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Industry Drug & Alcohol Testing

Compliance Ahead

Message from the FAA's Drug Abatement Division Director

As I embark on my second year as the Division Director, on behalf of the Federal Air Surgeon, Dr. Susan E. Northrup, I am thrilled to unveil our inaugural newsletter. This new platform serves as an additional channel to share drug and alcohol reg-ulation updates, discuss current issues, and outline best practices for compliance with the Department of Transportation and Federal Aviation Administration's drug and alcohol testing regulations (49 CFR part 40 and 14 CFR part 120).

The drug and alcohol testing of aviation safety-sensitive employees has played a crucial and vital role in safeguarding our skies and protecting the flying public for over three decades. We trust that regulated employers and employees, as well as service agents will find our newsletter insightful and valuable. It is part of our mis-sion to provide resources like this newsletter and our new Advisory Circular (AC 120-126) to help support regulated employers to Do Everything Right and ensure Compliance Ahead!

Thank you for your commitment to safety,
Nancy Rodriguez Brown

In This Issue

DER Awareness Help!

Source: AdobeStock/sebra

The FAA's Industry Drug and Alcohol Testing website is a vital resource for a regulated employer's Designated Em-ployer Representatives (DER).

If you are a DER, you must have knowledge of the regulations and requirements for testing to ensure your company's compliance. Although the FAA does not have a training program for DERs, our DER Awareness webpage has a video series and compliance brochure that outlines critical program requirements to help you Do Everything Right to keep our skies safe! The video series and brochure include topics about pre-employment, random, and return-to-duty testing, the collection process, and employee education. Each video addresses common situations that a DER will encounter and provides best practices to ensure compliance with the FAA and DOT requirements. These resources are available to help educate the DER and establish an employer's internal DER training program.

MIS Reporting Will Start on January 1, 2025

The annual Management Information System (MIS) reporting of FAA-regulated drug and alcohol test results for calendar year 2024 may be entered electronically starting on January 1, 2025, when the Drug and Alcohol Testing Management Information System (DAMIS) website (https://damis.dot.gov) opens. If you are a part 121 operator, or another type of employer or contractor that has 50 or more safety-sensitive employees, you must report your MIS data by March 15, 2025. For all other operators, FAA will notify you of the requirement to report your data by January 1. DAMIS now uses multi-factor authentication login, which started during the 2023 reporting season earlier this year. If you already have a Login.gov account, you should be able to sign in. If you have any questions, issues, or need to create an account, please visit https://login.gov.

More information can be found on our website at www.faa.gov/go/drugabatement under the Reporting Requirements and MIS resource. Although DAMIS will provide on-screen instructions when you enter your report, please contact us at MIS-Drugabatement@faa.gov or 202-304-2971 if you need assistance. Remember to save a copy of your signed/completed MIS report and that you must maintain a copy for five (5) years. Please note, an FAA Drug and Alcohol Compliance and Enforcement Inspector will require you to provide a copy of your MIS report during an inspection of your FAA-mandated drug and alcohol testing program.

49 CFR § 40.25, PRIA Changes, and Making a Good Faith Effort

All DOT-regulated employers must check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties under 49 CFR § 40.25 from previous DOT-regulated employers who employed the employee during the preceding two years, or longer under a company's policy. The applicant's written consent must be specific to each previous or current employer and signed, since electronic and digital signatures are not authorized. If an employee refuses to sign a release, an employer is prohibited from allowing them to perform safety-sensitive work. An employer must send the request to the previous employer(s) in writing either via fax, letter, or email that ensures confidentiality and verifies receipt.

If the employee is a pilot, an employer must comply with § 40.25 and the Pilot Records Database (PRD) requirements under 14 CFR part 111. The PRD is not a replacement for compliance with part 40. Starting September 9, 2024, the Pilot Records Improvement Act (PRIA) and FAA Form 8060-12 are no longer applicable. If an employer is requesting the records for a pilot, they may use the same aviation release information suggested form used for all covered employees. If you need help accessing or entering information into the PRD, contact the FAA's PRD Support Office at 9-amc-avs-PRDSupport@faa.gov.

These records are critical to safety and may identify someone who has a history of drug and/or alcohol violations. If possible, an employer should obtain the information prior to the applicant's first performance of safety-sensitive functions. If that is not feasible, an employer must make and document a good faith effort to obtain the information within 30 days of the date the employee first performs safety-sensitive functions. The regulations do not define what constitutes a good faith effort or require an employer to send its inquiry via certified mail; however, a single attempt without verification of receipt may not be sufficient. If you send the signed request to the employer and it is returned undeliverable, or you fax it and it is not transmitted, you may need to make an additional attempt to contact the previous employer. If you determine that a previous employer is out-of-business, bankrupt, or a foreign entity, you should document your request, including phone calls, emails, or other written communications, and maintain the documentation for three years. If the employee admits to a previous DOT violation or you receive information indicating the person violated the DOT rules, you must verify the individual successfully completed the return-to-duty process outlined in 49 CFR part 40, subpart O before permitting him or her to perform safety-sensitive duties.

If a previous employer fails to respond and you have verified receipt of the request (either via return-receipt, fax confirmation, email reply, or phone call acknowledging receipt), you may contact the FAA's Drug Abatement Division at drugabatement@faa.gov to seek assistance. For more information, including a new hire/transfer checklist and sample forms, please visit our website to ensure you Do Everything Right when hiring safety-sensitive employees.

Giving an Employee a Second Chance, or Not

Source: AdobeStock/Monkey Business

When a safety-sensitive employee has a DOT drug or alcohol rule violation, the employee is prohibited from performing any safety-sensitive functions for a DOT-regulated employer under 49 CFR § 40.285 and FAA's rule under 14 CFR part 120, subpart C or D. An employer must remove the employee from duty and provide a listing of DOT-qualified Substance Abuse Professionals (SAPs) who are readily available to the employee and acceptable to the employer under 49 CFR § 40.287. The decision to return an employee to duty and give them a second chance is up to each employer and outside the scope of the federal testing rules. However, if an employee is offered an opportunity to return to duty, an employer must ensure the employee receives an evaluation by a SAP and successfully complied with the education and/or treatment under 49 CFR part 40, subpart O. Once the employer has the initial and follow-up reports from the SAP and verified the information is compliant with 49 CFR § 40.311, and the employee passes a return-to-duty drug or alcohol test conducted under 14 CFR §§ 120.109(e) and/or 120.217(e), and 49 CFR § 40.305(a), the employee may return to work and the employer is obligated to conduct the follow-up testing under 14 CFR §§ 120.109(f) and/or 120.217(f), and 49 CFR § 40.309. You must maintain the records for five (5) years after the last follow-up test under 49 CFR § 40.333(a)(1).

Employers should decide their position about a second chance or zero tolerance policy and let employees, and applicants for safety-sensitive positions, know about it. If you have a zero-tolerance policy, you may be forced to change to a second chance program for an employee because of a judge, arbitrator, or other court settlement or agreement. If that happens – know what to do before you return the employee to work. The procedures to return an employee to duty apply regardless of how long ago the violation happened, and the follow-up testing follows an employee through breaks in employment and from one employer to another until the program is finished.

Returning an employee to duty after a DOT drug or alcohol violation without meeting the return-to-duty requirements creates a high risk to safety. Make sure you know the requirements as an employer!

Source: AdobeStock/iQoncept

Getting Back to Work after a Drug or Alcohol Test Violation

Source: AdobeStock/Andy Dean

All individuals that perform, either directly or by contract (including subcontract at any tier), a safety-sensitive function listed in 14 CFR §§ 120.105 and 120.215 for a part 119 certificate holder with authority to operate under 14 CFR parts 121 and/or 135, an operator as defined in 14 CFR § 91.147, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military must be subject to drug and alcohol testing under 14 CFR part 120 and 49 CFR part 40. When performing covered functions, an employee is personally responsible for providing a safe work environment for its co-workers and the traveling public by following established work rules and the federal rules on drug use and alcohol misuse. If this applies to you, you need to get educated on the testing requirements. More information is available on the Department of Transportation's employee webpage and the FAA's Q&As for safety-sensitive employees.

If you have a drug or alcohol test violation, which consists of a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a specimen), or conduct prohibited under 14 CFR part 120, subpart C or D, you cannot work again until you have completed the Substance Abuse Professional (SAP) evaluation, referral, and education/treatment process under 49 CFR part 40, subpart O. The first step is a SAP evaluation. Once the SAP determines you successfully completed the education and/or treatment process, you may apply for safety-sensitive work. Keep in mind that an employer's hiring and employment process is outside the scope of the federal testing rules and up to each employer. If an employer offers you employment, the employer must conduct a return-to-duty drug or alcohol test and get a negative result prior to allowing you to work under 14 CFR §§ 120.109(e) and/or 120.217(e), and 49 CFR § 40.305(a). Once you return to work, the employer must conduct your follow-up drug and/or alcohol testing in accordance with 14 CFR §§ 120.109(f) and/or 120.217(f), and 49 CFR § 40.309.

The return-to-duty requirements apply regardless of how long ago your violation occurred and follow you to your new employer. Employers are required by law to provide certain records about your drug and alcohol testing history to your new employer after you provide a specific written release. This ensures that you have met your obligation to complete the return-to-duty process and follow-up testing. If you refuse to sign a release, you will not be hired for a safety-sensitive job.

Source: AdobeStock/Svitlana

Voluntary Safety Program to Report Rule Deviations

Source: AdobeStock/gamjai

FAA-regulated employers and contractors are expected to comply with the DOT and FAA drug and alcohol testing rules under 49 CFR part 40 and 14 CFR part 120. Voluntary safety programs are an integral part of an employer or contractor's program to report deviations from the regulations and are critical to aviation safety for the National Aerospace System. Our Voluntary Disclosure Reporting Program (VDRP) is an incentive for employers and contractors to voluntarily identify, report, and correct instances of regulatory noncompliance. The program encourages compliance with the regulations, fosters safe operating practices, promotes the development of self-audits, and allows for communication to solve problems that enhance and promote aviation safety. Our VDRP is prescribed in FAA Advisory Circular 120-117 (AC) and applies to regulated employers and contractors that detect violations of the federal drug and alcohol testing requirements. Additionally, disclosures accepted by the FAA in accordance with the AC are protected from release to the public in accordance with the provisions of 14 CFR part 193 and FAA Order 8000.89.

To submit a disclosure, you may send your written notification to the FAA's Drug Abatement Division at drugabatement@faa.gov or aam-810-voluntary-disclosures@faa.gov.

When submitting your initial notification of disclosure, it is important to keep in mind the criteria under Section 7.1.3, such as providing notification immediately upon discovery of the noncompliance, usually within 24 hours and before the FAA learns of the apparent violation by other means. We will send you a letter of acknowledgment within 7 days of notification to acknowledge receipt and provide further instructions. You will have 10 days to respond in writing, and the process will generally take 75-days or less from the initial contact. If you have any questions, please contact us at drugabatement@faa.gov or 202-267-8442.

Drug and Alcohol Program Outreach and Education


Source: AdobeStock/wavebreak3

Each year we participate in stakeholder conferences to share FAA-regulated drug and alcohol program news, national testing data/statistics, best practices for maintaining an effective program, resources, and other relevant topics in support of the FAA and DOT testing regulations. Our participation in these conferences provides an excellent opportunity to educate stakeholders and promote safety awareness across the industry at a national and international level.

Over the past year, we have participated as guest speakers at conferences hosted by the Substance Abuse Program Administrators Association (SAPAA), International Forum for Drug and Alcohol Testing (IFDAT), Drug and Alcohol Testing Institute (DATI), and Regional Airline Association (RAA). We are continuously exploring additional venues and opportunities for expanding our external outreach to promote safety by increasing industry awareness of FAA's drug and alcohol testing program requirements. If you would like FAA's Drug Abatement Division to participate in a conference to discuss our drug and alcohol testing program, please send your request to drugabatement@faa.gov.

Reporting it Right!

Source: AdobeStock/Cozine

FAA requires specific reporting of employee violations, outlined in 14 CFR §§ 120.111(d), 120.113(d), and 120.221(c) and (d), including:

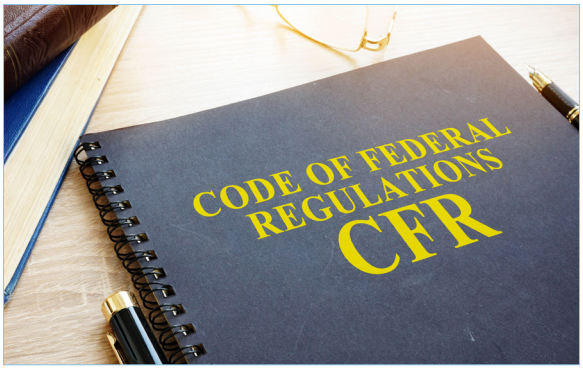
- Verified drug positives and alcohol misuse violations (alcohol test results of 0.04 or greater, pre-duty and on-duty use, and use following an accident) by a covered employee (or applicant) that holds a part 67 medical certificate.
- Refusals to submit to any drug or alcohol test by a covered employee (or applicant) that holds a part 61, 63, or 65 certificate holders.

Reports should be sent to the FAA via a protected email (aam830@faa.gov) or fax (202-267-5200). We encourage employers to use our sample forms available on our website to report the violation, and include any and all supporting documentation (e.g., a legible copy of the federal custody and control form (CCF) and/or DOT alcohol testing form (ATF), or refusal documentation that describes the employee's actions). The more information you can provide upfront will help support our review. Your cooperation and that of your service agent is appreciated and required under 49 CFR § 40.331.

Please note that although violations by non-certificate employees are not required to be reported to the FAA, an employer may report any DOT/FAA drug or alcohol violation to the FAA's Drug Abatement Division for review and investigation.

Contact Us if You Need Help!

If you have a question about the FAA's drug and alcohol testing requirements that apply to aviation employers, employees, or service agents, we are here to help! Visit our website to see if you can find the answer to your question or resources you need to establish a program. If you still have questions, contact us at drugabatement@faa.gov or 202-267-8442 and press 6 to leave a call back message. If you are submitting a registration or have questions about the registration process, write to us at drugabatement@faa.gov or call 202-267-8442 and press 7 to leave a call back message. Calls are returned as soon as possible, and we process new registrations within 15 days.



Source: AdobeStock/Vitali Vodolazskyi

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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law and FAA policies. Employers, contractors, safety-sensitive employees, and service agents should refer to the DOT and FAA regulations, 49 CFR part 40 and 14 CFR part 120 for the Drug and Alcohol Testing Program requirements.