

§ 120.209

§ 120.209 Requirement for notice.

Before performing an alcohol test under this subpart, each employer shall notify a covered employee that the alcohol test is required by this subpart. No employer shall falsely represent that a test is administered under this subpart.

§ 120.211 Applicable Federal regulations.

The following applicable regulations appear in 49 CFR and 14 CFR:

(a) 49 CFR Part 40—Procedures for Transportation Workplace Drug Testing Programs

(b) 14 CFR:

(1) § 67.107—First-Class Airman Medical Certificate, Mental.

(2) § 67.207—Second-Class Airman Medical Certificate, Mental.

(3) § 67.307—Third-Class Airman Medical Certificate, Mental.

(4) § 91.147—Passenger carrying flights for compensation or hire.

(5) § 135.1—Applicability

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§ 120.213 Falsification.

No individual may make, or cause to be made, any of the following:

(a) Any fraudulent or intentionally false statement in any application of an alcohol testing program.

(b) Any fraudulent or intentionally false entry in any record or report that is made, kept, or used to show compliance with this subpart.

(c) Any reproduction or alteration, for fraudulent purposes, of any report or record required to be kept by this subpart.

§ 120.215 Covered employees.

(a) Each employee, including any assistant, helper, or individual in a training status, who performs a safety-sensitive function listed in this section directly or by contract (including by sub-contract at any tier) for an employer as defined in this subpart must be subject to alcohol testing under an alcohol testing program implemented in accordance with this subpart. This includes full-time, part-time, temporary, and intermittent employees regardless

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of the degree of supervision. The 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.

§ 120.217 Tests required.

(a) *Pre-employment alcohol testing.* As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this subpart. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

(1) You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (*i.e.*, you must not test some covered employees and not others).

(3) You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40.

(5) You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04. If a pre-employment test result under this