

any function listed in subpart E of this part while that individual has a prohibited drug, as defined in this part, in his or her system.

(c) No certificate holder or operator shall knowingly use any individual to perform, nor shall any individual perform for a certificate holder or operator, either directly or by contract, any safety-sensitive function if that individual has a verified positive drug test result on, or has refused to submit to, a drug test required by subpart E of this part and the individual has not met the requirements of that subpart for returning to the performance of safety-sensitive duties.

[Doc. No. FAA-2008-0937, 74 FR 22653, May 14, 2009; Amdt. 120-0A, 75 FR 3153, Jan. 20, 2010]

#### § 120.35 Testing for prohibited drugs.

(a) Each certificate holder or operator shall test each of its employees who perform a function listed in subpart E of this part in accordance with that subpart.

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in subpart E of this part unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that subpart.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of subpart E of this part and emergency maintenance is required, the certificate holder may use individuals not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance under both of the following conditions:

(1) The certificate holder must give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, SW., Washington, DC 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder must retain copies of all such written notifications for two years.

(2) The aircraft must be reinspected by maintenance personnel who meet

the requirements of paragraph (b) of this section when the aircraft is next at an airport where such maintenance personnel are available.

(d) For purposes of this section, emergency maintenance means maintenance that—

(1) Is not scheduled and

(2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

#### § 120.37 Misuse of alcohol.

(a) *General.* This section applies to covered employees who perform a function listed in subpart F of this part for a certificate holder. For the purpose of this section, an individual who meets the definition of covered employee in subpart F of this part is considered to be performing the function for the certificate holder.

(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 certificate holder 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 certificate holder 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.* (1) No covered employee shall perform flight crew-member or flight attendant duties within 8 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 8 hours shall permit the employee to perform or continue to perform the specified duties.

(2) No covered employee shall perform safety-sensitive duties other than those specified in paragraph (d)(1) of this section within 4 hours after using alcohol. No certificate holder having actual knowledge that such an employee has used alcohol within 4 hours shall permit the employee to perform