

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 120 and 135**

[Docket No. FAA-2008-0937; Amendment No. 120-0A, 135-117A]

RIN 2120-AJ37

Drug and Alcohol Testing Program; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: The Federal Aviation Administration (FAA) is correcting its drug and alcohol testing regulations published on May 14, 2009. The FAA inadvertently excluded necessary wording within the text of two separate definitions; added wording to the sections describing refusals to submit to drug or alcohol tests; directed readers to an incorrect subpart for a referenced definition; omitted a cross reference to a list of applicable regulations; and added wording when describing an operator. This rule corrects those inadvertent errors and includes other minor editorial corrections. These corrections will not impose any additional requirements on operators affected by these regulations.

DATES: Effective January 20, 2010.

FOR FURTHER INFORMATION CONTACT: Rafael Ramos, Office of Aerospace Medicine, Drug Abatement Division, AAM-800, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8442; facsimile (202) 267-5200; e-mail drugabatement@faa.gov.

SUPPLEMENTARY INFORMATION:**Background**

On May 14, 2009, we published a final rule (74 FR 22649) that amended the regulations governing FAA-required drug and alcohol testing requirements. The final rule was necessary to gather all of the existing drug and alcohol requirements into one part because the regulations governing FAA-required drug and alcohol testing requirements were scattered throughout Chapter I of Title 14, Code of Federal Regulations. In that final rule in § 120.7 we omitted the words “and alcohol” from the definitions for “DOT agency” and “Employer.” In §§ 120.13 and 120.15, we inadvertently included the word “authorization.” In §§ 120.17 and 120.33, we used the term “subpart” instead of “part” when directing readers to the definition of prohibited drugs. In

§§ 120.103 and 120.211, we omitted the reference to § 135.1 from the list of applicable regulations. In § 120.117, we included the word “sightseeing” when describing an operator as defined in § 91.147 and omitted mailing instructions for § 91.147 operators. In § 120.119, we made reference to appendix H of 49 CFR part 40 as subpart H. In § 120.225, we omitted mailing instructions for § 91.147 operators. In the instruction for a change to 14 CFR part 135, we incorrectly listed a cross-reference to § 120.39 as § 135.39. This document corrects these errors.

List of Subjects*14 CFR Part 120*

Air carriers, Airmen, Alcohol testing, Aviation safety, Charter flights, Commercial air tour operators, Drug testing, Operators, Safety, Safety-sensitive, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Drug testing.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) parts 120 and 135 are amended as follows:

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101-40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 45101-45105, 46105, 46306.

■ 2. Revise paragraphs (g) and (i) of § 120.7 to read as follows:

§ 120.7 Definitions.

* * * * *

(g) *DOT agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug and alcohol testing (14 CFR parts 61, 65, 121, and 135; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

* * * * *

(i) *Employer* is a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, 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 drug and alcohol testing program to perform a safety-sensitive function only 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.)

* * * * *

■ 3. Revise paragraphs (b)(1) and (2) of § 120.13 to read as follows:

§ 120.13 Refusal to submit to a drug or alcohol test by a Part 63 certificate holder.

* * * * *

(b) * * *

(1) Denial of an application for any certificate or rating issued under part 63 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under part 63 of this chapter.

■ 4. Revise paragraphs (b)(1) and (2) of § 120.15 to read as follows:

§ 120.15 Refusal to submit to a drug or alcohol test by a Part 65 certificate holder.

* * * * *

(b) * * *

(1) Denial of an application for any certificate or rating issued under part 65 of this chapter for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under part 65 of this chapter.

■ 5. Revise paragraph (b) of § 120.17 to read as follows:

§ 120.17 Use of Prohibited drugs.

* * * * *

(b) No employer may knowingly use any individual to perform, nor may any individual perform for an employer, either directly or by contract, any air traffic control function while that individual has a prohibited drug, as defined in this part, in his or her system.

* * * * *

■ 6. Revise paragraph (b) of § 120.33 to read as follows:

§ 120.33 Use of prohibited drugs.

* * * * *

(b) No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract, any function listed in subpart E of this part while that individual has a prohibited drug, as defined in this part, in his or her system.

* * * * *

■ 7. Add paragraph (d)(2)(v) of § 120.103 to read as follows:

§ 120.103 General.

* * * * *

(d) * * *
 (2) * * *
 (v) § 135.1—Applicability
 * * * * *

■ 8. Revise paragraphs (a)(2) and (e)(2) of § 120.117 to read as follows:

§ 120.117 Implementing a drug testing program.
 (a) * * *

If you are ...	You must ...
* * * * *	* * * * *
(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.
* * * * *	* * * * *

* * * * *
 (e) * * *
 (2) Send this information in the form and manner prescribed by the Administrator, in duplicate to the appropriate address below:
 (i) For § 91.147 operators: The Flight Standards District Office nearest to your principal place of business.
 (ii) For all others: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.
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Administrator, in duplicate to the appropriate address below:
 (i) For § 91.147 operators: The Flight Standards District Office nearest to your principal place of business.
 (ii) For all others: The Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.
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CONSUMER PRODUCT SAFETY COMMISSION
16 CFR Part 1500
Children’s Products Containing Lead; Exemptions for Certain Electronic Devices
AGENCY: Consumer Product Safety Commission.
ACTION: Final rule.

■ 9. Revise paragraph (b) of § 120.119 to read as follows:

§ 120.119 Annual reports.
 * * * * *

(b) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet) other than hard-copy, for MIS form submission. For information on where to submit MIS forms and for the electronic version of the form, see: http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol.
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PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 12. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–45105.

■ 13. Revise paragraph (a)(5) of § 135.1 to read as follows:

§ 135.1 Applicability.
 (a) * * *
 (5) Nonstop Commercial Air Tour flights conducted for compensation or hire in accordance with § 119.1(e)(2) of this chapter that begin and end at the same airport and are conducted within a 25-statute-mile radius of that airport; provided further that these operations must comply only with the drug and alcohol testing requirements in §§ 120.31, 120.33, 120.35, 120.37, and 120.39 of this chapter; and with the provisions of part 136, subpart A, and § 91.147 of this chapter by September 11, 2007.
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SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is issuing a final rule concerning certain electronic devices for which it is not technologically feasible to meet the lead limits as required under section 101 of the Consumer Product Safety Improvement Act of 2008 (CPSIA).¹
DATES: *Effective Date:* This final rule is effective on January 20, 2010.
FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail khathlelid@cpsc.gov; telephone (301) 504-7254.

SUPPLEMENTARY INFORMATION:
A. Background
 The Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016, provides for specific lead limits in children’s products. Section 101(a) of the CPSIA provides that, by February 10, 2009, products designed or intended primarily for children 12 and younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 and younger cannot contain more than 300 ppm of lead. The limit

■ 10. Add paragraph (b)(5) to § 120.211 to read as follows:

§ 120.211 Applicable Federal regulations.
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(b) * * *
 (5) § 135.1—Applicability

■ 11. Revise paragraph (e)(2) of § 120.225 to read as follows:

§ 120.225 How to implement an alcohol testing program.
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(e) * * *
 (2) Send this information in the form and manner prescribed by the

Pamela Hamilton-Powell,
Director, Office of Rulemaking.
 [FR Doc. 2010-908 Filed 1-19-10; 8:45 am]
BILLING CODE 4910-13-P

¹ The Commission voted 5-0 to publish this final rule, with changes, in the **Federal Register**. Chairman Inez M. Tenenbaum, and Commissioners Thomas H. Moore, Nancy Nord, Robert Adler, and Anne Northup voted to publish the notice with changes. Commissioner Northup issued a statement, and the statement can be found at <http://www.cpsc.gov/PR/northup01062010devices.pdf>.