DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Research and Special Programs Administration

49 CFR Part 199

Federal Railroad Administration

49 CFR Part 219

Federal Highway Administration

49 CFR Part 382

Federal Transit Administration

49 CFR Part 654

[Docket 49384]

RIN 2120–AE43; 2137–AC21; 2130–AA81; 2125–AA79, 2125–AC85; 2125–AD06; 2132–AA38

Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities (FAA); Alcohol Misuse Prevention Program (RSPA); Alcohol Testing; Amendments to Alcohol/Drug Regulations (FRA); Controlled Substances and Alcohol Use and Testing (FHWA); Prevention of Alcohol Misuse in Transit Operations (FTA)

AGENCIES: Federal Aviation Administration (FAA), Research and Special Programs Administration (RSPA), Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: On February 15, 1994, the Department of Transportation published final alcohol testing rules, including a requirement that evidential breath testing devices be used to conduct alcohol tests. The Department also published a notice of proposed rulemaking seeking comment on whether blood testing should be used in very limited circumstances (i.e., for reasonable suspicion and post-accident tests, where evidential breath testing was not available). After reviewing the comments, the Department has decided not to authorize blood testing as proposed. The Department's operating administrations are amending their alcohol testing rules to require employers to submit to the Department reports of reasonable suspicion and post-accident tests that could not be conducted because breath testing was unavailable.

DATES: The amendments to the FAA, RSPA, FRA, FHWA, and FTA alcohol testing regulations are effective January 1, 1995. Comments concerning the reporting requirement added to the five operating administration alcohol testing regulations should be received by January 17 1995. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 49384, Room 4107 Department of Transportation, 400 7th Street, S.W., Washington D.C., 20590. This is a consolidated docket that will accept comments on the amendments to all five operating administration rules involved. Commenters wishing to have their comments acknowledged should send a stamped, self-addressed postcard with their comments. The Docket Clerk will date stamp the card and return it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Acting Director, Department of Transportation Office of Drug Enforcement and Program Compliance, 400 7th Street, S.W., Washington, D.C., 20590 (202–366–3784).

SUPPLEMENTARY INFORMATION: This rulemaking concerns the Department of Transportation's alcohol testing requirements. Larger employers are required to begin alcohol testing in accordance with the Department's regulations on January 1, 1995. Smaller employers are required to begin testing on July 1, 1995, or January 1, 1996, as provided in applicable operating administration rules. Those employers who are scheduled to begin testing January 1, 1995, are expected to be ready to begin testing on that date, including acquisition of equipment and training of personnel. No postponements of this compliance date have been granted. Since employers will have been on notice of this compliance date since February 15, 1994, the Department believes that employers will have had a reasonable time to prepare.

The NPRM

When the Department proposed the alcohol testing rules that it adopted in February 1994, one of the most important, most frequently commented-upon issues was the choice of testing methodology. After carefully considering comments about a variety of methods and devices, including arguments concerning the degree of discretion employers should have in choosing a testing method, the Department decided that the use of evidential breath testing devices (EBTs) was the most appropriate approach to take. The Department discussed the reasons for this decision at some length in the preamble to its alcohol testing procedures rule. See 59 FR 7342–7347, February 15, 1994.

At the same time, the Department sought comments, through a notice of proposed rulemaking (NPRM), on whether the Department should authorize blood testing for alcohol to be used in certain specific, very limited circumstances. See 59 FR 7367–7371, February 15, 1994. Under the proposal, blood would be used "only in those reasonable suspicion and post-accident testing circumstances where it is not practicable to use breath testing." *Id.* at 7367 The Department specifically noted that blood testing was "not intended, under the proposal, to be an equal alternative method that an employer can choose as a matter of preference. *Id.* The NPRM did not propose re-opening the underlying decision that breath testing is to be the basic testing method under the rules.

The rationale for the proposal was that "in some circumstances, the unavailability of EBTs may make breath testing impracticable." *Id.* The Department noted that

> [R]easonable suspicion and post-accident tests are more likely than other kinds of tests to happen at unpredictable times and in remote locations [I]t may be substantially easier and less costly to arrange for a blood alcohol test [than a breath test] in these circumstances. In some cases, it may be impossible to get an EBT to a remote location in time to conduct a meaningful test. *Id.*

Under such circumstances, the NPRM said, it might be better to test using blood, despite its known disadvantages (which the preambles to both the Part 40 final rule and the NPRM spelled out), than to be unable to complete a reasonable suspicion or post-accident test. The NPRM noted that there would probably be a small number of such tests per year (roughly estimated at 2500 per year), which could mitigate the effect of these disadvantages.

The remainder of the NPRM proposed procedures that would be used in the event the Department adopted the proposal. These proposals addressed such subjects as collection procedures, qualification of testing personnel, laboratories and laboratory procedures, and "fatal flaws" that would invalidate tests.

Comments

The Department received 185 comments on this NPRM. The commenters included 15 transportation employers or their associations, 9

testing industry organizations, 6 unions, and 155 individual transportation employees. Several months after the close of the comment period, the Department received additional correspondence on this subject, but the comments arrived so late in the rulemaking process that it was not practicable to consider them.

Comment was divided on the basic issue of whether blood testing shcuild be authorized. Employee comments were uniformly against the proposal. Six unions representing transportation workers and 155 individual transportation employees opposed blood testing. They cited a number of reasons. Blood testing was too invasive, causing pain and fear in many employees and severely invading employees' privacy. There was no possibility of immediate confirmation. There would be too much employer discretion as to when blood could be used, which could lead to abuse (e.g., overuse of blood by employers). Some of these comments expressed concern about incompetent or dangerous collection practices. Two additional commenters (one of whom favored using blood testing) expressed concern about confrontations arising from employees who objected to giving blood.

Twenty-five commenters, most of them employers or employer associations, favored blood testing. Thirteen of these endorsed the NPRM proposal. Most did so on the basis that it would be less costly and more convenient to be able to use blood testing for reasonable suspicion and post-accident testing. Specifically commenters were concerned that, in the absence of a blood option for these types of testing, employers would have to buy an unreasonably large number of EBTs to cover all their work locations. The other 12 commenters in this group favored much wider discretion for employers, saying that blood testing should be available for confirmation in all types of testing, with non-evidential devices (such as saliva devices) available for screening tests. The result would be that EBTs need never be obtained or used. Employers in the pipeline industry were particularly in favor of this approach, noting that only reasonable suspicion and post-accident alcohol tests are required for their industry, which has employees at many remote sites.

A related issue was how to define "readily available." The NPRM proposed that blood could be used when breath testing was not "readily available," and asked for comment on what that term should mean. Five commenters believed that a specific number of hours (e.g., two or eight) should be used as the criterion. That is, if breath testing could not be performed within that number of hours after the event leading to the test, then blood could be used. Nine commenters, to the contrary, said that employers should be able to decide when breath testing was readily available, based on such factors as cost, convenience, or preference. (One comment, on the other hand, said employers should never have this discretion.) The latter view was advocated by several of the commenters who favored a broader use of blood testing than the NPRM proposed, as it would reduce the number of occasions on which breath testing would be needed and perhaps make it possible for some employers to avoid breath testing altogether. Two commenters, representing aviation management and labor, respectively, disagreed about whether EBTs would typically be available in airports. Two other commenters proposed more complex schemes for determining when blood testing could be used.

On the question of what laboratories should be used for blood testing, six comments favored using state-certified laboratories, when they were available. Some of them said that these laboratories should be viewed as adequate at least until Department of Health and Human Services (DHHS) -certified laboratories became available. Ten comments favored DHHS certification for blood testing laboratories, though these commenters differed among themselves about whether DHHS-certified laboratories should be the only laboratories permitted to test blood in DOT mandated tests. Two other comments favored using laboratories certified by the College of American Pathologists (CAP), and three others supported using whatever laboratories were available, whether certified by DHHS, states, or CAP

Eleven commenters thought DOT should develop uniform, national testing procedures. Some of these commenters argued that state procedures are unreliable or that it would be too confusing to apply a variety of state standards, particularly for employers who operate in more than one state. Two testing industry organizations suggested using an existing industry blood collection standard. Eight other commenters thought that state procedures, or procedures developed at the discretion of the employer, should be viewed as adequate.

Nine commenters thought employers should either be authorized or required to "stand down" employees based on a positive screening test, pending receipt of the results of the blood confirmation test from the laboratory. Eight comments favored allowing an employee's supervisor to act as the collector for the screening test, the confirmation test, or both, at least if other trained collectors were not available. One comment opposed ever allowing a supervisor to act as a collector. With respect to fatal flaws, nine commenters agreed (and two disagreed) that a sample collected by an unauthorized collector should be regarded as invalid, eight said it should not be a fatal flaw if the procedures of the wrong state were used for collection. There were also several comments concerning the details of blood testing kits.

DOT Response

The Department clearly and specifically limited the NPRM to consideration of whether blood testing should be used for situations in which breath testing was not readily available for reasonable suspicion and post-accident tests, or in "shy lung" situations. For this reason, the issue raised by some commenters of whether employers should have the flexibility or discretion to use blood testing as an alternative to breath testing, even when breath testing is readily available in reasonable suspicion and post-accident testing or even in random or pre-employment testing, is outside the scope of the rulemaking.

Moreover, we remain convinced, for the reasons explained in the preamble to 49 CFR Part 40 published on February 15, 1994, that the Department made a sound decision to designate evidential breath testing as the basic method of alcohol testing to be used in DOT programs. Consequently the Department will not authorize the use of blood testing as an alternative to breath in the wide range of circumstances recommended by some commenters.

With respect to the NPRM proposal itself, the Department is mindful of the concerns expressed by employees and unions about the invasiveness of blood testing. As the Department recognized in the preambles to the NPRM and to the February 15 final rule, blood testing is the most invasive type of testing available, and is likely to create more anxiety among employees than other methods. Blood testing is the only testing method that, if conducted improperly by an ill-trained or inattentive collector, can do serious physical harm to an employee. Moreover, while we recognize a point

made by some commenters that employees have accepted blood alcohol testing in some circumstances, we think that the greater invasiveness of this approach would, on the whole, make employee acceptance of the program more, rather than less, difficult to obtain. Employee acceptance is one factor that leads to the success of an alcohol misuse prevention program.

Another factor we have taken into consideration is the added program complexity that would result from including blood testing in the Department's programs. Laboratories would have to be certified to test the blood samples. As the division among commenters on this point demonstrates, the best solution to this problem is not clear. In our view DHHS certification would be the highest standard for accuracy and reliability of testing. However, there would be considerable costs to laboratories and the Department, as well as some delays in program implementation, if DHHS had to create a laboratory certification program for blood alcohol testing, as it has for urine drug testing. Assuming that the number of tests involved is small (see discussion below) it might well not be cost effective for laboratories to go through a DHHS certification process. State-certified laboratories appear to vary in reputation for quality as well as in terms of availability: not all states have state or state-certified laboratories that would accept specimens for purposes of DOT mandated testing.

As mentioned in the preamble of the NPRM, the Department has expressly declined to use laboratories certified by private organizations (such as the CAP) in the drug testing context, and the comments did not provide a persuasive rationale for taking a different course with respect to alcohol testing. Using state or privately certified laboratories as an interim measure until DHHS-certified laboratories are ready could create concern among employees and employers about ensuring the highest level of accuracy in the program. The other procedural issues discussed in the comments—DOT national uniform procedures vs. reliance on differing state procedures, whether there should be a standard DOT blood testing kit and what should be in it, what should constitute a fatal flaw, etc.—also suggest that it would be a very complex matter to devise an appropriate set of procedures for blood testing.

Other questions arise because of the relationship of non-evidential screening test devices and blood tests. For example, suppose a saliva screening device indicates that an employee tests positive for alcohol. The blood test result will not be available from the laboratory for two or three days. What happens to the employee in the meantime? This is a problem we do not face with evidential breath testing, since a confirmation test result is available immediately, a point which we view as a significant advantage of breath testing.

In the drug testing rules, we explicitly prohibit on-site testing, in part for the reason that we consider it inappropriate for an employer to take any action against an employee, absent a confirmed and verified positive test result. (Concern about the accuracy of devices was also involved in this decision.) A similar situation would occur if an employee had a positive on-site screening test for alcohol and the employer stood him or her down pending receipt of the laboratory confirmation test result. On the other hand, from a safety point of view there is much to recommend to employers that they stand an employee down after a positive on-site screening test, since no one wants to send (for example) a truck driver back onto the road when we have a test result suggesting that the driver may have alcohol in his or her system. The comments on the subject favored standing employees down in this situation.

Should the Department, contrary to the drug testing rules, permit or require the employer to stand an employee down in this situation? If the employer stands an employee down in this situation, should DOT rules mandate that the employer pay the employee for the "stand down" period? In any case? Only if the confirmation test is negative? These are difficult and troubling questions, to which the best answers are far from self-evident.

This is not to say that the issues of invasiveness, added procedural complexity and stand-down are incapable of resolution. But is it worthwhile, from the point of view of employers, employees, and the Department, to create a new component of the alcohol testing program carrying these problems with it? The basic rationale for adding blood testing to the program is that, in its absence, employers will "miss" post-accident and reasonable suspicion tests. That is, there will be situations in which, because breath testing cannot be made available within eight hours, a post-accident or reasonable suspicion test that the regulations call for will not take place at all. In some number of these cases, blood testing might be available where breath testing is not.

How often will there be reasonable suspicion and post-accident tests that are "missed" because of the unavailability of breath testing that would be "caught" by blood testing? Our expectation is that there would be a small number of such situations. First, occasions for post-accident and reasonable suspicion tests are likely to be far fewer in number than occasions for pre-employment and random tests. The motor carrier industry accounts for 7.0 million of the approximately 7.8 million transportation employees who will be subject to alcohol testing. FHWA's very stringent criteria for post-accident testing (only a (1) fatal accident or (2) an accident in which the driver is issued a citation for a moving violation plus either (a) there is disabling damage to a vehicle or (b) an injury requiring immediate medical treatment away from the scene results in a post-accident test) mean that only a small percentage of all motor carrier accidents are likely to result in post-accident tests. The nature of drivers' jobs, which do not involve frequent or long-term observation by supervisors, suggests that there will be relatively few occasions for reasonable suspicion tests. The pipeline industry in which most accidents happen because of non-pipeline employees damaging pipelines (e.g., construction crews digging into a pipeline), and in which employees may often operate in remote locations with little supervision, appears to share this relatively low probability of reasonable suspicion and post-accident testing. We also anticipate few "shy lung" situations, and Part 40 has a provision to deal with them.

Other industries, which involve closer supervision of employees and/or broader definitions of triggering accidents may produce somewhat greater rates of post-accident or reasonable suspicion test situations. (In one of these, the railroad industry post-accident blood testing is done by FRA under a long-standing rule using an FRA contract lab. Nothing in this today's action in any way changes FRA's existing requirements involving blood testing.) However, since the absolute numbers of employees in these industries are much smaller, they will have less of an effect on the total number of such occasions. Even in these industries, the numbers may not be very high. Data from the aviation industry for example, suggests that there have been relatively few post-accident or reasonable cause drug tests (e.g., 720 out of 268,809 total tests conducted in 1993 under the FAA rule).

This brings us to the next factor. What data we have from situations where reasonable suspicion/cause tests have been administered for both drugs and alcohol suggests that there may be

substantially fewer such tests for alcohol than for drugs. For example, recent railroad industry data suggest that of the total of such tests, alcohol tests made up only about 17 percent of the total.

Finally we expect that a substantial percentage of the reasonable suspicion and post-accident testing situations can be "caught" by breath testing. This is particularly true in those industries (e.g., the railroad, transit, and aviation industries) where employees perform most safety-sensitive duties on known routes or in known locations, and where supervision is more readily available. Even in the motor carrier industry, the provision in the FHWA rule that allows use for purposes of the DOT testing program of results of tests conducted by law enforcement can help to reduce the incidence of "missed" tests.

However, there are likely to be some situations in which *no testing method*—including blood—can be brought to bear in time to conduct a post-accident or reasonable suspicion test. The oft-mentioned example of a truck accident at 2 a.m. on a remote highway in the middle of the desert may well be an example of a situation in which blood, as well as breath, testing will not be available in a timely manner. Certainly it would be a doubtful assumption that all, or perhaps even a majority, of tests that would be "missed" with breath would be "caught" with blood.

Consequently if we added blood testing to the alcohol testing program as proposed in the NPRM, we would be incurring the disadvantages of such a step in order to catch a subset of a subset of the universe of all reasonable suspicion and post-accident alcohol tests required under the Department's rules. This universe itself will probably not be a large one. Many of the tests can be caught by breath testing. Of those that cannot, many could not be caught by blood testing either.

In the NPRM, we made a rough estimate of perhaps 2500 situations per year in which blood would catch a test that breath could not. Commenters did not present data suggesting that the number would be significantly higher; we tend to think, at this time, that the estimate may have been too high.

We have concluded that it is not worth subjecting employees to an invasive testing procedure and incurring the other disadvantages of adding blood alcohol testing to our program to capture this probably small number of cases. For this reason, we are withdrawing the proposed authorization of the use of blood in some post-accident and reasonable suspicion test situations, and we will not include blood testing as a part of the DOT alcohol testing program. As noted below we are issuing a final rule establishing a temporary reporting requirement concerning missed reasonable suspicion and post-accident tests.

We believe that following this course will be less disadvantageous to employers than some commenters appear to believe. There is no requirement in the DOT rules—and never has been—that employers buy their own EBT for every conceivable location in which a reasonable suspicion or post-accident test could occur, including every company facility or location. We expect that companies may move EBTs around from facility to facility for scheduled tests such as pre-employment and random tests. For the non-scheduled reasonable suspicion and post-accident tests, we expect employers to take reasonable steps to ensure coverage. We recognize that tests will not be able to be completed in some instances. That is why, for example, the reasonable suspicion and post-accident testing provisions of the alcohol rules issued by the operating administrations on February 15, 1994, tell employers to discontinue attempts at testing after eight hours but require them to keep a record explaining the inability to conduct the test.

Consortia and third-party service providers can often provide both more economical service and wider coverage than employers would find possible on their own. Reimbursable agreements among employers, even across various industries, could make EBT and BAT services available in locations where a single employer would not have coverage. The operating administrations will also provide guidance and work with their employers to ensure appropriate coverage by employers. Finally the Department recognizes that there will be some situations in which the best good faith efforts on the part of an employer (as distinct from an abdication of the effort) cannot result in a test being completed. That is, we acknowledge and accept the fact that there will be some "missed" tests.

The Department's judgment on this issue is based, to a considerable extent, on the premise that there will not be excessive numbers of "missed" tests. This premise, while based on a logical view of how our program will work, is not, at this stage, based on hard data. This is because the alcohol testing program has not begun yet, so there is little data on which we can rely. (That is, the first MIS reports for alcohol are not due until March 15, 1996. The first MIS reports for drugs are not due until March 15, 1995, so we do not even have comprehensive data yet for drug testing in most of the affected industries which might serve as a basis for inferences about the alcohol testing program.) For this reason, the Department is modifying an existing regulatory requirement to generate relevant data.

All the operating administration alcohol testing regulations include a requirement for employers to prepare and maintain on file a record of when a post-accident or reasonable suspicion test is not administered within eight hours. At this point, the employer must stop attempts to administer the test. This is, in other words, an existing requirement to document a "missed" test and the reasons for it. This requirement applies to all covered employers.

For a three-year period beginning January 1, 1995, the Department will require those employers who transmit an MIS report to the Department to transmit a copy of these records along with their MIS report. They should be sent to the same address as MIS reports are sent for the operating administration involved. Reports should be sent to the operating administration *only* at the time that MIS reports are sent. That is, the employer should send a year's worth of reports (a separate report for each "missed test") to the operating administration at one time. Employers should not send reports concerning tests which are conducted within the 8-hour period, only concerning tests that are not conducted because more than 8 hours have passed since the triggering event. (The existing rules also require employers to document when a reasonable suspicion or post-accident test cannot be conducted within two hours. This requirement remains in effect, but employers are not required to report to DOT concerning tests that are conducted more than two but less than eight hours after the triggering event. This is because such tests, while perhaps of diminished value, are not truly "missed tests.")

The rule specifies the information that would be part of the records. The required information is the following:

(1) *Type of test.* Is the test a reasonable suspicion or post-accident test? (This information is not required from railroad employers, since FRA has always conducted post-accident blood tests and does not conduct post-accident breath alcohol testing parallel to that conducted under other operating administrations' rules. All "missed tests" under the FRA rule would be reasonable suspicion tests.)

(2) *Triggering event.* What was the date, time and location of the accident

or supervisor's determination of reasonable suspicion that led to the requirement for the test?

(3) *Employee category.* What type of safety-sensitive function was the employee performing? In responding to this item, employers should use the employee categories listed in each of the operating administrations' regulations (e.g., in mass transit, operator of a revenue service vehicle, operator of a non-revenue service vehicle, controller/dispatcher, maintenance personnel, security personnel). These regulatory categories, rather than the employer's job title for the individual, should be used for this purpose. Under no circumstances should the employee's name or other identifying information be provided. (This information is not required in reports to FHWA, since all FHWA-covered personnel are drivers.)

(4) *Explanation.* The reason(s) the test could not be completed within 8 hours. That is, what prevented the employer from conducting the test within this time period using breath testing?

(5) *Possible Use of Blood.* If blood testing would have been available to complete the test within eight hours, the record would include the name, address, and telephone number of the testing site at which blood testing could have occurred. (This information will help the Department to estimate the frequency of situations in which blood testing would have been available where breath testing is not.)

The Department will analyze these reports (which, since they concern 1995, 1996, and 1997 will include three years' data for large employers and two years' data for small employers) in 1998. We will revisit, at that time, the issue of whether there are sufficient numbers of post-accident and reasonable suspicion testing occasions which are missed by breath testing and could be captured by blood testing to make the addition of blood testing (or some other, new technology) a worthwhile step. While this data collection requirement is a response to the issues raised by the NPRM, and is a logical outgrowth of our consideration of those issues and the comments on them, it was not itself specifically proposed in that document. Therefore, we are asking for comment on the reporting requirement. Because we believe it is important to be in a position to have responded to comments on the reporting requirement before January 1, 1995, when alcohol testing begins and records of missed tests would need to start being kept for the reports that are due March 15, 1996, we have established a 45-day, rather than a 60-day, comment period on the reporting requirement. This opportunity for comment concerns only the reporting requirement itself, and not the underlying decision to withdraw the proposal to allow blood testing. Comments on that decision will be considered as outside the scope of this request for comments.

Regulatory Analyses and Notices

The Department has determined that this rule is a significant rule for purposes of Executive Order 12886 and the Department's Regulatory Policies and Procedures. While it makes only small changes to the Department's existing alcohol testing requirements, it pertains to a Department-wide regulatory program, and has been reviewed by all concerned Departmental offices and the Office of Management and Budget (OMB). The costs and benefits of alcohol testing were fully analyzed as part of the final rules issued February 15, 1994. Because the rule does impose a new reporting requirement, we have submitted this requirement to OMB for review under the Paperwork Reduction Act. The new reporting requirement will not be effective until OMB has approved it. DOT will publish a **Federal Register** notice when OMB approves the requirement.

Under the Regulatory Flexibility Act, the Department certifies that the requirements imposed by this rule will not have a significant economic effect on a substantial number of small entities. There are not sufficient Federalism impacts to warrant a Federalism assessment under Executive Order 12612.

List of Subjects

14 CFR Part 121

Air carriers, Air transportation, Aircraft, Aircraft pilots, Airmen, Airplanes, Alcohol, Alcoholism, Aviation safety, Pilots, Safety, Transportation.

49 CFR Part 199

Alcohol testing, Drug testing, Pipeline safety, Recordkeeping and reporting.

49 CFR Part 219

Alcohol and drug abuse, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 382

Alcohol testing, Controlled substances testing, Highways and roads, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 654

Alcohol testing, Grant programs—transportation, Mass transit, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 22nd day of November, 1994, at Washington, D.C.

Mortimer L. Downey,

Deputy Secretary.

David R. Hinson,

Administrator, Federal Aviation Administration.

D.K. Sharma,

Administrator, Research and Special Programs Administration.

S. Mark Lindsey,

Acting Deputy Administrator, Federal Railroad Administration.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Gordon J. Linton,

Administrator, Federal Transit Administration.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR Part 121, 49 CFR Part 199, 49 CFR Part 219, 49 CFR Part 382, and 49 CFR Part 654, as follows:

14 CFR CHAPTER I

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 1354(a), 1355, 1356, 1357 1401, 1421–1430, 1485, and 1502.

2. In Appendix J to Part 121, paragraph III. B. 2. is amended by designating the existing text as paragraph (a) and adding a new paragraph (b), to read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

III. Tests Required

B. Post-accident

* *

2. (a)

(b) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FAA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that are not completed within 8 hours shall be submitted to the FAA by March 15, 1996; March 15, 1997 and March 15, 1998; for calendar years 1995, 1996, and 1997 respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information: