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14 CFR Parts 65, 121, 135

Antidrug Program for Personnel Engaged in Specified Aviation Activities; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 65, 121, 135

[Docket Nos. 25148 and 26620; Admt. Nos. 65–38; 121–240; 135–51]

RIN 2120–AE82

Antidrug Program for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Omnibus Transportation Employee Testing Act of 1991 (the Act), amended the Federal Aviation Act of 1958 to provide a statutory mandate for drug testing of air carrier employees. The Act also prescribed certain consequences for prohibited drug use and mandated the use of split specimen testing. This rule amends the antidrug rule for conformity to the requirements of the Act.

In addition, this rule incorporates other changes to the antidrug rule. These changes clarify the requirements of the rule and also address concerns that have been raised since the rule was published.

Finally, this rule includes substantive changes to address provisions of the rule that are unclear, do not comport with the changes in the final DOT drug testing procedures, or do not adequately address required steps in the implementation process.

EFFECTIVE DATE: This final rule is effective on September 19, 1994, except the amendment to part 121, appendix I, VI.C. which is effective August 15, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, Office of Aviation Medicine, Drug Abatement Division (AAM–800), Federal Aviation Administration, 400 7th Street SW., Washington, DC 20590; telephone (202) 366–6710.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the amendment number identified in this final rule.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On November 14, 1988, the FAA issued an antidrug rule which required specified aviation employers and operators to initiate antidrug programs for personnel performing safety-sensitive functions.

On October 28, 1991, the Omnibus Transportation Employee Testing Act of 1991 (the Act) was enacted. Among other things, the Act provided a statutory mandate for drug testing in the aviation industry and required specified consequences for positive drug tests. A notice of proposed rulemaking (NPRM), published on February 15, 1994, proposed amendments to certain provisions of the FAA's antidrug rule in accordance with the Act. The NPRM also proposed certain other changes to the antidrug rule that would clarify employer and Medical Review Officer responsibilities and addressed other issues that have been identified since the promulgation of the rule. This rule incorporates the requirements of the statutory mandate, as well as the clarifying amendments.

Seven comments were received in the docket in response to the NPRM. These comments were taken into consideration during the development of this final rule.

Reason for Expedited Effective Date

A section of this rule concerning split specimen testing is being made effective in less than the 30 days from publication usually required by law. With an effective date of August 15, 1994, for this section the FAA can ensure that this rule is consistent with the DOT final rule which was published on February 15, 1994 (59 FR 7354). The DOT rule implements split specimen collection testing required by the Omnibus Transportation Employee Testing Act of 1991, as of August 15, 1994, for four modal administrations under the DOT. The DOT rule provided affected employers 6 months to begin implementing split specimen testing. Because employers have been given prior notification of the requirement for split specimen testing, employers subject to this rule will not be unduly burdened by an effective date of less than 30 days. The FAA has therefore determined that good cause exists under the provisions of 5 U.S.C. 533(d)(3) to warrant an expedited effective date.

Discussion of Comments and Final Rule

This rulemaking action encompasses a variety of changes to the FAA's antidrug regulation, most of which affect the operational provisions of the antidrug rule found in 14 CFR part 121, appendix I. Because a variety of changes, both substantive and minor technical revisions, were made to appendix I, the entire revised appendix has been republished in this final rule. Each of the significant changes and any related comments are discussed in detail below.

Random Testing

This final rule does not change the random drug testing requirements. The FAA notes, however, that a separate NPRM was jointly issued by the Office of the Secretary of Transportation and all DOT agencies with antidrug rules on February 15, 1994 (59 FR 7614). This NPRM proposed parallel changes to each agency's rule under which the random drug testing rate would be established based on the rate of random positive drug tests in the particular industry. Because of the common aspects of the random testing issues, the FAA will make any such changes as part of a joint final rule to be issued in the near future.

Amendments Required by the Act

Prohibition on Service; Rehabilitation and Evaluation

The Omnibus Transportation Employee Testing Act section entitled "Prohibition on service" (found at new FAAct section 614(b)) provides that no person who is determined to have engaged in illegal use of drugs may perform a safety-sensitive function after such determination. In accordance with this section, the FAA proposed that sections of the FAA's regulations that address the use of prohibited drugs (see, *e.g.*, 14 CFR 65.46(c), (d)) would be revised slightly to reflect the fact that entities other than certificate holders (*i.e.*, contractor companies) can require drug tests under the antidrug rule if they have an FAA-approved antidrug program. The changes were supported by commenters and are included in the final rule.

Section 614(b)(2) of the FAAct, "Effect of Rehabilitation," states that no covered employee may perform a safety-sensitive function after engaging in prohibited conduct unless he or she has completed a rehabilitation program under the provisions of section 614(c) of the FAAct. Section 614(c)(1) requires the Administrator to prescribe regulations that at a minimum provide for the identification and opportunity for treatment of employees in need of assistance in resolving problems with the use of controlled substances.

Further, the section states that the Administrator shall determine the circumstances under which such employees shall be required to participate in such a program. This language recognizes that rehabilitation may not be appropriate or warranted in all cases of prohibited conduct.

The legislative requirement of section 614(b)(2) is implemented in the revisions to paragraph A, section VII, of appendix I. The legislative history of the Act reflected the fact that the FAA did not prescribe regulations with respect to specific types of rehabilitation in its antidrug rule. However, because the Act requires the FAA to prescribe regulations under which persons in need of assistance would be identified, this final rule modifies the Medical Review Officer (MRO) duties to include such identification. Some commenters noted that a MRO may not be qualified as a substance abuse professional (SAP) and should therefore be required to refer the individual to a qualified SAP for the evaluation. It was the FAA's intent that only MROs who also meet the qualifications of a SAP (as contained in the definition of a SAP) would be authorized to perform the initial evaluation of individuals who have a verified positive drug test result or refuse to submit to a required test. The final rule has been changed to clarify this requirement. It also incorporates a provision parallel to one in the alcohol misuse prevention program final rule that limits the providers or facilities to which SAPs who perform an initial evaluation may refer an employee determined to be in need of assistance. This limitation also applies to MROs who serve as SAPs.

The NPRM proposed, and this final rule provides, that each covered employee who had a verified positive drug test result or who refused to submit to testing would be advised of all relevant resources available to the employee. Further, each such employee would be evaluated by a SAP (who could be the MRO) who would determine whether and what assistance the employee needed in resolving problems associated with prohibited drug use. Some commenters representing labor organizations stated that the FAA should include requirements that employers must provide or pay for any required treatment and that employees should be prohibited from terminating employees who are undergoing treatment. The FAA reaffirms its position that these issues are most appropriately matters for employer/employee negotiation.

New section 614(b)(3) of the FAAct, "Performance of prior duties prohibited," provides sanctions for employees who engage in prohibited use of drugs. It provides that, under certain circumstances discussed below, an individual shall not be permitted to perform the duties related to air transportation that he or she performed prior to the date he or she engaged in the prohibited drug use. The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform non-safety-sensitive functions. However, it is an absolute bar to the performance of the same duties the employee performed before the violation.

The final rule implements the provisions in the Act in two ways. Appendix I has been revised by adding paragraph F to section VI to preclude any person from performing the safety-sensitive function that the individual was performing if that person had two verified positive drug test results or if the individual used a prohibited drug while performing such a safety-sensitive function. A definition of "performing" paralleling the one in the alcohol misuse prevention program rule has been added. In order to effectively administer this provision, the final rule provides that this prohibition is effective for drug tests and on-duty drug use occurring after the effective date of the final rule. (The NPRM proposed to amend the regulatory sections to implement this prohibition. However, for clarity and consistency with the alcohol misuse prevention program we are adding this provision to appendix I.)

The bar is limited to the narrow prohibition in the Act and will not affect the performance of other duties. While the FAA recognizes that a narrow bar could lead to anomalous results (for example, a person might be barred from performing screening duties but could serve as a pilot), a bar that is limited to the statutory requirements is more likely to be consistent with the requirements of the Americans with Disabilities Act or other legal constraints. The FAA expects that employers will exercise responsible judgment in determining whether employees not expressly barred from service should be permitted to perform other safety-sensitive duties.

The bar on two-time violators will apply both to persons who have gone through rehabilitation and to those who, after evaluation, were determined not to need treatment. Otherwise, an employee who was found to need treatment and had an instance of recidivism would be subject to the bar, but an employee who did not need assistance but simply chose to use drugs again would not be. This provision is established under the FAA's general statutory authority to prescribe regulations affecting aviation safety.

Commenters representing labor organizations objected to the permanent bar in principle, but recognized the FAA's statutory requirement to impose such a bar. Commenters representing employers objected to the FAA's implementation of the permanent bar in which the burden of ensuring that permanently barred individuals do not perform the relevant safety-sensitive duties is placed on employers. These commenters assert that the FAA should maintain a name-specific "black list" that employers could check to determine an applicant's status. The FAA has not adopted this recommendation and believes that it would be inappropriate to do so. Aside from the obvious privacy and logistical issues associated with the creation of such a data base, it would not serve the purpose asserted by the commenters, which appears to be to relieve the employers of the necessity of obtaining information regarding applicants' drug testing history. However, the permanent bar is not the only measure precluding service in a safety-sensitive function. In addition, if an individual has a verified positive drug test result or has refused to submit to a drug test, the employer cannot use the individual to perform any safety-sensitive function unless and until the appropriate MRO or SAP evaluation and return to duty requirements have been met. (A similar prohibition applies under the alcohol misuse prevention program, 14 CFR part 121, appendix J). Information regarding such unresolved violations can be obtained only from the employee's records. In summary, the FAA does not view the need to ensure that an applicant is not subject to the permanent bar as materially different from the other requirements in this employer-based, employer-implemented program.

The FAA has addressed one concern raised by commenters regarding the availability of records from previous employers. The confidentiality provisions have been revised to clarify that employers are required to release employee antidrug program records upon written consent of the employee. This revision precludes prior employers from refusing to release records and thereby frustrating the intent of this regulation. With respect to record retention, the FAA notes that the retention periods provided in this rule are minimums and employers may choose to retain any records for a longer period of time. Employers should consider longer retention of information regarding verified positive drug test

results, refusals to submit to testing, evaluation, and rehabilitation, if for no other reason than to ensure that an individual previously terminated for violating the rule is not rehired for and impermissibly returned to the performance of safety-sensitive functions.

Commenters also expressed concern that employees be provided with adequate notice of the implications of having a verified positive drug test result or using drugs while performing a safety-sensitive function. The FAA agrees that employees should be advised of the consequences of such actions, and of the consequences of refusing to submit to a required test (which, although it does not implicate the permanent bar, does necessitate removal from safety-sensitive functions and possible reporting to the FAA). The FAA has therefore revised the employee assistance program provisions of appendix I to include a requirement that the employer policy provide information on the consequences under the antidrug rule of illegal use of drugs, verified positive drug test results, and refusals to submit to testing. It should be noted that an employer may advise employees of any consequences imposed under the employer's independent authority (e.g., termination); however, the employer could not purport or imply that the FAA's antidrug rule required such actions.

The permanent bar following a refusal to undertake or failure to complete rehabilitation is further implemented by retaining the current requirement that prior to returning to duty performing safety-sensitive functions following a verified positive drug test result on an FAA-mandated drug test or refusal to submit to such a drug test, the employee must be evaluated by the MRO on the specific issue of compliance with any previously-established treatment program. This rule retains the provisions regarding MRO recommendations for return to duty, with the modification that, based on the requirements of the Act, the MRO cannot recommend return to duty if an individual has failed to comply with a specified rehabilitation program. The FAA has chosen, however, not to impose a definite time period during which the employee must agree to undertake or complete the prescribed rehabilitation. This allows for the denial phase that most people go through when first confronted with evidence of a drug problem.

Split Specimen Testing

Split specimen testing, which is expressly required under the Act, is a procedure under which an original urine specimen is divided into two containers, each of which is sealed, labeled, and maintained separately. If the primary specimen tests positive, the split or secondary specimen can be tested to ensure that the confirmed positive was not caused by error or tampering. In accordance with the requirements of the Act, DOT has revised its procedural rule to require split specimen testing for all drug testing performed under the auspices of the FAA antidrug rule (and those of the Federal Highway Administration, the Federal Railroad Administration, and the Federal Transit Administration). Consistent with the provisions of the DOT rule, this final rule provides that split specimen testing is in lieu of the right to request a retest of the original specimen.

A number of commenters objected to the split specimen testing requirement as unnecessary and unduly burdensome. These commenters stated that split specimen provisions should not be included in the final rule. The FAA is constrained by the requirements of the Act and must provide for split specimen testing. All aviation entities with FAA-approved antidrug programs must therefore ensure that they have split specimen testing provisions in place by August 15, 1994, including providing appropriate amendments to their antidrug program plans to the FAA.

Both the Act and the DOT's revised rule provide that an employee is entitled to split specimen testing if the employee requests such testing within 3 days of receiving notice of the positive drug test result, and this final rule incorporates an analogous provision. The NPRM proposed that the request must be in writing. Commenters noted that the requirement for a written request conflicts with the limited time available during which to make the request to have a split specimen tested. The FAA has deleted the proposed requirement that an employee request the split specimen test in writing. The final rule also revises the provision regarding MRO verification of the primary specimen. The NPRM proposed that the MRO "may" proceed with verification pending receipt of the split specimen test result. Although this language was permissive, it was not the intent of the FAA that verification could be delayed solely based on an employee's request for a split specimen test. Rather, the provision was intended to recognize that factors other than the request for the split specimen analysis could affect the verification process. The final rule makes the intent of the FAA explicit. Finally, the rule provides that no employer or agency action is stayed during the request period or while waiting for a split specimen test result.

Clarifying Amendments

Rule Language

The NPRM included a notice that in the final rule the FAA would amend the antidrug rule to change the terms "passing" and "failing" a drug test. All of the DOT agencies that require drug testing, including the FAA, have received reports of some confusion in their respective industries regarding the use of the terms passing and failing a drug test and how those terms relate to different drug test results (*i.e.*, confirmed or verified positive or negative test, cancelled tests, etc.). The final rule changes these terms wherever they are used throughout the antidrug rule to the more accurate "verified positive" or "verified negative."

Additionally, the revised appendix I published in this final rule includes a number of minor editorial changes. For example, throughout the antidrug rule the phrase "functions specified in section III of appendix I" is used. This final rule replaces that phrase with the term "safety-sensitive function," which is defined accordingly.

Contract Air Traffic Control Facilities

As was noted in the preamble to the NPRM, when the FAA's final antidrug rule was published in 1988, air traffic control (ATC) facilities operated under contract with the FAA were explicitly excluded from coverage under the rule. It was subsequently determined that employees of contract ATC facilities would not be included in the FAA's program for Federal employees and should be subject to the FAA's rules for the aviation industry. This final rule changes the definition of covered employers to include such facilities. The FAA's air traffic control facilities and facilities operated by the military (whether directly or by contract) are not affected by this change.

Air traffic control facilities, whether they are currently required to perform testing by contract or not, should submit plans to the FAA within 90 days after the rule's effective date, as required by paragraph A.5., Section IX.

Refusal to Submit to Testing

The final antidrug rule included amendments to the airmen certification

sections of the FAA's regulations under which a refusal to submit to testing could be the basis for a certificate action. However, the rule did not have an express requirement for employers to notify the FAA of refusals or a specific mechanism for providing such notice. The NPRM proposed a reporting requirement that (paragraph E of section VI of appendix I to part 121) would correct this gap in the requirements of the rule. However, the proposal did not include a specific time for notifications. The final rule specifies that employers must notify the FAA of refusals to submit to required tests within 5 working days. The final rule also clarifies that sanctions do not attach to refusals to submit to either pre-employment or return to duty tests since the redefinition of "return to duty tests" makes such tests essentially voluntary. An individual who refuses to submit to pre-employment or return to duty testing but then wishes to perform a safety-sensitive function would have to subsequently agree to take and have a verified negative drug test result on such a test. The individual would then be subject to follow-up testing while performing safety-sensitive functions, because the individual might have refused based on recent drug use. The individual would not, however, be subject to certificate action for declining what is essentially a test taken voluntarily as a precondition to performing safety-sensitive duties.

Employees Covered By the Antidrug Rule

The final rule modifies the specified safety-sensitive duties slightly to parallel the classes of covered functions in the FAA's new alcohol misuse prevention program rule (14 CFR part 121, appendix J). This modification is not intended to significantly change the antidrug rule's coverage. The most significant changes are the elimination of flight test and ground instruction duties. The former category is eliminated because the FAA has determined that as a practical matter, these duties are essentially subsumed in flight crewmember or flight instructor duties. Ground instruction duties have been eliminated based on the FAA's desire to reduce the burden of the antidrug rule on the industry and the determination that individuals performing such duties could be removed from the program without jeopardizing public safety. Additionally, the categories of "aviation screening duties" and "ground security coordinator duties" have been established to clarify the FAA's original intent with respect to covered security functions.

Although most commenters supported these changes, one commenter believed that rather than specifying categories of safety-sensitive duties, the rule should provide the Administrator with the discretion to establish these categories without rulemaking. The FAA has not adopted this recommendation. While flexibility might be desirable, the FAA believes that it is essential that adequate notice and opportunity for comment be given to individuals the FAA intends to subject to the requirements of this rule. Publication of the safety-sensitive functions as part of the final rule also ensures that affected employees and employers have actual or constructive knowledge of the requirements of the rule.

The FAA has previously received a petition for rulemaking on the issue of the appropriate scope of covered employees under the antidrug rule. Because the issues raised in the petition have been resolved in this final rule, the FAA has closed this action. (Docket No. 26620)

Because the covered employee categories are being revised, we are republishing with this final rule the Drug Testing Management Information System (MIS) Data Collection Forms, which were published in the **Federal Register** on December 23, 1993 (58 FR 68198), and became effective on January 1, 1994. These forms provide the FAA with additional data for use in monitoring the antidrug program and reflect the changes in employees covered by the antidrug rule. There are no other significant changes to the forms.

Pre-Employment Testing

The NPRM proposed to revise the antidrug rule's pre-employment testing provision (paragraph A of section V of appendix I) to make the provision less burdensome. When it was published in 1988, the antidrug rule required pre-employment testing before an individual could be hired to perform a function specified in appendix I. As interpreted by the FAA, testing was required of individuals not currently employed by the employer, of current employees moving from a non-covered to a covered safety-sensitive function, and in circumstances where an employee was removed from the random testing pool for any length of time or was unavailable for testing for an extended period of time. Individuals who had a verified positive drug test result or refused to submit to an FAA-mandated drug test also had to pass a pre-employment test prior to performing or returning to safety-sensitive duties.

The FAA continues to believe that pre-employment drug testing has utility for those individuals who have not previously been subject to the FAA-approved random drug testing program of an employer. However, we have reassessed the need for pre-employment testing in other situations, such as when an employee has been on leave of absence or working outside the territory of the United States. The FAA believes, and all of the commenters addressing this issue concur, that safety can be maintained even if the requirement for pre-employment testing in some circumstances is eliminated. Therefore, the FAA has revised its antidrug rule to require pre-employment testing of an individual only prior to the first time the individual performs a safety-sensitive function for an employer. Such an individual must have a verified negative drug test result on a pre-employment test prior to performing a safety-sensitive function, and the employer could not permit the individual to perform such a function until the employer receives the verified negative pre-employment drug test result.

Employers would be permitted to require an employee to submit to pre-employment testing in cases where an employee previously subject to random testing by that employer has been removed from the random testing pool for reasons other than a verified positive drug test result on an FAA-mandated drug test or refusal to submit to such testing.

Return to Duty and Follow-Up Testing

The 1988 final antidrug rule included the category of "testing after return to duty" (former paragraph F, section V, appendix I). Under this provision, individuals who had been hired to perform safety-sensitive functions, or returned to the performance of safety-sensitive functions after receiving a verified positive drug test result on or refusing to submit to an FAA-mandated drug test, were subject to unannounced testing. As noted above, the threshold test required before returning to duty was characterized as a pre-employment test.

Commenters concurred with the FAA's assessment that the FAA's prior use of the term "return to duty" testing has caused confusion in the industry. The FAA also wishes to ensure consistency in terminology with the alcohol misuse prevention program rule. For these reasons, the antidrug rule has been revised to provide that an individual who had a verified positive

drug test result on a pre-employment test, or refused a pre-employment test, must take another pre-employment test and obtain a verified negative drug test result before performing safety-sensitive duties and would then be subject to follow-up testing. An employee who had a verified positive drug test result on another type of test or refused to submit to another type of test (*e.g.*, random) must take a return to duty test and obtain a verified negative drug test result before returning to the performance of safety-sensitive duties, and would then be subject to follow-up testing. Like all FAA-mandated tests, return to duty and follow-up tests must be performed in accordance with the requirements of appendix I and the testing procedures in 49 CFR part 40.

The FAA also proposed two other changes that would parallel the provisions of the alcohol rule. The first proposed change was the addition of a mandatory minimum of six follow-up drug tests during an individual's first 12 months after being hired for or returning to the performance of safety-sensitive functions after the individual has refused to submit to or had a verified positive drug test result on an FAA-mandated test. Commenters generally opposed this proposal, believing the determination of the appropriate number of follow-up tests should be a matter for the MRO's discretion. Based on these comments, the FAA has revised the follow-up testing provision. As revised, although follow-up testing is required for any person who refuses to submit to or who has a verified positive drug test result on an FAA-mandated drug test, a minimum of six tests over 12 months will be required only for an individual who is determined in an evaluation conducted under this rule to be in need of assistance in resolving problems associated with illegal use of drugs. This modification ensures that those employees most in need of monitoring will be subject to at least a minimum number of tests over the first year after returning to duty, the period during which recidivism is the most likely to occur. The remaining employees would be tested at the MRO's discretion.

The second change permits the employer to direct the individual to undergo alcohol testing, as well as drug testing, if the Medical Review Officer determines that such testing would be appropriate. No commenters addressed this change, and the final rule includes this provision as it was proposed.

Medical Review Officer Functions

The NPRM proposed to substantially revise section VII of appendix I. First, changes in the DOT final rule (49 CFR part 40), which establishes the duties of the MRO in the verification process, have superseded the FAA's rule. Rather than reiterate the duplicative provisions of the DOT rule, which are subject to change, the revised MRO section cites to the applicable provisions of the DOT rule and incorporates them (and therefore any future amendments) by reference.

The MRO duties have been revised to require the MRO to inquire whether an individual holds a part 67 airman medical certificate, to process requests for split specimen testing, and to evaluate or refer the individual to a SAP for evaluation, as discussed previously. The MRO's duties in the case of an employee or applicant who holds a part 67 airman medical certificate or who would be required to hold such a certificate to perform a safety-sensitive function for an employer are also specified. In response to comments, the requirements for submission of the reports to the Federal Air Surgeon have been revised. The final rule provides that an MRO has 10 working days following verification of a positive drug test result in which to make a determination regarding drug dependence. All documents pertaining to the test result, verification, dependency, SAP evaluations, and return to duty recommendations, if any, must be forwarded to the Federal Air Surgeon within 12 working days of verifying the positive drug test result.

The final rule also includes specific recordkeeping requirements for the MRO. This change makes explicit the previously implicit requirement that MROs maintain records necessary for accomplishing their duties. While the records are created on behalf of and remain the employers' records, the new recordkeeping section reflects the fact that, of necessity, there are records that must be maintained by the MRO if the MRO is to fulfill his or her regulatory role. The provision regarding forwarding of MRO records has been revised slightly from the NPRM to clarify that it is the employer's obligation to ensure that MRO records are forwarded to a new MRO, even if the employer is obtaining MRO services through a consortium. The change reflects the FAA's position that records associated with a particular employer's antidrug program remain the employer's records, even if the records are maintained by the MRO and even if the employer does not contract directly with the MRO. The FAA recognizes that a consortium may effect the actual transfer of records; however, the consortium does so only as an agent of the employers using its services to implement their programs.

Antidrug Program Plan Submission

Several changes were proposed in this NPRM to the plan submission provisions. First, the address to which plans and plan amendments must be submitted has been changed to reflect the Drug Abatement Division's current address. Second, the "transition" provisions of the rule for new aviation employers (paragraph A., section IX) have been changed to eliminate the substantial grace period previously provided. Commenters supported the FAA's view that given the published guidance available from the FAA and from private sector entities and the wealth of material and experience now available, there is no longer a reason to permit carriers to begin operations without having implemented an FAA-approved antidrug program.

The FAA noted in the preamble to the final rule that the compliance deadlines for new businesses might be accelerated in the future (53 FR 47043; November 21, 1988), and, accordingly, this final rule prohibits covered employers from beginning operations without an approved antidrug program. The program must be implemented, and all covered employees subject to testing, not later than the inception of operations. Any person hired by a new certificate holder to perform a safety-sensitive function after the issuance of the certificate must undergo pre-employment testing. Additionally, each new employer must ensure that employees performing safety-sensitive functions by contract are subject to an FAA-approved antidrug program within 60 days of the implementation of the employer's program. This requirement will impose no significant burden on new operators and any burden is outweighed by the benefits gained by public safety.

Third, the consortium plan submission section has been revised to require that each consortium program must provide for notification to the FAA of changes in membership. Finally, a new provision (section IX, paragraph A.6.) expressly states that covered employers must ensure that they are continuously covered under an approved antidrug program. This new section reflects the FAA's recognition of the fluid nature of the aviation industry, in which locations, contracts, and even corporate identities are subject to frequent changes.

Employees Located Outside the United States

As noted in the preamble to the NPRM, the original antidrug rule published in 1988 applied to employees performing safety-sensitive functions for the specified employers regardless of whether the employees were located within the territory of the United States or were located in a foreign country. In recognition of the international implications of the rule, however, the effective date of the rule with respect to employees located outside the territory of the United States was deferred on a number of occasions. Significant practical and legal concerns surrounding implementation of the antidrug rule outside the territory of the United States remain and the FAA has substantially revised the international section of the antidrug rule (section XII, appendix I).

Consistent with the proposed rule, this final rule provides that no employee located outside the territory of the United States shall be tested for illegal use of drugs under the provisions of appendix I. To ensure proper selection for random testing, an employer must remove from the random testing pool any employee assigned to perform safety-sensitive functions solely outside the territory of the United States, since such an employee is not available for testing. The employee must be returned to the random testing pool as soon as the employee once more begins to perform functions wholly or partially within the territory of the United States. As noted above, the employer has the option of requiring the employee to undergo a pre-employment test prior to returning to the performance of a safety-sensitive function within the territory of the United States (and therefore to the random testing pool). This section also provides that the provisions of appendix I do not apply to employees performing safety-sensitive functions by contract outside the territory of the United States.

Although most commenters supported this revision, one commenter expressed concern that employees performing safety-sensitive functions within the territory of the United States may be subject to random testing at a disproportionately high rate if employees outside the territory of the United States are excused from testing and that employees taken out of the random testing pool may pose a safety risk. The FAA is cognizant of concerns about safety and economic parity that are raised by this exclusion. However, the FAA has determined that the burdens associated with extraterritorial testing outweigh the possible safety benefit. The FAA expects that employers will ensure that persons performing safety-sensitive functions wholly or partially within the territory of the United States remain subject to an effective random testing program. Finally, employers concerned about drug use by employees removed from the random testing pool may, as addressed above, subject such employees to pre-employment testing prior to permitting the employees to perform safety-sensitive functions within the territory of the United States.

Paperwork Reduction Act Approval

The recordkeeping and reporting requirements of the final antidrug rule, issued on November 14, 1988, were previously submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. The OMB approval is under control number 2120–0535. The recordkeeping and reporting requirements in this amendment to the final rule were submitted to OMB during the NPRM stage and approved under the same OMB#2120–0535. There have been no changes to the paperwork or recordkeeping burden since the NPRM approval.

Federalism Implications

The amendments in this final rule will not have substantial direct effects 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, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Evaluation Summary

The FAA has determined that this final rule is not a significant regulatory action under Executive Order 12866. The Agency has prepared a regulatory evaluation that analyzes the costs and benefits of this final rule. The FAA does not expect that this rule will have a significant economic effect on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the complete regulatory evaluation, regulatory flexibility determination, and international trade assessment has been placed in the docket. A copy may be obtained by contacting the office identified under FOR FURTHER INFORMATION CONTACT.

International Trade Impact Analysis

The FAA finds that this rule will not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States

Significance

This rule is not likely to result in an annual effect on the economy of $100 million or more, although it may result in a small increase in costs for consumers, industry, or Federal, State, or local agencies. The FAA has determined that the rule is not significant under the Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

List of Subjects

14 CFR Part 65

Aircraft, Airmen, Air safety, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

14 CFR Part 135

Air carriers, Aircraft, Aircraft pilots, Airmen, Airplanes, Air taxi, Air transportation, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

In consideration of the foregoing, the Federal Aviation Administration is amending 14 CFR parts 65, 121, and 135 as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. Section 65.46 is amended by revising paragraphs (a)(2) and (d), by removing paragraph (e), and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 65.46 Use of prohibited drugs.

(a) * * *

(2) An "employer" means an air traffic control facility not operated by the FAA or by or under contract to the U.S. military that employs a person to perform an air traffic control function.

* * * * *

(d) No employer shall knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I to part 121 of this chapter for returning to the performance of safety-sensitive duties.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

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

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1485, and 1502 (revised Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

4. Section 121.455 is amended by revising paragraph (c) and by removing paragraph (d) to read as follows:

§ 121.455 Use of prohibited drugs.

* * * * *

(c) No certificate holder shall knowingly use any person to perform, nor shall any person perform for a certificate holder, either directly or by contract, any safety-sensitive function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I for returning to the performance of safety-sensitive duties.

5. Appendix I is revised to read as follows:

Appendix I to Part 121—Drug Testing Program

This appendix contains the standards and components that must be included in an antidrug program required by this chapter.

I. *DOT Procedures.* Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 complies with the requirements of this appendix and the "Procedures for Transportation Workplace Drug Testing Programs" published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (DHHS) pursuant to the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11970; April 11, 1988 as amended by 59 FR 29908; June 9, 1994).

II. *Definitions.* For the purpose of this appendix, the following definitions apply:

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

Annualized rate for the purposes of unannounced testing of employees based on random selection means the percentage of specimen collection and testing of employees performing a safety-sensitive function during a calendar year. The employer shall determine the annualized rate by referring to the total number of employees performing a safety-sensitive function for the employer at the beginning of the calendar year.

Employee is a person who performs, either directly or by contract, a safety-sensitive function for an employer, as defined below. 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 the purposes of this appendix.

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. Provided, however, that an employer may use a person who is not included under that employer's drug program to perform a safety-sensitive function, if that person is subject to the requirements of another employer's FAA-approved antidrug program.

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

Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines, or a substance specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 811, 812, unless the drug is being used as authorized by a legal prescription or other exemption under Federal, state, or local law.

Refusal to submit means that an individual failed to provide a urine sample as required in 49 CFR part 40, without a valid medical explanation, after he or she has received notice of the requirement to be tested in accordance with this appendix or engaged in conduct that clearly obstructed the testing process.

Safety-sensitive function means a function listed in section III of this appendix.

Substance abuse professional means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of disorders related to drug use and abuse.

Verified negative drug test result means that the test result of a urine sample collected and tested under this appendix has been verified by a Medical Review Officer as negative in accordance with 49 CFR part 40.

Verified positive drug test result means that the test result of a urine sample collected and tested under this appendix has been verified by a Medical Review Officer as positive in accordance with 49 CFR part 40.

III. *Employees Who Must Be Tested.* Each person who performs a safety-sensitive function directly or by contract for an employer must be tested pursuant to an FAA-approved antidrug program conducted in accordance with this appendix:

A. Flight crewmember duties.
B. Flight attendant duties.
C. Flight instruction duties.
D. Aircraft dispatcher duties.
E. Aircraft maintenance or preventive maintenance duties.
F. Ground security coordinator duties.
G. Aviation screening duties.
H. Air traffic control duties.

IV. *Substances for Which Testing Must Be Conducted.* Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V of this appendix. As part of a reasonable cause drug testing program established pursuant to this part, employers may test for drugs in addition to those specified in this part only with approval granted by the FAA under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

V. *Types of Drug Testing Required.* Each employer shall conduct the following types of testing in accordance with the procedures set forth in this appendix and the DOT "Procedures for Transportation Workplace Drug Testing Programs" (49 CFR part 40):

A. *Pre-employment Testing.*

1. Prior to the first time an individual performs a safety-sensitive function for an employer, the employer shall require the individual to undergo testing for prohibited drug use.

2. An employer is permitted to require pre-employment testing of an individual if the following criteria are met:

(a) The individual previously performed a covered function for the employer;

(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.

3. No employer shall allow an individual required to undergo pre-employment testing under section V, paragraphs A.1 or A.2 of this appendix to perform a safety-sensitive function unless the employer has received a verified negative drug test result for the individual.

4. The employer shall advise 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 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, paragraph A.(2) of this appendix.

B. *Periodic Testing.* Each employee who performs a safety-sensitive function for an employer and who is required to undergo a medical examination under part 67 of this chapter shall submit to a periodic drug test. The employee shall be tested for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs during the first calendar year of implementation of the employer's antidrug program. The tests shall be conducted in conjunction with the first medical evaluation of the employee or in accordance with an alternative method for collecting periodic test specimens detailed in an employer's approved antidrug program. An employer may discontinue periodic testing of its employees after the first calendar year of implementation of the employer's antidrug program when the employer has implemented an unannounced testing program based on random selection of employees.

C. *Random Testing.* Each employer shall randomly select employees who perform a safety-sensitive function for the employer for unannounced drug testing. The employer shall randomly select employees for unannounced testing for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in an employee's system using a random number table or a computer-based, number generator that is matched with an employee's social security number, payroll identification number, or any other alternative method approved by the FAA.

(1) During the first 12 months following implementation of unannounced testing based on random selection pursuant to this appendix, an employer shall meet the following conditions:

(a) The unannounced testing based on random selection of employees shall be spread reasonably throughout the 12-month period.

(b) The last collection of specimens for random testing during the year shall be conducted at an annualized rate equal to not less than 50 percent of employees performing a safety-sensitive function.

(c) The total number of unannounced tests based on random selection during the 12 months shall be equal to not less than 25 percent of the employees performing a safety-sensitive function.

(2) Following the first 12 months, an employer shall achieve and maintain an annualized rate equal to not less than 50 percent of employees performing a safety-sensitive function.

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

E. *Testing Based on Reasonable Cause.* Each employer shall test each employee who performs a safety-sensitive function and who is reasonably suspected of using a prohibited drug. 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). At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible drug use, shall substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; provided, however, 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 shall substantiate the decision to test an employee who is reasonably suspected of drug use. 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.

F. *Return to Duty Testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix the individual shall undergo a drug test. No employer shall allow an individual required to undergo return to duty testing to perform a safety-sensitive function unless the employer has received a verified negative drug test result for the individual.

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

2. The number and frequency of such testing shall be determined by the

employer's Medical Review Officer. In the case of any individual evaluated under this appendix and determined to be in need of assistance in resolving problems associated with illegal use of drugs, follow-up testing shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol, in addition to drugs, if the Medical Review Officer determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

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

VI. Administrative and Other Matters

A. *Collection, Testing, and Rehabilitation Records.* Each employer shall maintain all records related to the collection process, including all logbooks and certification statements, for two years. Each employer shall maintain records of employee confirmed positive drug test results, SAP evaluations, and employee rehabilitation for five years. The employer shall maintain records of negative test results for 12 months. The employer shall permit the Administrator or the Administrator's representative to examine these records

B. *Laboratory Inspections.* The employer shall contract only with a laboratory that permits pre-award inspections by the employer before the laboratory is awarded a testing contract and unannounced inspections, including examination of any and all records at any time by the employer, the Administrator, or the Administrator's representative.

C. *Employee Request for Test of a Split Specimen.* Not later than 72 hours after receipt of notice of a verified positive test result, an employee may request that the MRO arrange for testing of the second, "split" specimen obtained during the collection of the primary specimen that resulted in the confirmed positive test result.

2. The split specimen shall be tested in accordance with the procedures in 49 CFR part 40.

3. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the pendency of the split specimen test result. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

D. *Release of Drug Testing Information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with the specific, written consent of the employee authorizing release of the information to an identified person, to the National Transportation Safety Board as part of an accident investigation upon written request or order, to the FAA upon request, or as required by this appendix Except as required by law or this appendix, no employer shall release employee information.

E. *Refusal To Submit to Testing.* Each employer shall 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. Notification should be sent to: Federal Aviation Administration, Aviation Standards National Field Office, Airmen Certification Branch, AVN–460, P.O. Box 25082, Oklahoma City, OK 73125.

2. Employers are not required to notify the above office of refusals to submit to pre-employment or return to duty testing.

F. *Permanent Disqualification From Service.* An employee who has verified positive drug test results on two drug tests required by appendix I to part 121 of this chapter and conducted after September 19, 1994 is permanently precluded from performing for an employer the safety-sensitive duties the employee performed prior to the second drug test.

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

VII. Medical Review Officer/Substance Abuse Professional

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

A. *MRO and Substance Abuse Professional Duties.* In addition to the functions delineated in 49 CFR part 40, the MRO shall perform the duties listed hereunder.

1. During the MRO's interview with an employee or applicant who has had a confirmed positive drug test result, the MRO shall inquire, and the individual must disclose, whether the individual holds an airman medical certificate issued under part 67 of this chapter or, if an applicant, would be required to hold such certificate in order to perform the duties of the position for which the applicant is applying.

2. The MRO must process employee requests for testing of split specimens in accordance with section VI, paragraph C, of this appendix.

3. The MRO shall advise each employee who receives a verified positive drug test result on or refuses to submit to a drug test required under this appendix of the resources available to the employee in evaluating and resolving problems associated with illegal use of drugs, including the names, addresses, and telephone numbers of substance abuse professionals (SAP) and counseling and treatment programs.

4. The MRO shall ensure that each employee who receives a verified positive drug test result on or refuses to submit to a drug test required under this appendix is evaluated by a SAP to determine if the employee is in need of assistance in resolving problems associated with illegal use of drugs. The MRO may perform this evaluation if the MRO is qualified as a SAP.

5. Prior to recommending that an employee be returned to the performance of a safety-sensitive function after the employee has received a verified positive drug test result on or refused to submit to a drug test required by this appendix, the MRO shall—

a. Ensure that an employee returning to the performance of a safety-sensitive function has received a return to duty verified negative drug test result on a test conducted under section V., paragraph F of this appendix;

b. Ensure that each employee has been evaluated in accordance with section VII, paragraph A.4 of this appendix; and

c. Ensure that the employee demonstrates compliance with any rehabilitation program recommended following the evaluation required under section VII, paragraph A.4 of this appendix.

6. Prior to recommending that an individual be hired to perform a safety-sensitive function after such individual has received a verified positive drug test result on a pre-employment test or has refused to submit to a pre-employment drug test required by this appendix, the MRO shall—

a. Ensure that an individual has received a verified negative drug test result on a subsequent pre-employment test conducted under section V, paragraph A, of this appendix;

b. Evaluate the individual (if the MRO is qualified to be a SAP), or have the individual evaluated by a SAP, for drug use or abuse; and

c. Ensure that the individual has complied with the requirements of any rehabilitation program in which the individual participated following the verified positive pre-employment drug test result or the refusal to submit to a pre-employment test.

7. The MRO shall not recommend that a person who fails to satisfy the requirements in section VII, paragraph A.5 or A.6 of this appendix be hired to perform or returned to duty to perform a safety-sensitive function.

B. *MRO Determinations.* In the case of an employee or applicant who holds an airman medical certificate issued under part 67 of this chapter, or who is or would be required to hold such certificate in order to perform a safety-sensitive function for an employer, the MRO shall take the following actions after verifying a positive drug test result.

1. In addition to the evaluation required in section VII, paragraph A.4 of this appendix, the MRO shall make a determination of probable drug dependence or nondependence as specified in part 67 of this chapter within 10 working days of verifying the test result. If the MRO is unable to make such a determination, he or she should so state in the individual's records.

2. If the MRO determines that an individual is nondependent, the MRO may recommend that the individual be returned to duty or hired to perform safety-sensitive functions subject to the requirements of section VII, paragraph A.5 of this appendix. If the MRO makes a determination of probable drug dependence or cannot make a dependency determination, the MRO shall not recommend that the individual be returned to duty unless and until such individual has been found nondependent by or has received a special issuance medical certificate from the Federal Air Surgeon.

3. After making the determinations in section VII, paragraphs B.1 and B.2 of this appendix, the MRO must forward the names of such individuals with identifying information, the determinations concerning dependence, SAP evaluation (if available), return to duty recommendations, and any supporting information to the Federal Air Surgeon within 12 working days after verifying the positive drug test result of such individuals.

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 400 7th Street, SW., Washington, DC 20590.

C. *MRO Records.* Each MRO shall maintain records concerning drug tests performed under this rule in accordance with the following provisions:

1. All records shall be maintained in confidence and shall be released only in accordance with the provisions of this rule and 49 CFR part 40.

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

3. Records of confirmed negative test results shall be maintained for 12 months.

4. All records maintained pursuant to this rule by each MRO are subject to examination by the Administrator or the Administrator's representative at any time.

5. Should the employer change MROs for any reason, the employer shall ensure that the former MRO forwards all records maintained pursuant to this rule to the new MRO within 10 working days of receiving notice from the employer of the new MRO's name and address.

6. Any employer obtaining MRO services by contract, including a contract through a consortium, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

D. *Evaluations and Referrals.* Each employer shall ensure that a substance abuse professional, including an MRO if he/she is qualified as a substance abuse professional, who determines that a covered employee requires assistance in resolving problems associated with illegal use of drugs does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

1. A public agency, such as a State, county, or municipality;

2. The employer or a person under contract to provide treatment for drug problems on behalf of the employer;

3. The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

4. The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

VIII. Employee Assistance Program (EAP)

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

A. *EAP Education Program.* Each EAP education program must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding drug use in the workplace. The employer's policy shall include information regarding the consequences under the rule of using drugs while performing safety-sensitive functions, receiving a verified positive drug test result, or refusing to submit to a drug test required under the rule.

B. *EAP Training Program.* Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified above. The employer shall ensure that

supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training. The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years. The employer shall identify the employee and supervisor EAP training in the employer's drug testing plan submitted to the FAA for approval.

IX. Employer's Antidrug Program Plan

A. *Schedule for Submission of Plans and Implementation.* Each employer shall submit an antidrug program plan to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 400 7th Street, SW., Washington, DC 20590.

2. (a) Any person who applies for a certificate under the provisions of part 121 or part 135 of this chapter after September 19, 1994 shall submit an antidrug program plan to the FAA for approval and must obtain such approval prior to beginning operations under the certificate. The program shall be implemented not later than the date of inception of operations. Contractor employees to a new certificate holder must be subject to an FAA-approved antidrug program within 60 days of the implementation of the employer's program.

(b) Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) after September 19, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an antidrug program plan to the FAA for approval. No operator may begin conducting sightseeing flights prior to receipt of approval; the program shall be implemented concurrently with the inception of operations. Contractor employees to a new operator must be subject to an FAA-approved program within 60 days of the implementation of the employer's program.

(c) Any person who intends to begin air traffic control operations as an employer as defined in 14 CFR 65.46(a)(2) (air traffic control facilities not operated by the FAA or by or under contract to the U.S. military) after September 19, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an antidrug program plan to the FAA for approval. No air traffic control facility may begin conducting air traffic control operations prior to receipt of approval; the program shall be implemented concurrently with the inception of operations. Contractor employees to a new air traffic control facility must be subject to an FAA-approved program within 60 days of the implementation of the facility's program.

3. In accordance with this appendix, an entity or individual that holds a repair station certificate issued by the FAA pursuant to part 145 of this chapter and employs individuals who perform a safety-sensitive function pursuant to a primary or direct contract with an employer or an operator may submit an antidrug program plan (specifying the procedures for complying with this appendix) to the FAA for approval. Each certificated repair station shall implement its approved antidrug program in accordance with its terms.

4. Any entity or individual whose employees perform safety-sensitive functions pursuant to a contract with an employer (as defined in section II of this appendix), and any consortium may submit an antidrug program plan to the FAA for approval on a form and in a manner prescribed by the Administrator.

(a) The plan shall specify the procedures that will be used to comply with the requirements of this appendix.

(b) Each consortium program must provide for reporting changes in consortium membership to the FAA within 10 working days of such changes.

(c) Each contractor or consortium shall implement its antidrug program in accordance with the terms of its approved plan.

5. Each air traffic control facility operating under contract to the FAA shall submit an antidrug program plan to the FAA (specifying the procedures for all testing required by this appendix) not later than November 17, 1994. Each facility shall implement its antidrug program not later than 60 days after approval of the program by the FAA. Employees performing air traffic control duties by contract for the air traffic control facility (i.e., not directly employed by the facility) must be subject to an FAA-approved antidrug program within 60 days of implementation of the air traffic control facility's program.

6. Each employer, or contractor company that has submitted an antidrug plan directly to the FAA, shall ensure that it is continuously covered by an FAA-approved antidrug program, and shall obtain appropriate approval from the FAA prior to changing problems (e.g., joining another carrier's program, joining a consortium, or transferring to another consortium).

B. An employer's antidrug plan must specify the methods by which the employer will comply with the testing requirements of this appendix. The plan must provide the name and address of the laboratory which has been selected by the employer for analysis of the specimens collected during the employer's antidrug testing program.

C. An employer's antidrug plan must specify the procedures and personnel the employer will use to ensure that a determination is made as to the veracity of test results and possible legitimate explanations for an employee receiving a verified positive drug test result.

D. The employer shall consider its antidrug program to be approved by the Administrator, unless notified to the contrary by the FAA, within 60 days after submission of the plan to the FAA.

X. Reporting of Antidrug Program Results

A. Annual reports of antidrug program results shall be submitted to the FAA in the form and manner prescribed by the Administrator by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

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

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

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

B. Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administration's form, is acceptable for submission to the FAA.

C. Each report shall be signed by the employer's antidrug program manager or other designated representative.

D. Each report with verified positive drug test results shall include all of the following informational elements:

1. Number of covered employees by employee category.

2. Number of covered employees affected by the antidrug rule of another operating administration identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of positive drug test results verified by a Medical Review Officer

(MRO) by type of test, type of drug, and employee category.

5. Number of negative drug test results reported by an MRO by type of test and employee category.

6. Number of persons denied a safety-sensitive position based on a verified positive pre-employment drug test result reported by an MRO.

7. Action taken following a verified positive drug test result(s), by type of action.

8. Number of employees returned to duty during the reporting period after having received a verified positive drug test result on or refused to submit to a drug test required under the FAA rule.

9. Number of employees by employee category with tests verified positive for multiple drugs by an MRO.

10. Number of employees who refused to submit to a drug test and the action taken in response to the refusal(s).

11. Number of covered employees who have received required initial training.

12. Number of supervisory personnel who have received required initial training.

13. Number of supervisors who have received required recurrent training.

E. Each report with only negative drug test results shall include all of the following informational elements. (This report may *only* be submitted by employers with *no* verified positive drug test results during the reporting year.)

1. Number of covered employees by employee category.

2. Number of covered employees affected by the antidrug rule of another operating administration identified and reported by number and employee category.

3. Number of specimens collected by type of test and employee category.

4. Number of negative tests reported by an MRO by type of test and employee category.

5. Number of employees who refused to submit to a drug test and the action taken in response to the refusal(s).

6. Number of employees returned to duty during the reporting period after having received a verified positive drug test result on or refused to submit to a drug test required under the FAA rule.

7. Number of covered employees who have received required initial training.

8. Number of supervisory personnel who have received required initial training.

9. Number of supervisors who have received required recurrent training.

F. An FAA-approved consortium may prepare reports on behalf of individual aviation employers for purposes of compliance with this reporting requirement. However, the aviation employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

XI. Preemption

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

B. The issuance of 14 CFR parts 65, 121, and 135 does not preempt provisions of state criminal law that impose sanctions for reckless conduct of an individual that leads to actual loss of life, injury, or damage to property whether such provisions apply specifically to aviation employees or generally to the public.

XII. Employees Located Outside the Territory of the United States

A. No individual shall undergo a drug test required under the provisions of this appendix while located outside the territory of the United States.

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

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

B. The provisions of this appendix shall not apply to any person who performs a function listed in section III of this appendix by contract for an employer outside the territory of the United States.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421–1431, and 1502 (revised Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

7. Section 135.249 is amended by revising paragraph (c) and by removing paragraph (d) to read as follows:

§ 135.249 Use of prohibited drugs.

* * * * *

(c) No certificate holder or operator shall knowingly use any person to perform, nor shall any person perform for a certificate holder or operator, either directly or by contract, any safety-sensitive function if the person has a verified positive drug test result on or has refused to submit to a drug test required by appendix I to part 121 of this chapter and the person has not met the requirements of appendix I to part 121 of this chapter for returning to the performance of safety-sensitive duties.

Issued in Washington, DC, on August 12, 1994.

David R. Hinson,

Administrator.

Note: These exhibits will not appear in the Code of Federal Regulations.

Exhibits—FAA Drug Testing Management Information System Data Collection Forms

BILLING CODE 4910–13–P

DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS "EZ" Data Collection Form**. This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form inclu four sections. These sections address the data elements required in the FAA/DC rug testing regulations.

SECTION A - AVIATION EMPLOYER INFORMATION requires the company name for which the report is done, a current address, the company's FAA Antidrug Plan Identification Number, and the FAA Operating Certificate Number(s) held by the company. Below the company name, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary. Finally, a signature and date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code).

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, flight test pilots, and navigators; "Flight Attendant"; "Flight Instructor"; "Aircraft Dispatcher"; "Aircraft Maintenance"; "Ground Security Coordinator"; "Aviation Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is a count of **all** covered employees for **all categories combined**, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each employee category under the appropriate additional operating administration(s).

SECTION C - DRUG TESTING INFORMATION requires information on the drug tests conducted by your company. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in

covered positions only. Each part of this table must be completed for each category of testing including: (1) periodic, (2) random, (3) post-accident, (4) reasonable cause, (5) return to duty, and (6) follow-up testing. These numbers **do not** include refusals for testing. "**COLL**" requires the number of specimens collected in each employee category for each category of testing. "**NEG**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added to the answer entered in the row marked "**TOTAL.**"

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule. This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **other** (pre-employment, periodic, post-accident, reasonable cause, return to duty, or follow-up) drug test required under the FAA regulation and the action taken following the refusal. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a refusal to submit to a drug test.

- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a refusal to submit to a drug test.

- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.

- **Other** - include covered employees who did not fall under one of the previous options and specify the actions taken.

SECTION D - DRUG TRAINING requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

OMB NO. 2120-0535

FAA Drug Testing MIS EZ Data Collection Form
(NO POSITIVE Drug Test Results)

Year Covered by This Report: 19____

A. AVIATION EMPLOYER INFORMATION

Company Name		Antidrug Plan No. _____ FAA Certificate No.
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or 135 certificate holders included in this report. (Attach additional sheets if necessary)

Company Name		Telephone No. ( )
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date

_____ Title

(____)_____-_____ Telephone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 1 hour. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES AS OF JANUARY 1, 19___						
		NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Aircraft Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
TOTAL						

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE														
	Pre-employment		Periodic		Random		Post-Accident		Reasonable Cause		Return To Duty		Follow-up	
EMPLOYEE CATEGORY	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG	COLL	NEG
Flight Crewmember														
Flight Attendant														
Flight Instructor														
Aircraft Dispatcher														
Aircraft Maintenance														
Ground Security Coordinator														
Aviation Screener														
Air Traffic Controller														
TOTAL														

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST		
	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to a drug test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

D. DRUG TRAINING

DRUG TRAINING DURING CURRENT REPORTING PERIOD	
	NUMBER
Covered employees who have received *initial* training on the consequences, manifestations, and behavioral cues of drug use as required by the FAA drug testing regulations:	
Supervisory personnel who have received *initial* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA drug testing regulations:	
Supervisory personnel who have received *recurrent* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA drug testing regulations:	

DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Aviation Administration (FAA) and the U.S. Department of Transportation (DOT) **Drug Testing MIS Data Collection Form.** These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iv-v as an example to facilitate the process of completing the form correctly.

This reporting from includes five sections. These sections address the data elements required in the FAA and the DOT drug testing regulations. The five sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. AVIATION EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	1
C. DRUG TESTING INFORMATION	ii-v	2-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	vi	5
E. DRUG TRAINING	vi	5

Page 1 AVIATION EMPLOYER INFORMATION (Section A) requires the company name for which the report is done and a current address. Below the company names, list any other names the company uses ("Doing Business As") and the company's FAA Antidrug Plan Identification Number. Provide the FAA Operating Certificate Number(s) held by the company. Below this, a signature and date are required certifying the correctness and completeness of the information provided on the form, and a current telephone number (including the area code). Finally, list the name, address, and telephone number for any other aviation companies covered under the report, attaching additional sheets, if necessary.

Page 1 COVERED EMPLOYEES (Section B) requires a count for each employee category that must be tested under the FAA/DOT regulations. For the FAA, the covered employee categories are: "Flight Crewmember" which includes pilots, flight engineers, flight test pilots, and navigators; "Flight Attendant"; "Flight Instructor"; "Aircraft Dispatcher"; "Aircraft Maintenance"; "Ground Security

Coordinator"; "Aviation Screener"; and "Air Traffic Controller." The most likely source for this information is the employer's personnel department. These counts should be based on the company records for the reported year. The **TOTAL** is the count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if your company employs personnel who perform duties covered by the drug rules of more than one DOT operating administration. **NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION**, requires that you identify the number of employees in each category under the appropriate additional operating administration(s).

Section C is used to summarize the drug testing results for applicants and covered employees. There are seven categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following six parts are for entering drug testing data on periodic, random, post-accident, reasonable cause, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1. the number of specimens collected in each employee category;
2. the number of specimens tested which were verified negative and verified positive for any drug(s); and
3. individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all seven parts of the table in Section C.

Information on actions taken with those persons testing positive is also required. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 2 **DRUG TESTING INFORMATION** (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the applicant was applying. The other categories are for employee testing and require information for company employees in **covered positions** only. Each part of this table must be completed for each category of

testing These categories include: (1) periodic (2) random, (3) post-accident, (4) reasonable cause, (5) return to duty, and (6) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page v.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. It should not include refusals to test. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS,**" refers to the number of specimens provided by job applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "**NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG,**" requires counts of positive tests **for each** of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "**TOTAL.**"

A sample table is provided on page v with example numbers.

Page 2 Below the part of the table containing pre-employment testing information is a box with the heading "**Number of persons denied a position as a covered employee following a verified positive drug test.**" This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **DRUG TESTING INFORMATION**, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Flight Crewmember" and "Flight Attendant" to illustrate the procedures for completing the form.

A Urine specimens were collected from 157 job applicants for flight crewmember positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Flight Crewmember."

B The Medical Review Officer (MRO) for your company reported that 153 of those 157 specimens from applicants for flight crewmember positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Flight Crewmember."

C The MRO for your company reported that 4 of those 157 specimens from applicants for flight crewmember positions were positive (i.e., a drug or drugs were detected). Enter this information in the third blank column of the table in the row marked "Flight Crewmember."

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drug(s)
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, **OTHER DRUG TESTING/PROGRAM INFORMATION**, on page 5 of the reporting form.

Please note that the sample data collection form also has information for flight attendants on line two. The same procedures outlined for flight crewmembers should be followed for entering the data on flight attendants. With applicants for flight attendant positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives -- 1 for marijuana and 1 for opiates. This information is entered in the row marked "Flight Attendant."

E The last row, marked "TOTAL," requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for flight crewmember positions were collected and 107 for applicants for flight attendant positions. The total for that column would be 264 (i.e., 157 + 107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT TESTING								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				MARIJUANA (THC)	COCAINE	PHENCY-CLIDINE (PCP)	OPIATES	AMPHETA-MINES
Flight Crewmember	157	153	4	3	1	0	0	1
Flight Attendant	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1
	A	B	C	D				

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS." The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of the number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule. This information should be available from the personnel office and/or drug program manager.

Page 4 Next you must provide information on **ACTIONS TAKEN ON VERIFIED POSITIVE TEST RESULTS**. Indicate the number of employees subjected to the following actions:

- **No longer employed with company** - include covered employees who resigned or were terminated as the result of a positive drug test.
- **Reassigned to non-covered functions** - include covered employees who were reassigned within the company to a non-covered position as the result of a positive drug test.

- **Entered rehabilitation, if applicable, and/or returned to covered functions** - include covered employees who are undergoing or have completed a rehabilitation program and/or covered employees who have returned to a covered function.

- **Other** - include covered employees who did not fall under one of the previous options and specify the action taken.

Indicate the sum of the actions taken on the line marked **TOTAL**.

Page 5 **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug and a table dealing with employees who refused to submit to a drug test.

Page 5 **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 flight crewmember specimens, then you would write "Flight Crewmember" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine." If marijuana and opiates were detected in 2 flight crewmember specimens, then you would write "Flight Crewmember" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates."

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **other** (pre-employment, periodic, post-accident, reasonable cause, return to duty, or follow-up) drug test required under the FAA regulation and the actions taken following the refusal.

Page 5 **DRUG TRAINING** (Section E) requires information on the number of covered employees and supervisory personnel who have received the required drug training during the current reporting period.

OMB NO. 2120-0535

FAA Drug Testing MIS Data Collection Form

Year Covered by This Report: 19____

A. AVIATION EMPLOYER INFORMATION

Company Name		Antidrug Plan No. _____ FAA Certificate No.
Street Address/P.O. Box		
City	State	Zip Code

Other Part 121 and/or Part 135 certificate holders included in this report. (Attach additional sheets if necessary.)

Company Name		Telephone No. (.) .
Street Address/P.O. Box		
City	State	Zip Code

I, the undersigned, certify that the information provided on this Federal Aviation Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ Signature

_____ Date

_____ Title

(____)_____ _____ Telephone Number

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Aviation Administration estimates that the average burden for this report form is 2.5 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: FAA Drug Abatement Division (AAM-800); U.S. Department of Transportation; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2120-0535); Washington, D.C. 20503.

B. COVERED EMPLOYEES

COVERED EMPLOYEES AS OF JANUARY 1, 19____						
		NUMBER OF EMPLOYEES COVERED BY MORE THAN ONE DOT OPERATING ADMINISTRATION				
EMPLOYEE CATEGORY	NUMBER OF FAA COVERED EMPLOYEES	FHWA	FRA	FTA	RSPA	USCG
Flight Crewmember						
Flight Attendant						
Flight Instructor						
Aircraft Dispatcher						
Aircraft Maintenance						
Ground Security Coordinator						
Aviation Screener						
Air Traffic Controller						
TOTAL						

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the **current** reporting period **only** (for example, January 1, 1994 - December 31, 1994).
2. This report is only for testing REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION (FAA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):
   - Results should be reported only for the employees in **COVERED POSITIONS** as defined by the FAA drug testing regulations.
   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR part 40.
3. Information on refusals for testing should only be reported in Section D ("OTHER DRUG TESTING/PROGRAM INFORMATION"). Do not include refusals for testing in other sections of this report.
4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.
5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

Number of persons denied a position as a covered employee following a verified positive drug test:	

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PERIODIC								
Flight Crewmember								
Flight Instructor								
Air Traffic Controller								
TOTAL								
RANDOM								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								
POST-ACCIDENT								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								
REASONABLE CAUSE								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
RETURN TO DUTY								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

Number of employees returned to duty during this reporting period after having failed or refused a drug test required under the FAA rule:	

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
FOLLOW-UP								
Flight Crewmember								
Flight Attendant								
Flight Instructor								
Aircraft Dispatcher								
Aircraft Maintenance								
Ground Security Coordinator								
Aviation Screener								
Air Traffic Controller								
TOTAL								

ACTIONS TAKEN ON VERIFIED POSITIVE DRUG TEST RESULTS	
	NUMBER
No longer employed with company:	
Reassigned to non-covered functions:	
Entered rehabilitation, if applicable, and/or returned to covered functions:	
Other (specify):	
TOTAL	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	MARIJUANA (THC)	COCAINE	PHENCY-CLIDINE (PCP)	OPIATES	AMPHET-AMINES

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST		
	NUMBER OF REFUSALS	
	RANDOM TESTS	OTHER TESTS
Number of covered employees who refused to submit to a drug test required under the FAA rule:		
ACTION TAKEN	NUMBER	
No longer employed with company:		
Reassigned to non-covered functions:		
Entered rehabilitation, if applicable, and/or returned to covered functions:		
Other (specify):		

E. DRUG TRAINING

DRUG TRAINING DURING CURRENT REPORTING PERIOD	
	NUMBER
Covered employees who have received *initial* training on the consequences, manifestations, and behavioral cues of drug use as required by the FAA antidrug regulations:	
Supervisory personnel who have received *initial* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA antidrug regulations:	
Supervisory personnel who have received *recurrent* training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FAA antidrug regulations:	

[FR Doc. 94-20237 Filed 8-15-94; 4:48 pm]
BILLING CODE 4910-13-C

Corrections

Federal Register
Vol. 59, No. 206
Wednesday, October 26, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket Nos. 25148 and 26620; Admt. Nos. 65-38; 121-240; 135-51]
RIN 2120-AE82

Antidrug Program for Personnel Engaged in Specified Aviation Activities

Correction

In rule document 94-20237 beginning on page 42922 in the issue of Friday, August 19, 1994 make the following corrections:

Appendix I to Part 121

1. On page 42929, in the third column, under paragraph V. G., in the first line, "1."should appear before "Each".

2. On page 42930, in the first column, under paragraph VI. C., in the second line, "1." should appear before "Not".

3. On the same page 42930, in the second column, under paragraph VI. E., in the first line, "1." should appear before "Each".

4. On page 42932, in the first column, under paragraph IX. A., in the second line, "1." should appear before "Each".

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14 CFR Part 121

[Docket No. 25148; Amdt. No. 121-~~246~~ 240]

Antidrug Program for Personnel Engaged in Specified Aviation Activities; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule, Antidrug Program for Personnel Engaged in Specified Aviation Activities, published in the **Federal Register** on August 19, 1994.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, (202) 366-6710.

Correction of Publication

In the final rule beginning on page 42922 in the issue of Friday, August 19, 1994, the following corrections are being made:

Appendix I to Part 121 [Corrected]

1. On page 42928, first column, paragraph I, fourth line, the word "complies" is corrected to read "comply".

2. On page 42932, second column, paragraph No. 6, seventh line, the word "problems" is corrected to read "programs".

Dated: December 21, 1994.

Donald P. Byrne,

Assistant Chief Counsel, Office of the Chief Counsel.

[FR Doc. 94-31914 Filed 12-27-94; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25148; Admt. No. 121-240]

Antidrug Program for Personnel Engaged in Specified Aviation Activities; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a final rule, Antidrug Program for Personnel Engaged in Specified Aviation Activities; Correction, published in the **Federal Register** on December 28, 1994.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Julie B. Murdoch, (202) 366-6710.

Correction to Final Rule

In the final rule beginning on page 66672, in the issue of Wednesday, December 28, 1994, the following correction is being made:

1. On page 66672, second column, in the heading, the amendment number should be "121-240".

Dated: January 4, 1995.

Donald P. Byrne,

Assistant Chief Counsel, Office of Chief Counsel.

[FR Doc. 95-596 Filed 1-10-95; 8:45 am]

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