

**FEDERAL COMMUNICATIONS  
COMMISSION****47 CFR Part 73**

[MM Docket Nos. 98-43, 94-149; FCC 98-281]

**Commercial Television Station  
Children's Programming Report and  
Commercial Broadcast Station  
Ownership Report**AGENCY: Federal Communications  
Commission.ACTION: Final rule; announcement of  
effective dates.

**SUMMARY:** These rules announce the effective date of the rules published on December 18, 1998. Those rules amended the Commission's rules governing the manner of filing of the commercial television station children's programming report (FCC Form 398) and the information to be set forth in the commercial broadcast station ownership report (FCC Form 323). The Commission concluded that commercial television station licensees would be required to file their stations' FCC Form 398s in electronic form and that persons holding attributable interests in commercial broadcast station permittees and licensees would be required to disclose their gender and race or ethnicity when filing FCC Form 323.

**DATES:** Sections 73.3526(e)(11)(iii) and 73.3615(a) published at 63 FR 70040 (December 18, 1998) are effective on December 31, 1998.

**FOR FURTHER INFORMATION CONTACT:** James J. Brown, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** On December 8, 1998 the Office of Management and Budget ("OMB") approved the amendments to the public file rules pursuant to OMB Control No. 3060-0754, and on December 8, 1998, OMB approved the amendments to the broadcast station ownership filing rules pursuant to OMB Control No. 3060-0010.

Accordingly, the rules in Sections 73.3526(e)(11)(iii) and 73.3615(a) will be effective on December 31, 1998.

**List of Subjects in 47 CFR Part 73**Television broadcasting, Radio and  
Television Broadcasting.

Federal Communications Commission.

**William F. Caton,**  
*Deputy Secretary.*

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**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 219**

[Docket No. RSOR-6; Notice No. 47]

RIN 2130-AB31

**Random Drug and Alcohol Testing:  
Determination of 1999 Minimum  
Testing Rate**AGENCY: Federal Railroad  
Administration (FRA), Transportation  
(DOT).

ACTION: Notice of Determination.

**SUMMARY:** Under FRA's regulations on drug and alcohol testing, each year the Federal Railroad Administrator (Administrator) determines the minimum annual percentage rate for random drug and alcohol testing for the rail industry. Currently, the minimum rates for both drug and alcohol random testing are set at 25 percent.

After reviewing the rail industry drug and alcohol management information system (MIS) data for 1996 and 1997, as well as data from compliance reviews of rail industry drug and alcohol testing programs, the Administrator has determined that the minimum annual random drug and alcohol testing rates for the period January 1, 1999 through December 31, 1999 will remain at 25 percent of covered railroad employees.

**DATES:** This notice is effective December 30, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Assurance and Compliance, Operating Practices Division (RRS-11), FRA, 1120 Vermont Avenue, N.W., Mail Stop 25, Washington, D.C. 20590, (telephone: 202-493-6313) or David H. Kasminoff, Esq., Trial Attorney (RCC-12), Office of Chief Counsel, FRA, Washington, D.C. 20590 (telephone: 202-493-6043).

**SUPPLEMENTARY INFORMATION:****Administrator's Determination of 1999  
Random Drug Testing Rate**

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall violation rate, which is determined using annual railroad drug and alcohol program data taken from FRA's MIS. Based on this and other program data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol

testing rates for the following year (see 49 CFR 219.602 and 219.608, respectively).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two consecutive calendar years while testing at the 50 percent rate. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program and the findings from program compliance reviews, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

The minimum random drug testing rate for any administration in DOT is 25 percent. In this notice, FRA announces that the minimum random drug testing rate will continue to be 25 percent of covered railroad employees for the period January 1, 1999 through December 31, 1999, since the industry random positive rate for 1997 was 0.77 percent.

**Administrator's Determination of 1999  
Random Alcohol Testing Rate**

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two consecutive calendar years while testing at the 25 percent rate. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. If the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will remain at 25 percent.

Although the 1996 MIS report indicated an industry-wide positive rate of 0.24 percent and the 1997 MIS report indicated a positive rate of 0.23 percent, FRA audits of railroad programs for the past two years revealed problems with random testing programs, particularly with the predictability of testing for alcohol which has caused FRA to question the credibility of the data. Deficiencies uncovered in these audits indicated almost no alcohol testing at the beginning of the duty day and failure to distribute testing throughout the duty day (e.g., testing only during a four hour period in the middle of the day or only on Thursdays, and/or never