



**Review of Federal Aviation Administration Drug Testing and Alcohol Misuse
Prevention Programs ¹,
Department of Transportation Procedures for Transportation Workplace Drug and
Alcohol Testing Programs²,
and
Guidance for Developing Non-Federal Drug and Alcohol Testing Programs**

Background

Drug and alcohol testing of aviation industry employees was the result of the U.S. Government vigorously pursuing safety initiatives in the transportation industry. To achieve these safety goals and to prevent accidents involving prohibited drug and alcohol use, comprehensive drug and alcohol regulations were established to ensure that aviation safety is not compromised.

Since 1989, Federal regulations (Drug Testing Program, 14 CFR Part 121, Appendix I) have required drug testing of certain aviation industry employees. At that time, the Federal Aviation Administration's (FAA's) Drug Abatement Program was established to assist the aviation industry in developing and implementing its drug testing program. In 1995, the FAA's drug testing program was expanded to include alcohol testing regulations (Alcohol Misuse Prevention Program, 14 CFR Part 121, Appendix J). In developing these regulations, the FAA carefully balanced the government's commitment to public safety with the privacy rights of employees.

The U.S. Department of Health and Human Services (HHS) has approved testing protocols and positive thresholds for the five drugs in which urinalysis testing is required--cocaine, marijuana, opiates, phencyclidine (PCP) and amphetamines. These protocols and thresholds are crucial to the accuracy and integrity of the testing process. The U.S. Courts have upheld these same testing protocols and thresholds.

The Department of Transportation (DOT) published a final rule on drug testing, Procedures for Transportation Workplace Drug Testing Programs, (49 CFR Part 40) in 1988. This DOT regulation was based on HHS guidelines for Federal agency employee drug testing, with some changes to fit the transportation workplace. DOT added alcohol testing procedures to Part 40 in a 1994 final rule. DOT's rule describes the required procedures for conducting workplace drug and alcohol testing for the Federally regulated transportation industry. All DOT drug and alcohol programs, including FAA's, must

¹ 14 Code of Federal Regulation (14 CFR) Part 121, Appendices I and J

² 49 Code of Federal Regulation (49 CFR) Part 40

comply with Part 40. Only forensic laboratories certified by HHS may be used to conduct drug testing.

Aviation entities that must implement drug and alcohol testing programs under 14 CFR Part 121, Appendices I and J, are not prohibited from developing and implementing a company testing program. A company program may have all the requirements of a Federally mandated drug and alcohol program or it may expand or lessen requirements as it sees fit. Each employer must ensure that the employees understand that the company program and the FAA-mandated programs are separate and distinct. Employees must be advised under whose authority they are being tested and they must be made aware of the consequences that may arise from each program.

Aviation entities required to develop and implement FAA-mandated drug and alcohol programs include those certificate holders operating under Part 135 and Part 121; air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; and operators as defined in 14 CFR 135.1(c). Employees working in aviation-related industries who perform safety-sensitive functions directly or by contract for an employer must be included in an FAA-mandated drug and alcohol program.

FAA's Antidrug and Alcohol Misuse Prevention Program Elements

The following is an outline of the major program elements of FAA's antidrug and alcohol misuse prevention programs:

- Employees who must be tested under Federally mandated drug and alcohol programs (14 CFR Part 121 Appendix I, III. and Appendix J, II.) are those who perform safety-sensitive duties (directly or by contract for covered employers) as listed below:
 - Flight crewmembers
 - Flight attendants
 - Flight instructors
 - Aircraft dispatchers
 - Aircraft maintenance or preventive maintenance personnel
 - Ground security coordinators
 - Aviation screeners
 - Air traffic controllers (non-government)
- Substances for which testing must be conducted under Federally mandated drug and alcohol programs (14 CFR Part 121, Appendix I, IV and Appendix J):
 - Marijuana
 - Cocaine
 - Opiates
 - Phencyclidine (PCP)
 - Amphetamines
 - Alcohol (breath testing only)
- Types of testing required under FAA-mandated drug and alcohol programs (14 CFR Part 121, Appendix I, V. and Appendix J, III.):
 - Pre-employment (not mandatory for alcohol but permitted)
 - Random

Post-Accident
Reasonable Cause/Suspicion
Return-to-Duty
Follow-Up
Retesting of covered employees with an alcohol content of 0.02 or greater but less than 0.04 (alcohol testing only)

- Medical Review Officer (MRO) responsibilities:

An MRO must review and report negative and non-negative drug test results. An MRO must complete the verification process for non-negative test results. In addition to the functions contained in 14 CFR Part 121, Appendix I, VII. A. and C., an MRO must perform the functions and meet the qualifications set forth in 49 CFR Part 40, Subpart G.

- Substance Abuse Professional (SAP) responsibilities:

A SAP must evaluate employees who have violated DOT drug and alcohol regulations and make recommendations concerning education, treatment, follow-up testing, and aftercare. A SAP, in addition to the functions contained in 14 CFR Part 121, Appendix I, VII., B. and C. and Appendix J, VI., C. must perform the functions and meet the qualifications set forth in 49 CFR Part 40, Subpart O.

- Urine Collector responsibilities (49 CFR Part 40, Subparts C through E and I):

A collector must be knowledgeable about 49 CFR Part 40, the current "DOT Urine Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom he/she performs collections. He/she must keep current on any changes to these materials. A collector must undergo training as prescribed in Part 40, such as qualification training, refresher training, and demonstrate proficiency in collections before being qualified as a collector.

- Breath Alcohol Technician (BAT)/Screening Test Technician (SST) responsibilities (49 CFR Part 40, Subparts J through N):

A BAT or SST must be knowledgeable about current DOT guidance and procedures in Part 40 regarding alcohol testing procedures. Each technician must have qualification training, demonstrate proficiency in alcohol testing, and have appropriate refresher training before being qualified as a BAT/SST.

- Employee Assistance Program (14 CFR Part 121, Appendix I, VIII. A. and B., and Appendix J, VI. A. and B.):

➤ Education: An education program for employees must include at least the following—display and distribution of informational material, a community service hotline telephone number for employee assistance and the employer's policy regarding drug use in the workplace. Each employer should also distribute educational materials that explain the requirements of the alcohol misuse program and the employer's policies and procedures with respect to meeting those requirements.

- Training: An employer must implement a reasonable program of initial training for employees that includes 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. Supervisory personnel who will determine when an employee is subject to drug testing (based on reasonable cause) must receive initial and recurrent training on specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. In addition, an employer must ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing receive training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
- Records Maintenance and Retention:

Federal regulations require certain drug and alcohol records be kept for a specified period of time. For detailed information on the records that must be kept and the required length of time for these records, refer to 49 CFR Part 40; and 14 CFR Part 121, Appendix I, VI. A. and Appendix J, IV., A.
- Prohibited Conduct and Consequences
 - Prohibited conduct by employees under FAA-mandated drug and alcohol programs (14 CFR Part 121, Appendices I and J):
 - Alcohol concentration of 0.04 and greater.
 - Use of alcohol prior to performing safety-sensitive duties (flight crewmembers, flight attendants and air traffic controllers may not work within 8 hours after consuming alcohol; mechanics, aircraft dispatchers, flight instructors, screening personnel, and ground security coordinators may not work within 4 hours after consuming alcohol.).
 - Use of alcohol while on duty.
 - Use of alcohol after an accident.
 - Use of prohibited drugs.
 - Refusal to submit to testing (drugs and/or alcohol).
 - Consequences for employees engaging in prohibited conduct under FAA-mandated drug and alcohol programs (14 CFR Part 121, Appendix I, VI. and VII., and Appendix J, V., and 49 CFR Part 40, Subpart O):
 - Removal from safety-sensitive duties until return-to-duty process is completed.
 - Suspension or revocation by the Federal Air Surgeon of certificate of flight crewmembers and air traffic controllers that allows them to work.

- The following procedures must be followed before allowing an employee to resume working in a safety-sensitive position (14 CFR Part 121, Appendix I, V. F. and G. and VII. B. and C. and Appendix J, III. E. and F. and VI. C.) and (49 CFR Part 40, Subpart O):
 - Initial evaluation by a substance abuse professional.
 - Employee must participate in the treatment program recommended by the substance abuse professional.
 - Follow-up evaluation by a substance abuse professional to determine if the employee has successfully carried out the education and/or treatment recommendations.
 - Employee must pass a return-to-duty test.
 - Employee must submit to subsequent follow-up testing established by the substance abuse professional after resuming safety-sensitive functions.
 - Additional information on the requirements of Federal drug and alcohol programs can be found in the following documents: 14 CFR Part 121, Appendix I; 14 CFR Part 121, Appendix J; and 49 CFR Part 40. (Website: <http://www.faa.gov/avr/aam/adap/index.cfm>)

Non-Federally Mandated Testing Programs

A company can develop and implement a drug and alcohol testing program independently of the FAA's Federally mandated program. However, an employer must ensure that the employees understand that the company program and the FAA-mandated programs are separate and distinct. A company drug and alcohol program must be developed and implemented in accordance with state and local laws.

- In developing its own program, a company must:
 - Ensure that employees know that the company program and the FAA-mandated programs are separate and distinct.
 - Advise the employees under whose authority they are being tested.
 - Advise employees of the consequences that may arise from both the company program and FAA-mandated programs.
 - Ensure that testing under the FAA-mandated programs takes precedence over any company testing.
 - Ensure that the Federal Drug Testing Custody and Control Form and the DOT Alcohol Testing Form are not used in conducting testing under the company program.
 - Ensure that the company program is developed in accordance with state and local laws.

In developing its own company testing program, a company may:

- Use the company testing program to reflect the company policies in the area of drug use and alcohol misuse.
- Include all or some of the company employees.
- Conduct tests for reasons other than those required by 14 CFR Part 121, Appendix I, IV., and Appendix J. (example: Testing for workman compensation, incidents where a person is injured or property is damaged)
- Perform drug tests for substances other than the five drugs required by FAA regulations.
- Use different laboratory cut-off levels in detecting substances.
- Use different techniques in drug and alcohol testing.

The above elements of FAA's antidrug and alcohol misuse prevention programs can aid a company in developing its own program. Company drug and alcohol testing programs can complement FAA's Federally mandated program and serve as an additional deterrent to alcohol misuse and drug abuse in the aviation industry.



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