

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.

\* \* \* \* \*

#### *IV. Handling of Test Results, Record Retention, and Confidentiality \* \* \**

\* \* \* \* \*

#### **B. Reporting of Results in a Management Information System**

1. Annual reports of alcohol misuse prevention program 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.

(a) Each part 121 certificate holder shall submit an annual report each year.

(b) Each entity conducting an alcohol misuse prevention 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.

(c) The Administrator reserves the right to require that aviation employers not otherwise required to submit annual reports prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

2. 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 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 where to submit MIS forms and for the electronic version of the form, see: <http://www.faa.gov/avr/aam/adap>.

3. 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.

\* \* \* \* \*

Dated: November 25, 2003.

**Marion C. Blakey,**  
*Administrator, Federal Aviation Administration.*

#### **Federal Transit Administration**

##### **List of Subjects in 49 CFR Part 655**

Alcohol abuse, Drug testing, Grant programs—transportation, Mass transportation, Reporting and recordkeeping requirements, Safety, Transportation.

#### **49 CFR Chapter VI**

##### *Authority and Issuance*

■ For reasons set forth in the preamble, the Federal Transit Administration amends part 655 of title 49, Code of Federal Regulations, as follows:

#### **PART 655—PREVENTION OF ALCOHOL MISUSE AND PROHIBITED DRUG USE IN TRANSIT OPERATIONS**

■ 1. The authority citation for 49 CFR part 655 continues to read as follows:

**Authority:** 49 U.S.C. 5331; 49 CFR 1.51.

■ 2. In § 655.4, remove the definitions of “positive rate” and “violation rate” and add the following definitions in their place to read as follows:

##### **§ 655.4 Definitions.**

\* \* \* \* \*

*Positive rate for random drug testing* means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (i.e., positive, negative, 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 alcohol random screening tests (including refusals) conducted under this part.

\* \* \* \* \*

■ 3. Revise § 655.72(d) through (g) to read as follows:

##### **§ 655.72 Reporting of results in a Management Information System.**

\* \* \* \* \*

(d) As an employer, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40, § 40.25 and appendix H. You 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 where to submit MIS forms and for the electronic version of the form, see: <http://transit-safety.volpe.dot.gov/DAMIS>.

(e) To calculate the total number of covered employees eligible for random testing throughout the year, as an employer, you must add the total number of covered employees 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 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 covered employees rate more than on a once per month basis. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees 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.

(f) If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a paratransit vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random 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.

(g) A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR part 40) 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.

#### **Appendices A Through D [Removed]**

■ 4. Remove Appendices A through D to part 655.

Dated: November 21, 2003.

**Jennifer L. Dorn,**  
*Administrator, Federal Transit Administration.*

#### **Federal Railroad Administration**

##### *Section-by-Section Analysis*

##### *Section 219.5 Definitions*

*Positive rate for random drug testing.* A standardized DOT definition replaces the previous FRA definition of “positive rate.”

*Violation rate for random testing.* A standardized DOT definition replaces the previous FRA definition of “violation rate.”