CHANGE

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

National Policy

9120.1D
CHG 1

Effective Date:
04/30/2019

SUBJ: Changes to Administrative and Legal Enforcement Actions Based on Update to FAA Order 2150.3C, FAA Compliance and Enforcement Program

1. Purpose. This change harmonizes FAA Order 9120.1D with the updated FAA Order 2150.3C, FAA Compliance and Enforcement Program, published September 18, 2018. Changes include updated guidance on the collection, preservation and authentication of evidence, updated guidance on assembling the Enforcement Investigative Report (EIR) and what information must be included in Section B, and the new method of determining punitive sanctions. This change also incorporates FAA Order 8000.373A,published October 31, 2018, which sets forth overarching guidance for implementing the FAA Compliance Program (previously referred to as the Compliance Philosophy).

2. Who this change affects. The change affects all Drug Abatement Division personnel, particularly those who investigate, report, or process enforcement actions involving violations of the industry drug and alcohol testing requirements in the Federal Aviation Regulations.

3. Disposition of Transmittal Paragraph. Retain this transmittal sheet until the directive is cancelled by a new directive.

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4. Administrative Information. This Order change is distributed to the Drug Abatement Division branches in Washington headquarters, regions, and centers.

Michael A. Berry, M.D.
Federal Air Surgeon
Aviation Safety

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C/TPAs, collectors, and BATs. Service agent inspections are independent inspections and are not related to a specific company inspection. The standard operating procedures (SOP) for service agent inspections are in Appendix B of this order.

(8) *Inspection Schedule Changes and Cancellations.* While all efforts are made to maintain the inspection schedule as is, at times it is essential to the program to make necessary changes. All requests to change the final inspection schedule must be submitted through the C&E Center Manager to the Program Administration Branch Manager in Washington, DC. Once an inspector's schedule is established, the inspection planning must begin. Prior to canceling an inspection, the inspector must contact the C&E Center Manager. The C&E Center Manager will notify the AAM-810 Branch Manager accordingly. When a scheduled inspection is cancelled, the cancellation must be documented in CETS.

3. Preparation for the Inspection. The inspection lead is responsible for all planning of the assigned inspections. He/she has a critical role in accomplishing the goals of the inspection, ensuring that all critical aspects of an inspection, including planning and reporting, are accomplished according to established procedures (see inspection process guide in Figure 2-2).

a. The inspection lead examines CETS and the drug and alcohol enforcement history of each company to find past noncompliance issues and current potential noncompliance issues (NCTs). This includes previous inspections, open or closed voluntary disclosures, NCTs, and other special issues. This information will help the inspection team identify repeated noncompliance.

b. At a minimum, each inspection will include a review of mandatory testing records (e.g., pre- employment and random testing, positive drug tests, alcohol violations, and refusals), MRO verification, and the records specified in 49 CFR § 40.25. The inspection lead determines if additional areas require evaluation, based on the company's compliance history, such as previous inspections, investigations, voluntary disclosures, compliance actions, administrative actions, legal enforcement actions, etc.

c. Each team member must bring the following inspection tools:

(1) Copy of the regulations

(2) Inspection guide (included in Appendix A of this Order)

(3) Forms (inbriefing/outbriefing sheet, witness form, Small Business Information)

(4) Laptop

(5) Office supplies (note pads, paper clips, stapler, etc.)

d. The inspection lead notifies the C&E Center Manager if additional personnel are needed or if a change in scope (e.g., comprehensive or expanded focus) is necessary.

e. Inspectors must ensure voluntary disclosure issues are addressed, as described in Chapter 4 of this order.

(1) Inspection leads and team members will take part in record review activities and enter their findings in the inspection results section of CETS. Worksheets are available (see New Hire/Transfer Guide in Figure 2-5, Inspection Compliance Issue Guide in Figure 2-6, and Employee Interview Guide in Figure 2-8) to assist inspectors during record review and/or interview phases of the inspection.

(2) Inspectors/investigators are responsible for reviewing, copying, and certifying documents, as assigned by the inspection lead. The inspection lead must ensure each assigned portion of the review process is completed. Each inspector must initial the records review guide in the area of their assignments (see Part 2 of the Inspection Guide in Appendix A) to demonstrate completion. The inspection lead will enter this information into the official inspection record in CETS, and add the copies to the inspection record (in accordance with Appendix F of this Order).

(3) The inspector/investigator must certify the authenticity of evidence by providing an inspector/investigator statement as an Item of Proof to cover the entire case or each individual document. A statement is not required for evidence that is on its face self-authenticating (e.g., FAA-generated records, manuals in the FAA's possession, emails and/or letters). Refer to Order 2150.3, as amended, Chapter 4, para. 9.g, and see Figure 2-7 of this Order for Sample Statements of Authenticity.

(4) To the greatest extent possible, all testing records must be reviewed for the time period established by the C&E Center Manager and inspection lead prior to the inspection. Depending on the circumstances, the time periods may include the past two years, since the last inspection, or the last six months.

(5) Records to review and document, if applicable, include the following categories:

(a) *Positive Drug Test and Alcohol Violation Records*. Inspectors/investigators must review all verified positive drug test results and alcohol violation results, except those that have already been investigated by the Special Investigations Branch (AAM-830) or should have been reported to AAM-830. Inspectors/investigators must also review the records that document the employee's removal from a safety-sensitive function. The company has the authority to terminate or rehabilitate the employee prior to his/her return to safety-sensitive functions. If the employee is returned to safety-sensitive functions, the inspection team must review all return-to-duty records. These records may include the SAP reports, SAP credentials, return-to-duty test result, and follow-up test results. If inspectors discover an individual has returned to work without completing the return- to-duty process, the inspector should address the company violation for not ensuring that the individual completed the return-to-duty process prior to allowing the individual to perform safety sensitive functions. Due to Privacy Act implications for all individuals, and even more stringent restrictions for certificate holders subject to the Pilot's Bill of Rights (PBR), inspectors must refrain from discussing an individual's violation. Inspectors should forward a written statement regarding the individual's violation and copies of any documents found to the Special Investigations Branch manager's email address or AAM830@faa.gov.

(b) *Part 67 Medical Certificate Holders*. If the company fails to report a violation involving the misuse of alcohol, or a verified positive test result by a part 67 medical certificate holder to the Federal Air Surgeon (through the Drug Abatement Division), the inspection lead

noncompliance discoveries should be reported to the C&E Center Manager, who must enter a Non-compliance Transmittal for the Service Agent. The C&E Center Manager and Program Administration Branch Manager must coordinate to schedule an inspection of the Service Agent. Refer to Appendix B for service agent inspections.

8. Evidence Collection. Evidence collection is the most critical element of the inspection. To prove or disprove compliance by the company, sufficient documentation must be reviewed and gathered. Inspectors/investigators must review all evidence relevant to an alleged finding of noncompliance whether it proves or disproves the suspected noncompliance by the company. Inspectors/investigators should gather all available evidence to support the finding of noncompliance, not just a single instance. This evidence must answer the questions about what happened, who was involved, and where, when, and why it occurred. The Best Evidence Checklist tool (available on the Drug Abatement Division's (AAM-800) QMS Web site) provides guidance to inspectors/investigators when collecting evidence. When using this tool, inspectors/investigators must consider the type of company and gather the evidence necessary to establish the finding of noncompliance for that type of company. For more information concerning types of evidence typically most applicable in Drug Abatement investigations, see FAA Order 2150.3, as amended, chap. 4, para. 12.b.

The following describes different types of evidence and how each type should be handled according to Order 2150.3, as amended, chap. 4, para. 10:

a. Physical evidence. Physical evidence consists of tangible objects, such as specimen collection materials or computer software programs relating to random testing. Inspectors/investigators must exercise care in handling physical evidence so that damage, loss, or alteration does not occur. (For more information concerning physical evidence, see FAA Order 2150.3, as amended, chap. 4, para. 10.e.)

b. Witness interviews and statements. Witness interviews may be used to prove noncompliance and may be helpful in leading the inspector/investigator to other people who have direct knowledge or documentation of the issue.

(1) When possible, interview all witnesses who may be aware of a noncompliance issue.

(2) Witness accounts should be written and signed by the author, who may be the witness or the inspector/investigator. Witnesses should be informed that they are not under oath.

(3) The interview must be conducted in a professional manner with consideration for the following (see Employee Interview Guide in Figure 2-8 and Witness Statement Form in Figure 2-9):

(a) Plan the interview and questions in advance.

(b) Be attentive and take notes.

(c) Maintain control of the interview.

(d) Ask direct, relevant, and open-ended questions.

(e) Request a signed and dated statement.

(4) Inspectors and investigators will prepare a record of interview when outlining the interview/conversation conducted with witnesses or alleged violators. It should only state what the witness provided and it must not include the inspector/investigator's personal views and/or opinions. A record of interview is necessary if a witness declines to provide a statement. Inspectors/investigators are encouraged to try to obtain witness statements that are written, signed, and dated by the interviewee. If the interviewee is unwilling to write his or her own statement, the inspector/investigator should write the interviewee's statement and then ask the interviewee to review it for accuracy and sign and date it. If the interviewee is unwilling to do any of the above, the inspector/investigator should write the interviewee's statement as an inspector/investigator statement and ask the interviewee to review the statement to ensure its accuracy. In the last circumstance, the inspector/investigator should document that the interviewee either affirmed the accuracy of the statement or declined to do so and that the interviewee refused to sign the statement. (For more information concerning witness interviews and statements, see FAA Order 2150.3, as amended, chap. 4, para. 10.a.)

(5) Inspector/investigator statements (see Record of Interview in Figure 2-10) are used to document findings that are not available in witness statements, technical publications, logbooks, and manuals, etc. They are also used to document a finding of noncompliance that is observed by the inspector/investigator or to capture an interview when a witness is unwilling to sign a record of interview. Inspector/investigator statements must include the date, time, location, and contact information of those present. They must be personally signed and dated by the inspector/investigator and must not include his/her personal views and/or opinions.

c. Other General Categories of Proof (i.e., Electronic Evidence, Photographs, Video, etc.). For a discussion of other common forms of evidence and how to prepare that evidence as an IOP (when necessary), see FAA Order 2150.3, as amended, chap. 4, para. 10.

9. Documentation of Inspection Results. In preparation for the outbriefing, each inspection lead will, as soon as possible, enter his/her documentation of the inspection results into CETS. The following documentation must be entered into CETS in full detail and according to current guidance in the System Rules for CETS Data Entry:

a. Update of Company Profile. Any new information concerning the company, such as additional locations, company representatives, email address, service agents, etc., must be added to its profile.

b. Outcome of Areas Reviewed and Discovered Issues. The results of an inspection should be noted with the following:

(1) Findings of noncompliance are noted when it is established that an apparent noncompliance of the regulations occurred. It is not sufficient to document only a few findings of noncompliance to show a pattern. All discovered issues must be documented, including issues that are stale. For example, if one regulatory item was out of compliance on multiple occasions, then each occasion must be listed. Documentation of each finding of noncompliance must include a full description of what happened, who was involved, where and when it occurred, and the root cause of the event (e.g., why it occurred).

(2) Concerns are noted when there are issues discovered that are not findings of noncompliance, but may lead to noncompliance if the company and/or service agent fails to

resolve the issue. For example, if a collector has never dealt with a shy bladder situation, he/she may be asked to explain the shy bladder procedures as described in 49 CFR § 40.193. If the collector is unfamiliar with these procedures, this will be noted as an area of concern. It is important that the inspection lead educate the collector to the proper shy bladder procedures.

(3) Open items are noted when the issue cannot be resolved without clarification from management, or the team cannot agree on a specific item during the inspection. These items are revisited after a determination is made in coordination with the C&E Center Manager and the inspection lead.

10. Inspection Conclusion. The inspection lead will meet with the inspection team to assure that all applicable items on the inspection guide were covered and appropriate documentation was gathered, in accordance with this chapter**.** Inspectors must gather sufficient documentation to either demonstrate compliance or support the finding of noncompliance.

At this time the team will review and agree on all findings of noncompliance, areas of concern, or open items. If there is disagreement between the team on a particular item(s), the inspection lead must inform the company at the outbriefing that the item(s) will be left open and addressed later. The inspection lead may document the inspection results in CETS prior to the outbriefing, if time permits.

a. Outbriefing. The inspection lead is responsible for the outbriefing (see the Inbriefing/Outbriefing Guide in Figure 2-3).

(1) All members of the inspection team should attend.

(2) The inspection lead circulates the sign-in sheet for those individuals who were not part of the inbriefing (see Meeting Attendance List in Figure 2-4).

(3) If the inspection resulted in no findings of noncompliance, the inspection lead should advise the company representative that no further documentation will be received.

(4) When an inspection results in findings of noncompliance and/or areas of concern, the inspection lead must clearly and briefly identify the items discovered during the inspection. Do not linger on the issues, but explain them and obtain the company's agreement to initiate immediate corrective action. Advise the company representative that he or she will receive a Report of Inspection letter documenting the results of the inspection and requesting written corrective action for each finding of noncompliance. If the company would like to receive the letter via electronic mail in addition to United States Postal Service (USPS) mail, certified return receipt, you should verify the email address for the President/CEO and the DER.

(5) If there are unclear items that need to be resolved with the company that were not clarified during the actual inspection, the inspection lead should do this during the outbriefing. Similarly, the inspection lead should also use this opportunity to clarify any misunderstandings about the regulations and help to educate the company. While we are responsible for training and educating the company representative, that does not remove the finding of noncompliance. Remember not to linger on the topic, but be clear and concise.

(6) Inspectors/investigators must not display any disagreement on the issues or discuss how the findings of noncompliance will be addressed (e.g., with compliance or

enforcement action). (7) The inspection team should not tell the company representative how to respond to the findings of noncompliance. It is up to the company to decide on how to take corrective action; however, it is important to make it clear that correction action is required to address all findings of noncompliance.

b. Post-outbriefing. Following the outbriefing, the inspection team should gather all records and materials and leave the company.

(1) Do not leave anything behind, including papers, folders, extraneous copies of documents. If the company created reports or documents to support your inspection, take them with you to include in the inspection file.

(2) It is not appropriate to socialize with company representatives or service agents, as this might give the appearance of a conflict of interest.

11. Post-Inspection Activities.

a. Post-inspection inspection team meeting. The inspection lead must hold a post-inspection meeting with the inspectors/investigators to discuss lessons learned and to ascertain that all documentation has been gathered and certified. If the outbriefing report has already been entered into CETS, the inspection lead should have each inspector/investigator approve and initial the outbriefing report.

b. CETS. No later than seven (7) in-office working days of returning from the inspection or within the deadline assigned by the Team Coordinator and/or C&E Center Manager, each inspection lead must ensure that the information gathered is entered into CETS thoroughly and accurately, following the guidance described in the System Rules for CETS Data Entry. Specifically:

(1) Activity narrative in inspection profile;

(2) Resources tab (i.e., date and time of inspection);

(3) Updates to company information (i.e., contacts, email address, locations, etc.);

(4) Identifying the findings of noncompliance, areas of concern, and undecided or open items;

(5) Description of each finding of noncompliance item;

(6) Analysis of the root cause of each finding of noncompliance (e.g., why the noncompliance occurred);

(7) Evidence collected;

(8) Programs tab (i.e., drug and alcohol program self-administered or C/TPA and random protocol information);

(9) Interviews (all interviewees identified and a synopsis of their statements); and

(10) When an inspection results in no findings of noncompliance, this is indicated in CETS.

c. Inspection reporting and correspondence. Inspection reports and correspondence are prepared by the inspection lead using CETS (see Inspection Correspondence Flowchart in Figure 2- 11).

(1) *Outbriefing Report.* The inspection lead is responsible for entering the findings of noncompliance in CETS and generating the Outbriefing report. The inspection lead must obtain concurrence with the inspection team on the Outbriefing report.

(2) *Report of Inspection (ROI) Letter.* Using the letter template contained in CETS, the inspection lead is responsible for preparing a Report of Inspection (ROI) letter. The ROI describes all findings of noncompliance discovered during the inspection. The inspection lead must provide the outbriefing report, evidence to support the findings, and a draft ROI letter to the Team Coordinator and/or C&E Center Manager within seven (7) in-office working days of returning from the inspection or within the deadline assigned by the Team Coordinator and/or C&E Center Manager. The ROI letter and outbriefing report are either returned to the inspection lead for changes or approved. If the correspondence is returned to the inspection lead for changes, the review is documented under the Milestones Section in CETS and the process begins again. After the Team Coordinator and/or C&E Center Manager approve the ROI letter, the inspector must document and enter the final sign-off into CETS, in accordance with the Team Coordinator/C&E Center Manager Standards. The ROI letter must be sent to the company through United States Postal Service (USPS) mail, certified return receipt. The inspection lead may send an ADOBE pdf copy of the signed letter via electronic mail to the President/CEO and/or Designated Employer Representative and copy the Team Coordinator and C&E Center Manager.

d. Risk Analysis. Upon receiving the response to the ROI, the inspection lead is responsible for entering company information and inspection data into Drug Abatement's Automated Risk Calculation (ARC) system, and generating a risk analysis for each finding of noncompliance. The ARC system uses a company's compliance history, the inspection finding, evidence of noncompliance gathered during the inspection, the company's response to immediate corrective action, system-wide data, and other relevant information to calculate the risk level, based on FAA's safety risk management (SRM) principles as identified in Order 8040.4, as amended. For matters that are not determined an unacceptable risk to safety, the ARC incorporates guidelines, principles, and factors identified in the Drug Abatement Strategic Compliance Monitoring Plan, FAA's Compliance and Enforcement Order 2150.3, as amended, and the FAA Compliance Program Order (Order 8000.373). The following are examples of factors used in the risk analysis:

- Corrective action and likelihood of the consequences reoccurring;
- Type of behavior that resulted in noncompliance (e.g., intentional or reckless);
- Compliance history (is it a repeat finding of noncompliance);
- Potential severity of the consequence of noncompliance;

If the company did not respond to the ROI letter, the inspector/investigator should contact the company and encourage a response to provide corrective action. If the company continues not to respond or provide corrective action, this might, depending on the

circumstances, indicate an uncooperative attitude toward compliance or an unwillingness/inability to take appropriate corrective action. A failure to respond to the ROI letter is one factor that should be taken into account as part of the risk analysis.

Taking these and other factors into consideration, the system provides the recommended action (compliance and/or administrative or legal) for each finding of noncompliance. If the inspection evidence will not support compliance, administrative, or legal enforcement action, the inspection lead must recommend that no action be taken.

The inspection lead should discuss the recommended action with the Team Coordinator or C&E Center Manager. If the inspection lead proposes deviating from the action recommended by the final ARC analysis due to mitigating factors, aggravating factors, or other information (e.g., company demographics such as size, type and/or operational experience), he/she should discuss the proposed deviation with his/her Team Coordinator or C&E Center Manager. Deviations are approved by the C&E Center Manager and elevated to the Division Manager when there is a difference of opinion.

e. Types of Recommended Action. According to Order 2150.3, as amended, the inspector or investigator has three options for addressing noncompliance.

(1) Compliance Action. Compliance action may be appropriate when the inspection lead determines that future compliance can reasonably be ensured through compliance action alone, the company displays a constructive attitude that indicates a willingness to comply, and the ARC analysis confirms that the noncompliance does not represent a high safety risk. Compliance action is not appropriate if the conduct that caused the noncompliance disclosed a lack of, or reasonable basis to question, the company's qualifications. Compliance action is not appropriate if the criteria for legal action in Order 2150.3, as amended, are met, or when the company's record shows past or repeated noncompliance, especially when such noncompliance is similar or related to the current noncompliance. Compliance action may not be appropriate if the company has failed to respond to the ROI letter and/or did not provide acceptable corrective action.

The inspection lead determines whether compliance action may be appropriate by reviewing the facts and circumstances of the noncompliance and completing the final ARC analysis. When the final ARC analysis supports compliance action as the appropriate action for one or more findings of noncompliance, the inspection lead determines whether the company's corrective actions during the inspection or provided in response to the ROI letter are acceptable to resolve the issue and ensure the noncompliance does not reoccur. Compliance actions are not assigned an Enforcement Investigative Report (EIR) file number or entered into the Enforcement Information System (EIS). The compliance actions are maintained in CETS.

(2) Administrative Enforcement Action. Administrative enforcement action may be appropriate when the criteria for legal action in Order 2150.3, as amended, are not met, and the inspection lead reasonably and in good faith determines that compliance action will not remediate the noncompliance and ensure future compliance. The inspection lead makes this determination by reviewing the facts and circumstances of the noncompliance and completing the final ARC analysis. When the administrative action criteria and/or ARC analysis support administrative action as the appropriate action for an apparent violation, the inspection lead should consult with the Team Coordinator and/or C&E Center Manager before preparing the administrative action report. When administrative action is decided, CETS will assign an EIR

(3) Legal Enforcement Action. Legal enforcement action is appropriate when the criteria in Order 2150.3, as amended, are met or in circumstances where noncompliance represents an unacceptable risk to safety, as identified by Drug Abatement in published guidance based on analysis of system-wide enforcement data. Legal enforcement action may also be appropriate when the company shows a reluctance to take compliance action, or there is a pattern of repeated noncompliance that indicates an inability or unwillingness to comply with regulatory requirements. The inspection lead makes this determination by reviewing the facts and circumstances of the noncompliance and completing the final ARC analysis. When the legal action criteria and/or ARC analysis support legal action as the appropriate action for an apparent violation, the inspection lead should consult with the Team Coordinator and/or C&E Center Manager before preparing a legal enforcement report. When legal action is decided, CETS will assign an EIS File Number.

f. Action Letter (AL). The inspection lead prepares an Action Letter, using the letter template contained in CETS, after receiving the company's response to the ROI Letter and completing the final ARC analysis. The Action Letter notifies the company which findings of noncompliance were resolved by the corrective action provided in the company's response to the ROI letter, and which findings of noncompliance will be referred for enforcement action (if applicable). The inspection lead bases these determinations on the inspection results, the company's response to the ROI letter, and the completed ARC analysis. If the response to the ROI indicates there is no finding, the Action Letter should indicate the finding is no longer an issue and may be considered closed. The inspection lead must provide the draft Action Letter to the Team Coordinator and/or C&E Center Manager, which is then either returned to the inspection lead for changes or approved. If the letter is returned to the inspection lead for changes, the review is documented under the Milestones Section in CETS and the process begins again. After the Team Coordinator and/or C&E Center Manager approve the Action Letter, the inspector must document and enter the final sign-off into CETS, in accordance with the Team Coordinator/C&E Center Manager Standards. The approved Action Letter must be sent to the company within 120 calendar days from the date of the inspection or within the deadline assigned by the Team Coordinator or C&E Center Manager. The Action Letter is sent through regular United States Postal Service (USPS) mail. Electronic mail is not authorized. If enforcement action (administrative and/or legal) is included in the Action letter, the inspection lead prepares the 2150-5 form, except for the final action, and enters it into the EIS through CETS.

If the response to the ROI and evidence indicates there is no longer a finding of noncompliance for one or more issues, the inspection lead will note this in the AL and indicate that no further action is necessary pertaining to the issue(s). Separate correspondence is not necessary.

g. Legal Enforcement Action. All follow-up activities are entered into CETS. Using CETS, the inspection lead must generate the legal case and provide it to the Team Coordinator and/or C&E Center Manager within 75 calendar days from the date of inspection or within the deadline assigned by the Team Coordinator or C&E Center Manager. The legal enforcement report is either returned to the inspection lead for changes or approved. If it is returned for changes, the review is documented under the Milestones Section in CETS and the process begins again. After the Team Coordinator and/or C&E Center Manager approve the legal enforcement report, he/she must enter the final sign-off into CETS in accordance with Team

Coordinator/C&E Center Manager Standards. Once the legal enforcement report is approved, the Team Coordinator or C&E Center Manager enters into CETS the date that it was sent to the Office of Chief Counsel. Through all steps, each person who reviews the file (i.e., Inspection Lead or Investigator, Team Coordinator, or C&E Center Manager) must sign and date the ARC analysis. A complete, tabbed copy of the legal enforcement action must be retained in the field office and separate from the inspection file. The inspection lead prepares the 2150-5 form, including the legal action, and sends it to EIS through CETS.

Office of the Chief Counsel or Regional Counsel will close out an issue with no action when there is insufficient evidence to prove the finding of noncompliance or apparent violation or the issue is untimely under applicable time limitation for legal enforcement actions (see FAA Order 2150.3, as amended, chap. 4, para. 5). Either situation may result in the issuance of a no action letter. If Counsel returns the case file, the Team Coordinator or C&E Center Manager will provide further instructions.

The FAA's Compliance and Enforcement Program Order 2150.3, as amended, remains the source for inspection and investigation reporting and processing of enforcement activities. Please ensure that you continue to follow the requirements of Order 1600.75 involving "For Official Use Only" (FOUO) designations (see sample FOUO cover sheet in Figure 2-12), and the current Drug and Alcohol Compliance and Enforcement Inspector Handbook, Order 9120.1, as amended. The FOUO cover sheet template is available from the Drug Abatement Division (AAM-800) QMS Web Site and should be placed on top of the Section A tab and behind the last item of proof. All legal enforcement report folders must be prepared using a regular size brown/manila folder. There are two exceptions to this rule: 1) for cases against an individual, the folder must be red, and 2) for cases that are about to go stale, the folder must be bright blue. The top of the folder cover must include a label containing the EIS file number, name of the company (or individual), date of the violation, and the date that the violation becomes stale.

h. Administrative Action. When the final ARC analysis supports administrative action as the appropriate enforcement action for an out of compliance item or items, a letter of correction (LOC) or warning notice (WN) and Section B (Statement of Case) must be prepared for those items using the letter template contained in CETS. An LOC serves the same purpose as a WN, except the LOC is used when there is agreement with the company that corrective action acceptable to the FAA has been taken, or will be taken, within a reasonable time. The inspection lead must provide a draft of the LOC/WN and Section B to the Team Coordinator and/or C&E Center Manager within 75 calendar days from the date of inspection or within the deadline assigned by the Team Coordinator or C&E Center Manager. The LOC/WN and/or Section B is either returned to the inspection lead for changes or approved. If it is returned for changes, the review is documented under the Milestones Section in CETS and the process begins again. After the Team Coordinator and/or C&E Center Manager approve the LOC/WN and Section B, he/she must enter the final sign-off into CETS, submit the 2150-5 to EIS, and print and sign the 2150-5 in accordance with Team Coordinator/C&E Center Manager Standards. The LOC/WN is sent to the company through USPS mail within 120 calendar days from the date of inspection or within the deadline assigned by the Team Coordinator or C&E Center Manager. Electronic mail is not authorized. The inspection lead prepares the final assembled inspection file for archiving. Through all steps, each person who reviews the file (i.e., Inspection Lead or Investigator, Team Coordinator or Center Manager) must sign and date the final ARC analysis.

i. Inspection Follow-Up Documentation. The inspection lead ensures that all follow-

up activities are entered into CETS. He/she must also ensure that any follow-up information, such as documentation of additional corrective action by the company, and incoming and outgoing communication, is obtained and documented in CETS.

j. Inspection File Documentation. The final step in the inspection process is for the inspection lead to compile the inspection file documentation according to Appendix F.

Figure 2-7. Sample Statement of Authenticity

To certify the authenticity of evidence, inspectors/investigators have the option to provide a single inspector/investigator statement as an Item of Proof (IOP) to cover the entire case, or the inspector/investigator statement introducing a document as its own IOP may include the certification.

1. Using a single statement to cover the entire case:

I certify that the following evidence obtained in this case has been verified as true and accurate:

1. {List individual pieces of evidence. Include the date and time it was collected, where it was collected, how it was collected, from whom it was collected, and any other appropriate information.}

_____
{Name of FAA Investigative Personnel}

2. Introducing a specific document as its own IOP:

I certify that the following {insert description of document, e.g., document, copy of document, fax, etc.} was provided to me upon request by {insert name of source} on {insert date and time of collection} at {insert location of collection}.

_____
{Name of FAA Investigative Personnel}

3. Certification of photographs either taken or secured by FAA Investigative Personnel (combine into one document attached to the photograph that becomes an IOP):

I certify that this photograph fairly and accurately depicts {describe the image of the photograph and where it was taken} on {insert date and time it was taken}. This photograph was taken on a {insert type of camera used}.

_____
{Name of FAA Investigative Personnel}

Chapter 4. Voluntary Disclosures

1. General. FAA's Compliance Program Order (Order 8000.373) recognizes that aviation safety depends primarily on voluntary adherence to the regulations. The FAA has developed the Voluntary Disclosure Reporting Program (VDRP) to encourage employers and contractors to examine their own compliance efforts. The Drug Abatement VDRP, described in Advisory Circular (AC) 120-117, allows all employers and contractors (as defined in part 120) to participate by reporting inadvertent violations to the FAA along with a description of their corrective action and comprehensive fix for preventing future violations. Records submitted to the FAA under the Voluntary Disclosure Program are protected from release to the public.

2. Procedures. The Program Administration Branch Manager will assign voluntary disclosure cases to any Drug Abatement employee for processing. When processing voluntary disclosure cases, each assigned Drug Abatement employee must use the information in this chapter, in conjunction with AC 120-117. Failure to follow these procedures may result in a nonconformity and corrective action (NCA). When an employer or contractor has a voluntary disclosure, the inspector/investigator must check the status of the voluntary disclosure during the inspection or investigation. If the disclosure is still pending, the inspector/investigator must gather evidence of the violation, immediate corrective actions, and comprehensive fix. The information should be provided to the Drug Abatement employee who is assigned to the voluntary disclosure. If the disclosure is closed, the inspector/investigator must check to ensure the comprehensive fix has been implemented. All follow-up activities should be entered in CETS.

a. Once an employer or contractor discovers an apparent violation, they may voluntarily disclose it to the FAA, ordinarily within 24 hours. The process for documentation when a disclosure is received is critical to whether it is accepted or rejected. Each Drug Abatement employee is responsible for ensuring that a disclosure is reported immediately to the appropriate Branch or C&E Center Manager.

b. An employer or contractor should submit its initial notification to disclose an apparent violation by written correspondence to the Program Administration Branch Manager. If an employer or contractor notifies an inspection lead of an apparent violation in person during an inspection or investigation, the inspector/investigator should take the information, complete his or her inspection and review of the noncompliance, and inform the employer or contractor to submit the information to the Program Administration Branch Manager as outlined in AC 120-117. As soon as possible, the inspection lead should prepare a detailed statement of the disclosure, including the date, time of the notification, as well as the name and title of the person who provided it, and transmit everything to the C&E Center Manager and Program Administration Branch Manager.

c. After receipt of the disclosure, the Program Administration Branch Manager assigns it to a Drug Abatement employee who determines if the submission meets the conditions outlined in Section 6 of AC 120-117. If the assigned employee determines there is no violation of the regulations, the employer or contractor is advised in writing that its disclosure was not a violation using the letter template contained Drug Abatement Division's (AAM-800) QMS web site.

d. If the disclosure meets the conditions under the VDRP, the assigned employee must

prepare a Letter of Acknowledgment (LOA) for the Program Administration Branch Manager's signature using the letter template contained in Drug Abatement Division's (AAM-800) QMS web site. The LOA is sent through USPS, certified return receipt or electronic mail. The LOA serves two purposes. First, it acknowledges receipt of the initial notification. Second, it identifies, in accordance with AC 120-117, the information that the employer or contractor must submit in writing to the FAA, if not already been provided. This information should be provided to the FAA within 10 working days after the initial notification was made.

e. Upon receipt of the response to the LOA, the assigned employee must analyze the violation and the information, obtain the evidence to show the violation has been corrected, and determine whether the comprehensive fix is acceptable. The determination to reject or accept a voluntary disclosure is based on specific factors of the violation and the employer or contractor's actions. When making this determination, it is important for the assigned employee and Program Administration Branch Manager to follow the procedures established under AC 120-117 and Order 2150.3, as amended. Additionally, it is imperative to coordinate with the Drug Abatement Division Manager and Chief Counsel's Office for disclosures that are complex or require legal guidance.

(1) If the FAA accepts the voluntary disclosure, the assigned employee prepares appropriate written correspondence for the Program Administration Branch Manager's signature using the letter template contained in CETS. The written correspondence is sent through USPS, regular mail. At the conclusion of the disclosure process, the employer or contractor is referred for inspection so we can evaluate the comprehensive fix. The inspection lead annotates the results of his or her evaluation in CETS.

(2) If the voluntary disclosure is rejected, the assigned employee must generate written correspondence for the Program Administration Branch Manager's signature using the letter template contained in Drug Abatement Division's (AAM-800) QMS web site. The written correspondence is sent through USPS, certified return receipt, and the employer or contractor is referred for inspection or investigation in CETS. At the next inspection, the inspection lead should gather evidence of the violation and process inspection paperwork as if the employer or contractor had not disclosed the violation. When closing the inspection, the inspection lead will add notes to the analysis of the voluntary disclosure indicating the findings and action taken with his or her initials and the date information was entered.

f. Once the disclosure is complete, it must be included under the employer or contractor's enforcement record in its C&E Center and CETS profile. In addition to the correspondence and evidence, the C&E Center record must include the following:

(1) *Analysis*. The assigned employee's analysis must include the following (see sample analysis in Figure 4-1):

(a) Summary of the voluntary disclosure. This is a summary of the violation and the circumstances surrounding the violation. This includes a summary of the written and verbal communications to and from the employer or contractor.

(b) Summary of the employer or contractor's comprehensive fix.

(c) List of documentation provided by the employer or contractor.

(d) Analysis and recommendation to reject or accept voluntary disclosure.

(e) Final action.

(2) *Copy of the 2150-5 Form, if applicable*.

implementation, administration, evaluation, and compliance monitoring of the aviation industry drug and alcohol testing program described in 14 CFR part 120. This Web site can be accessed at https://www.faa.gov/go/drugabatement.

f. FAA Orders/Notices/Advisory Circulars (AC). FAA orders, such as the Compliance and Enforcement Program Order 2150.3, as amended, Compliance Program Order 8000.373, Safety Risk Management Policy Order 8040.4, as amended, and notices are directives to its own personnel and designees on how to carry out its responsibilities. ACs, such as the Voluntary Disclosure Reporting Program for Apparent Violations of the Drug and Alcohol Testing Regulations AC 120-117, are issued to provide guidance and information in a designated subject area or to show a method acceptable to the Administrator for complying with a Federal Aviation Regulation. FAA orders, notices, and ACs can be accessed online at http://rgl.faa.gov or http://isddc.dot.gov/OLPWeb.ASP.

g. Compliance Enforcement Tracking Subsystem (CETS). CETS provides the Office of Aerospace Medicine's Drug Abatement Division with automated capabilities for tracking, scheduling, and managing enforcement activities (i.e., inspections, investigations, voluntary disclosures, and other enforcement-related activities). It also maintains a database of cases, future schedules, companies and C/TPAs, and correspondence templates. Guidance on using CETS has been published by AAM-800 in the CETS user manual and in accordance with the current guidance in the System Rules for CETS Data Entry. Inspection, investigation and voluntary disclosure correspondence must adhere to the templates included in CETS. Alternations are only permitted at the direction of the Drug Abatement Division Manager.

h. DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) Web Site. The ODAPC Web site is a comprehensive source of information as it pertains to the implementation and interpretation of the drug and alcohol testing regulations in 49 CFR part 40. This Web site can be accessed at: http://www.transportation.gov/odapc.

i. Drug Abatement Division's SharePoint Site. This site catalogues the Drug Abatement Division's policies and guidance documents, office contacts and all program-related information. The site can be accessed at https://avssp.faa.gov/avs/aam/HQ/AAM800/SitePages/Home.aspx.

j. Safety Performance Analysis System (SPAS). SPAS is a Web-based application that tracks the performance of certificate holder—air operators, air personnel, or air agencies such as schools—and equipment such as aircraft. SPAS collects data over time to show trends and to help FAA inspectors spot anomalies. The data in SPAS comes from multiple external FAA and other government databases. SPAS can relate informational data such as Airworthiness Directives and Service Difficulty Reports.

k. Web-Based Operations Safety System (WebOPSS). WebOPSS is used by the Flight Standards Service (AFS) to collect data on operator activities, disseminate FAA policy to the certificate holder and inspector communities, and generate and manage Authorizing Documents on behalf of the operator. The system is also a repository containing some of the most up-to-date data on the airline industry.

1. (If they have a return-to-duty process) Please explain your process for returning individuals or employees to duty after a verified positive drug test, alcohol violation, or refusal. _____

2. How do you receive the SAP recommendation? _____

3. How do you ensure that all return-to-duty tests are conducted under direct observation? _____

Follow-up Testing

1. Explain your follow-up testing process? _____

2. Who performs your follow-up testing notifications? _____

3. When do you perform your follow-up testing? _____

4. How do you ensure that all follow-up tests are conducted under direct observation? _____

Program Responsibilities

How do you or your Consortium/Third Party Administrator (C/TPA) advise your collector of the required information in § 40.14 (e.g., employee name, ID number, type of test, required direct observation, etc.)? _____

Have you received a result indicating insufficient specimen, dilute, cancelled, or invalid? If not, move on. If so, ask to explain what they did with the result.

LOA	Letter of Acknowledgement
LOC	Letter of Correction
LOI	Letter of Investigation
LON	Letter of Notification
MRO	Medical Review Officer
NCA	Nonconformity and Corrective Action
NCT	Non-Compliance Transmittal
NIDA	National Institute on Drug Abuse
NOCA	Notice of Corrective Action
NOPE	Notice of Proposed Exclusion
NTSB	National Transportation Safety Board
ODAPC	DOT's Office of Drug and Alcohol Policy and Compliance
OPSPEC	Operations Specifications
OPSS	Operations Safety System
OST	Office of the Secretary of Transportation
PBR	Pilot's Bill of Rights
PIE	Public Interest Exclusion
PMI	Principal Maintenance Inspector
POC	Point of Contact
POI	Principal Operations Inspector
ROI	Report of Inspection
SAMHSA	Substance Abuse and Mental Health Services Administration
SAP	Substance Abuse Professional
SCMP	Strategic Compliance Monitoring Plan
SPAS	Safety Performance Analysis System

a. Outbriefing Report w/team member(s) approval (direct initials or email approvals). Inspections that result in no findings should include a copy of the outbriefing report, regardless of whether it contains no "concerns".
b. Documents (Items of Proof (IOP)) obtained during the inspection, which may include:
    - Statements from witnesses, company official, and/or inspector statements.
    - Testing or program documentation.
c. Ensure that the documents are tabbed to reference the Report of Inspection (ROI) letter macro item and certified, dated, and signed in accordance with 2150.3, as amended.

4. **Front of Second Divider**:

a. Response to ROI letter or NOCA (for a Service Agent), including supporting documentation.
b. ROI letter or NOCA (For a Service Agent), including certified mail receipts (if applicable), review documents and guidance (if applicable).

5. **Back of Second Divider**:

a. Action Letter and/or Administrative Action Letter with 2150-5 form and Statement of Case (Section B) (if applicable). Include the review documents and guidance (if applicable).
b. For a service agent inspection, include a copy of the closeout letter or NOPE, along with a printed copy of the out-briefing report (which may include concerns) and documents provided to support the PIE.

6. **Inside Back Cover**:

Miscellaneous material not related to previous sections, e.g., maps of inspection site area, hotel or other logistical information.