Will publish in the Federal Register on January 12, 2004 in Part 4.

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA-2002-11301; Amendment No. 121-302]

RIN 2120-AH14

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Final rule.

SUMMARY: As a result of a number of years of experience inspecting the aviation industry's Antidrug and Alcohol Misuse Prevention Programs, the FAA is clarifying regulatory language, increasing consistency between the antidrug and alcohol misuse prevention program regulations where possible, and eliminating regulatory provisions that are no longer appropriate. The major changes the FAA is making include the requirements for submission of antidrug plans and alcohol misuse prevention certification statements by employers and contractors; and the timing of pre-employment testing. The effect of these changes is to improve safety and lessen administrative burdens on the regulated public.

DATES: ~~This~~ These amendments becomes effective February 11, 2004 ~~[Insert date 30 days after date of publication in the Federal Register].~~ JMA 1/7/04

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SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (http://dms.dot.gov/search);

(2) Visiting the Office of Rulemaking's web page at http://www.faa.gov/avr/arm/index.cfm; or

(3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact its local FAA official, or the person listed under FOR FURTHER INFORMATION CONTACT. You can find out more about SBREFA on the Internet at http://www.faa.gov/avr/arm/sbrefa.htm, or by e-mailing us at -AWA-SBREFA@faa.gov.

General Information

The General Information portion of the preamble is organized as follows:

- Background information about the drug and alcohol rules (14 CFR part 121, appendices I and J, respectively).
- Two charts highlighting the principal changes in appendices I and J.
- Two charts highlighting the clarifying changes in appendices I and J.
- Discussion of comments received.

Background Information About the Drug and Alcohol Rules

The Antidrug and Alcohol Misuse Prevention Program regulations are part of a long history of FAA actions to combat the use of drugs and alcohol in the aviation industry. For many decades the FAA has had regulations prohibiting crewmembers from operating aircraft under the influence of alcohol or drugs that impair their ability to operate the aircraft. Because of the broad use of drugs in American society, the FAA adopted rules in the 1980s to require testing of persons performing safety functions in the commercial aviation industry for certain illegal drugs. On November 14, 1988, the FAA

published a final rule entitled, Antidrug Program for Personnel Engaged in Specified Aviation Activities (53 FR 47024), which required specified aviation employers and operators to initiate antidrug programs for personnel performing safety-sensitive functions.

Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. 45101, et seq.) (the Act), requiring drug and alcohol testing of air carrier employees. To conform with the Act, the Office of the Secretary of Transportation (OST) coordinated the efforts of Department of Transportation (DOT) modal administrations to address the issue of alcohol use in the transportation industries. On August 19, 1994, the FAA published a final rule entitled, Antidrug Program for Personnel Engaged in Specified Aviation Activities (59 FR 42911), which made clarifying and substantive changes in the FAA's antidrug rule to comport with revised DOT drug testing procedures. On February 15, 1994, the FAA published a final rule entitled, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities (59 FR 7380). The final rule required certain aviation employers to conduct alcohol testing.

The FAA's regulatory efforts have proven to be effective in detecting and deterring illegal drug use and alcohol misuse in the aviation industry. From 1990 through 2001, aviation employers required to report have told the FAA that approximately 19,400 positive pre-employment test results have occurred. Hence, pre-employment testing has proven to be an effective detection tool for the aviation industry.

In addition to these pre-employment test results, between 1990 and 2001 there were approximately 11,100 positive drug test results reported to the FAA by employers. For alcohol tests conducted between 1995 and 2001, employers have reported a total of

approximately 900 breath alcohol test results of 0.04 or greater. This is further evidence of the success of the FAA's drug and alcohol testing regulations.

While the drug and alcohol testing regulations have proven successful, experience has led the FAA to identify some aspects of the regulations that need to be amended. These amendments change requirements regarding: reasonable cause drug testing; periodic drug testing; the approval process of antidrug program plans; and the approval process of certification statements for alcohol misuse prevention programs. The FAA is also clarifying regulatory language, increasing consistency between the antidrug and alcohol misuse prevention program regulations where possible, and eliminating regulatory provisions that are no longer appropriate.

On February 28, 2002, the FAA published a Notice of Proposed Rulemaking (67 FR 9365) (NPRM), Notice 02-04. We proposed clarifying regulatory language, increasing consistency between the antidrug and alcohol misuse prevention program regulations where possible and eliminating regulatory provisions that were no longer appropriate. We proposed these changes to improve safety and lessen administrative burdens. The comment period for Notice 02-04 was scheduled to close May 29, 2002, but was extended until July 29, 2002 (67 FR 37361; May 29, 2002) as a result of public requests for extension.

gma 1/7/04

In Notice 02-04, the FAA proposed to make it clear that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing. Several commenters stated that this was more than a clarifying change. The commenters suggested that, because more people would have to be tested, there would be an economic impact from this proposed change. In order to gather more

information on the concerns expressed by the commenters, the FAA is not adopting the proposed revision in this final rule and will be publishing a Supplemental Notice of Proposed Rulemaking (SNPRM) in the near future. All other issues and comments related to Notice 02-04 are addressed and resolved in this final rule.

This amendment also replaces "Office of Aviation Medicine" with "Office of Aerospace Medicine," wherever it appears in the regulations.

Charts Summarizing the Changes

The following charts summarize the principal and clarifying changes to appendices I and J to 14 CFR part 121. Where the proposed change is modified in this final rule, the FAA's reason is discussed in this preamble.

PRINCIPAL CHANGES--APPENDIX I (Drug Testing)

Current Section Number and Title	**Summary**
Section II. Definitions.	• Changes the definition of "Employer" to clarify that an employer may use a contract employee to perform a safety-sensitive function if the contract employee is included in the: 1. Employer's FAA-mandated antidrug program; or 2. Contractor's FAA-mandated antidrug program while performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)
Section V. Types of Testing Required.	• Changes paragraph A., "Pre-employment Testing," to require pre-employment testing before hiring or transferring an individual into a safety-sensitive position. • Requires an employer to conduct another pre-employment test before hiring or transferring an individual into a safety-sensitive position if more than 180 days elapse between a pre-employment test and placing the individual into a safety-sensitive position. • Eliminates periodic drug testing.

Section IX. Implementing an Antidrug Program.	• Changes the title of the section. • Eliminates the requirement for plan approvals. Instead the FAA is requiring that: - new and existing part 121 and 135 certificate holders obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification is required for both the drug and alcohol programs. - new and existing part 145 certificate holders obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification if they opt to have the drug and alcohol programs because they perform safety-sensitive functions for an employer. Only one operations specification is required for both the drug and alcohol programs. - all other entities required or opting to have Antidrug and Alcohol Misuse Prevention Programs register with the FAA. Only one registration is required for both the drug and alcohol programs. • Eliminates the 60-day grace period before employers must ensure that contractors and part 145 certificate holders that perform safety-sensitive functions are subject to an antidrug program. • Requires updates to registration information as changes occur. • Makes it clear that employers may use contractors (including part 145 certificate holders) to perform safety-sensitive functions only if the contractors are subject to an antidrug program for the entire time they are performing safety-sensitive functions.

CLARIFYING CHANGES—APPENDIX I (Drug Testing)

Current Section Number and Title	**Summary**
Section I. General.	• Adds a paragraph that lists applicable Federal regulations. • Adds a paragraph that prohibits falsification of any logbook, record, or report.

Section II. Definitions.	• Changes the defined term "Contractor company" to "Contractor" to emphasize that "Contractor" could mean an individual or a company. • Changes the definition of "Employee" to eliminate unnecessary language. • Adds a definition of "Hire" to ensure that we do not inadvertently eliminate anyone who was required to submit to pre-employment testing under the 1994 pre-performance provision.
Section III. Employees Who Must Be Tested.	• Makes it clear that all employees who perform safety-sensitive functions, e.g., assistant, helper, or individual in a training status, whether they are full-time, part-time, temporary, or intermittent employees, are subject to an antidrug program regardless of the degree of supervision.
Section V. Types of Drug Testing Required.	• Clarifies pre-employment notification requirements. • Clarifies random testing requirements.

PRINCIPAL CHANGES-- APPENDIX J (Alcohol Testing)

Current Section Number and Title	**Summary**
Section VII. Implementing an Alcohol Misuse Prevention Program.	• Eliminates the FAA-required Alcohol Misuse Prevention Certification Statement. Instead the FAA is requiring: - new and existing part 121 and 135 certificate holders to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification is required for both the drug and alcohol programs. - new and existing part 145 certificate holders to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification if they opt to have the drug and alcohol programs because they perform safety-sensitive functions for an employer. Only one operations specification is required for both the drug and alcohol programs. - all other entities required or opting to have Antidrug and Alcohol Misuse Prevention Programs to register with the FAA. Only one registration is required for both the drug and alcohol programs.

	• Eliminates the 180-day grace period before employers must ensure that their contractors and part 145 certificate holders that perform safety-sensitive functions are subject to an alcohol misuse prevention program. • Requires updates to registration information as changes occur. • Makes it clear that employers may use contractors (including part 145 certificate holders) to perform safety-sensitive functions only if the contractors are subject to an alcohol misuse prevention program for the entire time they are performing safety-sensitive functions.

CLARIFYING CHANGES--APPENDIX J (Alcohol Testing)

Current Section Number and Title	**Summary**
Section I. General.	• Eliminates in paragraph D. the definition of "Administrator," because it is defined elsewhere in the regulations. • Eliminates in paragraph D. the definition of "Consortium." • Changes in paragraph D. the defined term "Contractor company" to "Contractor" to emphasize that "Contractor" could mean an individual or a company. • Adds paragraph H. that lists applicable Federal regulations. • Adds paragraph I. that prohibits falsification of any logbook, record, or report.
II. Covered Employees	• Makes it clear that all employees who perform safety-sensitive functions, e.g., assistant, helper, or individual in a training status whether they are full-time, part-time, temporary, or intermittent employees, are subject to an alcohol misuse prevention program regardless of the degree of supervision.

Discussion of Comments Received

General Overview

The FAA received approximately 30 comments in response to Notice 02-04, including comments from the Air Transport Association of America (ATA), Regional Airline Association (RAA), National Air Transportation Association (NATA), Airline Pilots Association, International (ALPA), and a joint filing by the Aeronautical Repair Station Association (ARSA) and 14 other entities.

APPENDIX I--DRUG TESTING PROGRAM

I. General

In Notice 02-04, the FAA proposed to add two paragraphs to this section: "Applicable Federal Regulations" and "Falsification." These paragraphs were designated "D." and "E." respectively. Proposed Paragraph D. included a list of Federal regulations dealing with the antidrug and the alcohol misuse prevention programs. Paragraph E., "Falsification," proposed to specifically prohibit falsification of any logbook, record, or report required to be maintained under the regulations to show compliance with appendix I. Similar language prohibiting falsification is used in 14 CFR §§ 21.2, 61.59, 63.20, and 65.20.

The FAA received only one comment, which was supportive. The FAA is adopting the changes as proposed.

II. Definitions

Contractor

In Notice 02-04, the FAA proposed to change the term "Contractor company" to "Contractor" to emphasize that a contractor can be an individual or a company who contracts with an aviation employer.

The FAA received one comment regarding the proposed change from "Contractor company" to "Contractor." The commenter believed that the term "Contractor company" was adequate.

The FAA has determined that the proposed clarification more clearly articulates the intended meaning of the term. Therefore, we are adopting the change as proposed.

Employee

In Notice 02-04, the FAA proposed to change the definition of "Employee" to clarify that an employee is either a person hired, directly or by contract, to perform a safety-sensitive function for an employer or a person transferred into a position to perform a safety-sensitive function.

We also proposed eliminating the sentence "Provided, however, that an employee who works for an employer who holds a part 135 certificate and who holds a part 121 certificate is considered to be an employee of the part 121 certificate holder for purposes of this appendix." This sentence was included at the inception of the drug testing regulations, when part 121 certificate holders were required to implement drug testing earlier than part 135 certificate holders. Because all existing part 121 and part 135 certificate holders have implemented the drug testing regulations, this language is no longer necessary.

The FAA did not receive any comments on the proposed changes to the definition of "Employee." We are adopting the changes as proposed.

Employer

In Notice 02-04, the FAA proposed to change the definition of "Employer." The proposed change was intended to make it clear that no employer can use a contract employee to perform a safety-sensitive function unless the contract employee: is included under that employer's FAA-mandated antidrug program; or is included under the contractor's FAA-mandated antidrug program and is performing a safety-sensitive function on behalf of the contractor (i.e., within the scope of employment with the contractor.)

We proposed to change the definition of "Employer" to close a loophole that was sometimes referred to as "moonlighting." Under the moonlighting loophole, when an employee was covered under an employer's drug testing program (Employer A), another employer (Employer B) could have used that employee to perform safety-sensitive functions even when the work was unrelated to the employee's work with Employer A. In many cases, however, Employer A was unaware of its employee's activities for Employer B. One problem arising from this was that if Employer A terminated the employee, Employer B might not know that the employee was no longer covered by Employer A's drug testing program

Another problem was that, in the event of an accident while an employee was working for Employer B, Employer B could not have post-accident tested the employee because the employee was not included in Employer B's drug testing program. Employer A might not have been aware of the need to test the employee, or it might not have

agreed to test the employee if the employee had not been performing a safety-sensitive function within the scope of employment with Employer A. In adopting the original rule, it was not the FAA's intent to create a situation where a person performing a safety-sensitive function could avoid being tested. With adoption of this change, employers will only be permitted to rely on companies with whom they have contractual relationships to cover testing of their employees.

The FAA received comments from several submitters, including ARSA and RAA, on the definition of "Employer." Two commenters approved of the proposed definition of employer. One of the commenters stated that the proposed definition clarified the relationship between employees and employers. Also, this commenter noted "that the stated problems with 'moonlighting' and the adverse experiences that it has generated over the past years justify the blanket elimination of the practice of moonlighting . . . ."

ARSA noted that the proposed elimination of the moonlighting exception would cause great difficulty because, if a non-certificated subcontractor did not want to have its own program, it would need to be covered by the programs of all of the contractors for whom it performed safety-sensitive work. ARSA believed that many of these companies would refuse to establish programs of their own.

ARSA correctly understands that under the final rule certificated and non-certificated contractors performing safety-sensitive functions must either obtain their own drug and alcohol programs or obtain coverage under each company for whom they are performing safety-sensitive functions. This is a business choice that each entity must make. Since the beginning of the drug and alcohol programs, companies have made

these choices. If a certificated or non-certificated contractor has its own program, it does not need to be included in the program of each company for whom it works.

In Notice 02-04, the last sentence of the definition of "Employer" read as follows: "An employer may use a contract employee who is not included under that employer's FAA-mandated antidrug program to perform a safety-sensitive function only if that contract employee is subject to the requirements of the contractor's FAA-mandated antidrug program and is performing work within the scope of employment with the contractor." RAA recommended that the FAA delete the phrase "and is performing work within the scope of employment with the contractor." RAA believed that the phrase places a burden on an employer to determine whether the work it requires of the contract employee is substantially similar to the work the employee performs for the contractor. RAA believed the language was an attempt to remedy a post-accident testing issue, and in this light, RAA found the language "within the scope of employment" to be "vague, ambiguous, subject to multiple interpretations and should be deleted." Instead, RAA proposed that the language of post-accident testing be amended to allow an employer to post-accident test a contract employee.

The examples provided in Notice 02-04 may have confused some commenters. The language "in the scope of employment" was not intended to be limited to post-accident testing. Upon further review of the proposal, we decided to include additional language to better explain that "within the scope of employment" means that it is part of the employee's job with the contractor to perform a safety-sensitive function for the employer.

In proposing to revise the definition of "Employer," the FAA intended to ensure that an individual performing a safety-sensitive function for an employer is covered by either the employer's program or the program of the contractor when the individual is performing work for the employer within the scope of his or her employment with the contractor. The previous language allowed an employer to use an individual for any safety-sensitive function, so long as the individual was covered by someone else's program. Under this final rule, if an individual is "performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor)," then the contractor is fully knowledgeable of what work the individual is doing, and the contractor can, therefore, remove from service any individual who tests positive while working for a client. This way, the regulation permits the employer to use an individual without directly covering him or her, but also ensures that the contractor will be in a position to know who is working where, so that safety and individual privacy are correctly balanced should a positive test result be received.

Two commenters had concerns about ensuring that contractor employees are actually covered by the contractor's program. One commenter suggested that "language be added to the final rule to require documentation that a contract employee is enrolled in the contractor's FAA mandated drug and alcohol testing program." The other commenter questioned whether or not it is an absolute requirement for FAA-approved repair stations to have actual copies of vendor plans on file at their facilities or whether an electronic means such as an updated listing that the FAA could maintain would be considered acceptable.

The FAA notes an employer must verify that the contract employee is subject to the contractor's FAA-mandated testing program on an on-going basis. While the regulation does not require specific documentation to be kept on file, the employer remains responsible for demonstrating that it has ensured that it has only used a contract employee who is included under the contractor's testing programs. In the past, the FAA's Drug Abatement Division maintained an Internet web site with a list of aviation companies that had approved drug and alcohol testing programs. The intent of this list was to assist employers in identifying contractors that were operating drug and alcohol testing programs in compliance with 14 CFR part 121, appendices I and J. However, the information on this list was current only at the time the list was placed on the web site. For example, the list did not indicate whether the company had implemented or continued to implement its drug and alcohol testing programs. Therefore, the information could not be used to determine compliance with the regulations, and the FAA removed the list from the Internet. The FAA has not imposed a specific documentation requirement for ensuring contractor coverage because we want to give employers the flexibility to meet this requirement on a continuing basis in any manner that is practical and effective for each particular employer.

Another commenter requested that the FAA include within the rule text itself, the examples provided in the preamble to Notice 02-04. The FAA considered this proposal and decided that including examples in the rule text for this definition is unnecessary since we have clarified this definition in the final rule.

The FAA notes that under this change to the regulation, an employer who currently has a "moonlighting" employee performing a safety-sensitive function is not

required to conduct a pre-employment test on the employee. However, the employer must include the employee under its antidrug and alcohol misuse prevention programs. With the effective date of this final rule, the "moonlighting" exception is eliminated and the employer may not hire or transfer any employee into a safety-sensitive function before the employer conducts a pre-employment test on the employee and receives a negative drug test result on the employee. In addition, one of the commenters stated that as a consortium administering drug and alcohol services, he has noticed that §135.1(c) operators do not read and comply with part 135. The commenter recommended addressing this concern by adding the term "scenic aircraft operations" in the definition of employer when §135.1(c) is mentioned.

The FAA has determined that it is only necessary to reference §135.1(c) to describe these employers. Section 135.1(c) refers to "any person or entity conducting non-stop sightseeing flights for compensation or hire in an airplane or rotorcraft that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport." "Scenic aircraft operations" does not accurately describe these employers. A more elaborate description would not better notify these commercial operators of their regulatory duty to comply with the drug and alcohol testing regulations. As commercial operators, they must read part 135. Section 135.1(c) explicitly directs these operators to §§135.249, 135.251, 135.253, 135.255, and 135.353, which require these operators to conduct testing under part 121, appendices I and J. We have concluded that the regulatory requirements are adequate as stated in the existing regulations. Consequently, we are not adopting the commenter's suggestion on this issue.

Therefore, the FAA is adopting the definition of employer as proposed, with minor editorial changes for clarity.

Other Definitions

We received two comments that suggested we clarify the definition of "Safety-sensitive." One of the commenters also suggested that we add definitions for "Performing maintenance" and "Cease to perform." The commenter stated, "To be able to interpret what is meant when safety-sensitive is used the reader must be able to understand the phrase explicitly." The commenter also stated, "without a clear definition of performing maintenance, a clear understanding of safety sensitive can never be comprehended."

The FAA has determined that these terms are already sufficiently defined. The definition of "Safety-sensitive function" cross-references the sections in appendices I and J, respectively, that describe which employees must be tested. It is not necessary to address specific examples of the tasks performed within safety-sensitive functions. Instead, the rule identifies the duties that are subject to drug and alcohol testing because of their relationship to aviation safety.

In requesting a definition for "Performing maintenance" the commenter stated, "Many people can perform regular maintenance on an aircraft engine and its components. Normally, only one or two of these individuals 'release-to-service' the aircraft engine and/or its components after this maintenance is performed." The commenter noted that "performing maintenance is a routine procedure on an aircraft engine," and asked when this becomes safety-sensitive. In addition, the commenter questioned when an employer should start drug and alcohol testing.

The commenter seems to be confusing performance of maintenance with release to service. In fact, release to service is only one aspect of the broader concepts of maintenance and preventive maintenance, which are defined by the FAA in 14 CFR § 1.1, and 14 CFR part 43. Maintenance and preventive maintenance are not defined differently for the purposes of drug and alcohol testing. Consequently, the FAA has determined that a definition for "Performing maintenance" is not necessary.

In the course of discussing "Safety-sensitive" and "Performing maintenance" the commenter noted that manufacturing duties are "just as safety-sensitive, if not more so" than maintenance duties. The commenter questioned why the FAA does not require drug testing for manufacturing duties.

The purpose of this rulemaking was not to add or remove categories of safety-sensitive employees. Any changes to the types of safety-sensitive employees who must be subject to testing would need to be accomplished by notice and comment rulemaking procedures. The FAA did not propose any such changes; therefore, it would not be appropriate to consider the commenter's issues in this rulemaking.

In requesting that we define "Cease to perform," the commenter stated that: "In a commercial business some procedures are time critical. In a small business where there are no 'extra' people available to finish a time critical process, removing one person for a random drug test can have significant financial consequences."

Under the regulations, the employer is responsible for determining when to notify its employees to immediately report for random testing. Therefore, a small business can allow an employee to finish a "time critical process" before notifying the employee to report immediately for a random test. For further discussion of random testing, see

Section V.B. Consequently, the FAA has determined that a definition for "Cease to perform" is not necessary.

Hire

Another commenter suggested that we add a definition of "Hire" to clarify when pre-employment testing needs to be done for a person who performs services as a volunteer, through barter, or in some other manner that may not seem to include a clear "hiring event." This commenter also suggested that we "specifically prohibit the performance of safety-sensitive duties by an applicant or as part of the application process."

The FAA agrees with the commenter regarding the need for a definition of "Hire." Therefore, we have added a definition of "Hire" to Section II. Definitions. The addition of this definition is not a substantive change, rather it is a clarification to ensure that the new pre-employment testing requirement does not inadvertently eliminate anyone who was required to submit to pre-employment testing under the 1994 provision. The FAA has determined that the rule language and the new definition of hire have made it clear that an applicant is prohibited from performing safety-sensitive duties until a pre-employment test is given and a negative result is received.

III. Employees Who Must be Tested.

In Notice 02-04, the FAA proposed to make it clear that the employer's decision to include an employee in its drug and alcohol testing program must be based on the safety-sensitive duties that the individual performs rather than employment status (full time, part time, temporary, or intermittent). The proposed language was not intended to change the current rule's scope.

We received several comments regarding this clarification, including a comment from RAA. Some commenters supported the clarification, while others expressed concerns.

RAA stated that the phrase "regardless of the degree of supervision" confuses the reader on exactly which individuals are required to be tested. RAA saw this language as broadening the scope of coverage beyond individuals who perform safety-sensitive functions. As an example, RAA stated that many air carriers do not currently consider a mechanic's helper as performing a safety-sensitive function, since any task affecting the aircraft is reviewed and signed off by another individual licensed to perform a safety-sensitive function. RAA felt that this change significantly broadened the scope of testing for many air carriers and would increase their expenses.

One commenter stated that the change makes it clear that the determination of who needs to be in a testing program is based on the safety-sensitive duties the individual performs. The commenter noted, however, that "helpers" are not mentioned in the regulatory text and that this omission could cause some confusion.

Another commenter believed that the rule change would require a mechanic's helper, who is supervised by a maintenance technician, to be covered by the drug and alcohol testing requirements.

The FAA's drug and alcohol testing regulations have always required testing of any employee who performs a safety-sensitive function regardless of the degree of supervision. Communications with the aviation industry, as well as compliance inspections and investigations, show that employers do not always understand which employees must be tested. Therefore, the FAA is specifying that the testing obligations

apply to any individual who is full-time, part-time, temporary, intermittent, or in a training status, if that individual is performing a safety-sensitive function. The revision does not change the scope of the regulation, it merely clarifies that any employee performing a safety-sensitive function must be tested even if that employee is being supervised during the performance of the safety-sensitive function.

Section III lists safety-sensitive functions and it does not list job titles. The determination of who should be tested is not based on the title of the position or the degree of supervision, but the actual functions performed. For example, it is possible that a mechanic's helper in one company might not perform safety-sensitive functions and would not need to be tested, while a mechanic's helper in another company might perform safety-sensitive functions and, therefore, must be subject to testing. The revision does not broaden the scope of testing or the costs associated with testing, but it may help employers to better understand whether they are properly testing all employees who perform safety-sensitive functions.

The FAA agrees, however, that revising the regulatory text to include assistants and helpers would help avoid confusion and this change is made in the final rule.

A commenter on pre-employment testing stated that, "in small companies especially...an individual could begin to perform safety-sensitive duties (without being formally transferred into a safety-sensitive position). Possible examples include a parts warehouseman who performs maintenance on an as-needed basis or a reservations clerk who is trained to do weight and balance calculations."

The FAA has considered the commenter's concerns. However, we have not adopted the language proposed by the commenter because we believe Section III.

Employees Who Must Be Tested, clearly states that the employer must test an employee before allowing the employee to accomplish any safety-sensitive task, even if the task only is accomplished on an as-needed basis. For example, a reservations clerk could be trained in the safety-sensitive duties of weight and balance calculations. However, the employee would only be tested if the employer identifies this person as someone who could be called upon to perform safety-sensitive duties on an as-needed basis. On the other hand, if the employer has not identified this person as someone who could be called upon to perform safety-sensitive duties and has not tested the employee, the employer may not use the person to perform safety-sensitive duties.

V. Types of Drug Testing Required.

A. Pre-employment Testing.

As discussed earlier, approximately 19,400 positive pre-employment tests have been reported to the FAA in the last decade, demonstrating that such tests are an effective detection tool. Pre-employment testing is directly tied to aviation safety, in that it is a gateway to safety-sensitive positions. Failure of a pre-employment test is a direct barrier to an individual's entry into safety-sensitive work. Thus, it is vital that the language requiring pre-employment testing be as clear as possible in order to maximize the efficiency of its use.

Originally, the antidrug regulation published in 1988 said, "No employer may hire any person to perform a function, listed in section III. of this appendix, unless the applicant passes a drug test for that employer." The regulation required pre-employment testing before an individual could be hired to perform a safety-sensitive function specified in the appendix.

In 1994, the FAA revised its antidrug rule to require pre-employment testing of an individual prior to the first time the individual performed a safety-sensitive function for an employer instead of requiring this testing "prior to hiring." Under the 1994 revisions, an individual was required to have a verified negative drug test result on a pre-employment test prior to performing a safety-sensitive function, and the employer could not allow the individual to perform such a function until the employer received the verified negative pre-employment test result.

Communications with the aviation industry and enforcement cases have shown that, in the absence of the very clear "hiring" event, some employers have misunderstood the pre-employment testing requirement. They neglected to conduct a pre-employment test and receive a negative test result before allowing employees to perform safety-sensitive functions. In the worst cases, this resulted in the performance of safety-sensitive functions by employees who subsequently tested positive for illegal drug use. Before the 1994 change, misunderstandings were not prevalent. The original language was a clearer standard for employers to follow. Therefore, the FAA proposed to change the language in paragraph V.A.1. back to requiring testing and receipt of a negative drug test result prior to hiring an individual for a safety-sensitive function.

In paragraph V.A.2., the FAA proposed to require that employers drug test employees prior to transferring them into safety-sensitive functions. This paragraph proposed to clarify to the employer that testing is required and a negative test result must be received before an employee is "hired" for a safety-sensitive function, even if that "hiring" is simply an internal transfer from a nonsafety-sensitive function to a safety-sensitive function.

In paragraph V.A.3., the FAA proposed to address circumstances where individuals are given pre-employment drug tests (and receive negative test results) but a significant period of time passes between the date of the test and the date of hire or transfer into a safety-sensitive function and thus into the employer's FAA-mandated drug testing program. The FAA proposed 60 days as an acceptable time between being given a pre-employment test and being brought into a drug testing program.

The FAA received comments on each of the subparagraphs of V.A. Several commenters, including the Drug & Alcohol Testing Industry Association (DATIA) supported the clarification in paragraph V.A.1. that a negative test result must be received prior to hiring an employee for a safety-sensitive function, especially in light of the number of positive pre-employment test results.

Several commenters, including ATA and RAA opposed the requirement in paragraph V.A.1. to conduct pre-employment testing with a negative test result received prior to hiring an individual. These commenters preferred the 1994 version of the regulation, which only required receiving the negative test result on a pre-employment test prior to performance.

RAA stated that the FAA's proposal to have a negative drug test result received prior to hire rather than prior to the first performance of a safety-sensitive function would severely affect the ability of its members to hire in an efficient manner. In addition they stated that this proposal would unnecessarily increase costs to air carriers, without enhancing safety. RAA noted that, generally, newly-hired pilots receive two to four weeks of classroom training before they perform any activity that could be considered a safety-sensitive function. RAA stated that classroom training generally occurs at the

corporation's headquarters, and, since most of the hires do not live there, air carriers conduct pre-employment testing on a new hire's first day of class. They noted that this gives the air carrier ample time to receive and document an individual's results before any safety-sensitive work is performed. RAA stated that the proposed rule would cause air carriers additional costs and administrative burdens because they must conduct a pre-employment test and receive a negative test result prior to beginning training of each individual. RAA noted that air carriers would have to conduct increased numbers of tests. RAA stated that air carriers would potentially be testing individuals who will never perform safety-sensitive functions, resulting in unnecessary costs to air carriers and infringement on the individual's rights.

ATA commented that FAA should not revert to the "prior to hire" pre-employment testing language. ATA stated "that failures to perform pre-employment testing have not been the result of confusion about when these tests must be performed, but instead because of a variety of other reasons: simple human error/forgetfulness, inadequate administrative systems, or occasionally the need to get someone in place in a position." They believed that "the change proposed by FAA will not prevent these kinds of errors from occurring in the future." ATA asserted, "the basic reason for the 1994 language—flexibility that realistically reflects the overall hiring process—has not changed and is as valid today as it was in 1994." Although ATA noted that FAA has a laudable goal in trying to reduce employer's errors in conducting pre-employment testing, they stated this goal "does not outweigh the need for flexibility to conduct pre-employment testing in a way that is operationally efficient and cost-effective." ATA stated that the flexibility the 1994 language afforded its members was critical "because

the hiring and training process for safety-sensitive employees can be complex and take a long time." ATA felt that its "members need the flexibility to conduct the pre-employment test at a time that makes sense in the course of the overall hiring process. For example, the pilot hiring/training process can take anywhere from four to six months, and even longer on occasion." ATA noted that given both the length of the process and that some individuals ultimately will not make it through the process, these individuals should not be pre-employment tested before being hired. ATA also stated that the same issues and concerns apply to flight attendant and mechanic hiring, although the hiring/training process may be shorter. For these reasons, ATA requested that FAA retain the current text of section V.A.1.

FAA enforcement experience shows that pre-employment testing is more effectively implemented when there is a clear event triggering the test, such as "hiring" an employee. Although some commenters preferred the 1994 version, the FAA found that the "prior to performance" language caused employers much confusion and made pre-employment testing violations the most frequently occurring enforcement cases.

Pre-employment violations are extremely serious because they indicate that an employee was placed into a safety-sensitive function without the proper testing. Statistics show that pre-employment testing yields the largest number and percentage of positive test results, a larger number and percentage than all other FAA-required drug testing combined. Pre-employment testing functions as the gatekeeper in the FAA-required drug testing program because it prevents the entry into safety-sensitive work of individuals who use illegal drugs. Therefore, any pre-employment violation poses the risk of permitting the entry of an illegal drug user into the aviation industry. For these

reasons, it is imperative that we provide employers with a clear and unambiguous standard for the timing in which to conduct pre-employment testing. We have determined that the event of hiring an employee provides an unambiguous standard for the timing of pre-employment testing. Although the "prior to hire" language may mean that some employers may conduct testing of individuals who do not complete the employer's training program, this may ultimately save employers money by eliminating illegal drug users before employers expend time, effort, and funds to train those individuals. Consequently, because of the safety implications of allowing undetected drug users to enter into safety-sensitive functions, the FAA is using the more clear and direct "prior to hire" language.

Furthermore, pre-employment drug testing is a less expensive and more common prerequisite for employment in the United States today than it was in 1994. Employers across the United States are finding that pre-employment, random, and other forms of testing make economic sense. According to a Substance Abuse and Mental Health Services Administration (SAMHSA) study, illegal drug use and alcohol misuse cost United States' private employers billions of dollars each year in costs associated with absenteeism, on-the-job errors, injuries to employees, increased insurance costs and workers compensation payments, etc. Requiring pre-employment testing prior to hiring an individual should actually save employers from expending salary, benefits, and workers compensation on active illegal drug users.

Therefore, the FAA is adopting paragraph V.A.1. as proposed, with minor editorial changes. Also, we added the words "conducts a pre-employment test and" to

make it clear that the test for which the employer is receiving a verified negative drug test result is a pre-employment test.

The FAA is adopting paragraph V.A.2. as proposed, with minor editorial changes. Specifically, we added the words "conducts a pre-employment test and" to clarify that the test for which the employer is receiving a verified negative drug test result is a pre-employment test.

Some commenters, including NATA, supported the 60-day provision in paragraph V.A.3. However, several commenters, including ATA and RAA, opposed the proposed 60-day provision. ATA stated that the 60-day period would not have any public safety benefit and would have additional cost. They recommended that the 60-day period be deleted. Alternatively, they suggested that the 60-day time period be changed to 180 days because the hiring and training process for pilots and flight attendants can take up to 6 months.

Another commenter opposed the 60-day provision in V.A.3. because he believes "it is not unusual for 60 days to elapse between the time a pilot or dispatcher candidate walks through the front door, until he/she is completely checked out in his/her safety-sensitive functions. To give the newly checked-out employee yet another pre-employment drug test makes no sense at all."

RAA opposed the proposed 60-day time frame because this provision would cause many of its members to conduct more than one pre-employment test and would require its members to more closely track the time between pre-employment testing and putting an employee into the testing program. RAA explained that under Postal regulations its members' new hires must be pre-employment tested within 90 days. Thus

the proposed 60-day window for pre-employment testing new hires is too narrow for RAA members.

After reviewing the comments, we have determined that 180 days, as suggested by ATA, is an acceptable time between conducting a pre-employment test and repeating the test before bringing an individual into an FAA-mandated drug testing program. While we want to ensure that there is not a significant delay between the pre-employment test and the individual being subject to a drug testing program, we want to give the employer some flexibility. However, the longer the delay between the pre-employment test and the individual assuming a safety-sensitive function, the less the deterrence factor because the individual is not in an on-going testing program. The FAA has determined that increasing the time period from 60 days to 180 days still provides an acceptable deterrence factor, while giving the employer more flexibility.

In looking at the proposed pre-employment testing rule text and accompanying preamble, the FAA has recognized that some of the discussion about the proposed changes to pre-employment testing may have caused misunderstandings about pre-employment testing and performance of a safety-sensitive function. The FAA believes that some commenters may have misunderstood the proposed 60-day provision as requiring that an employee must be tested again if the employee does not begin performing safety-sensitive functions within the 60 days. The final rule requires a second pre-employment test only when the person was not actually hired or transferred within the specified period that is now 180 days. Because of the apparent confusion about the use of the word "perform" in the pre-employment testing context, the FAA has revised the rule language in paragraph V.A.1. from "hire any individual to perform a function

listed..." to "hire any individual for a safety-sensitive function listed..." We did this to remove the word "perform" from paragraph V.A.1. because it appeared to cause confusion in paragraph V.A.3. In addition, this change to paragraph V.A.1. more directly mirrors the proposed language in V.A.2., which appears to have been clearer.

Therefore, we are adopting the proposed language in paragraph V.A.3. with the change described above to increase the 60-day period to 180 days.

One commenter correctly recognized that Notice 02-04 proposed requiring pre-employment testing of any individual hired or transferred into a safety-sensitive position, even if that individual were rehired by a former employer. However, when we reviewed the language in paragraph V.A. we realized that there was a conflict between paragraphs V.A.1., V,A,2. and V.A.4. The FAA proposed keeping paragraph V.A.2. with no changes, but redesignating it as V.A.4. Proposed paragraphs V.A.1. and V.A.2. clearly stated that any individual who is hired or transferred must be subject to pre-employment testing. Historically, paragraph V.A.2. (redesignated as V.A.4.) allowed but did not require an employer to pre-employment test an individual who previously performed a covered function for the employer and was removed from the random pool for other than a verified positive test result or a refusal to submit to testing, such as assignment to a nonsafety-sensitive function. This allowed an employer to return an individual to a safety-sensitive function without subjecting that individual to another pre-employment test.

In this final rule we have revised the language of paragraph V.A.4. to be consistent with paragraphs V.A.1. and V.A.2. so that an employer cannot rehire a former employee without a pre-employment test and receipt of a negative drug test result. The final rule

continues to allow employers to restore a current employee to a safety-sensitive function without pre-employment testing in limited circumstances. Specifically, if the employee is removed from the random testing pool for reasons unrelated to a positive test result or a refusal to test, and the employee is not a hire or transfer, the employer may put the employee back in the random testing pool without a pre-employment test. For example, if an employee is removed from the random pool because of a work-related injury or family medical leave, the employer may place that employee back into the random testing pool after the absence, so long as the employer is not "hiring" or "transferring" the employee into a safety-sensitive position.

In addition, in the introductory text to redesignated paragraph V.A.4., we restored the concept that an employer must receive a negative test result on a pre-employment test. Historically, the requirement for the receipt of a negative test result was included in paragraph V.A.3., but it was inadvertently omitted in the proposal.

Another commenter believed that requiring rehired employees to be pre-employment tested would be "cost prohibitive" and a large number of employers would need to be educated on this change. Therefore, this commenter requested a long grace period to allow companies to become familiar with this change.

The FAA has determined that postponing the effective date of this provision is not necessary. While all employers governed by the drug and alcohol testing regulations must become familiar with all the changes in this final rule, we have no data to suggest that a large number of pre-employment tests will be triggered by this new provision. Furthermore, while the commenter notes that she believes the change is "cost prohibitive", she does not oppose the change or offer data to support that a large number

of employers would need to conduct significantly more pre-employment tests as a result of this change.

One commenter suggested that we add a definition of "Hire" to clarify who must be pre-employment tested. The FAA agrees with this commenter. For a discussion of this issue see Section II. Definitions.

There were no changes to paragraphs V.A.4.(b) and (c). They are adopted as proposed.

In reviewing the draft final rule text, we realized that the language in paragraph V.A.5., which has been in the regulation for many years, could have caused some confusion. Specifically, proposed paragraph V.A.5. required an employer to notify "each individual applying to perform a safety-sensitive function at the time of application that the individual will be required to undergo pre-employment testing." This language was not intended to require employers who receive hundreds of unsolicited applications every year to notify each of these individuals of the requirement to test. Instead, the intent is to ensure that prior to pre-employment testing, each individual has been notified of the requirement to take that test and we revised the rule accordingly. Also, we updated the reference in the last sentence of the proposed paragraph because we redesignated paragraph V.A.2. as V.A.4. in Notice 02-04. Further we eliminated the reference to section V.A.1. in the proposal because it was redundant.

In the final rule, we have made minor editorial changes to section V.A., including substituting the word "individual" for the words "applicant," "person," and "employee," as appropriate for clarity.

The FAA has adopted the provisions proposed in paragraph V.A., Pre-Employment Testing, with the changes described above and minor editorial changes.

B. Periodic Testing

In Notice 02-04, the FAA proposed to eliminate paragraph V.B, Periodic Testing. Periodic testing was important at the beginning of the program when many people were grandfathered into newly approved antidrug programs without pre-employment testing. Initially, there was also a phase-in period for implementing random testing. Employers were not required to meet the annual random testing rate until the last collection at the end of the first year of testing. Thus, it was likely that a pilot would not be tested in the first year of testing. Because all flight crewmembers are subject to pre-employment testing and annual random testing, the FAA has determined that the elimination of periodic drug testing at this time will not compromise safety and will be a cost benefit to those aviation industry employers implementing drug programs. Also, there has never been a periodic testing requirement in appendix J. Because of the elimination of periodic testing, the remaining paragraphs in this section are being relettered accordingly.

The FAA received several comments, including one from ATA, supporting the proposed elimination of periodic testing. We agreed with the commenters and are adopting the changes as proposed.

C. Random Testing.

In Notice 02-04, the FAA proposed adding a paragraph to the random testing section for consistency with appendix J. Under the proposed provision, each employer must ensure that each safety-sensitive employee who is notified of selection for random drug testing proceeds to the collection site immediately. Under the proposal, even if the

employee is performing a safety-sensitive function at the time of the notification, the employer must ensure that the employee ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible. A similar requirement has been included in appendix J since its issuance in 1994 and has worked well. Two commenters supported the proposed change to the random drug testing section. One commenter stated that the proposed change would clear up the misunderstanding of the regulation that some companies have had.

ALPA submitted a comment generally opposing random testing and specifically stated: "We suggest deleting this new proposed language, and replacing it with the requirement that the employee report for the drug or alcohol test as soon as is practicable after notification of the test." ALPA supported the use of the Aircraft Communications Addressing and Reporting System (ACARS) "to notify pilots flying an aircraft of their obligation to report for a random drug and/or alcohol test upon landing . . . . By using on-board notification to crewmembers of their obligation to submit to urine testing upon landing, the crewmembers are able to defer emptying their bladders and avoid subsequent problems with producing the requisite urine specimen. Such notification and testing has been working well for employees and air carriers." ALPA noted that "the new proposed language would prevent the continued use of this means of notification, as it would require the pilots to cease operating the aircraft after notification of testing." Finally, ALPA concluded "there is no reason to preclude a pilot from completing an assigned flight segment and then reporting for the test as soon as practicable."

Another commenter noted that "some level of management oversight and control as to the timeframe allowed after a random drug test notification" is needed in the random testing section.

The FAA has determined that the proposed rule language continues to provide the employer a reasonable degree of control over when to notify an employee of the need to take a random drug test. The proposed rule language does not preclude pilots from completing a flight segment in progress in order to submit to random testing. Employers have always had the option of notifying employees of random testing after completion of their safety-sensitive duties. In addition, the proposed rule language does not permit advance notification of random testing of pilots and flight attendants. Such advance notification is inherently unfair because pilots and flight attendants are only two of the eight categories of safety-sensitive employees. In other words, six categories of employees are not accessible by ACARS advance notification. In addition to the unfairness issue, ACARS advance notification has been linked, through enforcement cases, to dilutions, substitutions, and adulterations. ACARS notification could provide the employee with an opportunity to consume large quantities of fluid immediately before the test, which may dilute the specimen. Also, ACARS notification could provide the employee with an opportunity to substitute a specimen or to obtain access to adulterants to subvert the testing process.

Another commenter questioned whether "all personnel performing a safety-sensitive function for a repair station holding an FAA-approved program must be tested equally and throughout the year, regardless of the volume of work performed by contract

to an air carrier, and regardless of whether a person actually performs a safety-sensitive function directly on an air carrier's aircraft."

The FAA notes that if an employer, who conducts testing in accordance with FAA requirements, decides that an employee will be performing safety-sensitive functions at any time, the employer must ensure that the employee is subject to random testing throughout the year. The continuity of the testing does not depend on the volume of work, but does depend on whether the employee has been designated by the employer to accomplish safety-sensitive functions. Thus, once an employer decides that an employee is subject to the employer's FAA-required testing program, the employee must remain subject to all forms of FAA-required testing, including random testing, as long as the employee may be called upon to perform safety-sensitive functions. The FAA has made it clear in Section III. Employees Who Must Be Tested, that employees who are designated as available to perform safety-sensitive functions even part-time or intermittently must be tested. The FAA has determined that the proposed random testing language does not need to be revised in response to this comment. Therefore, we are adopting the random testing provision as proposed.

E. Testing Based on Reasonable Cause.

In Notice 02-04, the FAA proposed to change the reasonable cause language. Specifically, we proposed to allow, but not require, an employer to make a reasonable cause determination regarding a contractor's employee. The employer would be allowed to refer a contract employee for testing under the contractor's drug and alcohol programs without waiting for a supervisor employed by the contractor to confirm the employer's determination.

The FAA received comments from several submitters, including ATA, RAA, NATA, and DATIA, on the proposed change to reasonable cause testing. Four of the commenters, including NATA and DATIA, supported the concept of allowing an employer to have its supervisors make reasonable cause determinations regarding contract employees and refer them for testing under the contractor's drug and alcohol programs.

Two of the commenters, however, suggested that the FAA did not go far enough because the proposed reasonable cause testing of contractors provision was permissive, not mandatory. One commenter recommended that the employer should be required to make a reasonable cause determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the employer's supervision. Also, the commenter recommended that the employer be required to refer the contract employee for a reasonable cause test under the contractor's program. Another commenter similarly believed that the provision should be mandatory and noted that the proposed rule language did not "indicate what steps the employer can or must take after the contractor employee has been identified as a possible drug or alcohol user." The commenter listed specific steps for testing the contract employee and for providing the test results to the relevant employers.

ATA and RAA opposed the proposed change to reasonable cause testing. ATA and RAA both had concerns over the legal implications of the proposed permissive language. In addition, ATA stated that it "opposes this proposal because it would place our members in the middle of a sensitive employer-employee situation with regard to someone else's employee. This provision, if adopted, would create administrative

burdens and legal risks that are unacceptable . . . . Moreover, even if an airline-employer makes a proper and timely referral there is no guarantee that the contractor will conduct the testing in a timely manner."

After reviewing the comments received, the FAA agrees with commenters that the permissive nature of this provision is not advisable because there are too many contingencies in the proposal. For example, as ATA pointed out, even if an employer makes a reasonable cause determination on a contract employee, there is no guarantee that the contractor will conduct the testing in a timely manner. Therefore, the FAA has not adopted the proposed reasonable cause testing of contract employees provision.

It is important to note that the FAA proposed the change because there was confusion as to who was responsible for making the determination and conducting reasonable cause testing of contract employees on an employer's premises. The FAA remains concerned that some contract employees are not being tested for reasonable cause because their actual employers are not on-site. The FAA may revisit this issue in future rulemaking. In the meantime, the FAA encourages employers to continue to make reasonable cause determinations regarding their own employees and continue to contact their contractors regarding any reasonable cause concerns that may arise regarding contract employees.

In addition, in Notice 02-04, we proposed to delete the following two sentences from paragraph V.D.1.: "Each employer shall test an employee's specimen for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs. An employer may test an employee's specimen for the presence of other prohibited drugs or drug metabolites only in accordance with this

appendix and the DOT 'Procedures for Transportation Workplace Drug Testing Programs' (49 CFR part 40)." The first sentence is redundant of the requirements in 49 CFR part 40. The second sentence is no longer appropriate.

The FAA did not receive any comments on the proposed paragraph V.D.1. Therefore, the FAA has adopted this change to paragraph V.D.1. as proposed, now redesignated as paragraph V.D.

IX. Implementing an Antidrug Program.

In Notice 02-04, the FAA proposed eliminating the requirement that each employer submit an antidrug program plan to the FAA for approval. Non-certificated employers or contractors conducting testing will be required to register with the FAA. Certificate holders must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification (OpSpec). This provides the FAA with the information it needs for surveillance of these programs. In addition, we proposed changing the title of this section so it more accurately reflects the section's content.

Replacement of Plan Approvals With OpSpecs and Registrations

We proposed eliminating the requirement for each employer to submit an antidrug program to the FAA for approval. Part 121 and part 135 certificate holders, and part 145 certificate holders who decide to have their own FAA testing program, will be tracked in the FAA's Operations Specifications Sub-System (OPSS). By using OPSS, certificate holders will not need to go to two separate FAA offices, the Flight Standards Service and the Office of Aerospace Medicine, every time they make a change to data regarding their company.

New and existing part 121 and part 135 certificate holders must obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec. The air carrier's FAA Principal Operations Inspector issues the OpSpec. New and existing part 145 certificate holders who choose to have their own FAA testing program must obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec from their FAA Principal Maintenance Inspector. Once the Antidrug and Alcohol Misuse Prevention Program OpSpec has been issued, the certificate holder must contact its FAA Principal Operations Inspector or Principal Maintenance Inspector, as applicable, to make any future changes to the OpSpec. Under the final rule, an entity will only be required to file one OpSpec that covers both the drug and the alcohol programs. To clarify the certificate holder's responsibility to update its Antidrug and Alcohol Misuse Prevention Program OpSpec, we added section IX.D.4. to the final rule. This clarification incorporated language from the sample Antidrug and Alcohol Misuse Prevention Program OpSpec, included in Notice 02-04, regarding the certificate holder's responsibility to update its OpSpec whenever changes to the data occur.

The FAA also proposed changing the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing: (1) air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; (2) sightseeing operators as defined by §135.1(c); and (3) non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program. Under the final rule, the first time an entity registers it will only be required to file one registration that covers both the drug and the alcohol programs. However, a company

must amend its registration information whenever changes to the data in the registration occur.

Generally, the registration requires less information than the antidrug plan required. The only new item (for the antidrug program) is a statement signed by a company representative that the company will comply with part 121, appendices I and J, and 49 CFR part 40. Companies will be able to meet their registration requirements for both the antidrug program and the alcohol misuse prevention program by signing one statement.

Every employer must either register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec, as appropriate. Part 145 repair stations and non-certificated contractor companies that are covered under an employer's antidrug and alcohol misuse prevention program may continue to be covered under the employer's program. As long as they continue to be covered under an employer's program and do not have their own programs, they need not register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec. A part 145 certificate holder or a non-certificated contractor that performs safety-sensitive functions for an employer may choose to have its own testing programs instead of being covered by an employer's program. In that case, the part 145 certificate holder would be required to obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec and the non-certificated contractor would register with the FAA as outlined in the rule.

The FAA received several comments on Section IX. DATIA supported the proposal to eliminate antidrug plan approvals. Another commenter supported the

elimination of antidrug plan approvals and noted that the proposed changes standardized the process for employers and the FAA.

The FAA received several comments concerning OpSpecs. RAA viewed the OpSpec requirement as an administrative procedure that could be handled in a variety of other more effective methods instead of being codified. RAA noted that airline individuals who specialize in aircraft navigational and air traffic procedures are typically responsible for maintaining the OpSpecs. RAA also noted that administering the antidrug and alcohol misuse prevention programs is typically accomplished by an individual in human resources. RAA stated that, while such individuals can coordinate their duties within the company, it sees no reason why an administrative task has to be regulated. Therefore, RAA requested that references to the OpSpec be deleted from the adopted rule.

In the past, the FAA has required that certificate holders and other entities receive FAA-approval of their antidrug and alcohol misuse prevention programs. Although the FAA has eliminated the regulatory requirement for a company to obtain FAA approval of these programs, the FAA needs to continue to track companies with programs. The mechanisms in this rule for the FAA to track companies with programs are OpSpecs for certificate holders or registration for other entities. This results in a more streamlined process than the old plan approval process while still providing the FAA with the necessary information. The information received continues to be important to the FAA, and we do not consider this new process merely an administrative task that can be accomplished without regulation. In response to RAA's concern regarding personnel responsibilities, the FAA has determined that while the employer may have to adjust

responsibilities within its organization, this initial burden is significantly offset by the reduction in the overall paperwork burden. Therefore, the FAA is adopting the requirement for an Antidrug and Alcohol Misuse Prevention Program OpSpec or registration to replace FAA approval.

ATA supported the proposal to track pertinent information through the OPSS and to eliminate the requirement for companies to have FAA-approved plans. However, ATA was concerned that this administrative change will create confusion as to who will enforce this requirement within the FAA. ATA recommended that FAA clearly state in the final rule that FAA Principal Operations Inspectors are not authorized to require different or additional information and that the Drug Abatement Division has exclusive authority over air carrier OpSpecs submitted in compliance with this appendix.

Another commenter did not agree with adding the new OpSpec because the commenter believed that the new OpSpec intermingled the responsibilities of the Drug Abatement Division and FAA Principal Maintenance Inspectors.

In response to these commenters, the FAA notes that under the new OpSpec process, the role of the local Flight Standards District Office is limited to creating and updating the actual Antidrug and Alcohol Misuse Prevention Program OpSpec. The FAA Principal Operations Inspector and the FAA Principal Maintenance Inspector have no responsibilities for oversight of a company's drug and alcohol testing programs. All oversight responsibility remains with the Drug Abatement Division. We do not see an intermingling of responsibilities, rather the new OpSpec process offers separate but complimentary interaction between the Drug Abatement Division and the Flight

Standards Service. Therefore, it is not necessary to add rule language that clarifies internal FAA responsibilities for the OpSpec.

NATA agreed with the FAA that there will be a reduction in the paperwork burden for certificate holders if programs no longer require FAA approval and issuance of plan numbers. However, NATA objected to the FAA placing on the certificate holders the burden of obtaining the new OpSpec. NATA noted that since this is a change mandated by the FAA, FAA inspectors should initiate contact with certificate holders under their supervision as they routinely do when new or changed OpSpecs are issued. NATA requested that the proposed language indicating that certificate holders bear the responsibility for obtaining the OpSpec be revised to clarify that existing operators will be issued the OpSpec by their primary inspector.

Although the FAA's Principal Operations Inspectors or Principal Maintenance Inspectors will continue to conduct their routine interaction with certificate holders, the information needed to prepare the OpSpec must come from the certificate holder. While this might be an inconvenience, as the commenter noted, there will be a reduction in the certificate holder's overall paperwork burden by eliminating the plan approval process. The ultimate beneficiary of the new OpSpec process will be the certificated entity, which will only be required to update its data in one FAA tracking system, and will no longer be required to provide information for a separate Drug Abatement Division tracking system.

Several commenters, including ATA and NATA, asked procedural questions about implementing the new OpSpec and registration processes. ATA recommended that FAA identify a person within the Drug Abatement Division for air carriers to contact in the event of a problem regarding its OpSpec under this appendix. ATA stated that, to

avoid confusion, the FAA should specify the documentation that contractors must provide to employers to prove that they have compliant antidrug and alcohol misuse prevention programs in place. NATA commented that additional information, such as a model certification statement, would be particularly helpful to small operators, including §135.1(c) operators.

The changes requested by the commenters can be accomplished without modifying the regulatory text. Once the rule becomes effective, the public can obtain information about process and implementation by contacting the Drug Abatement Division at the address in Section IX or by referencing the Drug Abatement Division's web site: http://www.faa.gov/avr/aam/adap.

Another commenter recommended the OpSpec identify the certified laboratory and medical review officer (MRO) that the company is using, and suggested that the FAA Principal Operations Inspector provide a written confirmation of approval/acceptance of the OpSpec. One commenter recommended that the FAA allow a transition period for companies that will be required to have an Antidrug and Alcohol Misuse Prevention Program OpSpec, while another commenter noted that companies were already obtaining this OpSpec.

In response to the recommendation that the OpSpec contain more detailed information and written confirmation of approval/acceptance, the FAA has determined that providing detailed information, including the current laboratory and MRO, could defeat the simplicity of the OpSpec and registration requirement under the new rule. Under the antidrug plan approval process, this level of detail was required. This led to each company filing numerous amendments because such detailed information changed

frequently. Also, waiting for the FAA to approve the contents of the antidrug plan added delay.

In deciding to move to the OpSpec and registration requirement, the FAA carefully considered whether it should be evaluating/approving the written information submitted at the beginning of the testing program. The FAA decided that the best evaluation of how a company is testing is done on-site at the company during FAA inspections. Successful implementation of a testing program is the employer's responsibility, and is not shown merely on a paper submission at the beginning of a testing program. Therefore, the FAA decided to collect only enough information in the registration statements and OpSpecs to provide a starting point for our inspections.

The FAA notes that many companies have already obtained the Antidrug and Alcohol Misuse Prevention Program OpSpec. In addition, because the requirement will not become effective until 30 days after this final rule is published, there is a built-in transitional period to obtain an OpSpec for any company that has not already obtained an Antidrug and Alcohol Misuse Prevention Program OpSpec.

One commenter was concerned that the plan approval process took a long time and may have caused the industry to lose revenue because operations could not begin until the FAA approved the antidrug plans. This commenter expressed hope that the OpSpecs and registration processes would streamline and expedite the beginning of operations, thereby minimizing any time delays.

The FAA is going forward with the OpSpec and registration processes as proposed, with minor clarifying changes, because we have determined that these, in fact, will streamline the gathering of basic information that the FAA needs for monitoring the

compliance of companies conducting FAA-required drug and alcohol testing. At the same time they will lessen the burden on the operator. As suggested by one of the commenters, we expect that the OpSpec and registration processes will expedite the beginning of operations for employers.

Elimination of 60-Day Grace Period For Contractors

The FAA also proposed eliminating the 60 days allowed for new employers to ensure that their contractors are subject to an antidrug program. This provision provided a grace period that was important at the inception of the antidrug regulations in 1988 because drug testing was a new regulatory requirement for employers and their contractors. However, since contractor programs must be implemented by the time the contractor performs safety-sensitive functions for an employer, this grace period is no longer necessary or appropriate.

The FAA received a supporting comment from DATIA on the proposed elimination of the 60-day grace period for contractors of new employers to implement an antidrug program. The FAA proposed this change in Section IX for employers to ensure that their contractors are covered by an FAA-mandated antidrug program. We are adopting it as proposed.

Adoption of the Plain Language Format for Section IX

The FAA proposed two formats for the rule language in this section. While both proposals had the same requirements, they differed greatly in format. The first option was presented in table format as much as possible. The second option followed the format of the current rule.

The FAA received a comment objecting to inclusion of the words "a non-certificated repair station, . . . or any other individual or company that provides safety-sensitive service." This commenter believed that this language, as posed in option 1, added a new requirement to the regulations.

As stated above, the options offered different formats but had the same requirements. Since the beginning of the program, certificated and non-certificated contractors have been allowed, but not required, to submit and implement antidrug programs under 14 CFR Part 121, Appendix I, Sections IX.A.3-4. Therefore, this is not a new requirement.

In the final rule we made a clarifying change to section IX.A. to remind existing companies that they must continue to follow the regulatory provisions in appendix I. In Notice 02-04, we articulated this requirement in option 2, but we did not explicitly address it in option 1. Therefore, we have added it to section IX.A. in the final rule and changed sections IX.C.2.a.iii. and b.iii. for consistency.

The FAA received comments from several submitters, including NATA and DATIA, supporting the table format. Therefore, the FAA is adopting the table format as proposed with minor editorial changes.

The FAA also received a comment from RAA requesting that we give operators the option of submitting information electronically. RAA noted that even if FAA is not now capable of receiving information electronically, we should nonetheless write it into the rule so that when we do have the capability, operators can submit it to the FAA without first requesting an exemption to the rule.

The FAA has determined that it is premature to incorporate into the current rule text any specific reference to electronic filings. However, we agree with the spirit of RAA's comment that the final rule should allow room for developments in acceptance and retention of electronic filings. Currently, we are not able to receive registration information electronically. The FAA is eager to pursue avenues for electronic filing, and therefore, in response to RAA's suggestion, we have added language in paragraph IX.E.2. to allow for registration information to be sent "in the form and manner prescribed by the Administrator."

APPENDIX J--ALCOHOL MISUSE PREVENTION PROGRAM

I. GENERAL

In Notice 02-04, the FAA proposed the following changes in paragraph D. Definitions. We proposed to eliminate the definition of "Administrator" because it is defined elsewhere in 14 CFR. We also proposed to change "Contractor company" to "contractor" to emphasize that a contractor could be an individual.

The FAA did not receive any comments on the proposed changes and we adopt them as proposed.

II. COVERED EMPLOYEES

In Notice 02-04, we proposed to make it clear in appendix J as we did with appendix I that including an employee in a drug and alcohol testing program depends on his or her duties not employment status (full time, part time, temporary, or intermittent). In this final rule, we have further modified appendix J to ensure that this is clear. We made a similar change in appendix I in response to a comment.

III. TESTS REQUIRED

D. Reasonable Suspicion Testing.

In Notice 02-04, the FAA proposed to change the reasonable suspicion language to allow, but not require, an employer to have its supervisors make reasonable suspicion determinations and refer a contract employee for testing under the contractor's alcohol misuse prevention program. This change was proposed because there has been confusion about the reasonable suspicion testing of contract employees on an employer's premises.

For the reasons discussed in the preamble to section V.E. of appendix I, the FAA has not adopted the proposed reasonable suspicion language.

IV. HANDLING OF TESTING RESULTS, RECORD RETENTION, AND CONFIDENTIALITY

In Notice 02-04, the FAA proposed to change paragraph B.4. by adding the sentence "No other form, including another DOT Operating Administration's form, is acceptable for submission to the FAA." The FAA has already made this change in a final rule published December 31, 2003 (68 FR 75455).

VII. IMPLEMENTING AN ALCOHOL MISUSE PREVENTION PROGRAM

In Notice 02-04, the FAA proposed eliminating the requirement that each employer submit an Alcohol Misuse Prevention Program Certification Statement. As with the elimination of program approval under appendix I, each employer or contractor conducting alcohol testing will be required to either register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program OpSpec, as specified in the regulation.

Many of the comments on appendix I addressed this change in appendix J as well. For the reasons discussed under appendix I, we have also adopted this change for appendix J.

In Notice 02-04, the FAA also proposed eliminating the 180 days allowed for new employers to ensure that their contractors are subject to an alcohol misuse prevention program. This provision provided a grace period that was important at the inception of the alcohol misuse prevention program regulations in 1994 because alcohol testing was a new regulatory requirement for employers and their contractors. However, since contractor programs must now be implemented by the time the contractor performs safety-sensitive functions for an employer, this grace period no longer applies and so the language is being removed.

The FAA received one comment on the proposed elimination of the 180-day timeframe. The commenter, DATIA, supported the proposed change. The FAA is adopting the elimination of the 180-day timeframe as proposed.

As with appendix I, the FAA proposed two formats for the rule language in this section, one mostly in table format, the other in the format of the current rule. Several commenters supported the table format, and we are adopting it for the final rule.

Miscellaneous Comments

The FAA received a number of comments that are outside the scope of the proposal. We have not addressed them in this final rule.

Paperwork Reduction Act

This final rule contains information collection activities subject to the Paperwork Reduction Act (44 U.S.C. 3507(d)). In accordance with the Paperwork Reduction Act,

documentation describing the information collection activities was submitted to the Office of Management and Budget (OMB) for review and approval, and assigned control number 2120-0685.

This rule constitutes a change to the data collection burden for existing and new companies required or electing to implement antidrug and alcohol misuse prevention programs. The respondents are part 121 and 135 certificate holders, operators as defined in §135.1(c), air traffic control facilities not operated by the FAA or by or under contract to the U. S. military and part 145 certificate holders and non-certificated contractors that elect to obtain antidrug and alcohol misuse prevention programs. Part 121, 135 and 145 certificate holders will obtain an Operations Specification (OpSpec). Operators as defined in §135.1(c), air traffic control facilities not operated by the FAA or by or under contract to the U. S. military, and non-certificated contractors will register with the FAA.

A protection provided by the Paperwork Reduction Act states that an agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. As stated above, the OMB control numbers is 2120-0685.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. §§ 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, FAA has determined this rule: (1) has benefits that justify its costs, is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Cost of Compliance

The FAA is changing several sections of 14 CFR part 121, appendices I and J; not all of these changes will have cost implications. Some of the changes to appendix I parallel changes to appendix J; the analysis will combine the sectional changes where appropriate. Information related to the number of companies, the costs of tests, and the salaries of the employees can be found in the full regulatory evaluation, found in the docket.

1) The FAA is amending appendix I, section II, to ensure that employers test all employees, including contractor employees, unless the employees are in a testing program for a contractor to the employer; this change will impose costs. The current provision, which has allowed "moonlighting," is confusing to the industry and is a potential loophole in employee coverage. In most circumstances, the second employer does not and cannot know the employee's status with the first employer.

Compliance inspections and investigations also show that employers confuse the regulatory provisions between the drug and alcohol rules. The current drug rule allows "moonlighting," while the alcohol rule does not permit it. Moonlighting occurs mostly among small employers, who often do not know the other employers that the moonlighting employee is working for. Consequently, these employees can potentially escape testing.

Only certain types of employees tend to moonlight; these include part 121/135 pilots, mechanics, screeners, sightseer pilots, and part 135 on-demand pilots, primarily single owner operators. The FAA believes that the number of moonlighting employees is small, but does not know exactly how many of these employees moonlight. Accordingly,

the FAA will base costs on an additional 1 percent of these employees having additional drug tests.

The FAA projects over 10 years, the total number of tests, due to the requirement that moonlighting employees be tested, will sum to 11,100, costing $499,200. Costs for employee time for this testing will sum to $147,200 over 10 years. Total 10-year costs of testing these employees will sum to $646,300 (present value, $449,900).

2) The FAA is eliminating section V. B. of appendix I, periodic testing. The current regulation requires that a new employer must periodically drug test part 67 medical certificate holders during the first calendar year of implementation of its program. Periodic testing was important at the beginning of the program when many people were grandfathered into newly approved antidrug programs without pre-employment testing. Since all flightcrew members are currently subject to pre-employment testing and annual random testing, the FAA believes that the elimination of periodic drug testing will not compromise safety and will be a cost savings. Cost savings from the elimination of periodic drug testing, over ten years, sums to $122,300 (present value, $85,900).

3) The FAA will make several changes to section IX of appendix I and section VII of appendix J; two of these changes will have cost implications. Provisions that affect part 121, 135, and 145 certificate holders will be covered in section 3a); and operators as defined by §135.1(c), air traffic control facilities not operated by the FAA or by or under contract to the U.S. military, and non-certificated contractors in section 3b).

3a) Part 121, 135, and 145 certificate holders will no longer have to submit antidrug and alcohol misuse prevention programs to the FAA for approval. The FAA

instead will track these certificate holders using the Operations Specifications Sub-System (OPSS). Using this system will allow the FAA to quickly make a change to a specific type of certificate holders' operations specifications.

Companies with antidrug and alcohol misuse prevention programs will incur additional costs from these rule changes. In the first year of this rule, these companies will have to file new information. New companies will have to do the same in their first year. When the number of employees at a company changes to fewer than 50 or greater than or equal to 50, they will have to send "employment change reports."

The 7,240 existing plan holders currently submit 490 amendments each year. The FAA anticipates that 33 of these amendments will be employment change reports each year after their initial year. In addition, 484 companies submit new plans each year.

Each of the existing plan holders will have to spend time to produce the required information, file and store it, and submit it to the FAA. Total first year costs will be $39,700. Subsequent year costs, which will encompass processing new plans, employment change reports, and amendments sum to $5,300. Ten-year costs, at the company level, equal $87,900 (present value, $69,700).

At the FAA, the information being submitted to OPSS will have to be processed. First year costs will be $21,400, while each subsequent year cost will be about $2,900; costs over ten years sum to $47,400 (present value, $37,600).

All companies will also incur some cost savings, for they will no longer have to file a combined drug plan and an alcohol certification statement to the FAA. Thus, each of the existing companies will no longer have to spend time to produce these plans and certification statements. Total first year cost savings will be $238,100. In subsequent

years, new companies would have had to handle plans, while existing companies would have had to process amendments; total annual costs savings, from not having to file these amendments and new plans, sum to $18,400. Ten year cost savings, at the company level, equal $406,000 (present value, $336,100).

Ten year net cost savings sum to $270,700 (present value, $228,800).

3b) These rule changes also will eliminate the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing non-Federal air traffic control facilities and operators as defined by §135.1(c). Instead, as with certificate holders, a single registration statement requirement will suffice for both programs. In addition, the FAA will require new and existing non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program to register with the FAA.

The FAA has identified 334 part 135.1(c) operators and 1,228 contractors that will be affected by these rule changes; the contractors include 21 Air Traffic Control (ATC) contractors, and 1,207 other contractors. The FAA does not expect any employment change reports from any of these companies.

Each of the existing plan holders will have to spend time to produce the required information, file and store it, and submit it to the FAA. Total first year costs will be $11,000, while total annual costs for existing company amendments and new company plans sum to $1,500. Ten year costs equal $24,200 (present value, $19,200).

At the FAA, first year costs will be $5,900, while each subsequent year cost will be about $800. Costs over ten years sum to $13,000 (present value, $10,400).

These companies will no longer have to file an alcohol certification statement and a drug plan, resulting in cost savings. Total first year cost savings will be $66,000, while total annual costs for the existing company amendments and new company plans sum to $5,400. Ten year cost savings equal $111,900 (present value, $92,700).

Ten year net cost savings sum to $74,700 (present value, $63,200).

Total cost for these rule changes sums to $178,600 (net present cost, $72,000). The total cost to the industry sums to $239,100 (present value, $119,900) and total costs savings to the FAA sums to $60,400 (present value, $48,000).

Analysis of Benefits

The FAA believes that these new rules can result in enhanced safety and concludes that several specific benefits will accrue from these rule changes.

The specific changes to pre-employment testing will result in a number of benefits. The FAA believes that certain employers had misunderstood the current requirements and that the requirements will be better understood. This will reduce the number of pre-employment enforcement cases. From 2000 through 2002, the FAA initiated 197 legal enforcement cases dealing with pre-employment violations, or an average of 66 cases per year. The FAA believes that these changes can reduce the number of legal enforcement cases, saving both the FAA and the industry time and resources.

Pre-employment testing acts as the "gatekeeper." Since this type of testing has the largest number of positives, it is a major tool that would keep drug users from getting into the aviation industry in the first place. Most of the other drug and alcohol tests are largely deterrence based. Clarifying pre-employment requirements is important, as the

process will reduce the number of mistakes by employers that can lead to employees not being pre-employment tested, the consequences including both potential safety impacts and enforcement actions for non-compliance.

Companies no longer having to file antidrug plans and alcohol misuse prevention program certification statements will bring about some cost savings. In addition to the costs savings discussed above, each company will benefit from a reduction in the paperwork burden; the FAA will also realize these same benefits. These rule changes will increase consistency between appendices I and J, where possible. Elimination of unnecessary differences will reduce industry inquiries into the current conflicts between the two, saving both individual companies and the FAA time and resources, as well as better compliance with the regulations.

Comparison of Costs and Benefits

This action will make a number of changes in order to make the antidrug and alcohol misuse prevention programs more efficient. The modifications to testing requirements, the changes to program submission requirements, and the elimination of the antidrug plans and the alcohol misuse prevention program certification statements should make these programs more effective.

These rules will result in a net cost of $178,600 (net present value, $72,000). The public will benefit from:

--increased safety, by reducing the likelihood that a drug user will be employed in a safety-sensitive position due to clarified pre-employment requirements;

--reduced paperwork, by companies no longer having to file an alcohol certification statement and a drug plan; and

--enhanced program management, due to the elimination of unnecessary differences between appendices I and J. Accordingly, the FAA finds these requirements to be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

For this rule, the small entity group is considered to be part 121 and 135 air carriers (Standard Industrial Classification Code [SIC] 4512) and part 145 repair stations

(SIC Code 4581, 7622, 7629, and 7699). The FAA has identified a total of 98 of a total of 144 part 121 air carriers and 2,118 of a total of 3,074 part 135 air carriers that are small entities. However, the FAA has been unable to determine how many of the 2,412 part 145 repair stations are considered small entities, and so called for comments in Notice 02-04, but received none.

The annualized cost of these rule changes to the industry is $17,100. The FAA is unable to isolate the cost savings to each industry group because some of the changes apply to individual companies while others apply to the employees. So, the FAA looked at the average cost impact on each of the small entities and also on all of the small entity industry groups. If all the cost were borne by only small part 121 air carriers, small part 135 air carriers, or applicable repair stations, the average cost per certificate holder would be $174, $8, or $7, respectively. If the cost savings were divided among all of these business entities, the average cost savings per entity would be $4 per entity. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of these entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and therefore no affect on any trade-sensitive activity.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Alcoholism, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 121 of Title 14, Code of Federal Regulations, as follows:

PART 121--OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS.

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 45101-45105, 46105, 46301.

2. Amend appendix I to part 121 as follows:

A. In section I., add new paragraphs D and E;

B. In section II., remove the definition of Contractor company; add new

definitions for Contractor and Hire in alphabetic order; and revise the definitions of Employee and Employer;

C. Revise section III.;

D. In section V., revise paragraph A.1, ~~redesignate paragraphs A.2 and A.4~~ as ~~paragraphs A.4 and A.5 respectively, add new paragraph A.2, and revise paragraphs A.3, A.4, and A.5~~, remove paragraph B.; redesignate paragraph C. as paragraph B. ; redesignate paragraphs B. 8., B. 9., and B. 10. as paragraphs B. 9., B. 10., and B. 11., respectively; add a new paragraph B.8; redesignate paragraph D. as paragraph C.; redesignate paragraph E. as paragraph D. and revise it; redesignate paragraph F. as paragraph E.; and redesignate paragraph G. as paragraph F.; E. In section VI., revise paragraph D.1;

F. In section VII., revise paragraph C.5;

G. Revise section IX; and

H. In section XIII., revise introductory text and paragraph B.

The additions and revisions read as follows:

APPENDIX I TO PART 121--DRUG TESTING PROGRAM

* * * * *

I. General

* * * * *

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

61.14--Refusal to submit to a drug or alcohol test.

63.12b--Refusal to submit to a drug or alcohol test.

65.23--Refusal to submit to a drug or alcohol test.

65.46--Use of prohibited drugs.

67.107--First-Class Airman Medical Certificate, Mental.

67.207--Second-Class Airman Medical Certificate, Mental.

67.307--Third-Class Airman Medical Certificate, Mental.

121.429--Prohibited drugs.

121.455--Use of prohibited drugs.

121.457--Testing for prohibited drugs.

135.1--Applicability.

135.249--Use of prohibited drugs.

135.251--Testing for prohibited drugs.

135.353--Prohibited drugs.

E. Falsification. No person may make, or cause to be made, any of the following:

1. Any fraudulent or intentionally false statement in any application of an antidrug program.

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

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

II. Definitions. * * *

* * * * *

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

* * * * *

Employee is a person who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined below. An employee is also a person who transfers into a position to perform a safety-sensitive function for an employer.

Employer is a part 121 certificate holder, a part 135 certificate holder, an operator as defined in §135.1(c) 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 antidrug program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated antidrug program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)

* * * * *

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.

* * * * *

III. 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 for an employer as defined in this appendix must be subject to drug testing under an antidrug program implemented in accordance with this appendix. 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.

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* * * * *

V. Types of Drug Testing Required. * * *

A. Pre-Employment Testing.

1. No employer may hire any individual for a safety-sensitive function listed in section III of this appendix 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 ~~paragraph~~ Section V.A.1. or V.A.2. of this Appendix and hiring or transferring the individual into a safety-sensitive function, resulting in that individual being brought under an FAA drug-testing program.

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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:

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

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

(c) 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 appendix, to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs 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 section V.A.4. of this appendix.

B. Random Testing.

* * * * *

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.

* * * * *

D. 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.

* * * * *

VI. Administrative and Other Matters.

* * * * *

D. Refusal to Submit to Testing. 1. Each employer must notify the FAA within 5 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 appendix. Send these notifications to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW, Washington, DC 20591.

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VII. Medical Review Officer/Substance Abuse Professional, and Employer Responsibilities. ~~* * *~~

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

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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.

* * * * *

IX. Implementing an Antidrug Program.

A. Each company must meet the requirements of this appendix. Use the following chart to determine whether your company must obtain an Antidrug and

Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

If you are …	You must…
1. A part 121 or 135 certificate holder…	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
2. A sightseeing operator as defined in §135.1(c) of this chapter…	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by [~~insert date 60 days after date of publication in the Federal Register~~]. March 12, 2004.
3. 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-810), 800 Independence Avenue, SW, Washington, DC 20591 by [~~insert date 60 after date of publication in the Federal Register~~]. March 12, 2004.
4. A part 145 certificate holder who has your own antidrug program...	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector
5. A contractor who has your own antidrug program...	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by [~~insert date 60 days after date of publication in the Federal Register~~]. March 12, 2004

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B. Use the following chart for implementing an antidrug program if you are applying for a part 121 or 135 certificate , if you intend to begin sightseeing operations as defined in §135.1(c) 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, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you...	You must...
1. Apply for a part 121 certificate or apply for a part 135 certificate...	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.
2. Intend to begin sightseeing operations as defined in §135.1(c) of this chapter...	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.
3. 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)...	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. 1. If you are an individual or company that intends to provide safety-sensitive services by contract to a part 121 or 135 certificate holder, a sightseeing operation as defined in §135.1(c) 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 chart in paragraph C.2 of this section to determine what you must do if you opt to have your own antidrug program.

2. The following chart explains what you must do if you opt to have your own antidrug program:

If you...	You must...
a. Are a part 145 certificate holder...	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in §135.1(c) of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.
b. Are a contractor (e.g., a security company, a non-certificated repair station, a temporary employment service company or any other individual or company that provides safety-sensitive services)...	i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 121 or-135 certificate holder, a sightseeing operator as defined in §135.1(c) 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 appendix 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:

a. Company name

b. Certificate number

c. Telephone number

d. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

e. Whether you have 50 or more safety-sensitive employees, or 49 or fewer safety-sensitive employees. (Part 121 certificate holders 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 appendix, appendix J of 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 appendix and appendix J of 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. 1. To register with the FAA, submit the following information:

a. Company name

b. Telephone number

c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

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

e. Whether you have 50 or more safety-sensitive employees, or 49 or fewer covered employees.

f. A signed statement indicating that: your company will comply with this appendix, appendix J of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 121 or part 135 certificate holder, a sightseeing operator as defined in §135.1(c) 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 in the form and manner prescribed by the Administrator, in duplicate to:

The Federal Aviation Administration
Office of Aerospace Medicine
Drug Abatement Division (AAM-810)
800 Independence Avenue, SW
Washington, DC 20591

3. Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph 2.

4. This registration will satisfy the registration requirements for both your Antidrug Program under this appendix and your Alcohol Misuse Prevention Program under appendix J of this part.

* * * * *

XIII. 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.

* * * * *

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.

* * * * *

3. In appendix J to part 121:

A. In section I., amend paragraph D. to remove the definitions for "Administrator" and "Contractor company"; add a definition for "Contractor" in alphabetical order; and add paragraphs H. and I.;

B. In section II., revise introductory text of paragraph A.;

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C. In section V., revise paragraphs C.3. and D.1.; and

D. Revise section VII.

The additions and revisions read as follows:

APPENDIX J TO PART 121—ALCOHOL MISUSE PREVENTION PROGRAM

* * * * *

I. GENERAL

* * * * *

D. Definitions.

* * * * *

Contractor means an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

* * * * *

H. Applicable Federal Regulations. The following applicable regulations appear in 49 CFR and 14 CFR:

1. 49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

61.14--Refusal to submit to a drug or alcohol test.

63.12b--Refusal to submit to a drug or alcohol test.

65.23--Refusal to submit to a drug or alcohol test.

65.46a--Misuse of Alcohol

65.46b--Testing for Alcohol

67.107--First-Class Airman Medical Certificate, Mental.

67.207--Second-Class Airman Medical Certificate, Mental.

67.307--Third-Class Airman Medical Certificate, Mental.

121.458--Misuse of alcohol.

121.459--Testing for alcohol.

135.1--Applicability

135.253--Misuse of alcohol.

135.255--Testing for alcohol.

I. Falsification. No person may make, or cause to be made, any of the following:

1. Any fraudulent or intentionally false statement in any application of an alcohol misuse prevention program.

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

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

II. 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 for an employer as defined in this appendix must be subject to alcohol testing under an alcohol misuse prevention program implemented in accordance with this appendix. This not only includes full-time and part-time employees, but temporary and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

* * * * *

V. CONSEQUENCES FOR EMPLOYEES ENGAGING IN ALCOHOL-RELATED CONDUCT

* * * * *

C. Notice to the Federal Air Surgeon

* * *

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.

* * *

D. Notice of Refusals

1. Except as provided in subparagraph 2 of this paragraph D, each employer shall notify the FAA within 5 working days of any covered employee who holds a certificate issued under 14 CFR part 61, part 63, or part 65 who has refused to submit to an alcohol

test required under this appendix. Notifications must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW, Washington, DC 20591.

* * * * *

VII. HOW TO IMPLEMENT AN ALCOHOL MISUSE PREVENTION PROGRAM.

A. Each company must meet the requirements of this appendix. Use the following chart to determine whether your company must obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

If you are ...	**You must...**
1. A part 121 or 135 certificate holder...	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
2. A sightseeing operator as defined in §135.1(c)...	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by [~~insert date 60 days after date of publication in the Federal Register~~]. March 12, 2004,
3. 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-810), 800 Independence Avenue, SW, Washington, DC 20591 by [~~insert date 60 days after date of publication in the Federal Register~~]. March 12, 2004,
4. A part 145 certificate holder who has your own alcohol misuse prevention program...	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Maintenance Inspector.
5. A contractor who has your own alcohol misuse prevention program...	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by ~~[insert date 60 days from date of publication in the Federal Register~~] March 12, 2004.

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B. Use the following chart for implementing an Alcohol Misuse Prevention Program if you are applying for a part 121 or 135 certificate, if you intend to begin

sightseeing operations as defined in §135.1(c) 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, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you...	**You must...**
1. Apply for a part 121 certificate or apply for a part 135 certificate...	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
2. Intend to begin sightseeing operations as defined in §135.1(c) of this chapter...	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
3. 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)...	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. 1. If you are an individual or a company that intends to provide safety-sensitive services by contract to a part 121 or 135 certificate holder or a sightseeing operator as defined in §135.1(c) of this chapter, use the chart in paragraph C.2. of this section to determine what you must do if you opt to have your own Alcohol Misuse Prevention Program.

2. The following chart explains what you must do if you opt to have your own Alcohol Misuse Prevention Program:

If you...	**You must...**
a. Are a part 145 certificate holder...	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in §135.1(c) of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.
b. Are a contractor (e.g., a security company, a non-certificated repair station, a temporary employment service company or any other individual or company that provides safety-sensitive services)...	i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in §135.1(c) of this chapter, and iii. Meet the requirements of this appendix 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:

a. Company name

b. Certificate number

c. Telephone number

d. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 121 certificate holders 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 appendix I of this part, this appendix, 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 appendix I of this part and this appendix.

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. 1. To register with the FAA, submit the following information:

a. Company name

b. Telephone number

c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.

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

e. Whether you have 50 or more covered employees, or 49 or fewer covered employees.

f. A signed statement indicating that: your company will comply with this appendix, appendix I of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 121 or part 135 certificate holder, a sightseeing operator as defined by §135.1(c) 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 in the form and manner prescribed by the Administrator, in duplicate to:

The Federal Aviation Administration
Office of Aerospace Medicine
Drug Abatement Division (AAM-810)
800 Independence Avenue, SW
Washington, DC 20591

3. Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph 2.

4. This registration will satisfy the registration requirements for both your Antidrug Program under appendix I of this part and your Alcohol Misuse Prevention Program under this appendix.

* * * * *

Issued in Washington, DC, on JAN 5 2004

Marion C. Blakey
Administrator

Certified to be a True Copy