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 .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. 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 of an aircraft in commercial operations in violation of specified FAA regulations, would be qualified for a pilot certificate. The settlement agreement procedures in this notification also may be available to pilots who, but for the disqualifying DOT drug or alcohol test result, violation of § 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 Medical 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.

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, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8198; james.barry@faa.gov.

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 pilot 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. 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 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).

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 Medical 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.

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 61.13(d)(2), unless otherwise authorized by the Administrator, a petition whose pilot, flight instructor, or ground instructor certificate has been revoked.

(3) The FAA will issue a decision providing the pilot with a final opportunity to demonstrate that he or she is qualified for the certificate and that the FAA should, consistent with law and policy, grant the certificate.
DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[DOCKET NO. USC-G–2018–0676]

Drawbridge Operation Regulation; Willamette River at Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Hawthorne Bridge across the Willamette River, mile 13.1, at Portland, OR. The deviation is necessary to accommodate a filming event for a movie. This deviation authorizes the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 6 p.m. on September 1, 2018, to 12:01 a.m. on September 2, 2018.

ADDRESSES: The docket for this deviation, USC–2018–0676 is available at http://www.regulations.gov. Type the docket number in the “SEARCH” box and click “SEARCH.” Click on the docket number in the Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email d13-pf-d13bridges@uscg.mil.

SUPPLEMENTARY INFORMATION: Multnomah County, the bridge owner, has requested a temporary deviation from the operating schedule for the Hawthorne Bridge across the Willamette River, mile 13.1, at Portland, OR. The requested deviation is to accommodate a filming event for a movie. To facilitate this event, the draw of the subject bridge will be allowed to remain in the closed-to-navigation position, and need not open to marine traffic from 6 p.m. on September 1, 2018, to 12:01 a.m. on September 2, 2018. The Hawthorne Bridge provides a vertical clearance of 49 feet in the closed-to-navigation position referenced to the vertical clearance above Columbia River Datum 0.0. The normal operating schedule is in 33 CFR 117.897(c)(3)(v). Waterway usage on this part of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. The Coast Guard requested objections to this deviation from local mariners via the Local Notice

Issued in Washington, DC, on July 12, 2018.

Naomi Tsuda,
Assistant Chief Counsel for Enforcement.

[FR Doc. 2018–15352 Filed 7–18–18; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[DOCKET NO. USC–2018–0521]

Safety Zone; Southern California Annual Firework Events for the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the San Diego, CA POPS Fireworks Display on the waters of San Diego Bay, CA on specific evenings from June 28, 2018 to September 2, 2018. This safety zone is necessary to provide for the safety of the participants, spectators, official vessels of the events, and general users of the waterway. Our regulation for the Southern California Annual Firework Events for the San Diego Captain of the Port Zone identifies the regulated area for the events. During the enforcement period, no spectators shall anchor, block, loiter in, or impede the transit of official patrol vessels in the regulated area without the approval of the Captain of the Port, or designated representative.

DATES: The regulations in 33 CFR 165.1123 will be enforced from 9:00