

regulation. The regulations shall permit air carriers and foreign air carriers to conduct pre-employment testing of airmen, crew members, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of airmen, crewmembers, airport security screening personnel, and other air carrier employees responsible for safety-sensitive functions for the use of alcohol or a controlled substance in violation of law or a Government regulation.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—(1) The Administrator shall establish a program of preemployment, reasonable suspicion, random, and post-accident testing for the use of a controlled substance in violation of law or a United States Government regulation for employees of the Administration whose duties include responsibility for safety-sensitive functions and shall establish a program of reasonable suspicion, random, and post-accident testing for the use of alcohol in violation of law or a United States Government regulation for such employees. The Administrator may establish a program of preemployment testing for the use of alcohol for such employees.

(2) When the Administrator considers it appropriate in the interest of safety, the Administrator may prescribe regulations for conducting periodic recurring testing of employees of the Administration responsible for safety-sensitive functions for use of alcohol or a controlled substance in violation of law or a Government regulation.

(c) SANCTIONS.—In prescribing regulations under the programs required by this section, the Administrator shall require, as the Administrator considers appropriate, the suspension or revocation of any certificate issued to an individual referred to in this section, or the disqualification or dismissal of the individual, under this chapter when a test conducted and confirmed under this chapter indicates the individual has used alcohol or a controlled substance in violation of law or a Government regulation.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1221; Pub. L. 104-59, title III, §342(d), Nov. 28, 1995, 109 Stat. 609; Pub. L. 107-71, title I, §139(1), Nov. 19, 2001, 115 Stat. 640.)

#### HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
45102(a) .....	49 App.:1434(a)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §614(a); added Oct. 28, 1991, Pub. L. 102-143, §3(a), 105 Stat. 953.
45102(b) .....	49 App.:1434(a)(2).	
45102(c) .....	49 App.:1434(a)(3).	

In subsections (a)(2) and (b)(2), the word “also” is omitted as surplus.

#### AMENDMENTS

2001—Subsec. (a). Pub. L. 107-71 substituted “personnel” for “contract personnel” wherever appearing.

1995—Subsec. (a)(1). Pub. L. 104-59, §342(d)(1), added par. (1) and struck out former par. (1) which read as follows: “In the interest of aviation safety, the Administrator of the Federal Aviation Administration shall prescribe regulations not later than October 28, 1992, that establish a program requiring air carriers and foreign air carriers to conduct preemployment, reasonable suspicion, random, and post-accident testing of airmen, crewmembers, airport security screening contract personnel, and other air carrier employees responsible for safety-sensitive functions (as decided by the Administrator) for the use of alcohol or a controlled substance in violation of law or a United States Government regulation.”

Subsec. (b)(1). Pub. L. 104-59, §342(d)(2), added par. (1) and struck out former par. (1) which read as follows: “The Administrator shall establish a program of pre-employment, reasonable suspicion, random, and post-accident testing for the use of alcohol or a controlled substance in violation of law or a Government regulation for employees of the Administration whose duties include responsibility for safety-sensitive functions.”

#### RULEMAKING ON RANDOM TESTING FOR PROHIBITED DRUGS

Pub. L. 103-305, title V, §501, Aug. 23, 1994, 108 Stat. 1594, provided that: “Not later than 180 days after the date of the enactment of this Act [Aug. 23, 1994], the Secretary shall complete a rulemaking proceeding and issue a final decision on whether there should be a reduction in the annualized rate now required by the Secretary of random testing for prohibited drugs for personnel engaged in aviation activities.”

#### § 45103. Prohibited service

(a) USE OF ALCOHOL OR A CONTROLLED SUBSTANCE.—An individual may not use alcohol or a controlled substance after October 28, 1991, in violation of law or a United States Government regulation and serve as an airman, crewmember, airport security screening employee, air carrier employee responsible for safety-sensitive functions (as decided by the Administrator of the Federal Aviation Administration), or employee of the Administration with responsibility for safety-sensitive functions.

(b) REHABILITATION REQUIRED TO RESUME SERVICE.—Notwithstanding subsection (a) of this section, an individual found to have used alcohol or a controlled substance after October 28, 1991, in violation of law or a Government regulation may serve as an airman, crewmember, airport security screening employee, air carrier employee responsible for safety-sensitive functions (as decided by the Administrator), or employee of the Administration with responsibility for safety-sensitive functions only if the individual completes a rehabilitation program described in section 45105 of this title.

(c) PERFORMANCE OF PRIOR DUTIES PROHIBITED.—An individual who served as an airman, crewmember, airport security screening employee, air carrier employee responsible for safety-sensitive functions (as decided by the Administrator), or employee of the Administration with responsibility for safety-sensitive functions and who was found by the Administrator to have used alcohol or a controlled substance after October 28, 1991, in violation of law or a Government regulation may not carry out the duties related to air transportation that the individual carried out before the finding of the Administrator if the individual—

(1) used the alcohol or controlled substance when on duty;

- (2) began or completed a rehabilitation program described in section 45105 of this title before using the alcohol or controlled substance; or
- (3) refuses to begin or complete a rehabilitation program described in section 45105 of this title after a finding by the Administrator under this section.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1222; Pub. L. 107-71, title I, §139(2), Nov. 19, 2001, 115 Stat. 640.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
45103(a) .....	49 App.:1434(b)(1).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §614(b); added Oct. 28, 1991, Pub. L. 102-143, §3(a), 105 Stat. 954.
45103(b) .....	49 App.:1434(b)(2).	
45103(c) .....	49 App.:1434(b)(3).	

In subsection (b), the words “Notwithstanding subsection (a) of this section” are added for clarity.

AMENDMENTS

2001—Pub. L. 107-71 substituted “screening employee” for “screening contract employee” wherever appearing.

**§ 45104. Testing and laboratory requirements**

In carrying out section 45102 of this title, the Administrator of the Federal Aviation Administration shall develop requirements that—

- (1) promote, to the maximum extent practicable, individual privacy in the collection of specimens;
- (2) for laboratories and testing procedures for controlled substances, incorporate the Department of Health and Human Services scientific and technical guidelines dated April 11, 1988, and any amendments to those guidelines, including mandatory guidelines establishing—
  - (A) comprehensive standards for every aspect of laboratory controlled substances testing and laboratory procedures to be applied in carrying out this chapter, including standards requiring the use of the best available technology to ensure the complete reliability and accuracy of controlled substances tests and strict procedures governing the chain of custody of specimens collected for controlled substances testing;
  - (B) the minimum list of controlled substances for which individuals may be tested; and
  - (C) appropriate standards and procedures for periodic review of laboratories and criteria for certification and revocation of certification of laboratories to perform controlled substances testing in carrying out this chapter;
- (3) require that a laboratory involved in controlled substances testing under this chapter have the capability and facility, at the laboratory, of performing screening and confirmation tests;
- (4) provide that all tests indicating the use of alcohol or a controlled substance in violation of law or a United States Government regulation be confirmed by a scientifically recognized method of testing capable of providing quantitative information about alcohol or a controlled substance;

- (5) provide that each specimen be subdivided, secured, and labeled in the presence of the tested individual and that a part of the specimen be retained in a secure manner to prevent the possibility of tampering, so that if the individual’s confirmation test results are positive the individual has an opportunity to have the retained part tested by a 2d confirmation test done independently at another certified laboratory if the individual requests the 2d confirmation test not later than 3 days after being advised of the results of the first confirmation test;

- (6) ensure appropriate safeguards for testing to detect and quantify alcohol in breath and body fluid samples, including urine and blood, through the development of regulations that may be necessary and in consultation with the Secretary of Health and Human Services;

- (7) provide for the confidentiality of test results and medical information (except information about alcohol or a controlled substance) of employees, except that this clause does not prevent the use of test results for the orderly imposition of appropriate sanctions under this chapter; and

- (8) ensure that employees are selected for tests by nondiscriminatory and impartial methods, so that no employee is harassed by being treated differently from other employees in similar circumstances.

(Pub. L. 103-272, §1(e), July 5, 1994, 108 Stat. 1222.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
45104 .....	49 App.:1434(d).	Aug. 23, 1958, Pub. L. 85-726, 72 Stat. 731, §614(d); added Oct. 28, 1991, Pub. L. 102-143, §3(a), 105 Stat. 955.

In this section, the word “samples” is omitted as surplus.

In clause (2), before subclause (A), the word “subsequent” is omitted as surplus.

In clause (3), the words “of any individual” are omitted as surplus.

In clause (4), the words “by any individual” are omitted as surplus.

In clause (5), the word “tested” is substituted for “assayed” for consistency. The words “2d confirmation test” are substituted for “independent test” for clarity and consistency.

In clause (6), the word “Secretary” is substituted for “Department” for consistency in the revised title and with other titles of the United States Code.

**§ 45105. Rehabilitation**

(a) PROGRAM FOR EMPLOYEES OF AIR CARRIERS AND FOREIGN AIR CARRIERS.—The Administrator of the Federal Aviation Administration shall prescribe regulations establishing requirements for rehabilitation programs that at least provide for the identification and opportunity for treatment of employees of air carriers and foreign air carriers referred to in section 45102(a)(1) of this title who need assistance in resolving problems with the use of alcohol or a controlled substance in violation of law or a United States Government regulation. Each air carrier and foreign air carrier is encouraged to make such a program available to all its employees in addition to the