

have been combined, this addition is merely a reminder to employers of an existing obligation to retain the record.

X. Reporting of Antidrug Program Results

We changed the title of this section to "Annual Reports" because the DOT's revisions to the MIS forms no longer require separate reporting of antidrug program results. The combined MIS form is now submitted for both drug and alcohol testing results.

The basic requirements of when to submit annual reports and who must submit them remain unchanged in this section. However, most of section X has been eliminated because it prescribed the specifics of the contents of annual reports, all of which are now prescribed by 49 CFR 40.26 and appendix H to 49 CFR part 40. For the reasons explained in the DOT's General Discussion of Rule Changes, we have adopted the DOT's language for submitting MIS reports and the role of service agents in those submissions.

14 CFR Part 121, Appendix J

I. General

D. Definitions. We have revised the definition of "violation rate" and changed the defined term to "violation rate for random alcohol testing," for the reasons discussed in the DOT's General Discussion of Rule Changes. Although there was no definition for "annualized percentage rate" under this appendix, the reasoning provided in the preamble to appendix I applies to calculating the number of employees to be tested in calendar year 2003 for appendix J also.

II. Covered Employees

In revising the annual reporting requirements of section IV.B., we decided to move former paragraph IV.B.2 to become a new paragraph under section II, which describes covered employees. Former paragraph IV.B.2 reminded employers to identify employees who are performing safety-sensitive functions under the regulations of more than one DOT agency. This is important because alcohol testing must be tied to the performance of safety-sensitive work. When the employer requires the employee to submit to an alcohol test, the employer must know what kind of safety-sensitive work the employee is performing and which DOT agency's testing regulations apply. In moving this paragraph to section II, we made minor editorial changes to the language and renumbered paragraphs accordingly.

III. Tests Required

C. Random Testing. We revised paragraph 2 under the random testing section to change the phrase "alcohol MIS reports" to "MIS reports." We made this change because the DOT's revisions to 49 CFR part 40 eliminated separate forms for alcohol testing results. There is now a combined form for reporting both drug and alcohol testing results.

As we have done in appendix I, we revised paragraph 6 under this section to make it clear to employers how to calculate whether they have met the minimum annual percentage rate under the DOT's final rule. 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), as we have done in appendix I, to explain what annual percentage rate applies to pools created by service agents.

IV. Handling of Test Results, Record Retention and Confidentiality

B. Reporting of Results in a Management Information System. We changed the title of this section to "Annual Reports" for consistency with appendix I.

The basic requirements of when to submit annual reports and who must submit them remain unchanged in this section. However, most of section IV has been eliminated because it prescribed the specifics of the contents of annual reports, all of which are now prescribed by 49 CFR 40.26 and appendix H to 49 CFR part 40. For the reasons explained in the DOT's General Discussion of Rule Changes, we have adopted the DOT's language for submitting MIS reports and the role of service agents in those submissions.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Chapter I

Authority and Issuance

■ For reasons set forth in the preamble, the Federal Aviation Administration amends part 121 of title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for 14 CFR part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105, 46301.

■ 2. Amend appendix I to part 121 as follows:

- A. In section II., remove the definition of Annualized rate; remove the definition of Positive rate and add a new definition in its place;
- B. In section V., revise paragraph C.6;
- C. In section VI., add paragraph F;
- D. In section X., revise section heading, revise paragraphs A introductory text and A.2, revise paragraph B, remove paragraphs C, D, E, F, add new paragraph C.

The revisions and additions read as follows:

Appendix I to Part 121—Drug Testing Program

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II. Definitions * * *

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Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this appendix plus the number of refusals of random drug tests required by this appendix, divided by the total number of random drug test results (*i.e.*, positives, negatives, and refusals) under this appendix.

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V. Types of Drug Testing Required * * *

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C. Random Testing.

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6. As an employer, you must select and test a percentage of employees at least equal to the minimum annual percentage rate each year.

(a) As an employer, to determine whether you have met the minimum annual percentage rate, you must divide the number of random testing results for safety-sensitive employees by the average number of safety-sensitive employees eligible for random testing.

(1) To calculate whether you have met the annual minimum percentage rate, count all random positives, random negatives, and random refusals as your "random testing results."

(2) To calculate the average number of safety-sensitive employees eligible for