

## § 120.19

the employer in accordance with subpart E of this part.

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### § 120.19 Misuse of alcohol.

(a) This section applies to covered employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the US military.

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

(d) *Pre-duty use.* No covered employee shall perform air traffic control duties within 8 hours after using alcohol. No employer having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform air traffic control duties.

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under subpart F of this part or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* A covered employee may not refuse to submit to any alcohol test required under subpart F of this part. An employer may not permit an employee who refuses to submit to such a test to

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perform or continue to perform safety-sensitive functions.

### § 120.21 Testing for alcohol.

(a) Each air traffic control facility not operated by the FAA or the U.S. military must establish an alcohol testing program in accordance with the provisions of subpart F of this part.

(b) No employer shall use any individual who meets the definition of covered employee in subpart A of this part to perform a safety-sensitive function listed in subpart F of this part unless that individual is subject to testing for alcohol misuse in accordance with the provisions of that subpart.

### Subpart D—Part 119 Certificate Holders Authorized To Conduct Operations under Part 121 or Part 135 or Operators Under § 91.147 of This Chapter and Safety-Sensitive Employees

### § 120.31 Prohibited drugs.

(a) Each certificate holder or operator shall provide each employee performing a function listed in subpart E of this part, and his or her supervisor, with the training specified in that subpart.

(b) No certificate holder or operator may use any contractor to perform a function listed in subpart E of this part unless that contractor provides each of its employees performing that function for the certificate holder or operator, and his or her supervisor, with the training specified in that subpart.

### § 120.33 Use of prohibited drugs.

(a) This section applies to individuals who perform a function listed in subpart E of this part for a certificate holder or operator. For the purpose of this section, an individual who performs such a function pursuant to a contract with the certificate holder or the operator is considered to be performing that function for the certificate holder or the operator.

(b) No certificate holder or operator may knowingly use any individual to perform, nor may any individual perform for a certificate holder or an operator, either directly or by contract,