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Friday  
April 14, 1989

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**Part VIII**

**Department of  
Transportation**

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**Federal Aviation Administration**

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**14 CFR Part 61 et al.**

**Anti-Drug Program for Personnel  
Engaged in Specified Aviation Activities;  
Final Rule; Request for Comment**

**Federal Register**

## DEPARTMENT OF TRANSPORTATION

## 14 CFR Parts 61, 63, 65, and 121

[Docket No. 25148; Amdts. 61-83, 63-26, 65-33, 121-203]

RIN 2120-AC33

### Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comment.

**SUMMARY:** On November 14, 1988, the FAA issued a final rule requiring specified aviation employers and operators to submit and to implement anti-drug programs for personnel performing sensitive safety- and security-related functions. This final rule extends certain compliance dates and revises the method by which certain entities may be covered by anti-drug programs approved by the FAA. This document also makes minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development of a program and implementation of an approved anti-drug program. These issues were addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action is necessary to facilitate implementation of the final rule issued on November 14, 1988. This rulemaking action is intended to clarify the requirements of the final anti-drug rule and to improve administration of the rule.

**DATES:** *Effective date:* This final rule is effective on April 11, 1989. Comments must be received not later than May 15, 1989.

**ADDRESS:** Send or deliver comments on this notice, in duplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Room 915G, Docket No. 25148, 800 Independence Avenue SW., Washington, DC 20591. Comments must be marked "Docket No. 25148." Comments may be examined in the Rules Docket between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Heidi Mayer, Office of Aviation Medicine, Drug Abatement Branch (AAM-220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3410.

### SUPPLEMENTARY INFORMATION: Comments Invited

The amendments contained in this final rule extend certain compliance dates and revise the procedures by which certain entities may be covered under an anti-drug program. Because these issues were set forth in previous rulemaking actions and interested persons commented on these issues, the amendments are being adopted without prior notice and prior public comment. However, the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979) provide that, to the maximum extent possible, operating administrations of the Department of Transportation (DOT) should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments must include the regulatory docket number or the amendment number identified in this final rule. Comments also must be submitted in duplicate to the address listed under the caption "ADDRESS" above. All comments received will be available for examination by interested persons in the Rules Docket. These amendments may be changed in light of the comments received on this final rule.

Commenters who want the FAA to acknowledge receipt of comments submitted on this final rule must submit a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket 25148." The postcard will be date-stamped by the FAA and will be returned to the commenter. A report summarizing each substantive contact with FAA personnel concerned with this rulemaking will be filed in the public docket.

### Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests must include the amendment number identified in this final rule. Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

### Background

The rulemaking process that led to promulgation of the final anti-drug

regulation began in late 1986. On December 4, 1986, the FAA issued an advance notice of proposed rulemaking (ANPRM) (51 FR 44432; December 9, 1986). The ANPRM invited comment from interested persons on drug and alcohol abuse by personnel in the aviation industry. The ANPRM also solicited comment on the options that the FAA should consider to protect and to maintain aviation safety in light of any drug and alcohol use in the aviation industry.

On March 3, 1988, the FAA issued a notice of proposed rulemaking (NPRM) (53 FR 8368; March 14, 1988) that analyzed the comments submitted on the ANPRM and set forth proposed regulations for comment by interested persons. The FAA received over 900 comments in response to the ANPRM and the NPRM.

The FAA also held three public hearings across the country on the proposed regulations contained in the NPRM. Each hearing was recorded by a court reporter and the hearing transcript was placed in the public docket for the rulemaking.

The FAA issued the final anti-drug rule requiring certain aviation employers and operators to develop and to implement an anti-drug program for employees performing specified aviation activities on November 14, 1988 (53 FR 47024; November 21, 1988). After the final rule was issued, the FAA continued to review the timeframes and implementation schedules contained in the final anti-drug rule. The FAA became aware of various practical implementation questions and issues as a result of the agency's responsibility to provide guidance on rule compliance to the industry. Also, representatives of aviation organizations and employers subject to the final rule expressed concern about certain procedural aspects of the final anti-drug rule. These entities maintain that the timeframes in the final rule for program submission are not realistic in light of the complexities of the final rule and that several detailed requirements of the final rule should be clarified or modified. These basic issues were addressed generally by the commenters in the prior rulemaking action, but the process of actually developing an anti-drug program has increased the awareness of the impact of certain detailed portions of the final rule. Thus, these issues and the concerns expressed to the FAA are not unique nor are they new issues being raised for the first time.

Several issues identified by the FAA are reflected in a formal petition submitted by the Air Transport

Association of America (ATA) and the Regional Airline Association (RAA). A copy of the petition is available for review by interested persons in Docket No. 25148. The petitioners jointly request that the FAA extend the effective date of the final rule as it applies to required testing of contract employees. The petitioners suggest that this additional time should be used by the industry and the FAA to fully explore the most effective methods for including contract employees in an anti-drug program. The petitioners ask that the FAA reconsider whether contractors may file their own drug testing plans directly to the FAA for approval. The petitioners also request that the FAA defer testing of employees located outside the territory of the United States indefinitely. Under the final rule, testing outside the United States must be conducted unless it would violate the laws of a foreign country or the foreign government has objected to the application of the final rule within its jurisdiction. The petitioners suggest that testing outside the United States should be suspended until DOT, the Department of State, and foreign governments have considered and discussed the international implications of the final rule.

The amendments contained in this final rule address, among other things, the request of ATA and RAA in their petition to revise the final anti-drug rule. With respect to the issue of testing contractor employees, these amendments, as discussed in more detail below, extend the compliance date for testing contractor employees and permit contractors to submit plans directly to the FAA. Before the rulemaking petition was received, the FAA determined that these amendments were necessary. For this reason, and because this rulemaking action addresses all issues raised in the petition submitted by ATA and RAA, the FAA determined that publication of the petition in the Federal Register is unnecessary and would unduly delay this rulemaking action.

The FAA believes that these actions are fully responsive to the concerns raised in the petition. Nevertheless, the FAA is aware that the industry's experience under this rule may result in the identification of other issues that may need to be addressed to facilitate the effective and efficient implementation of anti-drug programs. The FAA intends to schedule periodic meetings to receive comments and recommendations regarding implementation of the final anti-drug rule. In this regard, representatives of DOT, including personnel from the FAA,

have attended several meetings in the past few months sponsored by ATA and RAA to discuss rule implementation issues. Information obtained at future meetings or experience gained by the FAA and the industry may result in further modifications of the final anti-drug rule.

#### Discussion of the Amendments

The first and most crucial issue being amended by this final rule is extension of the timeframes by which employers must submit an anti-drug plan to the FAA for approval. Representatives of aviation organizations and employers maintain that the administrative and logistical problems related to development and submission of an anti-drug plan are much greater than anticipated. The FAA agrees. In light of the significant amount of work associated with development and planning of an effective and comprehensive anti-drug program, the FAA is convinced that the existing timeframes are unrealistic. The FAA believes that effective implementation of an employer's or an operator's anti-drug program will be much easier if additional time is given to these entities to develop the anti-drug program.

Although the FAA is restructuring the schedule for developing and submitting anti-drug plans to the FAA, the date by which the employer's approved anti-drug program must begin has not been changed. Thus, the date by which drug testing would begin pursuant to the final rule remains the same. The commenters do not express the same concern regarding the date that testing must begin as has been expressed regarding development and submission of an anti-drug plan. The FAA believes that additional time for development of an anti-drug plan that is unique to each affected employer and operator will lead to more effective and more efficient implementation of the anti-drug program.

In this amendment, the FAA is adding 120 days to the time period by which employers and operators must submit an anti-drug plan to the FAA for approval. This amendment correspondingly reduces, by an equivalent time period, the interval between approval of an anti-drug program and implementation of that program. For example, in the final anti-drug rule, Part 121 and large Part 135 certificate holders were given a 120-day period for plan submission and a 180-day period after program approval to implement drug testing, a total of 300 days for these portions of the overall schedule. This amendment provides a 240-day period for program submission and a 60-day period to implement the

approved program, or an identical 300-day total period.

As a result of amending the plan submission date for these employers, the interval between program approval and initiation of all types of drug tests is substantially shortened. Hence, the FAA is deleting the requirement that these entities begin preemployment testing not later than 10 days after approval of the employer's anti-drug program by the FAA. These employers now will implement preemployment testing at the same time that all other testing begins as required by the final anti-drug rule (on or about December 16, 1989). This will permit Part 121 and large Part 135 certificate holders to implement their approved anti-drug programs in an efficient and uniform manner.

The FAA is adding a similar extension of time in other sections of the final anti-drug rule that address the dates by which other employers and operators must submit anti-drug plans to the FAA for approval. The amendment correspondingly reduces the interval between program approval and implementation of the program.

The FAA believes that extending the time period by which employers and operators must develop and submit a plan to the FAA for approval will greatly enhance the quality and coverage of an employer's anti-drug program. Yet, at the same time, the goal of implementing a drug testing regimen and providing education and training on drug use and abuse to employees will not be delayed.

In addition to delaying the date by which plans must be submitted to the FAA for approval, the amended schedule creates a distinction with respect to individuals who are directly employed by an affected employer and those employees who provide sensitive safety- or security-related functions pursuant to a contract with the covered employer. The FAA firmly believes that contractor employees performing sensitive safety- or security-related functions for an employer or an operator should be tested. However, the FAA also believes that delaying the date by which testing of these employees must begin would have the salutary effect of allowing employers and operators to gain useful experience in implementing anti-drug programs for their own employees before addressing the added complexity and responsibility of testing contractor employees.

The FAA reconsidered the timeframe for including contractor employees in an employer's anti-drug program and the issue of whether contractors could submit anti-drug plans directly to the

FAA for approval. Because of the significant administrative and logistical difficulties associated with including contractor employees in an employer's anti-drug program, the FAA is revising the final rule to give employers additional time regarding testing of contractor employees.

As a result of the amendment, an employer's initial anti-drug program need only specify testing for direct employees of the employer. An employer's anti-drug program must be submitted and testing of the employer's direct employees must begin not later than the dates contained in this final rule. However, testing of contractor employees would not be required until 360 days after testing is initiated for direct employees under that employer's approved anti-drug program. Therefore, Part 121 certificate holders and Part 135 certificate holders employing more than 50 covered employees are permitted to use contractor employees, even if these employees are not covered by an FAA-approved anti-drug program, for an additional 1-year period after initial implementation of the employer's anti-drug program. A similar extension applies in the case of Part 135 certificate holders that employ 11 to 50 covered employees, Part 135 certificate holders that employ 10 or fewer covered employees, and operators as defined in the final anti-drug rule.

Under the provisions of the FAA's final anti-drug rule, contractors were required to come under the "umbrella" of a covered employer's anti-drug program. The NPRM implied that contractors could submit anti-drug plans directly to the FAA for approval. In the final anti-drug rule, that section was amended so that contractors were required to be part of one covered employer's program for whom the contractors provided covered services. However, at both the NPRM and the final rule phases of this rulemaking, the ultimate obligation to ensure that direct or contract employees are part of a drug testing program always has rested with the certificate holder or the operator subject to the final anti-drug rule. At the final rule stage, only the method by which contractor employees would be included in an approved plan was revised. DOT and the FAA are fully aware of the administrative and logistical complexity of this requirement and addresses that issue in this document.

In addition to extending the timeframe for including contractor employees in an approved anti-drug program, the FAA is amending the final anti-drug rule to permit contractors and consortiums

(which may be comprised of a combination of contractors, employers, or operators) to submit plans directly to the FAA for approval. These provisions are designed to facilitate implementation of the final anti-drug rule in the area of testing contractor employees and to permit employers and operators subject to the final rule to join together to take advantage of economies of scale. Thus, Appendix I to Part 121 contains a provision that enables repair stations certificated by the FAA to submit anti-drug programs directly to the FAA for approval. The FAA also is including a provision that would enable contractors that do not hold a Part 145 certificate and consortia of contractors or employers to submit a plan directly to the FAA for approval. Unlike certificated repair stations, some companies that provide employees to assist air carriers in the screening of persons and property are not certificated nor regulated directly by the FAA. Similarly, consortia that may develop to help small or remote aviation employers in developing and implementing anti-drug programs are neither certificated nor regulated by the FAA. However, after review of the final anti-drug rule and concerns expressed by the aviation community, the FAA believes that it would be wise to permit these entities to submit plans directly to the FAA for approval. These entities will be permitted to submit anti-drug programs to the FAA on a form and in a manner prescribed by the Administrator so that an appropriate mechanism and procedures can be developed for these types of entities. The FAA is adding a provision to the final anti-drug rule to provide such a mechanism for these entities.

The FAA believes that the delay in requiring contractor employees to be covered will provide sufficient time for many contractors to develop their own comprehensive anti-drug programs. Contractors actually may benefit from this delay since Part 121 and Part 135 certificate holders will have submitted anti-drug programs to the FAA and will have implemented approved anti-drug programs. Aviation contractors will gain valuable experience regarding the development of anti-drug programs and the administrative requirements from employers who have implemented anti-drug programs.

This final rule amendment also addresses the issue of the impact of the final rule on persons outside the United States. Under the terms of the final rule, the appendix is not effective until January 1, 1990, with respect to any person for whom a foreign government

contends that application of the appendix raises questions of compatibility with that country's domestic laws or policies.

After the final anti-drug rule was issued, the Department of State sent diplomatic notes to foreign governments regarding the requirements of the final rule. In response, 12 foreign governments objected to the potential impact of the final rule within their jurisdiction and contended that the final rule is incompatible with the foreign country's laws or policies. DOT and the FAA recognize that government-to-government discussion is critical, and has already begun in some cases, to reach permanent resolution of any conflict between the final rule and a foreign country's laws or policies.

In their petition, ATA and RAA state that a foreign country's silence or failure to communicate its objections should not be construed as tacit approval or affirmative consent to the final rule in that country. Because of the added complexity of this rule in an international arena, DOT and the FAA believe that the timeframe set forth in the final rule may be insufficient to ensure that each foreign government understands the significance of the final anti-drug rule and initiates appropriate governmental action to notify the U.S. government of its position regarding the final rule. Neither DOT nor the FAA wish to place a U.S. air carrier in an untenable position while this government-to-government process is developing. Therefore, the FAA is deleting the affirmative obligation for a diplomatic response from a foreign government and is extending the effective date of the final rule, as it may apply outside the territory of the United States, to January 1, 1991. DOT and the FAA believe that this action is necessary to avoid inconsistent or ineffective implementation of the rule by air carriers and to provide additional time for government-to-government discussions in this area. Moreover, the FAA believes that this extension will enable U.S. air carriers to obtain administrative expertise with their domestic anti-drug programs before implementing similar programs, and assuming the significantly greater logistical and administrative burden, of testing covered employees in foreign countries.

The FAA also is making several minor, editorial changes in the final anti-drug rule. These are technical changes to reflect the FAA's original intent regarding the final rule or to correct errors that occasionally occur during a rulemaking project of this magnitude.

For example, the term "ground dispatcher" is being deleted from Appendix I to Part 121. That term was intended to ensure that individuals performing aircraft dispatcher duties (e.g., preparation of a dispatch release or document, flight release form, load manifest, or flight plan) would be included in an employer's approved anti-drug program despite the title that was given to that employee or the fact that the employee did or did not hold an aircraft dispatcher certificate issued by the FAA.

The focus of the FAA's final anti-drug rule has always been on the "employer" or "operator." Thus, the provision that specifies sanctions for a certificated employee's refusal to submit to a drug test is amended to delete references to FAA inspectors and law enforcement offices. As amended, the specified sanctions apply only when an employee refuses to submit to a drug test in accordance with the appendix when requested by the employer or operator.

#### **Reason for no Notice and Immediate Adoption**

These amendments to the final anti-drug rule are needed immediately to delay the compliance dates specified in the final rule. Under the implementation schedule published in the *Federal Register* on November 21, 1988, certain aviation employers would have been required to submit an anti-drug program to the FAA for approval by April 20, 1989. It is necessary to delay implementation of the final anti-drug rule due to the administrative and logistical problems associated with implementation of comprehensive anti-drug programs. The FAA believes that delay of the date by which plans must be submitted to the FAA, and certain other provisions intended to relieve difficult burdens on employers, will lead to efficient and effective industry anti-drug programs.

For these reasons, notice and public comment procedures are impracticable, unnecessary, and contrary to the public interest. Moreover, the FAA has determined that good cause exists to make this final rule effective in less than 30 days. In accordance with the Regulatory Policies and Procedures of the Department of Transportation, an opportunity for public comment on the final rule is provided.

#### **Economic Assessment**

In accordance with the requirements of Executive Order 12291, the FAA reviewed the costs and the benefits of the final anti-drug rule issued on November 14, 1988. At that time, the FAA prepared a comprehensive

Regulatory Impact Analysis of the final anti-drug rule. The FAA included that analysis in the public docket. The FAA also summarized and analyzed the comments submitted by interested persons on the economic issues in the final rulemaking document published in the *Federal Register* on November 21, 1988.

This final rule extends certain compliance dates and revises the method by which certain entities may be covered by anti-drug programs approved by the FAA. This document also makes minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development of a program and implementation of an approved anti-drug program. These issues were addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action does not change the basic regulatory structure and requirements promulgated in the final anti-drug rule. Therefore, the FAA anticipates that there would be little or no cost associated with the extension of certain compliance dates and the technical amendments of this final rule. In addition, there would be little or no change in the benefits identified in the final rule. Thus, the FAA has determined that revision of the comprehensive Regulatory Impact Analysis for the final anti-drug rule is not necessary and preparation of a separate economic analysis for this final rule is not warranted.

#### **Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 requires a Federal agency to review any final rule to assess its impact on small business. The amendments contained in this final rule extend certain compliance dates, provide an additional, but not required, method by which some contractors may submit anti-drug programs directly to the FAA, and make certain editorial or clarifying changes to the final anti-drug rule. In consideration of the nature of these amendments, the FAA has determined that this final rule will not have a significant economic impact, positive, or negative, on a substantial number of small entities.

#### **International Trade Impact Statement**

This final rule contains an amendment that extends the date by which an employer must ensure that employees outside the United States are in compliance with the final rule issued on November 14, 1988. The amendment provides that Appendix I to Part 121 is not effective with respect to any employee located outside the territory of the United States until January 1, 1991.

Thus, the FAA has determined that this final rule will not have an impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the United States.

#### **Paperwork Reduction Act Approval**

The recordkeeping and reporting requirements of the final anti-drug rule, issued on November 14, 1988, previously were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1980. OMB approved those requirements on February 2, 1989. Because this final rule does not amend the recordkeeping and reporting requirements of the final rule, it is not necessary to amend the prior approval received from OMB.

#### **Federalism Implications**

The final rule adopted herein will not have substantial direct effects 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, in accordance with Executive Order 12612, the FAA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

#### **Conclusion**

This final rule extends certain compliance dates and revises the method by which certain entities may be covered by anti-drug programs approved by the FAA. This document also makes minor editorial changes and clarifications to the final anti-drug rule to aid an employer's development of a program and implementation of an approved anti-drug program. These issues were addressed in the prior rulemaking actions that led to promulgation of the final anti-drug rule. This rulemaking action is necessary to facilitate implementation of the final rule issued on November 14, 1988. This rulemaking action is intended to clarify the requirements of the final anti-drug rule and to improve administration of the rule.

Pursuant to the terms of the Regulatory Flexibility Act of 1980, the FAA certifies that the final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, the final rule will not result in an annual effect on the economy of \$100 million or more and will not result in a significant increase in consumer prices; thus, the final rule is not a major rule pursuant to the criteria of Executive Order 12291.

However, because the rule involves issues of substantial interest to the public, the FAA determined that the final rule is significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

#### List of Subjects

##### 14 CFR Part 61

Air safety, Air transportation, Aircraft, Aircraft pilots, Airmen, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

##### 14 CFR Part 63

Air safety, Air transportation, Aircraft, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

##### 14 CFR Part 65

Air safety, Air transportation, Aircraft, Airmen, Aviation safety, Drug abuse, Drugs, Narcotics, Safety, Transportation.

##### 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Aviation safety, Drug abuse, Drugs, Narcotics, Pilots, Safety, Transportation.

#### The Amendments

Accordingly, the FAA amends Parts 61, 63, 65, and 121 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, and 121) as follows:

#### PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for Part 61 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

2. By revising the introductory text of § 61.14(b) to read as follows:

§ 61.14 Refusal to submit to a drug test.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter, when requested by an employer as defined in that appendix or an operator as defined in § 135.1(c) of this chapter, under the circumstances specified in that appendix is grounds for—

#### PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for Part 63, Subpart A, is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, 1427, 1429, and 1430; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

4. By revising the introductory text of § 63.12b(b) to read as follows:

§ 63.12b Refusal to submit to a drug test.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter, when requested by an employer as defined in that appendix or an operator as defined in § 135.1(c) of this chapter, under the circumstances specified in that appendix is grounds for—

#### PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

5. The authority citation for Part 65 continues to read as follows:

Authority: 49 U.S.C. 1354, 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

6. By revising the introductory text of § 65.23(b) to read as follows:

§ 65.23 Refusal to submit to a drug test.

(b) Refusal by the holder of a certificate issued under this part to take a test for a drug specified in Appendix I to Part 121 of this chapter, when requested by an employer as defined in that appendix or an operator as defined in § 135.1(c) of this chapter, under the circumstances specified in that appendix is grounds for—

#### PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

7. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421-1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983).

#### Appendix I—[Amended]

8. By revising paragraph e. of section III of Appendix I to Part 121 to read as follows:

e. Aircraft dispatcher duties.

9. By revising paragraphs (A)(2), (A)(3), (A)(4), and (A)(5) of section IX of Appendix I to Part 121 to read as follows:

(A) \* \* \*

(2) Each employer who holds a Part 121 certificate and each employer who holds a Part 135 certificate and employs more than 50 employees who perform a function listed in section III of this appendix shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than 240 days after December 21, 1988. Each employer shall implement the employer's anti-drug program for its direct employees not later than 60 days after approval of the anti-drug program by the FAA. Each employer shall implement the employer's approved anti-drug program for its contractor employees not later than 360 days after initial implementation of the employer's approved anti-drug program for its direct employees.

(3) Each employer who holds a Part 135 certificate and employs from 11 to 50 employees who perform a function listed in section III of this appendix shall submit an interim anti-drug program to the FAA (specifying the procedures for preemployment testing, periodic testing, postaccident testing, testing based on reasonable cause, and testing after return to duty) not later than 300 days after December 21, 1988. Each employer shall implement the employer's interim anti-drug program for its direct employees not later than 60 days after approval of the anti-drug program by the FAA. Each employer shall submit an amendment to its interim anti-drug program to the FAA (specifying the procedures for unannounced testing based on random selection) not later than 120 days after approval of the employer's interim anti-drug program by the FAA. Each employer shall implement the random testing provision of the employer's amended anti-drug program for its direct employees not later than 60 days after approval of the amended program by the FAA. Each employer shall implement the employer's approved anti-drug program for its contractor employees, including unannounced testing based on random selection, not later than 360 days after initial implementation of the employer's interim anti-drug program for its direct employees.

(4) Each employer who holds a Part 135 certificate and employs 10 or fewer employees who perform a function listed in section III of this appendix, each operator as defined in § 135.1(c) of this chapter, and each air traffic control facility not operated by, or under contract with the FAA or the U.S. military, shall submit an anti-drug program to the FAA (specifying the procedures for all testing required by this appendix) not later than 480 days after December 21, 1988. Each employer or operator shall implement the employer's or operator's anti-drug program for its direct employees not later than 60 days after approval of the plan by the FAA. Each employer or operator shall implement the employer's or operator's approved anti-drug

program for its contractor employees not later than 360 days after initial implementation of the employer's or operator's approved anti-drug program for its direct employees.

(5) Each employer or operator, who becomes subject to the rule as a result of the FAA's issuance of a Part 121 or Part 135 certificate or as the result of beginning operations listed in § 135.1(b) for compensation or hire (except operations of foreign civil aircraft navigated within the United States pursuant to Part 375 or emergency mail service operations pursuant to section 405(h) of the Federal Aviation Act of 1958) shall submit an anti-drug plan to the FAA for approval, within the timeframes of paragraph (2), (3), or (4) of this section, according to the type and size of the category of operations. For the purposes of applicability of the timeframes, the date that an employer or operator becomes subject to the requirements of this appendix is substituted for "December 21, 1988."

10. By adding new paragraphs (6) and (7) to section IX of Appendix I to Part 121 to read as follows:

\* \* \* \* \*

(6) In accordance with this appendix, an entity or individual that holds a repair station certificate issued by the FAA pursuant to Part 145 of this chapter and employs individuals who perform a function listed in section III of this appendix pursuant to a primary or direct contract with an employer or an operator may submit an anti-drug program (specifying the procedures for complying with this appendix) to the FAA for approval. Each certificated repair station shall implement its approved anti-drug program in accordance with its terms.

(7) An entity or individual whose employees perform a function listed in section III of this appendix pursuant to a contract with an employer or an operator or a consortium of contractors or employers subject to the requirements of this appendix

may submit an anti-drug program (specifying the procedures for complying with this appendix) to the FAA for approval on a form and in a manner prescribed by the Administrator. Each contractor or consortium shall implement its approved anti-drug program in accordance with its terms.

11. By revising paragraph (B) of section XII of Appendix I to Part 121 to read as follows:

\* \* \* \* \*

B. This appendix shall not be effective with respect to any employee located outside the territory of the United States until January 1, 1991.

Issued in Washington, DC, on April 11, 1989.

Robert E. Whittington,  
Acting Administrator.

[FR Doc. 89-9004 Filed 4-11-89; 2:39 pm]

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# Corrections

Federal Register

Vol. 55, No. 237

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Parts 61, 63, 65, and 121

[Docket Nos. 25148; Amdts. 61-83, 63-26, 65-33, 121-203]

RIN 2120-AC33

#### Anti-Drug Program for Personnel Engaged in Specified Aviation Activities

##### *Correction*

In rule document 90-27408 beginning on page 48822 in the issue of Wednesday, November 21, 1990, the docket number should read as set forth above.

BILLING CODE 1505-01-D