

§ 120.121

14 CFR Ch. I (1–1–19 Edition)

§ 120.121 Preemption.

(a) The issuance of 14 CFR parts 65, 91, 121, and 135 by the FAA preempts any State or local law, rule, regulation, order, or standard covering the subject matter of 14 CFR parts 65, 91, 121, and 135, including but not limited to, drug testing of aviation personnel performing safety-sensitive functions.

(b) The issuance of 14 CFR parts 65, 91, 121, and 135 does not preempt provisions of state criminal law that impose sanctions for reckless conduct of an individual that leads to actual loss of life, injury, or damage to property whether such provisions apply specifically to aviation employees or generally to the public.

§ 120.123 Drug 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.

(1) Each employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

(2) Each covered employee who is removed from the random testing pool under this section shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

(b) The provisions of this subpart shall not apply to any individual who performs a function listed in §120.105 by contract for an employer outside the territory of the United States.

§ 120.125 Waivers from 49 CFR 40.21.

An employer subject to this part may petition the Drug Abatement Division, Office of Aerospace 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 Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

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

Subpart F—Alcohol Testing Program Requirements

§ 120.201 Scope.

This subpart contains the standards and components that must be included in an alcohol testing program required by this part.

§ 120.203 General.

(a) *Purpose.* The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

(b) *Alcohol testing procedures.* Each employer shall ensure that all alcohol testing conducted pursuant to this subpart complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to employers by this subpart.

(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.

§ 120.205 Preemption of State and local laws.

(a) Except as provided in paragraph (a)(2) of this section, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart.

(b) The alcohol testing requirements of this title shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless