

Chapter 3A

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Railroad Operating Practices (49 CFR Part 218)

Within their assigned territory, each inspector must determine the degree of railroad compliance with the regulations addressing blue signal protection of workers (including utility employees), yard limits, flag protection, hump yard protection, and prohibited tampering with locomotive safety devices. The inspector must observe railroad operations at the appropriate locations to determine compliance.

Blue Signal Protection of Workers

The inspector must have a thorough knowledge of the provisions of 49 CFR Part 218, Subpart B to determine which areas require blue signal protection. Inspectors must note the physical location of displayed blue signals, the position in which switches and derails have been left, and if applicable, the location and locking of derails. If an alleged violation is being investigated, photographs provide good supporting evidence of blue signal deficiencies. The effectiveness of the locking devices for entrance/access switches should be considered in determining compliance.

An inspector must observe the procedures employed at locations of remotely controlled switch operations to determine the adequacy of locking devices. Inspectors must also review entries in the written records to determine compliance with the recordkeeping provisions.

Applicability to FRA Inspectors

Since a worker is defined as a "railroad" employee, FRA employees are not railroad employees, and the blue signal protection regulation is therefore not applicable. FRA inspectors must not enter under, between and on locomotives and cars without first ensuring that such equipment will not be subject to movement. Good judgment must be exercised in making this determination, not only from the standpoint of safety but also to prevent interference with railroad operations. Inspections may be made, for example, in conjunction with routine railroad inspections on arriving or departing trains or cuts of cars and at such time as the proper protection is customarily utilized. Under ordinary circumstances, FRA inspectors must not request the railroad to furnish protection solely for the inspector's benefit. In this same respect, FRA has no objection to inspectors availing themselves of such protection if initiated by railroad supervision. When accepting an offer of protection, the inspector must request verbal assurance from the railroad supervisor that the furnishing of protection will not interfere with the railroad's operations.

Performing Inspections On a Main Track

Normally, there are few locations that routinely perform work requiring blue signal protection on a main track. An exception to this is when the railroad maintains a fuel and servicing facility on a main track for through trains. At a location such as this, an inspector should first determine if any work is being done that requires protection. Remember that there are certain exceptions to what constitutes servicing and testing, and fueling is considered one of those exceptions.

The important thing to realize when observing blue signal protection provided on a main track is that the regulation does not require lined and locked switches, or the application of derails under these circumstances. However, blue signals must still be applied at each end of the equipment to be protected. Check to see if this has been done. Also, if one or more locomotives are among the protected equipment, then a blue signal must be attached to the controlling locomotive at a location where it is readily visible to someone seated at the controls of that locomotive. Evaluate if this blue signal would be obvious to someone seated at those controls. Some flags that are hung from the side of the cab are not readily visible.

Performing Inspections On Track Other Than Main Track

This is the type of blue signal protection you would expect to find during a train yard inspection. When making an observation of this kind, great care must be exercised in determining what protection is required, and where it must be placed.

If you observe workers on, under, or between rolling equipment on a particular track, and find no lock on the switch for that track, before deciding that adequate protection is not being provided, check to see if a derail and blue signal have been applied as an alternate method of protection. This is acceptable if provided in accordance with 218.29 (c)(1) and (2). If none is found, check to see if a switch in prior sequence to the one you looked at, is locked. If so, and if that switch effectively prevents any possible movement onto the track where work is being performed, then the intent of the regulation has been met. If any question still exists, contact a railroad manager, and ask him to describe the procedure used at this facility, and determine if this procedure follows the intent of the regulation.

If the protection provided appears satisfactory by visual observation, there are several more steps to take. When a manual switch or derail provides protection, tug on the lock to see if it is functional. Instances have been found where workers, not wanting to bother with a key, have used defective locks that may be opened by hand, although appearing to be functional. Next, attempt to move the manual switch or derail (but, do not operate the switch or derail). Sometimes this can be accomplished even with the lock in place. If so, it may be due either to worn components, or possibly an undersize lock hasp allowing it to be bypassed.

Note: If an inspector sees that the established blue signal protection is inadequate (i.e., blue flag displayed but switch not locked), in order for an FRA inspector to take a deficiency or violation, a worker has to be on, under, or between the rolling equipment. However, the inspector would want to ensure the workers are aware that there is a potential problem.

Inspections Involving Alternate Methods of Protection

Instead of providing blue signal protection in accordance with 218.27 (other than main track), alternate methods of protection can be found in 218.29. This is true for other than main tracks, and locomotive servicing and car shop repair track areas, and allows a railroad to provide blue signal protection for the work area as a whole, rather than individual track.

When inspecting for the adequacy of blue signal protection in a locomotive servicing area, first determine if workers are on, under, or between rolling equipment. Then determine if the protection provided at each track, providing a means of entrance into the area, is proper. Are the blue signals displayed? Physically test any locks and manual switches and derails. Next, observe the operations inside the area for compliance. Remember that provision has been made in the regulation for using alternate methods to reposition rolling equipment within the area. However, this may only be done when all conditions of the regulation are met.

Yard Limits (218.35)

An inspector must have a thorough knowledge of each railroad's operating rules and general orders. Copies of current timetables and timetable special instructions should be reviewed to determine if they are compatible with the requirements of the Federal regulation. The following are examples of the types of yard limit inspection determinations and are not intended to limit the areas of inspection:

Review operating rules to determine if the railroad has an operating rule in effect which complies with 218.35 (b) (1), (2), and (3) and 218.35 © of the regulation.

Determine if the timetable, timetable special instructions, and other publications adequately address the use of main track within yard limits by designated class trains.

Determine that the railroad published yard limit rules that provide for flag protection in areas not protected by block signals.

Find out if train speeds within yard limits meet the restrictions outlined in 218.35 (b)(2).
Observe whether movements against the current of traffic within yard limits are properly authorized.

An inspector should observe the physical location of yard limit signs and determine if these locations are the same as those outlined in the timetable, special instructions, or other publications.

Flag Protection (218.37)

An inspector must have a thorough knowledge of the railroad's operating rules, general orders, timetable, timetable special instructions, or other publications pertaining to flag protection. Copies of current timetables and timetable special instructions should be obtained and retained for future reference.

An inspector should review the railroad's publications to determine their compatibility with the requirements of Federal regulations. The following are examples of flag protection inspections:
Review operating rules to determine if the railroad has operating rules in effect, which meet the requirements of 218.37.

Determine if railroad rules cover the dropping of lighted fusees when the train is moving on main track at less than half of the maximum authorized speed.

Find out if the railroad's rules cover the dropping of lighted fusees when the train is moving on the main track at more than half of the maximum authorized speed under circumstances where it may be overtaken.

Determine if the railroad's rules include instructions requiring crewmembers to protect against following movements on the same track.

Determine if the railroad's rules provide for protecting the front of the train against opposing movements.

Find out if the railroad's rules specifically forbid a crewmember, who is responsible for providing flag protection, to let other duties interfere with the protection of the train.

Determine if the rules prescribe specific minimum distances to provide adequate flag protection.
After the inspector has prepared for a flag protection inspection/observation, arrangements should be made to visit points on the railroad line where flagging regulations apply. There may be times when the inspector may choose to ride a train to monitor flag protection requirements. Inspectors should observe if crewmembers responsible for providing flag protection are supplied with the proper flagging equipment (designated in the railroad's operating rules) and if equipment is available for immediate use.

Additional monitoring of flag protection compliance can be achieved by inspecting the railroad's efficiency testing records, which are maintained in accordance with Part 217.

Control of Alcohol and Drug Use (49 CFR Parts 219 and 40)

The following work plan was developed for conducting alcohol/drug compliance reviews. Note that much of the paperwork/documentation discussed may only be located at the employee's central headquarters.

Work Plan for Alcohol/Drug Compliance Reviews

(Revised January 13, 1998)

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Purpose, Scope, Etc., of Compliance Reviews

0.1 **Purpose:** To verify that the railroad is complying with applicable provisions of the FRA regulations on Control of Alcohol and Drug Use in Railroad Operations.

0.2 **Scope:** Review compliance with 49 CFR Part 219 (including pertinent provisions of 49 CFR Parts 217, 225, 240, as appropriate) and 49 CFR Part 40. A particular compliance review may cover all of the issues addressed in this work plan ("comprehensive review") or may be limited to one or more program elements ("selective review"). Elements of this work plan may be employed as guidance for routine operating practices inspections that include an alcohol/drug component.

0.3 **Applicability of Subparts:** At the outset, it is critical to determine which subparts of 49 CFR Part 219 applies to the particular railroad. If the railroad has more than 15 Hours of Service employees or engages in joint operations, then all subparts apply (except reasonable cause accident/incident and rules violation testing under Subpart D, which remain optional). If the railroad has 15 or fewer Hours of Service employees and does not engage in joint operations, then only Subparts A, B, C, and H apply. Ref. 49 CFR Part 219.3.

0.4 **Railroads Subject to Review:** Because many railroads operate as systems or integrate portions of their alcohol/drug programs with other operators, the inspector should identify at the outset the scope of the particular inspection or compliance review (individual railroad, system, etc.). Note that several legal entities may be treated as a single "railroad" for purposes of certain requirements if those entities operate as a single, contiguous system.

Documents, Records and Personnel

1.1 **Railroad Officers and Managers.** Identify by name, position, organizational location, address and telephone number the persons performing the following functions related to the company's alcohol/drug program:

- Management official(s) with overall responsibility.
- Random alcohol/drug testing program manager.
- Medical Review Officer (MRO).
- Person responsible for managing collection resources.
- Principal Substance Abuse Professional (SAP).
- Custodian of any documents not held by one of the above.
- Accident/incident reporting officer.

Interview each of the above as necessary to develop data described below.

1.2 **Covered Employee Representatives.** Interview one or more of the following or their representatives, as appropriate:

- General Chairman BLE
- General Chairman UTU
- General Chairman BRS
- General Chairman TCU

1.3 **Documents.** Obtain one copy of each of the following documents:

From RRS headquarters --

- Random alcohol and drug testing program on file.
- Accident/incident reports employing alcohol/drug codes (train accidents and personal injuries) for recent 12-month period (RRS-20).
- Annual Management Information System (MIS) reports.
- A 12-month printout of reported accidents that may qualify for post-accident testing (RRS-20).
- A list of post-accident tests conducted by the railroad, including relevant laboratory trouble reports.

From the railroad --

- Rules and policies governing alcohol/drug compliance.
- Current instructions to supervisors pertaining to all sections of the regulations (49 CFR Parts 219, 240 and 40 in particular).
- Current collection instructions provided to facilities under 40.23(d).
- Custody and control forms (drug and alcohol): Federal and employer, if used.
- List of designated collection facilities for FRA testing (other than post- accident).
- List of designated post-accident testing facilities.
- List of accidents\incidents for which post-accident testing was performed.
- Quarterly reports from laboratory under 40.29(g)(6) for last 12 months.
- Summary reports of external performance testing results [40.31(d)] for 12- month period.
- Educational materials made available to employees [219.23(e)].

1.4 **Notices.** Employees are entitled to know who has ordered the testing. Therefore, the Federal chain of custody form must accurately reflect the type of test and who is ordering the test--Federal Regulation or company policy. A Federal chain of custody form is sufficient notice but employers are permitted to provide additional notice documentation as long as it does not contravene 49 CFR Parts 40 or 219. The following types of testing require Federal chain of custody forms:

	<u>Urine</u>	<u>Alcohol</u>
Return-to-service	x	x
Follow-up	x	x
Reasonable Cause (Federal authority)	x	x
Reasonable Suspicion	x	x
Pre-employment	x	N/A
Random	x	x

1.5 **Records.** (Ref: 49 CFR 219.23) Review pertinent records, including educational materials, as indicated under program elements below.

1.6 **Complaints.** Review complaint investigation reports (FRA files - all regions).

Query –

- Do any patterns emerge?
- Has the railroad corrected specific problems identified?
- Has the railroad instituted broad-based solutions, where needed?

Enforcement of Prohibitions - General

Ref. 49 CFR Part 219, Subpart B. This phase of the compliance review should determine that –

- (i) the railroad is exercising due diligence to prevent violations of 219.101 and 219.102; and
- (ii) specific requirements are being observed with respect to handling employees determined to have violated those provisions based upon FRA mandated or authorized tests.

Approach: Review program materials and sample of records, including any pre- identified problem case; and conduct interviews of railroad employees.

2.1 **Alcohol/Drug Prohibitions.** Review current company policy/rules governing alcohol/drugs applicable to employees in covered service.

- Is the company rule/policy sufficiently broad to ensure compliance by employees with 219.101, 219.102? If not, are these Federal requirements separately published to employees?

(Traditional railroad operating rule formulations may not clearly prohibit non-medical use of controlled substances off duty.)

- Does the rule/policy clearly indicate to employees their responsibilities with respect to medical use of controlled substances (219.103)? If not, is this Federal requirement separately published?

Employees must discuss with the physician their safety-sensitive duties and must adhere to any limitations, including dosage, contained in the prescription.

- Is there a commitment to compliance in practice -- do supervisors take appropriate action with respect to employees apparently in violation of 219.101 on the job?

2.2 **Initial Responsive Action.** Through appropriate investigation, determine the following and document the records reviewed and results --

- The railroad removes from service any employee who tests positive in an FRA test (absent extraordinary circumstances negating the value of the test).
- The railroad provides written notice concerning the reason for removal from service.
- The railroad provides an opportunity for a hearing.

(Note: It is not necessary to actually conduct an investigation if the employee waives hearing and enters the EAP program.)

- The railroad routinely conducts a SAP evaluation, requires completion of any primary treatment, and obtains a negative urine and/or breath sample (Return to Duty-Federal Test) before returning to service an employee testing positive in an FRA test.
- In the case of an alcohol positive constituting a violation of 219.101, conducts a SAP evaluation, requires completion of any primary treatment, determines that a breath test result of less than .02 (and/or urine negative) was obtained before returning employee to covered service.

2.3 **Follow-Up.** Determine that the railroad monitors employees returned to duty following evaluation and any needed treatment. Determine that --

- In the case of a drug positive under Part 40, Return-to-duty and follow-up testing are conducted according to Part 219, Subpart H.

NOTE: The regulation requires a minimum of six-breath alcohol and/or six urine drug tests in the first 12 months after return to service, regardless of the SAP requirements. However, locomotive engineers are required to have six-breath alcohol and six urine drug tests in the first 12 months.

- The SAP establishes the number and frequency of follow-up tests and the employer establishes when to test.
- Follow-up testing is done without prior notice.
- In the case of employees who required treatment for substance abuse disorders, they are retained in client status following return to duty and subject to aftercare for a specified period (up to 60 months).

Note: Again, the railroad has significant latitude in this area. However, failure to follow-up on a reasonable basis could constitute a violation of 219.105.

Post Accident Alcohol/Drug Testing Administration

Ref. 49 CFR Part 219, Subpart C, Appendix C to Part 219 and instructions for collection contained in FRA toxicology boxes.

This phase of the compliance review should determine that –

- (i) the railroad takes all practical steps to see that blood, urine, and other specified specimens (for fatalities) are provided to FRA for toxicological testing after qualifying accidents, based on reasonable inquiry and good faith judgments;
- (ii) testing is not conducted under this program where not required; and
- (iii) testing is timely and properly conducted.

Approach: Review all post-accident records, including any pre-identified problem cases, except that verification of qualifying events should be full 12-month audit.

3.1 Railroad Guidance. Review guidance to supervisors and command/control structure for post-accident decision-making.

- Do supervisors understand current and correct guidance for holding employees on duty and determining whether events/employees are testable? Were appropriate supervisors trained and is the training appropriate and documented?
- If there is a requirement for consultation with higher management, is it likely to result in delays?

3.2 Compliance With Testing Mandates (219.201).

Request a 12-month print out of reported accidents/incidents that may qualify for post-accident testing (RRS-20) to compare with list of events for which specimens were provided (RRS-11).

Review to ascertain if testing was required and if undertaken. Request explanations where testing was not undertaken. (Note possibility that explanations may be justified, as where injuries are not manifested

until a later date or damage estimates are revised up or down after in-shop examination of equipment.) Include consideration of any additional events that may have qualified for testing.

Review events for which specimens were provided to evaluate if any non-qualified events were included and, if so, determine explanation and remedial action.

Were any employees omitted from testing who should have been included?

Examples: Dispatchers with respect to line-haul collisions where the cause is not evident immediately after accident (or, with respect to a major train accident, any time the dispatcher is directly and contemporaneously involved).

3.3 **Compliance With Exclusions** (219.201, 219.203).

Request from alcohol/drug program manager listing of recent accidents/employees for which post-accident test was preformed. Review to ascertain if there was a bar to testing --

- Did the accident/incident fall within an exception (e.g., highway/rail grade crossing, natural causes or vandalism).
- Should individual employees have been excluded based on clear non- involvement in cause or severity (not applicable to major train accidents)?
- Were any employees released and recalled? If so, was the narrow exception of the regulation satisfied?

3.4 **Timely Collections.** Review timeliness of collections in qualifying events.

- Compute mean time from accident to collection and state range (shortest/longest).
- What were the principal causes of delay? Are they capable of resolution or are they endemic to the railroad's territory and normal staffing levels? If delays can be reduced, what action has the railroad taken to accomplish this? What additional actions should be taken?
- Review time from collection to shipment. Were reasonable steps taken to hasten delivery to lab?

If a collection was not completed within 4 hours after the accident, review the railroad's report to see why samples weren't promptly collected [219.209(c)].

3.5 **Tox Boxes.** Discuss deployment of toxicology boxes with headquarters and selected field supervisors. Does the railroad have sufficient kits on hand? Do the pertinent managers know where they are? Are materials, forms and instructions current and fresh?

3.6 **Designated Medical Facilities.** Review designation of medical facilities for collection. Are there any obvious gaps in coverage? If so, determine the reason.

3.7 **Telephonic Report** (219.209). Ascertain from FRA alcohol/drug program manager that post-accident testing events were reported by telephone as required. Obtain commitment for future compliance or take enforcement action, as needed.

3.8 **Completion of .73/.74.** Review pertinent Forms 6180.73 and .74 and any trouble reports; discuss with the alcohol/drug program manager whether post-accident testing operations have revealed significant problems with collections that require remediation. Discuss with railroad and monitor remedial action.

Examples: Supervisors handling specimens prior to securing of tox box; failure to provide instructions to collection facility; failure by collection facility to follow instructions; failure to complete paperwork (6180.73, 6180.74); breaks in chain of custody.

3.9 Follow-Up. Determine that employees are properly followed up in the case of verified positives and refusals.

- Did any employee refusing to cooperate in testing receive a 9-month disqualification, as required?

NOTE: An employee who provides a blood sample, but is unable to provide a urine sample, would normally not be treated as having refused.

- Were employees testing positive handled as required in 219.104 (a, b, d, e)?

Testing for Cause

Ref. 49 CFR Part 219, Subpart D.

This phase of the compliance review should determine whether for-cause testing is conducted subject to the conditions and safeguards prescribed in the regulations.

Remember--Reasonable Suspicion testing is a mandatory FRA test.

Approach: Review program guidance materials and a small sample of cases, including any pre-identified problem cases.

Note: Many railroads conduct "for-cause" or "railroad operating rule" testing programs under their own management prerogative or subject to a collective bargaining agreement. If the railroad claims this is the case, then the company policy and notices to employees must be reviewed to ensure that there is no implication that the testing is undertaken pursuant to FRA regulations. If it is clear that the program is conducted exclusively under private arrangements, other aspects of the railroad's for-cause testing program will not ordinarily be reviewed. Remember that reasonable suspicion testing is now mandatory. (However, see discussion of reporting requirements, below.)

Note: The remaining sections under For-Cause testing are only applicable to testing utilizing Federal authority.

4.1 General: Determine that --

- The railroad has provided notice to employees describing the consequence of a positive test and the availability of SAP referral; and
- The railroad requires employees to take a breath and/or urine test in reliance on the FRA rule only under qualifying conditions, within 8 hours of the triggering event or observation (or notice to the responsible supervisor), and without any break in service (i.e., that employees are not released and recalled).

4.2 Breath Testing: Determine that --

- The railroad has documentation on file covering its program for supervisor training in the detection of signs and symptoms of alcohol and drug influence, and training in post-accident requirements;
- Tests are conducted by a trained and qualified operator;

- If evidential or authorized screening devices are used and that the evidential devices have been calibrated according to manufacturer's instructions;

At least one supervisor, who has been trained, made determination with respect to reasonable suspicion situations;

- An initial/screening positive is followed by a second test (confirmation test) between 15-30 minutes later.

4.3 **Drug Urinalysis:** Determine that –

- Two supervisors, at least one of whom is trained, make determinations with respect to reasonable suspicion testing situations; and

NOTE: A single supervisor may direct testing under circumstances prescribed following accidents/incidents and rule violations [219.301 (b) (2)].

- Testing is conducted consistent with 49 CFR Parts 219 and 40.

Employee Assistance Policies

Ref. 49 CFR Part 219, Subpart E.

This phase of the compliance review should determine that the railroad is providing a realistic opportunity for employees with substance abuse problems to seek confidential assistance and an opportunity for co-workers to protect their safety without endangering the livelihood of the first-time offender.

Approach: Review program materials and any problem cases.

Note: Case-specific EAP records are entitled to a presumption of confidentiality. These records should be examined only in exceptional cases and subject to specific guidance from the Office of Chief Counsel through the OP Specialist.

5.1 **Publication.** Determine that the company has effectively published voluntary referral and co-worker report policies. Obtain a copy and review in detail to ensure regulatory compliance. Consider –

- Does the voluntary referral policy identify a confidential contact for referral? Is it current? Call the number and ask for the counselor. Verify that the person is available for this purpose.

Note: A personnel director or general manager is not acceptable. The contact must be a person meeting the definition of an EAP and must handle the contact in a confidential manner. Either salaried counselors or identified community resources will be acceptable if qualified. If it is necessary for the individual to take leave for treatment, management should be advised only that the person is on medical leave.

- Does the co-worker report policy clearly explain how to approach supervision? Does it clearly assure employees that disciplinary action will be waived if the identified individual accepts help?

5.2 **Implementation.** Determine if the company follows through with its policy.

- If the company practice is to require reporting of the alcohol/drug problem to management where the employee fails to complete treatment, does the policy clearly provide that confidentiality is waived under these circumstances?

- Are employees returned to their prior duties upon favorable recommendation by the SAP?

5.3 **Follow-Up.** Ascertain length of follow-up from the company and the SAP.

Note: FRA does not specify the length of follow-up. In a co-worker report situation, however, a good rule of thumb would be to monitor any employee diagnosed as chemically dependent for at least one year. During follow-up, the company may require drug urinalysis and/or breath alcohol testing on an unannounced basis.

5.4 **Alternative Policy.** If the railroad claims to have implemented an alternative policy under 219.407, verify that the policy is on file with RRS-11 and is effectively published to employees.

Pre-Employment Drug Testing

Ref. 49 CFR Part 219, Subpart F.

This phase of the compliance review should determine that pre-employment tests are completed for applicants for positions involving covered service and employees transferring to covered service for the first time.

Approach: Review program materials and ascertain how the program is actually administered; audit employment/transfer records for a recent 3-month period selected at random.

Using an appropriate sample –

- Review employment and MRO/program records to verify that tests are conducted for all Hours of Service positions, including first-time transfers from non-covered service; and
- Determine that –
 - Donors receive prior notice that the urine will be analyzed for drugs (normally provided at the time of collection);
 - Applicants receive notification of test results;
 - Applicants testing positive or refusing to provide a specimen are not hired in covered service; and
 - Employees do not commence covered service until negative test results have been reported by the MRO.

Note: This final item may become critical in times of labor unrest. There is no strike exception to this requirement.

*Note: FRA Pre-employment ALCOHOL testing has been suspended.

Random Drug and Alcohol Testing Program Administration

Ref. 49 CFR Part 219, Subpart G.

This phase of the compliance review should determine that random testing is being conducted consistent with the regulatory criteria, in a manner that does not favor or inappropriately burden any covered employee.

Approach: Review program manager records and complaints and pursue leads through field investigation, as necessary.

7.1 **Plan.** Re-review random drug and alcohol testing programs on file with FRA to ensure familiarity.

7.2 **Headquarters Administration and Documentation.** Inspect records of railroad program administrator with focus on following:

- Is the specification of covered positions/employees clear and unambiguous? Is interpretation of coverage uniform across the system? Does the plan successfully address the actual mixed service issues on the particular property?

NOTE: The mixed service issue may be the most troublesome (e.g., employees performing "hostling" functions and electricians who work on cab signal apparatus). Sec. 219.601(b)(6) provides the railroad certain latitude to include or exclude personnel at the margin. (An employee doing HOS duties one or two times every other year should not be in the random pool).

- Are new hires provided notice of the fact that they are subject to random testing?
 - Is the selection method clearly documented and consistently applied?
 - Are selections random and made in accordance with the procedures described in the railroad plan?
 - What percentage of persons/positions selected are actually tested? Are there significant variations among crafts or types of service?
 - In each case where a selected person/position is not tested on the appointed day, is the reason documented (either in central files or other identifiable files)? Is the relevant plan provision followed with respect to voiding of the selection or testing the person through a residual pool, etc.?
 - Are Hours of Service limitations resulting in a significant problem with respect to completion of tests? Is the railroad working on solutions?
 - For each person/position selected for testing but not tested, review the explanation for acceptability.
 - For each person providing a specimen where no report was issued (positive/negative), review why the test was canceled for acceptability and what corrective action was taken.
 - Is the 25% target being met? (May be adjusted by FRA)
 - Is there any respect in which plan execution consistently or frequently fails to meet the regulatory criteria [219.601(b)], e.g., --
- Are employees notified and tested only while on duty?
- Does each employee leave the collection site with a chain of custody form indicating that testing was conducted based on random selection under the FRA rule?
- Is any covered employee refusing a test removed from covered service for 9 months as required? Are proper return-to-service procedures employed?

(219.104)

7.3 **Field Administration of Random Testing.**

Based on program records, complaints and interviews evaluate the following:

- Are there any significant avenues for evasion in the actual administration of the program (i.e., are crews being informed well ahead (any sooner than sufficient travel time should be reviewed) of the collection; are individuals being allowed to mark off after it is clear the collection will occur; are excuses, if any, properly documented and valid)?
- What proportion of collections initiated result in a successful collection the first time, or the second time? Are "shy bladder" cases being pursued as outlined in the regulations (i.e., 3 hour time limit and MRO/medical review if unable to provide specimen)?

Note: This may be a vulnerable aspect of the program. Keep the alcohol/drug program manager apprised of findings.

- Is the railroad making a diligent effort to initiate and complete collections within the Hours of Service limitations? Are any cases of excess service being reported under 49 CFR Part 228?

Is sufficient testing occurring at the beginning, middle, and end of duty period to adequately provide a deterrent for the entire duty period? This is a major issue, especially for alcohol.

- What other problems have emerged in administration of the random testing program?

8.0 Urine Drug Testing Procedures:

Ref. 49 CFR Part 219, Subpart H, and 49 CFR Part 40.

DOT Employer's Guide to Part 40

DOT Urine Collection Procedures Guide

DOT Medical Review Officer Guide

DOT Substance Abuse Procedures Guide

This phase of the compliance review should determine that proper procedures are employed when drug urinalysis is conducted under Part 219. The procedures are intended to provide for secure collections while respecting the privacy and dignity of the donor.

Approach: Review program materials and complaints. Visit collection sites selected at random or because of identified deficiencies.

8.0.1 **Lab Testing Contract.** Determine that contract is with a DHHS certified laboratory that it provides for FRA access to records and that testing will be in accordance with Part 40. [219.701(b)].

8.1 **Collection.** Specimen collection is the most critical phase of drug urinalysis. As further described below, the review should determine that –

- Collection instructions and materials are consistent with Part 40 requirements;
- Collectors are prepared to conduct collections properly;
- Collection sites afford privacy and security throughout the collection process; and
- Part 40 requirements are otherwise being met.

8.1.1 Forms and Materials.

Review the custody and control form(s), collection kit materials, and any other standard items used on the property (whether or not required). Consider the following:

- Are they consistent with Parts 40 and 219?
- Are they clear and self-explanatory, or are clear instructions provided?
- Do they clearly delineate the responsibilities of supervisor, employee, and collector?

Any of the following items is an immediate source of concern:

- Medical information is requested, other than (as an option) on the back of the employee copy.
- The donor is asked to provide a release on the custody and control form. But see 219.11 and 40.25 (f)22 (ii).

Many railroads will expect a collection site to obtain samples for the railroad's own program as well as FRA's. Moreover, the same facility may also contract to collect samples for other Federally mandated or private employer testing programs. Collection site personnel must not confuse FRA collection procedures and materials with those of other testing programs.

Ask these questions –

- Can the collector articulate FRA procedures and produce the proper custody and control forms and collection kits? Can the collector name the laboratory to which FRA samples must be sent? (If the site is contracted to collect post-accident samples as well, is the collector aware that all such samples must be forwarded to FRA's contract laboratory?)
- Where are the FRA materials kept? Are they stored apart from those of other programs? What retrieval method does the site use? What inventory method?

8.1.2 **Facilities.** All collection sites should provide for the following –

- Security from undetected access during collection;
- Private enclosure for urination with toilet/urinal to complete void;
- Capability of securing sources of water, soap and other adulterants; bluing of toilet water;
- Secure storage for specimens pending shipment (if any delay in shipment is permitted).

8.1.3 **Collection Site Person (Collector).**

Ascertain that the collector either has received specific training or is a certified medical professional or technician who has received and understands specific instructions for collection.

Standards, training for collection personnel should be reviewed for completeness and accuracy.

Note: If a contract collector is employed, the materials may be viewed by the contractor as proprietary. FRA should have access to these materials, if necessary through the railroad. However, if there is a problem with access or if a privilege is asserted with respect to dissemination, the FRA Alcohol and Drug Program Manager should be consulted. Copying of such documents should be limited to avoid inadvertent dissemination of proprietary materials.

In the case of a collection site that uses a public rest room where securing of water sources is not possible -- requiring the collector to remain in the common area of the rest room while the donor provides the specimen in a stall -- verify that the collector is either of the same gender or is a certified medical professional or technician. (This is a "monitored" collection; in the case of direct observation, the collector must always be same gender.)

Determine that the supervisor/manager of the donor is not the collector.

8.1.4 **Collection Procedures.**

Review written procedures (instructions for collectors, collection site supervisors, donors) to determine if they are consistent with 40.21(d).

Critical items –

- Are instructions clear that collection is not observed, except in circumstances providing reason to believe the donor will tamper?
- Are instructions clear that only outer garments are to be removed (NOT strip and gown)?
- Do instructions emphasize security of specimens following collection and pending shipment?
- Do railroad supervisors receive separate instructions? Do they include cautions with respect to discretion as to non-accusatory approach on notification and avoiding embarrassment at collection site?

"Shy bladder": Do the instructions correctly describe the procedure where the donor claims inability to provide a specimen?

Note: The 3-hour procedure may not be well understood. Determine –

- whether the proper procedures are being followed; (start of 3-hour clock; 40 oz. fluid; refusal decision)

8.1.5 **Collection Records --**

- Who retains the employer copy?

Note: This is up to the company, but a procedure for retention should be identified in internal instructions as a matter of good practice.

- Do the MRO records include Copies 2 and 4?

Note: Copy 4 contains the employee certification and is necessary to establish a positive link between the individual and the specimen I.D. number. In the case of a verified positive, Copies 2 and 4 (or photocopy) may be provided to the charging railroad officer.

8.1.6 **Collection Quality Control.** Determine how the railroad ascertains compliance by collectors. For instance –

- Does the railroad (MRO) maintain good records of the reasons for test cancellations?
- Are negative tests reviewed? By whom?

Note: Review of negative reports (which must be maintained by MRO) must be accomplished at least administratively. Names and test numbers must be matched to ensure there are no administrative errors. Additionally, they need to be reviewed to check that the collection site is properly completing the paperwork. If there is a problem with the laboratory rejecting samples for collection errors this check should help resolve that problem.

- Is there a procedure for reporting collection problems from local supervision?
- What disposition is made of the employer copy of the custody and control form (i.e., is it used as an early warning on problems)?

8.1.7 **Logistics.** Verify collection site readiness through spot visits and mock collections during significant compliance audits.

- Are the correct forms and kits on hand?
- Are collectors prepared?

8.1.8 **Supervisory Readiness.** Verify supervisory readiness through selected interviews.

- Which facilities are designated for FRA testing in the area?
- What are you responsible for as a supervisor?
- How is the situation handled if an employee has difficulty providing a specimen?
- What happens to the employer copy of the custody and control form?
- Who are you to contact if there is a problem?
- How are you to handle Hours of Service issues?

8.2 **Laboratory Receipt and Analysis.**

Verify that the laboratory is currently certified by DHHS under Guidelines for Federal Workplace Drug Testing Programs by contacting the alcohol/drug program manager or checking the most recent Federal Register listing (reissued every month).

Review the laboratory contract to determine that it provides for FRA access for inspection and requires the laboratory to comply with Part 40.

From the railroad program manager or lab director, obtain the criteria for acceptance/rejection of specimens and ascertain whether consistent with current guidance.

Adulteration panel -- procedures.

- What are the criteria for evaluating specific gravity, creatinine and/or pH? What happens when one or more is out of limits?

Note: There is no requirement for use of adulteration panels or prescribed outcome if an adulteration test calls into question the validity of the specimen. However, if an adulteration panel is used, it is important that the railroad have a procedure for dealing with information provided.

Drug panel –

- Determine that the laboratory is testing for the 5 SAMSHA drug groups and that the DOT/FRA specimen is not used for other analysis.

8.2.1 Rate of Specimen Rejection by Lab.

Determine what percentage of tests is canceled because of errors prior to receipt at the lab and ascertain if the railroad is acting to deal with problems disclosed.

8.2.2 Analysis: Drugs.

Verify that the SAMSHA five-drug panel is used and is not supplemented.

Note: As a general rule, the quality of laboratory performance is the responsibility of the certifying body. However, FRA (RRS headquarters) maintains a contract oversight capability to investigate any problems that may arise.

8.2.3 Reporting Lab Results to the MRO.

- Are transmissions by a secure medium?
- Only confirmed results provided?

Note: Any transmission of unconfirmed screening data should be considered a serious violation. Contact alcohol/drug program manager immediately.

- Do test results include required items (specimen I.D., accession no., collection date and location, positive/negative)? Quantitations should not be included, except for opiates, if requested.
- Are electronic reports followed by hard copy of Copy 2 in every case, with lab certifying scientist signature on positives?

8.3 MRO Review.

Describe system for reporting results from the MRO to the railroad.

- How are test results communicated to the railroad? To whom?
- For positive tests, the lab report (Copy 2 of the chain of custody form only) may be provided to management.

Note: Quantitations may not be provided to management, unless the test result is contested and it becomes necessary to bring the lab file into the disciplinary proceeding.

- For negative tests, the lab report is not to be provided to management. Rather, the MRO should provide a listing of employee I.D.s, test dates and the information that the tests were negative. The purpose of this procedure is to ensure that management cannot discern (or guess) which employees are screening positive or are making medical use of controlled substances.
- Do employees receive test results promptly? (219.707--ten days or less)

8.3.1 Rate of Canceled Tests at MRO Level. How many tests have been canceled by the MRO?

Consider –

- Why are tests being canceled by the MRO? Are the reasons documented? Are the reasons acceptable?

- Has the MRO reported the nature of the problems to management (in an appropriate manner that protects confidentiality) or dealt with the collector/lab directly to obtain correction for future tests?

8.3.2 MRO Records.

Note: It is critical that confidentiality of drug test information be maintained. Avoid copying materials that contain medical information, unless central to the investigation. Handle necessary documents in a secure manner. Identify testing events by date, location and specimen number, rather than name. Obtain Office of Chief Counsel guidance through RRS channels, as necessary.

Review to determine following:

- Copy 3 on file for each test?
- Are MRO-downgraded negatives documented (prescription info, etc.)?
- Are blind proficiency test records in order? (See below.)

8.3.3 MRO Procedures.

How is contact made with employee?

Is every reasonable effort made to protect confidentiality at this stage?

Is there any significant delay in reaching the employee?

If review of sample files indicates problems, develop mean delay (lab report to contact initially established) and indicate greatest delay, along with factors influencing delays (MRO unavailability, method used to establish contact, etc.).

What is the procedure where employee claims medical use? Do the MRO's files indicate appropriate documentation of medical use consistent with 219.103?

What is the overall delay from lab report to MRO report to the employer/employee? For negatives? For positives?

8.4 Action on Positive Test Results (219.104, 219.711).

Check that employees testing and verified positive are removed from service immediately.

Is confidentiality maintained (i.e., is dissemination of drug use information limited to those management personnel with need to know? Are any personnel necessarily involved in grievance/arbitration advised that Federal regulations require the information to be treated as confidential)?

8.5 Performance Testing [40.31(d)].

Review last 12 months of external blind performance testing data.

Are quality control specimens introduced as true blind samples? (Observe or obtain a clear description of the procedure for introduction. If possible, view one or more blind samples to verify similarity to employee specimens.)

Possible problems include: mailing of performance testing specimens directly to lab by contractor, where postmark or other indications reveal that it is a quality control specimen; preparation of specimen by lab being challenged; use of non-standard container, seal or paperwork.

Introduced at rate of at least 3 per 100?

80/20 blank to spike?

Appropriate range of drugs spiked? Obtain list of target values and provide to Alcohol/Drug Program Manager for review.

Any false positives? (If so, must have been reported to FRA.)

Determine % false negative. If in excess of 10% of spiked specimens submitted, refer to RRS headquarters for review.

9.0 Breath Alcohol Testing Procedures:

Ref. 49 CFR Part 219, Subpart H; 49 CFR Part 40, Subpart C

Has each breath alcohol technician (BAT) been trained to proficiency on the operation of the evidential breath-testing device (EBT) that he or she is using? Review any documentation of the BAT's training. Is the BAT's course of instruction equivalent to DOT's model course?

Does the BAT know:

- o the fundamentals of EBT methodology and operation?
- o calibration procedures?
- o the fundamentals of breath alcohol analysis?
- o how to interpret and record EBT results?

How familiar is the BAT with the alcohol testing procedures in Part 40?

Are the BAT's instructions and forms consistent with Parts 40 and 219?

What kind of EBT does the BAT use? Is the EBT on NHTSA's conforming products list?

Review the quality assurance plan (QAP) developed by the EBT's manufacturer. For each EBT, have inspection, maintenance and external calibration checks been performed as required?

Are testing sites sufficiently private to prevent unauthorized persons from seeing and hearing test results?

How and when does the BAT transmit test results to the railroad? Is transmission confidential?

How are "shy lung" situations handled? What percentage of breath tests are not completed? Review how the railroad follows up uncompleted breath tests.

Are individual employee test results kept in a secure manner?

10.0 Accident/Incident Reporting:

Ref. 49 CFR Part 225.17(d); FRA Guide for Preparing Accident/Incident Reports.

Purpose: To verify that alcohol/drug involvement is accurately reported to FRA.

Approach: Obtain pertinent reports from RRS-20 for most recent 12-month period. Using appropriate sample of testing events for which positive results were obtained in post-accident or reasonable cause

testing, verify that alcohol/drug information is included in accident/incident report as required by the current reporting guide.

Specifically note whether refusals and other failures to obtain specimens have been reported with the accident/incident report as required by 49 CFR 219.209(b).

11.0 Documentation and Follow Up:

Document work plan elements completed, and material findings, in a narrative format suitable for presentation to the railroad. Areas not involving exceptions should be covered in brief, summary fashion. Exceptions should be discussed in sufficient detail to describe the factual basis, the regulatory requirements, and extent of non-compliance. Where numerous specific instances are cited, reference may be made to the attached inspection reports in lieu of detailed narrative discussion.

Provide the preliminary report to the railroad for comment within a set period (normally no more than 30 days), after review by the Operating Practices Specialist. Note: In an urgent case, the preliminary report stage may be omitted.

Prepare a final report attaching the railroad response and distribute within Region as directed and as follows:

RRS-11 ATT.: Alcohol/Drug Program Manager.

RCC-30 ATT.: Compliance history file.

Conduct follow-up review within 60 days on items requiring correction, or document for file reason for longer cycle; distribute summary of findings in the same manner as final report.

Note: As appropriate, violation reports may be prepared in connection with information obtained during a compliance review, subject to the same guidance applicable during routine inspections (see 49 CFR Part 209, Appendix A).