



Advisory Circular

Subject: Voluntary Disclosure Reporting
Program for Apparent Violations
of the Drug and Alcohol Testing
Regulations

Date: 12/20/17 **AC No:** 120-117
Initiated by: AAM-800 **Change:**

1 PURPOSE. Any employer or contractor regulated under Title 14 of the Code of Federal Regulations (14 CFR) part 120 may voluntarily disclose to the Federal Aviation Administration (FAA) violations of the drug and alcohol testing regulations under the voluntary disclosure reporting program (VDRP) described in this Advisory Circular (AC). This AC provides the information and guidance material an employer or contractor needs in order to voluntarily disclose an apparent violation of the drug and alcohol testing regulations listed in paragraph 3 of this AC.

2 AUDIENCE. This AC affects all employers and contractors as defined in paragraph 4 of this AC. This AC also provides guidance to FAA Drug Abatement Division (AAM-800) employees responsible for accepting and processing disclosures of an apparent violation of the drug and alcohol testing regulations.

3 SCOPE AND APPLICABILITY.

3.1 The VDRP discussed in this AC applies to violations of 14 CFR part 120, which covers the FAA's industry Drug and Alcohol Testing Program, and Title 49 CFR part 40, the Department of Transportation's Procedural Regulation, *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*.

3.2 Ordinarily, the FAA does not accept a voluntary disclosure if the violation is discovered during, or in anticipation of, an FAA investigation/inspection or in association with an accident or incident.

4 KEY TERMS.

4.1 Evidence. For the purpose of voluntary disclosure, evidence should generally be in the form of written documentation or reports that support an employer or contractor's analysis of the disclosed apparent violation. The evidence should also support the corrective action and the proposed comprehensive fix. Evidence may include, but is not limited to, checklists, policies, newsletters, standard operating procedures, records of training, manuals, training literature, and/or any other documents.

4.2 Comprehensive Fix. A comprehensive fix is an action or set of actions that the employer or contractor proposes in order to preclude recurrence of the apparent

violation that is voluntarily disclosed under this program. A schedule of the dates and events encompassed by the comprehensive fix must be established and included in written correspondence.

- 4.3 **Contractor.** A contractor is an individual or company that performs a safety-sensitive function by contract for an employer or another contractor. Contractor includes a part 145 repair station that has an FAA drug and alcohol testing program.
- 4.4 **Drug Abatement Employee.** The Drug Abatement employee refers to the designated employee of the Drug Abatement Division assigned to process and oversee the disclosure in accordance with FAA Order 9120.1C, *Drug and Alcohol Compliance and Enforcement Inspector Handbook*.
- 4.5 **Employer.** An employer is a part 119 certificate holder with authority to operate under parts 121 and/or 135; an operator as defined in § 91.147; or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military.

- 5 **ADDRESSING NON-COMPLIANCE.** We believe that incentives for an employer or contractor to identify and correct its own instances of noncompliance and to invest more resources in efforts to preclude their recurrence helps to promote aviation safety. A civil penalty has always been considered a means to promote compliance with federal regulations. FAA's policy of forgoing civil penalty actions when an employer or contractor detects a violation, promptly discloses the violation to the FAA, and takes prompt corrective action to ensure that the same or similar violations do not recur is designed to encourage compliance with the regulations, foster safe operating practices, and promote the development of self-audits. These policies are supported under the FAA's Order 8000.373, *FAA Compliance Philosophy*, which defines the FAA's goal to use the most effective means to return an employer or contractor to full compliance and to prevent recurrence. The FAA believes that the open sharing of reports of apparent violations by employers or contractors with the FAA encourages cooperation and communication optimal for solving problems and will enhance and promote aviation safety.

6 **VDRP POLICY.**

- 6.1 An employer's or contractor's submission must meet the following conditions in order to be covered under this VDRP:
 - 6.1.1 **The FAA Was Notified.** An employer or contractor must immediately notify the FAA of the apparent violation when it was discovered, usually within 24 hours, and before the FAA learns of the apparent violation by other means.
 - 6.1.2 **The Violation Was Inadvertent.** The apparent violation was the result of inattention and did not result from a purposeful choice.
 - 6.1.3 **The Violation Does Not Reflect a Lack of Qualification.** The apparent violation does not indicate a lack, or reasonable question of, an employer's or contractor's qualification to hold a certificate, letter of authorization, or program registration.
 - 6.1.4 **Immediate Action Satisfactory to the FAA Was Taken.** The employer or

contractor took immediate action upon discovery to terminate the conduct that resulted in the apparent violation.

6.1.5 Development of a Comprehensive Fix. The employer or contractor has developed or is developing a comprehensive fix and schedule of implementation satisfactory to the FAA. The comprehensive fix includes a follow-up self-audit to ensure that the action taken corrects the noncompliance. This self-audit is in addition to any audits the FAA conducts.

6.2 When an employer or contractor voluntarily discloses covered instances of noncompliance using the procedures outlined in paragraph 7 of this AC, the FAA will issue the employer or contractor written correspondence instead of initiating a civil penalty action. The written correspondence will conclude the voluntary disclosure; however, if at any time subsequent to acceptance of the disclosure, the FAA discovers that the employer or contractor failed to complete the comprehensive fix, the FAA may reopen the case and address the noncompliance with enforcement action.

6.3 If, at any time subsequent to acceptance of the disclosure, the FAA becomes aware that the disclosure did not meet the requirements for acceptance under the VDRP, the acceptance is withdrawn. In such a circumstance, the FAA may use the evidence gathered under the VDRP to proceed with enforcement action in accordance with the current edition of FAA Order 2150.3.

7 VDRP PROCEDURES

7.1 Step 1. Notification by the Employer or Contractor of an Apparent Violation.

7.1.1 An employer or contractor should submit its initial notification of an apparent violation by written correspondence to the FAA's Program Administration Branch Manager. Notification may be submitted via electronic mail to drugabatement@faa.gov or regular mail at the following address:

Federal Aviation Administration
Drug Abatement Division
ATTN: AAM-810
800 Independence Ave., SW
Washington, DC 20591

Note: Employers and contractors are not eligible to disclose an apparent violation using the FAA's web-based VDRP system.

7.1.2 Initial notification should be made on a timely basis, ordinarily within 24 hours of the discovery of the apparent violation and without delay. However, the FAA may accept disclosures that exceed the 24-hour policy when it is determined that a later submission is justified based on the specific circumstances. The FAA retains sole discretion in determining whether to accept a voluntary disclosure received later than 24 hours after discovery of the violation.

7.1.3 Written notification should include the following five elements:

- 7.1.3.1** A Brief Description of the Apparent Violation. The employer or contractor should include the dates of the disclosure, a brief description of the apparent violation and when it was discovered; an estimate of the duration of time it remained undetected; how the apparent violation was discovered; and an explanation regarding any lapse in reporting the apparent violation.
- 7.1.3.2** Verification that the Noncompliance Has Ceased. The employer or contractor should provide an explanation that verifies what steps it took to cease the noncompliance and when.
- 7.1.3.3** A Brief Description of Immediate Action Taken. The employer or contractor should describe the immediate action it took after discovering the apparent violation, including the action(s) taken to terminate the conduct that resulted in the apparent violation, as well as the person responsible for taking the immediate action.
- 7.1.3.4** An Evaluation. The employer or contractor should indicate that it is undertaking the following evaluations as part of its disclosure:
 - 7.1.3.4.1** Identifying systemic problems that may have caused the apparent violation.
 - 7.1.3.4.2** Analyzing the root cause of the problem that resulted in the apparent violation.
 - 7.1.3.4.3** Determining the corrective steps necessary to prevent the apparent violation from recurring.
- 7.1.3.5** Identification of the Responsible Person. The employer or contractor should identify the person responsible for preparing the comprehensive fix.

7.2 Step 2. FAA's Initial Response to the Employer or Contractor.

- 7.2.1** Once the employer or contractor notifies the FAA of its apparent violation, the FAA will respond with a Letter of Acknowledgement (LOA) to acknowledge receipt and formally initiate the disclosure process. If necessary, the FAA will request further information.

7.3 Step 3. Written Report of the Employer's or Contractor's Apparent Violation and Comprehensive Fix.

- 7.3.1** The employer or contractor should provide a written report to the Drug Abatement employee within 10 working-days from the date of the LOA. Any delays require approval from the Program Administration Branch Manager.
- 7.3.2** The written report must contain a detailed description of the proposed comprehensive fix outlining the planned corrective steps, the responsibilities for implementing those corrective steps, and a time schedule for completion of the fix.

7.3.3 See Appendix A for the required elements of a written report submitted under this AC.

7.4 Step 4. Written Report Review by the FAA.

7.4.1 Once the FAA determines that the employer's or contractor's voluntary disclosure meets the requirements described in this AC, the FAA will work with the employer or contractor to ensure that it identifies the root cause and systemic issue that led to the apparent violation. This collaboration helps to ensure that the corrective actions contained in the employer's or contractor's comprehensive fix are acceptable. After the Drug Abatement employee reviews and analyzes the written report and comprehensive fix, he or she will determine whether to accept or reject the voluntary disclosure.

7.4.2 Acceptance. If the FAA accepts the employer's or contractor's disclosure, the Drug Abatement employee will issue the decision in written correspondence. The corrective actions and the success of the comprehensive fix are reviewed during the employer's or contractor's next inspection. If it is determined that the employer or contractor did not follow the corrective actions described in its accepted written report, the FAA may rescind the written correspondence and initiate appropriate enforcement action.

7.4.3 Rejection. If the FAA rejects your disclosure, the Drug Abatement employee will issue the decision in written correspondence and terminate the voluntary disclosure process. The FAA will address the alleged violation during the employer's or contractor's next inspection. If a disclosure is rejected, the FAA may use the evidence gathered under the VDRP to proceed with enforcement action in accordance with the current edition of FAA Order 2150.3. An employer or contractor may request a review of the Drug Abatement employee's decision to reject the disclosure with the Drug Abatement Division Manager by responding in writing within 10 business days of receipt of the written correspondence and providing sufficient evidence that clearly supports its position. The employer's or contractor's request may be submitted via electronic mail to drugabatement@faa.gov or regular mail at the following address:

Federal Aviation Administration
Drug Abatement Division
ATTN: AAM-810
800 Independence Ave., SW
Washington, DC 20591

8 REPEATED NONCOMPLIANCE.

If a repeat violation occurs after the employer or contractor completed its comprehensive fix, the procedures outlined in this AC may apply to any disclosure of the repeated violation. The FAA will determine whether the repeated violation will be accepted under this AC in each individual case, after evaluating the facts and circumstances surrounding the repeated violation. Employers and contractors are encouraged to evaluate the systemic issues and circumstances surrounding each apparent violation.

9 APPLICABILITY OF THE FREEDOM OF INFORMATION ACT (FOIA) TO SELF-DISCLOSURE RECORDS. Records accepted by the FAA in accordance with this AC are protected from release to the public in accordance with the provisions of 14 CFR part 193 and FAA Order 8000.89, titled "Designation of Voluntary Disclosure Reporting Program (VDRP) Information as Protected from Public Disclosure under 14 CFR Part 193".

A handwritten signature in black ink that reads "Michael A. Berry, M.D." The signature is fluid and cursive, with "Michael A." on the first line and "Berry, M.D." on the second line.

Michael A. Berry, M.D.
Federal Air Surgeon
Office of Aerospace Medicine

Appendix A. Required Elements of the Written Report

An employer or contractor should include the following elements in its written report:

- A.1. General Information.**
 - A.1.1.** Date of written report.
 - A.1.2.** Certificate type or equivalent.
 - A.1.3.** Certificate number or registration number.
 - A.1.4.** Company name and address.
 - A.1.5.** Name and contact information of company official filing the report, including their position, telephone number, and e-mail address.
- A.2. Description of the Apparent Violation.**
 - A.2.1.** Summary of the apparent violation, including a brief statement that describes the nature of the apparent violation and a list of the specific sections of 14 CFR part 120 or 49 CFR part 40 that may have been violated.
 - A.2.2.** Date the apparent violation was discovered and the location of discovery.
 - A.2.3.** Name and contact information of the company official who discovered the apparent violation, including their position, telephone number, and e-mail address.
 - A.2.4.** Date and time of initial notification to the FAA.
 - A.2.5.** Name of Drug Abatement employee notified.
- A.3. Immediate Action.**
 - A.3.1.** A description of the immediate action taken to terminate the conduct that resulted in the apparent violation. This description should include the following:
 - A.3.1.1.** When immediate action was taken.
 - A.3.1.2.** Description of immediate action. This description should outline the immediate steps that were taken to cease the violation.
 - A.3.1.3.** Name and contact information of the company official responsible for immediate action, including their position, telephone number, and e-mail address.
- A.4. Analysis.**

A.4.1. Evidence of the apparent violation that demonstrates the seriousness of the violation and your analysis of that evidence. Describe the scope of the apparent violation, how the scope was determined, how the violation was detected, and the reasons why the apparent violation was inadvertent.

A.4.2. Conclusions reached regarding possible or probable systemic deficiencies (i.e., who, what, when, why, and how the violation occurred). Attach supporting documentation and evidence associated with the apparent violation. Attach evidence of the proposed measures to prevent recurrence. Documentation may include, but is not limited to, checklists, policies, newsletters, standard operating procedures, records of training, manuals, training literature, and/or any other documents.

A.5. Comprehensive Fix.

A.5.1. A detailed description of the proposed comprehensive fix. Outline the planned corrective steps, the responsibilities for implementing those corrective steps, a time schedule for completion of the fix and a self-audit following implementation of the corrective action(s). Each corrective step should identify the name and contact information of the individual or department responsible for implementing and completing the corrective step as well as the time allotted for completion of each corrective step. Examples of types of questions or issues that a comprehensive fix proposal should address are as follows:

A.5.1.1. Does the apparent violation involve service agents, satellite locations, or individuals beyond those addressed in the initial notification and for which immediate action was taken?

A.5.1.2. Are procedural or organizational changes necessary?

A.5.1.3. How will it be determined whether any procedural or organizational changes are effective?

A.5.1.4. What procedures will be developed to ensure that the affected area is periodically reviewed in the future so that concerns can be identified before a violation occurs?

A.5.1.5. Who will be responsible for performing periodic reviews?

A.5.1.6. To whom in your organization will the results of those periodic reviews be reported, and how they will be documented?

A.5.1.7. A schedule for completion of a self-audit following implementation of the comprehensive fix to verify the action taken corrects the noncompliance. Include the name and contact information of the individual(s) responsible for conducting the self-audit (this self-audit is in addition to any audits conducted by the FAA).

Appendix B. Advisory Circular Feedback Information

If you find an error in this AC, have recommendations for improving it, or have suggestions for new items/subjects to be added, you may let us know by (1) completing the form online at <https://ksn2.faa.gov/avs/dfs/Pages/Home.aspx> or (2) emailing this form to drugabatement@faa.gov.

Subject: AC

Please check all appropriate line items:

- An error (procedural or typographical) has been noted in paragraph _____ on page _____.
_____.
- Recommend paragraph _____ on page _____ be changed as follows:

- In a future change to this AC, please cover the following subject:
(Briefly describe what you want added.)

- Other comments:

- I would like to discuss the above. Please contact me.
(If checked, include your contact information.)

Submitted by: