

§ 120.7

14 CFR Ch. I (1–19 Edition)

(e) *Contractor* is an individual or company that performs a safety-sensitive function by contract for an employer or another contractor.

(f) *Covered employee* means an individual who performs, either directly or by contract, a safety-sensitive function listed in §§ 120.105 and 120.215 for an employer (as defined in paragraph (i) of this section). For purposes of pre-employment testing only, the term “covered employee” includes an individual applying to perform a safety-sensitive function.

(g) *DOT agency* means an agency (or “operating administration”) of the United States Department of Transportation administering regulations requiring drug and alcohol testing (14 CFR parts 61, 65, 121, and 135; 46 CFR part 16; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

(h) *Employee* is an individual who is hired, either directly or by contract, to perform a safety-sensitive function for an employer, as defined in paragraph (i) of this section. An employee is also an individual who transfers into a position to perform a safety-sensitive function for an employer.

(i) *Employer* is a part 119 certificate holder with authority to operate under parts 121 and/or 135 of this chapter, an operator as defined in § 91.147 of this chapter, or an air traffic control facility not operated by the FAA or by or under contract to the U.S. Military. An employer may use a contract employee who is not included under that employer’s FAA-mandated drug and alcohol testing program to perform a safety-sensitive function only if that contract employee is included under the contractor’s FAA-mandated drug and alcohol testing program and is performing a safety-sensitive function on behalf of that contractor (i.e., within the scope of employment with the contractor.)

(j) *Hire* means retaining an individual for a safety-sensitive function as a paid employee, as a volunteer, or through barter or other form of compensation.

(k) *Performing* (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such function.

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

(m) *Prohibited drug* means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines, as specified in 49 CFR 40.85.

(n) *Refusal to submit to alcohol test* means that a covered employee has engaged in conduct including but not limited to that described in 49 CFR 40.261, or has failed to remain readily available for post-accident testing as required by subpart F of this part.

(o) *Refusal to submit to drug test* means that an employee engages in conduct including but not limited to that described in 49 CFR 40.191.

(p) *Safety-sensitive function* means a function listed in §§ 120.105 and 120.215.

(q) *Verified negative drug test result* means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a negative result.

(r) *Verified positive drug test result* means a drug test result from an HHS-certified laboratory that has undergone review by an MRO and has been determined by the MRO to be a positive result.

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

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