§654.33 [Amended]

11. Section 654.33(a)(1) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

12. Section 654.33(a)(2)(i) is amended by removing the phrase "on duty in" and adding the word "operating" in its place.

13. Section 654.33(a)(2)(ii) is amended by removing the phrase "on duty in" and adding the word 'operating'' in its place. 14. In §654.35, paragraph (c)(1) is

revised and paragraphs (j) and (k) are added to read as follows:

*

§654.35 Random testing. *

*

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §654.53 for two consecutive calendar years indicate that

the violation rate is less than 0.5 percent. However, after the initial two years of testing by large transit operators and the initial first year of testing by small transit operators, the Administrator may lower the rate the following calendar year, if the combined violation rate is less than 0.5 percent and is in the interests of safety. * * *

(j) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency for the same employer, the covered employee shall be subject to random alcohol testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the covered employee's function.

(k) If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may-

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

required minimum annual percentage rate: or

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

15. Section 654.45 is added to subpart C to read as follows:

§654.45 Supervisor acting as Breath Alcohol Technician.

An employer shall not permit a direct supervisor of an employee to serve as the breath alcohol technician for an alcohol test of the employee.

Appendix A to Part 654-[Removed and Reserved]

16. Appendix A to Part 654—Sample Certifications of Compliance is removed and reserved.

Issued: February 27, 1995.

Gordon J. Linton,

Administrator. [FR Doc. 95-5178 Filed 3-3-95; 8:45 am] BILLING CODE 4910-57-U