



U.S. Department
of Transportation
**Federal Aviation
Administration**

Advisory Circular

Subject: Guidelines to Establish, Implement, and Maintain a DOT/FAA Drug and Alcohol Testing Program

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Initiated By: AAM-800

- 1 PURPOSE.** This advisory circular (AC) provides guidelines for establishing, implementing, and maintaining a drug and alcohol testing program in accordance with [Title 14 of the Code of Federal Regulations \(14 CFR\), part 120](#) and [Title 49 of the CFR \(49 CFR\) part 40](#).

The material in this AC is advisory in nature and does not constitute a regulation, is not legally binding in its own right, and neither the Department of Transportation (DOT) nor the Federal Aviation Administration (FAA) will rely on it as a separate basis for affirmative enforcement action or other administrative penalty. This document describes acceptable means, but not the only means, for demonstrating compliance with the applicable regulations. The FAA will consider other means of compliance that meet the intent of the DOT/FAA testing regulations promulgated in [14 CFR part 120](#) and [49 CFR part 40](#).

The content of this AC does not change or create any additional regulatory requirements, nor does it authorize changes in, or permit deviations from, existing regulatory requirements.

- 2 AUDIENCE.** This AC is addressed to the following persons as listed under [14 CFR § 120.1](#):
- All part 119 certificate holders operating under 14 CFR part 121 or part 135.
 - All air traffic control facilities not operated by the FAA or by or under contract to the U.S. military.
 - All operators as defined in [14 CFR § 91.147](#).
 - Any individual who performs a safety-sensitive function, directly or by contract, listed in 14 CFR §§ [120.105](#) and [120.215](#).¹
 - All part 145 certificate holders who perform safety-sensitive functions and elect to implement a drug and alcohol testing program under part 120.
 - All contractors who elect to implement a drug and alcohol testing program under part 120.

¹ Safety-sensitive functions include flight crewmember, flight attendant, flight instruction, aircraft dispatcher, aircraft maintenance and preventive maintenance, ground security coordinator, aviation screening, air traffic control, and operations control specialist duties. According to [49 CFR § 40.13\(h\)](#), no one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee. Refer to Section 7.2 and Appendix A of this AC for more information.

- 3 **SCOPE.** This AC supports the requirements specified in [14 CFR part 120](#), the FAA's Drug and Alcohol Testing Program, and Title [49 CFR part 40](#), the DOT's Procedural Regulation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, and best practices for establishing, implementing, and maintaining a DOT/FAA drug and alcohol testing program.

3.1 What This AC Canceled. AC 120-126, Guidelines to Establish, Implement, and Maintain a DOT/FAA Drug and Alcohol Testing Program, dated July 10, 2024, is canceled.

- 4 **RELATED REGULATIONS AND DIRECTIVES.** You can locate the current regulations listed below at <http://www.ecfr.gov>, and the current directives at http://www.faa.gov/regulations_policies/:

- [14 CFR part 120 \(titled 'Drug and Alcohol Testing Program'\)](#) describes who will be tested and when, the prohibited conduct and consequences of drug use or alcohol misuse, training, and education requirements, reporting and recordkeeping requirements, and other obligations when establishing a DOT/FAA testing program, as set forth by the FAA.
- [49 CFR part 40 \(titled 'Procedures for Transportation Workplace Drug and Alcohol Testing Programs'\)](#) describes the collection, testing, reporting, rehabilitation requirements, and other obligations that apply to transportation employers, employees, and service agents, as set forth by the DOT and defined under [49 CFR § 40.3](#).
- [FAA's Drug and Alcohol Compliance and Enforcement Surveillance Handbook, Order 9120.1](#), documents the surveillance procedures used by the FAA's Drug Abatement Division to assess the compliance of aviation industry employers, contractors, and service agents with the drug and alcohol testing requirements in the CFR. [FAA's Advisory Circular for Voluntary Disclosure Reporting Program for Apparent Violations of the Drug and Alcohol Testing Regulations \(AC 120-117\)](#) provides information and guidance material on how to voluntarily disclose an apparent violation of the DOT/FAA testing regulations.
- [FAA's Advisory Circular for Pilot Records Database \(PRD\) and Pilot Records Improvement Act \(AC 120-68\)](#) provides air carriers, operators and pilots guidance regarding the PRD requirements outlined in [14 CFR part 111 \(titled 'Pilot Records Database'\)](#).

- 5 **BACKGROUND.** In 1988, the FAA promulgated the drug testing requirements in [14 CFR part 121](#), appendix I to prohibit safety and security-sensitive employees from performing a safety-sensitive function for a commercial operator while the employee had a prohibited drug in his or her system as evidenced by a drug test showing the presence of drugs or drug metabolites. After several transportation incidents with evidence of drug or alcohol use between 1978 and 1991, Congress recognized the safety need for ensuring drug-and alcohol-free transportation employees and passed the [Omnibus Transportation Employee Testing Act of 1991](#). The "Act" amended the Federal Aviation Act of 1958 to require the FAA and other DOT Agencies to implement drug and alcohol testing of safety-sensitive transportation

employees. On February 15, 1994, the FAA published the alcohol testing requirements in [14 CFR part 121](#), appendix J. The drug and alcohol regulations in part 121, appendices I and J, as well as cross-references throughout parts 61, 63, 65, and 135 remained static for almost two decades. On May 14, 2009, the FAA published [14 CFR part 120](#) to streamline these scattered requirements, as it is situated today. The procedures for collecting and testing specimens are established under the DOT's [49 CFR part 40](#), which applies to FAA-regulated employers and employees.

The purpose of the DOT/FAA drug and alcohol testing program is to help prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees who perform safety-sensitive functions in aviation. Testing is designed to detect and deter employees from using prohibited drugs or misusing alcohol while performing safety or security-related duties. The DOT/FAA regulations incorporate specific procedures that ensure program integrity and provide due process. Employers help ensure safety by communicating to employees that use of illegal drugs and alcohol misuse is prohibited.

Since testing began in the late 1980s, thousands of individuals and employees have been prohibited from performing safety-sensitive duties while under the influence of drugs and alcohol. To review DOT testing data reported by employers that submitted an annual Management Information System (MIS) report since 2003, visit the DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) website at www.transportation.gov/odapc/DOT_Agency_MIS_Data.

- 6 DRUG AND ALCOHOL TESTING PROGRAM REQUIREMENTS.** This AC outlines the process and best practices for an employer² and contractor³ to start and maintain a testing program that is compliant with [14 CFR part 120](#) and [49 CFR part 40](#) (as outlined in paragraph 4 of this AC). The FAA's Drug and Alcohol Testing Program regulation, [14 CFR part 120](#), prescribes the drug testing requirements under subpart E, and the alcohol testing requirements under subpart F. The two subparts are similar in the types of testing, covered employees, reporting requirements, and implementation procedures to establish a program. There are small differences in training and when an employee is subject to testing.
- 7 HOW TO ESTABLISH A DOT/FAA DRUG AND ALCOHOL TESTING PROGRAM.** In accordance with 14 CFR §§ [120.117](#) and [120.225](#), which prescribe the requirements to implement a drug and alcohol testing program, each employer or contractor must establish its DOT/FAA drug and alcohol testing program using a Drug and Alcohol Testing Program Operations Specification (OPSS), Letter of Authorization (LOA), or Drug and Alcohol Testing Registration with the FAA. Each employer or contractor must provide the FAA with

² Defined in [14 CFR § 120.7\(g\)](#) as 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.

³ Defined in [14 CFR § 120.7\(d\)](#) as an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

specific information⁴ to establish its program and certify compliance with the DOT/FAA testing regulations specified in [14 CFR part 120](#) and [49 CFR part 40](#). Once the program is established, the employer is authorized to conduct DOT/FAA drug and alcohol testing and must implement the program based on the type of operation it conducts.

This section explains how each type of employer can establish and implement its program, and any requirements for updating or renewing the program information (if necessary).

7.1 Part 119 Certificate Holder with Authority to Operate under Part 121 and/or 135. (See 14 CFR §§ [120.117](#)(a)(1) and (b)(1), [120.225](#)(a)(1) and (b)(1))

If you are a part 119 certificate holder with authority to operate under parts 121 and/or 135, you must obtain a Drug and Alcohol Testing Program OPSS paragraph (A449) by contacting your FAA Principal Operations Inspector (POI).

Once your operating certificate and A449 are active, you must implement your FAA-mandated testing program, meeting the requirements of [14 CFR part 120](#) and [49 CFR part 40](#), no later than the date you start operations. Refer to Section 7 of this AC for information about implementation of a testing program. Because the FAA issues the A449 on reliance, in part, of information you provided about the particular program, you must notify your POI in accordance with 14 CFR §§ [120.117](#)(d)(4) and [120.225](#)(d)(4) when the A449 information changes. The A449 must remain part of your OPSS while your operating certificate is active. If you have a lapse in your operations or testing program, or you merge with or acquire another company, you must contact the FAA's Drug Abatement Division immediately at drugabatement@faa.gov or 202-267-8442 for guidance, as the basis upon which the A449 was issued will have changed.

Once your A449 is active, you are obligated to provide the FAA's Drug Abatement Division representatives access to your facility and records for review upon request in accordance with [49 CFR § 40.331](#).⁵

7.2 Operator as Defined in 14 CFR § 91.147.⁶ (See 14 CFR §§ [120.117](#)(a)(2) and (b)(2), [120.225](#)(a)(2) and (b)(2))

If you are an air tour operator as defined under [14 CFR § 91.147](#), you must register your program by obtaining an LOA. You may obtain an LOA by contacting the Flight Standards District Office (FSDO) nearest to your principal place of business. When requesting your LOA from the FSDO, you are not obligated to demonstrate you have

⁴ Information includes the company name, certificate number (for part 121, 135, and 145 operators), telephone number, address where the drug and alcohol testing program records are kept, list of the types of safety-sensitive employees included in the program (for operators with an A049 or registration), and whether you have 50 or more, or 49 or fewer safety-sensitive employees.

⁵ Reference [49 CFR § 40.331](#), Inspection Authority under the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. §§ 45101-45107) and FAA's general statutory authority outlined in 49 U.S.C. §§ 106(g) and 44701. FAA's Drug and Alcohol Compliance and Enforcement Surveillance Handbook, Order 9120.1, is available at https://www.faa.gov/regulations_policies/orders_notices/index.cfm/go/document.information/documentID/1041756.

⁶ 14 CFR 91.147 prescribes regulations for air tour operator conducting passenger-carrying flights for compensation or hire in an airplane or helicopter within a 25-statute mile radius of an airport.

implemented a drug and alcohol testing program. The FSDO will issue your LOA as an OPSS paragraph (A049), which will satisfy the requirements for registering your program.

Once your A049 is active, you must implement your testing program, meeting the requirements of [14 CFR part 120](#) and [49 CFR part 40](#), no later than the date you start operations. Refer to Section 7 of this AC for information about implementation of a testing program. Because the FAA issues the A049 on reliance, in part, on information you provided about the particular program, you must notify the FSDO in accordance with 14 CFR §§ [120.117\(e\)\(3\)](#) and [120.225\(e\)\(3\)](#) when the A049 information you initially provided changes. If you have a lapse in your operations or testing program, or you merge with or acquire another company, you must contact the FAA's Drug Abatement Division immediately at drugabatement@faa.gov or 202-267-8442 for guidance, as the basis upon which the A049 was issued will have changed.

Once your A049 is active, you are obligated to provide the FAA's Drug Abatement Division representatives access to your facility and records for review upon request in accordance with [49 CFR § 40.331](#).

7.2.1 A part 121 or 135 operator that also conducts air tour operations under 14 CFR § 91.147. (See 14 CFR §§ [120.117\(a\)\(3\)](#) and (b)(3), [120.225\(a\)\(3\)](#) and (b)(3)) If you are a part 121 or 135 operator that also conducts air tour operations as defined in [14 CFR § 91.147](#), you must obtain both the A449 and A049 in accordance with 14 CFR §§ [120.117\(a\)\(1\)](#) and (2), and [120.225\(a\)\(1\)](#) and (2) (described in section 6.1 and 6.2 herein). To document the A049 as part of the operator's program, the FSDO or POI will add the 'A3' annotation and part 119's certificate number to the A049. The annotation⁷ will allow the FSDO and the FAA's Drug Abatement Division to document the LOA without requiring a separate testing program. You must notify the FAA's Drug Abatement Division in writing at drugabatement@faa.gov that your part 121 or 135 program will include the employees that perform air tour operations in accordance with 14 CFR §§ [120.117\(a\)\(3\)](#) and [120.225\(a\)\(3\)](#).

7.3 Air Traffic Control Facility Not Operated by the FAA, by, or under Contract to the U.S. Military. (See 14 CFR §§ [120.117\(a\)\(4\)](#) and (b)(4), [120.225\(a\)\(4\)](#) and (b)(4)) If you operate an air traffic control facility that is not operated by the FAA or by or under contract to the U.S. Military, you must register with the FAA's Drug Abatement Division. Visit www.faa.gov/go/drugabatement for a sample registration form and instructions.

Once your registration number is active, you must implement your FAA-mandated testing program, meeting the requirements under [14 CFR part 120](#) and [49 CFR part 40](#),

⁷ The use of the annotations are explained in FAA Order 8900.1, Chapter 18, Sections [3](#) and [10](#), as part of issuing the A449 and/or A049.

no later than the date you start performing safety-sensitive functions. Because the FAA issues the registration on reliance, in part, of information you provided about the particular program, you must notify the FAA's Drug Abatement Division in accordance with 14 CFR §§ [120.117\(f\)\(4\)](#) and [120.225\(f\)\(4\)](#) when the information changes or 30 days before it expires. The registration is valid until you cancel it, or your facility is no longer operating. If you have a lapse in your operations or testing program, or you merge with or acquire another company, you must contact the FAA's Drug Abatement Division immediately at drugabatement@faa.gov or 202-267-8442 for guidance, as the basis upon which the registration was issued will have changed.

Once your registration is active, you are obligated to provide the FAA's Drug Abatement Division representatives access to your facility and records for review upon request in accordance with [49 CFR § 40.331](#).

7.4 Part 145 Repair Station that Conducts its own Drug and Alcohol Testing

Program. (See 14 CFR §§ [120.117\(a\)\(5\)](#) and (c)(1), [120.225\(a\)\(5\)](#) and (c)(1)) If you are a part 145 certificated repair station and elect to conduct your own DOT/FAA drug and alcohol testing to perform safety-sensitive duties by contract for an employer, you must obtain a Drug and Alcohol Testing Program OPSS paragraph (A449) by contacting your FAA Principal Maintenance Inspector (PMI). The PMI will document your A449 with an 'A1' as a stand-alone program, where the employees are not tested by another employer or contractor. While some repair stations are authorized for a specific rating, this limitation does not affect the A449 or the repair station's ability to conduct its own FAA drug and alcohol testing program. The A449 is merely the documentation to ensure that the repair station conducts its own testing in accordance with the drug and alcohol testing regulations.

Once your A449 is active, you must implement your FAA-mandated testing program, meeting the requirements under [14 CFR part 120](#) and [49 CFR part 40](#) as an employer, no later than the date you start performing safety-sensitive functions for an employer. Refer to Section 7 of this AC for information about implementation of a testing program. Because the FAA issues the A449 on reliance, in part, on information you provided about the particular program, you must notify your PMI in accordance with 14 CFR §§ [120.117\(d\)\(4\)](#) and [120.225\(d\)\(4\)](#) when the A449 information changes. If you no longer perform safety-sensitive functions for an employer, we suggest you remove the A449 and stop testing. To remove your A449, contact your PMI. In accordance with [49 CFR § 40.13\(h\)](#), no one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee as defined in [14 CFR § 120.7\(f\)](#). If you have a lapse in your operations or testing program, or you merge with or acquire another employer, you must contact the FAA's Drug Abatement Division immediately at drugabatement@faa.gov or 202-267-8442 for guidance, as the basis upon which the A449 was issued will have changed.

Once your A449 is active, you are obligated to provide the FAA's Drug Abatement Division representatives access to your facility and records for review upon request in accordance with [49 CFR § 40.331](#).

7.4.1 If your repair station employees are tested under an affiliated contractor registration, your PMI will include the ‘A2’ annotation and registration number as part of your A449. The registered party is responsible for compliance with the drug and alcohol testing regulations.

7.4.2 If your repair station certificate is held by a part 121 or 135 or air tour operator as defined in [14 CFR § 91.147](#), and the employees are tested under an A449 or A049, your PMI will include the ‘A3’ annotation and certificate or LOA number as part of your own A449. The part 121, 135, or air tour operator is responsible for compliance with the drug and alcohol testing regulations.

7.5 Contractor that Conducts its own Drug and Alcohol Testing Program. (See 14 CFR §§ [120.117](#)(a)(6) and (c)(2), [120.225](#)(a)(6) and (c)(2)) If you are an individual or company and elect to conduct your own DOT/FAA drug and alcohol testing program to perform safety-sensitive duties by contract for an employer, including subcontract at any tier, you must register with the FAA’s Drug Abatement Division. Visit www.faa.gov/go/drugabatement for a sample registration form and instructions.

Once your registration is active and the FAA issued you a specific identification number, you must implement your FAA-mandated testing program, meeting the requirements under [14 CFR part 120](#) and [49 CFR part 40](#) as an employer, no later than the date you start performing safety-sensitive functions for an employer. Because the FAA issues the registration on reliance, in part, of information provided about the particular program, you must notify the FAA’s Drug Abatement Division in accordance with 14 CFR §§ [120.117](#)(f)(4) and [120.225](#)(f)(4) when the registration information changes or 30 days before it expires. The registration is valid until you cancel it, or it expires and is not renewed. If you have a lapse in your operations or testing program, or you merge with or acquire another company, you must contact the FAA’s Drug Abatement Division immediately at drugabatement@faa.gov or 202-267-8442 for guidance, as the basis upon which the registration was issued will have changed. If you no longer perform safety-sensitive functions for an employer, we suggest you cancel your registration and stop testing. In accordance with [49 CFR § 40.13](#)(h), no one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee, as defined in [14 CFR § 120.7](#)(f).

Once your registration is active, you are obligated to provide the FAA’s Drug Abatement Division representatives access to your facility and records for review upon request in accordance with [49 CFR § 40.331](#).

7.5.1 If your registration includes employees that perform safety-sensitive functions for more than one part 145 repair station, it will be documented on the registration. The part 145’s PMI will include the ‘A2’ annotation and registration number on the part 145’s A449. If the information changes, you must amend your registration, as the basis upon which the registration was issued will have

changed. As the registered contractor, you are responsible for compliance with the drug and alcohol testing regulations.

8 HOW TO IMPLEMENT AND MAINTAIN A DOT/FAA DRUG AND ALCOHOL TESTING PROGRAM IN ACCORDANCE WITH 14 CFR PART 120 AND 49 CFR PART 40. Once you establish your DOT/FAA testing program, you must implement and maintain your program to ensure safety-sensitive employees, hired directly or by contract (including subcontract at any tier), are subject to testing in accordance with [14 CFR part 120](#) and [49 CFR part 40](#). Compliance is paramount to ensuring the safety of the traveling public; therefore, you should dedicate the time and resources to set up and maintain a compliant program. You should establish your testing policies and document them in writing to ensure your representatives and employees have a clear understanding of the requirements and consequences of the program. Implementation information is contained in this section to help you, and Appendices A and B of this AC provide additional detail about the safety-sensitive employee functions and random testing.

To get started, you should review this AC and the DOT/FAA testing regulations in their entirety. You should visit the FAA's website at www.faa.gov/go/drugabatement and the DOT's website at www.transportation.gov/odapc to review the many resources available to help you (including an Employee and Employer Guide, videos, sample policies, etc.). Prepare yourself before you start! Remember that you may hire a service agent⁸ to assist you in your collections, managing your random testing, and providing employee training or educational materials. Keep in mind that each employer is responsible for all the actions of its service agents and representatives as it relates to compliance with the DOT/FAA regulations, as specified in 14 CFR §§ [120.103\(c\)](#), [120.203\(c\)](#), and [49 CFR § 40.11\(b\)](#).

As an overview, with further detail in following sections, when developing your DOT/FAA testing program, you must:

- Authorize an employee to act as the Designated Employer Representative (DER) in accordance with [49 CFR § 40.3](#).
- Determine which employees are performing safety-sensitive functions and subject to testing in accordance with [49 CFR § 40.13\(h\)](#) and 14 CFR §§ [120.105](#) and [120.225](#).
- Conduct pre-employment drug testing and obtain negative results prior to hiring safety-sensitive employees or transferring employees into safety-sensitive positions in accordance with [14 CFR § 120.109\(a\)\(1\)](#) and (a)(2).
- Obtain written consent and request drug and alcohol testing information for employees who seek to perform safety-sensitive duties in accordance with [49 CFR § 40.25](#).

⁸ A service agent is defined in [49 CFR § 40.3](#) as any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, breath alcohol technicians (BATs) and screening test technicians (STTs), laboratories, medical review officers (MROs), substance abuse professionals (SAPs), and consortium/third party administrators (C/TPAs).

- Educate and train employees and supervisors on the effects and consequences of drug use and alcohol misuse, and supervisors who will make reasonable cause/suspicion⁹ testing determinations on how to make these determinations in accordance with 14 CFR §§ [120.115](#) and [120.223](#).
- Establish your random drug and alcohol testing to ensure that all employees have an equal chance of being tested each time selections are made, and that you meet the minimum annual testing rates established annually by the FAA Administrator in accordance with 14 CFR §§ [120.109\(b\)](#) and [120.217\(c\)](#).
- Take actions associated with testing violations, which may require reporting to the FAA in accordance with [49 CFR § 40.289](#).
- Maintain your records in accordance with the timelines established under 14 CFR §§ [120.113\(d\)\(6\)](#) and [120.219\(a\)\(2\)](#), and [49 CFR § 40.333](#) and in a secure and confidential manner.
- Ensure that a contract employee who is not included under that employer's FAA-mandated drug and alcohol testing program only performs a safety-sensitive function if that contract employee is included under the contractor's FAA-mandated drug and alcohol testing program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor) in accordance with [14 CFR § 120.7\(g\)](#).
- Ensure all your service agents meet the requirements of the regulations in accordance with 49 CFR §§ [40.11\(b\)](#) and [40.341](#).

The above list highlights the basic program requirements that apply as you implement testing. The issuance of a A449/A049/registration includes certification that the employer or contractor will comply with the DOT/FAA testing regulations. Doing everything right from the start helps you meet the requirements and ensure public safety.

Refer to the resources available online, and do not hesitate to contact the FAA's Drug Abatement Division at drugabatement@faa.gov or 202-267-8442 if you have any questions.

8.1 Designated Employer Representative (DER). According to [49 CFR § 40.3](#), a DER is “An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed, and to make required decisions in the testing and evaluation processes. The DER also receives the test results and other communications for the employer, consistent with the requirements of this part.” A DER must ensure that the information is maintained in accordance with the confidentiality requirements outlined in 14 CFR §§ [120.111\(c\)](#) and [120.219\(c\)\(1\)](#), as well as [49 CFR § 40.321](#). Essentially, the DER is critical to the success and compliance of your DOT/FAA drug and alcohol testing program and will often communicate with the FAA on behalf of the employer.

⁹ Reasonable cause drug testing is outlined in [14 CFR § 120.109\(d\)](#), and reasonable suspicion alcohol testing is outlined in [14 CFR § 120.217\(d\)](#). More information about this category of testing is explained in paragraph 8.3.3 of this AC.

Pursuant to the definition set forth in [49 CFR § 40.3](#),¹⁰ a service agent cannot act as a DER, and DOT would not authorize a “DER-for-hire” concept where a person is under contract by several companies to serve as their DER. In addition, employers are prohibited from releasing information regarding an employee’s test results, evaluation, or rehabilitation to a third party in accordance with [49 CFR part 40](#) as specified in 14 CFR §§ [120.111\(c\)](#) and [120.219\(c\)](#). It is possible for a corporation that owns multiple employers, each of which has its own testing program, to assign someone as an alcohol and drug program manager (ADPM) to assist the DER for each employer. That ADPM cannot act as the DER for any employer and must ensure the confidentiality of the test results between all the different DERs within the larger corporation. The ADPM is essentially acting as a Consortium/Third Party Administrator (C/TPA), which is a service agent as defined in [49 CFR § 40.3](#) and cannot be a DER. The FAA’s communications will be with the DER; however, the ADPM may be involved in the surveillance activities, including those of an FAA inspection or investigation. To ensure the protection of the employee’s information, the DER and ADPM must ensure test results are protected and confidentiality is not breached.

The regulations do not prohibit a safety-sensitive employee from acting as the DER. However, the FAA and DOT discourage this practice to avoid unintentional testing violations. For example, if the DER is a mechanic and sees they are selected for a random drug test, seeing their name on the list could be deemed notification to report for a test. Therefore, the mechanic must immediately report for the test. If they do not and wait to report for the test, that delay could result in a deviation from [14 CFR § 120.109\(b\)\(7\)](#) and (8), or call into question whether the mechanic refused the test. If it is unavoidable, we encourage you to have an alternate that can address the DER’s testing requirements, especially as it pertains to random testing notifications.

Although the regulations do not require a DER to be trained, they must have knowledge of the regulations, [14 CFR part 120](#) and [49 CFR part 40](#), to ensure the employer’s testing program meets all the requirements. The DER will experience different situations while managing the program and must comply with the regulations when determining what steps to take. The resources available online will help your DER comply!

8.2 Safety-Sensitive Employee Functions. According to [49 CFR § 40.13\(h\)](#), no one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee, as defined by the DOT agency regulations. Further, only safety-sensitive employees are subject to DOT/FAA testing. Each employer is responsible for evaluating the duties of its employees to determine if they are performing a safety-sensitive function listed under 14 CFR §§ [120.105](#) and [120.215](#) and subject to testing. If an employee is not performing covered functions but you test them anyway, you may be out of compliance with the regulations. If you want to test your employees who are not DOT-regulated, you may do so under your own company’s testing program and you are responsible for complying with the state laws where you operate. In this case, the

¹⁰ Refer to the [DOT’s Q&As for 49 CFR § 40.3](#) for more information about DER’s role.

DOT/FAA and company testing programs must remain separate so as not to violate [49 CFR § 40.13\(h\)](#).

As you determine what functions are covered, you should focus on the duties listed in 14 CFR §§ [120.105](#) and [120.215](#) and not the job title. Keep in mind that an employee includes any assistant, helper, or individual in a training status, and includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. A safety-sensitive employee's supervisor is not subject to testing unless they also perform safety-sensitive functions on an intermittent or part-time basis. Refer to Appendix A of this AC for resources to help when making determinations.

According to [14 CFR § 120.215\(b\)](#), you must identify any employee who is subject to the alcohol testing regulations of more than one DOT agency. For example, some aviation employers conduct aviation and motor carrier operations and employees may be subject to testing under [14 CFR part 120](#) and the Federal Motor Carrier Safety Administration (FMCSA) regulation ([49 CFR part 382](#)) or Pipeline and Hazardous Materials Safety Administration (PHMSA) regulation ([49 CFR part 199](#)). 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. If you have questions about another DOT agency's rule or requirements, a link to the webpages, regulations, and contact information is available at www.transportation.gov/odapc.

When using a contract employee to perform safety-sensitive functions, but that person is not included under your FAA-mandated drug and alcohol testing program, you are responsible for confirming the contract employee is tested under the contractor's FAA-mandated testing program and is performing on behalf of and within the scope of employment with the contractor. You should obtain proof of the contractor's program documentation by getting a copy of their A449, A049, or registration. It is important to understand that your DER must communicate with your contractor's DER. A managed service provider or recruiting company cannot restrict your communications with your contractor. As a third party, a managed service provider or recruiting company is prohibited from having access to your testing records or those of your contractor that conducts its own testing.

If you operate an Unmanned Aircraft System (UAS) under 14 CFR part 135, you must implement a DOT/FAA drug and alcohol testing program and test employees who perform a safety-sensitive function. Because UAS operations are different from traditional part 135 operations (i.e., unmanned and manned aircraft require different personnel and job duties), you will need to determine when the functions being performed and when testing applies.

8.3 Types of Drug and Alcohol Testing. Each employer must conduct drug and alcohol testing in accordance with 14 CFR §§ [120.109](#) and [120.217](#). Outlined below are the general testing requirements set forth in these regulations and supplementary

guidance that may be helpful to you.

8.3.1 Pre-Employment Drug Testing. Pre-employment drug testing is directly tied to aviation safety because it is the gateway to a safety-sensitive position. Once you have an active A449, A049, or registration, you must conduct a pre-employment drug test and obtain a verified negative result prior to hiring any individual or transferring an employee into a safety-sensitive function in accordance with [14 CFR § 120.109\(a\)\(1\)](#) and (2). Prior to conducting the test, you must advise the applicant or employee that they will be required to undergo testing to determine the presence of a prohibited drug in accordance with [14 CFR § 120.109\(a\)\(5\)](#). If you do not hire or transfer the employee into the safety-sensitive position for more than 180-days after obtaining the negative pre-employment drug test result, you must conduct a new test in accordance with [14 CFR § 120.109\(a\)\(3\)](#) before hiring or transferring them.

Employees who are removed from the random testing pool for reasons other than termination or transfer to a non-covered position may be sent for a pre-employment drug test prior to returning to the pool and to safety-sensitive duties in accordance with [14 CFR § 120.109\(a\)\(4\)](#). Although the decision is based on each company's policy, in the interest of best practices, the FAA suggests conducting the test if the absence and removal from the random testing pool lasted longer than 60 days. Please keep in mind that you should have a consistent policy in place that addresses these situations to ensure that everyone is treated fairly.

Pre-employment alcohol testing is not required; however, if you do decide to conduct testing, you must do it for all new hires or transfers in accordance with the requirements outlined in [14 CFR § 120.217\(a\)](#).

For more information (including a hiring checklist and pre-employment testing video), please visit www.faa.gov/go/drugabatement.

8.3.2 Random Testing. The random drug and alcohol testing requirements are outlined in 14 CFR §§ [120.109\(b\)](#) and [120.217\(c\)](#). The primary purpose of unannounced random testing is to deter drug use and alcohol misuse by aviation employees while performing safety-sensitive duties. Random testing can serve as an effective means to remove employees engaged in such use from the performance of safety-sensitive functions. Once an employee is hired or transferred, you must add them to the random testing pool immediately or before your next random selection. In accordance with 14 CFR §§ [120.109\(b\)](#) and [120.217\(c\)](#), you must:

- Select employees for testing using a scientifically valid method, such as a random number table or a computer-based random number generator.

- Ensure each employee has an equal chance of being tested each time selections are made.
- Test the selected employees in a way that is unannounced and in a non-predictable manner.
- Conduct random testing at times spread reasonably throughout the calendar year.
- Test enough employees to meet the minimum annual percentage rate set annually by the FAA Administrator and published in the Federal Register each year (copies are available on our website at www.faa.gov/go/drugabatement).

You may decide to hire a C/TPA to help manage your random testing pool and selections. If you do, the C/TPA will need a copy of your current program documentation (i.e., the registration, A449, or A049) to verify that your employees are subject to DOT drug and alcohol testing in accordance with [49 CFR § 40.347\(b\)\(2\)](#) and should be included in the random pool. Although the C/TPA is helping to manage your random testing program, you should have a hands-on approach to ensure they are meeting the requirements under 14 CFR §§ [120.109\(b\)](#) and [120.217\(c\)](#). As the employer, you are responsible for all the actions of your service agents, which includes the C/TPA, as specified in 14 CFR §§ [120.103\(c\)](#), [120.203\(c\)](#), and [49 CFR § 40.11\(b\)](#).

Refer to Appendix B of this AC for more information and best practices for random testing. Additional information (including a random testing video and a sample notification for DOT random testing form) is available at www.faa.gov/go/drugabatement or www.transportation.gov/odapc/employer.

8.3.3 Reasonable Cause/Suspicion Testing. Reasonable cause (drug) and suspicion (alcohol) testing are outlined in 14 CFR §§ [120.109\(d\)](#) and [120.217\(d\)](#). This type of testing is used when an employer's supervisor is trained in detection of symptoms of possible drug and alcohol use and suspects an employee of using a prohibited drug or alcohol. The supervisor's decision to test must be based on a reasonable and articulable belief of specific contemporaneous physical, behavioral, or performance indicators. Testing cannot be required based solely on a guess or hunch, anonymous tip, or a complaint from another employee. The observations must be based on symptoms of possible drug or alcohol use, which may include an employee's current appearance, behavior, speech, and/or smell associated with drug or alcohol use. The FAA notes that the regulations do not require a face-to-face evaluation to conclude there is a reasonable and articulable belief that an employee is utilizing a prohibited drug. For example, if your employees work at a location where a trained supervisor is not present (e.g., a remote aircraft dispatcher, mechanic, etc.), you are not obligated to conduct a face-to-face observation in order to require reasonable cause testing and certain performance characteristics may indicate reasonable belief of probable drug use.

However, you should establish procedures to conduct a remote evaluation¹¹ (by telephone or video) and ensure your supervisors are trained to detect behavioral or performance indicators when not face-to-face, such as mood swings or changes in attitude or speech.

For reasonable cause drug testing, 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. For an employer that is not a part 121 certificate holder and that employs 50 or fewer employees who perform safety-sensitive functions, only one supervisor who is trained in the detection of symptoms of possible drug use is required to substantiate and concur in the decision to test.

For reasonable suspicion alcohol testing, the required observations must be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. For alcohol testing, you do not need a second supervisor to make a test determination. If a test is not administered within 2 hours following a determination, you must prepare and maintain on file a record stating the reasons the test was not promptly administered. If the test is not administered within 8 hours following the determination, you must cease attempts to administer the alcohol test and state in the record the reasons the employee is not tested. You may not take any action against the employee under [14 CFR § 120.217\(d\)](#) based solely on the employee's behavior and appearance in the absence of an alcohol test. You are not prohibited from taking any action under your own authority that is otherwise consistent with the law of the state where you operate.

For more information (including an observation checklist), please visit www.faa.gov/go/drugabatement.

8.3.4 Post-Accident Testing. An employer must conduct post-accident drug and alcohol testing in accordance with 14 CFR §§ [120.109\(c\)](#) and [120.217\(b\)](#) when an employee's performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident. For purposes of testing requirements under a [14 CFR part 120](#), accident is defined in [14 CFR § 120.7\(a\)](#) as an occurrence associated with the operation of an aircraft that takes place between the time any person boards the aircraft with the intention of flight and all such persons have disembarked in which any person suffers death or serious injury, or the aircraft is substantially damaged. The FAA uses the same definition of serious injury and substantial damage as the National Transportation Safety Board (NTSB) does under [49 CFR part 830](#).¹²

¹¹ Refer to FAA's Chief Counsel [letter to Nolan O. Reidhead, dated January 20, 2016](#), for legal interpretation.

¹² The NTSB defines serious injury as any injury that (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5

When you evaluate the need for post-accident drug and alcohol testing, you should consider the aircraft involved and whether an employee is performing at the time of the accident or not. For example, if the aircraft is registered under a part 119 certificate and used for part 135 operations but is being flown under part 91 (as a check ride or en route to pick up passengers) and there is an accident, the covered pilot is potentially subject to testing. Alternatively, if a corporate aircraft is being flown under part 91 and not registered to the part 135 certificate and there is an accident, testing would not apply.

Testing must be based on the best available information at the time of the accident and meet the following timeframes:

- Drug testing must be conducted as soon as possible, but you must cease attempts to conduct the test after 32 hours. If a test is not administered, it must be based on a determination using the best information available at the time, that the employee's performance could not have contributed to the accident.
- Alcohol testing must be conducted as soon as practical. If not administered within 2 hours of the accident, you must prepare and maintain on file a statement to explain why it was not promptly administered. You must cease attempts to conduct the test within 8 hours following the accident and maintain the records for two years, as discussed in [14 CFR § 120.219\(a\)\(2\)\(ii\)\(C\)](#).

If an accident does not meet the criteria outlined above or in the regulation (e.g., a mechanic has a shop incident unrelated to an aircraft accident), you may conduct a test under your own policy using a non-federal or non-DOT testing form. An "incident" would not meet the criteria for an employer or contractor to conduct a DOT/FAA post-accident drug or alcohol test under [14 CFR part 120](#). Specifically, an incident is defined in [49 CFR part 830](#) as an occurrence other than an accident, associated with the operation of an aircraft, which affects or could affect the safety of operations. For more information, please visit www.faa.gov/go/drugabatement.

8.3.5 Return-to-Duty Testing. When an employee violates¹³ [14 CFR part 120](#), that employee cannot work again in a safety-sensitive position until completing Substance Abuse Professional (SAP) evaluation, referral, and education/treatment

percent of the body surface. NTSB defines substantial damage as damage or failure which adversely affects the structural strength, performance, or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowling, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades, and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wingtips are not considered "substantial damage" for the purpose of part 830."

¹³ In accordance with [49 CFR § 40.285\(b\)](#), "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 urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation." The FAA's prohibited conduct violations are listed under [14 CFR part 120](#), subparts C and D.

in accordance with [49 CFR § 40.285\(a\)](#). If you offer an employee an opportunity to return to safety-sensitive duties following a violation, you must conduct a return-to-duty drug (collected under direct observation for urine testing) or alcohol test in accordance with 14 CFR §§ [120.109\(e\)](#) and [120.217\(e\)](#). You must obtain a verified negative drug test result or alcohol test with a breath alcohol concentration of less than 0.02 before permitting the employee to perform safety-sensitive work. Keep in mind that you are obligated to conduct the return-to-duty drug or alcohol test based on the violation that triggered the requirement for the test. For example, if an employee tested positive or refused a random drug test, you must conduct a return-to-duty drug test under direct observation or using oral fluids and obtain the verified negative result prior to returning the employee to work.

If you are hiring an employee who had a previous drug violation and successfully completed the SAP's education and/or treatment but did not have a return-to-duty test, you may use the negative return-to-duty drug test result to meet your obligation for a pre-employment drug test under [14 CFR § 120.109\(a\)\(1\)](#). In this situation, you would include a statement attached to the return-to-duty test result or an annotation on the federal drug testing custody and control form (CCF) explaining that the direct observation return-to-duty test is also serving as the applicant's or employee's pre-employment test. If the test is conducted using urine, you must ensure it is collected under direct observation.

For more information (including a checklist on what actions to take and return-to-duty testing video), please visit www.faa.gov/go/drugabatement.

8.3.6 Follow-Up Testing. An employer must implement the follow-up testing in accordance with the SAP's directions and 14 CFR §§ [120.109\(f\)](#) and [120.217\(f\)](#) after an employee returns to work following a violation. The amount and frequency of follow-up testing is determined by the SAP, and you must have the SAP's plan for any employee who returns to duty. You must ensure that the SAP's follow-up plan meets the minimum of six unannounced tests in the first 12 months and does not exceed 60 months from the individual's return to the performance of safety-sensitive functions, in accordance with [49 CFR § 40.307\(d\)](#). You must ensure that the SAP's initial and follow-up evaluations include the information required by [49 CFR § 40.311\(c\)](#) and (d) and that the SAP's follow-up testing directions are clear and consistent with [49 CFR part 40, subpart O](#). If something in the report is missing or erroneous, you must contact the SAP to make sure it is compliant with the rules. Remember that each employer is responsible for the actions of its service agent, including the SAP, in accordance with 14 CFR §§ [120.103\(c\)](#) and [120.203\(c\)](#), and [49 CFR § 40.11\(b\)](#). If you accept a report that does not meet the rule when returning an employee to duty and starting the follow-up testing, you may be held accountable for any errors in the SAP's report.

You must carry out the testing in accordance with the SAP's direction and schedule tests on the date of your own choosing once the employee is hired or returns to duty as specified in [49 CFR § 40.309](#). If the follow-up tests are conducted using urine, you must ensure that all follow-up drug tests are collected under direct observation unless you authorize oral fluid testing. According to the DOT, if you discover an error in your employee's follow-up testing, either a missed test or one or more tests are not collected under direct observation, you must conduct the missing test(s) or restart the program in accordance with [49 CFR § 40.307\(e\)](#). You must document the actions you take to fix any errors in the follow-up testing, and we encourage you to contact FAA's Drug Abatement Division at drugabatement@faa.gov or 202-267-8442 for assistance.

For more information (including a return-to-duty video), please visit www.faa.gov/go/drugabatement.

8.3.7 Retesting for Alcohol. Under [14 CFR § 120.217\(g\)](#), an employer must retest a covered employee to ensure compliance with the provisions outlined in [14 CFR § 120.221\(f\)](#) when you choose to permit an employee to perform safety-sensitive functions within 8 hours following a confirmation alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04. You do not take any action under part 40 against the employee based solely on a test result showing an alcohol concentration less than 0.04. However, a company is not prohibited from taking action otherwise consistent with the law under its own independent authority.

8.4 When to Test. An employer should take care in determining when to test an employee. The timing for random drug testing is different than the timing for random alcohol testing and also differs by the type of test. Employees are subject to drug testing regardless of when the safety-sensitive functions are being performed. This is because using a prohibited drug is illegal and never permitted. However, alcohol is a legal substance, the use of which is prohibited by FAA regulations within prescribed periods related to the performance of safety-sensitive functions. For example, an employee should be notified to report for follow-up alcohol testing under [14 CFR § 120.217\(f\)\(5\)](#) 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. By contrast, any employee may be notified to report for a follow-up drug test under [14 CFR § 120.109\(f\)](#).

Before you notify an employee for testing, it is important to verify that the collection facility is ready and available for testing. This includes ensuring it can conduct a direct observation test, alcohol test with a working evidential breath testing device, and complete the test prior to closing. Once you notify the employee to report for testing, you must ensure the employee proceeds immediately to the collection facility and the test is completed. If the test is not completed, you are obligated to investigate the situation and determine whether the employee refused to test under 49 CFR §§ [40.191](#) or [40.261](#).

8.5 Hiring or Transferring a Safety-Sensitive Employee. Whether you hire an applicant to perform safety-sensitive functions or transfer a non-covered employee into a safety-sensitive position, there are other requirements you must follow in addition to the testing described in Section 7.3 of this AC.

8.5.1 Drug and Alcohol Records Check. Under [49 CFR § 40.25](#), an employer must check the drug and alcohol testing record of employees it intends to use to perform safety-sensitive duties. Specifically, under these requirements, each employer must obtain an employee's written consent¹⁴ and request drug and alcohol testing information from DOT-regulated¹⁵ employers who employed the employee during the two years prior to the date of the employee's application or transfer into a safety-sensitive position. If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. Regardless, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a "good faith effort" to obtain the consent and drug and alcohol testing information from the DOT regulated employers from the past two years. The DOT published a Q&A¹⁶ stating it considers a good faith effort to consist of a documented attempt or attempts to obtain drug and alcohol testing records from a former employer (e.g., return-receipt, fax confirmation, email reply, or phone call). Information indicating that the former employer did not receive the attempt (e.g., mail returned "undeliverable as addressed," fax did not transmit, email returned as undeliverable, phone call not returned) may require an additional attempt. You must retain your documented efforts for three years from the date of the employee's first performance of safety-sensitive duties for you pursuant to [49 CFR § 40.25\(i\)](#).

If you hire a pilot to perform flight crewmember duties, you are obligated under 14 CFR part 111 to query the FAA's Pilot Records Database (PRD).¹⁷ The FAA's PRD Advisory Circular ([AC 120-68](#)) provided more information, and you can contact the FAA's PRD Support Office at 9-amc-avs-PRDSupport@faa.gov for help accessing the PRD and questions about the information obtained via PRD. Information obtained via PRD does not satisfy the requirements under [49 CFR § 40.25](#).

¹⁴ You must ensure the employee signs the written consent form. Electronic or digital signatures by the employee or applicant are prohibited when requesting drug and alcohol records under [49 CFR § 40.25](#).

¹⁵ You may request a former FAA employee's testing information from the FAA's Internal Substance Abuse Program Office at 202-267-0238.

¹⁶ See [DOT Rule 49 CFR § 40.25 Q&A | U.S. Department of Transportation](#).

¹⁷ FAA's Pilot Records Improvement Act (PRIA) of 1996 and FAA Form 8060-12 were discontinued after September 9, 2024, and are no longer applicable.

If the previous employer is nonresponsive to your request under [49 CFR § 40.25](#), contact the FAA's Drug Abatement Division at drugabatement@faa.gov and provide a copy of the written release and documentation of your efforts so we may verify the employer has an active DOT/FAA drug and alcohol testing program or find out why the employer is not responding to a request in accordance with [49 CFR § 40.25\(h\)](#).

You must ask employees if they tested positive, or refused to test, on any pre-employment drug or alcohol test within the previous two years of their application and were not hired for the position, as required by [49 CFR § 40.25\(j\)](#). If they answer yes, you are prohibited from allowing the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process. If the employee is not able to provide any documentation and you offer the employee an opportunity to perform safety-sensitive duties, you must ensure that the employee 1) has been evaluated by an SAP (meeting the requirements under § [40.281](#)) 2) successfully complied with the SAP's evaluation in accordance with [49 CFR § 40.289](#) and 3) passes a return-to-duty test in accordance with [49 CFR § 40.305](#) and 14 CFR §§ [120.109\(e\)](#) or [120.217\(e\)](#). This requirement is separate from the records check and you cannot include the answer to the question about prior pre-employment violations to comply with [49 CFR § 40.25\(j\)](#) on your written release sent to all or any previous employers.

For more information (including a sample written release and relevant published legal interpretation(s)), please visit www.faa.gov/go/drugabatement.

8.5.2 Initial Training and Education for Employees and their Supervisors.

When you hire or transfer an employee into a safety-sensitive position, you must:

- Conduct initial training under your Employee Assistance Program (EAP) in accordance with [14 CFR § 120.115](#).
- Display and distribute educational materials on drug use, a community service hot-line telephone number for employee assistance, and the employer's drug policy and document the distribution in accordance with [14 CFR § 120.115](#).
- Distribute alcohol educational materials and document the distribution in accordance with 14 CFR §§ [120.219](#) and [120.223](#).

Your testing policy will often be part of your EAP training and alcohol misuse education since it contains the effects and consequences of drug use and alcohol misuse. In addition to training and education for employees, the EAP must include education and training on drug use for training for supervisors who make determinations for testing of employees based on reasonable cause, as subsequently discussed in section 7.5.3 of this AC. Neither the FAA nor the DOT have a training program available online. However, you will find resources on www.faa.gov/go/drugabatement and www.transportation.gov/odapc that will help

you develop your own training or policies. There are many service agents within the territory of the United States that are happy to help you!

Although you are only obligated under the regulation to conduct initial training, you and your employees may benefit from training on an annual basis. Education and awareness can aid someone in receiving the help they may need.

8.5.3 Supervisor Training. Under [14 CFR § 120.115\(c\)](#), each employer must conduct initial and recurrent supervisory training for personnel who will determine when an employee is subject to testing based on reasonable cause. The training must include specific and contemporaneous physical, behavioral, and performance indicators of probable drug use. This is in addition to the initial training provided to employees about the (i) effects and consequences of drug use on individual health, safety, and work environment; and (ii) manifestations and behavioral cues that may indicate drug use and abuse under [14 CFR § 120.115\(c\)\(1\)](#). You must ensure that supervisors who will make reasonable cause determinations receive at least 60 minutes of initial training and receive recurrent training at reasonable intervals. Although a timeframe for reasonable recurrent training is not defined in [14 CFR part 120](#), the FAA believes it is a best practice to conduct the recurrent training on a 12 to 18-month schedule.

You must also ensure that supervisors who make reasonable suspicion determinations for alcohol testing receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse in accordance with [14 CFR § 120.223\(b\)](#). Although you are not obligated under the regulations to conduct recurrent training for supervisors making reasonable suspicion alcohol determinations, we believe it is best practice to include a review of the alcohol testing requirements while conducting recurrent training for drug testing.

8.6 Reporting and Recordkeeping Requirements.

8.6.1 Employee Violation Reporting. An employer or its service agent must report the following types of violations in accordance with 14 CFR §§ [120.111\(d\)](#), [120.113\(d\)](#), [120.221\(c\)](#), [120.221\(d\)](#), and [49 CFR § 40.23\(h\)](#):

- All verified positive drug test results or refusals to submit to testing for individuals who hold or would be required to hold an airman medical certificate issued under [14 CFR part 67](#).
- All alcohol misuse violations (including a confirmed result with a breath alcohol concentration of 0.04 or greater; on-duty use; pre-duty use; use following an accident; or refusal to test) for individuals who hold or would be required to hold an airman medical certificate issued under [14 CFR part 67](#).
- All refusals to submit to drug or alcohol testing for individuals who are subject to drug and alcohol testing under [14 CFR part 120](#) and hold a certificate issued under 14 CFR [part 61](#), [63](#), or [65](#).

For more information (including sample reporting forms), please visit www.faa.gov/go/drugabatement.

8.6.2 Management Information System (MIS) Reporting. Employers must report their testing statistics on an annual basis in accordance with the MIS requirements outlined in 14 CFR §§ [120.119\(a\)](#) and [120.219\(b\)](#). Reports must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31). The requirement to report applies to all part 121 operators; all employers with 50 or more safety-sensitive employees; and all other employers notified by the FAA in writing of the requirement to submit a report. For more information and MIS instructions, please visit www.faa.gov/go/drugabatement.

8.6.3 Recordkeeping Requirements. Each employer must maintain records in accordance with 14 CFR §§ [120.113\(d\)\(6\)](#) and [120.219\(a\)\(2\)\(i\)](#) and (ii), and [49 CFR § 40.333](#). You are prohibited from sharing confidential test information with a third party in accordance with 14 CFR §§ [120.111\(c\)](#) and [120.219\(c\)](#), and [49 CFR § 40.321](#). A third party is defined in 49 CFR § 40.321 as any person or organization to whom other subparts of part 40 do not explicitly authorize or require the transmission of information in the course of the drug and alcohol testing process. A third party may include another employer's auditor or managed service provider. You are obligated to protect your employee's expectations of privacy and confidentiality in the testing program. The retention requirements are different depending on the result and type of test. For a list of the recordkeeping time requirements, please refer to the FAA's Frequently Asked Question at www.faa.gov/go/drugabatement and the DOT's document at www.transportation.gov/odapc/employer.

You are permitted to maintain your DOT/FAA drug and alcohol testing records electronically; however, they must be easily accessible, legible, formatted, and stored in an organized and reviewable manner. If your electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner as requested by the FAA in accordance with [49 CFR § 40.333\(e\)](#). For more information, please visit www.faa.gov/go/drugabatement.

8.6.4 Emergency Maintenance. Under [14 CFR § 120.35\(b\)](#), no certificate holder or operator may use any contractor to perform a safety-sensitive function unless that contractor tests each employee performing such a function in accordance with subpart E of [14 CFR part 120](#) (Drug Testing Program Requirements). However, 14 CFR §§ [120.35\(c\)](#) and [120.39\(c\)](#) provide relief in some emergency maintenance situations. A certificate holder or operator as defined in [14 CFR § 91.147](#) that conducts an on-demand operation into an airport (either domestic or abroad) or air tour operations at which no maintenance providers are available may use individuals not covered under a FAA-mandated testing program to provide emergency maintenance, subject to certain

conditions.¹⁸ Specifically, you must ensure that maintenance personnel who are covered reinspect the aircraft when the aircraft is next at an airport where maintenance personnel are available, and you must report the emergency maintenance to the Drug Abatement Division within 10 days of learning about the emergency maintenance (see [14 CFR § 120.35](#)(c)(1) and (2)). For information about reporting emergency maintenance (including a sample reporting form), please visit www.faa.gov/go/drugabatement.

9 ACTIONS WHEN A COVERED EMPLOYEE OR APPLICANT VIOLATES 14 CFR PART 120. Each employer must establish its company policy in accordance with 14 CFR §§ [120.115](#) and [120.219](#) to address covered employees who violate [14 CFR part 120](#). You are not required to return an employee to safety-sensitive duties after they successfully complied with the SAP's evaluation and passed a return-to-duty test. This is a personnel decision at the discretion of each employer, subject to collective bargaining agreements or other legal requirements in accordance with [49 CFR § 40.305](#)(b). It is important that you are prepared to act when a violation occurs.

- You must immediately remove a covered employee from safety-sensitive functions under [14 CFR part 120](#), subpart C and D, and [49 CFR § 40.23](#). If the individual is an applicant for a covered position, you are prohibited from hiring the individual until you have a negative pre-employment drug test result as specified in [14 CFR § 120.109](#)(a)(1). If your policy is to terminate an employee after a violation, you must remove them from the random testing pool under 14 CFR §§ [120.109](#)(b)(6)(B) and [120.217](#)(c)(6)(B).
- You must provide a listing of DOT-qualified SAPs to the covered employee or applicant in accordance with [49 CFR § 40.287](#).
- If the individual holds a medical certificate issued under [14 CFR part 67](#), you and/or your MRO must report the violation to the FAA's Federal Air Surgeon within two working days in accordance with [14 CFR §§ 120.113](#)(d)(1) and [120.221](#)(c), and [49 CFR § 40.23](#)(h).
- If the individual holds an airman certificate issued under 14 CFR [part 61](#), [63](#) or [65](#) and refuses to submit to a drug or alcohol test conducted under [14 CFR part 120](#), you must report the violation to the FAA's Drug Abatement Division within two working days in accordance with 14 CFR §§ [120.111](#)(d) and [120.221](#)(d).
- If you employed the individual as a pilot at the time of the violation, you must enter the information in the FAA's PRD within 30 calendar days in accordance with [14 CFR § 111.220](#).¹⁹ For more information about entering information or accessing the PRD, please contact the [PRD support office](#) at 9-amc-avs-PRDSupport@faa.gov.
- You must maintain the records of your reports to the FAA and the result for the minimum retention period in accordance with [14 CFR §§ 120.113](#)(d)(6) and [120.219](#)(a)(2)(i) and (ii), and [49 CFR § 40.333](#).

¹⁸ Emergency maintenance covers maintenance that is not scheduled and is necessitated by an aircraft condition not discovered prior to the departure for that location in accordance with 14 CFR §§ [120.35](#)(d) and [120.39](#)(d).

¹⁹ If a pilot's violation is related to a pre-employment test and reported to the FAA's Federal Air Surgeon, it will be added to the PRD by the FAA as an FAA record in accordance with 14 CFR § 111.135(e).

For more information, (including a checklist, sample reports, a return-to-duty procedure video, and employee or employer guide), please visit www.faa.gov/go/drugabatement and www.transportation.gov/odapc

10 PROGRAM AUDITS AND VOLUNTARY DISCLOSURE REPORTING OF

APPARENT VIOLATIONS. We believe it is a best practice to self-audit your DOT/FAA-mandated drug and alcohol testing program as well as your service agents (if applicable).

The DOT published a [DOT's Employer Collection Site Audit Brochure](#) and [our Inspection Guide](#) as resources to help employers establish their own auditing process. As an employer, it is your responsibility to ensure you have the knowledge to support your company's compliance with the DOT/FAA drug and alcohol testing regulations ([14 CFR part 120](#) and [49 CFR part 40](#)). In addition, each employer is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT's procedural regulations in accordance with [49 CFR § 40.11\(b\)](#). If you conduct your own audits and/or discover an instance of noncompliance with the drug and alcohol testing rules, you may voluntarily report the issue under FAA's Voluntary Disclosure Reporting Program (VDRP) on a timely basis and without delay. The Drug Abatement Division's VDRP is outlined in [Advisory Circular 120-117](#) and available to any regulated employer.

Once the A449, A049, or registration is active, you are subject to surveillance²⁰ (either during an inspection or investigation) by an FAA Drug and Alcohol Compliance and Enforcement Inspector to ensure compliance with the DOT and FAA testing rules. To facilitate your inspection or investigation, it is important that your DER can describe and discuss your company's testing program and provide the documentation requested by the FAA's inspector. In accordance with [49 CFR § 40.331](#), you must release all written, printed, and computer-based records and reports, files, materials, data, documents/documentation, agreements, contracts, policies, and statements related to your drug and alcohol testing program. Our inspector may also need to review some of the following types of records to verify your compliance:

- Employment records (e.g., records of hire, transfer or termination, and applications or resumes).
- Documentation of your safety-sensitive positions (e.g., position descriptions).
- Documentation of an employee's performance of a safety-sensitive function (e.g., flight logs, duty records, timesheets, work orders, invoices, receipts, and other maintenance records).

For an announced inspection, we will send you a letter of notification (LON) and provide a records list. Please adhere to the instructions outlined in the LON and take the time to review [FAA Order 9120.1](#) and our [Frequently Asked Question](#) for more information about planning

²⁰ [FAA Order 9120.1](#) (as amended), titled 'Drug and Alcohol Compliance and Enforcement Surveillance Handbook' outlines the surveillance procedures used by the Drug Abatement Division to assess compliance of aviation industry employers, contractors, and service agents with the drug and alcohol testing requirements under [14 CFR part 120](#) and [49 CFR part 40](#). The Omnibus Transportation Employee Testing Act of 1991 (49 USC §§ 45101-45107) and the FAA's general statutory safety authority outlined in 49 USC §§ 106(g), 40113(a), and 44701 provide the authority to conduct the inspections and investigations described in the aforementioned order.

for your inspection or tools to implement your own audit process. We encourage you to provide records in a manner that best helps facilitate the inspection.

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Appendix A. Resources for Evaluating Employee Duties to Determine if an Employee is Performing a Safety-Sensitive Function and Subject to Drug and Alcohol Testing

A.1 PURPOSE AND GENERAL INFORMATION.

In accordance with [14 CFR § 120.7](#)(f), an employee is defined as an individual who is hired, either directly or by contract (including subcontract at any tier), or transferred into a position to perform a safety-sensitive function for an employer. The safety-sensitive functions are listed under 14 CFR §§ [120.105](#) and [120.215](#) and below:

- 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, and
- i. operations control specialist duties.

An employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function for an employer must be subject to testing under a DOT/FAA drug and alcohol testing program (see [14 CFR § 120.1](#)). This includes full-time, part-time, temporary, and intermittent employees regardless of the degree of supervision. No part of the testing process may be conducted outside the territory of the United States and, therefore, when an employee only performs safety-sensitive duties outside the territory of the United States (including that by contract for an employer outside the territory of the United States), that employee must be removed from the random testing pool in accordance with 14 CFR §§ [120.123](#) and [120.227](#).

It is up to each employer to evaluate the specific duties of their employees, *not the employee's job title*, to determine if an employee is performing a safety-sensitive function and subject to testing. The information outlined in this appendix is intended to provide resources and information to assist an employer in making the determination of whether employees are performing safety-sensitive duties and subject to testing.

A.2 DISCUSSION OF THE COVERED SAFETY-SENSITIVE DUTIES.

A.2.1 Flight Crewmember Duties. Not all certificated pilots are subject to the DOT/FAA testing rules. Pilots that perform flight crewmember duties for a part 121 or 135 air operator or air tour operator are subject to testing in accordance with 14 CFR §§ [120.35](#)(a), [120.39](#)(b), [120.105](#)(a), and [120.215](#)(a)(1).

Pilots assigned to fly solely under [14 CFR part 91](#), excluding those operating under [14 CFR § 91.147](#), are not subject to DOT/FAA testing under [14 CFR part 120](#).

Medical personnel who are aboard the aircraft during an air ambulance operation only to provide medical care to patients are not performing flight crewmember duties in accordance with [14 CFR part 135, Subpart B](#). Consequently, they are not subject to DOT/FAA testing under [14 CFR part 120](#).

If you need clarification on whether an employee performs flight crewmember duties, please contact the FAA Principal Operations Inspector (POI) assigned to your operating certificate or your local [Flight Standards District Office](#).

A.2.2 Flight Attendant Duties. Flight attendant duties are typically associated with a part 121 or 135 operation and include assisting passengers during emergency or abnormal events as described in 14 CFR §§ [121.291](#) and [135.123](#). According to [FAA Order 8900.1, Volume 3, Chapter 33, Section 3-3513](#), flight attendants perform the following safety duties related to the airplane and its occupants:

- Safety briefings,
- Compliance checks of seat belt fastening,
- Conducting passenger briefings,
- Ensuring passenger compliance with stowage of the food and beverage tray,
- Ensuring passenger compliance with the seatbelt and no smoking placards/lights,
- Checking for the proper stowage of carry-on baggage,
- Attending distressed passengers, or
- Responding to emergency situations.

Cabin attendants performing activities limited to passenger service (e.g., serving beverages, conducting customer relations, acting as translators) do not perform flight attendant duties. However, they may be covered if they perform duties that are like those described above.

If you need clarification on whether an employee performs flight attendant duties, please contact the FAA POI assigned to your operating certificate or your local [Flight Standards District Office](#).

A.2.3 Flight Instruction Duties. Flight instructors who provide instruction in a flight simulator qualify as safety-sensitive employees when the instruction is provided to a part 121 or 135 or air tour operator. This includes simulator flight instruction, because instructors are responsible for making evaluations regarding the trainees' performance and judgment. Ground instruction duties are distinct from flight instruction and, therefore, are not covered under this category.

If a flight school provides flight instruction solely to the public or general aviation students, the instructor is not subject to testing under [14 CFR part 120](#). Students who attend flight training are not subject to testing.

A.2.4 Aircraft Dispatcher Duties. Aircraft dispatcher duties are specific to a part 121 or 135 operator and relate to exercising the authority to initiate, conduct or terminate a flight. According to the Dispatching and Flight Release Rules under [14 CFR part 121](#), [subpart U](#), the pilot in command and aircraft dispatcher share operational control, which means the exercise of authority over initiating, conducting, or terminating a flight (see [14 CFR § 1.1](#)). Aircraft dispatch duties include the preparation of a dispatch release or document, flight release form, load manifest, or flight plan. Weight and balance calculations are also a safety-sensitive function under the category of aircraft dispatchers, but the performance of these calculations alone does not constitute aircraft dispatcher duties.

A part 135 operator is not required to employ aircraft dispatchers or prepare a formal release authorizing a specific flight. Therefore, it is important for a part 135 operator to analyze the duties performed by their employees to determine which employees exercise operational control over a flight akin to aircraft dispatching duties. Often, this authority is delegated to the pilot in command, but may be shared by other employees. In accordance with [14 CFR § 135.21](#), an operator must have a manual setting forth the operator's procedures and policies, including persons authorized to exercise operational control over a flight. For more information on aircraft dispatching duties specific to part 135 operations, please refer to the FAA's Office of Chief Counsel response dated July 19, 2010 to [Jackson & Wade LLC](#), which discusses the duties of an aircraft dispatcher for a part 135 air operator.

A.2.5 Aircraft Maintenance and Preventive Maintenance Duties. When determining whether an employee performs maintenance and preventive maintenance duties on aircraft operated under part 121 or 135 or § 91.147, it is important to consider the duties as they relate to the FAA's definition of maintenance and preventive maintenance under [14 CFR § 1.1](#) and [14 CFR part 43](#). According to [14 CFR § 1.1](#):

- Maintenance includes inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance.
- Preventive maintenance means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations.

In 2006, the Office of Aerospace Medicine's Drug Abatement Division and the Flight Standards' Aircraft Maintenance Division collaborated to document common guidance to assist operators in determining the most common maintenance and preventive maintenance functions. Additionally, the FAA's legal interpretations related to maintenance and preventive maintenance are available at www.faa.gov/go/drugabatement. If you need assistance, consult your local [Flight Standards District Office](#) or FAA Principal Maintenance Inspector (PMI). Flight

Standards inspectors are the experts in determining what functions meet the definitions of maintenance and preventive maintenance.

If it is determined that the functions are considered maintenance and preventive maintenance duties (i.e., safety-sensitive functions under part 120), you must ensure the employee is subject to DOT/FAA drug and alcohol testing if the work is performed on an aircraft part or aircraft operated under a part 121 or 135 or § 91.147. If the duties are not covered, DOT/FAA testing is prohibited in accordance with [49 CFR § 40.13\(h\)](#), as the person would not be a covered employee. It is strongly recommended that you document your determination or obtain written guidance from Flight Standards. The documentation may be necessary to present to an FAA Drug and Alcohol Compliance and Enforcement Inspector during an inspection or investigation of your DOT/FAA testing program.

- A.2.5.1 Cleaning the Aircraft. The physical cleaning of an aircraft is not normally considered maintenance or preventive maintenance within the context of the regulations. However, there may be occasions where the preparation of the aircraft for the cleaning process requires removal of components or protection of components that fall under the definitions of maintenance and preventive maintenance. For example, prior to cleaning an aircraft, it may be necessary to close and secure the upper and lower fan cowl doors on a transport category aircraft. The closing and securing of the engine fan cowl doors are maintenance. Additionally, after the cleaning process, it may be necessary to reapply lubrication compounds and preservatives to aircraft components, which is considered maintenance and preventive maintenance. Conversely, cleaning seat cushions/covers is not considered maintenance.
- A.2.5.2 Decorative Coatings. According to [14 CFR part 43, Appendix A](#), Section (c), the “refinishing of decorative coating of fuselage, ...cabin, or cockpit interior...” is preventive maintenance.
- A.2.5.3 Repairing Cargo Containers. Cargo containers are considered part of the aircraft; therefore, repairs are covered under [14 CFR part 43](#) as maintenance.
- A.2.5.4 Building Parts. Although the person who physically manufactures a part does not perform maintenance or preventive maintenance duties, the person who takes that manufactured part and consumes it while repairing the next higher assembly must be tested.
- A.2.5.5 Manufacturer Testing. A manufacturer that performs a test on a component to determine the extent of repairs necessary or to determine the serviceability of a component is required to be covered under a

drug and alcohol program when performing work for a part 121 or 135 or § 91.147 operator. The testing is being performed to a standard acceptable to or approved by the FAA Administrator. The testing standard may be part of an inspection requirement in the technical data being used in the testing process.

A.2.5.6 **Line Service Maintenance.** Persons performing line servicing functions that would be considered maintenance or preventive maintenance (as listed in [14 CFR part 43, Appendix A](#)) must be tested. This includes persons that an air carrier arranges with to perform servicing at line maintenance facilities or locations outside of their normal routes.

A.2.5.7 **Mechanic's Helpers.** In accordance with 14 CFR §§ [120.105](#) and [120.215](#)(a), any employee, including an assistant, helper, or individual that performs aircraft maintenance and preventive maintenance must be tested, regardless of the degree of supervision or whether they sign off on the work or not.

A.2.5.8 **Parts Receiver.** A parts receiver is responsible for intake and outtake of repaired aircraft parts but does not actually perform an inspection of the part or repair. Therefore, they do not perform maintenance or preventive maintenance duties and are not subject to testing.

A.2.6 **Ground Security Coordinator (GSC) Duties.** Each air carrier or operator's security program dictates the GSC roles and responsibilities. In addition, the Department of Homeland Security's Transportation Security Administration (TSA) defines the GSC under [49 CFR chapter XII, part 1544](#). For clarification on whether your employees perform GSC duties, consult with your security program. If you are not an air carrier or operator, you should consult the air carrier with whom you contract to determine whether the duties performed are part of their security program.

A.2.7 **Aviation Screening Duties.** Employees performing aviation screening functions performed by non-TSA employees are covered employees subject to DOT/FAA testing. These duties include security screening at the checkpoint and non-checkpoint screening (pat down, wand, and carry-on baggage searches) of passengers. Screeners that perform the non-checkpoint screening on service personnel (non-passengers such as catering, cargo, etc.) are not covered under [14 CFR part 120](#).

Aviation screeners employed by the TSA and performing as a TSA employee are not subject to testing under [14 CFR part 120](#) unless they are hired directly by a regulated employer, or they work for a regulated employer outside of their employment as a DOT/FAA employee. For more information about TSA and their security-screening program, please visit their website at www.tsa.gov.

A.2.8 **Air Traffic Control Duties.** Only air traffic controllers who perform duties for an air traffic control facility not operated by the FAA or under contract to the United States military are tested under [14 CFR part 120](#).

A.2.9 **Operations Control Specialist Duties.** According to [14 CFR § 135.619\(a\)](#), any air ambulance operator that has 10 or more helicopters must establish Operations Control Centers. The specific duties of the operations control specialists include providing preflight weather assessment, assisting with fuel planning and alternate airport weather minimums, and communicating with pilots about operational concerns during flight. These types of duties and this category would not apply to any other operator.

If you need clarification on whether an employee performs operations control specialist duties, please contact the FAA POI assigned to your operating certificate or your local [Flight Standards District Office](#).

A.3 NON-COVERED FUNCTIONS.

As an employer, if you have employees who are not performing a safety-sensitive function, you are prohibited from including them in your DOT/FAA drug and alcohol testing program in accordance with [49 CFR § 40.13\(h\)](#). You may conduct your own testing program under your company policy and in accordance with the state laws where you operate; however, you are prohibited from using federal or DOT drug and alcohol testing forms or making employment determinations based on DOT/FAA testing. You must ensure that your DOT/FAA testing program and records are separate from your company testing program (non-DOT testing) in all respects.

The following are some examples of non-covered safety-sensitive functions:

- Ground handling
- Aircraft fueling
- Aircraft de-icing
- Ticketing
- Baggage handling or loading
- Aircraft push-back
- Tool calibrators
- Customer Service Agents

If your employee holds a commercial driver's license (CDL) to perform any of the above non-covered functions, DOT testing may apply under the Federal Motor Carrier Safety Administration (FMCSA) regulation ([49 CFR part 382](#)). Questions regarding a FMCSA-regulated employer or employee should be directed to FMCSAdrugandalcohol@dot.gov. For more information about FMCSA and the other transportation agency's regulations, please visit the [Department of Transportation's Agency web page](#).

Appendix B. Random Drug and Alcohol Testing Information and Best Practices

B.1 PURPOSE AND GENERAL INFORMATION.

In accordance with 14 CFR §§ [120.109\(b\)](#) and [120.217\(c\)](#), employers must conduct random drug and alcohol testing. In addition to the information outlined in section 7.3.2 of this AC, this appendix is intended to provide information and best practices to assist an employer in conducting a random testing program that meets the requirements of the regulation. To conduct random testing, an employer must:

- Select employees for testing using a scientifically valid method and testing enough employees to meet the annual percentage rate during the calendar year.
- Ensure each employee has an equal chance of being tested each time selections are made.
- Test the selected employees in a way that is unannounced.
- Conduct testing at times spread reasonably throughout the calendar year.

B.2 CALCULATING THE NUMBER OF TESTS REQUIRED.

B.2.1 Annual Testing Rates. The number of tests you are required to conduct each calendar year is determined by the minimum annual percentage rates for random drug and alcohol testing, which is published in the Federal Register each December and available at www.faa.gov/go/drugabatement. The annual rates are set annually by the FAA Administrator and based on the reported positive rate for the aviation industry in accordance with 14 CFR §§ [120.109\(b\)\(2\)](#) and [120.217\(c\)\(2\)](#).

B.2.2 Calculating the Number of Tests Required. To determine how many employees to test each time random testing is scheduled, you must divide the number of planned tests for the year by the number of testing periods in the year as specified in 14 CFR §§ [120.109\(b\)\(6\)](#) and [120.217\(c\)\(6\)](#). If the number of covered employees varies greatly from one testing period to the next due to seasonal or economic conditions, you should recalculate the annual rate during any or all random selection draws. An accepted method for calculating the number of tests required to meet the minimum annual percentage rate is described below:

B.2.2.1 Just before each testing period, calculate the number of tests you must conduct for that testing period by multiplying the number of employees in the random pool during the current testing period by the minimum annual percentage rate. Divide the result by the number of planned testing periods in the year.

In the example below, you are making quarterly random selections with a minimum annual percentage rate of 25%. You have the

following number of employees in the random pool each quarter and calculate the number of tests required for quarters 1, 2, and 3:

Quarter	Employees in random pool
1st quarter	23
2nd quarter	55
3rd quarter	40
4th quarter	27

1st Quarter $(23 \times 0.25) \div 4 = 2$ drug tests required (1.43 rounded up)
 2nd Quarter $(55 \times 0.25) \div 4 = 4$ random tests required (3.43 rounded up)
 3rd Quarter $(40 \times 0.25) \div 4 = 3$ random tests required (2.5 rounded up)

Before the last testing period of the calendar year, calculate the average number of safety-sensitive employees in the random pool for the calendar year by adding the number in the random pool for each testing period (including the last) and dividing the result by the number of testing periods in the calendar year:

$23 + 55 + 40 + 27 = 145$ employees $\div 4$ testing periods
 = 36.25 average number of employees in the random pool

Then, calculate the random testing requirement for the year by multiplying the average number of employees in the random pool for the calendar year by the minimum annual percentage rate:

36.25 average number of employees
X 0.25 minimum annual percentage rate
 = 10 random tests required for the calendar year (9.06 rounded up)

Determine the number of safety-sensitive employees you must test in the last testing period by subtracting the total number of random tests already conducted during the year from the number of random tests required for the entire year:

10 random tests required for the calendar year
-9 tests conducted in Quarters 1-3
 = 1 random test required in quarter 4 to meet the yearly minimum rate

B.2.2.2 If your company began operations mid-year, you would need to calculate your average number of employees for the year with the number of remaining selections to meet the minimum annual testing rates.

In the example below, you begin operations in the 2nd quarter and conduct random selections for the remaining calendar year when the minimum annual percentage rate is 25%. You have the following

number of employees in the random pool each quarter and calculate the number of tests required for quarters 2 and 3:

Quarter	Employees in random pool
2nd quarter	130
3rd quarter	120
4th quarter	150

2nd Quarter $(130 \times 0.25) \div 3 = 11$ random tests required (10.8 rounded up)

3rd Quarter $(120 \times 0.25) \div 3 = 10$ random tests required

Just before the final (4th quarter) draw, calculate the average number of employees in the random pool for the calendar year by adding the number of employees in the random pool for each testing period and divide the total by the number of testing periods:

$130 + 120 + 150 = 400$ employees $\div 3$ testing periods
= 134 average number of employees in the random pool (133.3 rounded up)

Next, calculate the number of tests that are required for the calendar year:

134 (average number) $\times 0.25$ (minimum annual percentage rate)
= 34 random tests required for the full calendar year (33.5 rounded up)

Since you only operated for 3 of the 4 quarters of the year, the number of required tests for that year is prorated:

34 random tests required for a full calendar year
 $\times 0.75$ ($\frac{3}{4}$ of the year)
= 26 random tests required for the prorated calendar year (25.5 rounded up)

To determine the number of employees who are to be tested in the 4th quarter, subtract the total number of random tests already conducted from the prorated number of random tests required for the year:

26 random tests required for the calendar year
- 21 tests conducted in Quarters 2 and 3
= 5 random tests required in Quarter 4 to meet the minimum rate

B.2.3 Combined to Stand-Alone Program. If your employees are in a combined random pool and you change to a stand-alone pool mid-year, you must ensure your calculations and random selections are based on the total number of employees eligible for testing during the remaining testing cycles for that year.

B.3 STRUCTURING THE RANDOM TESTING POOL.

There are several ways that your random testing pool(s) can be structured. Two of the most common methods are individual selection/single pool, and individual selection/multiple pools. These methods are only examples of ways to structure and operate random selection pools. Some methods may work better depending upon your company's organizational and geographical structure. It may be helpful to discuss their relative merits and implementation concerns with a statistician.

B.3.1 Individual Selection/Single Pool. Selection of individuals from a single pool is perhaps the easiest to implement and maintain. This type of pool has the following features:

- All covered employees are included in a single pool, and each is assigned a unique identifier such as a Social Security number, payroll identification number, or comparable identifying number.
- The number of employees to be tested is calculated.
- Selection of the specified number of employees is conducted using a scientifically valid method, such as a random number table or a computer-based random number generator.
- Each safety-sensitive employee must have an equal chance of being tested each time a selection is made.

B.3.2 Individual Selection/Multiple Pools. Selection of individuals segregated into separate pools can ensure that the selection is spread evenly across employee groups within the covered population. This is especially useful in companies that have large numbers of employees who are primarily in one location, such as mechanics, and others who are mobile and whose schedules are unpredictable, such as pilots and flight attendants. It may also be useful in organizations with many job sites. The procedures for managing multiple pools are the same as for a single pool.

Each pool is treated separately and tested at the same minimum annual percentage rate. An individual may be placed in only one pool per company. This helps ensure every employee has an equal chance of being tested each time selections are made. This type of pool has the following features:

- All covered employees are included in a pool that is defined by location or job category. For example, all pilots might form a pool, or all covered employees in a hub location might form a pool.
- Each employee within a pool is matched by a unique identifier such as a Social Security number, payroll identification number, or comparable identifying number.
- The number of employees to be tested from each pool is determined by multiplying the number of employees in a pool by the minimum annual percentage rate and dividing the result by the number of testing periods to be conducted during the year.
- Selection of the specified number of employees is conducted using a

scientifically valid method, such as a random number table or a computer-based random number generator.

B.3.3 Preparing the Random Pool for Selection. Prior to each random selection, you must ensure that only safety-sensitive employees are included in the random pool, and all safety-sensitive employees are in the random pool. When safety-sensitive employees leave or transfer out of a covered position or are assigned to work solely outside of the territory of the United States, you must remove the employee from the random pool. Employees may be removed from the random testing pool while on extended absence or furlough. We believe it is a best practice to remove them from the pool if the absence lasts 90 days or longer. Any employee who is removed from the random pool must be added back immediately upon resuming their safety-sensitive position, and prior to the next random selection.

B.4 MAKING RANDOM SELECTIONS.

B.4.1 Scientifically Valid Method. You may select covered employees for testing from each pool and test for both drugs and alcohol or have a selection list for drug and another for alcohol. Using a single random selection list for both drug and alcohol testing can create difficulties when the testing rates are different. If using a single list, to avoid any appearance of manipulation, you should document how employees will be designated for drug and alcohol testing. For example, you might decide to test names on the list for drugs and alcohol, starting at the top of the list until the alcohol rate is met and the remainder for drugs only. One way to avoid issues when using one random selection list of covered employees for both drug and alcohol testing is to ensure equality by making both the drug and alcohol selections from the full list of eligible employees in the random pool each time a selection is made. Examples of scientifically valid methods of random selection include 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.

B.4.2 Confidentiality of Selections. It is important to ensure that your random selection list is kept confidential until notifications can take place. Therefore, we recommend that you limit access to the selection list to only those individuals responsible for managing your random testing program.

B.5 NOTIFYING AND TESTING SELECTED EMPLOYEES.

B.5.1 Notification of Random Selection. Under [14 CFR § 120.109](#)(b)(8), you conduct random drug testing, but without regard to whether the employee was, is, or will be performing safety-sensitive functions at that exact time. In accordance with [14 CFR § 120.217](#)(c)(9), you must conduct random alcohol testing 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. Once notified, you must ensure that an employee proceeds immediately to the collection site and the test is completed. If the test is not completed, you are obligated to investigate the situation and determine whether the employee refused to test under 49 CFR §§ [40.191](#) or [40.261](#). If the employee is performing a safety-sensitive function at the time of the notification, you should ensure that the employee ceases to perform the safety-sensitive function and proceeds to the collection site as soon as possible. For categories where testing during the performance of a safety-sensitive function is not feasible (i.e., flight crewmember and flight attendant duties), you may only have the option to test just before or just after the performance of duties.

When you notify an employee to report for testing, we strongly encourage you to document your notification. The FAA has a sample notification form available online at www.faa.gov/go/drugabatement. If the test is not completed, you are obligated to investigate the situation and determine whether the employee refused to test under 49 CFR §§ [40.191](#) or [40.261](#). In accordance with [14 CFR part 120](#), subparts C and D, you must ensure your safety-sensitive employees are tested.

B.5.2 Collection Site Notification. To minimize issues with the collection site, you or your C/TPA should make contact to verify collection personnel are ready and available to conduct the necessary tests; the collector and/or breath alcohol technician is aware of the types of testing to conduct; the equipment is working; and the forms are available. Doing this before notifying the employee can help to ensure that the testing will begin with little to no delay. According to [49 CFR § 40.14](#), the following information must be provided to the collector:

- Full name of the employee being tested.
- SSN or Employee ID No.
- Laboratory name and address (can be pre-printed on the CCF).
- Employer name, address, phone and fax numbers (can be pre-printed on the CCF at Step 1-A).
- DER information.
- MRO information (can be pre-printed on the CCF).
- The DOT agency which regulates the employee's safety-sensitive duties (can be pre-printed in the appropriate box on the CCF at Step 1-D).
- Test reason (e.g., random).
- Whether the test is to be observed or not (refer to [49 CFR § 40.67](#)).
- C/TPA information (optional and can be pre-printed on the CCF).
- Specimen type to be collected (i.e., oral fluid or urine).

B.5.3 Testing Selected Employees. One characteristic that makes random testing effective as a deterrent is the element of unpredictability. While employees know they might be tested, they are never quite sure of when. The FAA's

regulations do not specify how often you must conduct random testing (other than a minimum percentage rate), but testing must be unannounced and spread reasonably throughout the year in a non-predictable pattern (e.g., monthly or quarterly). The DOT recommends that random selections and testing be performed at least quarterly. You should conduct testing throughout a testing period so employees cannot predict when they might be tested. Practices such as testing only at the beginning or end of a month or testing on the same date within test periods may create foreseeability. Because small employers may experience challenges with spreading the testing dates throughout the calendar year, it may be helpful for a small employer to join a C/TPA to be part of a larger, combined random testing pool. See Section B.6 of this appendix for more information.

- B.5.4 When a Test is not Completed.** Once the employee is notified to report for random testing and the test is not accomplished for any reason, the test cannot be rescheduled for a later time in accordance with 14 CFR §§ [120.109\(b\)\(7\)](#) and [120.217\(c\)\(7\)](#). For example, if the equipment at the collection site malfunctions and a test cannot be conducted, the employee's selection should be excused because the test is no longer unannounced. After you review the circumstances why the test was not completed, including whether the employee did not report for the test or arrived after the testing site was closed, you must determine if the test is a refusal in accordance with [49 CFR § 40.355\(i\)](#). If you determine that the employee has refused the test, you must follow the regulatory procedures described in section 8 of this Advisory Circular.
- B.5.5 Excusals.** You must ensure that each covered employee has an equal chance of being tested each time selections are made in accordance with 14 CFR §§ [120.109\(b\)\(5\)](#) and [120.217\(c\)\(5\)](#). If an employee is selected, you should make every effort to test the employee unless there is a legitimate circumstance that makes it impossible for you to notify the employee to report for testing. For example, if an employee is unavailable for the last two months of the calendar year while on extended leave (e.g., military leave, sick leave, furlough, or vacation), you may consider that a legitimate circumstance and document it as an excused test. It would not be acceptable to excuse an employee (e.g., flight crewmember or flight attendant) due to operational concerns such as a change in a flight schedule. If you excuse the employee, you must document the reason in accordance with [14 CFR § 120.219\(a\)\(ii\)\(A\)](#) and ensure that the missed test does not result in a shortfall for meeting your random testing rates. In this situation, it may be necessary for you to initiate another random selection or make an extra selection during the next selection cycle. If you hold the employee's name until they return to work later in the calendar year, you must ensure it is unannounced in accordance with 14 CFR §§ [120.109\(b\)\(7\)](#) and [120.217\(c\)\(7\)](#).
- B.5.6 Special Considerations.** If you are a covered employee and act as the primary or alternate DER, it may create some unexpected issues and challenges when it comes to actions associated with your own test. For example, if a covered

employee receives the list of employees selected for random testing and sees their own name, the employee must report immediately to the collection site for testing to ensure compliance with the random testing requirements under 14 CFR §§ [120.109\(b\)\(7\)](#) and [120.217\(c\)\(7\)](#). If the alternate DER is covered, but the primary DER is not, the problem would be eliminated if the primary DER manages the random selections.

B.6 RANDOM SELECTIONS AND SPECIAL GUIDANCE FOR SMALL OPERATORS.

B.6.1 Combined Random Testing. If you are a small operator, you may consider joining a Consortium/Third Party Administrator (C/TPA) and being part of a combined random testing pool under 14 CFR §§ [120.109\(b\)\(6\)\(ii\)](#) and [120.217\(c\)\(6\)\(ii\)](#). It would be up to you to obtain your selection list and notify your employees, and ensure that the C/TPA's combined pool meets the minimum annualized testing rates in accordance with §§ [120.109\(b\)\(6\)\(ii\)\(A\)](#) and [120.217\(c\)\(6\)\(ii\)\(A\)](#). This is a good option for a small operator because your covered employees will be part of a bigger pool, have an equal chance of being tested for each selection, and the random testing will be spread reasonably throughout the calendar year.

B.6.2 Single Pool and Dummy Entries. As an employer, you must ensure random drug and alcohol tests are spread reasonably throughout the calendar year in accordance with 14 CFR §§ [120.109\(b\)\(7\)](#) and [120.217\(c\)\(7\)](#). This can be challenging if you have a small random testing pool. If you do not join a C/TPA and add your employees to a combined random pool, you may want to consider adding dummy entries (names or numbers) to your random testing pool. Although the rule language does not explicitly address the use of dummy entries, it is a practice that can help a small operator achieve the purpose of random testing, which is to provide an ongoing deterrence from drug use or alcohol misuse. The use of dummy entries cannot alter the clear requirement of the regulation, such as the condition that only safety-sensitive employees are tested, and that each safety-sensitive employee has an equal chance of selection. It is important to evaluate when to use dummy entries, specifically, at the end of the testing year. If prior to the end of the year you have not actually selected enough safety-sensitive employees, you must remove all the "dummies" and select an actual employee through another effective random testing generation tool. This will ensure you meet your annual testing rate.

B.6.3 Alternate Selection Method for Employers with 12 or Fewer Employees. If you are an employer with 12 or fewer safety-sensitive employees, you may use an alternate selection technique to help maintain deterrence and avoid testing more employees than required annually. We recommend a two-step selection method because under the lowest minimum annual rates, you would still conduct one test per quarter and maintain the deterrence element. This method involves using a computer-based random number generator or a random number table to select the

quarter or quarters in which testing will be required and then the selection of the employee(s) for testing during the appropriate quarter(s). At that rate, a company with 13 to 16 employees can meet the FAA requirement by selecting and testing at least one safety-sensitive employee from the random pool each quarter. Because an employer should round to the next higher number when computing the number of required tests, a company with 13 to 16 employees should test 4 persons in a calendar year or 1 each quarter. As an example, say you are an employer with 15 covered employees testing at 25 percent. Rounding up, you would need to test 4 employees, which equals approximately one test per quarter to meet the minimum required number of tests. For example:

$$0.25 \times 15 = 3.75 \text{ employees rounded up to } 4$$

4 employees to test/4 quarters
= 1 employee to test per quarter

On the other hand, if you only have 7 covered employees and you must drug test at a 25 percent annual rate, you will need to test 1.75 or 2 (rounded up) employees ($0.25 \times 7 = 1.75$) during a calendar year. Since this number is less than four, testing once per quarter would result in testing two more employees than necessary. Therefore, another method is needed to select employees while maintaining the desired level of deterrence (note that you may test more than the required rate, but you must meet the minimum required).

We recommend a two-step selection method that involves using a computer-based random number generator or a random number table to select the quarter or quarters in which testing will be required and then the selection of the employee(s) for testing during the appropriate quarter(s). It works like this:

- At the beginning of the year, generate a random list of the four quarters. As an example, the selection list might look like this: 4,3,1,2. If you have one to four employees, you will need to test one person during the year, assuming a 25 percent annual rate. In this example, no name would be drawn until the fourth quarter because that is the first number to come up. Since the employees would not know when a draw is being made, they would assume that there is a chance their name could be drawn at any time.
- Using the same example, if you have five to eight covered employees, you will draw a name and test in each of the third and fourth quarters. If you have nine to twelve covered employees, you will draw a name and test one each of the first, third and fourth quarters.
- As previously noted, the alcohol minimum annual percentage rate is currently 10%. If you have up to ten employees, you must test one employee for alcohol each calendar year. You can meet this rate by conducting a second draw of quarters and testing in the quarter designated. In our example, the one alcohol test would be conducted in the fourth quarter. The alternative is to test the employee selected for

drug testing for alcohol as well. If you must test more than one employee for drugs during the calendar year, then you should designate which quarter's selection will also be tested for alcohol at the beginning of the year.

- Designating the test period at the beginning of the year will eliminate any concern that you attempted to target a specific employee for testing.

B.7 RECORDKEEPING REQUIREMENTS.

B.7.1 General Requirements. You must retain documents related to the random selection process for two years in accordance with [14 CFR § 120.219\(a\)\(ii\)\(A\)](#). The documents should support your random selection policies and process, and you and your service agents must make them available for inspection by the FAA in accordance with [49 CFR § 40.331](#).

B.7.2 Documenting Your Random Testing Process. To ensure you follow a consistent and compliant process and treat all employees fairly, it is critical that an employer document its random testing process. Documents include, but are not limited to, the following:

- Documentation of selection methodology (including a description of the computer program if applicable).
- List of safety-sensitive employees in the random pool prior to each selection.
- The random selection list each time selections are made.
- The employer's copy of the custody and control forms and alcohol testing forms from the completed random testing.
- The verified or confirmed test result, which must be maintained under other timeframes (e.g., non-negatives, failed alcohol tests, canceled test results, and refusal to test determinations).

B.7.3 Random Testing Records. It is important that you document everything in the entire random testing process, which may include:

- the number of employees selected each time;
- the names of each employee selected;
- the dates and times each employee is notified to report for testing;
- the dates and times of each employee's collection; and
- any reason an employee was not tested during the selection cycle, etc.

B.8 COMMON ERRORS IN RANDOM TESTING AND ADDITIONAL RESOURCES.

B.8.1 Common Errors. It is important that an employer is aware of the most common errors that occur in random testing so they can take the steps to ensure they avoid them. The following are some of the most common errors FAA inspectors find:

- Failing to include all safety-sensitive employees in the random testing pool when each selection is made.
- Including non-safety-sensitive employees in the random testing pool and conducting DOT tests when they are selected.
- Using an unacceptable random selection practice. For example, selecting numbers from a hat, rolling dice, and throwing darts are not acceptable random selection methods.
- Failing to conduct random testing for selected employees within a selection period or calendar year.
- Conducting the wrong type of test. For example, sending an employee for random alcohol testing and conducting a random drug test collection.
- Failure to notify the collection site of the reason for the test or verifying the collection site is ready and available prior to notifying the employee to report for testing.
- Over selecting or using alternates if employees are not available when they are available during the testing cycle.
- Failing to ensure the testing is unannounced or allowing employees to predict when selections and testing will be conducted.
- Failure to include required information on the CCF or mismarking the wrong test or DOT Agency.

B.8.2 FAA Inspection Reviews. During an FAA drug and alcohol compliance inspection, inspectors will check to ensure that each employee has an equal chance of being tested each time selections are made, that there is no way an employee can predict when the next random test will occur, and that the pool contains all safety-sensitive employees. If employees can avoid testing or do not have an equal chance of being tested, the issue would be documented as a finding of noncompliance with 14 CFR §§ [120.109](#)(b) and [120.217](#)(c).

B.8.3 Additional Resources. If you have an active DOT/FAA-mandated drug and alcohol testing program, you must have knowledge of the following regulations and should be aware of the resources available online:

- FAA’s Drug and Alcohol Testing Program, [14 CFR part 120](#), that provides the random drug and alcohol testing requirements that apply to aviation employers with an active program.
- DOT’s Procedures for Transportation Workplace Drug and Alcohol Testing Programs, [49 CFR part 40](#), that provides the drug and alcohol collection and testing process.
- Visit the FAA’s website at www.faa.gov/go/drugabatement to review our random testing video and Frequently Asked Questions or consider using the sample random testing notification form. We encourage you to subscribe for future updates!
- Visit the DOT’s website at www.transportation.gov/odapc and review their “Best Practices for DOT Random Drug and Alcohol Testing” guide. We encourage you to subscribe to the DOT’s list serve for future updates!

Appendix C. Advisory Circular Feedback Form

Paperwork Reduction Act Burden Statement: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0746. Public reporting for this collection of information is estimated to be approximately 20 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, completing, and reviewing the collection of information.

All responses to this collection of information are voluntary FAA Order 1320.46D. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Barbara Hall, 800 Independence Ave, Washington, D.C.

If you find an error in this AC, have recommendations for improving it, or have suggestions for new items/subjects to be added, you may let us know by (1) emailing this form to drugabatement@faa.gov or (2) faxing it to the attention of the Office of Aerospace Medicine, Drug Abatement Division, AAM-800, at (202) 267-5200.

Subject: AC 120-126A

Date: _____

Please mark all appropriate line items:

- ☐ An error (procedural or typographical) has been noted in paragraph _____ on page _____.
- ☐ Recommend paragraph _____ on page be changed as follows:

- ☐ In a future change to this AC, please cover the following subject:
(Briefly describe what you want added.)

☐ Other comments:

☐ I would like to discuss the above. Please contact me.

07/10/2024

AC 120-126A
Appendix C

Submitted by: _____ Date: _____
FAA 1320-73 (11/23) SUPERSEDES PREVIOUS EDITIONS