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Ellen Crum,

Acting Manager, Airspace and Rules.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA-1998-4521; Amendment No. 121-332]

RIN 2120-AF07

Drug and Alcohol Testing Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to update references to various types of commercial operators within the drug and alcohol testing regulations. In the final rule, "National Air Tour Safety Standards" (Air Tours) published on February 13, 2007, we changed the regulatory sections that referred to sightseeing operators that did not hold a certificate but that continued to be subject to drug and alcohol testing requirements. In addition, this technical amendment updates other references in the drug and alcohol testing regulations including addresses. The intent of this amendment is to avoid confusion created by inconsistent terms and references within the FAA's regulations.

DATES: *Effective Dates:* Effective on March 15, 2007.

FOR FURTHER INFORMATION CONTACT: Patrice M. Kelly, Deputy Division Manager, Drug Abatement Division, Office of Aerospace Medicine, 800 Independence Ave. SW., Washington, DC, 20591. (202) 267-3123; patrice.kelly@faa.gov.

SUPPLEMENTARY INFORMATION:

Technical Amendment

This technical amendment will update several references in the FAA's drug and alcohol testing regulations in Title 14 of the Code of Federal Regulations (14 CFR), part 121, appendices I and J. In addition, this amendment will change the location where registrations will be sent, so that

the appropriate offices will receive the drug and alcohol testing registration information.

Since the inception of the drug testing rules in 1988, and the alcohol testing regulations in 1994, the FAA has included any sightseeing operator defined in 14 CFR 135.1(c) as an "employer" that was required to meet the drug and alcohol testing requirements set forth in 14 CFR part 121, appendices I and J. Under the Air Tours final rule, the FAA has moved the former § 135.1(c) operators to the newly created § 91.147 of 14 CFR. In this amendment, we are changing all references to the term "Operator" as defined in § 135.1(c) to reference the new definition of "Operator" in § 91.147.

The "National Air Tour Safety Standards" final rule requires that a § 91.147 operator register its drug and alcohol testing program with the Flight Standards District Office nearest its principal place of business. The technical amendment reflects that change to several sections in appendices I and J of part 121. If this change is not made, these small operators would be required to file the same company contact information with multiple FAA offices. The amendment also updates the addresses where a repair station can file its program with the FAA, if the repair station opts to have its own testing program.

We are updating references to "a part 121 certificate holder" and "a part 135 certificate holder." The drug and alcohol testing regulations will now refer to "part 119 certificate holders with authority to operate under parts 121 and/or 135," which is a technically more accurate description.

In both appendix I, section IX, and appendix J, section VII, we eliminated paragraph "C.2" to incorporate it in the caption within the chart. The chart that appeared in paragraph "C.2" now appears in the newly redesignated paragraph "C." We made this change to avoid confusion and redundancy. We also removed an "e.g." provision in the C.2 chart found in both appendix I, section IX, and appendix J, section VII. The "e.g." in paragraph "C.2" was not used elsewhere in the charts, and was not a substantive provision.

Justification for Immediate Adoption

On the basis of the above, the FAA does not find that this amendment is a substantial action that requires 30 days after publication before it becomes effective, and that notice and public

comment under 5 U.S.C. 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 533(d) for making this rule effective on the same day that the National Air Tour Safety Standards final rule becomes effective (March 15, 2007), so that references to sections amended in the final rule are up to date.

List of Subjects in 14 CFR Part 121

Aircraft, Airmen, Aviation Safety, Reporting and recordkeeping requirements.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 121 is amended as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 45101-45105, 46105.

■ 2. Amend appendix I to part 121 as follows:

■ A. Amend section II, to revise the definition of "Employer"; and

■ B. Amend section IX by revising paragraphs A, B, C, D.1.e., E.1.f., and E.2.

The revisions read as follows:

Appendix I to Part 121—Drug Testing Program

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II. *Definitions.* * * *

* * * * *

Employer is a part 119 certificate holder with authority to operate under parts 121 and/or 135, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. An employer may use a contract employee who is not included under that employer's FAA-mandated antidrug program to perform a safety-sensitive function only if that contract employee is included under the contractor's FAA-mandated antidrug program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)

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IX. *Implementing an Antidrug Program.*

A. Each company must meet the requirements of this appendix. Use the following chart to determine whether your company must obtain an Antidrug 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. 2. An operator as defined in §91.147 of this chapter. 3. An air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. 4. A part 145 certificate holder who has your own antidrug program. 5. A contractor who has your own antidrug program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA Principal Operations Inspector. Register with the FAA by contacting the Flight Standards District Office nearest to your principal place of business. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591. 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 antidrug 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 antidrug program.

B. Use the following chart for implementing an antidrug program if you are applying for a part 119 certificate with authority to operate under parts 121 or 135, if you intend to begin operations as defined in §91.147 of this chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you . . .	You must . . .
1. Apply for a part 119 certificate with authority to operate under parts 121 or 135. 2. Intend to begin operations as defined in §91.147 of this chapter. 3. Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military).	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix. a. Register with the FAA by contacting the Flight Standards District Office nearest to your principal place of business prior to starting operations, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix. a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. If you are an individual or company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under parts 121 and/or 135, an operation as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military, use the chart below to determine what you must do if you opt to have your own antidrug program:

If you . . .	And you opt to conduct your own antidrug program, you must . . .
a. Are a part 145 certificate holder. b. Are a contractor.	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, or operator as defined in §91.147 of this chapter, and iii. Meet the requirements of this appendix as if you were an employer. i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, ii. Implement an FAA Antidrug Program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 or 135, an operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military, and iii. Meet the requirements of this appendix as if you were an employer.

D. 1. * * *
 e. Whether you have 50 or more safety-sensitive employees, or 49 or fewer safety-sensitive employees. (Part 119 certificate holders with authority to operate only under part 121 are not required to provide this information.)
 * * * * *
 E. 1. * * *
 f. A signed statement indicating that: Your company will comply with this appendix, appendix J of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 119 certificate holder with authority to operate under part 121 and/or part 135, an operator as defined in §91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.

2. Send this information in the form and manner prescribed by the Administrator, in duplicate to the appropriate address below:

- a. For § 91.147 operators: the Flight Standards District Office nearest to your principal place of business.
- b. For all others: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

■ 3. Amend appendix J to part 121 as follows:
 ■ A. In section I., amend paragraph D. to revise the definition of "Employer";

■ B. Amend section VII by revising paragraphs A, B, C, D.1.e., E.1.f., E.2., and E.3.

The revisions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

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I. GENERAL

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D. Definitions.

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Employer means a part 119 certificate holder with authority to operate under parts 121 and/or 135; an operator as defined in

§ 91.147 of this chapter; or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.
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VII. HOW TO IMPLEMENT AN ALCOHOL MISUSE PREVENTION PROGRAM

A. Each company must meet the requirements of this appendix. Use the following chart to determine whether your company must obtain an Antidrug 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	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 misuse prevention program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your FAA 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 Misuse Prevention Program.
5. A contractor who has your own alcohol misuse prevention 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 Misuse Prevention Program.

B. Use the following chart for implementing an Alcohol Misuse Prevention Program if you are applying for a part 119 certificate with authority to operate under parts 121 and/or 135, if you intend to begin operations as defined in § 91.147 of this

chapter, or if you intend to begin air traffic control operations (not operated by the FAA or by or under contract to the U.S. Military). Use it to determine whether you need to have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, or

whether you need to register with the FAA. Your employees who perform safety-sensitive duties must be tested in accordance with this appendix. The chart follows:

If you . . .	You must . . .
1. Apply for a part 119 certificate with authority to operate under parts 121 and/or 135.	a. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
2. Intend to begin operations as defined in § 91.147 of this chapter.	a. Register with the FAA by contacting the Flight Standards District Office nearest to your principal place of business prior to starting operations, b. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start operations, and c. Meet the requirements of this appendix.
3. Intend to begin air traffic control operations (at an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military).	a. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, b. Implement an FAA antidrug program no later than the date you start operations, and c. Meet the requirements of this appendix.

C. If you are an individual or a company that intends to provide safety-sensitive services by contract to a part 119 certificate

holder with authority to operate under parts 121 and/or 135 or an operator as defined in § 91.147 of this chapter, use the chart below

to determine what you must do if you opt to have your own Alcohol Misuse Prevention Program:

If you . . .	And you opt to conduct your own Alcohol Misuse Prevention Program, you must . . .
a. Are a part 145 certificate holder	i. Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.

If you . . .	And you opt to conduct your own Alcohol Misuse Prevention Program, you must . . .
b. Are a contractor	i. Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, ii. Implement an FAA Alcohol Misuse Prevention Program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and iii. Meet the requirements of this appendix as if you were an employer.

D. 1. * * *
 e. Whether you have 50 or more covered employees, or 49 or fewer covered employees. (Part 119 certificate holders with authority to operate only under part 121 are not required to provide this information.)
 * * * * *

E. 1. * * *
 f. A signed statement indicating that: Your company will comply with this appendix, appendix I of this part, and 49 CFR part 40; and, if you are a contractor, you intend to provide safety-sensitive functions by contract to a part 119 certificate holder with authority to operate under part 121 and/or 135, an operator as defined by § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.

2. Send this information in the form and manner prescribed by the Administrator, in duplicate to the appropriate address below:

a. For § 91.147 operators: The Flight Standards District Office nearest to your principal place of business.

b. For all others: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

3. Update the registration information as changes occur. Send the updates in duplicate to the address specified in paragraph 2.
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Issued in Washington, DC, on March 7, 2007.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

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DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

[BOP-1107-F]

RIN 1120-AB06

Suicide Prevention Program

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) revises its regulations on the suicide prevention program for clarity and to remove agency management procedures which do not need to be stated in regulations.

We intend the revised regulations to provide for the health and safety of inmates.

DATES: March 15, 2007.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 977, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 207-2105.

SUPPLEMENTARY INFORMATION: The Bureau is revising its regulations on the suicide prevention program (28 CFR part 552, subpart E). We published a proposed rule on November 13, 2000 (65 FR 67670). We received one comment.

What change is the Bureau making?

We are revising the regulations generally for clarity and to remove procedures relating to agency management. The revised regulations more clearly describe for the inmate how we identify and protect inmates at risk for suicide.

Procedures relating to agency management are exempt from the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553). Removing these procedures from the regulations allows us to speak more directly to inmates.

Revised § 552.40 more precisely states the purpose of our suicide prevention program and summarizes how we place inmates in and remove them from the program. Former §§ 552.41 through 552.43 are combined in a new § 552.41 which details the specific procedures we use to identify, refer, assess, and treat potentially suicidal inmates.

We combined provisions for the conditions of a suicide watch in former §§ 552.44, 552.46, and 552.48 in the new § 552.42. The revised regulations are more objective based. For example, the revised regulations require that rooms designated for housing an inmate on suicide watch must allow staff to maintain adequate control of the inmate without compromising the ability to observe and protect the inmate.

Previously, the regulations relied upon a more prescriptive approach of describing the location of the room

(“* * * a non-administrative detention/segregation cell ordinarily in the health services area”). This prescriptive approach does not take into account recent developments in correctional facility design and construction, and has become unnecessarily restrictive.

Former §§ 552.45 and 552.49 addressed agency management procedures, and former § 552.47 affirms that a previously imposed sanction remains in effect for an inmate when that inmate is removed from a suicide watch. Because our regulations on inmate discipline sufficiently support that statement, we removed these three sections.

Response to Comment

We received one comment on our proposed rulemaking. The commenter had three main areas of concern, which we address below:

Section 552.40: The commenter stated that “there should be a brief explanation of what a suicide watch is” in the rules.

We present just such a brief explanation of “suicide watch” in § 552.42. In this section, we explain in detail the housing arrangements and conditions under which the suicidal inmate is constantly observed. Therefore, it is not necessary to define the term suicide watch in § 552.40.

Section 552.41: The commenter recommended the use of a “buddy system” to prevent suicide, suggesting that highly-regarded inmates might be chosen to “look after” or “befriend” the suicidal inmate. The commenter also suggested that we have a “small team working together” so that the suicidal inmate would “get to know and associate and even depend on that team.”

Each new inmate who enters a Bureau facility receives written material and an orientation that explains what to expect and how to get help from staff. Additionally, all new inmates receive a confidential medical and mental health screening by a medical professional to identify those who need assistance or have the potential for becoming suicidal. These inmates are immediately referred to a mental health professional for individual assessment and appropriate treatment. Therefore, an