

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.

Editorial Notes

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 employees referred to in section 45102(a)(1). The Administrator shall decide on the circumstances under which employees shall be required to participate in a program. This subsection does not prevent an air carrier or foreign air carrier from establishing a program under this subsection in cooperation with another air carrier or foreign air carrier.

(b) PROGRAM FOR EMPLOYEES OF THE FEDERAL AVIATION ADMINISTRATION.—The Administrator shall establish and maintain a rehabilitation program that at least provides for the identification and opportunity for treatment of employees of the Administration whose duties include responsibility for safety-sensitive functions who need assistance in resolving problems with the use of alcohol or a controlled substance.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1223; Pub. L. 103–429, §6(58), Oct. 31, 1994, 108 Stat. 4385.)

HISTORICAL AND REVISION NOTES
PUB. L. 103–272

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
45105(a)	49 App.:1434(c)(1).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §614(c); added Oct. 28, 1991, Pub. L. 102–143, §3(a), 105 Stat. 954.
45105(b)	49 App.:1434(c)(2).	

In subsection (a), the words “of air carriers and foreign air carriers” are added for clarity.

PUB. L. 103–429

This amends 49:45105(a) to correct an error in the codification enacted by section 1 of the Act of July 5, 1994 (Public Law 103–272, 108 Stat. 1224).

Editorial Notes

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–429 substituted “section 45102(a)(1)” for “section 45102(a)(1)(A)” in second sentence.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–429 effective July 5, 1994, see section 9 of Pub. L. 103–429, set out as a note under section 321 of this title.

PRIORITIZING AND SUPPORTING THE HUMAN INTERVENTION MOTIVATION STUDY (HIMS) PROGRAM AND THE FLIGHT ATTENDANT DRUG AND ALCOHOL PROGRAM (FADAP)

Pub. L. 115–254, div. B, title V, §554(a), Oct. 5, 2018, 132 Stat. 3380, provided that: “The [Federal Aviation] Administration shall continue to prioritize and support the Human Intervention Motivation Study (HIMS) pro-

gram for flight crewmembers and the Flight Attendant Drug and Alcohol Program (FADAP) for flight attendants.”

HUMAN INTERVENTION MOTIVATION STUDY

Pub. L. 112–95, title VIII, §819, Feb. 14, 2012, 126 Stat. 127, provided that: “Not later than 180 days after the date of enactment of this Act [Feb. 14, 2012], the Administrator of the Federal Aviation Administration shall develop a Human Intervention Motivation Study program for cabin crew members employed by commercial air carriers in the United States.”

§ 45106. Relationship to other laws, regulations, standards, and orders

(a) EFFECT ON STATE AND LOCAL GOVERNMENT LAWS, REGULATIONS, STANDARDS, OR ORDERS.—A State or local government may not prescribe, issue, or continue in effect a law, regulation, standard, or order that is inconsistent with regulations prescribed under this chapter. However, a regulation prescribed under this chapter does not preempt a State criminal law that imposes sanctions for reckless conduct leading to loss of life, injury, or damage to property.

(b) INTERNATIONAL OBLIGATIONS AND FOREIGN LAWS.—(1) In prescribing regulations under this chapter, the Administrator of the Federal Aviation Administration—

(A) shall establish only requirements applicable to foreign air carriers that are consistent with international obligations of the United States; and

(B) shall consider applicable laws and regulations of foreign countries.

(2) The Secretaries of State and Transportation jointly shall request the governments of foreign countries that are members of the International Civil Aviation Organization to strengthen and enforce existing standards to prohibit crewmembers in international civil aviation from using alcohol or a controlled substance in violation of law or a United States Government regulation.

(c) OTHER REGULATIONS ALLOWED.—This section does not prevent the Administrator from continuing in effect, amending, or further supplementing a regulation prescribed before October 28, 1991, governing the use of alcohol or a controlled substance by airmen, crewmembers, airport security screening employees, air carrier employees responsible for safety-sensitive functions (as decided by the Administrator), or employees of the Administration with responsibility for safety-sensitive functions.

(Pub. L. 103–272, §1(e), July 5, 1994, 108 Stat. 1224; Pub. L. 107–71, title I, §139(3), 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>
45106(a)	49 App.:1434(e)(1).	Aug. 23, 1958, Pub. L. 85–726, 72 Stat. 731, §614(e); added Oct. 28, 1991, Pub. L. 102–143, §3(a), 105 Stat. 956.
45106(b)	49 App.:1434(e)(3).	
45106(c)	49 App.:1434(e)(2).	

In subsection (a), the word “prescribe” is substituted for “adopt” for consistency in the revised title and with other titles of the United States Code. The word “rule” is omitted as being synonymous with “regula-