

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 121**

[Docket No. FAA-2002-11301; Notice No. 02-04]

RIN 2120-AH14

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: After a number of years of experience inspecting the aviation industry's Antidrug and Alcohol Misuse Prevention Programs, the FAA is proposing to clarify regulatory language, increase consistency between the antidrug and alcohol misuse prevention program regulations where possible, and revise regulatory provisions as appropriate. Specifically, the FAA proposes to change the antidrug plan and alcohol misuse prevention certification statement submission requirements for employers and contractors. The FAA proposes to revise the timing of pre-employment testing. The FAA also proposes to modify the reasonable cause and reasonable suspicion testing requirements. The FAA believes that changing the regulations would improve safety and lessen a burden on the regulated public.

DATES: Send your comments on or before May 29, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2002-11301 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

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

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

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 five 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 of the item you wish to view.

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 docket number, notice number, or amendment number of this rulemaking.

General Information

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

- Background information about the drug and alcohol rules (14 CFR part 121, appendices I and J, respectively).
- Two charts highlighting the proposed principal and clarifying changes to appendix I.
- Two charts highlighting the proposed principal and clarifying changes in appendix J.
- Detailed, section-by-section discussion of the proposed changes to:
 - Appendix I.
 - Appendix J.

Background Information About the Drug and Alcohol Rules

The Antidrug and Alcohol Misuse Prevention Programs added to a long history of FAA actions to combat the use of drugs and alcohol in the aviation industry. For many decades the FAA has had regulations prohibiting crewmembers from operating aircraft under the influence of alcohol or drugs that impair their ability to operate the aircraft. As a result of the broad use of drugs in American society, the FAA initiated a rulemaking in the 1980s to test persons performing safety functions in the commercial aviation industry for certain illegal drugs.

After publishing an Advance Notice of Proposed Rulemaking in 1986 (51 FR 44432; December 9, 1986) and a Notice of Proposed Rulemaking (NPRM) in 1988 (53 FR 8368; March 14, 1988), on November 14, 1988, the FAA published a final rule entitled, Antidrug Program for Personnel Engaged in Specified Aviation Activities, (53 FR 47024), which required specified aviation employers and operators to initiate antidrug programs for personnel performing safety-sensitive functions.

Congress enacted the Omnibus Transportation Employee Testing Act of 1991, (the Act), which amended the Federal Aviation Act of 1958 to provide a statutory mandate for drug and alcohol testing of air carrier employees. To conform with the Act, the Office of the Secretary of Transportation (OST) coordinated the efforts of Department of Transportation (DOT) modal administrations to address the issue of

alcohol use testing in the transportation industries. Rulemakings were initiated under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143, Title V). The FAA published an NPRM related to industry drug testing requirements in 1994 (59 FR 7412; February 15, 1994), and on August 19, 1994, the FAA published a final rule, Antidrug Program for Personnel Engaged in Specified Aviation Activities (59 FR 42911). The August 19, 1994, final rule incorporated clarifying and substantive changes to address provisions of the antidrug rule that were unclear or did not comport with revised DOT drug testing procedures. With respect to alcohol testing, the FAA published an NPRM in 1992 (57 FR 59458; December 15, 1992), and then on February 15, 1994, published a final rule, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities (59 FR 7380). The final rule required certain aviation employers to conduct alcohol testing.

The FAA's regulatory efforts have proven to be effective in both detecting and deterring illegal drug use and

alcohol misuse in the aviation industry. From 1990 through 1998, aviation employers required to report have told the FAA that 13,074 positive pre-employment test results have occurred. Since pre-employment drug testing is the gateway through which a person must pass before entering a safety-sensitive job, pre-employment testing has proven to be an effective detection tool for the aviation industry. The success of the aviation industry in implementing the FAA's drug testing regulations is further evidenced by the 8,270 positive drug tests under all other forms of drug testing required by the FAA, as reported by the employers required to report between 1990 and 1998. The FAA regulations have been effective in deterring illegal drug use, as shown by the fact that the industry rate of positive random test results has remained below one percent during the 8 years (1990-1998) for which data are available. Similarly, in the context of alcohol tests conducted since 1995, employers have reported a total of 490 breath alcohol test results of 0.04 or greater on all alcohol tests given, but the total rate of random alcohol test results

of 0.04 or greater has remained below 0.5 percent for 5 consecutive years.

While the drug and alcohol testing regulations have been successful, experience with the testing regulations has led the FAA to identify some aspects of the regulations that need to be amended. These amendments involve reasonable cause drug testing, reasonable suspicion alcohol testing, periodic drug testing, the approval process of antidrug program plans, and the approval process of certification statements for alcohol misuse prevention programs. The FAA is proposing to clarify regulatory language, increase consistency between the antidrug and alcohol misuse prevention program regulations, and eliminate regulatory provisions that are no longer appropriate. In addition, the Office of Aviation Medicine has changed its name to the Office of Aerospace Medicine. In this NPRM, the FAA has corrected the office name in rule sections that were otherwise being changed. In the final rule, the FAA will correct the office name in any other rule sections necessary.

Charts Describing the Proposed Changes

PROPOSED PRINCIPAL CHANGES—APPENDIX I (DRUG TESTING)

Current section number and title	Summary
Section II. Definitions	<ul style="list-style-type: none"> Proposes to change the definition of employer to clarify that an employer may use a contract employee who is not included under that employer's drug program to perform a safety-sensitive function only if that contract employee is subject to the requirements of a contractor's FAA-mandated antidrug program and is performing work within the scope of employment with the contractor.
Section V. Types of Testing Required.	<ul style="list-style-type: none"> Proposes to change paragraph A., "Pre-employment Testing," to require pre-employment testing before hiring or transferring an individual to perform a safety-sensitive position. Proposes to require employers to conduct another pre-employment test for applicants or employees who transfer to safety-sensitive positions if more than 60 days elapse between a pre-employment test and placing the individual in a safety-sensitive position. Proposes to eliminate periodic drug testing since it was a transitional requirement and is no longer needed. Proposes to change paragraph E. to allow employers to make a reasonable cause determination on contract employees who are performing safety-sensitive functions on the employer's premises and under the supervision of the employer.
Section IX. Implementing an Antidrug Program.	<ul style="list-style-type: none"> Proposes to change the title of the section. Proposes to change the FAA antidrug plan approval process by eliminating the requirement for plan approvals. Instead the FAA proposes to require: <ul style="list-style-type: none"> —New and existing part 121 and 135 certificate holders to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification would be required for both the drug and alcohol programs, and certificate holders would have to provide less information than is currently required. —New and existing part 145 certificate holders that opt to have their own FAA testing programs because they perform safety-sensitive functions for an employer to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification would be required for both the drug and alcohol programs, and certificate holders would have to provide less information than is currently required. —All other entities required or opting to have an antidrug and alcohol misuse prevention programs to register with the FAA. Only one registration would be required for both the Antidrug and Alcohol Misuse Prevention Programs, and entities would have to provide less information than is currently required. Proposes to eliminate the 60-day timeframe for employers to ensure that contractors and part 145 certificate holders that perform safety-sensitive functions are subject to an antidrug program. Proposes to require updates to registration information as changes occur. Proposes to clarify that employers may use contractors (including part 145 certificate holders) to perform safety-sensitive functions only if the contractors are subject to an antidrug program for the entire time they are performing safety-sensitive functions.

PROPOSED CLARIFYING CHANGES—APPENDIX I (DRUG TESTING)

Current section number and title	Summary
Section I. General	<ul style="list-style-type: none"> Proposes to add a paragraph that lists applicable regulations. Proposes to add a paragraph to prohibit falsification of any logbook, record, or report.
Section II. Definitions	<ul style="list-style-type: none"> Proposes to change the defined term “contractor company” to “contractor” to emphasize that “contractor” could mean an individual or a company. Proposes to change the definition of “Employee” to eliminate unnecessary language.
Section III. Employees Who Must Be Tested.	<ul style="list-style-type: none"> Proposes to clarify that all employees who perform safety-sensitive functions, i.e., full-time, part-time, temporary, and intermittent employees, are subject to an antidrug program regardless of the degree of supervision. Proposes to clarify that employees who are in a training status and perform safety-sensitive functions are subject to an antidrug program. Proposes to clarify that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing.
Section V. Types of Drug Testing Required.	<ul style="list-style-type: none"> Proposes to clarify pre-employment notification requirements. Proposes to clarify random testing requirements. Similar language is used in appendix J.

PROPOSED PRINCIPAL CHANGES—APPENDIX J (ALCOHOL TESTING)

Current section number and title	Summary
Section III. Tests Required	<ul style="list-style-type: none"> Proposes to change paragraph D. to allow employers to make a reasonable suspicion determination on contract employees who are performing safety-sensitive functions on the employer’s premises and under the supervision of the employer.
Section IV. Handling of Testing Results, Record Retention, and Confidentiality.	<ul style="list-style-type: none"> Proposes to add language in paragraph B.4. that mirrors language in appendix I.
Section VII. Implementing an Alcohol Misuse Prevention Program.	<ul style="list-style-type: none"> Proposes to eliminate the FAA Alcohol Misuse Prevention Certification Statement. Instead the FAA proposes to require: <ul style="list-style-type: none"> —New and existing part 121 and 135 certificate holders to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification would be required for both the drug and alcohol programs, and certificate holders would have to provide less information than is currently required. —New and existing part 145 certificate holders that opt to have their own FAA testing programs because they perform safety-sensitive functions for an employer to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. Only one operations specification would be required for both the drug and alcohol programs, and certificate holders would have to provide less information than is currently required. —All other entities required or opting to have an antidrug and alcohol misuse prevention programs to register with the FAA. Only one registration would be required for both the drug and Alcohol programs and entities would have to provide less information than is currently required. Proposes to eliminate the 180-day timeframe for employers to ensure that their contractors and part 145 certificate holders that perform safety-sensitive functions are subject to an alcohol misuse prevention program. Proposes to require updates to registration information as changes occur. Proposes to require employers to only use contractors to perform safety-sensitive functions who are covered by an alcohol misuse prevention program for the entire period they perform safety-sensitive work.

PROPOSED CLARIFYING CHANGES—APPENDIX J (ALCOHOL TESTING)

Section number	Summary
Section I. General	<ul style="list-style-type: none"> Proposes to eliminate in paragraph D. the definition of Administrator, because it is defined elsewhere in the regulations. Proposes to eliminate in paragraph D. the definition of consortium. Proposes to change in paragraph D. the defined term “contractor company” to “contractor” to emphasize that “contractor” could mean an individual or a company. Proposes to add paragraph H. that lists applicable regulations. Proposes to add paragraph I. to prohibit falsification of any logbook, record, or report.
II. Covered Employees	<ul style="list-style-type: none"> Proposes to clarify that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing. Proposes to clarify in this section that all employees who perform safety-sensitive functions, i.e., full-time, part-time, temporary, and intermittent employees, are subject to an alcohol misuse prevention program regardless of the degree of supervision. Proposes to clarify that employees who are in a training status and perform safety-sensitive functions are subject to an alcohol misuse prevention program.

Section-by-Section Discussion of the Proposals

Appendix I—Drug Testing Program

I. General

By this action the FAA proposes to add two paragraphs to this section: “Applicable Federal Regulations” and “Falsification.” These paragraphs are designated “D.” and “E.” respectively. Proposed Paragraph D. includes a list of regulations dealing with the antidrug and the alcohol misuse prevention programs. FAA is proposing this list to help employers and other individuals find applicable regulatory citations. Telephone inquiries to the FAA indicate that aviation employers have a difficult time finding the regulations relating to the aviation industry antidrug program. Paragraph E., “Falsification,” proposes to specifically prohibit falsification of any logbook, record, or report required to be maintained under the regulations to show compliance with appendix I. Similar language also is used in the following regulations: 14 CFR 21.2, 61.59, 63.20, and 65.20.

II. Definitions

This action proposes to:

- Change the defined term from “contractor company” to “contractor” to emphasize that a contractor can be an individual or a company who contracts with an aviation employer. While our experience shows that most aviation employers already understand that a contractor can be a single individual or a company, we have proposed this change to eliminate any possible confusion.
- Change the definition of “employee” to clarify that an employee is either a person hired, directly or by contract, to perform a safety-sensitive function for an employer or transferred into a position to perform a safety-sensitive function. We also propose eliminating the sentence “Provided, however, that an employee who works for an employer who holds a part 135 certificate and who holds a 121 certificate is considered to be an employee of the part 121 certificate holder for purposes of this appendix.” This language was used at the beginning of the program when companies were implementing programs on a phased-in schedule. Because that is no longer the case, the sentence is now confusing and unnecessary.
- Change the definition of “employer” to clarify that an employer may use a contract employee who is not included under that employer’s drug program to perform a safety-sensitive function only if that contract employee is subject to the requirements of a contractor’s FAA-mandated antidrug program and is performing work within the scope of employment with the contractor.

The proposal related to the definition of employer is necessary to close a loophole in the current rule language. Currently, if an employee is covered under an employer’s drug testing program (Employer A), another employer (Employer B) may use that employee to perform safety-sensitive functions. This authority was designed to allow individuals employed by one company to perform safety-sensitive functions for

another company without the individuals being subject to multiple testing programs. The current language, however, permits performance of a safety-sensitive function by an employee of Employer A for Employer B even when the work is unrelated to the employee’s work with Employer A. In many cases, Employer A is unaware of its employee’s activities for Employer B. In the event of an accident, Employer B could not subject that employee to a post accident test, because the employee is not included in that employer’s drug testing program. As noted above, Employer A might not be aware of the need to test the employee, or even if it were aware, it might not agree to test the employee if the employee was not performing a safety sensitive function within the scope of employment with Employer A. In the example above, Employer A, Employer B, and the individual involved would be in compliance with the current rule. It was not the intent of the FAA in promulgating the current provision to create a situation where a person performing a safety-sensitive function could avoid being tested.

Even where an employer (Employer B) contacts an employee’s primary employer (Employer A) to ensure that the employee is covered by its antidrug program, there is no way to ensure that the employee is not subsequently dropped from Employer A’s program. Moreover, Employer B is unlikely to know if the employee has tested positive on a drug test or has refused to submit to testing under Employer A’s program.

The proposed change would not affect the ability of an employer to use contractor employees to perform safety-sensitive duties if those employees are under the FAA antidrug and alcohol misuse prevention program of the contractor and are performing safety-sensitive functions within the scope of employment of the contractor. It is reasonable and anticipated that a contractor may choose to provide antidrug and alcohol misuse prevention program coverage of its own employees as part of the services it renders to its clients.

Following are examples to help clarify the above:

1. Employer A is a part 121 operator and has an antidrug program. Included under employer A’s drug program are maintenance employees who perform safety-sensitive duties. Employer B is a part 135 operator and also has an antidrug program. Employer B needs a maintenance employee to perform safety-sensitive duties for several days because its maintenance employee is out sick. Employer B contracts with Employer A for Employer A’s maintenance employee to assist Employer B for several days.

Question: Must Employer B pre-employment test this employee and include the employee in its program?

Answer: No, the employee is still the employee of Employer A, who contracted out to Employer B, and is performing work within the scope of his/her employment with Employer A.

2. Employer A has an antidrug program for pilots who perform safety-sensitive duties. One of the pilots is looking for a part-time job. The pilot applies for a position with Employer B, a part 135 operator that is

looking for a part-time pilot to perform safety-sensitive duties. The pilot advises Employer B that he is in Employer A’s antidrug program, but Employer B has not contracted with Employer A for the pilot’s services.

Question: Must Employer B pre-employment drug test the pilot and put him/her in its program?

Answer: Yes. Because Employer B has not contracted with Employer A for the pilot’s services, the pilot’s work with Employer B is outside his/her scope of employment with Employer A.

III. Employees Who Must be Tested

The FAA is proposing to clarify that the decision to cover an employee must be based on the duties that the individual performs rather than employment status (full time, part time, temporary or intermittent) or job title. The proposed language is not intended to change the current rule’s scope. Rather, the FAA is proposing to directly specify that the testing obligations apply to temporary and intermittent employees who perform safety-sensitive functions, regardless of the degree of supervision. This proposed change clarifies that the regulation applies to employees, such as mechanic’s helpers, who sometimes perform safety-sensitive functions. The proposed change also clarifies that employees in a training status who perform safety-sensitive functions are covered by the regulation. The proposed clarification is important because experience, correspondence with the aviation industry, and compliance inspections and investigations show that employers do not always understand which employees must be tested.

The FAA is proposing to clarify that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing. This is not a substantive change because the current rule language states that anyone who performs a safety-sensitive function “directly or by contract” must be tested. The regulations have always required that any person actually performing a safety-sensitive function be tested, and we are proposing to clarify that performance “by contract” means performance under any tier of a contract. However, some maintenance providers may be confused about testing employees performing work under a subcontract because of conflicting guidance provided by the FAA. In the initial implementation phase of the drug testing rule in 1989, the FAA issued informal guidance entitled “Implementation Guidelines for the FAA Anti-Drug Program,” and in 1990 the FAA issued informal guidance entitled “Most Frequently Asked Questions About the Aviation Industry Anti-Drug Program,” both of which stated that maintenance subcontractors would not be required to test unless they took airworthiness responsibility for the work that they were performing. This guidance was never officially published in an FAA Advisory Circular or other official FAA policy vehicle, however it was provided widely to persons and companies in 1989 and 1990, and on an ad hoc basis thereafter until the mid-1990s. This guidance

constricted the potential reach of the plain language of the regulation as it applied to contractors. The potential reach of performing by "contract" is not actually limited to those who have a direct contract with the air carrier, but would include anyone who is performing work described in the original contract between the prime contractor and the air carrier. If the term "contract" were to be limited to the entity in direct relationship with the air carrier, then the air carrier could not enter into any contract that permitted subcontracting unless the contract also required the subcontractors to conduct the required testing. Otherwise, the air carrier would be in violation of the regulation by contracting for maintenance by persons who are not subject to testing.

The initial guidance restricting the scope of drug testing of contractors to exclude some subcontractors facilitated the implementation of the new drug testing requirements as soon as possible without disrupting the ability of air carriers to obtain critical maintenance on a contractual basis. However, unless a contracting company received a copy of the guidance or an individual letter that reflected the guidance, it would have not known to follow anything other than the rule language, which did not exclude subcontractors who did not sign off on the airworthiness of the work performed. In addition, soon after the drug testing rule became effective, in order to be prepared to perform work by contract for air carriers, small and large maintenance providers obtained drug and alcohol testing programs regardless of whether they were performing as a subcontractor or a prime contractor to an employer. The reality of the industry is that often a company performing maintenance for an air carrier may be performing as a prime contractor today and as a subcontractor tomorrow. Consequently, there is an essentially pervasive system of drug and alcohol testing in the maintenance side of commercial aviation, where both contractors and subcontractors have obtained drug-testing plans, without any distinction between their contracting versus subcontracting duties.

The constriction of the scope of testing of contractors developed at the beginning of the program is in conflict with the goal of having each person who performs a safety-sensitive function actually tested to ensure that he or she is not impaired. This early guidance had a safety net because it limited the exclusion of subcontractors to those circumstances where the subcontractor did not take airworthiness responsibility, therefore there was another level in the system overseeing the work. However, it is the FAA's clear policy to require that anyone who is actually performing maintenance is tested in accordance with the regulations.

As drug and alcohol testing became pervasive in the aviation maintenance area, FAA's informal guidance ceased to reference the limited subcontractor exception and entities were advised to test all persons actually performing maintenance directly or by contract for an air carrier. However, some entities may be unaware of this change and others have continued to rely on the earlier informal guidance to avoid testing the subcontractors who are actually performing

maintenance. Prior to this notice, the informal guidance was never formally withdrawn. The FAA is proposing to add language to the rule to emphasize that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing and FAA will rescind the conflicting informal guidance regarding subcontractors. We are seeking comment on our proposal to clarify this subject.

V. Types of Drug Testing Required

V.A. Pre-Employment Testing

As discussed earlier, 13,074 positive pre-employment tests have been reported to the FAA in the last decade, demonstrating that such tests are an effective detection tool. Pre-employment testing is directly tied to aviation safety, in that it is a gateway to safety-sensitive positions. Failure of a pre-employment test is a direct barrier to a person's entry into safety-sensitive work. Thus, it is vital that the language requiring pre-employment testing be as clear as possible in order to maximize the efficiency of its use.

Originally, the antidrug regulation published in 1988 said, "No employer may hire any person to perform a function, listed in section III. of this appendix, unless the applicant passes a drug test for that employer." The regulation required pre-employment testing before an individual could be hired to perform a function specified in the appendix. As interpreted by the FAA, pre-employment 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 had been removed from the random testing pool for any length of time or was unavailable for testing for an extended period of time.

In 1994, the FAA revised its antidrug rule to require pre-employment testing of an individual only prior to the first time the individual performed a safety-sensitive function for an employer. This revision was intended to provide employers additional flexibility to hire individuals in advance of receiving negative test results. Currently 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 must not permit the individual to perform such a function until the employer receives the verified negative pre-employment test result.

Experience and enforcement cases have shown that, in the absence of the very clear "hiring" event, some employers are neglecting to do the required pre-employment testing and receive a negative test result before allowing employees to perform safety-sensitive functions. In the worst cases, this has resulted in employees being allowed to perform safety-sensitive functions who have subsequently received positive test results. Before the 1994 change, misunderstandings were not prevalent. The original language was a clearer standard for employers to follow. Because of this, the FAA is proposing to reinstitute the requirement for employers to test an

individual and receive a negative test result prior to hiring the individual for a position that involves the performance of a safety-sensitive position. Therefore, proposed paragraph V.A.1. would change the language back to requiring testing and receipt of a negative drug test result prior to hiring a person to perform safety-sensitive functions.

Paragraph V.A.2., would require employers to pre-employment drug test employees prior to transferring them into a position to perform a safety-sensitive function. This paragraph is proposed to clarify to employers that pre-employment testing is required whenever an employee is "hired" to perform a safety-sensitive function, even if that "hiring" is simply an internal transfer from a nonsafety-sensitive job to a safety-sensitive job. Therefore, we propose adding this clarification immediately after V.A.1., and renumbering the remaining provisions in this section.

At times there are circumstances when individuals are given pre-employment drug tests in anticipation of being hired or transferred to perform a safety-sensitive function. Some people have asked about the length of time between a pre-employment test and when an employee is placed into an FAA-required drug testing program (subject to random, reasonable suspicion, and post-accident testing). Sometimes this time can be long, thereby reducing the deterrence factor of an on-going testing program. The FAA believes that 60 days is an acceptable time between a pre-employment test and being brought into a drug testing program because we want to ensure that there is not too long a time between the pre-employment test and the person being subject to random, reasonable suspicion, and post-accident testing while still giving the employer some flexibility.

V.B. Periodic Testing

This action proposes to eliminate Section V.B., periodic testing, which was initially imposed due to transitional concerns. The current regulation requires that a new employer must periodic drug test part 67 medical certificate holders during the first calendar year of implementation of its program. However, the new employer may discontinue the periodic drug testing of its part 67 medical certificate holders 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. Periodic testing was important at the beginning of the program when many people were grandfathered into newly approved antidrug programs without pre-employment testing. Initially, there was also a phase-in period for implementing random testing. Employers were not required to meet the annual random testing rate until the last collection at the end of the first year of testing. Thus, it was likely that a pilot would not be tested in the first year of testing. Because all flightcrew members are subject to pre-employment testing and annual random testing, the FAA believes that the elimination of periodic drug testing at this time would not compromise safety and would be a cost benefit to those aviation industry employers

implementing drug programs that include the testing of airmen. Also, there is no periodic testing requirement in appendix J. Because of the elimination of periodic testing, the remaining paragraphs in this section would be relettered accordingly.

V.C. Random Testing

An additional paragraph would be added to the random testing section stating that a safety-sensitive employee must immediately proceed to the testing site upon notification of selection for random drug testing; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible. A similar requirement has been included in appendix J since its implementation in 1994. The requirement in appendix J is clear and has worked well. Therefore, we are adding a parallel requirement in appendix I. Because of this additional paragraph, the remainder of the random testing section is relettered accordingly.

V.E. Testing Based on Reasonable Cause

This action proposes to include the following sentence to paragraph V.E., Testing Based on Reasonable Cause: "An employer may make a reasonable cause determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the supervision of the employer, and may refer the contract employee for a reasonable cause test under the contractor's drug testing program." This change is proposed because there has been confusion about whether an employer can test contract employees on its own premises. The FAA is concerned that some contract employees are not being tested for reasonable cause because their actual employers are not on-site. For example, employees of temporary employment agencies or repair stations may work from a few hours to a number of days or months for an employer, but they may be covered under the temporary agency's drug and alcohol testing programs. In some cases they work independently without supervision while others are supervised by the employer who contracted for their services. We do not believe that waiting for a contractor to send a supervisor to make a determination concerning one of its employees makes sense in many circumstances. In some cases, it may be impossible for a supervisor of the contractor to arrive in a timely manner. Therefore, we propose to change the reasonable cause language to allow, but not require, an employer to have its supervisors make reasonable cause determinations and refer the contract employee for testing under the contractor's drug and alcohol programs.

In addition, this action proposes to delete the two following sentences: 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). This change is proposed because part 40 lists the types of drugs and does not allow for testing of any other drugs.

IX. Implementing an Antidrug Program

We propose eliminating the requirement for companies to have FAA-approved plans. Current consortium members would be required to either register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. In addition, we propose changing the title of this section so it more accurately reflects the section's content.

Currently, there is a requirement for each employer to submit an antidrug program to the FAA for approval. We propose eliminating this requirement for part 121 and 135 certificate holders, and for part 145 certificate holders who choose to have their own FAA testing program. Instead, the FAA would track these certificate holders using the FAA's Operations Specifications Sub-System (OPSS). OPSS is a document management system that is designed to give the FAA ready access to certificate holders' operations specifications. Using this system allows the FAA to quickly make a change to a specific type of certificate holders' operations specifications and to generate the new documents for all of the certificate holders the change would affect. This system will eliminate the time-consuming process of preparing and producing new operations specifications for each carrier. By using OPSS, certificate holders would not need to go to two separate FAA offices, the Flight Standards Service and the Office of Aerospace Medicine, every time they make a change regarding their company. We believe that this change would reduce the certificate holder's overall paperwork burden.

New and existing part 121 and 135 certificate holders, and part 145 certificate holders who choose to have their own FAA program, would be issued an Antidrug and Alcohol Misuse Prevention Operations Specification (OpSpec) by their FAA principal operations inspector or principal maintenance inspector, as applicable. These certificate holders must contact their FAA principal operations inspector or principal maintenance inspector, as applicable, to make any required changes to the OpSpec. For sample OpSpecs for part 121, 135, and 145 certificate holders, see below. These are drafts and are subject to change in the future.

Sample OPSPEC for Part 121 Certificate Holders

A049 Antidrug and Alcohol Misuse Prevention Program
HQ Control: 05/25/00
HQ Revision: 000

The certificate holder who operates under Title 14 Code of Federal Regulations (CFR) part 121 certifies that it will comply with the requirements of 14 CFR part 121 appendices I and J and 49 CFR part 40 for its Antidrug and Alcohol Misuse Prevention Program.

a. Antidrug and Alcohol Misuse Prevention Program records are maintained and available for inspection by the FAA's Drug Abatement Compliance and Enforcement Inspectors at the location listed in Table 1 below:

Table 1

Date:
Telephone Number:
Address:
Address:
City:
State:
Zip code:

b. Limitations and Provisions.
(1) Antidrug and Alcohol Misuse Prevention Program inspections and enforcement activity will be conducted by the Drug Abatement Division. Questions regarding these programs should be directed to the Drug Abatement Division.

(2) When changes occur to the location or phone number where the Antidrug and Alcohol Misuse Prevention Program Records are kept, the certificate holder is responsible for updating this operations specification.

Sample OPSPEC for Part 135 Certificate Holders

A049. Antidrug and Alcohol Misuse Prevention Program
HQ Control: 05/25/00
HQ Revision: 000

The certificate holder who operates under Title 14 Code of Federal Regulations (CFR) Part 135 certifies that it will comply with the requirements of 14 CFR part 121 appendices I and J and 49 CFR part 40 for its Antidrug and Alcohol Misuse Prevention Program.

a. Antidrug and Alcohol Misuse Prevention Program records are maintained and available for inspection by the FAA's Drug Abatement Compliance and Enforcement Inspectors at the location listed in Table 1 below:

Table 1

Date:
Telephone Number:
Address:
Address:
City:
State:
Zip code:

b. Limitations and Provisions.
(1) Antidrug and Alcohol Misuse Prevention Program inspections and enforcement activity will be conducted by the Drug Abatement Division. Questions regarding this program should be directed to the Drug Abatement Division.

(2) The certificate holder is responsible for updating this operations specification when any of the following changes occur:

(a) Location or phone number where the Antidrug and Alcohol Misuse Prevention Program Records are kept.

(b) If the certificate holder's number of safety-sensitive employees goes to 50 and above or falls below 50 safety-sensitive employees.

(3) The certificate holder or operator with 50 or more employees performing a safety-sensitive function on January 1 of the calendar year must submit an annual report to the Drug Abatement Division of the FAA. The certificate holder or operator with fewer than 50 employees performing a safety-sensitive function on January 1 of any calendar year must submit an annual report upon request of the Administrator, as specified in the regulations.

(Select One)

The certificate holder/operator has 50 or more safety-sensitive employees.

The certificate holder/operator has fewer than 50 safety-sensitive employees.

Sample OPSPEC for Part 145 Certificate Holders

a. If the certificate holder has elected to implement an Antidrug and Alcohol Misuse Prevention Program, and the certificate holder performs safety-sensitive functions for a 14 CFR part 121, and 135 certificate holder and/or for a 14 CFR part 91 sightseeing operation as defined by § 135.1(c), then the certificate holder who operates under Title 14 Code of Federal Regulations (CFR) part 145 certifies that it will comply with the requirements of 14 CFR part 121, appendices I and J, and 49 CFR part 40 for its Antidrug and Alcohol Misuse Prevention Program.

b. Antidrug and Alcohol Misuse Prevention Program records are maintained and available for inspection by the FAA's Drug Abatement Compliance and Enforcement Inspectors at the location listed in Table 1 below:

Table 1

Date:
Telephone Number:
Address:
Address:
City:
State:
Zip code:

c. Limitations and Provisions.

(1) Antidrug and Alcohol Misuse Prevention Program inspections and enforcement activity will be conducted by the Drug Abatement Division. Questions regarding these programs should be directed to the Drug Abatement Division.

(2) The certificate holder is responsible for updating this operations specification when any of the following changes occur:

(a) Location or phone number where the Antidrug and Alcohol Misuse Prevention Program Records are kept.

(b) If the certificate holder's number of safety-sensitive employees goes to 50 and above, or falls below 50.

(3) The certificate holder or operator with 50 or more employees performing a safety-sensitive function on January 1 of the calendar year must submit an annual report to the Drug Abatement Division of the FAA. The certificate holder or operator with fewer than 50 employees performing a safety-sensitive function on January 1 of any calendar year must submit an annual report upon request of the Administrator, as specified in the regulations.

(Select One)

The certificate holder/operator has 50 or more safety-sensitive employees.

The certificate holder/operator has fewer than 50 safety-sensitive employees.

This action also proposes changing the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing air traffic control facilities not operated by the FAA or by or under contract to the U.S. military and sightseeing operators as defined by § 135.1(c). The proposed change would allow a single registration requirement for both programs. Likewise, the FAA proposes requiring new and existing non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program to register with the FAA.

Generally, the proposed registration would require less information than the current antidrug plan requires. The only new item (for the antidrug program) would be a statement signed by a company representative that the company would comply with part 121, appendices I and J, and 49 CFR part 40. This proposed registration would allow companies to meet their registration requirements for both the antidrug program and the alcohol misuse prevention program in the same document. The registration information would need to be amended whenever changes are made.

The proposed change to this section would not alter the existing requirements for operators that conduct sightseeing flights as defined in § 135.1(c) to implement antidrug and alcohol misuse prevention programs, except to establish a registration process in lieu of submission of an antidrug program plan and an alcohol misuse prevention program certification statement to the FAA for approval. This proposed change is not intended to affect the applicability of the current exemptions from § 135.1(c) for conducting limited sightseeing flights for nonprofit charitable or community events.

This action also proposes eliminating the 60 days allowed for new employers to ensure

that their contractors are subject to an antidrug and alcohol misuse prevention program. Contractor programs must be implemented by the time the contractor performs safety-sensitive functions for an employer. Because of the safety implications and since the regulations have been in effect since 1988, the FAA believes that it is no longer appropriate to grant employers extra time to ensure that their contractors are subject to an antidrug and alcohol misuse prevention program.

Similarly, employers (part 121 and 135 certificate holders, sightseeing operations as defined in § 135.1(c), and air traffic control facilities not operated by the FAA or by or under contract to the U.S. military), that participate in another company's antidrug and alcohol misuse prevention program would be required to either register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Operations Specification. Part 145 repair stations and non-certificated contractor companies that are covered under an employer's antidrug and alcohol misuse prevention program may continue to be covered under the employer's program. As long as they continue to be covered under an employer's program they may not register with the FAA or obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. A part 145 certificate holder or a non-certificated contractor that performs safety-sensitive functions for an employer may choose to have its own testing programs instead of being covered by an employer's program. In that case, the part 145 certificate holder would be required to either obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA as outlined in the rule. In every case where an employer or a contractor obtains an Antidrug and Alcohol Misuse Prevention Program Operations Specification or registers with the FAA, those companies may still use a service agent to provide program support.

The FAA is proposing two formats for the rule language in this section. While both proposals have the same regulatory requirements, they differ greatly in format. The first option is presented in table format as much as possible. The second option follows the format of the current rule. The FAA requests comments from the public on which format is easier to understand.

Appendix J—Alcohol Misuse Prevention Program

I. General

This action proposes the following changes in paragraph D. Definitions.

- Eliminates the definition of "Administrator" because it is defined elsewhere in the Federal Aviation Regulations.
- Changes "Contractor company" to "contractor." This would be a clarifying change to emphasize that a contractor could be either an individual or a company who contracts with an aviation employer. While experience shows that most aviation employers already understand that a contractor can be a single individual or a

company, we have proposed the change for those who may be uncertain.

There are two additional paragraphs that would be included in this section: "H. Applicable Federal Aviation Regulations" and "I. Falsification." Paragraph H. would include references for regulations involving the alcohol misuse prevention programs to help employers and other individuals. Paragraph I. would be revised to specifically prohibit falsification of any logbook, record, or report required to be maintained under the regulations to show compliance with appendix J. These proposed changes are consistent with proposed changes made in appendix I.

II. Covered Employees

The FAA is proposing to clarify that the decision to cover an employee must be based on the duties that the individual performs rather than employment status (full time, part time, temporary, or intermittent) or job title. The proposed language is not intended to change the current rule's scope. Rather, the FAA is proposing to directly specify that the testing obligations apply to temporary and intermittent employees who perform safety-sensitive functions, regardless of the degree of supervision. The proposed language would clarify that employees, such as mechanic's helpers, who sometimes perform safety-sensitive functions are covered. It also applies to employees in a training status who perform safety-sensitive functions. The clarification is important because experience, correspondence with the aviation industry, and compliance inspections and investigations show that employers do not always understand which employees must be tested.

The FAA is proposing to further clarify that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing. The current rule language states that anyone who performs a safety-sensitive function "directly or by contract" must be tested, however inconsistent informal guidance may have caused some confusion in the past. To clarify the meaning of the regulation and to avoid future confusion, we are proposing to add language to the rule language to emphasize that each person who performs a safety-sensitive function directly or by any tier of a contract for an employer is subject to testing. For additional information on this proposed change, see the discussion earlier in the proposed changes to Appendix I.

D. Reasonable Suspicion Testing

This action proposes to include the following sentence to paragraph D.1. under Reasonable Suspicion Testing: "For the purpose of reasonable suspicion testing, an employer may make a reasonable suspicion determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the supervision of the employer, and may refer the contract employee for a reasonable suspicion test under the contractor's alcohol testing program." This change is proposed because there has been confusion about whether an employer can

test contract employees on its own premises. The FAA is concerned that some contract employees are not being tested on reasonable suspicion. We propose to change the reasonable suspicion testing language to allow, but not require, an employer to have its supervisors make reasonable suspicion determinations and require testing of those contractor employees under the contractor's drug and alcohol programs. For additional information on this proposed change, see the discussion earlier in the proposed changes to appendix I.

IV. Handling of Testing Results, Record Retention, and Confidentiality

We propose to change paragraph B. 4. by adding the sentence "No other form, including another DOT Operating Administration's form, is acceptable for submission to the FAA." This mirrors language in appendix I.

VII. Implementing an Alcohol Misuse Prevention Program

We propose eliminating the requirement for companies to have FAA-approved Antidrug Plan and Alcohol Misuse Prevention Program Certification Statements. Currently, there is a requirement for each employer to submit an Alcohol Misuse Prevention Program Certification Statement to the FAA. We propose eliminating this requirement for part 121 and 135 certificate holders, and part 145 certificate holders who choose to have their own testing program. Instead, the FAA would track these certificate holders using the FAA's OPSS. For a discussion on this proposal, see the discussion in the proposed changes to appendix I.

New and existing part 121 and 135 certificate holders, and part 145 certificate holders who choose to have their own program, would be issued an Antidrug and Alcohol Misuse Prevention OpSpec by their FAA principal operations inspector or principal maintenance inspector, as applicable. These certificate holders would have to contact their FAA principal operations inspector or principal maintenance inspector, as applicable, to make any required changes to the OpSpec.

This action also proposes changing the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing air traffic control facilities and sightseeing operators as defined by § 135.1(c). The proposed change would allow a single registration requirement for both the antidrug and alcohol misuse prevention programs. Likewise, the FAA proposes requiring new and existing non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program to register with the FAA.

The proposed registration would require essentially the same information that appendix J now requires. It has always been the FAA's policy to allow this certification statement to be submitted along with the antidrug plan. This proposed registration would allow companies to meet their registration requirements for both the antidrug program and the alcohol misuse prevention program in a single document.

This action also proposes eliminating the 180 days allowed for new employers to ensure that their contractors are subject to an antidrug and alcohol misuse prevention program. Contractor programs must be implemented by the time a contractor performs safety-sensitive functions for an employer. Because of the safety implications, and since the regulations have been in effect since 1994, the FAA believes that it is no longer appropriate to grant employers extra time to ensure that their contractors are subject to an antidrug and alcohol misuse prevention program.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. § 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

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

Summary: After a number of years of experience inspecting the aviation industry's Antidrug and Alcohol Misuse Prevention Programs, the FAA is proposing to clarify regulatory language, increase consistency between the antidrug and alcohol misuse prevention program regulations where possible, and revise regulatory provisions as appropriate. Specifically, the FAA proposes to change the antidrug plan and alcohol misuse prevention certification statement submission requirements for employers and contractors. The FAA proposes to revise the timing of pre-employment testing. The FAA also proposes to modify the reasonable cause and reasonable suspicion testing requirements. The FAA believes that changing the regulations would improve safety and lessen a burden on the regulated public.

Use of: Title 49 U.S.C., Section 44701 empowers and requires the Administrator of the Federal Aviation Administration (FAA) to prescribe standards applicable to the accomplishment of the mission of the FAA. The information collected will be used to ensure compliance with the drug and alcohol programs.

This project is in direct support of the Department of Transportation's Strategic Plan "Strategic Goal" SAFETY; i.e., to promote the public health and safety by working toward the elimination of transportation-related deaths and injuries.

Respondents (including number of): The likely respondents to this proposed information requirement are employers

holding FAA certificates issued under parts 121, 135, and 145. These respondents will complete an Operations Specification (OpSpec). At this time, the likely number of respondents is 6,887 for the first year, and 490 in subsequent years.

Frequency: The FAA estimates the 6,887 respondents would have a one-time submission in the first year. Subsequently, only new respondents, which we estimate to be approximately 490 per year, would need to respond.

Annual Burden Estimate: This proposal would result in an annual recordkeeping and reporting burden of 2,066 hours for the industry at a cost of \$41,322.00 in the first year. In subsequent years, the proposal would result in an annual recordkeeping and reporting burden of 292 hours for the industry at a cost of \$5,844.00.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by April 29, 2002, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO

Standards and Recommended Practices and has identified no differences with these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

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

In conducting these analyses, the FAA has determined this rule: (1) Has benefits which do justify its costs, is not a "significant regulatory action" as defined in the Executive Order and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (2) would not have a significant impact on a substantial number of small entities; (3) reduces barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Cost of Compliance

The FAA has performed an analysis of the expected costs and benefits of this regulation. In this analysis, the FAA estimated future costs for a 10-year period, from 2001 through 2010. As required by the Office of Management and Budget, the present value of this stream of costs was calculated using a discount factor of 7 percent. All costs in this analysis are in 1999 dollars.

These changes would affect all companies with either antidrug or alcohol misuse prevention plans. There are currently 6,887 companies. In

addition, it would affect employees in 11 separate occupational categories.

The FAA proposes to amend 8 sections of Appendix I and 5 sections of Appendix J of part 121; not all of these proposed changes would have cost implications. Some of the proposed changes to Appendix I parallel proposed changes to Appendix J; the analysis will combine the proposed sectional changes where appropriate. Only those proposed changes with cost implications will be discussed below.

(1) Under Appendix I, under section II, the FAA is proposing to require employers to test all employees, including contractor employees, who perform safety sensitive duties, unless the employees are in a testing program for a contractor to the employer; this proposed change would impose costs. The current provision, which has allowed "moonlighting," is confusing to the industry and is a potential loophole in employee coverage. In most circumstances, the second employer does not and cannot know the employee's status with the first employer.

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

Only certain types of employees tend to moonlight; these include part 121/135 pilots, mechanics, screeners, sightseers, and part 135 on-demand pilots, primarily single owner pilots. The FAA does not know exactly how many of these employees moonlight, but is confident that the number is small. Accordingly, the FAA will base costs on an additional 1 percent of these employees having additional drug tests. The FAA calls for comments on whether this is a correct approximation of the number of employees who currently moonlight and requests that all comments be accompanied by clear documentation.

The FAA projects over 10 years, the total number of tests, due to the requirement that moonlighting employees be tested, would sum to 13,000, costing \$169,200. Costs for employee time for this testing would sum to \$52,600 over 10 years. Total 10-year costs of testing these employees would sum to \$221,500 (present value, \$160,000).

(2) The FAA is proposing to eliminate section V.B. of Appendix I, periodic testing. The current regulation requires that a new employer must periodically drug test part 67 medical certificate holders during the first calendar year of implementation of its program. Periodic testing was important at the beginning of the program when many people were grandfathered into newly approved antidrug programs without pre-employment testing. Since all flightcrew members are currently subject to pre-employment testing and annual random testing, the FAA believes that the elimination of periodic drug testing would not compromise safety and would be a cost savings. Cost savings over ten years sums to \$57,700 (present value, \$40,500).

(3) The FAA proposes several changes to section IX of Appendix I and section VII of Appendix J; two of these changes would have cost implications. Provisions that affect part 121, 135, and 145 certificate holders will be covered in section (3a) and parts 135.1(c), contract ATC's, and other contractors in section (3b).

(3a) The FAA proposes that part 121, 135, and 145 certificate holders would no longer have to submit antidrug and alcohol misuse prevention programs to the FAA for approval. The FAA instead would track these certificate holders using the Operations Specifications Sub-System (OPSS). Using this system would allow the FAA to quickly make a change to a specific type of certificate holders' operations specifications.

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

The 6,887 existing plan holders currently submit 490 amendments each year. The FAA anticipates that 33 companies would send employment change reports each year after their initial year. In addition, 968 companies submit new plans each year. The FAA believes that the number of companies submitting new plans under these proposals would decrease by 50%. Many of the new plans submitted each year come from companies that switch consortia; since this plan would eliminate the need for approved consortia, there would be no need for a company to inform the FAA when it changes service providers.

Each of the existing plan holders would have to spend time to produce the required information, file and store it, and submit it to the FAA. Total first year costs would be \$37,500. Subsequent year costs, which would encompass processing new plans, employment change reports, and amendments sum to \$5,300. Ten year costs, at the company level, equal \$85,400 (present value, \$67,400). At the FAA, the information being submitted to OPSS would have to be processed. First year costs would be \$18,600, while each subsequent year cost would be about \$2,600; costs over ten years sum to \$42,400 (present value, \$33,500).

All companies would also incur cost savings, for they would no longer have to file a combined drug plan and an alcohol certification statement to the FAA. Thus, each of the existing companies would no longer have to spend time to produce these plans and certification statements. Total first year cost savings would be \$225,200. In subsequent years, new companies would have had to handle plans, while existing companies would have had to process amendments; total annual costs savings sum to \$34,400. Ten year cost savings, at the company level, equal \$535,000 (present value, \$420,100).

Ten year net cost savings sum to \$407,300 (present value, \$319,200). (3b) These proposals also would eliminate the antidrug program plan and alcohol misuse prevention program certification statement requirements for new and existing non-Federal air traffic control facilities and operators as defined by § 135.1(c). Instead, as with the certificate holders, a single registration statement requirement would suffice for both programs. In addition, the FAA proposes requiring new and existing non-certificated contractors that elect to have an antidrug and alcohol misuse prevention program to register with the FAA.

The FAA has identified 253 part 135.1(c) operators and 1,004 contractors that would be affected by these proposals; the contractors include 19 Air Traffic Control (ATC) contractors, providing services for 192 ATC contract towers, and 985 other contractors. The FAA does not expect any employment change reports from any of these companies.

Each of the existing plan holders would have to spend time to produce the required information, file and store it, and submit it to the FAA. Total first year costs would be \$8,400, while total annual costs for existing company amendments and new company plans sum to \$1,200. Ten year costs equal \$19,000 (present value, 15,000).

At the FAA, first year costs would be \$4,200, while each subsequent year cost would be about \$600. Costs over ten years sum to \$9,400 (present value, \$7,500).

These companies would no longer have to file an alcohol certification statement and a drug plan, resulting in cost savings. Total first year cost savings would be \$50,300, while total annual costs for the existing company amendments and new company plans sum to \$7,600. Ten year cost savings equal \$118,300 (present value, \$93,000).

Ten year net cost savings sum to \$89,900 (present value, \$70,600). Total cost savings for these proposals sum to \$333,400 (net present cost, \$270,200). Total cost savings to the industry total \$281,600 (present value, \$229,300) and to the FAA total \$51,800 (present value, \$40,900).

Analysis of Benefits

The FAA believes that these proposals could result in enhanced safety and concludes that several specific benefits would accrue from these proposals.

The specific proposed changes to pre-employment testing would result in a number of benefits. The FAA believes that certain employers had misunderstood the current requirements and that the proposed requirements would be better understood. This would reduce the number of pre-employment enforcement cases. From August 1994 through June 2000, the FAA initiated 450 legal enforcement cases dealing with pre-employment violations, or an average of 76 cases per year. The FAA believes that these proposals could reduce the number of legal enforcement cases, saving both the FAA and the industry time and resources.

Pre-employment testing acts as the "gatekeeper." Since this type of testing has the largest number of positives, it is the tool that would keep drug users from getting into the aviation industry in the first place. Most of the other drug and alcohol tests are largely deterrence based. Clarifying pre-employment requirements is important, as the process would reduce the number of mistakes by employers that could lead to employees escaping the pre-employment test, the consequences including both potential safety impacts and enforcement actions for non-compliance.

Companies no longer having to file antidrug or alcohol misuse prevention plans would bring about benefits. In addition to the costs savings discussed above, each company would benefit from a reduction in the paperwork burden; the FAA would also realize these same benefits. Industry has

misunderstood the purpose and intent of these antidrug and alcohol misuse prevention plans, as there is confusion as to what is required by the regulations as opposed to what each company's plan requires them to do. Since the programs and obligations in each plan sometimes differ, eliminating the plans can lead to better compliance with the regulations.

These proposals would increase consistency between Appendices I and J, where possible. Elimination of unnecessary differences would reduce industry inquiries into the current conflicts between the two, saving both individual companies and the FAA time and resources, as well as better compliance with of the regulations.

The proposed changes to reasonable cause testing, which would allow an employer to have its supervisors make reasonable cause determinations and refer the contract employee to the contractor for testing under the contractor's antidrug program, would also have benefits. The amount of time needed for the contractor to send a supervisor to make a determination could mean the difference between the employee testing positive or testing negative, particularly for alcohol testing. This would allow more people to detect and, hence, request a test which is likely to increase safety.

Comparison of Costs and Benefits

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

These proposals would result in a net cost savings of \$333,400 (net present value, \$270,200). In addition, the public could see reduced paperwork and enhanced program management due to the elimination of unnecessary differences between Appendices I and J. The FAA has determined that these proposals would not compromise safety and would lessen the burden on the regulated public. Accordingly, the FAA finds these proposals to be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the

business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

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

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

For this rule, the small entity group is considered to be part 121 and 135 air carriers (Standard Industrial Classification Code [SIC] 4512) and part 145 repair stations (SIC Code 4581, 7622, 7629, and 7699). The FAA has identified a total of 98 of a total of 144 part 121 air carriers and 2,118 of a total of 3,074 part 135 air carriers that are small entities. However, the FAA is unable to determine how many of the 2,412 part 145 repair stations are considered small entities, and so calls for comments and requests that all comments be accompanied by clear documentation.

The annualized cost savings of these proposals to the industry are \$32,600. The FAA is unable to isolate the cost savings to each industry group because some of the proposals apply to individual companies while others apply to the employees. So, the FAA looked at the average cost impact on each of the small entities and also on all of the small entity industry groups. If all the cost savings were recognized by only small part 121 air carriers, small part 125 and part 135 air carriers, or all repair stations, the average cost savings per certificate holder would be \$333, \$15, or \$14, respectively. If the cost savings were divided among all of these business entities, the average cost savings per entity would be \$7 per entity. Therefore, we certify that this action would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Determination

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

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

Environmental Analysis

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

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94-163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

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

The Proposed Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-4402, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105, 46301.

2. Amend appendix I to part 121 as follows:

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

B. In section II, remove the definition of Contractor company; add a new definition of Contractor in alphabetic order; and revise the definitions of Employee and Employer;

C. Revise section III;

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

The additions and revisions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

I. General

* * * * *

D. Applicable Federal Regulations. The following applicable regulations appear in 49 CFR or 14 CFR:

1. 49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

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

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

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

65.46—Use of prohibited drugs.

67.107—First-Class Airman Medical Certificate, Mental.

67.207—Second-Class Airman Medical Certificate, Mental.

67.307—Third-Class Airman Medical Certificate, Mental.

121.429—Prohibited drugs.

121.455—Use of prohibited drugs.

121.457—Testing for prohibited drugs.

135.1—Applicability

135.249—Use of prohibited drugs.

135.251—Testing for prohibited drugs.

135.353—Prohibited drugs.

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

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

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

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

II. Definitions. * * *

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

* * * * *

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

Employer is a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U. S. military. An employer may use a contract employee who is not included under that employer's FAA-mandated antidrug program to perform a safety-sensitive function only if that contract employee is subject to the requirements of the contractor's FAA-mandated antidrug program and is performing work within the scope of employment with the contractor.

* * * * *

III. Employees Who Must be Tested. Each employee who performs a function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this appendix must be subject to drug testing under an antidrug program implemented in accordance with this

appendix. This not only includes full-time and part-time employees, but temporary and intermittent employees regardless of the degree of supervision. Also, employees in a training status and performing safety-sensitive functions must be subject to drug testing in accordance with this appendix.

The covered safety-sensitive functions are:

- a. Flight crewmember duties.
b. Flight attendant duties.
c. Flight instruction.
d. Aircraft dispatcher duties.
e. Aircraft maintenance and preventive maintenance duties.
f. Ground security coordinator duties.
g. Aviation screening duties.
h. Air traffic control duties.

* * * * *

V. Types of Drug Testing Required. * * *

A. Pre-Employment Testing.

1. No employer may hire any individual to perform a function listed in section III of this appendix unless the employer first receives a verified negative drug test result for that applicant.

2. No employer shall allow an individual to transfer from a nonsafety-sensitive to a safety-sensitive job unless the employer first receives a verified negative drug test result for the individual.

3. Employers must conduct another pre-employment test and receive a verified negative drug test result before hiring an applicant or transferring an employee into a safety-sensitive position if more than 60 days elapse between conducting the pre-employment test and hiring or transferring the person into a safety-sensitive function, resulting in that person being brought under an FAA drug-testing program.

* * * * *

5. 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 in accordance with this appendix, to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under section V.A.1. or A.2 of this appendix.

B. Random Testing. * * *

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

* * * * *

D. Testing Based on Reasonable Cause. 1. Each employer shall test each employee who performs a safety-sensitive function and who is reasonably suspected of having used a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous

physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible drug use, 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.
 2. An employer may make a reasonable cause determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the supervision of the employer, but not in the employer's program, and may refer the contract employee for a reasonable cause

test under the contractor's drug testing program.
 * * * * *

OPTION 1 FOR SECTION IX:

IX. *Implementing an Antidrug Program.*

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

If you are existing . . .	You must . . .
1. Part 121 or 135 certificate holder	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your principal certificate operations inspector.
2. Sightseeing operation as defined in § 135.1(c) of this chapter.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave., SW, as Washington, DC 20591 by [60 days from the date the final rule is published].
3. Air traffic control operation not operated by the FAA or by or under contract to the U.S. Military.	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave., SW, Washington, DC 20591 by [60 days from the date the final rule is published].
4. Part 145 certificate holder who has your own antidrug program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your principal maintenance inspector.
5. Contractor who has your own antidrug program	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave., SW, Washington, DC 20591 by [60 days from the date the final rule is published].

B. Use the following schedule for implementing an antidrug program for new certificate holders and contractors. Use it to determine whether you need to have an

antidrug and alcohol misuse prevention program operations specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive

duties must be tested in accordance with this appendix. The schedule follows:

If you . . .	You must . . .
1. Apply for a part 121 certificate or apply for a part 135 certificate.	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA antidrug program no later than the date you start operations, and c. Use only contract employees to perform safety-sensitive functions who are covered by an FAA antidrug program for the entire period they perform safety-sensitive work.
2. Intend to begin sightseeing operations as defined in § 135.1(c) of this chapter.	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division, 800 Independence Ave., SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA antidrug program no later than the date you start operations, and c. Use only contract employees to perform safety-sensitive functions who are covered by an FAA antidrug program for the entire period they perform safety-sensitive work.
3. Intend to begin air traffic control operations as an employer defined in § 65.46 of this chapter (that is, air traffic control facilities not operated by the FAA or by or under contract to the U.S. military).	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division, 800 Independence Ave., SW, Washington, DC 20591, b. Implement an FAA antidrug program no later than the date you start operations, and c. Use only contract air traffic controllers to perform safety-sensitive functions who are covered by an FAA antidrug program for the entire period they perform safety-sensitive work.

C. 1. If you are an individual or company that will provide safety-sensitive services by contract to a part 121 or 135 certificate holder or a sightseeing operation as defined in § 135.1(c) of this chapter, use the chart in paragraph C.2 of this section to determine

what you must do if you opt to have your own antidrug program.
 2. Employees who perform safety-sensitive functions for a part 121 or 135 certificate holder or a sightseeing operation as defined in § 135.1(c) of this chapter must be tested in

accordance with this appendix. The following chart explains what you must do if you opt to have your own antidrug program:

If you . . .	You must . . .
a. Are a part 145 certificate holder	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operation as defined in § 135.1(c) of this chapter, and iii. Meet the same requirements as an employer under this appendix.

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

D. 1. To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your Aviation Flight Standards principal operations inspector or principal maintenance inspector. Provide him/her with the following information:

- a. Company name.
- b. Certificate number.
- c. Telephone number.

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

e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 121 certificate holders are not required to provide this information.)

2. You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification issued by your principal operations inspector or principal maintenance inspector that you will comply with this appendix, appendix J of this part, and 49 CFR part 40.

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

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

- a. Company name.
- b. Telephone number.

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

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

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

f. A signed statement indicating that your company performs safety-sensitive functions for a part 121 or a 135 certificate holder or sightseeing operation as defined by § 135.1(c) of this chapter and that your company will comply with this appendix, appendix J of this part, and 49 CFR part 40.

2. Send this information in *duplicate* to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave. SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the Drug Abatement Division.

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

OPTION 2 FOR SECTION IX:

IX. *Implementing an Antidrug Program.*

A. Antidrug and Alcohol Misuse Prevention Program Operations Specifications and registration with the FAA. Each certificate holder required to have an antidrug program by this appendix shall submit an Antidrug and Alcohol Misuse Prevention Program Operations Specification to its Principal Operations Inspector. All other operators required or electing to have an antidrug program will register with the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 by [60 days from the date the final rule is published].

1. Any person who applies for a certificate under the provisions of part 121 or part 135 of this chapter shall obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification prior to beginning operations under the certificate. The program shall be implemented not later than the date of start of operations. Contractor employees to a new certificate holder must be subject to an antidrug program in accordance with this appendix.

2. Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) shall, not later than 60 days prior to the proposed initiation of such operations, register with the FAA. No operator may begin conducting sightseeing flights prior to registration. The program shall be implemented concurrently with the start of operations. Contractor employees to a new operator must be subject to an antidrug program in accordance with this appendix.

3. 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) shall, not later than 60 days prior to the proposed initiation of such operations, register with the FAA. The antidrug program shall be implemented concurrently with the start of operations. Contractor employees to a new air traffic control facility must be subject to an antidrug program in accordance with this appendix.

4. 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 safety-sensitive functions pursuant to a contract with an employer or an operator may obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification from its Principal Maintenance Inspector. Each certificated repair station shall implement its antidrug program in accordance with this appendix.

5. 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), may submit an antidrug program registration in a manner prescribed by the Administrator. Each contractor shall implement its antidrug program in accordance with this appendix.

6. Each air traffic control facility operating under contract to the FAA shall register with the FAA. Each facility shall implement its antidrug program in accordance with this appendix. 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 antidrug program in accordance with this appendix.

7. Each employer or contractor company must use only contract employees who are covered by an FAA antidrug program for the entire period they perform safety-sensitive work.

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

- a. Company name.
- b. Certificate number.
- c. Telephone number.

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

e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 121 certificate holders are not required to provide this information.)

2. You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification issued by your principal operations inspector or principal maintenance inspector that you will comply with this appendix, appendix J of this part, and 49 CFR part 40.

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

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

- a. Company name.
- a. Telephone number.

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

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

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

f. A signed statement indicating that your company will comply with this appendix, appendix J of this part, and 49 CFR part 40.

2. Send this information in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave. SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the Drug Abatement Division.

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

* * * * *

3. In appendix J to part 121:

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

B. In section II., revise the introductory text;

C. In section III., revise paragraph D.1.;

D. In section IV.B., revise paragraph 4.;

E. Revise section VII.

The additions and revisions read as follows:

APPENDIX J TO PART 121—ALCOHOL MISUSE PREVENTION PROGRAM

* * * * *

I. General.

* * * * *

D. Definitions.

* * * * *

Contractor means an individual or company that performs a safety-sensitive

function by contract for an employer or another contractor.

* * * * *

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

1.49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

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

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

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

65.46a—Misuse of Alcohol.

65.46b—Testing for Alcohol.

67.107—First-Class Airman Medical Certificate, Mental.

67.207—Second-Class Airman Medical Certificate, Mental.

67.307—Third-Class Airman Medical Certificate, Mental.

121.458—Misuse of alcohol.

121.459—Testing for alcohol.

135.1—Applicability.

135.253—Misuse of alcohol.

135.255—Testing for alcohol.

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

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

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

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

II. Covered Employees.

Each employee who performs a function listed in this section directly or by contract (including by subcontract at any tier) for an employer as defined in this appendix must be subject to alcohol testing under an alcohol misuse prevention program implemented in accordance with this appendix. This not only includes full-time and part-time employees,

but temporary and intermittent employees regardless of the degree of supervision. Also, employees in a training status performing safety-sensitive functions must be subject to alcohol testing in accordance with this appendix. The covered safety-sensitive functions are:

* * * * *

III. Tests Required.

* * * * *

D. Reasonable Suspicion Testing

1. An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in § 65.46a, § 121.458, or § 135.253 of this chapter. For the purpose of reasonable suspicion testing, an employer may make a reasonable suspicion determination regarding any contract employee who performs a safety-sensitive function on the employer's premises and under the supervision of the employer, and may refer the contract employee for a reasonable suspicion test under the contractor's alcohol testing program.

* * * * *

IV. Handling of Test Results, Record Retention, and Confidentiality.

* * * * *

B. * * *

4. 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.

* * * * *

OPTION 1 FOR SECTION VII:

VII. How to Implement an Alcohol Misuse Prevention Program.

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

Table with 2 columns: 'If you are an existing . . .' and 'You must . . .'. It lists 5 scenarios for alcohol misuse prevention programs and the corresponding actions required, such as obtaining specifications or registering with the FAA.

B. Use the following schedule for implementing an Alcohol Misuse Prevention

Program. Use it to determine whether you need to have an Antidrug and Alcohol

Misuse Prevention Program operations specification, or whether you need to register

with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The schedule follows:

If you . . .	You must . . .
1. Apply for a part 121 certificate or apply for a part 135 certificate.	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Use only contract employees to perform safety-sensitive functions who are covered by an FAA Alcohol Misuse Prevention Program for the entire period they perform safety-sensitive work.
2. Intend to begin sightseeing operations as defined in § 135.1(c) of this chapter.	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division, 800 Independence Ave., SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Use only contract employees to perform safety-sensitive functions who are covered by an FAA Alcohol Misuse Prevention Program for the entire period they perform safety-sensitive work.
3. Intend to begin air traffic control operations as an employer defined in § 65.46 of this chapter (that is, air traffic control facilities not operated by the FAA or by or under contract to the U.S. military).	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division, 800 Independence Ave., SW, Washington, DC 20591, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Use only contract air traffic controllers to perform safety-sensitive functions who are covered by an FAA Alcohol Misuse Prevention Program for the entire period they perform safety-sensitive work.

C.1. If you are an individual or a company that will provide safety-sensitive services by contract to a part 121 or 135 certificate holder or a sightseeing operation as defined in § 135.1(c) of this chapter, use the chart in paragraph C.2. of this section to determine

what you must do if you opt to have your own antidrug program.
2. Employees who perform safety-sensitive functions for part 121 or 135 certificate holders or sightseeing operations as defined in § 135.1(c) of this chapter must be tested in

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

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

D.1. To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your Aviation Flight Standards Inspector. Provide him/her with the following information:

- a. Company name.
- b. Certificate number.
- c. Telephone number.
- d. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.
- e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 121 certificate holders are not required to provide this information.)

2. You must certify on your Antidrug and Alcohol Misuse Prevention Program Operations Specification, issued by your principal operations inspector or principal maintenance inspector, that you will comply with appendix I of this part, this appendix, and 49 CFR part 40.

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

- E.1. To register with the FAA, submit the following information:
 - a. Company name.
 - b. Telephone number.
 - c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.
 - d. Name the type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).
 - e. Whether you have 50 or more covered employees, or 49 or fewer covered employees.

f. A signed statement indicating that your company performs safety-sensitive functions for a part 121 or a 135 certificate holder or sightseeing operation as defined by § 135.1(c) of this chapter and that your company will comply with appendix I of this part, this appendix, and 49 CFR part 40.

2. Send this information in *duplicate* to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave. SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the Drug Abatement Division.

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

OPTION 2 FOR SECTION VII:

VII. *Implementing an Alcohol Misuse Prevention Program.*

A. Antidrug and Alcohol Misuse Prevention Program Operations Specifications and Registration with the FAA.

1. Each certificate holder required to have an alcohol misuse prevention program (AMPP) by this appendix shall submit an Antidrug and Alcohol Misuse Prevention Program Operations Specification to its principal operations inspector or principal maintenance inspector. All other operators required or electing to have an AMPP will register with the Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

2.a. Any person who applies for a certificate under the provisions of part 121 or part 135 of this chapter shall obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification prior to beginning operations under the certificate. The program shall be implemented not later than the start of operations. Contractor employees to a new certificate holder must be subject to an AMPP in accordance with this appendix.

b. Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) shall, not later than 60 days prior to the proposed initiation of such operations, register with the FAA. No operator may begin conducting sightseeing flights prior to registration. The program shall be implemented concurrently with the start of operations. Contractor employees to a new operator must be subject to an AMPP in accordance with this appendix.

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) shall, not later than 60 days prior to the proposed initiation of such operations, register with the FAA. The AMPP shall be implemented concurrently with the start of operations. Contractor employees to a new air traffic control facility must be subject to an AMPP in accordance with this appendix.

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 safety-sensitive functions pursuant to a contract with an employer or an operator may obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification from its principal maintenance inspector. Each certificated repair station shall implement its AMPP in accordance with this appendix.

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), may submit an AMPP registration in a manner prescribed by the Administrator. Each contractor shall implement its AMPP in accordance with this appendix.

5. Each air traffic control facility operating under contract to the FAA shall register with the FAA. Each facility shall implement its AMPP in accordance with this appendix. 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 AMPP in accordance with this appendix.

6. Each employer or contractor company must use only contract employees who are covered by an FAA Alcohol Misuse Prevention Program for the entire period they perform safety-sensitive work.

B. Obtaining an Antidrug and Alcohol Misuse Prevention Program Operations Specification.

1. To obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification, you must contact your Aviation Flight Standards principal operations inspector or principal maintenance inspector. Provide him/her with the following information:

- a. Company name.
- b. Certificate number.
- c. Telephone number.
- d. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.
- e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 121 certificate holders are not required to provide this information.)

2. You must certify on your Antidrug and Alcohol Misuse Prevention Program

Operations Specification issued by your principal operations inspector or principal maintenance inspector that you will comply with appendix I of this part, this appendix, and 49 CFR part 40.

3. You are required to obtain only one Antidrug and Alcohol Misuse Prevention Program Operations Specification to satisfy this requirement under both appendix I of this part and this appendix.

C. Registering Your Alcohol Misuse Prevention Program with the FAA.

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

- a. Company name.
- b. Telephone number.
- c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.
- d. Name the type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance duties, ground security coordinator duties, aviation screening duties, air traffic control duties).
- e. Indicate whether you have 50 or more covered employees, or 49 or fewer covered employees.
- f. A signed statement indicating that your company will comply with appendix I of this part, this appendix, and 49 CFR part 40.

2. Send this information in *duplicate* to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Ave. SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the Drug Abatement Division.

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

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Jon L. Jordan,
Federal Air Surgeon.

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