

positives, negatives, and refusals) under this part.

\* \* \* \* \*

*Violation rate for random alcohol testing* means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

■ 3. Amend § 382.305 by revising paragraph (j) to read as follows:

**§ 382.305 Random testing.**

\* \* \* \* \*

(j)(1) To calculate the total number of covered drivers eligible for random testing throughout the year, as an employer, you must add the total number of covered drivers eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered drivers must be in the random pool. If you are an employer conducting random testing more often than once per month (e.g., daily, weekly, bi-weekly) you do not need to compute this total number of covered drivers rate more than on a once per month basis.

(2) As an employer, you may use a service agent (e.g., a C/TPA) to perform random selections for you, and your covered drivers may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

\* \* \* \* \*

■ 4. Amend § 382.401 by revising paragraph (c)(1)(viii) to read as follows:

**§ 382.401 Retention of records.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(viii) A copy of each annual calendar year summary as required by § 382.403.

\* \* \* \* \*

■ 5. Amend § 382.403 by revising paragraph (b), removing paragraphs (c) and (d), redesignating paragraphs (e) and (f) as (c) and (d), respectively, and revising them, and adding a new paragraph (e) to read as follows:

**§ 382.403 Reporting of results in a management information system.**

\* \* \* \* \*

(b) If an employer is notified, during the month of January, of a request by the

Federal Motor Carrier Safety Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the FMCSA by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the FMCSA specifies in its request. The employer must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.26 and appendix H to part 40). The employer may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission. For information on the electronic version of the form, see: <http://www.fmcsa.dot.gov/safetyprogs/drugs/engtesting.htm>.

(c) When the report is submitted to the FMCSA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(d) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the same employer), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(e) A service agent (e.g., *Consortia/Third party administrator* as defined in 49 CFR 382.107) may prepare the MIS report on behalf of an employer. However, a company official (e.g., *Designated employer representative*) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

Dated: November 25, 2003.

Annette M. Sandberg,  
Administrator, Federal Motor Carrier Safety Administration.

**Federal Aviation Administration**

*FAA's Section-by-Section Discussion*  
14 CFR Part 121, Appendix I

II. Definitions

The FAA has eliminated the definition for "annualized rate" because

the definition is no longer necessary in light of the DOT's final rule. However, the definition for annualized rate had contained instructions to estimate the number of employees that must be tested during the calendar year based on the number of safety-sensitive employees as of the beginning of the calendar year. The DOT's final rule changed this method of calculation. Now, to determine how many employees to randomly test during the calendar year, the employer must use the average number of safety-sensitive employees instead of the number of employees as of the beginning of the calendar year. Because this change occurred during the 2003 calendar year, we recognize that employers may have difficulty estimating the number of safety-sensitive employees to be tested in 2003. Therefore, for the calendar year 2003 only, employers may use the number of employees as of the beginning of the calendar year to determine the total number of safety-sensitive employees to be tested or the employers may use the averaging method described in this regulation and 49 CFR part 40. Beginning in 2004, the new methodology must be used by all employers.

In addition, we have revised the definition of "positive rate" and changed the defined term to "positive rate for random drug testing," for the reasons discussed in the DOT's General Discussion of Rule Changes.

V. Types of Drug Testing Required

C. Random Testing. We revised paragraph 6 under the random testing section to make it clear to employers how to calculate whether they have met the minimum annual percentage rate under 49 CFR part 40. For the reasons explained in the DOT's General Discussion of Rule Changes, we inserted paragraph 6(b) to address the use of service agents to conduct random testing for employers. We added paragraphs 6(b)(1)–(2) to explain what annual percentage rate applies to pools created by service agents.

VI. Administrative and Other Matters

F. DOT Management Information System Annual Reports. For consistency with 14 CFR part 121, appendix J, we have added this paragraph to make it clear that employers must keep copies of annual reports submitted to the FAA for a minimum of 5 years. This is not an additional record keeping requirement because the MIS reports were already required to be kept for 5 years under 14 CFR part 121, appendix J, section IV, A.2.(a)(1). Since the MIS reports for both drug and alcohol testing