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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2000–8431; Amendment No. 121–287]

RIN 2120–AH15

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The FAA is making minor technical amendments to its drug and alcohol regulations final rule, which was effective August 1, 2001. Since publication of the final rule, we have become aware of minor corrections that need to be made to avoid confusion. The effect of this technical amendment will be to correct the rule language to reflect the intent of the final rule.

EFFECTIVE DATE: November 19, 2001.

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, AAM–800, Drug Abatement Division, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register's** Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

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

Background

On April 29, 1996, the Department of Transportation (DOT) published an advance notice of proposed rulemaking (ANPRM) (61 FR 18713) asking for suggestions to change 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsequently, on December 9, 1999, the DOT published a notice of proposed rulemaking (NPRM) (64 FR 69076) proposing a comprehensive revision to 49 CFR part 40, and the DOT published its final rule on December 29, 2000 (64 FR 79462). As a consequence of the DOT's final rule, on April 30, 2001, the FAA published an NPRM (66 FR 21494) proposing to revise its drug and alcohol regulations to integrate, as appropriate, the new DOT procedures and to be consistent with changes made to 14 CFR part 67. On August 9, 2001, we published a final rule (66 FR 41959) consistent with the new DOT procedures and the current 14 CFR part 67.

Since publication of our final rule, we have become aware of minor corrections that need to be made to avoid confusion. Unless these rule sections are revised, the FAA regulations will not be technically accurate.

In our final rule, we inadvertently retained language allowing, but not requiring, employers to follow certain recommendations for follow-up testing. Sections 40.297 and 40.309 of the DOT final rule require the employer to carry out the Substance Abuse Professional's (SAP) follow-up testing requirements. Therefore, the FAA is modifying 14 CFR part 121, appendix I, section V.G.3., to require the employer to direct the employee to have follow-up testing for alcohol, in addition to drugs, if the SAP determines that alcohol testing is necessary for the particular employee. Similarly, the FAA is modifying 14 CFR part 121, appendix J, section III.F.3. to require the employer to direct the employee to have follow-up testing for drugs, in addition to alcohol, if the SAP determines that drug testing is necessary for the particular employee. With the correction to these sections, the FAA requirements for following SAP recommendations are now consistent with the DOT requirements.

In addition, the FAA found an inadvertent omission regarding pre-employment alcohol testing. In our final rule, we adopted language that all the DOT modal administrations proposed. Our adoption provision inadvertently omitted previous language in 14 CFR part 121, appendix J, section III.A. that stated: ''If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of paragraph F of section V of this appendix apply.'' If the language is left as it appears in the final rule, employers might erroneously believe that persons with alcohol concentrations of between 0.02 and 0.04 on a pre-employment test could be put to work immediately. Therefore, we are restoring the missing language to 14 CFR part 121, appendix J, section III.A.

Finally, after publication of the final rule we became aware that some cross-references had become incorrect because of changes made in the final rule. Therefore, we are correcting these cross-references.

Agency Findings

The FAA is making minor technical amendments to its drug and alcohol regulations final rule, which was effective August 1, 2001, to correct minor omissions in the rule language. The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

The FAA has determined that this action does not warrant preparation of a regulatory evaluation since the anticipated impact is minimal. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; (4) will not impose barriers to international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

In addition, this rule imposes no information collection requirements for which Paperwork Reduction Act approval is needed.

Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that notice and public comment to this technical amendment are unnecessary and contrary to the public interest. The amendments made in this final rule are corrective and clarifying changes to an existing rule that went through public notice and comment. The corrections in this technical amendment, in and of themselves, do not have a substantial impact upon regulated employers because they merely conform the final rule published August 9, 2001, to current DOT regulations. The amendments do not make significant, substantive changes to 14 CFR part 121, appendices I and J, and we would not anticipate the receipt of adverse comments on them. Furthermore, if the changes are stayed awaiting public notice and comment, regulated persons are likely to become confused about the conflicts between the FAA and DOT regulations on the issues addressed in the amendments. Therefore, the FAA finds that notice and comment are unnecessary and good cause exists for making these technical amendments effective immediately.

It is essential that these technical amendments take effect upon publication of this final rule. Delaying these amendments with a later effective date would result in confusion on the part of the regulated public. These technical amendments are merely intended to correctly implement the August 9 final rule. Therefore, the FAA finds good cause to make the changes effective upon publication in the **Federal Register**.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Safety, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 121, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

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

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

2. Amend appendix I to part 121 as follows:

A. In section V., revise paragraph G.3.;

B. In section VII, revise paragraph C.1.

The revisions read as follows:

Appendix I to Part 121—Drug Testing Program

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V. Types of Drug Testing Required * * *

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G. *Follow-up Testing.* * * *

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

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

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

1. As part of verifying a confirmed positive test result, the MRO shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 to perform a safety-sensitive function for the employer. If the individual answers in the negative, the MRO shall then inquire, and the individual shall disclose whether the individual currently holds a medical certificate issued under 14 CFR part 67. If the individual answers in the affirmative to either question, in addition to notifying the employer in accordance with 49 CFR part 40, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph 5, the name of the individual, along with identifying information and supporting documentation, within 12 working days after verifying a positive drug test result.

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3. Amend appendix J to part 121 as follows:

A. In section III, revise paragraphs A.5. and F.3;

B. In section IV, revise paragraphs B.6.(g) and B.7.(d)

C. In section V., revise paragraphs A.1., C.2., and E.

D. In section VI, revise paragraph A.2.(i)

The revisions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

III. Tests Required

A. Pre-employment testing

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

* * * * *

F. Follow-up Testing. * * *

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

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

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B. Reporting of Results in a Management Information System

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6. * * *

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(g) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described 49 CFR part 40).

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7. * * *

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(d) Number of covered employees who engaged in alcohol misuse who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in 49 CFR part 40).

V. CONSEQUENCES FOR EMPLOYEES ENGAGING IN ALCOHOL-RELATED CONDUCT

A. Removal From Safety-sensitive Function

1. Except as provided in 49 CFR part 40, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by § 65.46a, 121.458, or 135.253 of this chapter or an alcohol misuse rule of another DOT agency.

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C. Notice to the Federal Air Surgeon

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2. Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of section VI.C. of this appendix within 2 working days of the employer's receipt of the report.

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E. Required Evaluation and Testing

No covered employee who has engaged in conduct prohibited by § 65.46a, 121.458, or 135.253 of this chapter shall perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40.

VI. ALCOHOL MISUSE INFORMATION, TRAINING, AND SUBSTANCE ABUSE PROFESSIONAL

A. Employer Obligation to Promulgate a Policy on the Misuse of Alcohol

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2. *Required Content.* * * *

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

Issued in Washington, DC, on November 14, 2001.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 01–28868 Filed 11–16–01; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''Commission'') amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for refrigerators, refrigerator-freezers, and freezers. The Commission is also making minor, corrective amendments to the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to Part 305 that contain cost calculation formulas.

EFFECTIVE DATE: February 19, 2002.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–2889); *hnewsome@ftc.gov.*

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances: Refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps). The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 (Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an ''EnergyGuide'' label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a ''range of comparability.'' This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy (DOE) to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under section 305.10 of the Rule, the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

New Ranges of Comparability for Refrigerators, Refrigerator-Freezers, and Freezers

The Commission has analyzed 2001 submissions of data for refrigerators, refrigerator-freezers, and freezers. Analysis of the submission indicates that the ranges for these products have changed significantly.[3] Therefore, the Commission is publishing new ranges of comparability for refrigerators, refrigerator-freezers, and freezers. Today's publication of the new ranges for refrigerators, refrigerator-freezers, and freezers also means that, after February 19, 2002, manufacturers of these products must calculate the operating cost figures at the bottom of labels for the products using the 2001 cost for electricity (8.29 cents per kilowatt-hour).

Minor Amendments to Appendices H and I

The Commission is also amending the cost calculation formulas appearing in the Appendices (H and I) to part 305 that contain, for central air conditioners and heat pumps, heating and cooling performance costs and the ranges of comparability. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing.

[2] Reports for refrigerators, refrigerator-freezers, and freezers are due August 1.

[3] New DOE energy conservation standards for these products became effective on July 1, 2001. 62 FR 23102 (April 28, 1987).