

**Federal Aviation Administration
Office of Aerospace Medicine and**

Flight Standards Service

14 CFR Part 121, Appendices I and J

GUIDANCE ALERT

On January 10, 2006, the Federal Aviation Administration (FAA) published a final rule in the Federal Register amending 14 CFR part 121, appendices I and J, "Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities." A copy of the final rule may be obtained from the Drug Abatement Division's web page (http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/).

The final rule was issued to clarify that each individual who performs a safety-sensitive function directly or by contract (including by subcontract at any tier) for a company operating under part 121, part 135, or section 135.1(c), is subject to drug and alcohol testing. The final rule became effective on April 10, 2006, with a compliance date of October 10, 2006.

The guidance in this alert addresses specific issues that have been raised to the FAA by the aviation industry regarding the final rule. All of the following issues are being restated for clarity but have been unchanged by the January 10 final rule.

- The following types of safety-sensitive functions are covered by the FAA's drug and alcohol testing regulations:
 - Flight crewmember duties
 - Flight attendant duties
 - Flight instruction duties
 - Aircraft dispatcher duties
 - Aircraft maintenance and preventive maintenance duties
 - Ground security coordinator duties
 - Aviation screening duties
 - Air traffic control duties
- The definition of maintenance is addressed in 14 CFR part 1 and preventive maintenance is addressed in 14 CFR part 43.
- Any maintenance or preventive maintenance an air carrier or employer would have performed in-house is still covered under the drug and alcohol testing program when the maintenance and/or preventive maintenance is outsourced at any tier.
- The Flight Standards Service's Aircraft Maintenance Division has compiled and listed below some of the frequently asked questions submitted about whether certain functions are considered maintenance and/or preventive maintenance by the Federal Aviation Regulations. It is important to note that the primary responsibility for compliance with the drug and alcohol testing program and ensuring that all persons performing maintenance and/or preventive maintenance duties are covered at any tier lies with the air carrier.
 - Cleaning the Aircraft—The physical cleaning of an aircraft is not normally considered maintenance or preventive maintenance within the context of the regulations. However, there may be occasions where the preparation of the

aircraft for the cleaning process requires removal of components or protection of components that fall under the definition of maintenance or preventive maintenance. For example, prior to cleaning an aircraft, it may be necessary to close and secure the upper and lower fan cowl doors on a transport category aircraft. The FAA considers the closing and securing of the engine fan cowl doors as maintenance. Additionally, after the cleaning process, it may be necessary to reapply lubrication compounds and preservatives to aircraft components, which could be considered maintenance/preventive maintenance. Conversely, cleaning of seat cushions/covers would not be considered maintenance.

- Decorative Coatings—14 CFR part 43, appendix A defines the “refinishing of decorative coating of fuselage,...cabin, or cockpit interior...” as preventive maintenance.
- Repair to Cargo Containers - Are repairs/maintenance to these containers that are loaded on the aircraft in cargo operations included? These are considered part of the airplane.
 - Yes. These types of repairs/maintenance are covered under part 43 and must be performed by persons covered under a program.
- Building Parts – Does the person who physically manufactures a part during the process of a repair to an aircraft have to be covered?
 - No. The person who physically manufactures a part does not have to be a covered employee because manufacturing is not considered maintenance, or preventive maintenance. However, the person who takes that manufactured part and consumes it while repairing the next higher assembly must be covered under a program.
- Line Service Maintenance – Do persons that an air carrier arranges with to perform servicing at line maintenance facilities or locations outside of their normal routes need to be covered?
 - Yes, if those persons are performing line servicing functions that would be considered maintenance and/or preventive maintenance (as listed in part 43 appendix A).
- Manufacturers – Is a manufacturer that performs a test on a component to determine the extent of repairs necessary or to determine the serviceability of a component required to be covered under a drug and alcohol program when performing work for a 121/135 air carrier?
 - Yes. The testing is being performed to a standard required by the manufacturer or other standards acceptable to or approved by the Administrator. The testing standard may be part of an inspection requirement in the technical data being used in the testing process.
- Mechanic's Helpers – Do non-certificated helpers that perform some maintenance duties, as part of a process under the direct supervision, need to be covered even though they will not sign off the work?
 - Yes. All employees who conduct maintenance or preventive maintenance are required to be covered by an FAA drug and alcohol

testing program regardless of whether they sign off the work or not.

- Third Level Subcontracting – If an air carrier makes an arrangement for an outsource maintenance provider to perform maintenance on its aircraft, or components thereof, and that provider contracts out portions of that maintenance (third level), does the third level contractor have to be covered under a drug and alcohol program?
 - Yes. The regulations require any persons, at any level, to be covered under a program. It is the air carriers' responsibility to ensure that any maintenance contracted out is done with persons covered by a program. The air carrier cannot delegate its regulatory responsibility to ensure all persons who perform maintenance or preventive maintenance are covered.
 - The Federal Aviation Regulations require a regulated employer to ensure any individuals performing safety-sensitive functions by contract for it are included in a FAA-mandated drug and alcohol testing program. How an employer determines whether an individual is included in a FAA-mandated drug and alcohol testing program is a business decision. The FAA's drug and alcohol regulations do not require a company to audit the testing programs of a contractor.
 - Anyone performing such functions must be included in a FAA-mandated drug and alcohol testing program.
 - The drug and alcohol testing regulations do not apply to employees who are assigned to perform safety-sensitive functions solely outside of the United States and its territories. This has not changed since 1988.

The FAA has provided its inspectors with internal guidance to help them oversee compliance with this regulation. Additionally, the FAA has provided the public with an internet site to ask and view questions about drug and alcohol testing. This site can be accessed by going to www.faa.gov and selecting the link titled Frequently Asked Questions (FAQ). At the FAQ site select the category Medical and then select the subcategory Drug and Alcohol Testing.

If you have any questions concerning the drug and alcohol testing regulations, please contact the Drug Abatement Division via telephone (202-267-8442) or email (drugabatement@faa.gov). If you need further clarification concerning the definition of maintenance and preventive maintenance, please contact your local Flight Standards District Office.