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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

[Docket No. FAA-2012-1058; Notice No. 24-05A]

RIN 2120–AK 09

Drug and Alcohol Testing of Certificated Repair Station Employees Located Outside of the United States; Extension of comment period

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM); extension of comment period.

SUMMARY: This action extends the comment period for the notice of proposed rulemaking (NPRM), Drug and Alcohol Testing of Certificated Repair Station Employees Located Outside of the United States. On December 7, 2023, the Federal Aviation Administration (FAA) published this proposed rule. The NPRM would require certificated repair stations located outside the territory of the United States whose employees perform safety-sensitive maintenance functions on certain air carrier aircraft to obtain and implement a drug and alcohol testing program in accordance with the requirements of the Drug and Alcohol Testing Program published by the FAA and the Procedures for Transportation Workplace Drug Testing Programs published by the Department of Transportation. The FAA is extending the comment period for this NPRM to allow commenters additional time to analyze the proposed rule and prepare a response.

DATES: The comment period for the NPRM published December 7, 2023, at 88 FR 85137 and scheduled to close on February 5, 2024, is extended until April 5, 2024.

ADDRESSES: Send comments identified by docket number FAA-2012-1058 using any of the following methods:

- Federal eRulemaking Portal: Go to https://www.regulations.gov and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Docket: Background documents or comments received may be read at https://www.regulations.gov at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nancy Rodriguez-Brown, Office of Aerospace Medicine, Drug Abatement Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8442; email: drugabatement@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

On December 7, 2023, the FAA published the NPRM, Drug and Alcohol Testing of Certificated Repair Station Employees Located Outside of the United States.[1] This proposed rule, which the FAA is required by statute to promulgate, would implement a statutory mandate to require certificated part 145 repair stations located outside the territory of the United States (U.S.) to ensure that employees who perform safety-sensitive maintenance functions on part 121

[1] 88 FR 85137.

air carrier aircraft are subject to a drug and alcohol testing program, consistent with the applicable laws of the country in which the repair station is located. This proposed rule would require a part 145 repair station located outside the territory of the U.S. to implement a drug and alcohol testing program meeting the requirements of 49 CFR part 40 and 14 CFR part 120, which must cover its employees who perform maintenance functions on part 121 air carrier aircraft. If a part 145 repair station cannot meet one or all requirements in 49 CFR part 40 (e.g., the laws of the country where the repair station is located are inconsistent with the regulations), the part 145 repair station may apply for an exemption using the process described in 49 CFR 40.7. Similarly, if a part 145 repair station cannot meet one or all requirements in 14 CFR part 120, it may apply for a waiver in accordance with proposed waiver authority. This rule would affect approximately 977 part 145 repair stations in about 65 foreign countries.[2]

It is the responsibility of the employer (e.g., the part 121 operator) to ensure that any person who performs safety-sensitive functions (e.g., maintenance or preventive maintenance), directly or by contract (including by subcontract at any tier), is subject to drug and alcohol testing. The FAA notes that part 145 repair stations located within the territory of the U.S. may elect to, but are not required to, implement a drug and alcohol testing program under 14 CFR part 120. When hiring by contract, if a part 145 domestic repair station does not have a testing program of its own, the part 121 operator must cover the repair station's safety-sensitive employees under its FAA drug and alcohol testing program.[3] In this scenario, for purposes of drug and alcohol testing, the part 121 operator hires the repair station employees as covered employees[4] and must apply all the regulatory requirements of the program to these employees

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[2] These estimates are current as of April 2021 and sourced from the National Vital Information Subsystem (NVIS). NVIS is a subsystem of the Flight Standards Automation System, a comprehensive information system used primarily by inspectors to record and disseminate data associated with inspector activity and aviation environment. While there are more current estimates (as of March 2023, the rule would affect approximately 962 part 145 repair stations in about 66 foreign countries), the 2021 numbers are used in the regulatory evaluation and Regulatory Impact Assessment to estimate cost.

[3] 14 CFR 120.1(b), 120.105(e), 120.215(a)(5).

[4] A covered employee is defined in § 120.7(e) as an individual who performs, either directly or by contract, a safety-sensitive function listed in §§ 120.105 and 120.215 for an employer (as defined in § 120.7(g)).

(e.g., conduct a pre-employment drug test, the records check, the training and educational information distribution requirements, and include the individuals in the random testing pool). Therefore, all employees performing a safety-sensitive function within the U.S. are part of a drug and alcohol testing program, whether it is the part 121 operator's program or the repair station's program. As further discussed in this preamble, the FAA does not propose any changes to its current drug and alcohol testing requirements applicable to employees performing a safety-sensitive function within the U.S. as part of this rulemaking. In addition, the FAA invites comments, with supporting data, on whether the drug and alcohol testing requirements in this proposed rule should be extended to safety sensitive maintenance employees of part 121 certificate holders located outside the United States.

II. Extension of Comment Period

Commenters were instructed to provide comments to the NPRM on or before February 5, 2024, (i.e., sixty (60) days after publication of the NPRM). Subsequently, on January 16, 2024, the FAA received a request from 15 organizations to extend the comment period an additional ninety (90) days.[5] Commenters cited the holiday season and the complexity, including international ramifications, as reasons for requesting the extension.

The FAA grants the petitioners' request for an extension of the comment period. The FAA recognizes the importance of the proposed rule and that an extension would help

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[5] FAA-2012-1058-0099. Organizations included:
Aeronautical Repair Station Association
Civil Aviation Aerospace Industries Association
Air Transport Association of Canada
Aircraft Electronics Association
Airlines for America
Aviation Suppliers Association
Aviation Technician Education Council
Cargo Airline Association
Helicopter Association International
International Air Transport Association
Modification and Replacement Parts Association
National Air Carrier Association
National Air Transportation Association
National Business Aviation Association
Regional Airline Association

commenters craft complete and thoughtful responses. However, the FAA believes that an additional sixty (60) days provides sufficient opportunity to review the NPRM and provide comments. With this extension, the comment period will now close on April 5, 2024. This will provide the public with a total of one hundred twenty (120) days to conduct its review and submit comments to the docket. The FAA will not grant any additional requests to further extend the comment period for this rulemaking.

III. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The Agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA), 5 U.S.C. 552, CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as "PROPIN." The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Electronic Access and Filing

A copy of this notice of proposed rulemaking, all comments received, any final rule, and all background material may be viewed online at www.regulations.gov using the docket number listed above. A copy of this rulemaking will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at www.federalregister.gov and the Government Publishing Office's website at www.govinfo.gov. A copy may also be found at the FAA's Regulations and Policies website at www.faa.gov/regulations_policies.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

IV. Extension of Comment Period

In accordance with § 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed the petitions for extension of the comment period for this notice. The petitioners have shown a substantive interest in the proposed policy and good cause for the extension of the comment period. The FAA has determined that an extension of the comment period for an additional sixty (60) days to April 5, 2024 is consistent with the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 24-05 is extended until April 5, 2024.

Issued under authority provided by 49 U.S.C. 106(f), 45102, and 44733 in Washington, D.C.

Yvette A. Rose,

Deputy Executive Director, Office of Rulemaking.

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