§ 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 must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

(b) Form of programs. Random alcohol testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) As a railroad, to calculate the total number of covered employees eligible for random testing throughout the year, 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 com-
pute this total number of covered em-
ployees rate more than on a once per
month basis.

(i) As a railroad, you may use a serv-
ice agent (e.g., C/TPA) to perform ran-
dom selections for you, and your cov-
ered employees may be part of a larger
random testing pool of covered employ-
ees. 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.

(ii) [Reserved]

(2) The program must include testing
procedures and safeguards, and, con-
sistent with this part, procedures for
action based on tests where the em-
ployee is found to have violated §219.101.

(3) The program must ensure that
random alcohol tests conducted under
this part are unannounced and that the
dates for administering random tests
are spread reasonably throughout the
calendar year.

(4) The program must ensure to the
maximum extent practicable that each
covered employee perceives the possi-
bility that a random alcohol test may
be required at any time the employee
reports for work and at any time dur-
ing the duty tour (except any period
when the employee is expressly re-
lieved of any responsibility for per-
formance of covered service).

(5) An employee may be subject to
testing only while on duty. Only em-
ployees who perform covered service
for the railroad may be subject to test-
ing under this part. In the case of em-
ployees who during some duty tours
perform covered service and during
others do not, the railroad program
may specify the extent to which, and
the circumstances under which they
are subject to testing. To the extent
practical within the limitations of this
part and in the context of the rail-
road’s operations, the railroad program
must provide that employees are sub-
ject to the possibility of random test-
ing on any day they actually perform
covered service.

(6) Testing must be conducted promptly, as provided in §219.701(b)(1).

(7) Each time an employee is notified
for random alcohol testing the em-
ployee must be informed that selection
was made on a random basis.

(8) Each railroad must ensure that
each covered employee who is notified
of selection for random alcohol testing
proceeds to the test site immediately:
provided, however, that if the employee
is performing a safety-sensitive func-
tion at the time of the notification, the
railroad must instead ensure that the
employee ceases to perform the safety-
sensitive function and proceeds to the
testing site as soon as possible.

(c) Implementation. (1) No later than
45 days prior to commencement of ran-
dom alcohol testing, the railroad must
publish to each of its covered employ-
ees, individually, a written notice that
the employee will be subject to random
alcohol testing under this part. Such
notice must state the date for com-
 mencement of the program, must state
that the selection of employees for
testing will be on a strictly random
basis, must describe the consequences
of a determination that the employee
has violated §219.101 or any applicable
railroad rule, and must inform the em-
ployee of the employee’s rights under
subpart E of this part. A copy of the
notice must be provided to each new
covered employee on or before the em-
ployee’s initial date of service. Since
knowledge of Federal law is presumed,
nothing in this paragraph (c)(1) creates
a defense to a violation of §219.101. This
notice may be combined with the no-
tice or policy statement required by
§219.23.

(2) A railroad commencing operations
must submit a random testing program
60 days after doing so. The railroad
must implement its approved random
testing program not later than the ex-
piration of 60 days from approval by
the Administrator.

[66 FR 41973, Aug. 9, 2001, as amended at 68
FR 75464, Dec. 31, 2003]