

Appendix I to Part 121—Drug Testing Program

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

I. General

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

B. DOT Procedures. Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 comply with the requirements of this appendix and the “Procedures for Transportation Workplace Drug Testing Programs” published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

C. Employer Responsibility. As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this appendix and 49 CFR part 40.

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

1. 49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

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

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

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

DOT agency means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug testing (14 CFR part 61 et al.; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

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

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

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

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

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

Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, as specified in 49 CFR 40.85.

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.191.

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

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

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

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

A. Flight crewmember duties.

B. Flight attendant duties.

C. Flight instruction duties.

D. Aircraft dispatcher duties.

E. Aircraft maintenance and preventive maintenance duties.

F. Ground security coordinator duties.

G. Aviation screening duties.

H. Air traffic control duties.

IV. Substances for Which Testing Must Be Conducted. Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V. of this appendix.

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

A. Pre-Employment Testing.

1. No employer may hire any individual for a safety-sensitive function listed in section III of this appendix unless the employer first conducts a pre-employment test and receives a verified negative drug test result for that individual.

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

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

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

(a) The individual previously performed a safety-sensitive function for the employer and the employer is not required to pre-employment test the individual under section V.A.1.

or V.A.2 of this appendix before putting the individual to work in a safety-sensitive function;

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

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

5. Before hiring or transferring an individual to a safety-sensitive function, the employer must advise each individual that the individual will be required to undergo pre-employment testing in accordance with this appendix, to determine the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, or a metabolite of those drugs in the individual's system. The employer shall provide this same notification to each individual required by the employer to undergo pre-employment testing under section V.A.4. of this appendix.

B. Random Testing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Testing Based on Reasonable Cause. Each employer must test each employee who performs a safety-sensitive function and who is reasonably suspected of having used a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the symptoms of possible

drug use, must substantiate and concur in the decision to test an employee who is reasonably suspected of drug use; except that in the case of an employer, other than a part 121 certificate holder, who employs 50 or fewer employees who perform safety-sensitive functions, one supervisor who is trained in detection of symptoms of possible drug use must substantiate the decision to test an employee who is reasonably suspected of drug use.

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

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

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

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

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

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

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

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

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

C. Release of Drug Testing Information. An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this appendix, or 49 CFR part 40, no employer shall release employee information.

D. Refusal to Submit to Testing. 1. Each employer must notify the FAA within 5 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to a drug test required under this appendix. Send these notifications to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW, Washington, DC 20591.

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

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

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

F. DOT Management Information System Annual Reports. Copies of any annual reports submitted to the FAA under this appendix must be maintained by the employer for a minimum of 5 years.

VII. Medical Review Officer/Substance Abuse Professional, and Employer Responsibilities. The employer shall designate or appoint a Medical Review Officer

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

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

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

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

2. The SAP shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the affirmative, the SAP cannot recommend that the individual be returned to a safety-sensitive function that requires the individual to hold a 14 CFR part 67 medical certificate unless and until such individual has received a medical certificate or a special issuance medical certificate from the Federal Air Surgeon. The receipt of a medical certificate or a special issuance medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this appendix.

3. The employer must forward to the Federal Air Surgeon a copy of any report provided by the SAP, if available, regarding an individual for whom the MRO has provided a report to the Federal Air Surgeon under section VII.C.1 of this appendix, within 12 working days of the employer's receipt of the report.

4. The employer cannot permit an employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty to resume that duty until

the employee has received a medical certificate or a special issuance medical certificate from the Federal Air Surgeon unless and until the employer has ensured that the employee meets the return-to-duty requirements in accordance with 49 CFR part 40.

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

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

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

B. EAP Training Program. Each employer shall implement a reasonable program of initial training for employees. The employee training program must include at least the following elements: The effects and consequences of drug use on personal health, safety, and work environment; the manifestations and behavioral cues that may indicate drug use and abuse; and documentation of training given to employees and employer's supervisory personnel. The employer's supervisory personnel who will determine when an employee is subject to testing based on reasonable cause shall receive specific training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use in addition to the training specified above. The employer shall ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training. The employer shall implement a reasonable recurrent training program for supervisory personnel making reasonable cause determinations during subsequent years. The employer shall identify the employee and supervisor EAP training in the employer's drug testing plan submitted to the FAA for approval.

IX. Implementing an Antidrug Program.

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

If you are . . .

You must . . .

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1. A part 121 or 135 certificate holder... Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
 2. A sightseeing operator as defined in § 135.1(c) of this chapter. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
 3. An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
 4. A part 145 certificate holder who has your own antidrug program. Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector.
 5. A contractor who has your own antidrug program. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
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B. Use the following chart for implementing an antidrug program if you are applying for a part 121 or 135 certificate, if you intend to begin sightseeing operations as defined in §135.1(c) of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. military.) Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you are . . .	You must . . .
1. Apply for a part 121 certificate or apply for a part 135 certificate.	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.
2. Intend to begin sightseeing operations as defined in § 135.1(c) of this chapter.	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 prior to starting operations, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.
3. Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. 1. If you are an individual or company that intends to provide safety-sensitive services by contract to a part 121 or 135 certificate holder, a sightseeing operation as defined in §135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by

of this appendix as if you
were an employer.

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

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

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

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

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

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

- a. Company name.
- b. Telephone number.
- c. Address where your Antidrug and Alcohol Misuse Prevention Program records are kept.
- d. Type of safety-sensitive functions you perform for an employer (such as flight instruction duties, aircraft dispatcher duties, maintenance or preventive maintenance

duties, ground security coordinator duties, aviation screening duties, air traffic control duties).

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

f. A signed statement indicating that: your company will comply with this appendix, appendix J of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 121 or part 135 certificate holder, a sightseeing operator as defined in §135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

2. Send this information in the form and manner prescribed by the Administrator, in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW., Washington, DC 20591.

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

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

X. Annual Reports.

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

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

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

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

B. As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet)

other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: <http://www.faa.gov/avr/aam/adap>.

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

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

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

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

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

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

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

XIII. Waivers from 49 CFR 40.21. An employer subject to this part may petition the Drug Abatement Division, Office of Aerospace Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

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

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

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

[Amdt. 121-240, 59 FR 42928, Aug. 19, 1994; 59 FR 53869, Oct. 26, 1994, as amended at 59 FR 62226, Dec. 2, 1994; Amdt. 121-240, 59 FR 66672, Dec. 28, 1994; 61 FR 37224, July 17, 1996; 65 FR 18887, Apr. 10, 2000; 66 FR 41966, Aug. 9, 2001; Amdt. 121-287, 66 FR 57866, Nov. 19, 2001; 68 FR 75460, Dec. 31, 2003; Amdt. 121-302, 69 FR 1855, Jan. 12, 2004]

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

I. General

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

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

C. Employer Responsibility. As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

D. Definitions.

As used in this appendix—

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

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

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

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

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

Covered employee means a person who performs, either directly or by contract, a safety-sensitive function listed in section II of this appendix for an employer (as defined below). For purposes of pre-employment testing only, the term “covered employee” includes a person applying to perform a safety-sensitive function.

DOT agency means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 65, 121, and 135; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

Employer means a part 121 certificate holder; a part 135 certificate holder; an air traffic control facility not operated by the FAA or by or under contract to the U.S. military; and an operator as defined in 14 CFR 135.1(c).

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

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.261.

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

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

E. Preemption of State and local laws.

1. Except as provided in subparagraph 2 of this paragraph, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

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

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

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

F. Other requirements imposed by employers.

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

G. Requirement for notice.

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

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

1. 49 CFR

Part 40—Procedures for Transportation Workplace Drug Testing Programs

2. 14 CFR

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

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

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

65.46a—Misuse of Alcohol.

65.46b—Testing for Alcohol.

67.107—First-Class Airman Medical Certificate, Mental.

67.207—Second-Class Airman Medical Certificate, Mental.

67.307—Third-Class Airman Medical Certificate, Mental.

121.458—Misuse of alcohol.

121.459—Testing for alcohol.

135.1—Applicability.

135.253—Misuse of alcohol.

135.255—Testing for alcohol.

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

1. Any fraudulent or intentionally false statement in any application of an alcohol misuse prevention program.
2. Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this appendix.
3. Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this appendix.

II. Covered Employees

A. Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract for an employer as defined in this appendix must be subject to alcohol testing under an alcohol misuse prevention program implemented in accordance with this appendix. This not only includes full-time and part-time employees, but temporary and intermittent employees regardless of the degree of supervision. The safety-sensitive functions are:

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

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

III. Tests Required

A. Pre-employment testing

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

1. You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
2. You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).
3. You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
4. You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR Part 40.
5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment test result under this paragraph indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of paragraph F. of section V. of this appendix apply.

B. Post-accident testing

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

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

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

C. Random testing

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

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

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

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

4. (a) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of this appendix for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less

than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

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

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

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

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

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

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

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

- (1) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.
 - (2) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.
 - (3) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.
7. Each employer shall ensure that random alcohol tests conducted under this appendix are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.
 8. Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.
 9. A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.
 10. If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency, the employee shall be subject to random alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's functions.
 11. If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

- (a) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or
- (b) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

D. Reasonable Suspicion 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.

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

3. Alcohol testing is authorized by this section only if the observations required by paragraph 2 are made during, just preceding, or just after the period of the work day that the covered employee is required to be in compliance with this rule. An employee may be directed by the employer to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

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

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

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

(2) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination made under paragraph 2 of this section that there is reasonable suspicion that the employee has violated the alcohol misuse provisions in §65.46a, 121.458, or 135.253 of this chapter.

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

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in §65.46a, §121.458, or §135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

F. Follow-up Testing

1. Each employer shall ensure that the employee who engages in conduct prohibited by §65.46a, §121.458, or §135.253 of this chapter is subject to unannounced follow-up alcohol testing as directed by a SAP.
2. The number and frequency of such testing shall be determined by the employer's SAP, but must consist of at least six tests in the first 12 months following the employee's return to duty.
3. The employer must direct the employee to undergo testing for drugs in accordance with appendix I of this part, in addition to alcohol, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.
4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.
5. A covered employee shall be tested for alcohol under this paragraph only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

G. Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater but Less Than 0.04

Each employer shall retest a covered employee to ensure compliance with the provisions of section V, paragraph F of this appendix, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

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

A. Retention of Records

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

2. Period of retention.

(a) Five years.

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

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

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

(4) Records related to other violations of §65.46a, §121.458, or §135.253 of this chapter.

(b) Two years. Records related to the testing process and training required under this appendix.

(1) Documents related to the random selection process.

(2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(3) Documents generated in connection with decisions on post-accident tests.

(4) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(5) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(6) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(7) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

B. Annual Reports

1. Annual reports of alcohol misuse prevention program results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

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

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

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

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

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

C. Access to Records and Facilities

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

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

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

V. Consequences for Employees Engaging in Alcohol-Related Conduct

A. Removal From Safety-sensitive Function

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

B. Permanent Disqualification From Service

An employee who violates §65.46a(c), 121.458(c), or 135.253(c) of this chapter, or who engages in alcohol use that violates another alcohol misuse provision of §65.46a, 121.458, or 135.253 of this chapter and had previously engaged in alcohol use that violated the provisions of §65.46a, 121.458, or 135.253 of this chapter after becoming subject to such prohibitions is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

C. Notice to the Federal Air Surgeon

1. An employer who determines that a covered employee who holds an airman medical certificate issued under part 67 of this chapter has engaged in alcohol use that violated the alcohol misuse provisions of §65.46a, 121.458, or 135.253 of this chapter shall notify the Federal Air Surgeon within 2 working days.
2. Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of section VI.C. of this appendix within 2 working days of the employer's receipt of the report.
3. All documents must be sent to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW, Washington, DC 20591.
4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.
5. Once the Federal Air Surgeon has recommended under paragraph C.4. of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

D. Notice of Refusals

1. Except as provided in subparagraph 2 of this paragraph D, each employer shall notify the FAA within 5 working days of any covered employee who holds a certificate issued under 14 CFR part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW, Washington, DC 20591.

2. An employer is not required to notify the above office of refusals to submit to pre-employment alcohol tests or refusals to submit to return to duty tests.

E. Required Evaluation and Testing

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

F. Other Alcohol-Related Conduct

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

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

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

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

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening

when an alcohol problem is suspected, including confrontation, referral to any available employee assistance program, and/or referral to management.

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

B. Training for Supervisors

Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under section II of this appendix receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

C. Substance Abuse Professional (SAP) Duties

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O, and this appendix.

VII. How To Implement an Alcohol Misuse Prevention Program

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

----- If you are . . .	You must . . . -----
1. A part 121 or 135 certificate holder...	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector.
2. A sightseeing operator as defined in § 135.1(c).	Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.
3. An air traffic control facility not	Register with the FAA,

operated by the FAA or by or under contract to the U.S. Military. Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.

4. A part 145 certificate holder who has your own alcohol misuse prevention program. Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Maintenance Inspector.

5. A contractor who has your own alcohol misuse prevention program. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591 by March 12, 2004.

B. Use the following chart for implementing an Alcohol Misuse Prevention Program if you are applying for a part 121 or 135 certificate, if you intend to begin sightseeing operations as defined in §135.1(c) of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. military.) Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you . . .	You must . . .
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1. Apply for a part 121 certificate or apply for a part 135 certificate.	a. Have an Antidrug and Alcohol Misuse Prevention Operations Specification, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
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2. Intend to begin sightseeing operations as defined in § 135.1(c) of this	a. Register with the FAA, Office of Aerospace
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chapter..

Medicine, Drug Abatement
Division (AAM-810), 800
Independence Avenue, SW,
Washington, DC 20591 prior
to starting operations,
b. Implement an FAA Alcohol
Misuse Prevention Program
no later than the date you
start operations, and
c. Meet the requirements of
this appendix.

3. Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. military).
- a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW, Washington, DC 20591,
b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and
c. Meet the requirements of this appendix.
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C. 1. If you are an individual or a company that intends to provide safety-sensitive services by contract to a part 121 or 135 certificate holder or a sightseeing operator as defined in §135.1(c) of this chapter, use the chart in paragraph C.2. of this section to determine what you must do if you opt to have your own Alcohol Misuse Prevention Program.

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

If you . . .	You must . . .
a. Are a part 145 certificate holder.....	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you

start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in § 135.1(c) of this chapter, and

iii. Meet the requirements of this appendix as if you were an employer.

b. Are a contractor (e.g., a security company, a noncertificated repair station, a temporary employment service company or any other individual or company that provides safety-sensitive services).

i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW., Washington, DC 20591,

ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 121 or 135 certificate holder or sightseeing operator as defined in § 135.1(c) of this chapter, and

iii. Meet the requirements of this appendix as if you were an employer.

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

a. Company name.

b. Certificate number.

c. Telephone number.

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

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

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

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

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

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

a. Company name.

b. Telephone number.

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

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

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

f. A signed statement indicating that: Your company will comply with this appendix, appendix I of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 121 or part 135 certificate holder, a sightseeing operator as defined by §135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military.

2. Send this information in the form and manner prescribed by the Administrator, in duplicate to: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-810), 800 Independence Avenue, SW., Washington, DC 20591.

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

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

VIII. Employees Located Outside the U.S.

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

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

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

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

[Amdt. 121–237, 59 FR 7390, Feb. 15, 1994, as amended at 59 FR 53086, Oct. 21, 1994; 59 FR 62238, 62239, Dec. 2, 1994; 59 FR 66672, Dec. 28, 1994; 61 FR 37224, July 17, 1996; 65 FR 18887, Apr. 10, 2000; 66 FR 41967, Aug. 9, 2001; Amdt. 121–287, 66 FR 57866, Nov. 19, 2001; 68 FR 75461, Dec. 31, 2003; 69 FR 1858, Jan. 12, 2004; 69 FR 12938, Mar. 18, 2004]

Effective Date Note: By Amdt. 121–237, 60 FR 24766, May 10, 1995, part 121, was amended by suspending appendix J, sec. III, subsection A (“Pre-employment”), effective May 10, 1995.