specialist duties.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009, as amended by Amdt. 120-2, 79 FR 9973, Feb. 21, 2014]

#### **§ 120.107 Substances for which testing must be conducted.**

Each employer shall test each employee who performs a safety-sensitive function for evidence of a prohibited drug during each test required by §120.109.

[84 FR 16773, Apr. 23, 2019]

### **§ 120.109 Types of drug testing required.**

Each employer shall conduct the types of testing described in this section in accordance with the procedures set forth in this subpart and the DOT “Procedures for Transportation Workplace Drug Testing Programs” (49 CFR part 40).

#### **(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.

(2) No employer may allow an individual to transfer from a nonsafety-sensitive to a safety-sensitive function unless the employer first conducts a pre-employment test and receives a verified negative drug test result for the individual.

(3) Employers must conduct another pre-employment test and receive a verified negative drug test result before hiring or transferring an individual into a safety-sensitive function if more than 180 days elapse between conducting the pre-employment test required by paragraphs (a)(1) or (2) of this section and hiring or transferring the individual into a safety-sensitive function, resulting in that individual being brought under an FAA drug testing program.

(4) If the following criteria are met, an employer is permitted to conduct a pre-employment test, and if such a test is conducted, the employer must receive a negative test result before putting the individual into a safety-sensitive function:

(i) The individual previously performed a safety-sensitive function for the employer and the employer is not required to pre-employment test the individual under paragraphs (a)(1) or (2) of this section before putting the individual to work in a safety-sensitive function;

(ii) The employer removed the individual from the employer's random testing program conducted under this subpart for reasons other than a verified positive test result on an FAA-mandated drug test or a refusal to submit to such testing; and

(iii) The individual will be returning to the performance of a safety-sensitive function.

(5) Before hiring or transferring an individual to a safety-sensitive function, the employer must advise each individual that the individual will be required to undergo pre-employment testing in accordance with this subpart, to determine the presence of a prohibited drug in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under paragraph (a)(4) of this section.

#### **(b) *Random drug testing.***

(1) Except as provided in paragraphs (b)(2) through (b)(4) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the statistical reports required by § 120.119. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the Federal Register the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(3) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of this subpart for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(5) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(i) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random testing results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(A) To calculate whether you have met the annual minimum percentage rate, count all random positives, random negatives, and random refusals as your "random testing results."

(B) To calculate the average number of safety-sensitive employees eligible for random testing throughout the year, add the total number of safety-sensitive employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only safety-sensitive employees are to be in an employer's random testing pool, and all safety-sensitive employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly) you do not need to compute this total number of safety-sensitive employees more than on a once per month basis.

(ii) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(A) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(B) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(C) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

(7) Each employer shall ensure that random drug tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) Each employer shall require that each safety-sensitive employee who is notified of selection for random drug testing proceeds to the collection site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible.

(9) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(10) If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select covered employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

(11) An employer required to conduct random drug testing under the anti-drug rules of more than one DOT agency shall provide each such agency access to the employer's records of random drug testing, as determined to be necessary by the agency to ensure the employer's compliance with the rule.

(c) *Post-accident drug testing.* Each employer shall test each employee who performs a safety-sensitive function for the presence of a prohibited drug in the employee's system if that employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. The employee shall be tested as soon as possible but not later than 32 hours after the accident. The decision not to administer a test under this section must be based on a determination, using the best information available at the time of the determination, that the employee's performance could not have contributed to the accident. The employee shall submit to post-accident testing under this section.

(d) *Drug testing based on reasonable cause.* Each employer must test each employee who performs a safety-sensitive function and who is reasonably suspected of having used a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible drug use, must substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; except that in the case of an employer, other than a part 121 certificate holder, who employs 50 or fewer employees who perform safety-sensitive functions, one supervisor who is trained in detection of symptoms of possible drug use must substantiate the decision to test an employee who is reasonably suspected of drug use.

(e) *Return to duty drug testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this subpart or receiving a verified positive drug test result on a test conducted under this subpart the individual shall undergo a return-to-duty drug test. No employer shall allow an individual required to undergo return-to-duty testing to perform a safety-sensitive function unless the employer has received a verified negative drug test result for the individual. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

(f) *Follow-up drug testing.*

(1) Each employer shall implement a reasonable program of unannounced testing of each individual who has been hired to perform or who has been returned to the performance of a safety-sensitive function after refusing to submit to a drug test required by this subpart or receiving a verified positive drug test result on a test conducted under this subpart.

(2) The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional conducted in accordance with the provisions of 49 CFR part 40, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

(3) The employer must direct the employee to undergo testing for alcohol in accordance with subpart F of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

(4) Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Substance Abuse Professional determines that such testing is no longer necessary.

[Docket No. FAA-2008-0937, 74 FR 22653, May 14, 2009, as amended at 84 FR 16773, Apr. 23, 2019]

**§ 120.111 Administrative and other matters.**

(a) *MRO record retention requirements.*

(1) Records concerning drug tests confirmed positive by the laboratory shall be maintained by the MRO for 5 years. Such records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process.

(2) Should the employer change MRO's for any reason, the employer shall ensure that the former MRO forwards all records maintained pursuant to this rule to the new MRO within ten working days of receiving notice from the employer of the new MRO's name and address.

(3) Any employer obtaining MRO services by contract, including a contract through a C/TPA, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

(b) *Access to records.* The employer and the MRO shall permit the Administrator or the Administrator's representative to examine records required to be kept under this subpart and 49 CFR part 40. The Administrator or the Administrator's representative may require that all records maintained by the service agent for the employer must be produced at the employer's place of business.

(c) *Release of drug testing information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this subpart, or 49 CFR part 40, no employer shall release employee information.

(d) *Refusal to submit to testing.* Each employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this subpart. Notification must be sent to:

Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) Permanent disqualification from service.

(1) An employee who has verified positive drug test results on two drug tests required by this subpart of this chapter, and conducted after September 19, 1994, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed prior to the second drug test.

(2) An employee who has engaged in prohibited drug use during the performance of a safety-sensitive function after September 19, 1994 is permanently precluded from performing that safety-sensitive function for an employer.

(f) DOT management information system annual reports. Copies of any annual reports submitted to the FAA under this subpart must be maintained by the employer for a minimum of 5 years.

**§ 120.113 Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.**

(a) The employer shall designate or appoint a Medical Review Officer (MRO) who shall be qualified in accordance with 49 CFR part 40 and shall perform the functions set forth in 49 CFR part 40 and this subpart. If the employer does not have a qualified individual on staff to serve as MRO, the employer may contract for the provision of MRO services as part of its drug testing program.

(b) Medical Review Officer (MRO). The MRO must perform the functions set forth in subpart G of 49 CFR part 40, and subpart E of this part. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

(c) Substance Abuse Professional (SAP). The SAP must perform the functions set forth in 49 CFR part 40, subpart O.

(d) Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.

(1) As part of verifying a confirmed positive test result or refusal to submit to a test, the MRO must ask and the individual must answer whether he or she holds an airman medical certificate issued under 14 CFR part 67 or would be required to hold an airman medical certificate to perform a safety-sensitive function for the employer. If the individual answers in the affirmative to either question, in addition to notifying the employer in accordance with 49 CFR part 40, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph (d)(5) of this section, the name of the individual, along with identifying information and supporting documentation, within 2 working days after verifying a positive drug test result or refusal to submit to a test.

(2) During the SAP interview required for a verified positive test result or a refusal to submit to a test, the SAP must ask and the individual must answer whether he or she holds or would be required to hold an airman medical certificate issued under 14 CFR part 67 to perform a safety-sensitive function for the employer. If the individual answers in the affirmative, the individual

must obtain an airman medical certificate issued by the Federal Air Surgeon dated after the verified positive drug test result date or refusal to test date. After the individual obtains this airman medical certificate, the SAP may recommend to the employer that the individual may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(3) An employer must forward to the Federal Air Surgeon within 2 working days of receipt, copies of all reports provided to the employer by a SAP regarding the following:

(i) An individual who the MRO has reported to the Federal Air Surgeon under § 120.113 (d)(1); or

(ii) An individual who the employer has reported to the Federal Air Surgeon under § 120.111(d).

(4) The employer must not permit an employee who is required to hold an airman medical certificate under 14 CFR part 67 to perform a safety-sensitive duty to resume that duty until the employee has:

(i) Been issued an airman medical certificate from the Federal Air Surgeon after the date of the verified positive drug test result or refusal to test; and

(ii) Met the return to duty requirements in accordance with 49 CFR part 40.

(5) Reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(6) MROs, SAPs, and employers who send reports to the Federal Air Surgeon must keep a copy of each report for 5 years.

#### **§ 120.115 Employee Assistance Program (EAP).**

(a) The employer shall provide an EAP for employees. The employer may establish the EAP as a part of its internal personnel services or the employer may contract with an entity that will provide EAP services to an employee. Each EAP must include education and training on drug use for employees and training for supervisors making determinations for testing of employees based on reasonable cause.

(b) *EAP education program.*

(1) Each EAP education program must include at least the following elements:

(i) Display and distribution of informational material;

(ii) Display and distribution of a community service hot-line telephone number for employee assistance; and

(iii) Display and distribution of the employer's policy regarding drug use in the workplace.

(2) The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule.

(c) *EAP training program.*

(1) Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements:

(i) The effects and consequences of drug use on individual health, safety, and work environment;

(ii) The manifestations and behavioral cues that may indicate drug use and abuse; and

(2) The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous



physical, behavioral, and performance indicators of probable drug use in addition to the training specified in § 120.115(c).

(3) The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training.

(4) The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years.

(5) Documentation of all training given to employees and supervisory personnel must be included in the training program.

(6) The employer shall identify the employee and supervisor EAP training in the employer's drug testing program.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009, as amended by Amdt. 120-1, 78 FR 42003, July 15, 2013]

**§ 120.117 Implementing a drug testing program.**

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA:

<b>If you are . . .</b>	<b>You must . . .</b>
(1) A part 119 certificate holder with authority to operate under parts 121 or 135	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
(2) An operator as defined in § 91.147 of this chapter	Obtain a Letter of Authorization by contacting the Flight Standards District Office nearest to your principal place of business.
(3) A part 119 certificate holder with authority to operate under parts 121 or 135 and an operator as defined in § 91.147 of this chapter	Complete the requirements in paragraphs 1 and 2 of this chart and advise the Flight Standards District Office and the Drug Abatement Division that the § 91.147 operation will be included under the part 119 testing program. Contact the Drug Abatement Division at FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.
(4) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.
(5) A part 145 certificate holder who has your own drug testing program	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, if you opt to

	conduct your own drug testing program.
(6) A contractor who has your own drug testing program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, if you opt to conduct your own drug testing program.

(b) Use the following chart for implementing a drug testing program if you are applying for a part 119 certificate with authority to operate under parts 121 or 135 of this chapter, if you intend to begin operations as defined in § 91.147 of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA. Your employees who perform safety-sensitive functions must be tested in accordance with this subpart. The chart follows:

<b>If you . . .</b>	<b>You must . . .</b>
(1) Apply for a part 119 certificate with authority to operate under parts 121 or 135	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification,
	(ii) Implement an FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(2) Intend to begin operations as defined in § 91.147 of this chapter	(i) Have a Letter of Authorization,
	(ii) Implement an FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(3) Apply for a part 119 certificate with authority to operate under parts 121 or 135 and intend to begin operations as defined in § 91.147 of this chapter	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification and a Letter of Authorization,
	(ii) Implement your combined FAA drug testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(4) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military)	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, prior to starting operations,
	(ii) Implement an FAA drug testing program no later

	than the date you start operations, and
	(iii) Meet the requirements of this subpart.

(c) If you are an individual or company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operation as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military, use the following chart to determine what you must do if you opt to have your own drug testing program.

<b>If you . . .</b>	<b>And you opt to conduct your own drug program, you must . . .</b>
(1) Are a part 145 certificate holder	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591,
	(ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in § 91.147 of this chapter, and
	(iii) Meet the requirements of this subpart as if you were an employer.
(2) Are a contractor	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591,
	(ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military, and
	(iii) Meet the requirements of this subpart as if you were an employer.

(d) *Obtaining an Antidrug and Alcohol Misuse Prevention Program Operations Specification.*

(1) To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

- (i) Company name.
- (ii) Certificate number.
- (iii) Telephone number.
- (iv) Address where your drug and alcohol testing program records are kept.
- (v) Whether you have 50 or more safety-sensitive employees, or 49 or fewer safety-sensitive employees. (Part 119 certificate holders with authority to operate only under part 121 of this chapter are not required to provide this information.)

(2) You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector that you will comply with this part and 49 CFR part 40.

(3) You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under this part.

(4) You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

(e) Register your Drug and Alcohol Testing Program by obtaining a Letter of Authorization from the FAA in accordance with § 91.147.

(1) A drug and alcohol testing program is considered registered when the following information is submitted to the Flight Standards District Office nearest your principal place of business:

(i) Company name.

(ii) Telephone number.

(iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you or your employees perform (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that your company will comply with this part and 49 CFR part 40.

(2) This Letter of Authorization will satisfy the requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.

(3) Update the Letter of Authorization information as changes occur. Send the updates to the Flight Standards District Office nearest your principal place of business.

(4) If you are a part 119 certificate holder with authority to operate under parts 121 or 135 and intend to begin operations as defined in § 91.147 of this chapter, you must also advise the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.

(f) Obtaining a Drug and Alcohol Testing Program Registration from the FAA.

(1) Except as provided in paragraphs (d) and (e) of this section, to obtain a Drug and Alcohol Testing Program Registration from the FAA, you must submit the following information to the Office of Aerospace Medicine, Drug Abatement Division:

(i) Company name.

(ii) Telephone number.

(iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you or your employees perform (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that: your company will comply with this part and 49 CFR part 40; and you intend to provide safety-sensitive functions by contract (including subcontract at any tier) to a part 119 certificate holder with authority to operate under part 121 or part 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

(2) Send this information to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.

(3) This Drug and Alcohol Testing Program Registration will satisfy the registration requirements for both your drug testing program under this subpart and your alcohol testing program under subpart F of this part.

(4) Update the registration information as changes occur. Send the updates to the address specified in paragraph (f)(2) of this section.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3154, Jan. 20, 2010, as amended by Amdt. 120-1, 78 FR 42003, July 15, 2013]

### **§ 120.119 Annual reports.**

(a) Annual reports of testing results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the following provisions:

(1) Each part 121 certificate holder shall submit an annual report each year.

(2) Each entity conducting a drug testing program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(3) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

(b) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR § 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see:

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/drug\\_alcohol](http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol).

(c) A service agent may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3154, Jan. 20, 2010]

### **§ 120.121 Preemption.**

(a) The issuance of 14 CFR parts 65, 91, 121, and 135 by the FAA preempts any State or local law, rule, regulation, order, or standard covering the subject matter of 14 CFR parts 65, 91, 121, and 135, including but not limited to, drug testing of aviation personnel performing safety-sensitive functions.

(b) The issuance of 14 CFR parts 65, 91, 121, and 135 does not preempt provisions of state criminal law that impose sanctions for reckless conduct of an individual that leads to actual loss

of life, injury, or damage to property whether such provisions apply specifically to aviation employees or generally to the public.

### **§ 120.123 Drug testing outside the territory of the United States.**

(a) No part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.

(1) Each employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

(2) Each covered employee who is removed from the random testing pool under this section shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

(b) The provisions of this subpart shall not apply to any individual who performs a function listed in § 120.105 by contract for an employer outside the territory of the United States.

### **§ 120.125 Waivers from 49 CFR § 40.21.**

An employer subject to this part may petition the Drug Abatement Division, Office of Aerospace Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

(a) Each petition for a waiver must be in writing and include substantial facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR § 40.21.

(b) Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(c) The Administrator may grant a waiver subject to 49 CFR § 40.21(d).

## **Subpart F—Alcohol Testing Program Requirements**

### **§ 120.201 Scope.**

This subpart contains the standards and components that must be included in an alcohol testing program required by this part.

### **§ 120.203 General.**

(a) *Purpose.* The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

(b) *Alcohol testing procedures.* Each employer shall ensure that all alcohol testing conducted pursuant to this subpart complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to employers by this subpart.

(c) *Employer responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

### **§ 120.205 Preemption of State and local laws.**

(a) Except as provided in paragraph (a)(2) of this section, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart.

(b) The alcohol testing requirements of this title shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

#### **§ 120.207 Other requirements imposed by employers.**

Except as expressly provided in these alcohol testing requirements, nothing in this subpart shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including any authority and rights with respect to alcohol testing and rehabilitation.

#### **§ 120.209 Requirement for notice.**

Before performing an alcohol test under this subpart, each employer shall notify a covered employee that the alcohol test is required by this subpart. No employer shall falsely represent that a test is administered under this subpart.

#### **§ 120.211 Applicable Federal regulations.**

The following applicable regulations appear in 49 CFR and 14 CFR:

(a) 49 CFR Part 40—Procedures for Transportation Workplace Drug Testing Programs

(b) 14 CFR:

(1) § 67.107—First-Class Airman Medical Certificate, Mental.

(2) § 67.207—Second-Class Airman Medical Certificate, Mental.

(3) § 67.307—Third-Class Airman Medical Certificate, Mental.

(4) § 91.147—Passenger carrying flights for compensation or hire.

(5) § 135.1—Applicability

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3154, Jan. 20, 2010]

#### **§ 120.213 Falsification.**

No individual may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application of an alcohol testing program.

(b) Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this subpart.

(c) Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this subpart.

#### **§ 120.215 Covered employees.**

(a) Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract (including by

subcontract at any tier) for an employer as defined in this subpart must be subject to alcohol testing under an alcohol testing program implemented in accordance with this subpart. This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

- (1) Flight crewmember duties.
- (2) Flight attendant duties.
- (3) Flight instruction duties.
- (4) Aircraft dispatcher duties.
- (5) Aircraft maintenance or preventive maintenance duties.
- (6) Ground security coordinator duties.
- (7) Aviation screening duties.
- (8) Air traffic control duties.
- (9) Operations control specialist duties.

(b) Each employer must identify any employee who is subject to the alcohol testing regulations of more than one DOT agency. Prior to conducting any alcohol test on a covered employee subject to the alcohol testing regulations of more than one DOT agency, the employer must determine which DOT agency authorizes or requires the test.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009, as amended by Amdt. 120-2, 79 FR 9973, Feb. 21, 2014]

#### **§ 120.217 Tests required.**

(a) *Pre-employment alcohol testing.* As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this subpart. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(1) You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

(3) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40.

(5) You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 120.221(f) apply.

(b) *Post-accident alcohol testing.*

(1) As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.



(2) If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

(3) A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(c) *Random alcohol testing.*

(1) Except as provided in paragraphs (c)(2) through (c)(4) of this section, the minimum annual percentage rate for random alcohol testing will be 25 percent of the covered employees.

(2) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for this determination is drawn from MIS reports required by this subpart. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(3)(i) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(ii) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this subpart for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(4)(i) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of this subpart for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(ii) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of this subpart for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(5) The selection of employees for random alcohol testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or

other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

(6) As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(i) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random alcohol screening test results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(A) To calculate whether you have met the annual minimum percentage rate, count all random screening test results below 0.02 breath alcohol concentration, random screening test results of 0.02 or greater breath alcohol concentration, and random refusals as your “random alcohol screening test results.”

(B) To calculate the average number of safety-sensitive employees eligible for random testing throughout the year, add the total number of safety-sensitive employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Only safety-sensitive employees are to be in an employer's random testing pool, and all safety-sensitive employees must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly) you do not need to compute this total number of safety-sensitive employees more than on a once per month basis.

(ii) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(A) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(B) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(C) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

(7) Each employer shall ensure that random alcohol tests conducted under this subpart are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(8) Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(9) A covered employee shall only be randomly tested 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.

(10) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency, the employee shall be subject to random alcohol

testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's functions.

(11) If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

(i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

(d) *Reasonable suspicion alcohol testing.*

(1) An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in §§ 120.19 or 120.37.

(2) The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (d)(2) of this section are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this rule. An employee may be directed by the employer to undergo reasonable suspicion testing for alcohol only 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.

(4)(i) If a test required by this section is not administered within 2 hours following the determination made under paragraph (d)(2) of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination made under paragraph (d)(2) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of, or impaired by, alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination made under paragraph (d)(2) of this section that there is reasonable suspicion that the employee has violated the alcohol misuse provisions in §§ 120.19 or 120.37.

(iii) No employer shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this subpart from taking any action otherwise consistent with law.

(e) Return-to-duty alcohol testing. Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in §§ 120.19 or 120.37 the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

(f) Follow-up alcohol testing.

(1) Each employer shall ensure that the employee who engages in conduct prohibited by §§ 120.19 or 120.37, is subject to unannounced follow-up alcohol testing as directed by a SAP.

(2) The number and frequency of such testing shall be determined by the employer's SAP, but must consist of at least six tests in the first 12 months following the employee's return to duty.

(3) The employer must direct the employee to undergo testing for drugs in accordance with subpart E of this part, in addition to alcohol, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

(4) Follow-up testing shall not exceed 60 months after the date the individual begins to perform, or returns to the performance of, a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.

(5) A covered employee shall be tested for alcohol under this section only 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.

(g) Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04. Each employer shall retest a covered employee to ensure compliance with the provisions of § 120.221(f) if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

### **§ 120.219 Handling of test results, record retention, and confidentiality.**

(a) Retention of records.

(1) *General requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this subpart in a secure location with controlled access.

(2) *Period of retention.*

(i) *Five years.*

(A) Copies of any annual reports submitted to the FAA under this subpart for a minimum of 5 years.

(B) Records of notifications to the Federal Air Surgeon of refusals to submit to testing and violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(C) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(D) Records related to other violations of §§ 120.19 or 120.37.

(ii) *Two years.* Records related to the testing process and training required under this subpart.

- (A) Documents related to the random selection process.
- (B) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
- (C) Documents generated in connection with decisions on post-accident tests.
- (D) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.
- (E) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.
- (F) Documentation of compliance with the requirements of § 120.223(a).
- (G) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
- (H) Certification that any training conducted under this subpart complies with the requirements for such training.

(b) *Annual reports.*

(1) Annual reports of alcohol testing program results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions of paragraphs (b)(1)(i) through (iii) of this section.

(i) Each part 121 certificate holder shall submit an annual report each year.

(ii) Each entity conducting an alcohol testing program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(iii) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

(2) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR § 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see:

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/offices/aam/drug\\_alcohol/](http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/).

(3) A service agent may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

(c) *Access to records and facilities.*

(1) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained under this subpart.

(2) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests in accordance with 49 CFR part 40. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(3) Each employer shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

**§ 120.221 Consequences for employees engaging in alcohol-related conduct.**

**(a) *Removal from safety-sensitive function.***

(1) Except as provided in 49 CFR part 40, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by §§ 120.19 or 120.37, or an alcohol misuse rule of another DOT agency.

(2) No employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has violated this section.

**(b) *Permanent disqualification from service.***

(1) An employee who violates §§ 120.19(c) or 120.37(c) is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

(2) An employee who engages in alcohol use that violates another alcohol misuse provision of §§ 120.19 or 120.37, and who had previously engaged in alcohol use that violated the provisions of §§ 120.19 or 120.37 after becoming subject to such prohibitions, is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

**(c) *Notice to the Federal Air Surgeon.***

(1) An employer who determines that a covered employee who holds an airman medical certificate issued under part 67 of this chapter has engaged in alcohol use that violated the alcohol misuse provisions of §§ 120.19 or 120.37 shall notify the Federal Air Surgeon within 2 working days.

(2) Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of § 120.223(c) within 2 working days of the employer's receipt of the report.

(3) All documents must be sent to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(4) No covered employee who is required to hold an airman medical certificate in order to perform a safety-sensitive duty may perform that duty following a violation of this subpart until the covered employee obtains an airman medical certificate issued by the Federal Air Surgeon dated after the alcohol test result or refusal to test date. After the covered employee obtains this airman medical certificate, the SAP may recommend to the employer that the covered employee may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(5) Once the Federal Air Surgeon has recommended under paragraph (c)(4) of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

(d) *Notice of refusals.* Each covered employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to an alcohol test required under this subpart. Notification must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division

(AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) *Required evaluation and alcohol testing.* No covered employee who has engaged in conduct prohibited by §§ 120.19 or 120.37 shall perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40.

(f) *Other alcohol-related conduct.*

(1) No covered employee tested under this subpart who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

(i) The employee's alcohol concentration measures less than 0.02; or

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

(2) Except as provided in paragraph (f)(1) of this section, no employer shall take any action under this rule against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this rule from taking any action otherwise consistent with law.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009, as amended by Amdt. 120-1, 78 FR 42004, July 15, 2013]

### **§ 120.223 Alcohol misuse information, training, and substance abuse professionals.**

(a) *Employer obligation to promulgate a policy on the misuse of alcohol.*

(1) General requirements. Each employer shall provide educational materials that explain these alcohol testing requirements and the employer's policies and procedures with respect to meeting those requirements.

(i) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the employer's FAA-mandated alcohol testing program and to each individual subsequently hired for or transferred to a covered position.

(ii) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(2) Required content. The materials to be made available to employees shall include detailed discussion of at least the following:

(i) The identity of the individual designated by the employer to answer employee questions about the materials.

(ii) The categories of employees who are subject to the provisions of these alcohol testing requirements.

(iii) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol testing requirements.

(iv) Specific information concerning employee conduct that is prohibited by this chapter.

(v) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(vi) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(vii) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(viii) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(ix) The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the process in 49 CFR part 40, subpart O.

(x) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(xi) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening when an alcohol problem is suspected, including confrontation, referral to any available employee assistance program, and/or referral to management.

(xii) Optional provisions. The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of this subpart. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(b) *Training for supervisors.* Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 120.217(d) of this subpart receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

(c) *Substance abuse professional (SAP) duties.* The SAP must perform the functions set forth in 49 CFR part 40, subpart O, and this subpart.

**§ 120.225 How to implement an alcohol testing program.**

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA:

<b>If you are . . .</b>	<b>You must . . .</b>
(1) A part 119 certificate holder with authority to operate under part 121 or 135	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
(2) An operator as defined in § 91.147 of this chapter	Obtain a Letter of Authorization by contacting the Flight Standards District Office nearest to your principal place of business.
(3) A part 119 certificate holder with authority to	Complete the requirements in paragraphs 1 and 2 of this chart and advise the Flight Standards District Office and Drug



operate under part 121 or part 135 and an operator as defined in § 91.147 of this chapter	Abatement Division that the § 91.147 operation will be included under the part 119 testing program. Contact Drug Abatement Division at FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.
(4) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.
(5) A part 145 certificate holder who has your own alcohol testing program	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, if you opt to conduct your own alcohol testing program.
(6) A contractor who has your own alcohol testing program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, if you opt to conduct your own alcohol testing program.

(b) Use the following chart for implementing an alcohol testing program if you are applying for a part 119 certificate with authority to operate under part 121 or part 135 of this chapter, if you intend to begin operations as defined in § 91.147 of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, Letter of Authorization, or Drug and Alcohol Testing Program Registration from the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this subpart. The chart follows:

<b>If you . . .</b>	<b>You must . . .</b>
(1) Apply for a part 119 certificate with authority to operate under parts 121 or 135	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification,
	(ii) Implement an FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(2) Intend to begin operations as defined in § 91.147 of this chapter	(i) Have a Letter of Authorization,
	(ii) Implement an FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(3) Apply for a part 119 certificate with	(i) Have an Antidrug and Alcohol Misuse Prevention

authority to operate under parts 121 or 135 and intend to begin operations as defined in § 91.147 of this chapter	Program Operations Specification and a Letter of Authorization, (ii) Implement your combined FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.
(4) Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military)	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591, prior to starting operations,
	(ii) Implement an FAA alcohol testing program no later than the date you start operations, and
	(iii) Meet the requirements of this subpart.

(c) If you are an individual or a company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter or an operator as defined in § 91.147 of this chapter, use the following chart to determine what you must do if you opt to have your own alcohol testing program.

<b>If you . . .</b>	<b>And you opt to conduct your own Alcohol Testing Program, you must . . .</b>
(1) Are a part 145 certificate holder	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specifications or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591,
	(ii) Implement an FAA alcohol testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with the authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and
	(iii) Meet the requirements of this subpart as if you were an employer.
(2) Are a contractor	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591,
	(ii) Implement an FAA alcohol testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and
	(iii) Meet the requirements of this subpart as if you were an employer.

(d)(1) To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

- (i) Company name.
- (ii) Certificate number.
- (iii) Telephone number.
- (iv) Address where your drug and alcohol testing program records are kept.
- (v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(Part 119 certificate holders with authority to operate only under part 121 of this chapter are not required to provide this information.)

(2) You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification, issued by your FAA Principal Operations Inspector or Principal Maintenance Inspector, that you will comply with this part and 49 CFR part 40.

(3) You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under this part.

(4) You must update the Antidrug and Alcohol Misuse Prevention Program Operations Specification when any changes to the information contained in the Operation Specification occur.

(e) Register your Drug and Alcohol Testing Program by obtaining a Letter of Authorization from the FAA in accordance with § 91.147.

(1) A drug and alcohol testing program is considered registered when the following information is submitted to the Flight Standards District Office nearest your principal place of business:

- (i) Company name.
- (ii) Telephone number.
- (iii) Address where your drug and alcohol testing program records are kept.
- (iv) Type of safety-sensitive functions you or your employees perform (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).
- (v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.
- (vi) A signed statement indicating that your company will comply with this part and 49 CFR part 40.

(2) This Letter of Authorization will satisfy the requirements for both your drug testing program under subpart E of this part and your alcohol testing program under this subpart.

(3) Update the Letter of Authorization information as changes occur. Send the updates to the Flight Standards District Office nearest your principal place of business.

(4) If you are a part 119 certificate holder with authority to operate under part 121 or part 135 and intend to begin operations as defined in § 91.147 of this chapter, you must also advise the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.

(f) Obtaining a Drug and Alcohol Testing Program Registration from the FAA.

(1) Except as provided in paragraphs (d) and (e) of this section, to obtain a Drug and Alcohol Testing Program Registration from the FAA you must submit the following information to the Office of Aerospace Medicine, Drug Abatement Division:

- (i) Company name.
- (ii) Telephone number.

(iii) Address where your drug and alcohol testing program records are kept.

(iv) Type of safety-sensitive functions you or your employees perform (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

(v) Whether you have 50 or more covered employees, or 49 or fewer covered employees.

(vi) A signed statement indicating that: your company will comply with this part and 49 CFR part 40; and you intend to provide safety-sensitive functions by contract (including subcontract at any tier) to a part 119 certificate holder with authority to operate under part 121 or part 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

(2) Send this information to the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue SW., Washington, DC 20591.

(3) This Drug and Alcohol Testing Program Registration will satisfy the registration requirements for both your drug testing program under subpart E of this part and your alcohol testing program under this subpart.

(4) Update the registration information as changes occur. Send the updates to the address specified in paragraph (f)(2) of this section.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3154, Jan. 20, 2010, as amended by Amdt. 120-1, 78 FR 42005, July 15, 2013]

#### **§ 120.227 Employees located outside the U.S.**

(a) No covered employee shall be tested for alcohol misuse while located outside the territory of the United States.

(1) Each covered employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

(2) Each covered employee who is removed from the random testing pool under this paragraph shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

(b) The provisions of this subpart shall not apply to any person who performs a safety-sensitive function by contract for an employer outside the territory of the United States.