DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 120

[Docket No.: FAA–2012–1058; Amdt. No. 120–3]

RIN 2120–AK09

Drug and Alcohol Testing of Certificated Repair Station Employees Located Outside of the United States

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

ACTION: Final rule.

SUMMARY: This final rule requires certificated repair stations located outside the territory of the United States (U.S.) whose employees perform safety-sensitive maintenance functions on certain air carrier aircraft to conduct alcohol and controlled substance testing in a manner acceptable to the Administrator and consistent with the applicable laws of the country in which the repair station is located. The final rule directs the repair station to comply 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, as proposed. However, this final rule also allows foreign governments, on behalf of certificated repair stations within their territories, and individual foreign repair stations subject to the rule to obtain the Administrator's recognition of a compatible alternative that contains minimum criteria in lieu of compliance with certain components of the Drug and Alcohol Testing Program.

DATES: This rule is effective January 17, 2025, except for amendatory instructions 3, 8, and 11, which are effective December 20, 2027. The compliance date for this final rule is December 20, 2027.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How to Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

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SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

BASA—Bilateral Aviation Safety Agreement
ICAO—International Civil Aviation Organization

Table of Contents

I. Executive Summary

This final rule implements section 308(d)(2) of the FAA Reauthorization Act of 2012 (codified in 49 U.S.C. 44733) by requiring 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 air carrier aircraft are subject to an alcohol and controlled substances testing program determined acceptable to the FAA Administrator and consistent with the applicable laws of the country in which the repair station is located.

The NPRM proposed a foreign repair station subject to the rule (*i.e.,* a foreign repair station that performs safety-sensitive maintenance on part 121 air carrier aircraft) would need to implement an alcohol and drug testing program that meets the requirements of 14 CFR part 120 and 49 CFR part 40, which is adopted as proposed in this final rule. In addition, in response to feedback received during the comment period of the proposed rulemaking, the final rule establishes a process for foreign governments, on behalf of certificated repair stations within their territories, and individual foreign repair stations subject to the rule to obtain a waiver based on the Administrator's recognition of a country or foreign repair station's existing requirements or testing program(s) promulgated under the laws of the country as a compatible alternative that contains minimum elements of 14 CFR part 120.

Affected foreign repair stations that receive a waiver based on recognition by the Administrator will be relieved from comprehensive compliance with subparts E and F of 14 CFR part 120 (in turn, providing relief from 49 CFR part 40) and will not need to seek further waivers or exemptions from 14 CFR part 120 or 49 CFR part 40 under this final rule. All other foreign repair stations subject to the rule will be required to meet 14 CFR part 120 and 49 CFR part 40, subject to any waivers or exemptions that a repair station may obtain. Foreign repair stations subject to the rule must comply not later than December 20, 2027. After this date, part 121 operators will be prohibited from using a foreign repair station employee to perform safety-sensitive maintenance outside the U.S. who is not covered by a waiver based on recognition by the Administrator or an FAA-mandated drug and alcohol testing program.

This rulemaking will affect approximately 977 part 145 repair stations in about 65 foreign countries.[1] Since the rule provides several pathways for compliance, the FAA estimated low and high-cost cases. The low-cost case assumes all countries with certificated repair stations will submit a request for a waiver based on recognition. The total unadjusted unit cost to the industry and the FAA to submit one request is $2,569. At a seven percent discount rate, the adjusted total cost for all 65 countries to submit this request is $116,690, $64,540 annualized, and $123,459 at a three percent discount rate, $64,521 annualized. In the high-cost case, costs to foreign repair stations consist of developing an FAA-mandated drug and alcohol testing program, training, testing of safety-sensitive maintenance employees for drug and alcohol, and annual reporting. The total present value cost to foreign repair stations over five years, at a seven percent discount rate sums to $49.6 million or $12.1 million annualized. At a three percent discount rate, the present value total cost to foreign repair stations is $55.6 million or $12.1 million annualized.

In the high-cost case, the FAA will incur costs associated with documenting these foreign repair stations and performing oversight and surveillance for those complying with FAA-mandated drug and alcohol testing requirements under part 120 and 49 CFR part 40. These costs only apply to compliance with the rule and not if a country or repair station has an approved waiver based on recognition.[2] Total cost to FAA over five years, at seven percent present value, sums to $6.5 million with an annualized cost of $1.6 million. At three percent present value, total cost is $7.4 million with an annualized cost of $1.6 million.

The table below shows the estimated costs to both part 145 repair stations and FAA over five years. The estimated total cost of the final rule, at seven percent present value, is $56.1 million and $63.0 million at 3 percent present value.

TABLE 1—COST TO PART 145 FOREIGN REPAIR STATIONS AND FAA OVER 5 YEARS

[Millions—2022 U.S. dollars] *

Year	Program, training development, & maintenance	Training	Testing (drug and alcohol)	Annual reports	FAA oversight costs	Total cost (7% PV)	Total cost (3% PV)
1	$0.3	$7.6	$0.0	$2.1	$0.0	$9.4	$9.8
2	0.3	1.0	4.5	6.8	2.1	12.8	13.8
3	0.3	1.0	4.5	6.8	2.1	12.0	13.5
4	0.3	1.0	4.6	6.9	2.1	11.3	13.1
5	0.3	1.0	4.6	6.9	2.1	10.6	12.8
Total	1.6	11.7	18.2	29.4	8.2	56.1	63.0

* These numbers are subject to rounding error.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the FAA's authority. The FAA's authority to issue rules on alcohol and drug testing is in 49 U.S.C. 45102, which directs the Administrator to prescribe regulations that establish a program requiring air carriers and foreign air carriers to conduct certain alcohol and controlled substances testing.

This final rule is further promulgated under section 308 of the FAA Modernization and Reform Act of 2012 (the Act), 49 U.S.C. 44733. Specifically, 49 U.S.C. 44733(d)(2), titled ''Alcohol and Controlled Substances Testing Program Requirements,'' requires the FAA to ''promulgate a proposed rule requiring that all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft [be] subject to an alcohol and controlled substances testing program determined acceptable by the [FAA] Administrator and consistent with the applicable laws of the country in which the repair station is located.'' Additionally, this final rule is promulgated under section 2112 of the FAA Extension, Safety, and Security Act of 2016, (the 2016 Act), which directed publication of a notice of proposed rulemaking in accordance with 49 U.S.C. 44733. The 2016 Act also required that the notice of proposed rulemaking be finalized. Further, section 302(b) of the FAA Reauthorization Act of 2024 (Pub. L. 118–63) requires that within 18 months of enactment of that Act, the Administrator shall issue a final rule carrying out the requirements of section 2112(b) of the FAA Extension, Safety, and Security Act of 2016.

III. Background

A. History

The FAA and the Office of the Secretary of Transportation (OST) have long engaged in a regulatory partnership regarding drug and alcohol testing of persons in the aviation industry. These regulations are promulgated under 14 CFR part 120 and 49 CFR part 40. The preamble to the NPRM provided a full history of the FAA and OST regulations.[3]

B. Legislative and Rulemaking Actions

1. FAA Modernization and Reform Act of 2012

In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (2012 Act).[4] Section 308(d)(2) of the 2012 Act, implemented in 49 U.S.C. 44733, requires that the Administrator publish a proposed rule requiring that all part 145 repair station employees responsible for safety-sensitive

[1] 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.

[2] For those foreign governments or repair stations that receive a waiver based on recognition, FAA will rely on the foreign government or repair station to ensure compliance with the recognized programs and notify FAA when the standards or conditions change.

[3] Drug and Alcohol Testing of Certificated Repair Station Employees Located Outside of the United States, 88 FR 85137, 85139 (Dec. 7, 2023).

[4] Public Law 112–95 (Feb. 14, 2012).

maintenance functions on part 121 air carrier aircraft outside the U.S. to be subject to an alcohol and controlled [5] substances testing program determined acceptable by the Administrator and consistent with the applicable laws of the country in which the repair station is located. The FAA considers all maintenance functions performed on part 121 air carrier aircraft to be safety-sensitive under 14 CFR 120.105 and 120.215.

2. Advance Notice of Proposed Rulemaking

In response to the congressional mandate, the FAA published an advance notice of proposed rulemaking (ANPRM) on March 17, 2014.[6] The comment period for the ANPRM closed July 17, 2014. The FAA received 74 substantive comments of both support and opposition. The FAA discussed and responded to the comments received as part of the NPRM.[7]

3. FAA Extension, Safety, and Security Act of 2016

After the FAA published the ANPRM, Congress enacted the FAA Extension, Safety, and Security Act of 2016 (2016 Act),[8] which reemphasized Congress's prioritization of drug and alcohol programs for foreign repair station employees in section 2112. Specifically, section 2112 directed the FAA to (1) ensure that an NPRM pursuant to 49 U.S.C. 44733(d)(2) is published within 90 days of the date of the enactment of the 2016 Act and (2) ensure that the rulemaking is finalized within a year of the NPRM publication.[9] The NPRM was promulgated in accordance with such direction.

4. FAA Reauthorization Act of 2024

After the FAA published the NPRM, Congress enacted the FAA Reauthorization Act of 2024 (2024 Act),[10] which again reemphasized Congress's prioritization of drug and alcohol programs for foreign repair station employees who perform maintenance on part 121 air carrier aircraft. Specifically, section 302(b) directed the FAA to issue a final rule within 18 months of the date of the enactment of the 2024 Act that carries out the requirements of section 2112(b) of the 2016 Act.

IV. Discussion of the Final Rule

A. Testing Under 14 CFR Part 120 and 49 CFR Part 40

In the NPRM, the FAA proposed to fulfill Congress's mandate by requiring certificated part 145 repair stations located outside the territory of the U.S. whose employees perform safety-sensitive maintenance functions on part 121 air carrier aircraft to obtain and implement a drug and alcohol testing program, consistent with the applicable laws of the country in which the repair station is located.[11] Specifically, the FAA proposed to 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, covering employees who perform maintenance functions on part 121 air carrier aircraft. If a part 145 repair station located outside the U.S. could not meet one or all requirements in 49 CFR part 40 (*i.e.,* DOT's requirements), the FAA noted that the part 145 repair station could apply for an exemption using the existing process described in 49 CFR 40.7. Similarly, if a part 145 repair station located outside the U.S. could not meet one or all requirements in 14 CFR part 120 (*i.e.,* the FAA's requirements), the FAA proposed that the repair station may apply for a waiver in accordance with proposed 120.9.

1. Application of 14 CFR Part 120 and 49 CFR Parts 40 Through 145 Certificated Repair Stations Located Outside the Territory of the United States (§§ 120.1, 120.123 and 120.227)

To effectuate this testing framework, the FAA proposed three revisions to 14 CFR 120.1, which are all adopted in this final rule. Specifically, § 120.1(c) will specify that paragraph (c) applies to those part 145 certificate holders located in the territory of the U.S. who elect to implement a drug and alcohol testing program under 14 CFR part 120. New paragraph (d) will expand the applicability of domestic 14 CFR part 120 to all part 145 certificate holders outside the territory of the U.S. who perform safety-sensitive maintenance functions on part 121 air carrier aircraft, effective on the compliance date of December 20, 2027. Finally, current 14 CFR 120.1(d) is redesignated as paragraph (e).

The FAA proposed adding specific instructions to affected part 145 repair stations outside the territory of the U.S. on how to meet the necessary requirements to implement a drug and alcohol testing program to 14 CFR 120.117 (Drug Testing Program Requirements) and 120.225 (Alcohol Testing Program Requirements), which are adopted by this final rule. First, § 120.117(a)(5) will specify that the requirements in that paragraph, which permit a repair station to elect to implement a testing program, are applicable only to part 145 certificate holders located inside the territory of the U.S. New § 120.117(a)(6) within the table will require a part 145 repair station located outside the territory of the U.S. whose employees perform safety-sensitive maintenance functions on part 121 air carrier aircraft to obtain an OpSpec A449 in their Operations Specifications by contacting the repair station's Principal Maintenance Inspector. In turn, current 14 CFR 120.117(a)(6) is redesignated as paragraph (a)(7).

Similarly, this final rule revises 14 CFR 120.117(c)(1) to specify the requirements in that paragraph are applicable only to part 145 certificate holders located inside the territory of the U.S. New paragraph (c)(2) will require the applicable repair station located outside the territory of the U.S. to (1) obtain an OpSpec A449 in their Operations Specifications by contacting the repair station's Principal Maintenance Inspector, (2) implement the drug testing program no later than three years from the publication date of this final rule,[12] and (3) meet the

[5] As noted in the NPRM, the legislation specifically used the term ''controlled substances.'' This term is also used in 49 U.S.C. 45102, which originally charged the FAA with prescribing regulations for air carriers and foreign air carriers to conduct certain drug and alcohol testing (*i.e.,* eventual 14 CFR part 120). Title 49 U.S.C. chapter 447 does not include a definition for ''controlled substance.'' However, the FAA finds that given (1) the deference to the FAA Administrator to determine program acceptability in 49 U.S.C. 44733 and (2) the FAA's firmly established drug and alcohol testing regulations based off the original authority in 49 U.S.C. 45102, ''controlled substances'' should be intended to mean the FAA's current definition of ''drug'' as based off the definition of ''controlled substances'' provided by 49 U.S.C. 45101. Specifically, 49 U.S.C. 45101 states that the definition of ''controlled substance'' means any substance under section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 specified by the Administrator of the FAA.

[6] Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States ANPRM, 79 FR 14621 (Mar. 17, 2014). Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States; Extension of Comment Period, 79 FR 24631 (May 1, 2014).

[7] 88 FR 85137 at 85140.

[8] Public Law 114–190 (Jul. 15, 2016).

[9] Section 2112(b) of Public Law 114–190.

[10] Public Law 118–63 (May 16, 2024).

[11] 88 FR 85137.

[12] The NPRM proposed that a foreign repair station beginning operations more than one year after the effective date of the regulation implement a drug testing program no later than the date the repair station begins operations. The final rule removes this language because it is superfluous. As revised, 14 CFR 117(c)(2) requires all affected foreign repair stations to implement a drug testing program no later than three years from the publication date of the final rule. Accordingly, an affected foreign repair station that begins operations

requirements of 14 CFR part 120, subpart E. In turn, current 14 CFR 120.117(c)(2) is redesignated as paragraph (c)(3).

This final rule adopts similar amendments to the implementation tables set forth in 14 CFR 120.225(a) and (c). Specifically, in 14 CFR 120.225(a), this final rule: revises the introductory language of paragraph (a)(5) to specify that paragraph is applicable to part 145 certificate holders located inside the territory of the U.S.; adds new paragraph (a)(6) to include the requirements for a part 145 repair station located outside the territory of the U.S. that performs safety-sensitive maintenance functions on part 121 air carrier aircraft; and redesignates current paragraph (a)(6) as paragraph (a)(7). Likewise, in 14 CFR 120.225(c), this final rule: revises paragraph (c)(1) to specify the requirements in that paragraph are applicable only to part 145 certificate holders located inside the territory of the U.S.; adds new paragraph (c)(2) to require the applicable repair station located outside the territory of the U.S. to (1) obtain an OpSpec A449 in its Operations Specifications by contacting the repair station's Principal Maintenance Inspector, (2) implement the alcohol testing program no later than three years from the publication date of this final rule,[13] and (3) meet the requirements of 14 CFR part 120, subpart E; and redesignates current paragraph (c)(2) as paragraph (c)(3).

Relatedly, this final rule adopts minor grammatical changes to the headings of the table set forth in 14 CFR 120.117(c) and 14 CFR 120.225(c) and introductory text of 120.117(c)(1) and (3) and 120.225(c)(1) and (3) to conform with the heading revisions. This final rule also adopts the correct introductory text in § 120.225(d), which is currently and inadvertently blank in the regulations.

Finally, the FAA notes that, in light of the expanded flexibilities for waivers based on recognition, subsequently discussed in section IV.B of this preamble, this final rule makes technical corrections to the regulatory text in §§ 120.117 and 120.225. These revisions are discussed in that section.

more than three years after the publication date of the final rule must immediately comply with this requirement, regardless of whether they are starting operations as a new part 145 repair station.

[13] This final rule implements the same non-substantive revisions described in footnote 11 to the alcohol testing program requirements set forth in 14 CFR 120.225(c)(2).

2. Conforming Amendments To Facilitate Drug and Alcohol Procedures Outside the United States (§§ 120.123 and 120.227)

This final rule adopts conforming amendments to 14 CFR 120.123 and 120.227, which currently effectively restrict any drug and alcohol programs from implementation outside of the U.S. Specifically, this final rule adds language at the beginning of 14 CFR 120.123(a), 120.123(a)(1), 120.123(b), 120.227(a), 120.227(a)(1), and 120.227(b) that would except persons under adopted 14 CFR 120.1(d) from applicability of those regulations restricting drug and alcohol testing outside the territory of the U.S.

3. Exemptions and Waivers to Drug and Alcohol Program Requirements (120.5 and 120.9)

As previously discussed in the NPRM, the FAA seeks to avoid situations whereby the regulations of the FAA are inconsistent with laws in other sovereign countries and acknowledges there are many unique scenarios associated with the establishment and implementation of drug and alcohol testing programs outside of the U.S. Therefore, the FAA explained in the NPRM that a part 145 repair station could apply for an exemption from 49 CFR part 40 using exemption processes existing therein. In turn, the FAA proposed to add language to 14 CFR 120.5 to clarify that an employer's drug and alcohol testing conducted pursuant to 14 CFR part 120 must comply with the procedures set forth in 49 CFR part 40, to include any exemptions issued to that employer in accordance with 49 CFR 40.7. To streamline and efficiently address potential international legal conflicts between foreign laws and the FAA's own regulations, the FAA proposed to add waiver authority in new 14 CFR 120.9 to allow repair stations located outside of the U.S. to request waivers from specific provisions of 14 CFR part 120. The FAA maintains that the existing exemption process in 49 CFR part 40 in tandem with the proposed waiver process in new 14 CFR 120.9 would provide sufficient pathways to work with part 145 certificated repair stations outside the territory of the U.S. to ensure these repair stations are not in violation of the laws of the country within which they are situated. Therefore, these provisions are adopted as proposed.

4. Effective and Compliance Date

In the NPRM, the FAA proposed to require the applicable repair station located outside the territory of the U.S. to obtain an OpSpec A449 and implement a drug and alcohol testing program no later than one year from the effective date of the regulation (or, if a foreign repair station begins operations more than one year after the effective date of the regulation, implement a drug testing program no later than the date the repair station begins operations). The FAA received comments on the compliance date and reevaluated the amount of time that would be necessary to come into compliance with the regulations adopted by this final rule (see section IV.C.3 of this preamble for further discussion on the effective date comments). Commenters raised valuable implementation and operational concerns including time for a foreign repair station to prepare and submit waiver or exemption requests, time for the FAA to hire and train new employees, and time for the FAA and DOT to process a potentially large volume of waiver and/or exemption requests. With the introduction of expanded flexibilities for waivers based on recognition, the FAA expects a foreign government or an individual repair station seeking relief will need more time than proposed to prepare and submit a request.

Based on these comments, the FAA has set the effective date of this rule to January 17, 2025 and will extend the delay for compliance for three years from the date of publication. Accordingly, the compliance date for affected foreign repair stations is December 20, 2027. The FAA has made changes to the regulatory text to ensure requests are received with sufficient time for the FAA to respond to requests for waivers. If a repair station's existing program is not recognized pursuant to 14 CFR 120.10 and it does not have a testing program that meets the requirements of 14 CFR part 120 and 49 CFR part 40 or an approved waiver and/or exemption for these parts, the repair station will be prohibited from performing safety-sensitive maintenance functions on part 121 air carrier aircraft and the part 121 air carrier is prohibited from using the part 145 repair station to perform aircraft maintenance. The FAA encourages those seeking a waiver or an exemption to do so as early as possible. This is especially important during the final year before the compliance date, considering the large number of requests the FAA and DOT expect to receive during that period.

The FAA acknowledges DOT has a separate process for granting exemptions from 49 CFR part 40. Under 49 CFR part 5, DOT requires an exemption request to be submitted at least 60 days before the proposed

effective date of the exemption, unless good cause is shown in that petition. Because FAA and DOT may need to coordinate on requests that involve a waiver and exemption from the same repair station, the FAA recommends foreign repair stations requiring an exemption make their request at least 90 days before the compliance date of this rule, December 20, 2027, or 90 days before a repair station intends to perform safety-sensitive maintenance functions on part 121 air carrier aircraft after the compliance date.

B. Recognition of Existing Requirements or Testing Programs

The FAA acknowledges that the relief in the proposed waiver program was insufficient and expanding the waiver eligibility is appropriate and consistent with the foundational intent of the Congressional mandate, particularly given the overwhelming number of comments the FAA received in response to the NPRM urging the FAA to, first, recognize the sovereignty of foreign nations and their individual legal contexts and, second, work more collaboratively with foreign country governments to achieve the ends of the legislation.[14] To be clear, as previously discussed, this final rule maintains the option for a foreign repair station to implement an alcohol and drug testing program that meets the requirements of 14 CFR part 120 and 49 CFR part 40 as proposed in the NPRM. However, the final rule also expands on the flexibilities in the proposed waiver program in response to these public comments. To avoid potential duplication and unnecessary paperwork due to multiple waiver requests, the FAA is enabling direct engagements with foreign governments that represent the interests of foreign repair stations in their territories by establishing a process in new § 120.10 for foreign governments, on behalf of repair station operators within their territories, to obtain a waiver for those operators based on the Administrator's recognition of existing requirements promulgated under the laws of the country as a compatible alternative subject to minimum criteria. Proposed waiver section 120.9 contained a requirement that a foreign repair station submit ''[a] description of the alternative means that will be used to achieve the objectives of the provision that is the subject of the waiver.'' Based on consideration of that provision and comments received, in § 120.10, the FAA is expanding the opportunity for foreign governments and foreign repair stations to rely on existing programs as demonstrations of the alternative means used to meet the objectives of part 120, provided certain criteria are met. Foreign governments, and foreign repair stations subject to foreign governance, are in the best position to assess and explain the laws imposed within their borders. The FAA anticipates foreign governments will pursue this waiver option to relieve individual foreign repair stations from the compliance burdens, unnecessary duplication, and potential conflicts between U.S. requirements and foreign laws where the U.S. and the foreign government share an objective of an alcohol- and drug-free workplace when performing safety-sensitive duties. However, if a foreign government chooses not to avail itself of this option, § 120.10 will provide an individual foreign repair station discretion to make its own waiver request based on recognition of an existing testing program that meets the criteria identified in the regulation. If an individual foreign repair station demonstrates its existing program contains the criteria outlined in § 120.10, the Administrator will issue a waiver.

Therefore, the FAA finds this waiver based on recognition will alleviate the burdens associated with the difficulties of identifying conflicts between foreign laws and the regulations. Specifically, this final rule adopts new § 120.10, Waiver based on recognition of a foreign government's existing requirements or an existing testing program of a part 145 repair station outside the territory of the U.S. This section will set forth the general requirements to obtain the waiver, including: the compatibility elements, process and procedures for the request, disposition of the request, effect and validity, and compliance measures.

General. Section 120.10(a) will provide that a foreign government may request a waiver on behalf of repair stations within its territory based on the Administrator's recognition of the country's existing requirements (*e.g.,* an existing testing regime) as a compatible alternative that meets the minimum key elements set out in § 120.10(b) (subsequently explained). In the event a foreign government chooses not to make a request on behalf of the repair stations in its country, § 120.10 also allows individual foreign repair stations to follow this process to similarly request a waiver based on recognition of an existing testing program by demonstrating the program is a compatible alternative that meets the key elements set out in the regulation. By requiring that a compatible alternative contain the criteria set forth in § 120.10(b), the FAA intends to ensure a foreign government's existing requirements meet the same safety intent[15] of the FAA's regulations regarding drug and alcohol testing for safety-sensitive employees, including those that perform maintenance on part 121 air carrier aircraft. To note, if granted a waiver based on recognition of a compatible alternative, a foreign repair station will be required to comply with the recognized existing testing program.

Compatibility. The criteria a foreign government's existing requirements or testing program must contain to obtain a waiver are set forth in § 120.10(b) and include:

—A testing protocol or established consequences used to detect or deter, or both, employees who are responsible for safety-sensitive maintenance on part 121 air carrier aircraft from misusing alcohol and using drugs.[16]

—An education or training program or materials that explain the impact and consequences of misusing alcohol and using drugs while performing safety-sensitive maintenance.

—The method used to rehabilitate and ensure that safety-sensitive maintenance employees who return to work on part 121 air carrier aircraft after a drug or alcohol test violation or consequence no longer misuse alcohol or use drugs.

Similar to the proposed and finalized waiver element in § 120.9 that requires an applicant to provide ''a description of the alternative means that will be used to achieve the objectives of the provision that is the subject of the waiver,'' the FAA finds these criteria acceptable to ensure the proposed compatible alternative meets the same safety intent of the existing rules regarding drug and alcohol testing for safety-sensitive employees in the U.S., including those that perform maintenance on part 121 air carrier aircraft. The FAA acknowledges the laws and requirements of a country will impact how a government or foreign repair station meets these criteria. The following discussion on each element

[14] These comments are summarized and adjudicated in section V.A of this preamble.

[15] See 14 CFR 120.3, stating the purpose of part 120 is to establish a program designed to help prevent accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

[16] The FAA recognizes that each country may present a range of drug laws or requirements, and may indicate testing of drugs that differ from those tested for within the U.S. The term ''drugs'' is intended to broadly address the category of drugs tested for by a foreign government or individual foreign repair station.

may help a foreign government or an individual repair station demonstrate how its own requirements or testing program meet these elements.

Effective testing protocols or established consequences.

The circumstances under which a foreign repair station conducts testing or applies consequences for prohibited conduct are critical to detecting or deterring, or both, employees from misusing alcohol and using drugs while at work and performing safety-sensitive maintenance on part 121 air carrier aircraft. Testing may include pre-employment, post-accident, reasonable suspicion, or random. Pre-employment drug testing acts as a gatekeeper and critical tool for identifying and keeping drug users out of safety-sensitive positions in the aviation industry. Post-accident drug and alcohol testing assists regulated employers in determining if drugs and/or alcohol are contributing factors to an accident. Employers conduct reasonable cause/suspicion drug and alcohol testing when there is credible evidence and direct observations by a trained supervisor indicating an employee may be using drugs or misusing alcohol while performing safety-sensitive duties. Random drug and alcohol testing contributes as an effective deterrent discouraging safety-sensitive employees from using drugs or alcohol while at work. These methods of testing have made a long-standing positive impact on the FAA's domestic program, but the FAA notes they may not be the only means for detection and deterrence that ensures safety-sensitive maintenance personnel are not using drugs or misusing alcohol. Because laws permitting testing and circumstances may vary from country to country, this nonexhaustive list provides examples of the types of testing that may be recognized as part of a compatible alternative under § 120.10.

If a foreign government or an individual repair station indicates it conducts testing, a request for waiver based on recognition of a compatible alternative must include a description of the testing protocols (see new § 120.10(c)(1), detailing documentation necessary in a recognition package). As an example, the U.S. domestic testing program is standardized to ensure the integrity and identity of the specimen, and scientific accuracy of the test result. The testing must include strict specimen collection procedures to minimize the opportunity an individual would have to tamper with their specimen. Another system safeguard includes a regimented process to document the handling and storage of a specimen from the time it is collected until the time it is released to the facility that conducts the analysis. A properly documented collection process links donors to their specimen and provides proof of all specimen activity between collection and analysis. The FAA's domestic testing protocols and specimen analysis are established in 49 CFR part 40 and are consistent with the U.S. Department of Health and Human Service's laboratory protocols. The FAA acknowledges that testing protocols identified in a request for waiver based on recognition may depart from the requirements of 49 CFR part 40; however, requestors must thoroughly explain how those testing protocols ensure the integrity and identity of the specimen, and scientific accuracy of any test results.

As noted, while testing is the most efficient method for detection and deterring employees from using drugs and misusing alcohol while performing safety-sensitive maintenance, it may not be the only means. As reiterated by commenters to the NPRM, established consequences for drug use or alcohol misuse can be an effective deterrent when testing is limited by the laws of the foreign country. For example, established consequences may include laws providing for the vigorous detection, prosecution, and punishment (*e.g.,* imprisonment) of drug use or alcohol misuse. Several commenters identified such consequences and their deterrent effects.[17] If a request for waiver based on recognition relies on established consequences, the FAA would anticipate receiving information from a foreign government or a foreign repair station demonstrating either its own testing systems and protocols or its laws and regulations limit or do not permit testing of the repair station's safety-sensitive maintenance employees.

An education or training program or materials.

It is imperative to safety that safety-sensitive maintenance employees understand the personal consequences of drug use and alcohol misuse and the professional consequences of failing to comply with the requirements of their employer's drug and alcohol policies. In the U.S., for drug testing, an employer must conduct initial training for safety-sensitive employees that includes the effects and consequences of drug use on personal health, safety, and work environment, as well as the manifestations and behavioral cues that may indicate drug use and abuse.[18] Similarly, for alcohol testing, each employer must provide each employee with educational materials that explain the alcohol misuse requirements and the employer's policies and procedures with respect to meeting those requirements.[19] Employee training in the U.S. is a one-time requirement; however, the FAA believes it is a good practice to provide employees with new information when it changes and remind them of the requirements when performing covered functions. While the FAA does not offer its own training materials for employers to use, training and its materials can take many forms (*e.g.,* virtual or in-person instruction, handouts). The FAA expects an acceptable training and education program required under § 120.10(b)(2) would ensure employees and their supervisors understand the safety risk of drug use and alcohol misuse, as well as the consequences of a drug and/or alcohol testing violation. The FAA understands a request for waiver based on recognition may not include the actual training or materials intended for use with safety-sensitive maintenance employees. However, the request must include what topics the training and/or materials will cover.

Method to rehabilitate and ensure that safety-sensitive maintenance employees who return to work on part 121 air carrier aircraft after a drug or alcohol test violation or consequence no longer misuse alcohol or use drugs.

In a country where it is permissible for a safety-sensitive maintenance employee to return to work after using drugs or misusing alcohol, pursuant to § 120.10(b)(3), a request for waiver based on recognition must include a process for treatment and/or education. Further evaluation or testing is critical to ensure the employee does not return to perform maintenance on part 121 air carrier aircraft and continue to use drugs and/or misuse alcohol. The FAA's domestic program allows a safety-sensitive employee to be evaluated by a qualified substance abuse professional (SAP) after failing a drug or alcohol test or refusing a test. Once the employee demonstrates successful compliance with the SAP's treatment and/or education, the employee may return to performing safety-sensitive functions after passing a return-to-duty test conducted by their employer.[20] After returning to work, the employer must conduct the unannounced follow-up testing for a minimum of one year or up to five years, depending on the SAP's

[17] See section V.E. of this preamble.

[18] 14 CFR 120.115(c).

[19] 14 CFR 120.223(a).

[20] 14 CFR 120.109(e) and 120.217(e).

directions.[21] The return-to-duty process, including unannounced follow-up testing, functions to reduce the probability of recurrence through monitoring that employee to ensure the behavior does not repeat. If an employee fails another required drug or alcohol test or there is evidence of on-duty use, the safety-sensitive maintenance employee is permanently disqualified from performing maintenance for any employer regulated under 14 CFR part 120.[22]

Because of the potential for repeated risk, the request for waiver based on recognition must describe or demonstrate what methods are used to ensure safety-sensitive maintenance employees who return to work on part 121 air carrier aircraft after a drug or alcohol test violation or consequence are monitored to detect or deter, or both, repeat behavior.

Requests for recognition (§ 120.10(c)). This section will require certain information to be included in a request for waiver based on recognition, including the name, title, address, email address, and telephone number of the primary person to be contacted regarding review of the request (§ 120.10(c)(1)(i)); documentation of the foreign government's existing requirements demonstrating that the requirements contain the key elements of part 120 as described in paragraph (b), including, if appropriate, copies of applicable laws, regulations, and other requirements carrying the force of law (§ 120.10(c)(1)(ii)); any appropriate data, records, or supporting explanation for the Administrator to consider in determining whether the foreign government's existing requirements contain those key elements (§ 120.10(c)(1)(iii)); and a statement that the requestor intends to notify the Administrator within 30 days of changing any key elements as described in paragraph (b) that form the basis of the Administrator's recognition and describe those change(s) to the key elements (§ 120.10(c)(1)(iv)). Requests must be submitted to the FAA's Office of Aerospace Medicine, Drug Abatement Division (§ 120.10(c)(2)) at least 90 days before the waiver needs to take effect (§ 120.10(c)(3)). The FAA plans to update the website shortly after publication of the final rule to facilitate submission of information that a foreign government or foreign repair station needs to provide for FAA to consider a waiver based on recognition.

Disposition (§ 120.10(d)). If a foreign government's request complies with § 120.10(c) and demonstrates its requirements meet the key elements described in § 120.10(b), the FAA will recognize the country's requirements as a compatible alternative, pursuant to § 120.10(d) and issue a waiver. To note, the FAA may request additional information from the foreign government or the foreign repair station to fully understand and evaluate the alternative testing program or consequence to ensure the information meets the requirements, and under § 120.10(d)(1) will retain authority to make such inquiries. The FAA envisions such a request as a collaborative process with the requestor.

Effect and Validity (§ 120.10(e)). A waiver based on recognition in the form of an FAA-issued letter will be provided to the requestor if the request is accepted. If the requestor is a foreign government, the waiver will apply to all FAA-certificated foreign repair stations that are in the territory of that country and subject to the recognized compatible alternative. The FAA expects the foreign government to distribute the FAA-issued letter to all foreign repair stations in its territory so each is aware of the waiver based on recognition and can maintain a copy. Pursuant to § 120.10(e)(2), the Administrator's waiver based on recognition will remain valid so long as the compatible alternative retains the key elements that formed the basis of the Administrator's decision.

Compliance (§ 120.10(f)). If granted waiver based on recognition of a compatible alternative, a foreign government would ensure that foreign repair stations subject to its authority comply with the recognized existing requirements (*i.e.,* follow the laws in their own country). As previously explained, the FAA will issue a letter indicating the waiver based on recognition to a government or a foreign repair station. Foreign repair stations that have obtained a waiver based on recognition of an existing testing program, or that are covered by a foreign government's recognized compatible alternative pursuant to § 120.10(e)(1), must maintain the FAA-issued letter on file documenting the waiver in accordance with § 120.10(f)(1). The letter serves as documentation the certificated repair station's safety-sensitive maintenance employees are either subject to a testing protocol or established consequences, or both, deemed acceptable to the FAA Administrator and may be provided to a part 121 air carrier as program documentation of compliance. Finally, pursuant to § 120.10(f)(2), the FAA may modify, suspend, or withdraw its waiver based on recognition by the Administrator when it is no longer valid (*e.g.,* if the recognized existing requirements are changed to remove key elements that were previously acceptable to the Administrator); when a foreign repair station fails to implement a testing program consistent with its recognition (*e.g.,* if a repair station obtains recognition based on certain key elements but then fails to implement those elements in a testing program); or when the FAA determines that a foreign government or foreign repair station has not provided the notification within 30 days of changes to the key elements that form the basis of the Administrator's recognition, as described in § 120.10(c)(1)(iv).

Conforming Amendments. In the applicability section for part 120, § 120.1, the final rule includes a new exception in § 120.1(d), which clarifies that § 120.5 and subparts E and F of 14 CFR part 120 do not apply to part 145 certificate holders outside the territory of the United States who perform safety-sensitive maintenance functions on part 121 air carrier aircraft that have obtained a waiver based on recognition pursuant to § 120.10.

In the tables in §§ 120.117(a) and (c) and §§ 120.225(a) and (c), the final rule clarifies that the information does not apply to a part 145 repair station that has obtained a waiver based on recognition by the Administrator of existing requirements or a testing protocol or established consequences (or both) pursuant to new § 120.10 as adopted by this final rule. The sections now more clearly explain that a foreign repair station that has not received a waiver based on recognition of existing requirements promulgated under the laws of their country must meet the requirements of 14 CFR part 120 as if it was an employer as defined in the regulation, and in accordance with any applicable waivers as described under § 120.9 or any exemptions granted under 49 CFR 40.7. This final rule does not change the meaning of these sections from what was proposed; however, with the introduction of expanded flexibilities for waivers, the FAA found it necessary to clarify that this language will not apply to foreign repair stations that are covered under a waiver based on recognition by the Administrator issued pursuant to 14 CFR 120.10.

V. Responses to Comments

The NPRM published on December 7, 2023, with the original comment period closing on February 5, 2024. On January 16, 2024, a coalition of 15 organizations requested to extend the comment period

[21] 49 CFR 40.307(d).

[22] 14 CFR 120.111(e) and 120.221(b).

an additional 90 days. In response, the FAA extended the comment period by an additional 60 days to April 5, 2024.[23] This extension provided a total of one hundred twenty (120) days for comment submission.

The FAA received 74 comment submissions in response to the NPRM during the 120-day comment period, including two requests for an extension of the comment period and two out-of-scope comments. Of the 70 remaining comments germane to the rulemaking, 17 generally supported the NPRM, 40 generally opposed the NPRM, and 13 stated no position but provided their comments and concerns or asked questions about the proposal. These comments addressed multiple aspects of the proposal and are further summarized alongside the FAA's responses in the sections that follow. The 17 supporting commenters included two airline mechanics unions (International Brotherhood of Teamsters (Teamsters) and Transportation Trades Department, AFL–CIO (TTD)), a pilots' union (Allied Pilots Association (APA)), a transit employee union (Transport Workers Union of America (TWU)), a trade association (National Drug & Alcohol Screening Association (NDASA)), a Substance Abuse Professional (SAP) Directory service (SAPList), a software provider (Nexus 33 Group LLC), and 10 individuals.

The 40 opposing commenters included thirteen foreign repair stations (Air New Zealand Limited, Chromalloy, Excel Aerospace Pte, HAECO Component Overhaul, Hong Kong Aero Engine Services Limited, IHI Corporation, JAL Engineering Company Limited, MTU Maintenance Zhuhai, Panasonic Avionics Corp-Line, Taikoo Shandong Aircraft Engineering Co., Taikoo Xiamen Aircraft Engineering Co., Taikoo Xiamen Landing Gear Services, and Elbe Flugzeugwerke), five trade associations (Aeronautical Repair Station Association (ARSA), Airlines for America (A4A), Cargo Airline Association (CAA), General Aviation Manufacturers Association (GAMA), and Regional Airline Association (RAA)), four airline manufacturers (AIRBUS Commercial Aircraft, The Boeing Company, Boeing Research and Technology, and GE Aerospace), three foreign trade associations (Airlines for Europe (A4E), Bundesverband der Deutschen Luft- und Raumfahrtindustrie e.V./German Aerospace Industries Association (BDLI), and International Air Transport Association (IATA)), three foreign airlines (Deutsche Lufthansa AG, EL AL Israel Airlines, and Qantas Airways Limited), two foreign governmental aviation organizations (European Commission Directorate General for Mobility and Transport (DG MOVE) and UK Department for Transport (UK DFT)), one charter airline (Capital City Jet Center), one maintenance provider (MRO Holdings, Inc.), one manufacturer (MOOG Inc.), one U.S. repair station (Fortner Engineering & Manufacturing, Inc.),[24] and six individuals.

The 13 commenters that did not state an overt position on the NPRM included seven foreign repair stations (Airfoil Services, Goodrich THY TEKNİK SERVİS MERKEZİ LTD. ŞTİ, Honeywell do Brasil, Seman Peru, Sharp Aviation K Inc,[25] ST Engineering Aerospace Services Company, and Tamagawa Aero Systems), one employment screening services provider (New Era Drug Testing), one SAP service provider (American Substance Abuse Professional, Inc.), and three individuals.

The following sections summarize and respond to comments received on the NPRM.

A. Sovereignty of Other Nations and Existing Programs

Thirty-one commenters, including ARSA, Air New Zealand Limited, Airbus Commercial Aircraft, A4A, A4E, Deutsche Lufthansa AG, EL AL Israel Airlines Ltd., GE Aerospace, GAMA, BDLI, IATA, Qantas Airlines, The Boeing Company, and UK DFT, raised the issue of national sovereignty as a basis for their opposition to the NPRM. These commenters generally disagreed with the NPRM's approach to implementing the statutory mandate. Commenters including A4A, RAA, IATA, ARSA, and EL AL Israel Airlines commented that the proposal's drug and alcohol testing program requirement may conflict or be inconsistent with the laws of other sovereign nations. In their view, the proposal failed to consider these pre-existing, complex, and diverse legal contexts that operate outside the United States. Commenters provided numerous examples of conflicts between various foreign laws and the requirements of 49 CFR part 40 and 14 CFR part 120, which are discussed in section IV.D of this preamble. These commenters argued that the statutory mandate prohibits the FAA from proposing regulations on persons outside the territory of the U.S. that would facially conflict with the laws of sovereign nations. They also argued that the statute does not permit the FAA to shift the burden of avoiding inconsistencies with foreign laws to the part 145 repair stations that would need to seek waivers or exemptions.

A4A and IATA further encouraged the FAA to directly engage with foreign governments that have different methods of deterring drug and alcohol use and abuse that may accomplish the FAA's objectives by other means, stating the imposition of testing obligations in some countries may run contrary to, or be unnecessary in consideration of, the country's cultural context and its various laws. A4A commented the FAA should establish a process through which a foreign repair station may request that the U.S. government and the respective government of the repair station cooperate and come to an agreement to ensure subject repair stations in those countries be compliant with all illicit drug and alcohol abuse laws, both foreign and domestic. Airbus also commented that U.S. authorities should issue exemptions and waivers at the level of each country without involving each part 145 certificated repair station to minimize the administrative burden and associated costs. Similarly, ARSA suggested the FAA find another country's laws acceptable with no further action if the country has an existing program or has harsh laws or other deterrents for drug and alcohol use. Capital City Jet Center in Canada also stated the FAA should either work to develop a standard or require proof a repair station is covered by their governing country's existing testing program. Given the variations in these laws from country to country, commenters including The Boeing Company generally agreed that a ''one-size-fits-all'' approach would be impossible to implement and enforce, and that FAA should instead accept local testing regimes and defer to local authorities. To summarize, these commenters urged the FAA to consider accepting a government's determination of compliance and acceptability.

Several commenters, including A4A, ARSA, and IATA, suggested that the proposal would shift the burden of understanding and complying with foreign laws and regulations from the FAA to foreign citizens, which would violate national sovereignty. Specifically, ARSA stated, ''the congressional directive was clear: the

[23] Drug and Alcohol Testing of Certificated Repair Station Employees Located Outside of the United States; NPRM extension of comment period, 89 FR 4584 (Jan. 26, 2024).

[24] ARSA and Fortner Engineering & Manufacturing, Inc. submitted nearly identical comments with no substantive differences. Because these comments originated with ARSA, the final rule refers to these separate submissions as ARSA's comments.

[25] Sharp Aviation K Inc provided two comments on the NPRM.

rule on its face cannot conflict with a sovereign nation's laws. Placing the burden on a certificate holder to prove its laws conflict with the proposed aviation safety regulations is an unacceptable application of legislative plain language.'' Commenters further argued that the public is unable to assess the legal ramifications of extending 14 CFR part 120 and 49 CFR part 40 beyond the boundaries of the U.S., and that foreign repair station and maintenance facility owners are citizens, not international legal experts capable of competently seeking waivers and exemptions from the regulations. Commenters stated that placing this burden on a certificate holder to prove its laws conflict with the proposal is an unacceptable application of legislative plain language. They would like to see the government make the determination of compliance and acceptability, not the foreign citizen.

Conversely, the Teamsters and APA, who supported the rule as proposed, stated the FAA should not expand the NPRM to allow a foreign repair station to present an existing or equivalent testing program to meet the requirements of the proposed rule. The Teamsters stated DOT's reliance on existing standards to address the use of alcohol and controlled substances for domestic covered employees necessitates an identical application for any further employees entered in the testing program. Another supporting commenter, NDASA, agreed the requirements for foreign repair stations should mirror those drug and alcohol programs in the United States. They further stated already existing testing programs and advances in international testing in the 30 years since the FAA originally proposed testing outside of the U.S. will make this rulemaking easier to implement.

The FAA disagrees that the NPRM's approach fails to consider the legal contexts of foreign nations, resulting in conflict and inconsistency. Section 44733(d)(2) explicitly required the proposed rule requiring an alcohol and controlled substances testing program determined acceptable by the Administrator to be promulgated consistent with the applicable laws of the country in which the repair station is located. The FAA maintains that the proposed rule considered legal contexts of foreign nations because the FAA proposed a pathway under which a foreign repair station could be consistent with both the FAA drug and alcohol testing regulations and the laws of the country. Specifically, the FAA proposed (and this final rule adopts) a pathway that would allow a foreign repair station to apply for exemptions and waivers under 49 CFR part 40 and 14 CFR part 120, respectively, to facilitate compliance with the consistency requirement. Therefore, the FAA maintains that this rulemaking does not, as commenters suggested, impose rigid requirements without regard to local legal contexts. Nor does the NPRM's approach improperly burden the owners of foreign repair stations with responsibility for understanding and complying with FAA regulations. Affected foreign repair stations must hold an FAA-issued part 145 certificate to be subject to the regulations promulgated in this rule. Accordingly, these foreign repair stations must already understand and comply with the requirements of 14 CFR part 145 concerning aircraft maintenance, repair, and operation organizations. The FAA separately addresses commenters' arguments concerning the burdens of seeking waivers and exemptions below.

However, the FAA acknowledges each country impacted by this rule may have existing testing protocols or consequences under local laws that could meet the safety intent of the FAA's domestic requirements to detect or deter, or both, employees who are responsible for safety-sensitive maintenance functions from misusing alcohol and using drugs.

Further, the FAA acknowledges the discrepancy between legal contexts of a foreign country and FAA regulations, some of which may be so complex that a singular means of compliance may not be adequately covered solely by that proposed in the NPRM. Therefore, as previously discussed, this final rule includes more flexible waivers whereby a foreign government, on behalf of its repair station operators within its territory, may seek a waiver based on recognition of the foreign government's existing requirements or testing program. As explained, the waiver is also available to an individual foreign repair station, which may seek recognition of an existing testing program promulgated under the laws of the country or present consequences under local laws as a compatible alternative that demonstrate it meets the intent of the regulation. Section IV.B of this preamble discussed this waiver option, including the necessary criteria to demonstrate a testing program or consequences that meet the intent of the existing rules regarding drug and alcohol testing for safety-sensitive employees and the procedures to seek such recognition. The FAA finds that this more flexible waiver option comprehensively considers the unique laws and sovereignty of other countries and responds to commenters' concerns of this nature.

B. Final Rule Effective and Compliance Date

In the NPRM, the FAA proposed to require the applicable repair station located outside the territory of the U.S. to obtain an OpSpec A449 and implement a drug and alcohol testing program no later than one year from the effective date of the regulation (or, if a foreign repair station begins operations more than one year after the effective date of the regulation, implement a drug testing program no later than the date the repair station begins operations). A4A requested the compliance date of this final rule should be held in abeyance for repair stations seeking waivers or exemptions, regardless of whether the FAA adopts the option for a government to make a request on behalf of its repair stations. If a government makes the request on behalf of its repair stations, A4A stated the compliance date of the regulations should be held in abeyance in a country until a final agreement has been made and becomes effective. They argued this would help avoid a scenario where one repair station in a country must comply with the FAA testing requirements where another does not because they are waiting on a decision, avoids requiring a repair station to set up intermittent costly processes that must later be revised to conform to the agreement, and avoids a situation where a repair station may be out of compliance with a local or FAA regulation while waiting on a pending request, which may put the repair station in difficult contractual or insurance policy non-compliance situations. For similar reasons, A4A requested the FAA fully adhere to its statutory limitation through a waiver/exemption process that ensures all inconsistencies are addressed before it imposes its program on foreign repair stations. They stated the one-year delay in compliance date proposed is based on no supporting data the FAA and DOT have the resources or ability to adjudicate hundreds to thousands of requests. CAA also had concerns with the waiver process, stating that the FAA needs to properly address whether the proposed rule's final compliance date will be substantially far enough in the future to accommodate the hundreds of exemption requests, and the agency should not arbitrarily enforce the regulations while exemption applications are pending or delayed at the hands of the agency.

The FAA acknowledges the concern regarding the rule's compliance date

and agrees with commenters that more time is needed to implement the requirements of this rule. With the introduction of waivers based on recognition of the foreign government's existing requirements or testing program, the FAA expects a foreign government or an individual repair station seeking relief will need sufficient time to prepare and submit a request, and the FAA and DOT will need additional time to create a new FAA International Compliance and Enforcement Branch, and to process waiver and exemption requests. The FAA disagrees, however, that compliance with these regulations by a foreign repair station should be held in abeyance if their request for a waiver from 14 CFR part 120 is pending with the FAA, or if their request for an exemption is pending with DOT. The extended three-year compliance date and the requirement to make a request at least 90 days before a waiver is needed will provide sufficient time to make and/or respond to requests made pursuant to §§ 120.9 and 120.10, and no abeyance will be necessary.

As discussed in section IV.A of this preamble, the FAA has set the effective date of this rule to January 17, 2025 and set the compliance date to December 20, 2027. The FAA has made changes to the regulatory text to ensure requests are received with sufficient time to respond to requests for waivers requested pursuant to §§ 120.9 and 120.10.

C. Government Resources

Commenters including A4A, A4E, ARSA, CAA, EL AL Airlines, and IHI expressed concern that the DOT and the FAA do not have the ability to manage the number of waivers and exemptions submitted with their own resources, or to respond to requests in a timely manner. Further, these commenters explained that delays in obtaining waivers and exemptions could increase the costs of implementing a testing program. Specifically, A4A stated their concern the FAA and DOT do not have the expertise and ability to fully adjudicate the impact of foreign laws and inconsistency with the FAA program and would like the FAA to recognize it will give full deference to the determination of foreign authorities regarding the inconsistency of laws for the purpose of compliance with FAA's program.

The FAA acknowledges commenters' concerns regarding the burden on the FAA and DOT because of waiver and exemption requests associated with this rule. In response to concerns regarding burden and for reasons discussed above, the FAA has expanded waiver eligibility allowing a foreign government, on behalf of the repair stations in its country, or an individual foreign repair station to provide a written request for a waiver based on recognition of an existing testing program promulgated under the laws of the country as a compatible alternative that meets the minimum key elements set out in the regulation. The FAA finds this expansion of the waiver option will sufficiently recognize deference to foreign governments, their sovereignty, and their existing laws and requirements as an acceptable means of ensuring an alcohol and drug-free workplace. The FAA expects the expanded waiver options to reduce the burden on foreign citizens and on FAA and DOT by reducing the number of waivers and exemptions received.

D. Specific Conflicts With Foreign Laws

Commenters including ARSA, Air New Zealand Limited, Airbus Commercial Aircraft, A4A, A4E, Deutsche Lufthansa AG, EL AL Israel Airlines Ltd., GE Aerospace, GAMA, BDLI, IATA, Qantas Airlines, The Boeing Company, DG MOVE, UK DFT, and individuals specifically raised issues of labor and employment laws, human rights laws, union policies and laws protecting the privacy rights of employees. Commenters also noted that in countries that already permit some type of drug and alcohol testing, the existing methodologies vary greatly.

The FAA received comments regarding existing laws that may conflict with the proposed rule in several countries including the United Kingdom, Ireland, Germany, the European Union, China, Singapore, Peru, and Japan. GE Aerospace provided a copy of their comments submitted to the ANPRM, which contained some current regulatory requirements for Hungary, Korea, Singapore, the UK, China, Australia, and Brazil.

Chile. An individual commented it is necessary to verify the impact of the policy according to the local law in Chile and that the policy must not conflict with the employments contracts, employment legislation, or labor legislation.

China. The FAA received 6 comments from Chinese repair stations HAECO Component Overhaul Xiamen Ltd., Hong Kong Aero Engine Services Limited, MTU Maintenance Zhuhai, Taikoo Xiamen Aircraft Engineering Co. Ltd, Taikoo Xiamen Landing Gear Services Co. Ltd, and Taikoo Shandong Aircraft Engineering Co., Ltd. These repair stations, along with The Boeing Company, stated the People's Republic of China has very strict management and control of the illegal use of drugs, forbidding any misuse of prohibited drugs. Taikoo Shandong Aircraft Engineering Co., Ltd. noted that the laws of the People's Republic of China cover all the prohibited drugs listed in 49 CFR part 40. Commenters also stated that drug testing is not commonly requested by a business company in China and can only be conducted by police when drug use is suspected or when an individual is in recovery from drug use. The repair stations stated that they instead have internal procedures that effectively control alcohol misuse, including training/education and daily checks.

EU. DG MOVE commented that the EU has robust safety management provisions in place for maintenance stations and a verifiable track record demonstrating that drug and alcohol abuse do not represent a safety concern requiring further regulatory action. The issue is covered by EU aviation safety regulations, in addition to EU Member States' employment laws. DG MOVE stated that since 2003 and the adoption and application of EU legislation pertaining to the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organizations and personnel involved in these tasks, all EASA part 145 maintenance organizations are required to establish a Safety and Quality policy and a compliance monitoring system. Moreover, since December 2022 (date of applicability of Commission Implementing Regulation (EU) 2021/19632), all EASA part 145 maintenance organizations are required to establish a safety management system compliant with International Civil Aviation Organization (ICAO) Annex 19 provisions. Such policy mandates the conduct of random independent audits of all aspects of the organization ability to carry out maintenance to the required standard, including checks of all maintenance personnel's training and performance in relation to human factor issues, which could influence their ability to safely and properly exercise their tasks, explicitly including the issue of abuse of alcohol or drugs. DG MOVE states the new burdensome control measures implied by the proposed rule are in no way justified with regard to the EU and its Member States. DG MOVE also pointed to the existing U.S.-EU BASA, which is addressed in section V.G of this preamble.

Germany. The BDLI and Lufthansa Group stated random testing for drugs and alcohol is not compatible with the laws in Germany. A German foreign

repair station, Elbe Flugzeugwerke GmbH, commented that a general testing of alcohol and drugs without concrete suspicion is not permitted under German local law and that the local personal rights of the employee are in contradiction with the general requirement for testing, therefore, this rule cannot be implemented in Germany.

Ireland. MOOG Inc. commented that, legally, organizations in Ireland cannot force staff to undergo mandatory workplace drug testing or alcohol consumption exams and to do so could cause controversy. MOOG Inc. also mentioned privacy issues and human rights conflicts because presently there is no requirement in the Safety Health and Welfare at Work Act, 2005 clause 13(1)(c), which allows regulations to be made for testing for intoxicants.

Israel. EL AL Israel Airlines (EL AL) commented that Israeli law prohibits companies from performing random drug and alcohol testing on employees, though local law provides for testing based on suspicion or need. EL AL further asserted that Israeli law codifies a person's right to bodily autonomy and privacy and prohibits compelled medical examinations without a person's consent. EL AL also suggested that Israeli data privacy laws may deem regular and random drug and alcohol testing as illegal and illegitimate spying and as a violation of privacy. EL AL stated retaining the required consent for processing of Personal Information is a struggle for the airline and, even if obtained may not withstand proportionality tests as there may be other disciplinary measures with a lesser effect on the employee's privacy.

Japan. The FAA received comments from repair stations in Japan, including Panasonic Avionics Corp-Line Maintenance, who stated labor laws in Japan do not allow companies to conduct drug investigations. Another commenter, JAL Engineering Company Limited, stated the strict prohibition of drugs in Japan and its enforcement means the prevalence of drug use among the Japanese population is significantly lower than in the United States and Europe. The commenter also stated the Japan Civil Aviation Bureau mandates alcohol testing for maintenance personnel before the start of their shifts. Another Japanese repair station, IHI Corporation, commented that alcohol testing may be feasible, but drug testing causes concerns with the protection of personal information and consent to test. They also stated drug possession and its use are illegal in Japan and the consequences are expected to achieve the goal of the implementation of the drug testing rule.

Mexico. Chromalloy, a repair station located in Mexico, stated the aviation laws in Mexico already include an alcohol and drugs testing as part of the medical examination required to obtain/renew aviation maintenance license and this medical examination is in accordance with ICAO recommendations. Furthermore, the commenter indicated under Article 47 of Mexico's Federal Labor Law, employees are prohibited from arriving at work intoxicated or under the influence of a narcotic or drug (with medical exception).

Peru. Seman Peru Sac, a foreign repair station, stated some aspects of the proposed rule are not in accordance with the reality of the country. For example, they stated there is no substantial consumption rate of amphetamines, heroin, and opioids in Peru. The most widely used drugs are cocaine, marijuana, and alcohol. They also stated drug testing at their location has been always negative because they follow the Advisory Circular DGAC Peru 91.010–2019, requiring unannounced detection of 10% of personnel once a year.

Singapore. The FAA received a comment from Excel Aerospace in Singapore which stated Singapore has extremely strict drug and alcohol regulations.

Türkiye. A repair station in Türkiye, GOODRICH THY TEKNİK SERVİS MERKEZİ LTD. ŞTİ, commented that drug and alcohol testing can only be requested if an individual is under the influence within the workplace or there is a suspicion, or if the nature of the job requires testing (*e.g.,* drivers). They also stated employees who are notified of testing must be informed about the method, scope, and purpose of the test, and personal data must be protected, and explicit consent must be given before an employer allows employees to undergo alcohol and drug tests.

United Kingdom (UK). The UK DFT commented that the NPRM contains elements that overlap with domestic UK provisions, including the Railways and Transport Safety Act 2003 and the Employment Rights Act 1996. UK DFT stated aircraft maintenance personnel are required by the terms of their licenses and those of their organizations not to work whilst under the influence of drugs or alcohol. The Railways and Transport Safety Act 2003 sets out prescribed limits for people involved in aviation activities, including flight crew, ground crew and air traffic controllers. The Act does not contain provisions giving the power to conduct random drug and/or alcohol testing without the consent of the test subject, which UK DFT states is contrary to the NPRM and has the potential to impose on UK sovereignty. UK DFT further states U.S. employment law is different from UK employment law, which is set out in the Employment Rights Act 1996. UK DFT stated the requirement of a program that complies with extremely detailed and onerous criteria that can be applied to U.S. repair stations presents practical difficulties if implemented on UK repair stations. It is likely to present problems in some cases of a clash between the requirements of the NPRM and UK domestic law on unfair dismissal under the Employment Rights Act 1996. UK DFT further discussed its responsibility for the British Overseas Territories, which do not have the same provisions as those contained in the Railways and Transport Safety Act 2003 or the Employment Rights Act 1996 but do have robust Employment Laws and regulatory enforcement mechanisms in place, including suspension and/or revocation of any license, certificate, or approval, within each individual Territories' own legal framework. UK DFT stated the measures suggested in the NPRM are unnecessary and disproportionately burdensome with the potential to encroach on UK sovereignty.

The FAA acknowledges each country impacted by this rule may have different laws on labor, employment, privacy, etc., which the repair stations in that country must follow. The FAA appreciates the information provided by other countries and individual foreign repair stations to help illustrate this point. As described previously, the FAA has expanded waiver eligibility to a foreign government, on behalf of its repair station operators within its territory, and the individual repair stations. This waiver based on recognition allows a foreign government or an individual repair station to provide the FAA with a written request for waiver based on recognition of an existing testing program or consequences promulgated under the laws of the country that meets the minimum criteria set forth in new § 120.10. Absent a waiver based on recognition, the foreign repair stations must meet the requirements of 14 CFR part 120 and 49 CFR part 40, with the option to request a waiver or exemption for those discrete regulations that may present an obstacle.

E. Human Rights Concerns

GAMA commented that the rule raises human rights concerns because it may result in outcomes inconsistent with

widely recognized norms of justice. Specifically, GAMA stated that foreign governments may use a positive test result obtained through a repair station's drug and alcohol testing program to prosecute a station employee. GAMA further asserted that station employees in some countries may face criminal conviction and excessive punishment, up to and including capital punishment, due to a test required under this rule. ARSA similarly commented that some countries impose harsh penalties for alcohol and drug use. CAA raised a concern of risks to employees of foreign repair stations where the host country's strict drug use laws carry severe punishments, and CAA questioned whether compliance with the rule would cause difficulty in retaining and hiring employees who fear criminal sanctions for their drug use.

The FAA acknowledges these concerns about the potential human rights implications of the rule's testing requirements. However, Congress has directed the FAA to promulgate a rule requiring that foreign repair stations ensure employees who perform safety-sensitive maintenance on part 121 air carrier aircraft are subject to a drug and alcohol testing program. Further, GAMA's concern about countries' ability to use positive tests resulting from this rule's requirements to obtain convictions and to impose excessive punishments is difficult to assess without additional information. These consequences turn on a country's laws, its criminal justice system, prosecutorial decision-making and discretion within that system, and several other factors that are beyond the FAA's understanding. The FAA acknowledges that certain safety-sensitive maintenance employees that engage in illegal drug use or alcohol misuse may be deterred from employment with a foreign repair station if testing pursuant to the final rule would uncover such conduct. The FAA lacks sufficient information to assess the extent of impacts on retention and hiring associated with an employee's fear of being sanctioned for drug use by their employer's government. In cases where a foreign government receives a waiver based on recognition of existing requirements, this final rule would not impose additional testing or requirements beyond what the foreign government requires.

GAMA also asked the FAA to reconsider issuing the rule if it could result in harsh, cruel, or unusual punishments in other countries. GAMA implored the FAA to, at a minimum, work with the U.S. Department of State or other appropriate government agencies to reduce the likelihood of inhumane outcomes. The FAA notes that the waiver based on recognition option provided in the final rule would not impose additional testing or requirements beyond what the foreign government requires. Furthermore, the waiver based on recognition will permit countries and individual repair stations to seek recognition of a foreign government's existing requirements or testing program that may mitigate certain downstream risks associated with testing for drug use and alcohol misuse. The FAA notes that it regularly engages in inter-agency collaboration, such as with the U.S. Department of State, and would continue to do so to the extent any specific concerns are raised in the implementation of this rule.

F. Waivers and Exemptions

1. Waiver Burdens

ARSA asked the FAA to consider offering a blanket waiver from the requirements of 14 CFR part 120 in some circumstances, including where a foreign government has similar drug and alcohol testing requirements. ARSA stated that compliance with 49 CFR part 40 would not be required if the FAA issued a blanket waiver to 14 CFR part 120. The Teamsters, a supporting commenter, explained that the FAA has satisfied these concerns via the proposed waiver and exemption process.

The FAA disagrees that the proposed regulations improperly burden foreign repair stations that would be subject to the rule. As explained previously, the regulations as proposed comply with 49 U.S.C. 44733(d)(2): they require the relevant foreign repair stations to implement a testing program; they establish acceptable baseline requirements for a testing program; and they include mechanisms for compliance and adaptation, specifically through waivers and exemptions, to address inconsistencies with local laws. The FAA reasonably determined that the regulated community is best situated to seek relief from 49 CFR part 40 and 14 CFR part 120 to ensure consistency with local laws, which led the FAA to expand the waiver opportunities, as previously discussed in this final rule.

However, the FAA finds seeking such relief may require more time than the NPRM's proposed one-year implementation period. Accordingly, the FAA will set the effective date to 30 days while extending the compliance date to three years to provide existing foreign repair stations up to three years to comply with the pathways adopted by this final rule. These measures provide foreign repair stations with sufficient time and flexibility to implement an appropriate drug and alcohol testing program consistent with any waivers. Additional explanation for the extension of the compliance date of the rule is included in sections IV.A and V.B.

2. Waiver Standard and Requirements

Several commenters raised concerns about the NPRM's proposed processes and applicable standards for issuing waivers and exemptions. A4A stated the proposed processes for issuance of waivers and exemptions is ambiguous and vague because it does not offer a standard under which the FAA will approve a waiver. A4A alleged that the process is therefore arbitrary and capricious, and it requested the FAA explain the process and standards for FAA waivers and DOT exemptions and give the public an opportunity to comment on the standards. The Lufthansa Group commented that waivers and exemptions would be reviewed through an unspecified process and rely on an individual's judgment rather than a particular standard. ARSA similarly commented that the NPRM failed to provide an objective standard for obtaining an exemption or waiver.

A4A stated the FAA asks for more than what Congress required within the waiver request process (*i.e.,* the ''reasons why granting the waiver would not adversely affect the prevention of accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol'' and a ''description of the alternative means that will be used to achieve the objectives of the provision that is the subject of the waiver, or, if applicable a justification of why it would be impossible to achieve the objective of the provision in any way'').[26] A4A stated these items should not be part of the waiver process since the FAA cannot impose a program that is inconsistent with the applicable laws of the country in which the repair station is located, making this information irrelevant. Both A4A and ARSA suggested that the FAA and DOT must automatically grant a waiver or exemption when there is an inconsistency in the law. They argued that the proposed process indicates the FAA could deny waivers despite the clear Congressional mandate to avoid inconsistencies with foreign laws, and the FAA offered no standards for making these decisions in the proposed rule. ARSA provided suggested

[26] Proposed § 120.9(b)(5) and (6).

amendments to the regulatory text consistent with its comments. Some commenters including IHI Corporation, a repair station in Japan, would like to see more flexibility on the approval of a waiver, considering the context of the country's laws and regulations and their customs.

Alternatively, supporting commenters including TWU noted the waiver and exemption process outlined in the NPRM is appropriately tailored and urged the FAA to maintain a narrow view of what necessitates an exemption or waiver. The TTD agreed, stating the FAA must carefully review each request, examine the country's laws, and weigh the potential costs of relaxing important safety regulations. The Teamsters commented on the proposed requirements for requesting a waiver and stated maintaining a narrow process for granting waivers or exemptions is necessary for the pursuit of one level of safety across maintenance providers. They stated the elements the FAA requires to grant a waiver provide a high bar, and the FAA should maintain that high bar, not taking revenue or workforce size into account. They asked the FAA to maintain a narrow interpretation of what an ''inconsistency'' with another country's law is and require the requestor to cite laws that are explicitly inconsistent with the regulation. They also stated any request for a waiver or exemption will adversely affect accidents and injuries unless categorically proven otherwise. The Teamsters also stated it would be inappropriate and inconsistent with Congressional intent to only apply 14 CFR part 120 and 49 CFR part 40 in part.

The FAA recognizes that the different laws and regulations of some countries may place limitations on drug and alcohol testing, prohibit it entirely, or place conditions on how testing would be done. Congress contemplated this potential barrier in 49 U.S.C. 44733(d)(2) as evidenced by the language requiring the drug and alcohol program to be both acceptable to the Administrator and consistent with the applicable laws of the country in which the repair station is located. As explained in the NPRM, the FAA proposed to avoid situations whereby the regulations of the FAA are inconsistent with laws in other sovereign countries through waivers and exemptions.

To ensure that a waiver based on an inconsistent law results in an acceptable drug and alcohol testing program, § 120.9(b) requires the foreign repair station to explain why granting the waiver ''would not adversely affect the prevention of accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees,'' and describe ''alternative means that will be used to achieve the objectives of the provision that is the subject of the waiver or, if applicable, a justification of why it would be impossible to achieve the objectives of the provision in any way''.[27] These elements of a request will inform the FAA's assessment of whether a waiver is appropriate upon a showing of an inconsistent law, and whether any conditions or mitigation would be appropriate to further the purposes and objectives of the drug and alcohol requirements already deemed acceptable to the Administrator.

The FAA recognizes that the varied laws of foreign countries could conflict with the drug and alcohol testing requirements in complex ways. Some asserted conflicts may be clear. For example, some countries may completely bar on privacy grounds any pre-employment drug testing, which is required by § 120.109(a), or random drug testing, which is required by § 120.109(b). More difficult conflicts may arise when a country's existing drug and alcohol testing requirements are inconsistent, though not outright barred, with the demands of the rule. These circumstances understandably result in uncertainty about how the FAA will address specific requests for waivers, but that uncertainty is inherent in the balance struck by Congress when it directed the FAA to require drug and alcohol testing in a manner acceptable to the Administrator and consistent with diverse foreign laws. The NPRM provided a standard that was deemed appropriate to the Administrator that will result in waivers to accommodate foreign laws upon a showing of inconsistency, though the FAA retains the authority to advance the purposes and objectives of the existing testing scheme to the greatest extent possible through appropriate conditions and limitations that still preserve consistency with foreign laws.

Supporting commenters NDASA and APA suggested modifications to the proposed rule text regarding waiver requirements. First, NDASA suggested that FAA include a requirement that copies of foreign laws provided to the FAA are translated in English. Although English is the expectation for any submitted documentation, the FAA does not find this distinction needs to be included in the regulatory text.

NDASA and APA recommended the modification of § 120.9(b)(6) to change from ''if applicable, a justification of why it would be impossible to achieve the objectives of the provision in any way'' to instead state, ''if applicable, an explanation of how the safety objectives of the provision will be met with procedures that create an equivalent level of safety.'' They asserted this change would always include safety, so it cannot be considered impossible to achieve. The FAA does not revise the adopted regulatory text to reflect this recommended revision in this final rule. As the FAA has acknowledged, each country impacted by this rule may have different laws on labor, employment, privacy, etc., which the repair stations in that country must follow. The FAA must consider the diversity of laws and ensure the regulatory language allows a repair station to remain consistent with the applicable laws of the country in which the repair station is located. Additionally, the element of safety is further explicitly accounted for in paragraph (b)(3), which requires an explanation of why granting the waiver would not adversely affect the prevention of accidents and injuries resulting from the use of prohibited drugs or the misuse of alcohol by employees.

NDASA suggested adding a regulatory provision in 49 CFR part 40 to correspond with the NPRM's proposed § 120.9, likening the addition to the existing stand down waiver process, which has regulatory references in both § 40.21 and § 120.125. The FAA determined this recommendation is outside the scope of this rulemaking, which is limited to amending part 120.

3. Eliminating Waivers and Exemptions

NDASA and APA commented they preferred to see no waiver or exemption option. APA stated all safety-sensitive work on part 121 aircraft should be required to adhere to the same, or at least substantially similar, stringent criteria as required for part 121 maintenance personnel located within the United States to maintain a consistent minimum level of safety. APA further stated the FAA should prohibit part 121 operators from having maintenance performed in countries with laws that prohibit testing or make it impractical. They stated there is no logic behind permitting a knowing acceptance of reduced safety standards. NDASA agreed with APA's comment, asserting that if a country cannot meet the criteria, the safest approach would be to prohibit the U.S. carrier from having safety-sensitive maintenance functions performed within that country.

[27] Proposed § 120.9(b)(3) and (6).

APA and NDASA commented that the exemption process proposed in the NPRM is not the correct mechanism for allowing a foreign repair station to opt out of the rule, and the waiver process in part 120 is more appropriate. They both stated the exemption process should be removed for three reasons: (1) part 40 should be followed as written regardless of where testing occurs due to the quality, consistency, and protections it affords; (2) exemptions should only be granted when there are ''special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking'', and (3) it is contrary to the Administrative Procedure Act and the DOT's position on exemptions to make a regulation inviting exemptions from potentially 192 of the ICAO signatory countries and/or the individual repair stations in those countries. They stated that since the rule anticipates receiving petitions for exemption, the situation is not unusual and has been contemplated in the rulemaking, making the waiver process more appropriate. The commenters suggested deleting § 120.5 from the proposed rule and making this a waiver process under § 120.9 only.

The FAA appreciates the commenters' concerns about exemptions under 49 CFR part 40 being used to accommodate foreign laws applicable to foreign repair stations that are inconsistent with the part's requirements. The FAA agrees that compliance with those requirements would ensure consistent, high-quality testing occurs when required by this rule. However, the FAA lacks the authority to grant an exemption in whole or in part from 49 CFR part 40 under § 40.7 or implement a waiver process for relief from 49 CFR part 40. The exemption process described in 49 CFR part 5 is DOT's established process for granting relief from 49 CFR part 40. Furthermore, because the availability of exemptions may be critical to compliance with the statutory mandate's consistency requirement in some circumstances, the FAA defers to DOT to honor Congress's intent if any appropriate exemptions are sought. As commenters noted, an exemption will only be granted under § 40.7 if the requestor documents special or exceptional circumstances (*e.g.,* a country's law) that make compliance with a specific provision of 49 CFR part 40 impracticable. These circumstances may not be generally applicable nor contemplated in connection with the rulemaking that finalized 49 CFR part 40,[28] and, considering the unique context of each country's laws, the FAA concludes that exemptions would not be generally applicable outside the foreign repair station's country. Also, there is no evidence to suggest that DOT contemplated in the rulemaking finalizing 49 CFR part 40 the specific special or exceptional circumstances that may arise when a foreign law conflicts with the part's requirements.

APA and NDASA were also concerned granting waivers or exemptions to foreign repair stations may open the door to granting similar waivers to domestic employers and may have an impact on long-standing international testing required by the Federal Railroad Administration, the Federal Motor Carrier Safety Administration, and the Coast Guard. These commenters requested the FAA address the potential impact on the DOT agencies that require testing.

The FAA does not find that the implementation of this final rule would have an impact on the testing requirements of another Federal agency requiring testing in accordance with 49 CFR part 40. Each regulating agency and DOT has the authority to determine the applicability of their respective regulation and whether to consider providing relief from their respective regulation either in part or in whole. Further, the waiver option presented in this rule is specifically applicable to foreign repair stations that perform safety-sensitive maintenance on part 121 air carrier aircraft. The FAA is not extending this option to domestic employers regulated under 14 CFR part 120.

4. Department of Transportation (DOT) Authority

A4A argued Congress did not confer authority to the FAA to impose a program over which it does not control, noting that 49 CFR part 40 is a DOT regulation and the FAA cannot grant exemptions to it. A4A also commented the FAA's reliance on DOT's exemptions far exceeds the Congressional limitations placed on the FAA, and the FAA cannot force the DOT to agree that an inconsistency meets the thresholds provided in 49 CFR part 5.

As a general matter, the FAA has broad statutory authority to promulgate regulations to implement programs established by statute and administered by the FAA. Under section 106 of title 49 of the United States Code, the Administrator ''is authorized to issue, rescind, and revise such regulations as are necessary to carry out'' the Administrator's and the FAA's functions. Those functions include administering alcohol and drug testing programs codified in 49 U.S.C. chapter 451. Specifically, the FAA's authority to issue rules on alcohol and drug testing is in 49 U.S.C. 45102, which directs the Administrator to prescribe regulations that establish a program requiring air carriers and foreign air carriers to conduct certain drug and alcohol testing. In addition to these authorities, the final rule is promulgated under section 308 of the 2012 Act, 49 U.S.C. 44733(d)(2), which directs the FAA to extend drug and alcohol testing requirements to foreign repair stations with employees that perform safety-sensitive maintenance functions on part 121 air carrier aircraft. Section 309 of the 2012 Act further requires that such testing requirements be acceptable to the Administrator. The FAA maintains that the standards set forth in 14 CFR part 120 and 49 CFR part 40, which are cooperatively administered by the FAA and DOT, respectively, are acceptable drug and alcohol testing programs as applied to persons that perform safety-sensitive maintenance functions at U.S.-based repair stations. Because the FAA lacks the data or studies to support a deviation from the current program requirements, for purposes of 49 U.S.C. 44733(d)(2), the Administrator finds that the current drug and alcohol testing scheme is acceptable as applied to foreign repair stations.

As the NPRM explained, the FAA and DOT have long engaged in a regulatory partnership regarding drug and alcohol testing of persons in the aviation industry.[29] This partnership has resulted in linked regulations that generally govern DOT agencies'—including the FAA's—drug and alcohol testing procedures in 49 CFR part 40, and more specific FAA regulations on the same subjects in 14 CFR part 120. The FAA's existing drug and alcohol testing regulatory framework functions through both DOT's and FAA's regulations.[30] As noted previously, the FAA has broad statutory authority to carry out its functions. Neither 49 U.S.C. 44733(d)(2) nor any other statute limits the FAA's authority to promulgate regulations on drug and alcohol testing that are consistent with the long-established regulatory framework. Commenters offered no authority or analysis to suggest otherwise. They also did not explain how the FAA's lack of control over DOT's exemption process is relevant to the FAA's statutory authority

[28] *See* 49 CFR 40.7(b).

[29] 88 FR at 85138.

[30] 49 CFR 40.1(a) states that 49 CFR part 40 applies to and instructs ''all parties who conduct drug and alcohol tests required by [DOT] agency regulations how to conduct these tests and what procedures to use.''

to require a drug and alcohol testing program. The proposed regulations fall well within the FAA's statutory authority, and the FAA's continued reliance on 49 CFR part 40 is necessary to ensure consistency across the existing regulatory framework in which drug and alcohol testing conducted under this rule would occur.[31] If an exemption from 49 CFR part 40 is necessary, a part 145 repair station must request it in writing from DOT under the provisions and standards of 49 CFR part 5. While the FAA lacks control over DOT's exemption process, the FAA and DOT may coordinate on these requests as they relate to implementation of a drug and alcohol testing program required by 14 CFR part 120, particularly if the foreign repair station concurrently requests a waiver from this part 120.

5. Department of Health and Human Services (HHS) Authority

A4A and ARSA stated the FAA did not address the requirements of the HHS that may apply to the testing program and whether repair stations may obtain relief from these requirements when inconsistent with foreign laws. The FAA disagrees with commenters that relief may need to be granted by HHS as part of this rule. Because requirements that connect to the HHS mandatory guidelines (*e.g.,* laboratory certifications) are included in 49 CFR part 40, any relief needed by a foreign repair station, or its government, may be granted by DOT as part of the exemption process.[32]

6. Waiver Cost

Commenters including ARSA, DG MOVE, MRO Holdings, and EL AL Israel Airlines expressed concern with the cost to request a waiver or exemption, stating the process is burdensome and will require the foreign citizen to obtain the services of experts in the fields of international law as well as HHS, DOT, and FAA regulations to decipher whether compliance with each section of the rules can be achieved. Commenters stated the cost of this is not included in the NPRM.

Relatedly, CAA commented that the rulemaking fails to accurately account for the costly challenges if the rule was implemented as proposed and underestimates the practical and legal feasibility of implementing the conceived exemption process. They also stated that, as noted in the NPRM, over 900 repair stations in over 30 countries would come under this rulemaking and even if only half applied for exemptions, there is no proper accounting by the FAA of the personnel, time, cost, and inherent delays for processing hundreds of exemptions involving explanation of local law, expertise of additional personnel, time, and cost to the applicant.

The FAA acknowledges concerns regarding the cost of submitting waivers and exemptions. In the NPRM, the FAA, because of the uncertainty of how many repair stations would apply for a waiver or exemption, assumed that all repair stations would comply with the rule. The cost of creating and maintaining a drug and alcohol program is more expensive than the cost of all repair stations submitting a waiver or exemption. Therefore, the estimated cost in the NPRM is a conservative case in which the cost of the rule is higher. In response to comment, in the final rule, the FAA has expanded waiver eligibility to foreign governments, which FAA anticipates will mitigate the burden on foreign repair stations identified by commenters. Because of this addition, the FAA also added a second scenario that estimates the cost of all countries applying for this alternative means of compliance.

G. Bilateral Aviation Safety Agreements

In the NPRM, the FAA invited comments on whether any Bilateral Aviation Safety Agreements (BASAs) conflict with the requirements of the proposed rule. Though responsive commenters provided views on various BASAs, few offered evidence of direct conflicts with the requirements of those agreements. For example, BDLI commented that countries with existing BASAs already contain prohibitions and requirements regarding the consumption of drugs and alcohol in the workplace and any violation of these prohibitions would result in sanctions by the aviation authority and in serious cases criminal prosecution but did not explicitly provide which BASAs would conflict. Many commenters reiterated concerns that were submitted in response to the ANPRM.[33] For example, commenters encouraged the FAA to honor the intent of the BASAs and to rely on them to implement aspects of the rule, focused on the need for consultation with BASA parties, and identified the potential for retaliation.

As the NPRM explained, the FAA has been directed by Congress to promulgate regulations requiring part 145 repair stations outside the U.S. to have a drug and alcohol testing program for their employees who perform work on part 121 aircraft. To the extent that BASA provisions concerning notice and consultation are applicable to the proposed regulations, the FAA intends to follow those provisions.

1. Governmental Commenters

Two foreign government transportation agencies representing the interests of the United Kingdom and the European Union commented in opposition to the NPRM and raised concerns about the BASAs between the United States and their respective jurisdictions. The UK DFT asserted that the US–UK BASA, Maintenance Implementation Procedure (MIP), and Maintenance Agreement Guidance (MAG) would need to be amended if the FAA finalized the NPRM as proposed and made it effective in the UK. In the UK DFT's view, the FAA would be in breach of the MIP if it refused to certify a UK-based part 145 repair station for failure to comply with the NPRM's proposed requirements. UK DFT also noted that the FAA did not consult on the proposal under the terms of the UK–US BASA prior to publication. Finally, the UK DFT encouraged the FAA to accept the UK aviation maintenance system as a whole and not seek to make changes to parts of it. The UK DFT further asked the FAA to respect the principles of trust, cooperation, communication, and safety culture which underpin the UK–US BASA.

For the European Union, DG MOVE commented that a full account should be taken of the mutual trust and equivalency principles that underlie the US–EU BASA, and the existing requirements in place within the European Union. DG MOVE stated the BASA provides for a privileged exchange on regulatory developments, which was not done prior to the issuance of the proposed rule. DG MOVE asked the FAA to honor the long-standing cooperative relationship between Europe and the United States,

[31] While the final rule amends 14 CFR 120.5 to require regulated entities to comply with exemptions issued under part 40, the final rule makes no changes to the longstanding requirement that those entities ''having a drug and alcohol testing program under this part must ensure that all drug and alcohol testing conducted pursuant to [part 120] complies with the procedures set forth in 49 CFR part 40.''

[32] Although HHS has no authority to regulate the transportation industry, the DOT does have such authority. DOT is required by law to develop requirements for its regulated industry that ''incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines . . .'' See 49 U.S.C. 20140(c)(2). In carrying out its mandate, DOT requires by regulation at 49 CFR part 40 that its federally-regulated employers use only HHS-certified laboratories in the testing of employees, 49 CFR 40.81, and incorporates the scientific and technical aspects of the HHS Mandatory Guidelines.

[33] The ANPRM published at 79 FR 14621. The FAA responded to these comments in the NPRM. 88 FR at 85141.

to minimize economic burden on their respective aviation industries from redundant oversight, and to adhere to the comprehensive system of regulatory cooperation in civil aviation safety an environmental testing and approvals based on continuous communication and mutual confidence.

The FAA acknowledges the concerns raised by UK DFT and DG MOVE, particularly with respect to prior notice and consultation concerning the NPRM and the requirements now finalized in the rule. The FAA is committed to honoring the principles of trust and cooperation embodied in the BASAs between the United States and the United Kingdom, the European Union, and other signatory partners. The final rule amends the proposal to address some of the concerns raised by UK DFT and DG MOVE. Specifically, the FAA has revised the waiver and provided an additional waiver option that gives foreign governments the ability to obtain a waiver on behalf of repair stations in its territory based on recognition of its program. The FAA is confident that the changes to the waiver options made in response to comment will allow for a streamlined process for further productive discussions and, if appropriate, the recognition of a country's existing requirements as a compatible alternative pursuant to § 120.10. As explained previously, the FAA has set the effective date of this rule to January 17, 2025 and includes a three-year compliance period to provide existing foreign repair stations up to three years to comply with the pathways adopted by this final rule. The FAA will further consult with parties to BASAs, where appropriate, on the impact of the final rule's requirements on the relevant agreements during this three-year implementation period.

2. Labor, Trade, and Industry Commenters

Fourteen labor organizations, airline trade organizations, and companies in the airline and maintenance industry commented on the NPRM's impact on the BASAs. Like the governmental commenters, the labor, trade, and industry commenters raised concerns about consultation and honoring the BASAs' purposes and requirements. For example, Airbus commented that the FAA should take special care with countries where a BASA is in force, including engaging in in-person consultations on a regular basis to understand the legal, practical, and cultural issues related to drug and alcohol testing, and the measures already in place that may mitigate the need to deploy this rule. In addition, several commenters raised the potential for retaliation by foreign governments against repair stations located in the United States if the NPRM were to be finalized as proposed.

Commenters including A4A, IATA, and ARSA argued that the rulemaking attempts an end-around of BASAs by including the proposal under 14 CFR part 120 instead of part 145. They also requested the FAA generally follow directives on bilateral agreements and procedures required by treaties. ARSA and A4A stated that drug and alcohol testing requirements would need to be included as amendments to the special conditions of certain BASAs, and that those changes should be made in accordance with the State Department's sanctioned process associated with bilateral partners. A4A further suggested that FAA's drug and alcohol testing program should be applied through part 145 rather than part 120. A4A asserted that this change would respect comity and reciprocity by clarifying that any compliance issues would be processed through existing BASA provisions for special conditions. Accordingly, A4A explained that the proposed drug and alcohol testing requirements would automatically apply only in foreign jurisdictions without reciprocal recognition of the foreign repair station certificate (*i.e.,* a BASA). IATA stated their agreement with these comments, adding that the proposed rule disregards the relevance of existing BASAs which recognize part 145 repair stations that are certificated by the safety regulator where the facility is located. IATA recommended that the FAA instead accept a country's drug and alcohol testing requirements if there is a BASA in place that already addresses drug and alcohol testing. IATA asserted that a BASA should be renegotiated if there is no provision for drug and alcohol testing in an existing agreement. BDLI suggested that the FAA should treat as equivalent and sufficient any prohibitions and requirements regarding drug and alcohol consumption in a BASA party state. Airbus and Lufthansa Group alleged that the NPRM is incompatible with the U.S.-EU BASA. Airbus further noted that the U.S.-EU BASA Maintenance Annex Guide (MAG) is silent on drug and alcohol testing programs, but argued that this silence does not mean the NPRM would avoid conflict with the U.S.-EU BASA MAG. In their comment supporting the NPRM, the Teamsters noted opposing commenters have not provided evidence demonstrating that international obligations (*i.e.,* BASAs) are inherently in conflict with the NPRM and that the FAA should not permit these concerns to impact the rulemaking.

The FAA disagrees with the commenters' characterization of the NPRM as an attempt to circumvent the requirements or purposes of the BASAs. To the extent BASAs address repair stations, including through annexes and special conditions, those BASAs concern how the parties will inspect, evaluate, and certify that maintenance organizations meet the requirements of part 145 and its equivalent in the foreign jurisdiction. The FAA's drug and alcohol testing regulations do not contain any maintenance standards that would be subject to special conditions.[34] As the Teamsters correctly noted, commenters have not identified a specific conflict between the NPRM and the BASAs. However, the FAA agrees with the governmental commenters who suggested that further consultations and amendments to address the change of circumstances may be appropriate, consistent with the consultation provisions under applicable BASAs. The FAA is committed to doing so if a provision is identified warranting such.

Opposing commenters argued that the FAA should transfer drug and alcohol testing requirements to part 145 for the limited purpose of ensuring that those requirements would be subject to the special conditions process under current BASAs. However, BASA parties have other means to address concerns about the requirements finalized in this rule, including provisions in each BASA allowing for consultation between the parties on amendments to address either party's revisions to its regulations, procedures, or standards (including those outside of part 145). For these reasons, the FAA concludes that relocating the drug and alcohol testing requirements applicable to part 145 repair stations is not appropriate or necessary.

Some labor, trade, and industry commenters also raised concerns about retaliation against U.S.-based repair stations if drug and alcohol testing were extended beyond U.S. borders. For example, A4A and IATA commented that the NPRM's impact on BASAs could increase the risk that foreign governments impose reciprocal and retaliatory drug and alcohol testing or other requirements on U.S.-based repair stations outside of a BASA's mutual and cooperative certification regime. GAMA

[34] For example, the UK–US BASA MIP defines ''special conditions'' to mean the requirements of ''14 CFR parts 43 and 145 or in the (UK) Part-145 that have been found, based on a comparison of the regulatory maintenance systems, not to be common to both systems and which are significant enough that they must be addressed.'' US–UK BASA 1.7(h)

warned that the FAA should not take any action that may dissuade other countries from entering into these agreements. MOOG Inc. similarly commented that the NPRM could result in backlash within current BASAs and limit the possibility of future agreements. The FAA acknowledges the commenters' concerns and has taken steps in the final rule to lessen the burdens on foreign governments and repair stations that could incentivize retaliation. As explained above, the FAA anticipates that the waiver changes made in response to comments in the final rule will facilitate recognition of a foreign government's existing requirements as a compatible alternative that contains the minimum key elements of 14 CFR part 120.

H. Safety Case

1. Lack of Sufficient Data or Risk

Twenty commenters including ARSA, IATA, MOOG Inc., and Lufthansa Group stated that there is insufficient statistical data (*i.e.,* no safety case) to justify a rule requiring drug and alcohol testing programs at foreign repair stations. Several commenters continue to question the safety risk that would make issuance of a new regulation necessary, with A4A asserting safety measures must be data-driven and risk-based because the FAA fosters the industry's success with its scientifically-based and data-driven safety regulations and programs. Because there have been no accidents or incidents related to safety-sensitive maintenance personnel using drugs or alcohol, A4A argued Congress requires this rule, not the FAA's safety mandate. Commenters asserted the FAA has no data showing evidence that drug use or alcohol misuse has ever caused or contributed to a maintenance function-related accident or incident, ergo there are no ''proven accidents and incidents'' involving drug use or alcohol misuse by maintenance personnel in the United States, European Union, and beyond. Some commenters argued that the absence of data indicates that there is no safety risk or productivity justification for the rule.

Commenters including Airbus Commercial Aircraft, ARSA, IATA, CAA, and RAA emphasized how the FAA acknowledged in the NPRM there have been no accidents or incidents related to safety-sensitive maintenance personnel using drugs or alcohol and that the FAA could not determine whether the rule would have any additional impact on safety because the FAA does not have testing data or knowledge of existing testing programs in other countries. Some commenters, including GAMA and MOOG Inc., confirmed they have no records showing an issue with safety records and quality performance. Similarly, commenters from China (including Taikoo Shandong Aircraft Engineering Co., Ltd, Taikoo Xiamen Aircraft Engineering Co. Ltd, Taikoo Xiamen Landing Gear Services Co. Ltd, and HAECO Component Overhaul Xiamen Ltd.).

BDLI, IHI Corporation, and JAL Engineering provided information that there is no record of an accident or incident that can be attributed to drug use or alcohol misuse. DG MOVE and UK DFT commented that there have been no occurrences of safety data at the United States level or the European Union level to substantiate the need to extend the current requirements to the EU. DG MOVE noted that a review of the European Central Repository looking at all incidents, serious incidents, and accidents in the EU Member States/EEA States between 2015–2023 showed only 4 references to maintenance engineers who were suspected of consuming alcohol before work. In addition, IATA commented that between 1970 and 2012, there were no occurrence reports of drug or alcohol intake at maintenance facilities in the ICAO Accident Data Reporting system. IHI Corporation would like the FAA to show how much flight safety will improve by conducting this testing, to ensure the cost is worth the benefit. BDLI stated lack of training, failure to follow instructions, overconfidence, distraction, fatigue, or a non-ergonomic workplace are far more likely to be named as potential sources of danger.

The FAA acknowledges that it continues to have insufficient data to estimate a baseline level of safety risk associated with drug use and/or alcohol misuse at foreign repair states by safety-sensitive maintenance personnel. The FAA believes that the safety data showing the number of positive test results for maintenance personnel subject to testing under the FAA's domestic program offers strong support for this rulemaking. Based on the data reported to the FAA from all regulated domestic employers from 2005–2017, maintenance employees were subject to 1,343,887 drug tests (including all test types). Of those tests, 17,046 resulted in a verified positive drug test result for one or more of the drugs tested. From 2009–2017, employers reported that maintenance employees were subject to 568,156 alcohol tests (including all test types), and 1,516 of those tests had a confirmed alcohol concentration of 0.04 or greater. As the FAA has stated in previous rules,[35] the FAA does not believe it should wait until there is an actual loss of human life before taking action to ensure safety-sensitive maintenance personnel are subject to testing. Only one link in the safety chain would have to fail for an accident to occur. Therefore, although the FAA cannot determine the quantitative impact on safety, Congressional intent has determined there is a safety benefit and the FAA has scoped this final rule to address the specific statutory mandates in 49 U.S.C. 44733(d)(2) and 49 U.S.C. 44733.

2. Existing Regulations

Many commenters noted that drug use and alcohol misuse in the aviation industry is sufficiently addressed through existing regulations of sovereign nations (including the European Union), as well as by the policies of employers within the industry. For example, DG MOVE commented they have robust safety management provisions in place for maintenance stations and the issue is covered by EU aviation safety regulations, in addition to Member States' employment laws. RAA mentioned the industry has been successful implementing Safety Management Systems including drug and alcohol abatement programs, which foster scientifically-based and data-driven approaches as well as voluntary reporting programs.

Boeing Research and Technology commented that stringent drug and alcohol monitoring policies are already in place in many countries and the existing policies are designed to ensure the safety and reliability of aviation maintenance work, often exceeding the requirements proposed by the FAA. They also stated that in some countries, laws are not standardized at the national level, but instead vary by state or province; they also may vary by the class of driver.

The FAA received 2 comments from South Korean company Sharp Aviation K which requested an exemption and waiver from the rule due to the strict drug policy of South Korea. The company stated that South Korea's citizens are prohibited from using drugs and drug testing is already mandatory for every worker as pre-employment requirements including foreign workers prior to visa issuance.

Two commenters from Singapore questioned whether their existing processes were acceptable to meet the requirements of this rule. One individual questioned if a repair station

[35] For example, 71 FR 1666.

that already sends personnel for drug and alcohol testing during their pre-employment checkup needs to comply. The second, ST Engineering Aerospace Services Company Pte. Ltd., a foreign repair station, commented that Singapore already has a very strong policy against the sale and consumption of drugs, and their CAAS or local National Aviation Authorities (NAA) also has a bilateral agreement with FAA. They also stated they have a written policy on drug and alcohol testing which is accepted by other NAAs. They questioned whether their current policy is acceptable.

The FAA appreciates the few commenters that provided information about their countries' own testing laws, regulations, and/or requirements. This type of information helped the FAA better understand how countries impacted by this rule may have existing drug and alcohol testing requirements and local laws that could meet the same safety intent of the domestic requirements. As described previously, in response to comments, this final rule provides a waiver option allowing a foreign government, on behalf of all repair stations in the country, to submit an existing testing program for acceptance by the Administrator. An individual foreign repair station may also seek a waiver based on the laws of its country and current testing regimes or consequences that exist and meet the intent of the mandate. If a foreign repair station or its government, on behalf of all repair stations in the country, does not submit a request for waiver based on recognition of an existing testing program, the foreign repair stations must meet the requirements of 14 CFR part 120 and 49 CFR part 40, with the option to request a waiver or exemption as proposed in the NPRM.

3. Alleviate Public Safety Concerns

Twelve commenters who supported the NPRM noted the increased safety benefit the rule would bring and the need for a single level of safety domestically and in foreign countries. These commenters included the Teamsters, TTD, TWU, APA, NDASA, a software provider (Nexus 33 Group), and six individuals. The Teamsters argued for a single level of safety, stating the current ''two-tiered'' system of regulation is inappropriate and fundamentally unsafe. They also stated the ability of air carriers to evade regulatory responsibilities and the attendant costs of those responsibilities has played a role in the continued outsourcing of heavy maintenance. TTD stated it is a glaring and troubling loophole in the regulation that workers at domestic facilities must undergo extensive drug and alcohol testing while foreign mechanics working on U.S. aircraft are exempt. One individual commenter stated the benefit to safety outweighs any cost to foreign repair stations to implement these programs and potential obstacles of implementation. Nexus 33 Group LLC commented that safety is a team effort regardless of location and a drug free workplace is essential to safety. They stated that they recognize that many international repair stations already have a drug free workplace in place, and this would simply confirm their current enforcement of internal policies with oversight. An individual commented that airlines should always strive to keep their operations as safe as possible, and this NPRM could bring an additional ''cushion'' towards that. Another individual commented that they have seen the benefits of enhanced safety protocols as they relate to a sound workplace drug and alcohol testing program in the U.S., and it makes sense from a safety standpoint to expand a similar program to further ensure the safety of the traveling public. APA commented that although there have been no instances of an accident due to drug or alcohol use by someone in a safety-sensitive position, it is not an effective approach to safety to wait for something to happen before taking steps to prevent it from happening. APA further stated safety is not negatively impacted by these drug and alcohol programs, so there is no downside to implementing them from a safety perspective.

As previously discussed in the NPRM, the FAA does not have sufficient data to estimate a baseline level of safety risk associated with drug use and/or alcohol misuse at foreign repair stations. The FAA received minimal explicit quantitative or qualitative information pertaining to foreign countries' laws and regulations, program elements of acceptable drug and alcohol testing, and existing drug and alcohol testing programs in other countries. The FAA also continues to recognize the number of accidents and incidents involving drug use and/or alcohol misuse by safety-sensitive maintenance personnel at foreign repair stations is unknown. Because the FAA does not have sufficient testing data or knowledge of existing testing programs in other countries, the FAA is unable to estimate the impact of the final rule in detecting and deterring drug use and/or alcohol misuse. However, the FAA acknowledges commenters that asserted a public safety concern with foreign repair stations and agrees with commenters that acknowledged the safety benefits of drug and alcohol testing programs in the U.S. The FAA supports such programs to further ensure safety of the traveling public.

I. Financial, Technical, and Operational Concerns

1. Benefits and Costs

Nineteen commenters mentioned the necessity of considering whether the benefits of mandating drug and alcohol testing programs in foreign repair stations outweigh the costs. Many commenters believed this rulemaking would create an excessive economic burden on the company without a significant benefit, including BDLI. Moreover, several commenters stated such a program would impose excessive costs on business operations, which would ultimately be transferred to customers, placing an additional burden on domestic operators.

Airbus Commercial Aircraft commented that the lack of testing alternatives may convince some foreign repair stations to surrender their certificate because the volume of their activities with domestic operators no longer justifies their investment. A4A commented similarly, stating the FAA must consider the indirect competitive cost implications of the NPRM to the United States airline industry and assess the NPRM's indirect costs to domestic airlines if foreign repair stations refuse to comply and forgo their part 145 certification. Commenters generally expressed concern that the rulemaking will result in aircraft maintenance becoming unavailable to domestic air carriers at repair stations or in countries with few repair stations and will give an unfair competitive advantage to foreign air carriers. A4A asked the FAA to consider the likelihood of the loss of maintenance operations overseas for U.S. air carriers and the resulting economic and competitive impact for U.S. air carriers and the public that rely on their transportation. A4A stated the possibility is very real and included data on the strain on airline operations that currently struggle to obtain the necessary volume of maintenance services on a global scale.

Several commenters from China including HAECO Component Overhaul Xiamen Ltd., Hong Kong Aero Engine Services Limited, and Taikoo Xiamen Landing Gear Services Co. Ltd stated that such a program would provide no additional benefit while imposing excessive costs on their business operations, which would ultimately be

transferred to customers, placing an additional burden on U.S. operators.

The FAA acknowledges the commenters' concerns regarding the primary and secondary cost impacts to the industry. Given that the FAA is offering in the final rule an expanded waiver and an exemption option, foreign repair stations will be afforded several avenues to achieve compliance with the rule and maintain current operations without consequential additional costs.

2. Cost Data Based on U.S. Costs

Commenters including A4A, DG MOVE and ARSA expressed concerns about the accuracy of the cost data included in the NPRM, stating the FAA has not comprehensively assessed the practical and economic implications of the rule implementation in foreign countries. These commenters believed a complex and costly testing program of non-U.S. based personnel should be supported by solid data, including a comprehensive cost basis that is reflective of the local, regional situation and not based on United States pricing. DG MOVE stated the cost of implementation cannot be solely based on the cost for domestic organizations to comply since there are practicalities of implementation specific to foreign organizations that can have a large influence on cost, which cannot be reliably estimated. DG MOVE further stated the impact assessment is incomplete and does not allow for a relevant cost-benefit analysis. ARSA stated that the cost estimate does not include the cost of compliance if the rule cannot be implemented as if the repair station was in the United States.

The FAA acknowledges the commenters' concern with respect to using data denominated in U.S. dollars such data does do not represent costs in local and regional situations. However, there is no country- or region-specific data available. Therefore, the FAA has converted the costs from U.S. dollars to exchange rates based on the Purchasing Power Parity (PPP). The FAA acknowledges this adjustment only accounts for exchange rates and heterogenous price levels and not heterogenous additional costs countries may incur as compared to complying with the rule within the jurisdiction of the United States, such as translation or legal services. However, the FAA does not have the data to estimate all the different cases that may arise in all the affected countries.

With respect to the practical and economic implications of the rule implementation in foreign countries, the FAA has considered the heterogenous impact this rule will have in different countries and has concluded that an analysis of such implications would be impracticable due to its complexity, uncertainty, and lack of necessary data. Furthermore, as previously noted, legal challenges may limit some countries from complying with the rule. Because of this uncertainty, the FAA is providing a waiver option that will allow countries or individual repair stations to demonstrate they have met the intent of the rule if they have testing standards that meet the elements set forth in this rule.

3. Costs Based on Compliance With HHS Requirements

Several commenters argued that the NPRM failed to account for the costs of compliance with HHS requirements that are incorporated through 49 CFR part 40. Among other things, ARSA commented that the FAA must assess the costs of obtaining HHS approval of laboratories and personnel, use of approved testing equipment, and transportation of specimens if necessary. ARSA argued that the FAA must review cost assessments included in the earlier rulemaking proceeding promulgating HHS requirements that would be applicable to foreign repair stations under the rule.

The FAA acknowledges the commenters' concerns regarding compliance with HHS requirements, which are included in 49 CFR part 40. However, the FAA regulatory impact analysis (RIA) assumed all repair stations would send their testing samples to already-approved HHS laboratories, which are all in the U.S. and Canada, and would not elect to request HHS approval of a laboratory in their own country. Therefore, the cost of laboratory approval is not included in the RIA.

As previously discussed, in this final rule the FAA is allowing a foreign government to obtain a waiver by requesting recognition of an existing testing program promulgated under the laws of the country that meets the minimum key elements set out in the regulation. If a foreign government chooses not to avail itself of this option, an individual foreign repair station may make its own request for a waiver based on recognition of an existing testing program. Under this option, the FAA may provide a waiver based on recognition of an existing testing protocol to the country as a whole or to an individual repair station, which would require no additional cost estimate.

4. Small Business and Subcontractor Costs

ARSA commented that the FAA must consider all tiers of small business that must comply with the current and proposed regulations and that the impact on small entities will be at least four times the amount estimated. They stated each repair station must evaluate whether their contractors and subcontractors will need to be included in their own programs to conduct aircraft maintenance, and the FAA failed to include the impact to contractors and subcontractors in the cost of the rule. Further, because they were not included, ARSA contended that these contractors and subcontractors did not have reasonable time to comment on the proposal. A4A agreed with the comments made by ARSA regarding the FAA's cost-benefit analysis.

The FAA acknowledges the impact to small businesses and their subcontractors. The FAA has included an analysis on the impact to small entities in the Regulatory Flexibility Act section.

With respect to subcontractors, this rule applies to foreign repair stations who perform maintenance on part 121 air carrier aircraft outside the U.S. The FAA did not estimate the cost to subcontractors because if a foreign repair station decides to contract with another non-certificated maintenance provider to perform safety-sensitive aircraft maintenance functions on a part 121 air carrier aircraft, the certificated repair station must include the personnel performing aircraft maintenance functions in their testing program. This rule does not require or allow a non-certificated contractor or subcontractor to implement its own FAA or DOT drug and alcohol testing program, which is why these parties are not accounted for in the rule. While this is different than how FAA applies testing within the U.S., the mandate for testing does not extend to non-certificated contractors or subcontractors that perform maintenance on part 121 air carrier aircraft outside the U.S.

5. Quantitative and Qualitative Benefits

APA and NDASA addressed the lack of economic data provided to the FAA, stating the lack of data does not nullify the safety benefit of the rule. NDASA suggested the FAA use a qualitative economic analysis for the rule, rather than a quantitative analysis. NDASA further commented the domestic program is effective as a deterrent, and the efficacy of drug and alcohol testing

programs is well-proven and without question. The history of the domestic program proves the deterrent effect of Federally mandated drug and alcohol testing. NDASA asserted the more than 35 years of effective deterrence is an important consideration that should be used to evaluate the costs and benefits of this rulemaking.

NDASA further commented that if a quantitative analysis is needed, the FAA should assess the costs of illicit drug use and substance abuse disorders rather than the cost of equivalent testing programs in other countries. NDASA referred to ''Injury Costs'' and the ''Substance Abuse Cost Calculator'' on the National Safety Council website and the calculator for workplace costs of substance use disorders on the National Institute of Health's National Library of Medicine 2017 article from the Journal of Occupational Medicine for data.

The FAA agrees that drug and alcohol testing has certain qualitative benefits that are discussed in other sections of this preamble and the regulatory impact analysis supporting this final rule. With respect to quantitative data, the FAA declines to rely on the commenter's proposed sources of data for a quantitative analysis. Those sources provide aggregated U.S.-based statistics and tools without a basis for extrapolation to aviation-sector employers in foreign countries. Furthermore, as noted in the NPRM and supporting documents, there are no documented cases in which an accident was connected to a repair station employee. Therefore, it is not possible to conduct a quantitative benefits analysis for this rule. The quantitative cost analysis the FAA conducted, as discussed herein and in the NPRM, accounts for the costs of implementing and maintaining an alcohol and drug testing program and the cost associated with submitting and reviewing requests for waivers and exemptions.

6. Economic Equity Between Domestic and Foreign Repair Stations

TWU and one individual noted the NPRM would level the economic playing field between foreign and domestic repair stations helping to correct an imbalance that benefits foreign repair stations. TWU stated the current regulatory requirements have created a loophole benefitting foreign repair stations by enabling and effectively encouraging the offshoring of aircraft maintenance jobs. Because foreign repair stations are not required to meet the same regulatory requirements as domestic repair stations, TWU claimed the number of foreign repair stations has grown more than 40% since 2016, and approximately 56% of the total workforce maintaining, repairing, and overhauling U.S.-flagged aircraft is based outside of the United States. TWU pointed out China specifically, stating they employ more than 7% of the global workforce doing this work. They stated exempting these foreign repair stations from the regulation creates a relative advantage for those firms that are directly competing against the U.S. workforce.

In addition to the safety benefits, the FAA acknowledges that an alcohol and drug testing program for foreign repair stations that is equal to those programs required in the jurisdiction of the FAA would create uniform standards for all repair stations. The FAA further acknowledges the pathways provided in the final rule (*e.g.,* waivers pursuant to §§ 120.9 and 120.10) will not create a uniform standard for all foreign repair stations or between domestic and foreign repair stations. The purpose of these regulations is to obtain safety benefits equal to those required in the U.S. to the extent permissible under the Congressional mandate, which requires a balance between the safety benefits of domestic testing requirements deemed acceptable by the Administrator and conflicting foreign requirements.

7. Specific Implementation Concerns

A number of commenters believed costs of implementation for a domestic repair station are minimal compared to the burden on the government and the foreign citizens because of the drug and alcohol testing requirements. A4A pointed out such obstacles may be so unreasonable to overcome or present such burdens that the cost of compliance far outweighs any measurable benefit and asked the FAA to strongly consider any obstacles that may result in validity issues, unfairly threaten the careers of qualified maintenance employees, or make compliance unreasonably burdensome for a repair station. RAA agreed with this comment and asked the FAA to address how the FAA envisions small repair stations to implement the program, especially in remote locations. Commenters including ARSA and IATA pointed out many examples of requirements of 49 CFR part 40 that will be difficult to implement in a foreign country, such as the dependence upon qualifications and training for service agents (*e.g.,* Medical Review Officers, collectors, and substance abuse professionals) that are specific to the United States, or equipment such as alcohol screening devices that may not be readily available in every country. IATA commented that these testing devices also have very specific use and care requirements that can only be performed by its manufacturer or a certificated maintenance representative. New Era Drug Testing, MRO Holdings, and ASAP addressed the need for established training for collectors and other personnel in the testing process, including collectors and MROs. New Era also brought up the need for multilingual translators for MROs during donor interviews. ASAP further stated the FAA needs to do further engagement with foreign governments and stakeholders to fully understand the practical challenges of adapting the procedures. Airbus Commercial Aircraft commented that not all maintenance personnel should be automatically subject to alcohol and controlled substance testing because this could lead to organizations circumventing the costs associated with the establishment and maintenance of a testing program. Specifically, Airbus stated that some organizations maintaining components off wing may be tempted to deliver their components to distributors who do not hold a part 145 certificate, or to establish such a company to distribute their components. MOOG Inc., also stated that aircraft undergoing maintenance may have components removed and replaced by new or maintained articles which, as produced under FAA part 21 requirements, are not subject to drug and alcohol programs, meaning a component removed from a part 121 aircraft and replaced with a new component will not be manufactured with a drug and alcohol program compliant to 14 CFR part 120 and 49 CFR part 40.

Commenters including A4A, DG MOVE, MRO Holdings, Airbus, and New Era expressed concern for the lack of laboratories certified by the Department of Health and Human Services under the National Laboratory Certification Program outside of the United States and the significant burden associated with shipping specimen to a laboratory in the United States in a manner that complies with HHS's strict chain of custody requirements, or attempting to get a local laboratory certified, which they stated is not a cost accounted for in the rule. A4A and MRO Holdings also noted the possibility of specimen validity and the potential for a sample to be exposed to extreme temperature variances, causing distortion if repair stations are required to ship specimens across borders. Other commenters mentioned foreign repair station operations in remote locations where available individuals qualified to

perform collections as well as access to timely resources and shipping options are limited. Airbus commented it is unclear why the flexibility provision applicable to the domestic repair stations not electing to implement a drug and alcohol testing program is not equally offered to foreign part 145 certificated repair stations and the lack of suitable solutions may convince some part 145 certificated repair stations located outside the U.S. to surrender their certificate, for example, because the volume of their activities with U.S. operators no longer justifies their investment.

A SAP directory service that supported the rule, *SAPlist.com*, also brought attention to the difficulty outside of cost to implementing the return-to-duty process outside of the U.S., citing language barriers, exams, time differences, and international referrals for substance abuse professionals. The commenter raised several questions regarding the SAP process, including whether the SAP must be in the U.S. or in the foreign country. If the SAP is in the U.S. and provides a virtual assessment, the commenter asked how a SAP could make referrals for treatment in another country, noted language differences, online resources being in another language, time differences, and virtual assessments requiring certain technologies. If the SAP is in the foreign country, the commenter raised the issue of ensuring the SAP is qualified to DOT standards with no qualification training or exams in another language than English, and SAP credentials outside the U.S. The commenter also asked whether DOT will provide the regulations in other languages. DG MOVE also mentioned the cost of training and qualification of SAPs. ASAP raised similar questions about international SAP qualifications; the availability of international SAPs and treatment programs that understand the local requirements and U.S. regulations; the geographical, logistical, and legal challenges of international telehealth services, international substance use treatment protocols; and whether repair stations will need to make international referrals. ASAP commented adapting part 40 requirements for use in foreign certificated repair stations involves careful consideration of the local legal systems, cultural norms, and available substance abuse treatment resources.

A4A recommended the FAA undertake a full cost-benefit analysis of the burdens of implementation as recommended by OMB Circular No. A–4, which states analysis should ''look beyond the obvious benefits and costs of your regulation and consider any important additional benefits or costs, when feasible.'' A4A requested a supplemental proposal to minimize these obstacles and present an updated regulatory impact analysis.

The FAA acknowledges commenters' extensive concerns about implementing the requirements of 14 CFR part 120 and 49 CFR part 40 outside the territories of the U.S. Further, the FAA acknowledges commenters' concerns that some testing or procedural requirements in the regulations would be especially burdensome and costly to meet for a part 145 repair station located outside the territory of the U.S. (*e.g.,* use of HHS-certified laboratories). As discussed above, this final rule expands waiver options to foreign governments on behalf of repair station operators within its territory. The waiver option is now also available to an individual foreign repair station, which may seek a waiver based on recognition of an existing testing program promulgated under the laws of the country as a compatible alternative that meets the key elements set out in the regulation. By obtaining a waiver based on recognition, a foreign repair station may meet the requirements of this final rule without applying 14 CFR part 120 and 49 CFR part 40 directly. It will allow them to present a program or other requirements that exist in their country's existing framework to the Administrator for recognition as the basis for the waiver, which will eliminate the need to meet requirements in 14 CFR part 120 and 49 CFR part 40 that have been identified by commenters as exceedingly difficult to implement.

The FAA also acknowledges the commenters' concerns regarding the secondary cost impacts to the industry. Given that FAA has provided more flexibility for the waiver options and there are exemption options in the final rule, there will be several avenues for foreign repair stations to comply with the rule and maintain current operations without consequential additional costs. The regulatory impact analysis has been updated to reflect the additional means of compliance included in the final rule.

J. Extending Testing to Part 121 Maintenance Personnel

In the NPRM, the FAA sought comments as to whether the testing requirements should be extended to foreign aircraft mechanics working directly for part 121 carriers. Commenters were asked to submit data that would allow the FAA to quantify the benefits and costs of expanding drug and alcohol testing requirements to these mechanics.

Three commenters who supported the NPRM, including the Teamsters, stated that if the goal of the NPRM is to eliminate an aviation maintenance ecosystem in which the ability to uphold a single level of safety is predicated on the geographic location of the maintenance facility, all aircraft mechanics working on part 121 aircraft should be captured in the rulemaking. The Teamsters and TWU warned that without this coverage, the rule may create an incentive for part 121 carriers to move maintenance from a contracted part 145 repair station to an in-house facility where the airline can evade the regulatory costs associated with compliance. NDASA pointed out the statute does not explicitly restrict the FAA from including part 121 mechanics, and adding them to the rule is consistent with the statute. Airbus Commercial Aircraft commented that the absence of drug and alcohol testing requirements for employees of part 121 certificate holders located outside the United States may create an inconsistent treatment of maintenance personnel working at the same location and result in a weakness of a safety net.

Opposing commenters also commented on the proposal to include part 121 air carrier employees who perform aircraft maintenance, with A4A stating FAA's safety data does not support an expansion of the rule and the FAA has not adequately considered or analyzed the costs and benefits of an expansion. A4A and GAMA noted that the FAA should stay within the confines of the statutory mandate and not expand the scope without support from safety data. By contrast, ARSA argued that the FAA must explain why it is not extending testing requirements to similarly-situated part 121 employees in foreign countries, and the failure to apply drug and alcohol testing in a uniform and consistent manner belies the FAA's requirement to ensure aviation safety. A4E also commented on the differing treatment of employees from part 145 repair stations and part 121 operators, noting that the proposed regulations would not ''level the playing field'' for these entities because maintenance personnel employed by part 121 operators outside the U.S. are not subject to drug and alcohol testing while employees serving the same function for part 145 repair stations outside the U.S. would be under these regulations. The Lufthansa Group similarly commented that the proposal would not create a ''level playing field.''

In response to the NPRM, the FAA received no safety data justifying the

benefits and costs of expanding drug and alcohol testing requirements to foreign aircraft mechanics working directly for part 121 carriers. Because the statutory mandate specifically required all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft outside the U.S. to be subject to an alcohol and controlled substances testing program determined acceptable by the Administrator and consistent with the applicable laws of the country in which the repair station is located, and because the FAA lacks safety data to support an expansion of the rule, this final rule does not expand the scope of the rule to foreign aircraft mechanics working directly for part 121 carriers.

The FAA acknowledges comments noting that the final rule may result in differing treatment of part 145 and part 121 employees outside of the U.S. but finds the commenters' arguments unpersuasive. As discussed above, the FAA does not have an articulable safety basis to extend drug and alcohol testing to part 121 employees outside the U.S., and Congress has not instructed the FAA to do so. By contrast, Congress has mandated the FAA to require such testing of part 145 employees. Accordingly, though commenters suggested that the FAA must extend testing requirements to part 121 employees to ensure equivalent treatment to part 145 employees, the FAA concludes that the suggestion is misplaced because the record before the agency does not support an extension.

K. EU and International Civil Aviation Organization (ICAO)

A4E commented a European Union-wide solution is preferable for waivers and exemptions. The Lufthansa Group commented they would like to see a waiver option established at the European Union level, since they have multiple repair stations located outside of Germany but within the European Union, each with its own defined labor law rules, regulations, and restrictions. This process should allow for bilateral discussions and negotiations and conclude with a formal agreement that expressly recognizes the laws of each country and appropriately addresses any inconsistencies at the country level, rather than the individual repair station level. They stated this will allow the foreign government to provide a single and unified position on its laws versus the potential for individual repair stations to inconsistently interpret the laws of their country, which may result in contrary waivers or exemptions for repair stations in the same country, and thereby reducing the number of waiver and exemption requests the FAA and DOT would receive. Commenters stated this cooperation between governments would foster safety, the respective rights of individuals, consistency, and operational, administrative, and implementation efficiency regarding maintenance operations and employees.

Although some commenters suggested an EU-wide option for submitting waivers and exemptions, the FAA has not implemented this option. An EU-wide option is also not available for the second pathway of compliance with this rule where a foreign government, on behalf of its repair station operators within its territory, or an individual repair station may request a waiver based on recognition of an existing testing program promulgated under the laws of the country as a compatible alternative. Because each country has its own individual laws and requirements that may impact its drug and alcohol testing programs, each foreign government is in the best position to know the laws imposed on their own citizens.

Eighteen commenters including A4E, IATA, CAA, BDLI, GE Aerospace, Airbus Commercial Aircraft, and GAMA stated that the appropriate vehicle through which to require drug and alcohol testing at foreign repair stations would be a new ICAO initiative. These commenters believed consultation and coordination with ICAO member States is the only way to ensure the FAA meets the statutory requirement to be ''consistent with the applicable laws of the country where the repair station is located.'' Specifically, the DG MOVE called upon the FAA to bring this issue to the attention of ICAO to examine the safety case and pursue a global solution through the establishment of international standards, where warranted.[36] GAMA stated ICAO should issue Standards and Recommended Practices (SARPs) governing such testing to ensure a single Member State does not violate the national sovereignty of others and that consultation and coordination through ICAO and with ICAO member states is the only method that can ensure the final rule is consistent with the applicable laws of a foreign repair station's country. Commenters believed an ICAO initiative would set a common baseline for safety with adequate flexibility for varying customs and laws, which governments could follow when issuing their own regulations. A4A noted the single request the FAA made for countries to support ICAO action to establish alcohol and controlled substance testing requirements may have been compliant with the mandate, but it is not enough to reflect the FAA's support for international standardization. A4A mentioned other countries have continued their push for ICAO action on minimum standards for drug and alcohol testing, and they encouraged the FAA to continue efforts at ICAO for an international standard in lieu of the proposed rule. IATA also commented that an agreement through ICAO would preclude extraterritorial mandates and violations of local laws while providing the framework for a global solution and that without such a solution, they are concerned that the FAA's current extraterritorial proposal would invite retaliation by other governments.

A supporting commenter, APA, stated that approaches to working with other countries and ICAO to develop joint guidelines have yielded little progress in implementing or enforcing drug and alcohol standards internationally. They stated that despite jointly developed ICAO standards in Annex 1 to the Convention on International Civil Aviation and various countries' aviation regulations prohibiting the use of drugs and alcohol, many countries either do not mandate compliance testing for aviation personnel or they exclude maintenance personnel from testing.

The FAA has supported the development of international drug and alcohol testing standards since the Congressional mandate was first introduced and believes that they could help deter and detect drug use and alcohol misuse that could compromise aviation safety. In addition to promulgating a proposed rulemaking, the FAA Modernization and Reform Act of 2012 sought to direct the Secretaries of State and Transportation, acting jointly, to request the governments of foreign countries that are members of ICAO to establish an international standard for alcohol and controlled substances testing of persons who perform safety-sensitive work on commercial air carriers. The Department of State sent a cable to all embassies on October 19, 2012. Although the response was minimal, most of the member states that did respond supported these efforts. However, as explained in the NPRM, ICAO standards still do not require ICAO Member States to establish (or direct industry to

[36] The FAA notes that, after the comment period closed, the FAA engaged in a meeting with DG MOVE and EASA for the Bilateral Oversight Board for the U.S.-EU Safety Agreement on June 11, 2024. At that time, DG MOVE reiterated its concerns with the proposal and specifically suggested collaboration with the FAA at ICAO to pursue a more global approach on the issue. The FAA uploaded a Memorandum to the docket summarizing the interaction as of July 8, 2024.

establish) testing programs to deter or detect drug use and alcohol misuse by aviation personnel in the performance of safety-sensitive functions. Although the ICAO standards set forth in Annex 1 and many countries' aviation regulations prohibit the use of drugs and alcohol by certain aviation personnel when use may threaten aviation safety, many countries either do not require testing of aviation personnel to verify compliance or do not extend testing to safety-sensitive maintenance personnel. Should ICAO adopt drug and alcohol program standards in the future, it is FAA policy to conform to ICAO SARPs to the maximum extent practicable in keeping with U.S. obligations under the Convention on International Civil Aviation.

The FAA reconsidered and expanded its waiver options for the final rule, whereby a foreign government, on behalf of its repair station operators, or an individual foreign repair station, may seek a waiver based on the laws of the country. This alternative to meeting the requirements of 14 CFR part 120 and 49 CFR part 40 will allow a repair station to operate a testing program based on the laws of its country and current testing regimes or consequences that exist. The FAA publishes this final rule in accordance with the Act's statutory mandate in an area within which there are no applicable ICAO SARPs. The FAA expects this waiver to more easily allow for the application of a testing program that is in alignment with any future SARPs.

L. Scope of Safety-Sensitive Functions

Commenters requested clarification on what qualifies as an aircraft maintenance function. A4E argued the FAA failed to define the term in its regulation and has left it up to the Flight Standards Service of the FAA to determine, causing significant confusion. Airbus stated they believe only maintenance personnel performing tasks that could result in a failure, malfunction, or defect endangering the safe operation of the aircraft if not performed properly or if improper parts or materials are used should be considered for testing, and GAMA specified the testing should only apply to those performing ''heavy maintenance'' to meet the language of the statute. Some foreign repair station commenters expressed confusion about whether their repair station performs aircraft maintenance functions or stated they do not perform it, such as Excel Aerospace in Singapore and Honeywell in Brazil. There was also confusion among commenters about the status of manufacturing and whether it is considered maintenance, and IHI Corporation requested examples of target roles of safety-sensitive maintenance functions. Airfoil Services in Malaysia sought clarification if they need a program because they perform maintenance on components that are delivered to a customer to be assembled later. Another foreign repair station, Tamagawa Aero Systems in Japan, asked which employee category they fall under in § 120.105. ARSA also commented the FAA is targeting maintenance providers, and no other type of safety-sensitive function regulated under 14 CFR part 120 is required to test at ''any tier'' in the contract.

Further, Airbus proposed limiting this rule to individuals with the authority to designate (identification/callout), implement, and/or perform inspection of Required Inspection Items (RII), which they state would make the requirements match the direction given by Congress. Airbus stated that when the FAA defined persons involved in aircraft maintenance (broad sense) with safety-sensitive functions, it implied that all personnel involved in maintenance carry out aviation safety-related aircraft maintenance. It stated the FAA should exclude maintenance personnel that are involved in aircraft maintenance that does not put aviation safety at risk.

Airbus also commented with respect to maintenance and preventive maintenance duties, stating it is unclear whether the qualifying term 'aircraft' is to refer to aircraft maintenance in the broad sense (*e.g.,* aircraft maintenance vs. airport maintenance) or maintenance performed on aircraft (*i.e.,* on-wing), excluding maintenance on articles and components not installed on an aircraft (*i.e.,* off-wing). Airbus proposed a regulatory text change to 14 CFR 120.105(a) and 120.215(a) to read: ''Duties related to required inspections of maintenance and alteration items of aircraft'' instead of ''aircraft maintenance and preventive maintenance duties.'' They stated this wording would allow the Administrator to use any appropriate designation, free from ambiguity, to target a precise population of personnel involved in maintenance and alteration of aircraft.

The FAA disagrees that further explanation or definition of aircraft maintenance functions are necessary in the rule. The drug and alcohol testing regulations intentionally do not differentiate between heavy or safety critical and non-safety critical forms of maintenance. When determining whether a safety-sensitive employee performs aircraft maintenance duties, whether under a foreign or domestic repair station, impacted parties should consider the duties of their employees as they relate to the FAA's definition of maintenance under 14 CFR 1.1 and 14 CFR part 43. According to 14 CFR 1.1, maintenance includes inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. For example, a manufacturer that performs a test on a component to determine the extent of repairs necessary or the serviceability of a component is performing maintenance since the testing performed on the aircraft component may be part of an inspection requirement in the technical data being used in the testing process. The Flight Standards Service aviation maintenance inspectors are the experts in determining what functions meet the definitions of aircraft maintenance. The Flight Standards Service and the Drug Abatement Division in the FAA's Office of Aerospace Medicine developed guidance about the most common functions that are considered aircraft maintenance, which is provided in FAA Advisory Circular (AC) 120–126.[37] If an impacted party needs further guidance after reviewing the definitions and examples provided in FAA's AC 120–126, they should consult with the Flight Standards Service or their FAA Principal Maintenance Inspector (PMI). The FAA has made no regulatory changes to the definition of aircraft or maintenance based on these comments.

M. Miscellaneous Comments

Out of Scope Comments. One individual commenter stated the FAA should require testing and maintain the same standards as in the U.S., even if the laws of a country do not allow it. The FAA can override neither, first, the sovereignty of another country, nor, second, the Congressional direction in 49 U.S.C. 44733 to promulgate a rule requiring part 145 repair station employees be subject to an alcohol and controlled substances testing program that is consistent with the applicable laws of the country in which the repair station is located. One individual commenter stated the FAA should include truck drivers from Mexico and Canada when crossing the border to the U.S. The comments are outside the scope of the Congressional mandate and this rulemaking.

Excluded Countries. A4E commented on their concern for the creation of a

[37] FAA Advisory Circular 120–126, Guidelines to Establish, Implement, and Maintain a DOT/FAA Drug and Alcohol Testing Program (Jul. 10, 2024). *https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/1042452*

level playing field since the NPRM will not apply to countries without a requirement for a part 145 repair station certificate (*e.g.,* Canada). Like part 121 employees outside the U.S. discussed in section IV.J, the FAA does not have an articulable safety basis to extend drug and alcohol testing generally to employees performing safety-sensitive maintenance functions for an organization that does not hold a part 145 repair station certificate located outside the territory of the U.S., and Congress has not instructed the FAA to do so. Instead, Congress has mandated the FAA to require such testing of part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft. Accordingly, though the commenter suggested that the FAA must extend testing requirements to non-certificated maintenance organizations that perform safety-sensitive maintenance, the FAA concludes that the suggestion is misplaced because the record before the agency does not support an extension.

Oral Fluid Testing. NDASA stated they believe the use of oral fluid testing will make implementation of part 40 easier outside of the U.S. once there are oral fluid laboratories available. Specifically, it may reduce the number of petitions for waiver or exemption from the rule since other countries may deem oral fluid testing less intrusive from a privacy perspective than urine testing. They stated oral fluid testing is preferred in Australia, New Zealand, and other countries. The FAA acknowledges this comment and agrees that the use of oral fluid drug testing may make drug testing collection more accessible to foreign repair stations.

Guidance. Airbus commented that it was unclear who is the principal maintenance inspector for European Approved Maintenance Organizations (AMOs) that obtained their U.S. part 145 repair station certificate under the U.S.-EU BASA MAG. Airbus recommended that guidance material should be developed, reviewed, and tested with several affected AMOs before the entry into force of the final rule of this rulemaking proposal to ensure a smooth implementation. The FAA acknowledges this comment and will work with AMOs to the extent necessary to comply with the final rule.

Random Testing Rates. MRO Holdings expressed concern as to how the FAA will calculate the random pool testing rate. The rate is determined by reviewing the positive rate for the ''entire industry,'' but these rates will differ from country to country, which could cause countries with low rates to have burdensome and costly tests that are not aligned with usage rates of that country. Foreign repair stations that are required to meet the requirements of 14 CFR part 120 and 49 CFR part 40 may be required to submit an annual report of testing statistics in accordance with 14 CFR 120.119(a) and 120.219(b)(1), which allows the FAA to determine the positive rate for the entire industry. Because the Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry, testing data submitted by foreign repair stations will be included in this calculation. Foreign repair stations with a waiver under section 120.10 are exempt from the obligations under subparts E and F of 14 CFR part 120; therefore, data will not be provided or considered in a random testing rate.

Addition of Unannounced Inspections. One individual commented that the FAA should mandate all foreign Aviation Maintenance Inspection and Repair on all U.S.-registered commercial aircraft, components, and articles to also mirror the U.S. by allowing unannounced inspections by the FAA and requiring duty time limitations. The commenter further stated that the NPRM's current provisions, though promising, may benefit from a more granular examination to enhance the effectiveness of the proposed rule and address potential loopholes that might arise in practical implementation. The final rule implements a statutory mandate to require acceptable drug and alcohol testing of certain part 145 repair station employees outside the U.S. consistent with local laws where the repair station is located. Because this mandate does not include any changes to inspections or duty time limitations, this comment is outside the scope of this rulemaking.

More Inclusive Mandate. An individual commented that they advocate for a more inclusive mandate to mirror current U.S. regulations to ensure that the final regulations are not only effective but also resilient to the evolving landscape of Commercial Aviation Maintenance, Inspection and Repair to include both aircraft, components, and articles of all parts 121 and 145 entities outside of the U.S. This comment is outside the scope of the Congressional mandate and this rulemaking. This final rule implements a mandate to require acceptable drug and alcohol testing of certain part 145 repair station employees responsible for safety-sensitive maintenance on part 121 air carrier aircraft outside the U.S. consistent with local laws where the repair station is located. Congress did not direct the FAA to comprehensively regulate entities or activities outside the U.S.

Withdrawal of the Rule. ARSA commented that the FAA may comply with the statutory mandate by withdrawing the NPRM. The FAA disagrees. Section 302 of the 2024 Act directed the FAA to issue a final rule that carries out the requirements of section 2112(b) of the 2016 Act within 18 months of the 2024 Act's enactment. Conversely, the 2016 Act required a rulemaking to be ''finalized.'' Accordingly, Congress has directed the FAA to publish these regulations, and withdrawal would not be considered publication of a final rule.

Definitions. An anonymous commenter requested the FAA define the term ''part 121 air carrier aircraft,'' specifically asking whether it means the aircraft needs to be on the part 121 Operations Specifications, and if it needs to be in revenue service. The commenter believed a definition is necessary, and that the explanation in the preamble to the rule was insufficient. The FAA disagrees that a definition of ''part 121 air carrier aircraft'' is needed in this rule. Historically, testing applies to maintenance personnel who repair aircraft or aircraft parts listed on the part 121 air carrier's Operations Specifications (D085).

V. Severability

As discussed earlier in the final rule, Congress directed the FAA to issue a final rule that requires all part 145 repair station employees responsible for safety-sensitive maintenance functions on part 121 air carrier aircraft outside the U.S. to be subject to an alcohol and controlled substances testing program determined acceptable by the Administrator and consistent with the applicable laws of the country in which the repair station is located. 49 U.S.C. 44733(d)(2).[38] Consistent with that mandate, the FAA is requiring foreign repair stations to comply with 14 CFR part 120 and 49 CFR part 40, subject to any waivers and exemptions. However, the FAA recognizes that these distinct pathways for compliance and certain provisions of this final rule will affect foreign repair stations and various stakeholders in different ways. Therefore, the FAA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other.

[38] Section 302 of the 2024 Act directed the FAA to issue a final rule implementing Congress's mandate in 49 U.S.C. 44733(d)(2).

In the event a court were to invalidate one or more of this final rule's provisions, the remaining provisions should stand, thus allowing the FAA to continue to carry out Congress's statutory commands and objectives concerning the safety of maintenance on part 121 air carrier aircraft conducted by certificated repair stations located outside the U.S.

VI. Regulatory Notices and Analyses

Federal agencies consider the impacts of regulatory actions under a variety of executive orders and other requirements. First, Executive Order 12866, Executive Order 13563, and Executive Order 14094 (''Modernizing Regulatory Review'') direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is $183 million using the most current (2023) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: will result in benefits that justify costs; is not a significant regulatory action under section 3(f)(1) of Executive Order 12866 but raises legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in section 3(f) of Executive Order 12866, as amended by Executive Order 14094; will create unnecessary obstacles to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are summarized below.

A. Summary of the Regulatory Impact Analysis

Total Benefits and Costs of This Rule

In response to Congressional direction, the FAA requires certificated part 145 repair stations located outside the U.S. and its territories whose employees perform safety-sensitive maintenance functions on part 121 air carrier aircraft to ensure those employees are subject to a controlled substances and alcohol testing program consistent with the applicable laws of the country in which the repair station is located. This rule requires a part 145 repair station located outside the territory of the U.S. to cover its employees performing safety-sensitive maintenance functions on part 121 air carrier aircraft under its own testing program that meets the requirements of 49 CFR part 40 and 14 CFR part 120. However, 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), it 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 the waiver authority established in this rule. In addition, foreign governments, on behalf of their repair station operators within their territories, may request a waiver based on recognition of existing requirements promulgated under the laws of the country as a compatible alternative that contains the minimum key elements of 14 CFR part 120. However, if a foreign government chooses not to avail itself of this option, § 120.10 will provide that an individual foreign repair station may make its own request for waiver based on recognition of an existing testing program that meets the key elements identified in the regulation.

Although the FAA was unable to identify any quantifiable benefits to this rulemaking at this time, this rulemaking applies the FAA's existing primary tool for detecting and deterring substance abuse by safety-sensitive aviation employees, especially illegal drug use, throughout the international aviation community to enhance aviation safety.

Since the rule provides multiple opportunities for waiver, the FAA estimated low- and high-cost cases. The low-cost case assumes all countries with certificated repair stations will submit a request for waiver based on recognition. The total undiscounted cost is $129,012 with the cost to industry at $48,129 and $80,882 to the FAA. At a seven percent discount rate, the total cost is $116,690, $64,540 annualized, and $123,459 at a three percent discount rate, $64,521 annualized. The benefits remain the same in the low-case as in the high-case. In the high-cost case the total cost, at seven percent present value, of this rule equals the foreign repair station cost of $62 million, plus FAA cost of $6.5 million for a total of $68.5 million ($69.8 million at three percent present value) over five years. The FAA has placed the Regulatory Impact Analysis for this rule in the docket for this rulemaking.

Who is potentially affected by this rule?

- Part 145 Certificated Foreign Repair Stations outside the U.S. that perform safety-sensitive maintenance functions on part 121 aircraft.
- The FAA Office of Aerospace Medicine.

Costs of This Rule

Part 145 certificated foreign repair stations outside the U.S. and the FAA will incur the cost of this final rule. In the low-cost case the FAA assumes all countries with certificated repair stations will submit a request for a waiver based on recognition. The cost to the industry consists of reporting and submission costs for the request. The cost to the FAA consists of review of the request.

TABLE 2—PRICE LEVEL ADJUSTED COST FOR THE WAIVER BASED ON RECOGNITION

[2022 U.S. dollars]

Year	Industry	FAA	Total	Discounted costs (7%)	Discounted Costs (3%)
1	$24,468	$41,063	$65,532	$61,244	$63,623
2	23,661	39,819	63,480	55,446	59,836

TABLE 2—PRICE LEVEL ADJUSTED COST FOR THE WAIVER BASED ON RECOGNITION—Continued

[2022 U.S. dollars]

Year	Industry	FAA	Total	Discounted costs (7%)	Discounted Costs (3%)
Total	48,129	80,882	129,012	116,690	123,459
Annualized	.....	.....	.....	64,540	64,521

In the high-cost case, the estimated cost of the final rule to part 145 certificated foreign repair stations are the costs to implement a drug and alcohol testing program that adheres to U.S. domestic testing standards. Cost to foreign repair stations will consist of developing a drug and alcohol testing program, training, testing safety sensitive maintenance employees for drugs and alcohol, and documentation. Total cost to foreign repair stations over five years, at seven percent present value, sums to $49.6 million with an annualized cost of $12.1 million. At three percent present value, estimated total cost to foreign repair stations is $55.6 million with an annualized cost of $12.1 million.

TABLE 3—COST TO PART 145 FOREIGN REPAIR STATIONS OVER 5 YEARS

[$Millions] *

Year	Program and training development & maintenance	Training	Testing (drug and alcohol)	Annual reports	Total cost (7% PV)	Total cost (3% PV)
1	$0.4	$7.6	$0.0	$2.1	$9.4	$9.8
2	0.3	1.0	4.5	6.8	11.0	11.9
3	0.3	1.0	4.5	6.8	10.4	11.6
4	0.3	1.0	4.6	6.9	9.7	11.3
5	0.3	1.0	4.6	6.9	9.1	11.0
Total	1.6	11.7	18.2	29.4	49.6	55.6

*These numbers are subject to rounding error.

Cost to the FAA would include inspections and the necessary documentation associated with monitoring these repair stations. Total cost to FAA over five years, at seven percent present value, sums to $6.5 million with an annualized cost of $1.6 million. At three percent present value, total cost is $7.4 million with an annualized cost of $1.6 million.

Benefits of This Rule

Congress mandated that the FAA propose a rule that establishes drug and alcohol testing programs for foreign repair stations. Any benefits of the regulations would result from potential reductions in safety risks, any improvements in safety in detecting and deterring drug use and/or alcohol misuse, and reductions in lost worker productivity. The FAA concludes that two specific sets of benefits may accrue from this rulemaking:

- The prevention of potential injuries and fatalities and property losses resulting from accidents attributed to controlled substances use/alcohol misuse or neglect or error on the part of individuals whose judgement or motor skills may be impaired by the presence of alcohol or drugs; and
- The potential reduction in absenteeism, lost worker productivity, and other cost to employers, as well as improved general safety in the workplace, by the deterrence of drug use and/or alcohol misuse.

However, the FAA lacks sufficient data to estimate a baseline level of safety risk associated with a drug and alcohol testing program at part 145 certificated foreign repair stations that perform safety-sensitive maintenance on part 121 aircraft. Additionally, it is difficult to estimate (and the FAA does not have data on) the impact of the final rule in detecting and deterring drug use and/or alcohol misuse. To estimate safety and productivity benefits that would result from the proposed rule, the FAA would need estimates of the following:

- Baseline risks attributable to drug use and/or alcohol misuse;
- Effectiveness of the rule; and
- Value of the reduction in risk of affected outcomes.

The FAA sought comments on this issue and did not receive any data. The FAA also requested that commenters submit data that would allow it to quantify the safety and productivity benefits of extending the proposed rule to foreign aircraft mechanics employed directly by part 121 certificate holders and did not receive any data.

Baseline Risks Attributable to Drug Use and/or Alcohol Misuse

The FAA does not have data to estimate a baseline level of safety risk associated with safety-sensitive maintenance personnel drug use and/or alcohol misuse. The FAA acknowledges it is aware of no accidents or incidents related to safety-sensitive maintenance personnel using drugs or misusing alcohol. The FAA may use accidents or incidents related to part 121 aircraft that list maintenance as either a cause or factor in the accident report as a proxy to assess the decreased risk of injuries, fatalities, and property losses. However, it is difficult to attribute an accident or incident that occurs months after the maintenance was completed to poor maintenance work related to drug use and/or alcohol misuse.

Effectiveness of the Rule

The FAA would also need data on the effect of the rule on maintenance workers' drug use and/or alcohol misuse and the resulting effect on job performance. For example, drug and alcohol programs may serve as a

deterrent, resulting in less drug use and/or alcohol misuse by employees and higher productivity. However, it would be difficult to analyze the direct causal effect of less drug use and/or alcohol misuse to improved productivity. The FAA would need to retrieve extensive data, such as employees' health levels, employees' sleep patterns, changes to operating procedures, levels of education and training, and staffing levels, amongst other factors, to isolate the direct effect of a decrease in drug use or alcohol misuse on productivity levels. Additionally, even if this data were available, the analysis would be extensive and there would be academic questions regarding whether the causal effect was properly measured.

Additionally, as mentioned above, there are no accidents or incidents directly related to drug use and/or alcohol misuse to estimate the effect of the rule on injuries, fatalities, or property loss. Therefore, there is a lack of information to establish a baseline.

Value of Risk Reduction

The safety risks from drug use and/or alcohol misuse are increased risk of injuries and fatalities in the event of an accident or incident. The FAA values the reductions in such risks using the value of statistical life (VSL) for fatalities and fractions of the VSL based on the Maximum Abbreviated Injury Scale (MAIS) for injuries. The Department of Transportation guidance on valuing reductions in fatalities and injuries [39] could be used to monetize and quantify estimates of the potential safety benefits associated with this rulemaking.

Alternatives Considered

Alternative 1—the Status Quo—The status quo represents a situation in which the FAA would not propose to require part 145 foreign repair stations to test their safety-sensitive maintenance personnel for drugs and alcohol. This alternative is counter to Congressional direction and, therefore, rejected.

Alternative 2—The FAA would work through ICAO to create an international standard for drug and alcohol testing of maintenance personnel at repair stations. While the FAA is willing to work with ICAO, 49 U.S.C. 44733(d)(2) requires the FAA to expeditiously proceed with this rulemaking. In other words, Congress directed the FAA to establish a program acceptable to the Administrator; working through ICAO to create an international standard may not expeditiously meet this intention given the time, resources, and scope of the adoption of an international standard. This alternative may not meet Congressional direction due to the multitude of Member State equities considered in the implementation of an ICAO standard.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980, (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule to aid the public in commenting on the potential impacts to small entities. The FAA considered the public comments in developing the final rule and this Final Regulatory Flexibility Analysis (FRFA). A FRFA must contain the following:

(1) A statement of the need for, and objectives of, the rule;

(2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

(4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

1. A Statement of the Need for, and Objectives of, the Rule

This rule requires certificated part 145 repair stations located outside the territory of the United States (U.S.) to ensure that employees who perform aircraft maintenance on part 121 air carrier aircraft are subject to a drug and alcohol testing program. A part 145 repair station located outside the territory of the U.S. will cover its employees performing maintenance functions on part 121 air carrier aircraft under its own testing program meeting the requirements of 49 CFR part 40 and 14 CFR part 120. 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, they may apply for a waiver in accordance with waiver authority established in this rule.

In addition, foreign governments may request a waiver, on behalf of their repair station operators within their territories, based on recognition of existing requirements promulgated under the laws of the country as a compatible alternative that contains the minimum key elements of 14 CFR part 120. However, if a foreign government chooses not to avail itself of this option, § 120.10 provides that an individual foreign repair station may request its own waiver based on recognition of an existing testing program that meets the key elements identified in the regulation.

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.), specifically 49 U.S.C. 106 and 49 U.S.C. 45102. This final rule is further promulgated under section 308 of the FAA Modernization and Reform Act of 2012 (49 U.S.C. 44733); section 2112 of the FAA Extension, Safety, and Security Act of 2016 (the 2016 Act), which directed publication of a notice of

[39] DOT Departmental Guidance on Valuation of a Statistical Life. Economic Analyses. Office of the Secretary of Transportation. *https://www.transportation.gov/office-policy/transportation-policy/revised-departmental-guidance-on-valuation-of-a-statistical-life-in-economic-analysis.*

proposed rulemaking in accordance with 49 U.S.C. 44733; and section 302 of the FAA Reauthorization Act of 2024, which directed the issuance of a final rule carrying out the requirements of section 2112 of the 2016 Act.

2. Significant Issues Raised in Public Comments in Response to the Initial Regulatory Flexibility Analysis

The FAA received a comment summarized and acknowledged above concerning impacts to small entities. In response to commenters concerns, in this final rule, the FAA allows foreign governments, on behalf of certificated repair stations within their territories, and individual foreign repair stations subject to the rule, to obtain a waiver based on recognition of a compatible alternative that contains minimum key elements in lieu of compliance with certain components of the Drug and Alcohol Testing Program.

3. A Response to SBA Comments

The FAA did not receive comments from the Chief Counsel for Advocacy of the SBA in response to the Initial Regulatory Flexibility Analysis provided in the proposed rule.

4. Small Entities To Which the Rule Will Apply

This rule will impact part 145 repair stations located outside the territory of the U.S. that perform safety-sensitive maintenance functions on part 121 air carrier aircraft. The Regulatory Flexibility Act defines a small business as ''a business entity organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor.'' [40] While the regulatory flexibility determination does not require small foreign entities to be considered, foreign repair stations may be using U.S. components or labor, especially if they are working on U.S.-manufactured aircraft; therefore, the FAA assumes the RFA applies.

The SBA established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).[41] These size standards generally define small businesses based on the number of employees or annual receipts. Table 4 shows the SBA size standard, based on the NAICS code, applicable to repair stations, as it encompasses air transport support activities to include aircraft maintenance and repair services.

TABLE 4—SMALL BUSINESS SIZE STANDARDS: AIRCRAFT MAINTENANCE AND REPAIR SERVICES

NAICS code	Description	Size standard
488190	Other Support Activities for Air Transportation	$40.0 million.

Source: SBA.
NAICS = North American Industrial Classification System.
SBA = Small Business Administration.

Although the FAA was able to identify a size standard for repair stations to be considered small, the FAA lacks financial data to determine if foreign repair stations meet the applicable size standard. Instead, the FAA provides an analysis estimating the total cost to small entities based on available data for domestic repair stations. A 2011 antidrug and alcohol misuse prevention rule for domestic repair stations analyzed the effect on domestic repair stations that were small entities and subcontractors those entities used. That rule based the regulatory flexibility determination analysis on a Transportation Security Administration (TSA) study that used Dun & Bradstreet data to estimate the share of domestic repair stations that would be considered small entities.[42] The findings show that 93.28% of domestic repair stations would be classified as small entities. Extrapolating this estimate to the 977 foreign repair stations used in the analysis of this rulemaking results in 912 foreign repair stations that could be considered small entities.[43]

5. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Based on the total nominal cost of the rule to repair stations, $60.9 million, the cost per repair station is $62,331.[44] Multiplying the cost per repair station by the estimated 912 repair stations that are small entities results in a total cost to small entities of $56.8 million over five years. Table 5 shows the estimated annualized compliance costs by category.

TABLE 5—AVERAGE COST OF COMPLIANCE AND SMALL ENTITIES

Category	Number of small entities	Average annualized cost per repair station
Program and Training Development & Maintenance Cost	912	$322.52
Training	912	1,942.83
Testing Cost	912	3,027.79
Paperwork	912	4,897.96

1. Based on a baseline of existing practices and using a 7% discount rate.

[40] 13 CFR 121.105(a)(1). The Regulatory Flexibility Act defines a ''small business'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. 5 U.S.C. 601(3). Section 121.105 of 13 CFR contains the Small Business Administration's implementing regulations clarifying the definition of ''small business concern.''

[41] Small Business Administration (SBA). 2019. Table of Size Standards. Effective August 12, 2019. *https://data.sba.gov/dataset/small-business-size-standards/resource/d89a5f17-ab8e-4698-9031-dfeb34d0a773.*

[42] Final Rule, Supplemental Regulatory Flexibility Determination, Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities: Supplemental Regulatory Flexibility Determination, 76 FR 12559 (Mar. 8, 2011).

[43] The calculation is as follows: 977*.9328 = 911.31. This estimate is rounded up to 912.

[44] $60,896,928/977 = $762,330.53.

The final rule also allows foreign governments, on behalf of certificated repair stations within their territories, and individual foreign repair stations subject to the rule, to obtain a waiver based on recognition of a compatible alternative that contains minimum key elements in lieu of compliance with certain components of the Drug and Alcohol Testing Program. Entities that choose this means of compliance will incur $1,325 in one-time costs.

6. Significant Alternatives Considered

Alternative 1—the Status Quo—The status quo represents a situation in which the FAA would not require part 145 foreign repair stations to test their safety-sensitive maintenance personnel for drugs and alcohol. This alternative is counter to Congressional direction and, therefore, rejected.

Alternative 2—The FAA would work through ICAO to create an international standard for drug and alcohol testing of maintenance personnel at repair stations. While the FAA is willing to work with ICAO, 49 U.S.C. 44733(d)(2) requires the FAA to expeditiously proceed with this rulemaking. In other words, Congress directed the FAA to establish a program acceptable to the Administrator; working through ICAO to create an international standard may not expeditiously meet this intention given the time, resources, and scope of the adoption of an international standard.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the U.S. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the U.S., so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rulemaking is congressionally mandated. The FAA assessed the potential effect of this rule and determined that it ensures the safety of the American public. Several commenters including organizations representing the interests of foreign governments, the commercial aviation industry, aviation workers, and foreign repair stations voiced their opposition to an FAA drug and alcohol testing standard for foreign repair stations. As discussed in this preamble, these commenters cited failure to recognize each nation's sovereignty. They also noted that ICAO would be the more appropriate vehicle to set worldwide standards. As a result, this rulemaking could create an obstacle or retaliation to foreign commerce.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $183.0 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following amendments to the existing information collection requirements previously approved under OMB Control Number 2120–0535. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these information collection amendments to OMB for its review.

Summary: Under §§ 120.1, 120.123 and 120.227, this rule extends the drug and alcohol testing regulations beyond the territory of the U.S. certificated part 145 repair stations located outside the territory of the United States to implement a drug and alcohol testing program in accordance with 14 CFR part 120 and 49 CFR part 40 to cover their employees who perform safety-sensitive maintenance functions on part 121 air carrier aircraft. Each repair station would be required to obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification. In addition, each repair station located outside the territory of the U.S. would be required to provide drug and alcohol testing program management information system (MIS) data.

In addition, the final rule establishes a waiver process for foreign governments, on behalf of certificated repair stations within their territories, and individual foreign repair stations subject to the rule to obtain a waiver based on recognition of a country or foreign repair station's existing requirements or testing program(s) promulgated under the laws of the country as a compatible alternative that contains minimum elements of 14 CFR part 120. Affected foreign repair stations that receive a waiver based on recognition by the Administrator will be relieved from comprehensive compliance with subparts E and F of 14 CFR part 120 (in turn, providing relief from 49 CFR part 40) and will not need to seek further waivers or exemptions from 14 CFR part 120 or 49 CFR part 40.

Use: The information will be used by the part 145 repair station located outside of the territory of the U.S. to certify implementation and maintenance of a drug and alcohol testing program. The FAA's Drug Abatement Compliance and Enforcement Inspectors will use this information to identify those foreign repair stations with an active program for inspection scheduling. Inspections are used to verify compliance with the drug and alcohol testing regulations and requirements. In addition, the Drug Abatement Division will use the annual MIS data reported to calculate the annual random drug and alcohol testing rates in the aviation industry.

Under the expanded waiver option, *i.e.,* a waiver based on recognition, the information will be used by foreign governments, on behalf of their repair stations within their territories, or foreign repair stations if their regulating country does not avail themselves of this option, to demonstrate the foreign government or the part 145 repair stations located outside of the territory of the U.S. existing requirements promulgated under the laws of the country as a compatible alternative that contains the minimum key elements of 14 CFR part 120.

Respondents (including number of): There are currently 977 part 145 certificated repair stations located in 65 countries.

Frequency: Part 145 repair stations located outside the territory of the U.S. will provide information for program certification only once; however, these repair stations will also incur annual

program maintenance: *e.g.,* updates to the programs per new guidance; the random pool list; and the overall testing process. The aggregate annual testing data would be provided electronically through the Department of Transportation's Drug and Alcohol Management Information System.

For a waiver based on recognition, foreign governments, or part 145 repair stations located outside the territory of the U.S. if their regulating country does not avail themselves of this option, will provide information for the Administrator's approval only once.

Annual Burden Estimate:

1. BURDEN FOR PROGRAM CERTIFICATION AND ANNUAL PROGRAM MAINTENANCE

Documentation	Number of repair stations	Hours per repair station	Hourly wage	Total cost
Antidrug and Alcohol Misuse Prevention Program Operations Specification	977	16.2 [45]	$29.43 [46]	$465,800

2. BURDEN FOR ANNUAL TEST DATA

Documentation	Total records [47]	Time per record (hours)	Hourly wage	Total cost	Average yearly cost [48]
Training records	544,176	0.25	[49] $33.57	$2,756,696	$551,339
Records related to the alcohol and drug collection process, test results, refusal to test, employee dispute records, SAP reports, follow-up tests	262,384	5.0	34.47	26,584,052	5,316,810
Total	806,560	N/A	N/A	29,340,748	5,868,150

To calculate the number of drug and alcohol training records, the FAA took the 2021 data showing 147,194 mechanics and 29,439 supervisors and accounted for a 0.49 percent growth rate over five years. Accounting for these rates results in an initial first year total of 148,637 mechanics and 29,728 supervisors. This is a total of 178,365 employees. In the first year all mechanics and supervisors will take anti-drug and alcohol training. These are two separate trainings. This requirement will result in 178,365 records for anti-drug training and 178,365 for alcohol training. In addition, supervisors will have to take an additional supervisor reasonable cause/reasonable suspicion determinations training for drugs and alcohol. This requirement will add another 59,456 records since they are two separate trainings as well.[50] Therefore, in the first year, there will be a total of 416,186 records.[51]

For year two and beyond, for drug records, the total records reflect the increase in new mechanics and supervisors which will be required to take the drug training. Using the growth rate this results in 727 mechanics and 145 supervisors for a total of 872 records. The 145 new supervisors will also have to take the reasonable cause/reasonable suspicion determinations for drugs training. In addition, there is recurrent reasonable cause/reasonable suspicion determinations for drugs training that all supervisors will have to take every 12 to 18 months. In year two, this results in 29,728 supervisors taking the recurring trainings. Thus, the records for drug training in year two is 30,745.[52] In addition, new mechanics and supervisors will be required to take alcohol training and supervisors will have to take the reasonable cause/reasonable suspicion determinations for alcohol training. This adds another 1,017 records. There is no recurrent alcohol training for supervisors. Therefore, in year two the total records are 31,762.[53]

The same calculation for year two is repeated for years three through five. There are 31,919 records in year three, 32,075 in year four, and 32,234 in year five. This results in a total of 544,176 total training records over the five years.[54]

To calculate the number of records related to alcohol and drug collection, the FAA sums the number of pre-employment drug tests, random drug and alcohol tests, and post-accident, reasonable cause, return to duty, and follow-up drug and alcohol tests per year beginning in year two. First, for drug testing, every new employee performing maintenance will be required to take a pre-employment drug test but not an alcohol test. Second, the FAA estimates 25 percent of current employees performing maintenance will be randomly drug tested per year. Third, there will be post-accident, reasonable cause, return to duty, or follow-up testing. The FAA estimates 1.70 percent of employees tested in a given year will be tested again under this category. The total drug tests over the five years is 187,202.[55]

For alcohol testing, no pre-employment alcohol testing is required. The other two categories of alcohol testing will be the same as for drug testing. However, the FAA estimates random drug testing will occur at a rate of 10 percent of current employees and 4.10 percent for post-accident,

[45] Based on the previous PRA, the FAA assumes 16 hours in the first year to establish the testing program and one hour to register with the FAA's Drug Abatement Division. Therefore, 17 hours are required for the first year. For each year after, the recurring time to update and maintain the testing list will be 16 hours. The average over five years results in the 16.2 hours per year.

[46] Office and Administrative Support Workers (SOC 43–9199), May 2022; Mean Hourly Wage $20.75 *http://www.bls.gov/oes/2022/May/oes439199.htm.* The total wage includes BLS compensation data. For 2020, BLS has wages at 70.5 percent total compensation while benefits are 29.5 percent. Employer Costs for Employee Compensation—December 2022. *https://www.bls.gov/news.release/archives/ecec_03172023.htm.*

[47] Estimated number of records from 2018 to 2022.

[48] Average yearly cost is calculated by dividing total cost by five years.

[49] Information and Records Clerks (SOC 43–4000), May 2022; Mean Hourly Wage $23.67 *https://www.bls.gov/oes/2022/may/naics3_481000.htm#43-4000.* The total wage includes BLS compensation data. For 2022, BLS has wages at 70.5 percent total compensation while benefits are 29.5 percent. Employer Costs for Employee Compensation—December 2022. *https://www.bls.gov/news.release/archives/ecec_03172023.htm.*

[50] 29,728*2 = 59,4560.0

[51] 178,365 + 178,365 + 59,456 = 416,186.

[52] 872 + 145 + 29.728 = 30,745.

[53] 30,745 + 1,017 = 31,762

[54] 416,186 + 31,762 + 31,919 + 32,075 + 32,234 = 544,176

[55] This is broken down by category as 3,516 pre-employment drug tests, 180,558 random drug tests, 3,128 post-accident, reasonable cause, return to duty, and follow-up tests.

reasonable cause, return to duty, and follow-up tests. The total alcohol tests over the five years is 75,182.[56] Taking the sum of drug and alcohol tests results in 262,384 records related to alcohol and drug collection.

WAIVER BASED ON RECOGNITION

Documentation	Total submissions [57]	Time per submission [58]	Hourly wage [59]	Total cost
Request for a Waiver Based on Recognition	65	20	$66.25	$86,124

The FAA assumes that every foreign government that regulates part 145 repair stations located outside the territory of the U.S. will submit a request for a waiver based on recognition. There are 65 countries that have part 145 repair stations within their territories so there will be 65 submissions. Each submission will require 20 hours at an hourly wage of $66.25. Thus, the total cost for all 65 of the submissions is $86,124. This will be one time cost.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f for regulations and involves no extraordinary circumstances.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order (E.O.) 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, will not have federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a ''significant energy action'' under the executive order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609 and has determined that this action could create differences in international regulatory requirements. The FAA acknowledges that a foreign government may ask the FAA to revisit certain international agreements, as discussed in section IV.I, to accommodate this action.

VIII. Additional Information

A. Electronic Access and Filing

A copy of the NPRM, all comments received, this final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this final rule 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 *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov.* A copy may also be found on the FAA's Regulations and Policies website at *https://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 final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official or the person listed under the **FOR FURTHER INFORMATION CONTACT**

[56] This is broken down by category as 72,223 random drug tests and 2,959 post-accident, reasonable cause, return to duty, and follow-up tests.

[57] Each foreign government that regulates part 145 repair stations will provide one submission.

[58] The total hours per submission is 20 hours and is disaggregated between a government program analyst that will do 15 hours of the work and a government manager that will do 5 hours of work.

[59] The hourly wage is the weighted average between the wages of the government program analyst and the government manager. Since the government program analyst will do 15 hours of the total 20 hours of work their wage, $59.93, is multiplied by 0.75 (15/20 = 0.75). The government manager does the other 5 hours of work (5/20 = 0.25) and thus their wage, $86.41, is multiplied by 0.25. (($59.93*0.75) + ($86.41*0.25) = $66.25).

FAA Technical Pay Band, K Band with Washington DC locality; effective Jan. 2022, minimum salary $131,917. The total loaded salary of $179,737 is divided by 2,080 hours to get the $86.41 hourly wage. *https://web.archive.org/web/20220402230925/https://www.faa.gov/sites/faa.gov/files/2022-02/core_salary_with_conversion.xlsx.*

FAA Technical Pay Band, I Band with Washington DC locality; effective Jan. 2022, minimum salary $90,877. The total loaded salary of $123,820 is divided by 2,080 hours to get the $59.93 hourly wage. *https://web.archive.org/web/20220402230925/https://www.faa.gov/sites/faa.gov/files/2022-02/core_salary_with_conversion.xlsx.*

heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 120

Alcoholism, Air carriers, Alcohol abuse, Alcohol testing, Aviation safety, Drug abuse, Drug testing, Operators, Reporting and recordkeeping requirements, Safety, Safety-sensitive, Transportation.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 120—DRUG AND ALCOHOL TESTING PROGRAM

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101–40103, 40113, 40120, 41706, 41721, 44106, 44701, 44702, 44703, 44709, 44710, 44711, 44733, 45101–45105, 46105, 46306.

■ 2. Revise and republish § 120.1 to read as follows:

§ 120.1 Applicability.

This part applies to the following persons:

(a) All air carriers and operators certificated under part 119 of this chapter authorized to conduct operations under part 121 or part 135 of this chapter, all air traffic control facilities not operated by the FAA or by or under contract to the U.S. military; and all operators as defined in 14 CFR 91.147.

(b) All individuals who perform, either directly or by contract, a safety-sensitive function listed in subpart E or subpart F of this part.

(c) All part 145 certificate holders located in the territory of the United States who perform safety-sensitive functions and elect to implement a drug and alcohol testing program under this part.

(d) Beginning December 20, 2027, all part 145 certificate holders outside the territory of the United States who perform safety-sensitive maintenance functions on part 121 air carrier aircraft, except that section 120.5 and subparts E and F of this part do not apply to part 145 certificate holders outside the territory of the United States who perform safety-sensitive maintenance functions on part 121 air carrier aircraft that have obtained recognition pursuant to § 120.10.

(e) All contractors who elect to implement a drug and alcohol testing program under this part.

■ 3. Effective December 20, 2027, amend § 120.1 by revising paragraph (d) to read as follows:

§ 120.1 Applicability.

* * * * *

(d) All part 145 certificate holders outside the territory of the United States who perform safety-sensitive maintenance functions on part 121 air carrier aircraft, except that section 120.5 and subparts E and F of this part do not apply to part 145 certificate holders outside the territory of the United States who perform safety-sensitive maintenance functions on part 121 air carrier aircraft that have obtained recognition pursuant to § 120.10.

■ 4. Revise § 120.5 to read as follows:

§ 120.5 Procedures.

Each employer having a drug and alcohol testing program under this part must ensure that all drug and alcohol testing conducted pursuant to this part complies with the procedures set forth in 49 CFR part 40 and any exemptions issued to that employer by the Department of Transportation in accordance with 49 CFR 40.7.

■ 5. Add § 120.9 to read as follows:

§ 120.9 Waivers for Part 145 certificate holders outside the territory of the United States.

(a) A part 145 certificate holder whose employees perform safety-sensitive maintenance functions on part 121 air carrier aircraft outside the territory of the United States may request a waiver from the Administrator from any requirements under 14 CFR part 120, subpart E or F, if specific requirements of subpart E or F are inconsistent with the laws of the country where the repair station is located.

(b) Each waiver request must include, at a minimum, the following elements:

(1) Information about the organization, including the name and mailing address and, if desired, other contact information such as a fax number, telephone number, or email address;

(2) The specific section or sections of this part from which the organization seeks a waiver;

(3) The reasons why granting the waiver would not adversely affect the prevention of accidents and injuries resulting from the use of prohibited drugs and/or the misuse of alcohol by employees;

(4) A copy of the law that is inconsistent with the provision(s) of this part from which a waiver is sought;

(5) An explanation of how the law is inconsistent with the provision(s) of this part from which a waiver is sought; and

(6) A description of the alternative means that will be used to achieve the objectives of the provision that is the subject of the waiver or, if applicable, a justification of why it would be impossible to achieve the objectives of the provision in any way.

(c) Each request for a waiver must be submitted to the Federal Aviation Administration, Office of Aerospace Medicine, in a form and manner acceptable to the Administrator.

(d) Each request for a waiver must be submitted at least 90 days before the organization needs it to take effect.

■ 6. Add § 120.10 to read as follows:

§ 120.10 Waiver based on recognition of a foreign government's existing requirements or an existing testing program of a Part 145 certificate holder outside the territory of the United States.

(a) *General.* A foreign government on behalf of its part 145 certificate holders, or a part 145 certificate holder whose employees perform safety-sensitive maintenance functions on part 121 air carrier aircraft outside the territory of the United States (herein referred to as a foreign repair station), may request a waiver from the Administrator from the requirements of this part in recognition of the foreign government's existing requirements, or the foreign repair station's existing testing program developed consistent with the laws of its home country, as a compatible alternative to the requirements of this part.

(b) *Compatibility.* A request for recognition must demonstrate that the foreign government's existing requirements, or the foreign repair station's existing testing program, contain the following key elements of this part:

(1) A testing protocol or established consequences used to detect or deter, or both, employees who are responsible for safety-sensitive maintenance on part 121 air carrier aircraft from misusing alcohol and using drugs.

(2) An education or training program or materials that explain the impact and consequences of misusing alcohol and using drugs while performing safety-sensitive maintenance.

(3) The method used to rehabilitate and ensure that safety-sensitive maintenance employees who return to work on part 121 air carrier aircraft after a drug or alcohol test violation or consequence no longer misuse alcohol or use drugs.

(c) *Requests for recognition of a foreign government's existing requirements or a foreign repair station's existing testing program.* (1) Each request for recognition of a foreign

government's existing requirements or a foreign repair station's existing testing program must contain:

(i) The name, title, address, email address, and telephone number of the primary person to be contacted regarding review of the request;

(ii) Documentation of the foreign government's existing requirements or the foreign repair station's existing testing program demonstrating that the requirements or program contain the key elements of this part described in paragraph (b) of this section, including, if appropriate, copies of applicable laws, regulations, and other requirements carrying the force of law; and

(iii) Appropriate data, records, or supporting explanation for the Administrator to consider in determining whether the foreign government's existing requirements or the foreign repair station's existing testing program contain the key elements of this part; and

(iv) A statement that the requestor intends to notify the Administrator within 30 days of any change to the key elements described in paragraph (b) of this section that form the basis of the Administrator's recognition pursuant to paragraph (d)(2) of this section and provide a description of those changes in such notification.

(2) Each request for recognition must be submitted to the Federal Aviation Administration, Office of Aerospace Medicine, in a form and manner acceptable to the Administrator.

(3) Each request for recognition must be submitted at least 90 days before the organization needs it to take effect.

(d) *Disposition.* (1) The Administrator will evaluate a request for recognition and may request additional information, documentation, or explanation, as needed, to supplement the request.

(2) A foreign government's existing requirements or a foreign repair station's existing testing program will be recognized as a compatible alternative to the requirements of this part if the Administrator determines that:

(i) The request complies with the requirements of paragraph (c) of this section; and

(ii) The foreign government's existing requirements, or the foreign repair station's existing testing program, contain the key elements of this part as described in paragraph (b) of this section.

(e) *Effect and validity.* (1) Recognition by the Administrator issued to a foreign government pursuant to paragraph (d)(2) of this section will apply to all foreign repair stations within the territory of the foreign government and subject to the recognized compatible alternative to the requirements of this part.

(2) Recognition by the Administrator will remain valid so long as the foreign government's existing requirements, or the foreign repair station's existing testing program, retains the key elements of this part that formed the basis of the Administrator's recognition pursuant to paragraph (d)(2) of this section.

(f) *Compliance.* (1) Each foreign repair station subject to existing requirements or an existing testing program recognized as a compatible alternative to the requirements of this part pursuant to paragraph (d)(2) of this section must maintain an FAA-issued letter on file documenting the recognition.

(2) The FAA may modify, suspend, or withdraw recognition by the Administrator when:

(i) A recognition is no longer valid;

(ii) A foreign repair station fails to implement a testing program consistent with a recognition issued pursuant to paragraph (d)(2) of this section; or

(iii) A foreign government or foreign repair station has not provided the notification described in paragraph (c)(1)(iv) of this section.

■ 7. Amend § 120.117 by:

■ a. Revising paragraph (a)(5);

■ b. Redesignating paragraph (a)(6) as paragraph (a)(7);

■ c. Adding new paragraph (a)(6); and

■ d. Revising paragraph (c).

The revisions and additions read as follows:

§ 120.117 Implementing a drug testing program.

(a) * * *

If you are . . .	You must . . .
* * * * * * *	
(5) A part 145 certificate holder located inside the territory of the United States who has your own drug testing program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue SW, Washington, DC 20591, if you opt to conduct your own drug testing program.
(6) A part 145 certificate holder located outside the territory of the United States whose employees perform safety-sensitive maintenance functions on part 121 air carrier aircraft, unless you have received recognition pursuant to § 120.10.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector.
* * * * * * *	

* * * * *

(c) If you are an individual or company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under part 121 and/or part 135 of this chapter, an operation as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. military, use the following chart to determine what you must do if you opt to have your own drug testing program.

If you are . . .	You must . . .
(1) A part 145 certificate holder located inside the territory of the United States and opt to conduct your own program under this part.	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specification or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue SW, Washington, DC 20591,

If you are . . .	You must . . .
	(ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under part 121 or 135, or operator as defined in § 91.147 of this chapter, and (iii) Meet the requirements of this subpart as if you were an employer.
(2) A part 145 certificate holder located outside the territory of the United States whose employees perform maintenance functions on part 121 air carrier aircraft, unless you have received recognition pursuant to § 120.10.	(i) Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector. (ii) Implement a drug testing program acceptable to the Administrator no later than December 20, 2027, and (iii) Meet the requirements of this subpart as if you were an employer in accordance with any applicable waivers or exemptions.
(3) A contractor who opts to implement a testing program under this part.	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue SW, Washington, DC 20591, (ii) Implement an FAA drug testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under part 121 or 135, or operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military, and (iii) Meet the requirements of this subpart as if you were an employer.

* * * * *

■ 8. Effective December 20, 2027, amend § 120.117 by revising paragraph (c)(2) to read as follows:

§ 120.117 Implementing a drug testing program.

* * * * *

(c) * * *

If you are . . .	You must . . .
* * * * * * *	
(2) A part 145 certificate holder located outside the territory of the United States whose employees perform maintenance functions on part 121 air carrier aircraft, unless you have received recognition pursuant to § 120.10.	(i) Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector. (ii) Implement a drug testing program acceptable to the Administrator, and (iii) Meet the requirements of this subpart as if you were an employer in accordance with any applicable waivers or exemptions.
* * * * * * *	

■ 9. Amend § 120.123 by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 120.123 Drug testing outside the territory of the United States.

(a) Except for those testing processes applicable to persons testing pursuant to § 120.1(d), 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) Except for those persons testing pursuant to § 120.1(d), 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.

* * * * *

(b) Except for those persons testing pursuant to § 120.1(d), 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.

■ 10. Amend § 120.225 by:

■ a. Revising paragraph (a)(5);

■ b. Redesignating paragraph (a)(6) as paragraph (a)(7);

■ c. Adding new paragraph (a)(6); and

■ d. Revising paragraphs (c), (d) introductory text and (d)(1).

The revisions and addition read as follows:

§ 120.225 How to implement an alcohol testing program.

(a) * * *

If you are . . .	You must . . .
* * * * * * *	
(5) A part 145 certificate holder located inside the territory of the United States who has your own alcohol testing program.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector or register with the FAA Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue SW, Washington, DC 20591, if you opt to conduct your own alcohol testing program.

If you are . . .	You must . . .
(6) A part 145 certificate holder located outside the territory of the United States who performs safety-sensitive maintenance functions on part 121 air carrier aircraft, unless you have received recognition pursuant to § 120.10.	Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector.
* * * * * * *	

* * * * *

(c) If you are an individual or company that intends to provide safety-sensitive services by contract to a part 119 certificate holder with authority to operate under part 121 and/or part 135 of this chapter, or an operator as defined in § 91.147 of this chapter, use the following chart to determine what you must do if you opt to have your own drug testing program.

If you are . . .	You must . . .
(1) A part 145 certificate holder located inside the territory of the United States and opt to conduct your own program under this part.	(i) Have an Antidrug and Alcohol Misuse Prevention Program Operations Specifications or register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue SW, Washington, DC 20591, (ii) Implement an FAA alcohol testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with the authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and (iii) Meet the requirements of this subpart as if you were an employer.
(2) A part 145 certificate holder located outside of the territory of the United States who performs maintenance functions on part 121 air carrier aircraft, unless you have received recognition pursuant to § 120.10.	(i) Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector. (ii) Implement an alcohol testing program acceptable to the Administrator no later than December 20, 2027, and (iii) Meet the requirements of this subpart as if you were an employer in accordance with any applicable waivers or exemptions.
(3) A contractor	(i) Register with the FAA, Office of Aerospace Medicine, Drug Abatement Division (AAM–800), 800 Independence Avenue SW, Washington, DC 20591, (ii) Implement an FAA alcohol testing program no later than the date you start performing safety-sensitive functions for a part 119 certificate holder with authority to operate under parts 121 and/or 135, or operator as defined in § 91.147 of this chapter, and (iii) Meet the requirements of this subpart as if you were an employer.

(d) To obtain an antidrug and alcohol misuse prevention program operations specification:

(1) You must contact your FAA Principal Operations Inspector or Principal Maintenance Inspector. Provide him/her with the following information:

* * * * *

■ 11. Effective December 20, 2027, amend § 120.225 by revising paragraph (c)(2) to read as follows:

§ 120.225 How to implement an alcohol testing program.

* * * * *

(c) * * *

If you are . . .	You must . . .
* * * * * * *	
(2) A part 145 certificate holder located outside of the territory of the United States who performs maintenance functions on part 121 air carrier aircraft, unless you have received recognition pursuant to § 120.10.	(i) Obtain an Antidrug and Alcohol Misuse Prevention Program Operations Specification by contacting your Principal Maintenance Inspector. (ii) Implement an alcohol testing program acceptable to the Administrator, and (iii) Meet the requirements of this subpart as if you were an employer in accordance with any applicable waivers or exemptions.
* * * * * * *	

■ 12. Amend § 120.227 by revising paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 120.227 Employees located outside the U.S.

(a) Except for those persons testing pursuant to § 120.1(d), no covered employee shall be tested for alcohol misuse while located outside the territory of the United States.

(1) Except for those persons testing pursuant to § 120.1(d), each covered 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.

* * * * *

(b) Except for those persons testing pursuant to § 120.1(d), the provisions of this subpart shall not apply to any person who performs a safety-sensitive function by contract for an employer outside the territory of the United States.

Issued under authority provided by 49 U.S.C. 106(f), 45102, 44731(d), in Washington, DC.

Michael Gordon Whitaker,

Administrator.

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