

(iii) 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/about/office_org/headquarters_offices/avs/offices/aam/drug_alcohol/.

(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.

(c) *Access to records and facilities.*

(1) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained under this subpart.

(2) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests in accordance with 49 CFR part 40. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(3) Each employer shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

§ 120.221 Consequences for employees engaging in alcohol-related conduct.

(a) *Removal from safety-sensitive function.* (1) Except as provided in 49 CFR part 40, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by §§ 120.19 or 120.37, or an alcohol misuse rule of another DOT agency.

(2) No employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has violated this section.

(b) *Permanent disqualification from service.* An employee who violates §§ 120.19 or 120.37, or who engages in alcohol use that violates another alcohol misuse provision of §§ 120.19 or 120.37 and who had previously engaged in alcohol use that violated the provisions of §§ 120.19 or 120.37 after becoming subject to such prohibitions is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

(c) *Notice to the Federal Air Surgeon.* (1) An employer who determines that a covered employee who holds an airman medical certificate issued under part 67 of this chapter has engaged in alcohol use that violated the alcohol misuse provisions of §§ 120.19 or 120.37 shall notify the Federal Air Surgeon within 2 working days.

(2) Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of § 120.223(c) within 2 working days of the employer's receipt of the report.

(3) All documents must be sent to the Federal Air Surgeon, Federal Aviation Administration, Office of Aerospace Medicine, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

(4) No covered employee who is required to hold an airman medical certificate in order to perform a safety-sensitive duty may perform that duty following a violation of this subpart until the covered employee obtains an airman medical certificate issued by the Federal Air Surgeon dated after the alcohol test result or refusal to test date. After the covered employee

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obtains this airman medical certificate, the SAP may recommend to the employer that the covered employee may be returned to a safety-sensitive position. The receipt of an airman medical certificate does not alter any obligations otherwise required by 49 CFR part 40 or this subpart.

(5) Once the Federal Air Surgeon has recommended under paragraph (c)(4) of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

(d) *Notice of refusals.* Each covered employer must notify the FAA within 2 working days of any employee who holds a certificate issued under part 61, part 63, or part 65 of this chapter who has refused to submit to an alcohol test required under this subpart. Notification must be sent to: Federal Aviation Administration, Office of Aerospace Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, or by fax to (202) 267-5200.

(e) *Required evaluation and alcohol testing.* No covered employee who has engaged in conduct prohibited by §§ 120.19 or 120.37 shall perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of 49 CFR part 40.

(f) *Other alcohol-related conduct.* (1) No covered employee tested under this subpart who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

(i) The employee's alcohol concentration measures less than 0.02; or

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

(2) Except as provided in paragraph (f)(1) of this section, no employer shall take any action under this rule against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this rule from taking any action otherwise consistent with law.

§ 120.223 Alcohol misuse information, training, and substance abuse professionals.

(a) *Employer obligation to promulgate a policy on the misuse of alcohol.* (1) *General requirements.* Each employer shall provide educational materials that explain these alcohol testing requirements and the employer's policies and procedures with respect to meeting those requirements.

(i) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the employer's FAA-mandated alcohol testing program and to each individual subsequently hired for or transferred to a covered position.

(ii) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(2) *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(i) The identity of the individual designated by the employer to answer employee questions about the materials.

(ii) The categories of employees who are subject to the provisions of these alcohol testing requirements.

(iii) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol testing requirements.

(iv) Specific information concerning employee conduct that is prohibited by this chapter.

(v) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(vi) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of