

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

(b) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(1) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(2) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(3) If the service agent has your employees in a random testing pool combined with other DOT-regulated companies, you must ensure that the testing is conducted at least at the highest rate required for any DOT-regulated company in the pool.

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VI. Administrative and Other Matters * * *

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F. DOT Management Information System Annual Reports. Copies of any annual reports submitted to the FAA under this appendix must be maintained by the employer for a minimum of 5 years.

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X. Annual Reports.

A. Annual reports of testing results must be submitted to the FAA by March 15 of the succeeding calendar year for the prior calendar year (January 1 through December 31) in accordance with the provisions below.

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2. Each entity conducting an antidrug program under this part, other than a part 121 certificate holder, that has 50 or more employees performing a safety-sensitive function on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

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B. As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at 49 CFR 40.26 and appendix H to 49 CFR part 40). You may also use the electronic version of the MIS form provided by 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 where to submit MIS forms and for the electronic version of the form, see: <http://www.faa.gov/avr/aam/adap>.

C. A service agent may prepare the MIS report on behalf of an employer. However, a company official (e.g., Designated Employer Representative as defined in 49 CFR part 40) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

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■ 3. Amend appendix J to part 121 as follows:

■ A. In section I.D, remove the definition of Violation rate and add a definition in its place;

■ B. Revise section II;

■ C. In section III.C, revise paragraphs C.2 and C.6;

■ D. Revise section IV.B.

The revisions and additions read as follows:

Appendix J to Part 121—Alcohol Misuse Prevention Program

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I. General * * *

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D. Definitions

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

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II. Covered Employees

A. Each employee who performs a function listed in this section directly or by contract for an employer as defined in this appendix must be subject to alcohol testing under an FAA-approved alcohol misuse prevention program implemented in accordance with this appendix. The covered safety-sensitive functions are:

1. Flight crewmember duties.
2. Flight attendant duties.
3. Flight instruction duties.
4. Aircraft dispatcher duties.
5. Aircraft maintenance or preventive maintenance duties.
6. Ground security coordinator duties.
7. Aviation screening duties.
8. Air traffic control duties.

B. Each employer must identify any employee who is subject to the alcohol testing regulations of more than one DOT agency. Prior to conducting any alcohol test on a covered employee subject to the alcohol testing regulations of more than one DOT agency, the employer must determine which DOT agency authorizes or requires the test.

III. Tests Required * * *

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C. Random Testing

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2. The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for this determination is drawn from MIS reports required by this appendix. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

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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 alcohol screening test 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 screening test results below 0.02 breath alcohol concentration, random screening test results of 0.02 or greater breath alcohol concentration, and random refusals as your "random alcohol screening test results."

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

(b) As an employer, you may use a service agent to perform random selections for you, and your safety-sensitive employees may be part of a larger random testing pool of safety-sensitive employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only safety-sensitive employees are in the random testing pool. For example:

(1) If the service agent has your employees in a random testing pool for your company alone, you must ensure that the testing is conducted at least at the minimum annual percentage rate under this part.

(2) If the service agent has your employees in a random testing pool combined with other FAA-regulated companies, you must ensure that the testing is conducted at least