determination that an employee has refused a drug or alcohol test if ''You are authorized by a DOT agency regulation to do so, you schedule a required test for an owner-operator, and the individual fails to appear for the test without a legitimate reason.''

This section was drafted in response to a situation that sometimes occurs, in which a C/TPA directs an owner-operator or other self-employed individual to appear for a random or other test and the individual is a ''no show.'' Because this individual is self-employed, there is usually no party (like an employer in a larger business) who can determine that the individual has refused to test and cause the individual to be removed from performing safety-sensitive functions. Section 40.355(j)(1) contemplates that, where DOT agency regulations permit, C/TPAs could make a refusal determination in this situation, since there basically is no one else in position to do it.

At present, DOT agency regulations do not address this issue. In some cases (*e.g.*, FRA, FTA), the provision is irrelevant, because these agencies do not regulate any owner-operators. The Department seeks comment, however, on whether DOT agencies that do regulate owner-operators or other self-employed safety-sensitive personnel should add a provision to their final conforming rules authorizing this action by C/TPAs. DOT agency rule provisions could also permit or require C/TPAs, in this situation, to report the refusals to the applicable DOT agency. The Department seeks comment on whether such a reporting authorization or requirement is advisable. Another alternative would be for Part 40 to authorize reporting of this kind on a Department-wide basis, obviating the need for amendments to individual operating administration rules.

Rulemaking Process Matters

In addition to these common provisions of the NPRMs, the individual DOT agencies, in some cases, have agency-specific provisions they wish to propose. These agency-specific provisions are discussed in the preambles to each DOT agency rule.

Each of the DOT agencies involved with this rulemaking will be reviewing one another's dockets, so that suggestions that may have been made in response to only one agency's proposed rule will be available to all the agencies. Any or all of the six agencies may make changes to their proposed rules based on comments that came into the docket of another of the agencies. In addition, in some cases one agency has proposed an idea (*e.g.*, an FMCSA proposal to issue notices concerning random testing rates only when there is a change, rather than every year) that, after reviewing the dockets, other agencies may choose to adopt.

Regulatory Analyses and Notices

These proposed rules have been designated as non-significant under Executive Order 12886 and the Department of Transportation's Regulatory Policies and Procedures. They are non-significant because they merely make conforming changes to the revised 49 CFR Part 40, which has already been subject to extensive comment and analysis. The proposed changes would not have any incremental economic impacts on their own. The economic impacts of the underlying Part 40 changes were analyzed in connection with the Part 40 rulemaking.

Because these proposals have no incremental economic impacts, the Department certifies, under the Regulatory Flexibility Act, that these proposals, if adopted, would not have a significant economic impact on a substantial number of small entities. These proposals likewise have no incremental Federalism impacts for purposes of Executive Order 13132, so no further analysis is needed for Federalism purposes. All the information collection requirements of Part 40 have been analyzed and approved by OMB. These proposed rules would impose no information collection requirements that have not already been reviewed in context of the Part 40 rulemaking, so no further Paperwork Reduction Act review is necessary.

There are a number of other Executive Orders that can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this NPRM, and we believe that the proposed rules do not directly affect the matters that the Executive Orders cover.

Issued this 9th day of April 2001, at Washington, D.C.

Jon L. Jordan,

Federal Air Surgeon, Federal Aviation Administration.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

Stacy L. Gerard,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

S. Mark Lindsey,

Acting Deputy Administrator, Federal Railroad Administration.

Julie Anna Cirillo,

Acting Deputy Administrator, Federal Motor Carrier Safety Administration.

Hiram J. Walker,

Acting Deputy Administrator, Federal Transit Administration.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance, Office of the Secretary.

[FR Doc. 01–9409 Filed 4–27–01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2000–8431; Notice No. 00–14]

RIN 2120–AH15

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes amendments to the industry drug and alcohol testing regulations to conform with the changes in the Department of Transportation's revision of its drug and alcohol testing procedures regulation, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. We also propose to change the antidrug and alcohol misuse prevention program regulations in light of the amendments that have been made to the medical standards and certification requirements. We further propose eliminating certain requirements under reasonable suspicion and post-accident alcohol testing because these requirements are outdated and no longer valid. These

proposals are intended to update and clarify the regulations based on the Department of Transportation's revisions and previous FAA rulemakings.

DATES: Send your comments on or before June 14, 2001.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–8431 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Diane J. Wood, Manager, Drug Abatement Division, AAM–800, Office of Aviation Medicine, Federal Aviation Administration, Washington, DC 20591, telephone number (202) 267–8442.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commentators wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–8431.'' The postcard will be date stamped and mailed to the commenter.

Availability of Rulemaking Documents

You can get an electronic copy of this document using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view. You can also get an electronic copy using the Internet through FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Background

On April 29, 1996, the Department of Transportation issued an advance notice of proposed rulemaking (ANPRM) (61 FR 18713) asking for suggestions in changing 49 CFR part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs. Subsequently, on December 9, 1999, a notice of proposed rulemaking (NPRM) (64 FR 69076) was issued proposing a comprehensive revision to 49 CFR part 40. The Department of Transportation (DOT) published its final rule on December 19, 2000 (65 FR 79462). As a consequence of the DOT's action, the FAA is proposing to amend its drug and alcohol testing regulations to integrate, as appropriate, the new DOT procedures.

In addition, on March 19, 1996, the FAA published a final rule, Revision of Airman's Medical Standards and Certification Procedures and Duration of Medical Certificates (54 FR 11238). This final rule amended requirements for 14 CFR part 67 medical certificate holders. Since the publication of this final rule the FAA has identified some inconsistencies between 14 CFR part 121 and 14 CFR part 67 that require modification. Changes in 14 CFR part 121 are being proposed at this time because the revision of 49 CFR part 40 is causing modifications to the portions of 14 CFR part 121 that are not consistent with the 1996 changes to 14 CFR part 67. Rather than reissuing inconsistent provisions in 14 CFR part 121, appendices I and J, this notice proposes to update the regulations consistent with 14 CFR part 67.

Two sections of 14 CFR part 121, appendix J, refer to a requirement for employers to submit information to the FAA on March 15, 1996, 1997, and 1998. Specifically, 14 CFR part 121, appendix J, sections III.B.2(b) and III.D.4(b) require employers to submit to the FAA notice of any post-accident test or reasonable suspicion test that was not completed within the eight hour period required for such tests. The reporting requirements were imposed only for the first three years after the final rule on alcohol misuse prevention became effective. Those requirements have expired, therefore we propose to eliminate those paragraphs.

The Common Preamble

A common preamble to all of the modal NPRMs proposing changes to the drug and alcohol testing rules is being published in the same issue of this **Federal Register** with this NPRM. This common preamble contains an overview of general issues related to drug and alcohol testing requirements in the transportation industry.

Section by Section Analysis

The following discusses only those portions of 14 CFR part 121, appendices I and J, which the FAA is proposing to change.

Appendix I

I. General

By this action FAA proposes to add a ''General'' section (I. General) and a ''Purpose'' section (A. Purpose) to the beginning of 14 CFR part 121, appendix I for clarity and organizational purposes. This section would include paragraph ''B. DOT Procedures'' and paragraph ''C. Employer Responsibility.'' These proposed changes are necessary to clarify the responsibility of employers to follow the requirements and procedures of this appendix and 49 CFR part 40. These proposed changes also reinforce that employers are responsible for all actions

of their officials, representatives, and service agents in carrying out the requirements of 14 CFR part 121, appendix I and 49 CFR part 40.

II. Definitions

This action proposes to change the definition of ''prohibited drug'' to limit the definition to the five drugs that are prohibited under 49 CFR 40.85. In addition we propose adding the phrase ''except as permitted in 49 CFR part 40.'' The current language in 14 CFR part 121, appendix I, could be misread to mean that the use of certain prohibited drugs is permitted if authorized under state law (such as medical use of marijuana that may be recommended or prescribed by physicians in certain states that have legalized its use for the treatment of some conditions). We expect that the proposed changes would eliminate any such confusion.

We propose to change the definition of ''refusal to submit'' to refer to 49 CFR part 40. This would be a clarifying change.

In addition, we propose to change the definitions in 14 CFR part 121, appendix I for ''verified negative test result'' and ''verified positive test result.'' These definitions are necessary because these terms are used in this appendix. The proposed definitions are intended to be consistent with the broader language for verified tests used in 49 CFR 40.3.

IV. Substances for Which Testing Must Be Conducted

This action proposes eliminating the second sentence of this section because it allows the employer to test for drugs in addition to those specified in 14 CFR part 121, appendix I with approval of the FAA under 49 CFR part 40 and for substances for which the Department of Health and Human Services has established an approved testing protocol. This action is proposed because 49 CFR 40.85 prohibits testing for additional drugs.

V. Types of Drug Testing

F. Return-to-Duty Testing. This action proposes to change the requirements of return to duty testing to conform with 49 CFR part 40, which requires the Substance Abuse Professional (SAP), not the Medical Review Officer (MRO), to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

G. Follow-up Testing. This proposed action changes the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP, instead of the MRO, to determine the number of follow-up tests an employee should have. This action also proposes language to conform with the 49 CFR part 40 requirement that an employee who tests positive is subject to at least six follow-up tests after returning to duty.

VI. Administrative and Other Matters

With regard to documents that an employer must maintain, this action proposes to alter this section to refer to 49 CFR part 40. 14 CFR part 121, appendix I would include those documents that are currently specified in this appendix, but which have not been moved to 49 CFR part 40.

We propose to delete current paragraphs A. and B. titled ''Collection, Testing, and Rehabilitation Records'' and ''Laboratory Inspections'' respectively. These requirements are now addressed in 49 CFR part 40.

This action proposes to eliminate parts of paragraph ''C. Employee Request for Test of a Split Specimen'' because 49 CFR part 40 sets out these requirements for split specimens. We propose moving paragraph C.3. to the MRO section, 14 CFR part 121, appendix I, section VII.A. because it is an MRO responsibility. This change is proposed for clarity and organizational purposes.

We propose to add a new paragraph A, ''MRO Record Retention Requirements.'' These are not new requirements but have been consolidated here from current section VII.C. because they were not included in 49 CFR part 40. Specifically, this paragraph would include two paragraphs dealing with MRO contracting services and transfer of records.

This action proposes to include paragraph B. ''Access to Records.'' This is not a new requirement and is currently in section VII.C.4. Moving the access to records requirement would consolidate the record requirements in one section.

This action proposes to include paragraph C. ''Service Agent.'' This would be a conforming change to 49 CFR part 40 and would specify when service agents must have records available for inspections and investigations of the employer's antidrug program. This action proposes to change paragraph D. ''Release of Drug Testing Information'' to conform with 49 CFR part 40.

VII. Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities

We propose to rename this section from ''MRO and Substance Abuse Professional'' to ''Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.'' We also propose to rename ''A. MRO and Substance Abuse Professional Duties'' to ''A. Medical Review Officer'' and to rename ''B. MRO Determinations'' to ''B. Substance Abuse Professional.'' These changes are proposed to better organize the information in this appendix and to conform to changes to 49 CFR part 40.

We propose to delete the majority of MRO and SAP responsibilities in this appendix and instead refer the reader to 49 CFR part 40. We propose to keep the MRO and employer responsibilities for 14 CFR part 67 airman medical certificate holders because these requirements are specific to the FAA. We propose to move some responsibilities from the MRO to the SAP because 49 CFR part 40 has given SAPs some duties that formerly belonged to the MROs.

In addition, we propose keeping the provision in this appendix that prohibits the MRO from delaying the verification of the primary test result pending the outcome of the split-specimen test. It will be in the section titled ''VII. A. Medical Review Officer.''

For organizational purposes the MRO, SAP, and Employer Responsibilities regarding 14 CFR part 67 airman certificate holders have been combined under one section. We propose titling this paragraph ''C. Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.''

The 14 CFR part 67 final rule, dated March 1996, made a verified positive drug test result a disqualifying condition for the issuance or retention of a medical certificate. Prior to this change, the MRO was required to evaluate whether a 14 CFR part 67 airman medical certificate holder was dependent on drugs following a verified positive drug test result. If an MRO determined that an individual was dependent or could not determine drug dependency, the MRO could not recommend that the individual return to duty until the individual was found to be nondependent by, or had received a special issuance from, the Federal Air Surgeon. If the MRO determined the individual to be nondependent, the MRO could recommend that the individual be returned to duty or hired to perform safety-sensitive functions with a negative test result on a return to duty drug test.

This action proposes a change to paragraph ''VII.B. MRO Determinations'' to reflect the 1996 amendment to 14 CFR part 67. Since the March 1996 final rule on 14 CFR part 67, the MROs have not been permitted to ''make a determination of probable drug dependence or nondependence as specified in 14 CFR part 67.'' This proposed action would remove paragraphs 1 and 2. The proposal would alter paragraph 3, and move that paragraph to become paragraph C.3. The proposed new paragraph C.3. would delete any reference to the MRO determining dependency for persons holding an FAA medical certificate to ensure the current requirements are consistent with 14 CFR part 67. Clarifying language in paragraph C.3. would change the requirement from the MRO to the employer to forward SAP evaluations to the Federal Air Surgeon to reflect the changes in MRO duties in 49 CFR part 40.

Under current 14 CFR part 121, appendix I, the ability of the MRO to return an individual to duty is restricted if that individual is a 14 CFR part 67 medical certificate holder. Because of the changes to 49 CFR part 40, the SAP has now assumed the return to duty role. Therefore, in paragraph C.2. we propose to similarly restrict the SAP's ability to return a 14 CFR part 67 medical certificate holder to a safety-sensitive function if that medical certificate is necessary for the performance of those functions.

Because the requirements for employers are now divided between this appendix and 49 CFR part 40, there could be confusion for an employer about the steps to follow when dealing with an employee who is required to hold a 14 CFR part 67 airman medical certificate in order to perform safety-sensitive functions. Specifically, there might be confusion as to how to return such an employee to duty after a positive test result or a refusal to test.

The FAA would like to note that an employer would not be able to use an

employee who would be required to hold a 14 CFR part 67 airman medical certificate to perform safety-sensitive duties following a positive test result until and unless the Federal Air Surgeon has issued a special issuance medical certificate. This proposal continues the requirement that the employer ensure that the employee who is required to hold a 14 CFR part 67 medical certificate meets the return to duty and follow-up testing requirements in accordance with 49 CFR part 40, once the Federal Air Surgeon has recommended that the employee who holds a 14 CFR part 67 medical certificate be permitted to perform safety-sensitive duties. These are not new concepts, and have been implicit requirements under the existing regulations. The FAA requests comments on whether these requirements to follow both 14 CFR part 67 and 49 CFR part 40 should be made explicit for clarity purposes, or whether the concepts are clear enough as implied by 49 CFR part 40 and this appendix.

If an individual is not required to hold a 14 CFR part 67 medical certificate to perform safety-sensitive functions, the SAP may return the individual to duty. The individual's 14 CFR part 67 medical certificate is subject to review by the Federal Air Surgeon, but this review would not affect the SAP's ability to return the individual to duty as long as the individual did not need a 14 CFR part 67 medical certificate to perform his/her duties.

As indicated previously this action proposes to move ''C. MRO Records.'' Anything pertinent to MRO records can be found in section VI.D.1. ''Administrative and Other Matters.'' This proposal would place all record retention responsibilities under one section.

This action proposes to eliminate paragraph VII.D. ''Evaluations and Referrals'' and replace it with paragraph B. ''Substance Abuse Professional.'' These proposed changes to Paragraph B. would refer the reader to 49 CFR part 40, Subpart O, for SAP requirements and would conform with 49 CFR part 40, which contains the specific SAP requirements. There would be no need to list the same requirements in this appendix because they are included in 49 CFR part 40.

IX. Employer's Antidrug Program

This action proposes to eliminate the requirement for an entity seeking to operate as a consortium to first seek the approval of the FAA. The terms upon which the FAA granted its approval to consortia have now been changed by the requirements of 49 CFR part 40.

Also, in the common preamble published today by DOT, it is emphasized that the six DOT agencies that cover specific transportation industries needed to revise their rules to be consistent with 49 CFR part 40. It would be inappropriate for the FAA to separately grant consortium approvals when the DOT and the other modal administrations do not grant such approvals. Retaining the provision for consortium approvals by the FAA could cause confusion among the DOT regulated entities that DOT is trying to avoid.

If consortium approvals are eliminated within this appendix, then any reference to an ''FAA-approved consortium'' or ''consortium'' would be replaced with ''consortium/third party administrator'' as defined by 49 CFR part 40. We are seeking public comment on the elimination of the consortium approval process and the substitution of the 49 CFR part 40 term ''consortium/third party administrator'' at any point that consortia are referenced, as appropriate.

XII. Employees Located Outside the Territory of the United States

This action proposes a change to the title of the section to ''XII. Testing Outside the Territory of the United States.'' While 49 CFR part 40 authorizes laboratory and MRO functions to occur outside the United States in Canada and Mexico, we are proposing to clarify that this authorization would not apply to entities regulated by this appendix. We are proposing to change paragraph A. to make it explicit that no part of the testing process, including specimen collection, laboratory processing, and MRO actions, shall be conducted outside the territory of the United States.

It is important to note that, unlike DOT agencies that require drug testing by entities outside the United States, the FAA's regulations apply only to United States' entities and testing is confined to the soil of the United States and its territories. We acknowledge that it may be more convenient and practical for entities conducting testing outside the United States to use local laboratories and MROs, however, the situation is different in aviation because testing is prohibited outside the United States and its territories. The FAA has consistently declined to take a unilateral approach to testing outside the United States, and instead has been working productively with the International Civil Aviation Organization (ICAO) to develop a multilateral approach to drug and alcohol testing consistent with the Chicago Convention. The FAA's efforts through ICAO have been successful in supporting an aviation environment free of substance abuse. However, if the threat to aviation safety posed by substance abuse increases, or requires additional efforts and the international community has not adequately responded, the FAA will consider taking appropriate rulemaking action. The proposed change conforms to past FAA guidance on this section, to past practice, and to our commitment to continue to work with the International Civil Aviation Organization to address all aspects of international substance abuse testing.

XIII. Waivers From 49 CFR 40.21

This action proposes to add this section to address a new provision introduced in 49 CFR part 40, which would permit waivers from 49 CFR 40.21. Under 49 CFR 40.21, an employer is prohibited from temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or a drug metabolite, an adulterated test, or a substituted test before the MRO has completed verification of the test result. This practice is described in 49 CFR 40.21 as ''stand down.'' However, 49 CFR 40.21 (b) permits an employer to seek a waiver from 49 CFR 40.21 (a), thereby permitting the employer to stand down its employees.

In order to implement the waiver provision of 49 CFR 40.21, the FAA proposes to add a new section to this appendix. There has been no past practice of granting waivers to the FAA's drug testing regulations. Therefore, this provision is proposed to create a process to address the requests for waiver from the stand down provisions of 49 CFR 40.21. Consistent with the requirements for seeking a waiver under 49 CFR 40.21(b), this section proposes to place the responsibility upon the applicant to provide sufficient factual information, analysis and justification to obtain a waiver from the stand down provision. The FAA is given discretion, by 49 CFR 40.21(b), to grant, deny, grant with conditions, modify, and revoke waivers. Because this is detailed in 49 CFR 40.21(b), the proposed language does not address the FAA's discretion on these matters.

Appendix J

I. General

This change proposes to add a paragraph ''C. Employer Responsibility.'' The reason for this proposed change would be to ensure that employers understand that they are responsible for all applicable requirements and procedures of this appendix and 49 CFR part 40. These proposed changes would also reinforce that employers are responsible for all actions of their officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations. These proposed changes would also conform to 49 CFR part 40.

This action proposes to reletter paragraph ''C. Definitions'' to paragraph ''D. Definitions.'' This action also proposes the following changes to paragraph ''D. Definitions.''

- Delete the definition of ''Consortium'' because the definition is provided in 49 CFR part 40.
- Delete the definition of ''Confirmation Test'' because the definition is provided in 49 CFR part 40. It is redundant to list it again in this appendix.
- Change the definition of ''refusal to submit to an alcohol test'' to refer to 49 CFR part 40. This would be a clarifying change.
- Delete the definition of ''Screening Test'' since the definition is provided in 49 CFR part 40. There is no need to repeat the definition in the appendix.
- The remaining paragraphs will be relettered accordingly.

III. Tests Required

A. Pre-employment Testing. In order to standardize the pre-employment alcohol testing requirements, all of the Department of Transportation modal administrations are proposing the same rule language. For a discussion of the proposal, see the Department of Transportation's common preamble that is being published concurrently with this proposal.

B. Post-accident Testing. This action proposes the elimination of paragraph 2(b) in its entirety. This paragraph requires specific data to be submitted to the FAA by March

15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required.

D. Reasonable Suspicion Testing. This change proposes the elimination of paragraph 4(b) in its entirety. This paragraph requires specific data to be submitted to the FAA by March 15, 1996, 1997, and 1998. The timeframes have expired and submission of the data is no longer required.

This action also proposes to eliminate in paragraph 4(d) the words ''Except as provided in paragraph (b)'' since paragraph (b) has been eliminated.

E. Return to Duty Testing. This action proposes to change the requirements of return to duty testing to conform with 49 CFR part 40, which now requires the SAP to determine that the employee has successfully complied with the prescribed education and/or treatment prior to allowing the person to perform safety-sensitive functions.

F. Follow-up Testing. This action proposes to change the requirements of follow-up testing to conform with 49 CFR part 40, which requires the SAP to determine the number of follow-up tests an employee should have. This change would conform with the 49 CFR part 40 requirement that any employee who receives an alcohol violation is subject to at least six follow-up tests after returning to duty. In addition, this paragraph would be reorganized for clarity.

IV. Handling of Test Results, Record Retention and Confidentiality

A. Retention of Records. This action proposes to specify the records employers must continue to retain in addition to the records required by 49 CFR part 40.

Specifically, this action proposes to eliminate the reference to recordkeeping requirements, except annual reports submitted to the FAA, because these recordkeeping requirements are included in 49 CFR part 40. For clarity, we moved all existing record requirements throughout paragraphs 2 and 3 into the appropriate sections of the proposed paragraph 2 and noted the specific retention period for the records. We eliminated 2(c) because all of the 1-year requirements are included in 49 CFR part 40.

C. Access to Records and Facilities. This action proposes the elimination of most of this section because 49 CFR part 40 sets out the confidentiality and release of information requirements. We propose to retain the current paragraph number 8, which would now be renumbered as paragraph 2, because it reinforces to the employer the requirement to comply with this appendix regarding access to all facilities.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

C. Notice to Federal Air Surgeon. In light of the changes to 49 CFR part 40 and the changes that were made to 14 CFR part 121, appendix I, because of the 1996 amendment to 14 CFR part 67, this action proposes to change paragraph 4 to parallel the changes to 14 CFR part 121, appendix I. In addition, this action proposes to add a new paragraph 5, which would clarify the employer's obligation to ensure that the employee met the return to duty requirements, following the recommendation of the Federal Air Surgeon. This is a current requirement that is being clarified. Also, this requirement conforms to 49 CFR part 40.

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

This action proposes to change the title from ''VI. Alcohol Misuse Information, Training, and Referral'' to ''VI. Alcohol Misuse Information, Training, and Substance Abuse Professional'' for clarity and organizational purposes.

This action proposes to change the title of ''C. Referral, Evaluation, and Treatment'' to ''C. Substance Abuse Professional Duties'' for clarity purposes and to conform to 49 CFR part 40. We propose the elimination of the majority of this paragraph because the SAP requirements are detailed in 49 CFR part 40, Subpart O. This paragraph would now refer the reader to 49 CFR part 40 for SAP requirements.

VII. Employer's Alcohol Misuse Prevention Program

This action proposes to eliminate the requirement for an entity seeking to operate as a consortium to first submit to the FAA an alcohol misuse prevention program (AMPP) certification statement. For the same reasons that we propose to eliminate consortium approvals in section IX of this appendix, we propose to eliminate the requirement for consortia to submit AMPPs to the FAA.

Also, we propose that any references to an ''FAA-approved consortium'' or ''consortium'' would be replaced with ''consortium/ third party administrator'' as defined by 49 CFR part 40, as appropriate. We propose to strike the definition of ''consortium'' in section I, paragraph C of this appendix.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no new requirements for information collection associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

The DOT prepared a regulatory analysis indicating that the modal proposals due to the changes in 49 CFR part 40 would not have any incremental economic impacts on their own. DOT also indicated that the modal proposed rules have been designated as non-significant under Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. See the Department of Transportation's common preamble, ''Transportation Workplace Drug and Alcohol Testing Programs; Amendments to DOT Agency Rules Conforming to 49 CFR Part 40'' for the regulatory evaluation of the actions that the FAA is proposing due to 49 CFR part 40.

In addition to the FAA's proposed changes that are directly due to changes in 49 CFR part 40, the FAA is proposing certain clarifying changes to 14 CFR part 121, appendices I and J that are not directly due to 49 CFR part 40. Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. The FAA is not allowed to propose or adopt a regulation unless a reasoned determination is made that the benefits of the intended regulation justify the costs. The FAA's assessment of this Notice of Proposed Rulemaking indicates that its economic impact would be minimal. Since the costs and benefits of this proposed rule do not make it a ''significant regulatory action'' as defined in the Order, the FAA has not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. The FAA does not need to do the latter analysis where the economic impact of a proposal is minimal. The changes that are being proposed because of changes to 49 CFR part 40 would have no incremental economic impacts on their own, and the additional clarifying changes that are being proposed would impose no new requirements; they would merely clarify existing requirements.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Because the changes proposed in this action are a reworking of existing requirements and have been subject to extensive comment and analysis in the 49 CFR part 40 rulemaking or are merely clarifying changes and should not have incremental economic impacts on their own, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would have no affect on any trade-sensitive activity.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private section; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

Environmental Analysis

FAA order 1050.1d defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1d, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those which, if implemented, may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this action qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aircraft pilots, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of Title 14, Code of Federal Regulations, 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, 46105.

2. Amend appendix I to part 121 as follows:

A. Revise section I;

B. In section II, revise the definitions of ''Prohibited drug'' and ''Refusal to submit''; remove the definitions of ''Verified negative drug test result'' and ''Verified positive drug test result''; and add new definitions of ''Verified negative drug test'' and ''Verified positive drug test'' in alphabetical order;

C. Revise section IV;

D. In section V, revise paragraphs F. and G.2., G3., and G.4;

E. In section VI, revise paragraphs A, B, C and D.

F. In section VII, revise the heading of the section, and revise paragraphs A, B, and C;

G. In section XII, revise the heading of the section and the introductory text in paragraph A; and

H. Add section XIII.

The revisions and additions read as follows:

Appendix I to Part 121—Drug Testing Program

* * * * *

I. General

A. *Purpose.* The purpose of this appendix is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform safety-sensitive functions.

B. *DOT Procedures.* Each employer shall ensure that drug testing programs conducted pursuant to 14 CFR parts 65, 121, and 135 of this chapter comply with the requirements of this appendix and the ''Procedures for Transportation Workplace Drug Testing Programs'' published by the Department of Transportation (DOT) (49 CFR part 40). An employer may not use or contract with any drug testing laboratory that is not certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program.

C. *Employer Responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of this appendix and 49 CFR part 40.

II. *Definitions.* * * *

* * * * *

Prohibited drug means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, except as permitted by 49 CFR part 40.

* * * * *

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.191.

* * * * *

Verified negative drug test means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

Verified positive drug test means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

* * * * *

IV. *Substances for Which Testing Must Be Conducted.* Each employer shall test each employee who performs a safety-sensitive function for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines during each test required by section V. of this appendix.

V. *Types of Drug Testing Required.* * * *

* * * * *

F. *Return to Duty Testing.* Each employer shall ensure that before an individual is returned to duty to perform a safety-sensitive function after refusing to submit to a drug test required by this appendix or receiving a verified positive drug test result on a test conducted under this appendix the individual shall undergo a return to duty drug test. No employer shall allow an individual required to undergo return to duty testing to perform a safety-sensitive function unless the employer has received a verified negative return to duty drug test result for the individual. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

G. *Follow-up Testing.* * * *

* * * * *

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for alcohol in accordance with appendix J of this part, in addition to drugs, if the Substance Abuse Professional determines that alcohol testing is necessary for the particular employee. Any such alcohol testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The Substance Abuse Professional may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the Substance Abuse Professional determines that such testing is no longer necessary.

VI. *Administrative and Other Matters.* A. *MRO Record Retention Requirements.* 1. Records concerning drug tests confirmed positive by the laboratory shall be maintained by the MRO for 5 years. Such records include the MRO copies of the custody and control form, medical interviews, documentation of the basis for verifying as negative test results confirmed as positive by the laboratory, any other documentation concerning the MRO's verification process.

2. Should the employer change MROs for any reason, the MRO shall forward all records maintained pursuant to this rule to the new MRO within ten working days of receiving notice from the employer of the new MRO's name and address.

3. Any employer obtaining MRO services by contract, including a contract through a consortium, shall ensure that the contract includes a recordkeeping provision that is consistent with this paragraph, including requirements for transferring records to a new MRO.

B. *Access to Records.* The employer and the MRO shall permit the Administrator or the Administrator's representative to examine records required to be kept under this appendix and 49 CFR part 40. The Administrator may require that all records maintained by the service agent for the employer must be produced at the employer's place of business.

C. *Service Agents.* In accordance with 49 CFR part 40, service agents may maintain records for the employer. If requested by the Administrator or the Administrator's representative, all records maintained by the service agent for the employer must be produced at the service agent's place of business by the first day of a scheduled inspection or investigation of the employer's antidrug program.

D. *Release of Drug Testing Information.* An employer shall release information regarding an employee's drug testing results, evaluation, or rehabilitation to a third party in accordance with 49 CFR part 40. Except as required by law, this appendix, or 49 CFR part 40, no employer shall release employee information.

* * * * *

VII. *Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities.* * * *

A. *Medical Review Officer (MRO).* The MRO must perform the functions set forth in 49 CFR part 40, Subpart G, and this appendix. The MRO shall not delay verification of the primary test result following a request for a split specimen test unless such delay is based on reasons other than the fact that the split specimen test result is pending. If the primary test result is verified as positive, actions required under this rule (e.g., notification to the Federal Air Surgeon, removal from safety-sensitive position) are not stayed during the 72-hour request period or pending receipt of the split specimen test result.

B. *Substance Abuse Professional (SAP).* The SAP must perform the functions set forth in 49 CFR part 40, Subpart O.

C. *Additional Medical Review Officer, Substance Abuse Professional, and Employer Responsibilities Regarding 14 CFR part 67 Airman Medical Certificate Holders.*

1. As part of verifying a confirmed positive test result, the MRO shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the negative, the MRO shall then inquire, and the individual shall disclose, whether the individual currently holds a medical certificate issued under 14 CFR part 67. If the individual answers in the affirmative to either question, the MRO must forward to the Federal Air Surgeon, at the address listed in paragraph 4, the name of the individual, along with identifying information and supporting documentation, within 12 working days after verifying a positive drug test result.

2. The SAP shall inquire, and the individual shall disclose, whether the individual is or would be required to hold a medical certificate issued under 14 CFR part 67 of this chapter to perform a safety sensitive function for the employer. If the individual answers in the affirmative, the SAP cannot recommend that the individual be returned to a safety-sensitive function that requires the individual to hold a 14 CFR part 67 medical certificate unless and until such individual has received a special issuance medical certificate from the Federal Air Surgeon. The receipt of a special issuance medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this appendix.

3. The employer must forward to the Federal Air Surgeon a copy of any report provided by the SAP, if available, regarding an individual for whom the MRO has provided a report to the Federal Air Surgeon under section VII.C.1 of this appendix, within 12 working days of the employer's receipt of the report.

4. All reports required under this section shall be forwarded to the Federal Air Surgeon, Federal Aviation Administration, Attn: Drug Abatement Division (AAM–800), 800 Independence Avenue, SW., Washington, DC 20591.

* * * * *

XII. *Testing Outside the Territory of the United States.* A. No part of the testing process (including specimen collection, laboratory processing, and MRO actions) shall be conducted outside the territory of the United States.

* * * * *

XIII. *Waivers from 49 CFR 40.21.* An employer subject to this part may petition the Drug Abatement Division, Office of Aviation Medicine, for a waiver allowing the employer to stand down an employee following a report of a laboratory confirmed positive drug test or refusal, pending the outcome of the verification process.

A. Each petition for a waiver must be in writing and include substantial facts and justification to support the waiver. Each petition must satisfy the substantive requirements for obtaining a waiver, as provided in 49 CFR 40.21.

B. Each petition for a waiver must be submitted to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM–800), 800

Independence Avenue, SW., Washington, D.C. 20591.

C. The Administrator may grant a waiver subject to 49 CFR 40.21(d).

3. In appendix J to part 121:

A. In section I, redesignate paragraphs C through F as paragraphs D through G, add new paragraph C, and amend redesignated paragraph D by removing the definitions for ''Consortium'', ''*Refuse to submit*'', and by adding a definition for ''*Refusal to submit (to an alcohol test)*'' in alphabetical order;

B. In section III, revise paragraphs A, B heading, and B.2; remove paragraph D.4.(b); redesignate paragraphs D.4. (c) and D.4.(d) as paragraphs D.4. (b) and D.4. (c); revise redesignated paragraph D. 4. (c); and revise paragraphs E, and F;

C. In section IV, revise paragraphs A.1, A.2, and C.2, and remove paragraphs C.3 through C.8;

D. In section V, revise paragraph C.4 and add paragraph C.5; and

E. In section VI, revise the heading and paragraph C.

The revisions and additions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

* * * * *

I. General

* * * * *

C. *Employer Responsibility.* As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

D. *Definitions*

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Refusal to submit (to an alcohol test) means that a covered employee engages in conduct specified in 49 CFR 40.261.

* * * * *

III. Tests Required

A. Pre-employment testing

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

1. You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

2. You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).

3. You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

4. You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR Part 40.

5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

B. Post-Accident Testing

* * * * *

2. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.

* * * * *

D. Reasonable Suspicion Testing

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4. * * *

(c) No employer shall take any action under this appendix against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this appendix from taking any action otherwise consistent with law.

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in § 65.46a, § 121.458, or § 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP (See paragraph V. C. 4 of this appendix) has determined that the employee has successfully complied with the prescribed education and/or treatment.

F. Follow-up Testing

1. Each employer shall ensure that the employee who engages in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional.

2. The number and frequency of such testing shall be determined by the employer's Substance Abuse Professional, but must consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for drugs, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.

5. A covered employee shall be tested for alcohol under this paragraph 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.

* * * * *

IV. Handling of Test Results, Record Retention, and Confidentiality

A. Retention of Records

1. *General Requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this appendix in a secure location with controlled access.

2. *Period of retention.*

(a) *Five years.*

(1) Copies of any annual reports submitted to the FAA under this appendix for a minimum of 5 years.

(2) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.

(4) Records related to other violations of § 65.46a, § 121.458, or § 135.253 of this chapter.

(b) *Two years.* Records related to the testing process and training required under this appendix.

(1) Documents related to the random selection process.

(2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(3) Documents generated in connection with decisions on post-accident tests.

(4) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(5) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(6) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(7) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

* * * * *

C. Access to Records and Facilities

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2. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

* * * * *

C. Notice to the Federal Air Surgeon

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4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

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.

* * * * *

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

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C. Substance Abuse Professional Duties (SAP)

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O and this appendix.

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Issued in Washington, DC on April 11, 2001.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 01–9410 Filed 4–27–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 5, and 16

[USCG–2000–7759]

RIN 2115–AG00

Chemical Testing

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise its chemical drug testing regulations to conform with the Department of Transportation's (DOT) final rule on drug testing procedures published in the **Federal Register** on December 19, 2000. The Coast Guard proposes to amend the regulations on Marine Casualties and Investigations and Chemical Testing by removing obsolete sections and sections duplicating the DOT regulations; adding new definitions; and modifying existing text to incorporate new terms and procedures contained in the DOT procedural requirements. This rulemaking would conform Coast Guard rules to the new requirements established by the December 19, 2000, DOT final rule.

DATES: Comments and related material must reach the Docket Management Facility on or before June 29, 2001.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7759), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call LT Jennifer Ledbetter, Coast Guard, telephone 202–267–0684. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–2000–7759), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On December 19, 2000 (65 FR 79462), the Department of Transportation (DOT) published a comprehensive revision to their drug and alcohol testing procedural rules (49 CFR Part 40). The revised Part 40 makes numerous changes in the way that drug and alcohol testing will be conducted in the future. While some provisions of the new rule will be made effective more quickly, as amendments to the existing Part 40, the entire revised part is scheduled to go into effect on August 1, 2001.

Part 40 is one element of a One-DOT set of regulations designed to deter and detect the use of illegal drugs and the misuse of alcohol by employees performing safety-sensitive transportation functions. DOT has published a summary of the major changes affecting the modal drug testing rules. These major changes include changes to the ''return to duty'' process (49 CFR 40.21); a requirement that all modes collect ''split specimens'' for drug testing (49 CFR 40.71 and subpart H); a new DOT process for employers to request waiver of the policy against stand down of employees pending completion of the test verification process (49 CFR 40.21); changes in qualifications and training requirements for testing personnel, medical review officers, and other technicians and substance abuse professionals (49 CFR 40.33,121 and 281); revised role of consortium/third-party administrators (C/TPA) (49 CFR 40.345 and 347); and a requirement that employers check