



[4910-13]

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 61, 67, 91, and 120**

**Settlement Policy for Commercial Pilots In Drug and Alcohol Testing Cases**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notification of enforcement policy.

**SUMMARY:** The FAA is adopting a procedure for prompt settlement agreements between the FAA and commercial pilots who have: received a verified positive result for a Department of Transportation (DOT)-required drug test; received a DOT-required alcohol test result of 0.04 or above alcohol concentration; refused to submit to a DOT-required drug or alcohol test in violation of FAA regulations; or acted or attempted to act as a crewmember of an aircraft in commercial operations in violation of specified FAA regulations under this policy that proscribe the use, being under the influence or affects, or while have proscribed levels of alcohol or drugs. The settlement agreement procedures in this notification are generally available to pilots who, but for the disqualifying DOT drug or alcohol test result, refusal to submit to a DOT test, or violation of the specified alcohol- and drug-related FAA regulations prohibiting acting or attempting to act as a crewmember, would be qualified for a pilot certificate and who are first-time violators of these drug or alcohol provisions.

**DATES:** The enforcement policy is effective October 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** James Barry, Manager, Policy/Audit/Evaluation, Enforcement Division, AGC-300, Federal Aviation Administration.

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## **SUPPLEMENTARY INFORMATION:**

### **BACKGROUND**

A commercial pilot who receives a disqualifying DOT drug or alcohol test result, refuses a DOT drug or alcohol test, or violates § 91.17(a)(1) through (4) is subject to the revocation of airman certificates issued under 14 CFR part 61 and airman medical certificates issued under 14 CFR part 67. Under 14 CFR 61.13(d)(2), unless otherwise authorized by the Administrator, a person whose pilot, flight instructor, or ground instructor certificate has been revoked may not apply for any certificate, rating, or authorization for one year after the date the FAA issued the revocation order.

Many commercial pilots who receive a disqualifying DOT drug or alcohol test result, refuse a DOT drug or alcohol test, or violate § 91.17(a)(1) through (4) promptly enter into the Human Intervention Motivation Study (“HIMS”) program, which is a substance recovery program for such pilots.<sup>1</sup> If a pilot undergoes evaluation, and successfully completes appropriate treatment and remains under comprehensive continuing care in accordance with the HIMS program, the pilot may become eligible for an authorization for special issuance of an airman medical certificate (“special issuance”) well before the completion of an FAA investigation into

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<sup>1</sup> A pilot is not permitted to fly commercially after receiving a disqualifying DOT drug or alcohol test result or having refused a DOT drug or alcohol test unless the pilot completes a substance abuse professional (SAP) evaluation and undergoes referral for education/treatment and return-to-duty testing. Further, under 14 CFR 61.53(a), a pilot is prohibited from acting as a required flight crew member when he or she knows, or has reason to know, that he or she has a disqualifying medical condition, which includes substance abuse or dependence under 14 CFR part 67.

the matter, initiation of legal enforcement action based on the investigation, and passage of the time period specified in 14 CFR 61.13(d)(2).<sup>2</sup>

Indeed, following the discovery of a disqualifying DOT drug or alcohol test result, DOT drug or alcohol test refusal, or violation of 14 CFR 91.17(a)(1) through (4), the FAA Office of Aerospace Medicine, Drug Abatement Division (“AAM-800”) investigates the apparent violation, which includes interviews and the collection of evidence, and develops an enforcement investigative report (“EIR”), which is subject to AAM-800 management review. If AAM-800 management deems the EIR sufficient, it transmits the EIR to the Office of the Chief Counsel’s Enforcement Division (“AGC-300”) for additional review to ensure, among other things, evidentiary sufficiency and compliance with law and policy. Consistent with FAA policy, AGC-300 issues an order revoking pilot and airman medical certificates only after the thorough review necessary to ensure that legal enforcement action involving the revocation of certificates is appropriate. Although the FAA normally issues emergency orders of revocation for the types of drug or alcohol violations discussed in this notification, the FAA necessarily takes the appropriate amount of time to ensure that the issuance of the order is reasonable and supportable. Accordingly, the period of time between the FAA’s discovery of a drug or alcohol violation and the issuance of a certificate action can be lengthy. Further, the additional time period specified in 14 CFR 61.13(d)(2) adds up to a year after the issuance of an order of revocation. During the period from the discovery of the violation to the expiration of the time period specified in 14 CFR 61.13(d)(2), a pilot may have long successfully completed recovery steps necessary to be found qualified for a special issuance.

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<sup>2</sup> Under 14 CFR 67.401(a), the Federal Air Surgeon has discretion to grant a special issuance to a pilot who does not meet the requirement for unrestricted airman medical certification if the airman can show to the satisfaction of the Federal Air Surgeon that the duties authorized by the class of medical certificate applied for can be performed without endangering public safety during the period in which the authorization would be in force.

## **POLICY STATEMENT**

Under the new prompt settlement procedure, the FAA will send notification to commercial pilots who receive a disqualifying DOT drug or alcohol test result, refuse a DOT drug or alcohol test, or violate § 91.17(a)(1) through (4) in commercial operations. The notification will inform the pilot that he or she may contact AAM-800 within ten days of receipt of the notice to request consideration for a prompt settlement of the legal enforcement action. The FAA will send the notification soon after it discovers the violation.

If the pilot requests to be considered for the new settlement procedure, the FAA will determine whether the pilot is eligible for the process. The procedure is not available where there is a question about a pilot's qualification to hold a certificate other than that presented by the disqualifying DOT drug or alcohol test result, refusal to submit to a DOT test, or violation of § 91.17(a)(1) through (4), or where the pilot is not a first-time violator of these drug or alcohol testing provisions. If the FAA deems application of the prompt settlement procedure is appropriate, AGC-300 enforcement counsel will provide the pilot, or his or her legal representative, a formal agreement that sets forth the conditions for prompt settlement. The terms of the settlement agreement will normally include the following provisions.

- (1) The settlement agreement must be executed by the parties within ten days after the FAA transmits the agreement to the pilot.
- (2) The FAA will issue an emergency order revoking all certificates the pilot holds that were issued under 14 CFR parts 61 and 67 immediately upon receiving the fully executed settlement agreement.
- (3) The emergency order of revocation will: (i) require the immediate surrender of all certificates the pilot holds that were issued under 14 CFR parts 61 and 67 to

enforcement counsel; (ii) notify the pilot that the failure to immediately surrender these certificates could subject the pilot to further legal enforcement action, including a civil penalty; and (iii) inform the pilot that the FAA will not accept an application for a new certificate issued under 14 CFR part 61 for a period of a year from the date of the issuance of the emergency order of revocation.

- (4) The pilot will waive all appeal rights from the emergency order of revocation.
- (5) The parties will agree to bear their own costs and attorney fees, if any, in connection with the matter.
- (6) The pilot will agree to not initiate any litigation before any court, tribunal, or administrative entity concerning any costs or attorney fees, including applications under the Equal Access to Justice Act, incurred as a result of the above-referenced matter.
- (7) The pilot will agree to waive any and all causes of action against the FAA and its current and/or former officials and employees relating to the above-referenced matter.

This procedure is expected to allow pilots who have established qualifications to hold a new 14 CFR part 61 certificate, and have met the requirements under 14 CFR part 67 for a special issuance consistent with participation in the HIMS program, to more quickly assume commercial flight crewmember duties. Indeed, it should allow pilots to apply for a new pilot certificate closer in time to a determination that the pilot is eligible for a special issuance (following timely evaluation, treatment, and continuing comprehensive care in accordance with the HIMS program). Further, the added predictability of this process should allow pilots who have received a disqualifying DOT drug or alcohol test result, refused to submit to a DOT test, or

violated § 91.17(a)(1) through (4) to focus effort and energy on the treatment and recovery process, and allow both the pilot and FAA to better allocate limited resources.

Issued in Washington, DC on July 12, 2018.

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[FR Doc. 2018-15352 Filed: 7/18/2018 8:45 am; Publication Date: 7/19/2018]