

§ 120.223

14 CFR Ch. I (1–1–13 Edition)

(4) No covered employee who is required to hold an airman medical certificate in order to perform a safety-sensitive duty may perform that duty following a violation of this subpart until the covered employee obtains an airman medical certificate issued by the Federal Air Surgeon dated after the alcohol test result or refusal to test date. After the covered employee obtains this airman medical certificate, the SAP may recommend to the employer that the covered employee may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(5) Once the Federal Air Surgeon has recommended under paragraph (c)(4) of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

(d) *Notice of refusals.* Each covered employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to an alcohol test required under this subpart. Notification must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) *Required evaluation and alcohol testing.* No covered employee who has engaged in conduct prohibited by §§ 120.19 or 120.37 shall perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40.

(f) *Other alcohol-related conduct.* (1) No covered employee tested under this subpart who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions

for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

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

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

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

§ 120.223 Alcohol misuse information, training, and substance abuse professionals.

(a) *Employer obligation to promulgate a policy on the misuse of alcohol.* (1) *General requirements.* Each employer shall provide educational materials that explain these alcohol testing requirements and the employer's policies and procedures with respect to meeting those requirements.

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

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

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

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

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

(iii) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance

with these alcohol testing requirements.

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

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

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

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

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

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

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

(xi) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening when an alcohol problem is suspected, including confrontation, referral to any available employee assistance program, and/or referral to management.

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

(b) *Training for supervisors.* Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §120.217(d) of this subpart receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

(c) *Substance abuse professional (SAP) duties.* The SAP must perform the functions set forth in 49 CFR part 40, subpart O, and this subpart.

§ 120.225 How to implement an alcohol testing program.

(a) Each company must meet the requirements of this subpart. Use the following chart to determine whether your company must obtain an Anti-drug and Alcohol Misuse Prevention Program Operations Specification or whether you must register with the FAA:

| If you are . . . | You must . . . |
|---|---|
| (1) A part 119 certificate holder with authority to operate under parts 121 and/or 135. | Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector. |
| (2) An operator as defined in §91.147 of this chapter. | Register with the FAA, by contacting the Flight Standards District Office nearest to your principal place of business. |
| (3) An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. | Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591. |
| (4) A part 145 certificate holder who has your own alcohol testing program. | Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 if you opt to conduct your own alcohol testing program. |
| (5) A contractor who has your own alcohol testing program. | Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591 if you opt to conduct your own alcohol testing program. |

(b) Use the following chart for implementing an alcohol testing program if you are applying for a part 119 certificate with authority to operate under parts 121 and/or 135 of this chapter, if you intend to begin operations as defined in §91.147 of this chapter, or if