

§219.603

under the reporting requirements of §219.803 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §219.803 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensures that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as a result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process.

(f) The railroad must randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the Administrator. If the railroad conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual railroad or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this part or any DOT agency drug testing rule.

(g) Each railroad must ensure that random drug tests conducted under this part are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same railroad, the employee must be subject to random drug testing at the percentage rate established for the calendar year by the

49 CFR Ch. II (10–1–03 Edition)

DOT agency regulating more than 50 percent of the employee's function.

(i) If a railroad is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the railroad may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the railroad is subject.

§219.603 Participation in drug testing.

A railroad shall, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with §219.102, and the employee must provide the required specimen and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

§219.605 Positive drug test results; procedures.

(a) [Reserved]

(b) Procedures for administrative handling by the railroad in the event a specimen provided under this subpart is reported as positive by the MRO are set forth in §219.104. The responsive action required in §219.104 is not stayed pending the result of a retest or split specimen test.

§219.607 Railroad random alcohol testing programs.

(a) Each railroad must submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A railroad commencing operations must submit a random alcohol testing program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad