

*Section 219.601 Railroad Random Drug Testing Programs**Paragraph (b)(2)(ii) Form of Programs*

FRA amends this paragraph to conform with the Department's new directions on how to calculate the number of covered employees eligible for random testing. An employer or service agent acting on the employer's behalf (e.g., a consortium or third party administrator) must recalculate this number for each random testing period to take into account seasonal or other fluctuations in the number of employees it has throughout the year. An employer had previously been allowed to calculate this number only once per year based on the number of employees it had at the beginning of the year.

*Section 219.602 Administrator's Determination of Railroad Drug Testing Rate**Paragraphs (c) and (d)*

FRA is revising these paragraphs to replace the references to § 219.803, which contained agency-specific railroad reporting requirements, with references to new § 219.800, which incorporates by reference the standardized and simplified DOT reporting requirements found in § 40.25 and in appendix H to part 40. Section 219.803 is removed and reserved.

*Section 219.607 Railroad Random Alcohol Testing Programs**Subparagraph (b)(1) Form of Programs*

As with § 219.601 discussed above, FRA revises this subparagraph to conform with the Department's new directions on how to calculate the number of covered employees eligible for random testing.

Subparagraph (b)(1)(i)

As with § 219.601 discussed above, FRA adds this new subparagraph to address the increasing use of service agents to perform random drug testing selections.

*Section 219.608 Administrator's Determination of Railroad Alcohol Testing Rate**Paragraphs (c) and (d)*

FRA is revising these paragraphs to replace the references to § 219.801, which contained agency-specific railroad reporting requirements, with references to new § 219.800, which incorporates by reference the standardized and simplified DOT reporting requirements found in § 40.25 and in appendix H to part 40. Section 219.801 is removed and reserved.

*Section 219.800 Annual Reports**Paragraph (a)*

As explained above, FRA is streamlining its MIS system by combining the annual reporting requirements formerly contained in §§ 219.801 and 219.803 into one section. This paragraph, which defines who must file an annual report, adopts the language formerly found in paragraph (a) of each of those sections.

Paragraphs (b)–(e)

Paragraph (b) incorporates part 40's forms and instructions by reference. Paragraphs (c)–(e) add standardized instructions on electronic reporting, reporting of multi-modal employee results, and reporting by service agents.

Section 219.801 Reporting Alcohol Misuse Program Results in a Management Information System

As explained above, this section is removed and reserved. The FRA-specific reporting requirements formerly contained in this section are removed and replaced by those contained in new § 219.800.

Section 219.803 Reporting Alcohol Misuse Program Results in a Management Information System

As explained above, this section is removed and reserved. The FRA-specific reporting requirements formerly contained in this section are removed and replaced by those contained in new § 219.800.

Federal Railroad Administration**List of Subjects in 49 CFR Part 219**

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Chapter II*Authority and Issuance*

■ For reasons set forth in the preamble, the Federal Railroad Administration amends part 219 of title 49, Code of Federal Regulations, as follows:

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 1. The authority citation for 49 CFR part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311, 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

■ 2. In § 219.5, the definitions of “positive rate” and “violation rate” are removed and the following definitions are added in their place to read as follows:

§ 219.5 Definitions.

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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., positives, negatives, and refusals) under this part.

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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 random alcohol screening tests (including refusals) conducted under this part.

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■ 3. Section 219.601 is amended by revising paragraph (b)(2)(ii) and adding paragraph (b)(2)(iii) to read as follows:

§ 219.601 Railroad random drug testing programs.

* * * * *

(b) * * *

(2) * * *

(ii) To calculate the total number of covered employees eligible for random testing throughout the year, as a railroad, 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 a railroad's random testing pool, and all covered employees must be in the random pool. If you are a railroad 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.

(iii) As a railroad, 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.

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■ 4. Section 219.602 is amended by revising paragraphs (c) and (d) to read as follows:

§ 219.602 Administrator's determination of random drug testing rate.

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