

# **Alcohol and Drug Testing**

## **Regulations**

**(Parts 219 and 40)**

## **Interpretive Guidance Manual**

**Federal Railroad Administration  
September 14, 2010**

## LIST OF ACRONYMS

AAR	-	Association of American Railroads
ANPRM	-	Advance Notice of Proposed Rulemaking
ASD	-	Alcohol Screening Device
ASLRRA	-	American Short Line and Regional Railroad Association
BAT	-	Breath Alcohol Technician
CCF	-	Custody & Control Form
CCU	-	Continuing Education Units
CFR	-	Code of Federal Regulations
CPL	-	Conforming Products List
C/TPA	-	Consortium/Third-Party Administrator
DER	-	Designated Employer Representative
DHHS	-	Department of Health and Human Services (HHS preferred)
DOT	-	Department of Transportation
DOT Agency	-	FRA, FAA, FTA, FMCSA, NHTSA, PHMSA, OST, etc.
EAP	-	Employee Assistance Professional
EBT	-	Evidential Breath Testing Device
FAA	-	Federal Aviation Administration
FMCSA	-	Federal Motor Carrier Safety Administration
FRA	-	Federal Railroad Administration
FR	-	Federal Register or Final Rule
FTA	-	Federal Transit Administration
HHS	-	(Department of) Health and Human Services
MRO	-	Medical Review Officer
NHTSA	-	National Highway Traffic Safety Administration
NLCP	-	National Laboratory Certification Program
NOPE	-	Notice of Proposed Exclusion
NPRM	-	Notice of Proposed Rulemaking
NTSB	-	National Transportation Safety Board
OA	-	Operating Administration (such as FRA)
ODAPC	-	Office of Drug and Alcohol Policy and Compliance (DOT)
OGC	-	Office of General Counsel (DOT)
OST	-	Office of the Secretary (DOT)
PCP	-	Phencyclidine
PHMSA	-	Pipeline and Hazardous Materials Safety Administration
PIE	-	Public Interest Exclusion
SAMHSA	-	Substance Abuse and Mental Health Services Administration
SAP	-	Substance Abuse Professional
STT	-	Screening Test Technician
USCG	-	United States Coast Guard

## **How to Use This Part 219 and Part 40 Interpretations Guidance Manual**

The purpose of this manual is to provide guidance that is in addition to the Part 219 and Part 40 regulations. First go to the CFR and read the regulation that applies to a question you have. If that doesn't answer your question, then you can use this manual to see if there are any interpretations from sources such as DOT and FRA Q & As, preamble language to rules, and excerpts from the Urine Specimen Collection Guidelines and the Substance Abuse Professional Guidelines. The FRA Part 219 Alcohol/Drug Program Compliance Manual (June 2002 Second Edition) should also be one of your first resources.

The easiest way to use this manual is in an electronic format in which you search for a specific word or phrase. For example, in Word format, go to EDIT on the toolbar and then click on FIND or while you're in the document, just click and hold the CONTROL (Ctrl) key down while you click on the letter F (Control F). When Find What? appears, enter the word or phrase you're looking for such as the word - catheterization. Keep clicking on Find Next until the reference you're looking for appears. Or, if you know the CFR cite in which you're looking to see if there's interpretive guidance, type in the CFR section such as 219.101 and if there is interpretive guidance, it will follow.

If you don't have the electronic format, then you will need to know the CFR section you're looking for such as 40.67 for direct observation collections.

Part 40 Questions & Answers will be in Part 40, but some FRA Questions & Answers will be in Part 219 or Part 40, depending on the subject.

NOTE: All deficiencies and/or violations of Part 40 should be written under 219.701 and not under Part 40. This section basically requires testing to be performed per Part 40 (except for post-accident). In the narrative section of the inspection and/or violation report, the inspector should refer to the specific sections of Part 40 which were in non-compliance.

# **CONTROL OF ALCOHOL AND DRUG USE PART 219**

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## **Preamble Language & Other Interpretive Guidance For FRA and State Inspectors Formatted by 49 CFR PART 219 Sections**

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**Federal Railroad Administration  
Updated: September 14, 2010**

<b>Control of Alcohol and Drug Use PART 219 Subparts</b>	
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**PART 219  
SUBPART A - GENERAL**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.3</b>	<b>APPLICATION</b>	
Tourist railroads decision tree	<p>- Is the track gage less than 24 inches? If YES, FRA will not exercise jurisdiction. End of inquiry.</p> <p style="text-align: center;">*****</p> <p>- Is the track gage less than 24 inches? If NO, does the railroad operate over the general railroad system, or own track that is part of the general railroad system?</p> <p>If YES, Part 219 applies. End of inquiry.</p> <p style="text-align: center;">*****</p> <p>- If the railroad DOES NOT operate over (or own track that is part of) the general railroad system, then is the railroad INSULAR or NON-INSULAR?</p> <ol style="list-style-type: none"> <li>1. At-grade rail crossing in use? (non-insular)</li> <li>2. Public highway-rail grade crossings in use? (non-insular)</li> <li>3. Bridge over a public road or waters used for commercial navigation? (non-insular)</li> <li>4. Track located within 30 feet of another railroad? (non-insular)</li> </ol> <p>If the railroad is INSULAR or NON-INSULAR, FRA does not exercise jurisdiction with respect to Part 219. End of inquiry.</p>	August 2005 guidance issued by RCC

**PART 219  
SUBPART A - GENERAL**

<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
<p>(a)(1) Military base railroads</p>	<p>FRA does not have full jurisdiction over other branches of the Federal government. The reasoning is that FRA was only given authority to collect from “persons” who violated the regulations, and sovereign immunity applies unless expressly waived. In March 2004, FRA decided that even though it couldn’t collect against another Federal branch, it should be able to investigate since it was given broad jurisdiction to regulate for railroad safety. In a particular instance, FRA examined the DOE’s potential transport to a location and decided that it could take certain actions. Those include the power to:</p> <ul style="list-style-type: none"> <li>- conduct investigations and warrantless inspections of the railroad equipment, facilities, and operations at reasonable times and in a reasonable way;</li> <li>- issue subpoenas, require the production of documents, take depositions, &amp; prescribe recordkeeping &amp; reporting requirements;</li> <li>- conduct accident investigations;</li> <li>- disqualify individuals from safety-sensitive service if their violation of the railroad safety regulations demonstrates their unfitness for such service;</li> <li>- issue emergency safety orders to abate unsafe conditions or practices, including directing common carrier railroad(s) serving the facility to limit or even halt shipments pending resolution of rail safety problems within the facility; and</li> <li>- seek injunctive relief, though a civil action brought by the Attorney General, to enjoin a violation of the Secretary’s regulations &amp; orders.</li> </ul>	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<p>(a)(1) General railroad system of transporta- tion</p>	<ul style="list-style-type: none"> <li>- By “general railroad system of transportation,” FRA refers to the network of standard gage track over which goods may be transported throughout the nation &amp; passengers may travel between cities &amp; within metropolitan &amp; suburban areas.</li> <li>- Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system.</li> <li>- However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.</li> <li>- Moreover, portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there. For example, the Alaska Railroad.</li> <li>- Similarly, an intercity high speed rail system with its own right of way would be part of the general system although not physically connected to it.</li> <li>- Urban rapid transit operations are ordinarily not part of the general system, but may have sufficient connections to that system to warrant exercise of FRA’s jurisdiction.</li> <li>- Tourist railroad operations are not inherently part of the general system and, unless operated over the lines of that system, are subject to few of FRA’s regulations.</li> <li>- If trackage is part of the general system, restricting a certain type of traffic over that trackage to a particular portion of the day does not change the nature of the line - it remains the general system.</li> </ul>	<p>Appendix A to Part 209</p>

SECTION	INTERPRETIVE GUIDANCE	SOURCE
(b)(1) Plant railroads	<ul style="list-style-type: none"> <li>- Where the plant railroad operates beyond the plant boundaries on the general system, it becomes a railroad with respect to those particular operations, during which its equipment, crew, &amp; practices would be subject to FRA’s regulations.</li> <li>- In some cases, the plant railroad leases track immediately adjacent to its plant from the general system railroad. Assuming such a lease provides for, &amp; actual practice entails, the exclusive use of that trackage by the plant railroad &amp; the general system railroad for purposes of moving only cars shipped to or from the plant, the lease would remove the plant railroad’s operations on that trackage from the general system for purposes of FRA’s regulations, as it would make that trackage part &amp; parcel of the industrial installation.</li> </ul>	Appendix A to Part 209
(b)(2) Joint operations	<p>Operating on the tracks of another railroad (joint operations). This would include the operation of a railroad on tracks of any other railroad subject to Part 219 (full or partial compliance).</p>	Verbal interpretation Lamar Allen
(b)(2) Interchange	<ul style="list-style-type: none"> <li>- FRA intends the phrase “except as necessary for purposes of interchange” to be construed with appropriate emphasis on the adjective “necessary.”</li> <li>- Where interchange-related trackage rights are used for operating convenience of either railroad, the small railroad shall comply with all relevant provisions of Part 219. <ul style="list-style-type: none"> <li>- FRA field inspectors will make decisions regarding “necessary.”</li> </ul> </li> </ul>	Preamble to Final Rule, 12/27/89, Pg. 53239

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.5</b>	<b>DEFINITIONS</b>	
Class I	<ul style="list-style-type: none"> <li>- Average annual operating revenues of \$250 Million or more</li> <li>- In 2004, there were 8 Class I railroads: Amtrak, BNSF, CN, CP, CSX, KCS, NS, and UP.</li> </ul>	Jeff Warren, STB; 202-565-1674
Class II	<ul style="list-style-type: none"> <li>- Average annual operating revenues between \$20 Million and \$250 Million</li> <li>- In 2001, there were about 20 Class II railroads.</li> </ul>	STB 49 CFR 1201
Class III	<ul style="list-style-type: none"> <li>- Line-haul railroads and switching and terminal companies with operating revenues below \$20 Million</li> <li>- In 2001, there were about 600 Class III railroads</li> </ul>	STB
Regionals Locals	<ul style="list-style-type: none"> <li>- Regionals are those with annual operating revenues between \$40 Million and \$256.4 Million and at least 350 miles of track operated.</li> <li>- Locals are all those railroads which fall below the Regional thresholds.</li> </ul>	Dennis Yachechak
Covered employee	The ban on on-the-job use refers to any such use while the employee is assigned to perform covered service. For instance, an employee who accepts a call to perform yard service & reports at the appointed time becomes subject to the prohibition on use upon reporting, even though the employee may not yet have engaged in the movement of rolling stock.	Preamble to Final Rule, 8/2/85, Vol. 50, No. 149 Pg. 31535
Possess	- An alcohol test is not needed to confirm possession of alcohol or controlled substances.	Preamble to Final Rule Pg. 7453

<b>PART 219 SUBPART B - PROHIBITIONS</b>		
<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
<b>219.101</b>	<b>Alcohol &amp; drug use prohibited</b>	
	- A 219.101 (on-the-job use) is difficult to prove, but is usually found during FRA post-accident or breath alcohol testing.	
(a)(1) Use	“Use” is intended to have its common sense meaning. For instance, an employee may not ingest an alcoholic beverage, inject a controlled substance, or take a controlled substance in pill form. (Vol. 50; No. 149)	Preamble to Final Rule, 8/2/85; Pg. 31353
(a)(2) Alcohol	- Includes alcohol-based cough syrup, prescriptions, over-the-counter medication, or liquor-filled chocolates. (Pg. 7316)	Preamble to Final Rule; 2/5/94
(a)(2) Under the Influence of	- This is principally directed at the problem of pre-duty use, but applies equally to the condition of an employee who has used a substance on the job without being detected in the act...”under the influence of” refers to noticeable effects of alcohol or a drug that cause the employee to behave or appear in a way characteristic of the effects of the substance & thus suggest the employee is not fit to undertake safety-sensitive functions. For instance, an employee who is under the influence of alcohol or another central nervous system depressant may give evidence through slurred speech (“heavy tongue”) or unsteady gait. An employee who is under the acute influence of a central nervous system stimulant may appear extremely nervous or unusually talkative. Obviously, for an employee to be found “under the influence” it will be necessary to form a judgment that the observed appearance or behavior is related to alcohol or drug use, as opposed to other causes.	Preamble to Final Rule, 8/2/96, Vol 50, No. 149 Pg. 31535

**PART 219  
SUBPART B - PROHIBITIONS**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
Impairment	- The concept of “impairment” relates to the employee’s ability to perform his functions properly. For instance, an employee with a significant level of alcohol in his system might be capable, as a result of practice or selective tolerance, to conceal the conventional signs that he is “under the influence.” However, if the employee fails to perform an assigned task in a proper manner, & it can be established that that failure was associated with alcohol consumption, the employee would be shown to be “impaired.”...The testing authority conferred by Subpart D can assist in resolving marginal cases.	Preamble to Final Rule, 8/2/96, Vol 50, No. 149 Pg. 31535
(a)(2) 0.04	- A breath alcohol concentration of .04 means .04 grams of alcohol in 210 liters of expired deep lung air. This breath standard is analogous to a blood alcohol concentration of .04. - The .04 sets a <i>per se</i> level of alcohol that is absolutely prohibited...the consensus of scientific & professional opinion appears to be that material detrimental effects on human performance, begin at least in the range of .04 percent. (Vol. 50, No. 149)	Preamble to Final Rule; 2/25/94 Pg. 7316 Preamble to Final Rule; 8/2/96, Pg. 31535
(a)(4) 0.02 to 0.039	...The bifurcated system does not preempt a railroad’s independent authority to test and discipline under Rule G. As stated in 219.1, railroads retain the latitude to adopt more stringent standards under their own authority. For instance, railroads retain their authority to discipline an employee under company policy for a 0.02-0.039 test result conducted under FRA authority or to discipline an employee found to have violated Rule G based solely on supervisory observations...	Preamble to Final Rule; 2/15/94 Pg. 7452

**PART 219**  
**SUBPART B - PROHIBITIONS**

<p>(a)(5) Negative - below 0.02</p>	<p>- Breath alcohol concentrations of less than 0.02 percent from a Federal collection are negative tests. The carrier is not permitted to take any administrative action on a Federal result of greater than 0.00 percent &amp; less than 0.02 percent, nor may they use this finding as the nexus for conducting their own alcohol test under company authority.</p> <p>- Additional company policy testing after a negative Federal test (below 0.02 percent) would only be permitted in the extraordinarily rare circumstance where following a <i>reasonable suspicion, Federal reasonable cause, or Federal follow-up</i> test, the carrier's trained supervisor was present &amp; made an <u>independent</u> post-test reasonable suspicion determination based on the covered employee's body odors, speech, behavior, or appearance. However, this same allowance would <u>not</u> be permitted following a Federal random test. Carriers are not permitted to use this special circumstance as an opportunity to achieve a different test result, &amp; any such case should be thoroughly investigated by FRA. Unless there is compelling evidence to support the need for additional testing, FRA will likely consider administrative action against the carrier.</p>	<p>Part 219 Alcohol/ Drug Program Compliance Manual</p>
<p><b>219.102</b> <b>Drugs</b></p>	<p><b>Prohibition on abuse of controlled substances</b></p>	
	<p>- This violation is marginally less serious than a 219.101 violation because in most cases on-the-job use, possession, or impairment is not established.</p> <p>- A 219.102 violation is normally found during a random urine drug test.</p>	

**PART 219**  
**SUBPART B - PROHIBITIONS**

**219.103**  
**Prescription**  
**& OTC**

**Prescribed and over-the-counter drugs**

Medical  
marijuana

Some states have passed a proposition authorizing physicians to recommend the use of marijuana for the treatment of cancer, AIDS, anorexia, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. DOT & FRA's position is that the use of marijuana by transportation safety-sensitive employees is prohibited. DOT & FRA will continue to fully enforce the current drug testing laws regardless of the passage of such state propositions.

**PART 219  
SUBPART B - PROHIBITIONS**

<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
<p>Safety Advisory 98-3</p>	<ul style="list-style-type: none"> <li>- On 12/24/98, FRA issued a notice of safety advisory 98-3 regarding safe use of prescription and over-the-counter (OTC) drugs. It is reproduced here.</li> <li>- FRA issued this advisory in support of DOT's efforts to ensure that transportation employees safely use prescription and OTC drugs. Safe rail operations depend upon alert &amp; fully functional professionals who have not been adversely affected by drug use, whether medically appropriate ("legal") or not. FRA has always prohibited illicit drug use &amp; unauthorized use of controlled substances by safety-sensitive employees, but is equally concerned about the potentially adverse side effects from other prescription drugs and OTC products. Because DOT &amp; FRA testing (including FRA's post-accident testing program) targets only alcohol &amp; controlled substances, FRA does not have a clear picture of the extent to which the performance of safety-sensitive employees is adversely affected by legal drug use.</li> <li>- Accordingly, although not specifically addressed in its alcohol &amp; drug testing regulations (49 CFR part 219), FRA strongly recommends that rail employers &amp; safety-sensitive employees follow 219.103 guidelines when considering the use of all prescription and OTC drugs. Simply stated, in the interest of safety, FRA strongly recommends that either a treating medical professional or a railroad-designated physician make a fitness-for-work determination concerning all prescription &amp; OTC drug use prior to permitting an employee to return to work in safety-sensitive service. This determination should also be made whenever an employee currently performing safety-sensitive functions is concerned about possible effects on his or her job performance from the use of prescription or OTC drugs.</li> <li>- Section 219.103(b) authorizes railroads to establish reporting &amp; approval procedures for all prescription &amp; OTC drugs which may have detrimental effects on safety. Additionally, FRA recommends that railroads educate their employees on these reporting &amp; approval procedures and, most importantly, on how to use prescription &amp; OTC medications safely.</li> <li>- FRA will take all appropriate action to continue reducing the negative impact from inappropriate use of all prescription &amp;</li> </ul>	<p>FR, Vol 63, No. 247</p>

SECTION	INTERPRETIVE GUIDANCE	SOURCE
	OTC medications. Moreover, FRA strongly encourages the rail industry to voluntarily develop programs on safe prescription and OTC drug use before such programs are mandated or directed through legislation.	
<b>219.104</b>	<b>Responsive action</b>	
(a) All modes	Removal from covered service includes removal from safety-sensitive service in all modes of transportation affected by Part 40.	
(c) Hearing procedures probationary employee	<ul style="list-style-type: none"> <li>- Probationary covered service employees found positive on a Federal alcohol or drug test have a right to an opportunity for a hearing, upon request</li> <li>- Railroad must also provide the required notice, and at a minimum, provide a list of available SAPs.</li> <li>- Railroad must provide educational materials, including a detailed discussion of the consequences for covered employees found to have violated the Federal prohibitions &amp; the procedures specified in 219.104</li> <li>- See also 2/14/03 FRA letter to Jeffrey Moller, AAR</li> </ul>	Q & A - Probationary employee
(d) Follow-up testing	<ul style="list-style-type: none"> <li>- For locomotive engineers, during the first year, follow-up tests must include at least 6 alcohol tests and 6 drug tests. A railroad can test for both alcohol and drugs on the same day.</li> <li>- On a non-routine basis, employers may call an employee “who is available for duty” (not on medical or authorized leave) to duty for a follow-up drug and/or alcohol test when abstinence from alcohol is required in a Federal follow-up testing plan.</li> </ul>	240.119 (d)(2)

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.105</b>	<b>Railroad’s duty to prevent violations</b>	
(a) Actual knowledge	An employer who actually knows an employee has used alcohol during the pre-duty abstinence period is prohibited from allowing the employee to perform covered service duties. A railroad cannot always be aware of pre-duty behavior, but actual knowledge can come from the railroad’s direct observation of an employee, a reliable witness or the employee’s admission of alcohol use. Generally, this prohibition is enforceable vis-a-vis the railroad only in “actual knowledge” situations.	Preamble to Final Rule; 2/15/94 Pg. 7320
(a) Mark-off rights	“Mark-off” rights continue to be a collective bargaining issue. Prior to the December 27, 1989, Final Rule, “Labor representatives also renewed their call for a recognized right of “mark-off” when an employee receives a short call but has recently consumed beverage alcohol. FRA has previously indicated that this issue should be handled through cooperative agreements on the properties.	Preamble to Final Rule Pg. 53239



SECTION	INTERPRETIVE GUIDANCE	SOURCE
(a)(1) Evacuation	<ul style="list-style-type: none"> <li>- An evacuation is the relocation of people to a safe area to avoid exposure. It is normally initiated by local authorities, usually by the responding fire or police department, and may be either a mandatory or voluntary evacuation.</li> <li>- This definition for purposes of post-accident testing may differ from the “immediate notice of certain hazardous materials incidents” reporting in 171.15.</li> </ul>	
(a)(1) Fuel oil spill	<p>A fuel oil spill from the fuel tank of a locomotive, although a hazardous material, is not considered hazmat “lading” since the fuel tank is part of the locomotive. Nor would it be considered a release of hazmat lading if a fuel tender car(s), connected to the locomotive (as part of the locomotive consist) would spill fuel oil. However, if a fuel tender car is not part of a locomotive consist, any fuel oil spill would be considered hazmat lading.</p> <p>considered</p>	FRA guidance
(a)(2) Impact accident	<ul style="list-style-type: none"> <li>- If a train or switching movement goes over a derail, causing damage of \$150,000 or a reportable injury, post-accident testing is not required because a derail is <u>not</u> the type of obstruction contemplated by the rule. However, failure to stop short of the derail is a qualifying event for reasonable cause testing.</li> <li>- If two pieces of maintenance equipment collide and a reportable injury occurs, a post-accident test would not be triggered because the employees are not covered, nor are they performing covered service.</li> </ul>	FRA PAT questions 8/2/85
(b) Exceptions - grade crossing accident	<p>The following is a standard letter regarding the exception for post-accident testing following highway-rail grade crossing accidents:</p> <p>Dear Mr. Reilly:</p> <ul style="list-style-type: none"> <li>- Educating all the personnel involved in railroad operations continues to be a daily challenge. I am providing this letter to you and your organization in hopes that you can distribute it to your members to help in this education process. The specific</li> </ul>	FRA letter to AAR and ASLRRRA, 11/2/01

SECTION	INTERPRETIVE GUIDANCE	SOURCE
	<p>target of this correspondence is law enforcement personnel who respond to rail accidents and are unsure as to whether they have authority to administer alcohol and drug tests to train crews after train accidents.</p> <ul style="list-style-type: none"> <li>- FRA's mission is rail safety. Whenever there is a significant train accident, FRA regulations require blood &amp; urine specimens from any railroad employees who were directly involved to determine if alcohol or drug use could have contributed to the cause or severity of the accident. Section 219.201 (a) specifies the types of events that require such post-accident alcohol &amp; drug testing. Section 219.201 (c) provides that the railroad shall determine whether or not to conduct Federal post-accident testing. The railroad representative is required to make a reasonable inquiry into the circumstances &amp; consequences of the accident/incident before determining whether testing is required.</li> <li>- The majority of train accidents occur when a train strikes a trespasser, pedestrian, or motor vehicle on the tracks. In these situations, or when an accident has been wholly caused by vandalism or an Act of God, FRA regulations exempt the train crew from post-accident testing conducted <u>under FRA authority</u>, since FRA believes that the crew would have had little or no chance to avoid the impact because of the very long stopping distances required to safely stop a train. Therefore, toxicological testing of the crew after such an accident would not yield useful information as to cause.</li> <li>- In general terms, FRA's regulations preempt state &amp; local toxicological testing of railroad employees after train accidents. However, FRA regulations make a special allowance to permit enforcement of certain state &amp; local criminal provisions. Section 219.13, which defines the preemptive effect of FRA's regulations, reads in its entirety as follows:  (a) Under Section 20106 of Title 49, United States Code, issuance of these regulations preempts any State law, rule, regulation, order or standard covering the same subject matter,</li> </ul>	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
	<p>except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.</p> <p>(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal laws that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.</p> <p>- Therefore, while FRA’s alcohol &amp; drug testing regulations generally preempt states from issuing drug testing regulations of their own, they do not preempt provisions of state criminal laws that may require drug testing after train accidents if such provisions impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property.</p> <p>- Local law enforcement may therefore test pursuant to their own authority under appropriate state criminal law, <u>provided that such testing:</u></p> <p>(1) is exempted from FRA preemption under Section 219.13 (e.g., where the police have <u>probable cause</u> to suspect that the railroad employee was impaired at the time of the accident);</p> <p>(2) has an independent basis upon which to withstand constitutional scrutiny; and</p> <p>(3) does not interfere with the collection of FRA post-accident specimens.</p> <p>- I hope this letter will be used to effect appropriate actions at accident sites. Thank you for your interest in rail safety &amp; FRA’s alcohol &amp; drug testing program. If you have further questions please contact Lamar Allen, FRA’s Drug and Alcohol Program Manager at 202-493-6313 or Kathy Schnakenberg, a member of his team, at 816-561-2714.</p> <p>Sincerely,</p> <p>George Gavalla Associate Administrator for Safety</p>	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
(b) Exceptions - grade crossing accidents in railroad yards	<ul style="list-style-type: none"> <li>- One rationale for this exception is that a heavy train operating a high speeds requires a long stopping distance that allows the crew insufficient time to avoid an accident by the time the motor vehicle is spotted on the railroad tracks.</li> <li>- The second rationale is that motor vehicle operators cause the vast majority of these accidents since the train has the right of way over motor vehicles at public crossings.</li> <li>- In the case of a mechanical employee struck by a hump yard switching crew while backing his pickup truck onto a yard crossing, this exception would not apply, and consideration should be made as to whether this was a qualifying post-accident testing event.</li> <li>- Note, however, that highway-rail grade crossing collisions/ impacts within industries or railroad yards must still be reported to the FRA on the F6180.57 report.</li> </ul>	Q & A
(b) Exceptions - natural causes (sun-kink)	<ul style="list-style-type: none"> <li>- A derailment involving a sun-kink does not fit within the natural cause exception to testing, because a sun-kink is not “wholly” attributable to a natural cause. For example, it usually occurs following track repair, or due to failure to issue a heat order, or due to the crew’s failure to comply with the heat order speed restriction.</li> </ul>	
<b>219.203</b>	<b>Responsibilities of railroads and employees</b>	
(b) Timely collection	<ul style="list-style-type: none"> <li>- The four hours is the specified time to use in determining when railroads are required to document why-the-delay if they do not have their employees tested within that time frame [per 219.209 (c)].</li> <li>- The critical element is that the railroad must implement this process so that the testing decisions &amp; arrangements for travel &amp; testing are accomplished within four hours of the accident’s occurrence or from when the railroad was notified.</li> <li>- FRA understands that the railroads have to work with the medical establishments to prioritize this collection requirement.</li> </ul>	FRA policy per Lamar Allen

SECTION	INTERPRETIVE GUIDANCE	SOURCE
	<p>- Any violation for non-compliance with speed of testing requirements will be from FRA’s assessment of the railroad’s action/inaction in getting the employee to the medical facility. If the railroad representative makes a timely decision on who to test, and uses diligence in coaxing the medical facility into doing the testing, FRA will not penalize the railroad.</p>	
(b) Recall for testing	<p>- The rule contemplates that this exception will seldom apply to train crew members, since they will have been held in duty status until the relevant determinations have been made. (Recall normally applies to dispatchers &amp; signal maintainers.)</p> <p>- It is critical that the recall be made “immediately” if the railroad’s “preliminary investigation” establishes that the employee played such a major role in the cause of the accident.</p> <p>- Once the testing decision is made, facts discovered later will not warrant recall (e.g., further inspection of the damaged equipment reveals more damage had been incurred).</p>	FRA 4/19/90 letter to Alaska Railroad
(d)(2) Unconscious persons  Catheterization	<p>NOTE: References to catheterization were removed from 219.11 (b)(2) in the 2001 rewrite. See 40.61 (b)(3), and DOT’s Q &amp; A.</p> <p>- If an employee needs medical attention, treatment takes priority &amp; should not be delayed to collect a specimen.</p> <p>- If an employee is catheterized as part of a <u>medical procedure</u> (following an accident), once the employee’s medical condition is <u>stabilized</u> &amp; the employee can understand that a DOT collection is required &amp; can sign the CCF, a urine specimen should be obtained.</p> <p>- A urine specimen must <u>not</u> be collected, by catheterization or other means, from an unconscious employee.</p> <p>- As mentioned above, catheterization to obtain a urine specimen is also <u>not</u> authorized unless it has already been done as part of a medical procedure.</p> <p>- An employee who normally voids through intermittent or self-catheterization is required to provide a specimen (may provide directly from the catheter into the collection container in the privacy of a restroom).</p> <p>See clarification for post-accident testing below.</p>	Urine Specimen Collection Guidelines Page 24

<p>Taking urine thru a catheter</p>	<p>Q: Under what circumstances may urine from an injured employee be taken through a catheter for FRA testing?</p> <p>A: Whether urine from an injured employee may be taken through a catheter for an FRA test depends on 3 variables:</p> <ol style="list-style-type: none"> <li>1. Whether the employee has already been catheterized for medical purposes;</li> <li>2. Whether the employee is unconscious or not; and</li> <li>3. Whether the test is conducted under Part 219 Subpart C (post-accident) or Subpart D (reasonable suspicion/cause).</li> </ol> <ul style="list-style-type: none"> <li>- Urine may not be collected (whether by catheterization or other means) from an unconscious employee for FRA reasonable suspicion or reasonable cause testing. In its testing procedures (Part 40.61), DOT prohibits urine from being taken from an unconscious employee, whether by catheterization or other means.</li> <li>- Urine may be collected from a conscious employee who has been catheterized for medical purposes (independent of the requirement to provide a urine specimen) for FRA reasonable suspicion or reasonable cause testing. Part 40 permits urine to be taken from a conscious employee who has already been catheterized for medical purposes, so long as the urine collection is properly documented (see September 2001 Q &amp; A above).</li> <li>- Under 219.11 (a), an employee is deemed to have consented to FRA testing by the act of performing covered service for a railroad. A conscious employee may not refuse to provide urine from his/her catheter bag.</li> <li>- Urine may be collected from an employee who has been catheterized for medical purposes, whether conscious or unconscious, for FRA post-accident testing. Because Part 40 applies to FRA reasonable suspicion/cause testing, but does not apply to FRA post-accident testing (see 219.701), 40.61 does not prohibit the taking of urine from an unconscious employee for a post-accident test. Blood may also be taken from an injured employee, whether conscious or unconscious, subject to a physician's determination that drawing the required amount of blood for a post-accident test is consistent with the employee's health (219.203 (e)).</li> <li>- An employee, whether <sup>24</sup>conscious or unconscious, may not be catheterized solely for the purpose of providing an FRA specimen.</li> </ul>	<p>FRA guidance</p>
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SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.205</b>	<b>Specimen collection and handling</b>	
Drugs tested for	<ul style="list-style-type: none"> <li>- Initial testing is performed on urine (or blood if urine is not available) by an immunosay for 8 drug groups: cannabinoids (marijuana), cocaine, opiates (morphine, codeine), amphetamine, methamphetamine, phencyclidine (PCP), barbiturates (major sedatives), and benzodiazepines (minor tranquilizers).</li> <li>- If the test is negative (that is, the results are below the cut-off), routinely no further analysis is performed.</li> <li>- If the initial test is presumptively positive, the urine and/or the blood (and/or tissue in the case of a fatality) specimens are analyzed using GCMS. See the <i>Summary of Analysis Performed on Specimens for Toxicology Under FRA Post-Accident Testing Program</i>, revised 1/30/06, for specific drug or metabolites &amp; cut-off levels for urine &amp; blood for each drug or metabolite.</li> <li>- FRA tests for more drugs &amp; cut-off levels are lower for post-accident testing, than for Part 40 tests.</li> <li>- FRA can test for “any” drug if there is a credible need established.</li> </ul>	Lab summary report
FRA’s oversight contractor	FRA employs the services of a contractor, currently HealthWest, LLC for scientific & technical oversight of FRA’s contract laboratory. Expert consultants in forensics toxicology are utilized by HealthWest to evaluate lab methods, testing protocols & records. FRA conducts periodic oversight inspections to review the performance of the lab in complying with the terms & requirements of the contract.	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
Expired blood tubes	<p>- FRA authorizes railroads to instruct local medical personnel to replace any expired blood tubes with their own stock of unexpired 10 mL grey-top tubes (not 5 mL). This action is requested, but not required, &amp; need only be considered when expired tubes are discovered during an actual post-accident collection. If no unexpired tubes are available, then use of “expired” tubes is required. There is not a chance that negative results will be changed to positive.</p> <p>- There is an expiration date on the outside of the shipping box. The expiration date refers to the vacuum of the blood tubes in each kit. When blood tubes are replaced, cross through the expiration date on the shipping box, &amp; record the next expiration date.</p> <p>NOTE: New expiration date labels are now being supplied by the lab when the blood tubes are replaced.</p>	12/3/96 FR Notice

**PART 219**  
**SUBPART D - TESTING FOR CAUSE**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.300</b>	<b>Mandatory reasonable suspicion testing</b>	
(a) Covered employee	<ul style="list-style-type: none"> <li>- If a covered employee is in the random testing pool, he is subject to a reasonable suspicion test even during duty tours when he is not performing covered service.</li> <li>- See FRA's A/D web page for a copy of this Q &amp; A.</li> </ul>	Q & A - Reasonable Suspicion Test
Alcohol possession	An alcohol test is not needed to confirm <u>possession</u> of alcohol or controlled substances.	Preamble to Final Rule Pg. 7453
A/D possession	<p>Q1: A railroad supervisor boards a train while stopped at a red signal. As he approaches the locomotive door, he sees the engineer quickly remove a bottle of beer from the icebox &amp; place it in his suitcase. The supervisor charges the employee with possession of alcohol, in violation of 219.101 &amp; the railroad's operating rules. Should the supervisor also arrange for a Federal reasonable suspicion alcohol test to be conducted?</p> <p>A1: While the engineer has violated 219.101(a)(1) (prohibiting on-duty use or possession of alcohol), possessing alcohol while on duty is not in itself evidence of alcohol misuse. The supervisor must have specific observations concerning the appearance, behavior, speech or body odors of the engineer which are not present in this scenario. However, the railroad does not need an alcohol test result to prove that the engineer was in violation of 219.101(a)(1). To prove a possession violation, the railroad need only prove that the bottle contained an alcoholic substance &amp; was in the possession of the engineer.</p>	FRA guidance

**PART 219**  
**SUBPART D - TESTING FOR CAUSE**

<p>A/D possession</p>	<p>Q2: Same scenario as above, except the railroad supervisor observes a crack pipe fall out of the engineer’s pocket. Should the supervisor arrange for a Federal reasonable suspicion drug test to be conducted?</p> <p>A2: The supervisor cannot order this test because 219.300(a)(2) requires the supervisor’s suspicion to be based on observations of the engineer exhibiting signs &amp; symptoms of illegal drug use. Similarly, to prove a violation of 219.101(a)(1) (prohibited on-duty use or possession of a controlled substance), the railroad need only prove that there was cocaine in the crack pipe (since possession of drug paraphernalia is not in itself a violation) &amp; that the crack pipe was in the possession of the engineer. While the possession of a crack pipe does not in itself violate FRA regulations, the railroad should, at a minimum, refer the engineer to an EAP to determine if he has an active substance abuse problem.</p> <p>Q3: In the above scenarios, could the railroad test the engineer under company policy?</p> <p>A3: In both scenarios, Part 219 does not prohibit the railroad from conducting company tests under its own authority.</p>	<p>FRA guidance</p>
<p>Decline in job performance</p>	<ul style="list-style-type: none"> <li>- Long-time decline in job performance (i.e., missing work, tardiness) MAY NOT be considered as a factor in determining whether to conduct reasonable suspicion testing. This is best handled through EAP programs.</li> <li>- For drugs, observations may include indications of the chronic &amp; withdrawal effects of drugs.</li> </ul>	
<p>Logic tree</p>	<p>FRA has a recommended (not required) “logic tree” for symptoms consistent with either alcohol or drug use. It is:</p> <ul style="list-style-type: none"> <li>- Alcohol test first</li> <li>- If breath test is below .02, collect urine sample for drug testing</li> <li>- If breath test is .02 or more, drug analysis is optional</li> </ul>	<p>Preamble to Final Rule 2/15/94 Pg. 7454</p>

**PART 219**  
**SUBPART D - TESTING FOR CAUSE**

(b)(2)  
Drugs - 2  
supervisors  
(1 trained)

- All covered employee supervisors must be trained.
- For a urine drug test, only the trained supervisor of the two required supervisors must be on-site; the other supervisor could be contacted by telephone.
- Supervisors who were formerly trained under the previous rule, were required to be retrained following the inclusion of alcohol testing in 1994.
- A supervisor cannot make a reasonable suspicion determination for a Federal test until he or she is trained.
  - Although refresher training is not required, it is recommended.

**PART 219**  
**SUBPART D - TESTING FOR CAUSE**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<p>Returning employee to duty after RC or company policy drug test</p>	<p>Thank you for your letter to the FRA in which you asked, “What is the FRA’s policy as to a railroad employee being required to return to service during the same tour of duty after completing reasonable cause or company policy drug test?” FRA has taken the same position, as discussed below, on this issue since 1986 when FRA first authorized reasonable cause testing. In FRA’s opinion, as an industry, we have had very few problems regarding employers removing a railroad employee from service while the cause of the incident triggering the testing is still under investigation. As you know, the FRA alcohol and drug regulation requires an employer to remove and test any covered employee who is manifesting the signs &amp; symptoms described under the regulation (Mandatory Reasonable Suspicion testing). FRA expects to see those employees held out of service pending the results of the test(s). Reasonable cause testing events-whether accident/incident or rule violation-is discretionary and may be conducted under Federal authority, company authority, or not at all, since such testing is authorized but not required by Part 219. This type of testing (as well as post-accident testing events) is only a basis to <i>inquire</i> whether alcohol or drugs may have played a role, not a reason to <i>conclude</i>, even preliminarily, that the employee was unfit for work. FRA expects that employers would withdraw employees from service <i>only to the extent they would do so under their disciplinary policies based on the underlying conduct</i>. Additionally, 219.105 requires a railroad to use due diligence to prevent alcohol &amp; drug violations in the workplace. As previously stated, it is FRA’s experience that the industry is, as a whole, professionally accomplishing that task.</p>	<p>3/3/03 FRA letter to James Brunkenhoefer, UTU</p>

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.301</b>	<b>Testing for reasonable cause</b>	
(a) Railroad authority testing	<ul style="list-style-type: none"> <li>- FRA's rules neither authorize nor prohibit other forms of testing that may be adopted by the railroads, or testing under circumstances other than those specified. FRA has neither endorsed nor preempted a railroad's right to test in areas not covered by the Federal rule. Challenges to the validity of non-Federal tests are a matter between labor &amp; management.</li> <li>- FRA does not investigate testing that was performed pursuant to a railroad medical policy or based on a railroad's own authority. FRA would investigate initially only to determine if the test was conducted under Federal or railroad authority.</li> <li>- The above also applies to railroads who require urine tests in connection with periodic medical examinations. This is not a matter within the purview of FRA's regulation.</li> <li>- See also 219.1 (b)</li> </ul>	FRA 7/2/86 letter to UTU
Wrong form	<ul style="list-style-type: none"> <li>- If a railroad conducts reasonable cause testing under its own authority and mistakenly uses the Federal chain of custody form, the test is now considered a Federal test &amp; must be administered &amp; followed-up as a Federal test.</li> <li>- If the facts do not support Federal testing, an inspector can still recommend a civil penalty action against the railroad.</li> </ul>	
(b)(2) Timing or history	Neither timing (injury occurred soon after going on duty) nor an employee's history of previous injuries constitute "reasonable cause."	
(b)(3) Switch alignment	The mere presence of an accident/incident while operating a switch and a safety rule on operating procedures is not sufficient to establish reasonable cause. An inquiry must be made to develop facts to support a determination that the employee contributed to the occurrence or its severity.	4/30/91 FRA letter to Conrail

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<p>Railroad documentation of Federal RS or RC testing</p>	<p>To RCC attorneys: FYI: You've probably argued with NS about the railroad's refusal to document its basis for conducting a RS/RC test under FRA authority. Previously, we've declined violations which cited NS for failing to provide such documentation because Part 219 does not expressly require railroads to do so. However, at least year's Part 219 audit, FRA put NS on notice that it must provide this documentation, since without it FRA cannot determine if NS complied with the requirements for Subpart D testing (namely, that the decision to test was made by a trained supervisor, based on contemporaneous observations, and conducted within 2 hrs of those observations (RS). This week, FRA will send NS a copy of its final audit report, reiterating that the requirement for documentation will be enforced from this point forward (excerpt below). If you receive any violation reports for failure to document after the date of this report (approx. 1/10/05), please bring them to me. Also, if you'd like to see any other area covered by the report, (e.g., random or post-accident testing), please let me know.</p> <p>Excerpt from final report: Although there is no express requirement, NS cannot demonstrate compliance with Subpart D if it fails to document the basis for each RS test. For each such test, NS must be able to prove that the decision to test was made by a trained supervisor based on articulable, contemporaneous observations (RS). NS must also be able to show that the test was conducted within 2 hours (RS) of the observations or other events that were the basis for the decision to test. NS cannot rely on the CCF alone to provide the required documentation, since the CCF does not contain evidence of <i>who</i>, <i>why</i>, and <i>when</i> for each decision to test. Without such information, FRA cannot determine whether the conditions for RS testing were met. Congress declared RS testing an important safety tool by mandating it in 1991. FRA thoroughly audits railroad RS testing programs &amp; expects NS to make readily available documentation for each determination to test. Failure to do so will result in recommendations for civil penalties.</p>	<p>1/10/05 e-mail from Patty Sun, RCC</p>

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.302</b>	<b>Prompt specimen collection; time limitation</b>	
Hours of service	<ul style="list-style-type: none"> <li>- Testing of an employee under Federal authority, for reasonable suspicion or reasonable cause, may be conducted after the expiration of the hours of service provided that documentable due diligence is demonstrated by the railroad.</li> <li>- If a railroad performs reasonable cause testing under company authority (if the event would qualify for testing under FRA authority) FRA would treat it the same as if the railroad had elected to conduct the tests under FRA authority. That is, if the railroad makes a good faith effort to avoid or minimize the excess service, FRA would treat it as justifiable excess service. The railroad must report the incident as excess service, &amp; FRA would consider all the circumstances in determining the validity of the railroad efforts at avoidance or minimization.</li> <li>- FRA continues to use its prosecutorial discretion in applying the Federal hours of service laws to cases of unscheduled, unanticipated alcohol &amp; drug testing. While much of FRA’s guidance has been verbal, I wanted to outline the instances in which we use our discretion so as <b>not</b> to recommend the assessment of a civil penalty action against a railroad, <i>provided that the railroad uses due diligence to minimize the length of the excess service.</i> In general, the scenarios when hours of service violation reports shall <b>not</b> be written include: <ul style="list-style-type: none"> <li>- Mandatory Federal toxicological testing following a qualifying post-accident event (49 CFR 219.201)</li> <li>- Mandatory Federal reasonable suspicion testing (49 CFR 219.300);</li> <li>- Permissive Federal reasonable cause testing (qualifying accidents/incidents or rule violations (49 CFR 219.301);</li> <li>- Company reasonable cause testing for events that would have met the criteria for Federal reasonable cause testing (qualifying accident/ incidents or rule violations);</li> <li>- Federal tests that result in a secondary required “direct observation” collection;</li> <li>- A telephone verification interview of an employee conducted by a MRO following a laboratory positive test result (Federal or company). (This issue just recently arose and to my knowledge</li> </ul> </li> </ul>	<p>8/1/95 FRA memo to RAs; OP-97-27</p> <p>2/18/94 FRA memo to RAs</p> <p>3/7/02 FRA memo to RAs</p>

SECTION	INTERPRETIVE GUIDANCE	SOURCE
	<p>has not yet been addressed:</p> <ul style="list-style-type: none"> <li>- FRA does not use this same prosecutorial discretion in instances of Federal <u>random</u> alcohol &amp; drug testing, even when there is a case of “shy bladder,” because the railroad is able to plan in advance for this type of test &amp; should allow ample time for a shy bladder situation. The <u>only</u> exception involving random testing would occur if an employee is required to provide a secondary required “direct observation” collection.</li> <li>- Of course, any excess service, regardless of the reason, counts as time on duty &amp; must be reported to FRA in accordance with 49 CFR Part 228 on FRA Form F6180.3. See 49 CFR 228.19.</li> <li>- A railroad employee should inform the railroad when excess service occurs that the railroad would normally be unaware of, since the railroad is responsible for complying with the Federal hours of service laws &amp; its recordkeeping requirements. For example, if an MRO interrupts a conductor’s off-duty period to conduct a 20-minute telephone verification interview following a positive laboratory drug test result, the railroad should ensure that the conductor advises it if the interview results in excess service (i.e., service that has commingled with his or her previous duty tour), or if he or she will not be rested for purposes of the Federal hours of service laws when called to report for a subsequent duty tour. (See OP Technical Bulletin OP 04-29 Part B for additional information on FRA’s policy on interrupted off-duty periods.)</li> <li>- If a railroad is so informed of any excess service, but still requires an employee to report for duty when he or she has not had a statutory off-duty period, then a recommendation should be made for the assessment of a civil penalty action against the railroad. If a railroad is <u>not</u> so informed of any excess service, and an employee then reports for duty when he/she has not had a statutory off-duty period, the scenario should be investigated to determine whether a recommendation for an individual liability action against the employee is appropriate (e.g., if the employee willfully failed to inform the railroad of the telephone interview so that he or she could return to duty sooner to earn additional pay, individual liability may be warranted).</li> </ul>	

**PART 219**  
**SUBPART E - IDENTIFICATION OF TROUBLED EMPLOYEES**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
Hours of service - follow-up test	<p>Can a railroad exceed a covered employee's hours of service in order to complete a routine follow-up test resulting from a positive company reasonable cause test result?</p> <p>Answer: A railroad may exceed hours of service to complete a company (non-Federal) reasonable cause test, if the accident/incident/rule violation that triggered the company test would also have met the criteria for Federal RC testing. FRA allows this flexibility (provided that the railroad uses due diligence &amp; reports the excess service) because RC tests are triggered by unpredictable events. In contrast, the timing of follow-up tests, like random tests, is at the railroad's discretion. FRA therefore expects the railroad, when scheduling a follow-up or random test, to provide sufficient time to complete the test within the employee's hours of service. Therefore, a railroad may NOT exceed hours of service for a follow-up test, regardless of whether it results from a Federal or company test.</p>	FRA's response to ADTS' questions
<b>219.403</b>	<b>Voluntary referral policy</b>	
(a) Testing	Any testing conducted pursuant to the railroad voluntary referral policy is generally non-Federal testing because a violation of Federal regulations has not yet occurred.	Verbal guidance from Lamar Allen
<b>219.405</b>	<b>Co-worker report policy</b>	
(b) Co-worker	Yardmasters are often in a gray area between management and employees. To provide maximum flexibility in implementing an effective program on the various railroads, FRA has left this determination with the railroads.	
	- Note that generally any drug or alcohol test conducted pursuant to the co-worker report policy should be Federal tests because in most cases, the nexus for the co-worker report was a Federal violation of 219.101 or 219.102.	Verbal guidance from Lamar Allen

<b>PART 219 SUBPART F - PRE-EMPLOYMENT TESTS</b>		
<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
<b>219.501</b>	<b>Pre-employment drug testing</b>	
(a) Medical exam	Pre-employment drug and/or alcohol tests may be conducted as part of the pre-employment medical exam.	
(a) New-hires	- A covered employee performing service prior to 1986, was grand-fathered. They remain grand-fathered even if they are separated from employment with the same railroad, and then returned to duty.	Verbal guidance from Lamar Allen
	- A railroad has a <b>one-time only</b> Federal pre-employment drug test requirement for each of its covered service employees (regardless of whether the pre-employment test is for a new employee or for a first-time transfer to covered service). - This is true even if there are breaks in the employee's covered service with the railroad. - This also applies to a track laborer that had a Federal pre-employment drug test under FMCSA because he was a CDL holder, quits, and is then rehired as a conductor. Another pre-employment drug test is not required. However, FRA regulations do not prohibit the railroad from conducting its own pre-employment tests on you under company authority. Note that this only applies to FRA, not the other DOT agencies.	Q & A - Pre-Employment Drug Testing
(a) First time transfers to covered service	- Inspectors should ensure that non-covered employees, e.g., mechanical employees, who transfer into covered service for the first time receive a Federal pre-employment drug test with a negative result prior to performing covered service. - If a railroad neglected to do so, inform the railroad of its obligation to test, even if the employee has already started performing covered service (taking into consideration whether a short line railroad may be exempted from this type of testing if it has less than 16 covered employees or absence of joint track operations). - Remind railroad to use a Federal chain of custody form.	FRA 10/4/2001 memo

SECTION	INTERPRETIVE GUIDANCE	SOURCE
	<p>- If an audit finds that a railroad used non-Federal forms, the railroad must get a signed statement from the collector per 40.205 (b)(2) as long as the tested employee was subjected to the same Part 40 collection procedures, certified lab, etc. as for a Federal test.</p> <p>- However, if a railroad conducts company testing for more than the 5 drugs, then this cannot be corrected with a signed statement.</p>	
Shy bladder	See 40.195 for situations in which an individual is unable to provide a sufficient amount of urine for a pre-employment test because of a permanent or long-term medical condition.	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
Pre-placement hair testing	<p>Thank you for your e-mail inquiries about the FRA &amp; DOT positions on hair testing. In writing this response I consulted with ODAPC as to Departmental policy. The joint position of our offices is that FRA &amp; DOT alcohol &amp; drug regs neither authorize nor prohibit hair testing so long as it is done under company authority only. However, you should be aware that FRA &amp; DOT do not currently consider hair analysis to be scientifically or legally acceptable for the testing of Federal specimens. In addition, FRA cannot warrant their use in Federally sanctioned or authorized administrative actions. For this reason, drug testing results obtained thru hair analysis cannot be used to show a 219.101 or 219.102 violation, nor can such results be the basis for engineer decertification or any other disciplinary action under Federal authority. In future audits, FRA will monitor any hair testing program to make sure that Federal authority is not used to conduct tests or impose discipline. It is my understanding that BNSF intends to conduct hair testing strictly under its own authority for new hires and non-covered service employees such as managers. Federal regs do not prohibit employers from conducting company authority pre-screening tests <u>in addition</u> to the required Federal pre-employment drug tests for applicants &amp; first-time transfers to covered service. Non-covered service employees are, of course, not within the scope of the regs. Implementation of any new type of testing is bound to raise questions &amp; concerns. It could even have an impact on Federal testing programs. FRA therefore strongly recommends that you work closely with your labor representatives before implementation begins to ensure that all affected employees fully understand the scope, authority, &amp; procedures to be used in hair testing. Employees subject to hair testing should also be made aware of any hearing or other employment rights they will have under this testing program.</p>	3/5/03 FRA letter to Art Freeman, BNSF
Hair testing	Note that CSX is also conducting pre-placement hair testing for conductors.	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.502</b>	<b>Pre-employment alcohol testing</b>	
Background	<ul style="list-style-type: none"> <li>- As information only, Federal pre-employment alcohol testing was first implemented on January 1, 1995, but was suspended by FRA on May 10, 1995. However, effective August 1, 2001, it is now <u>permitted</u>, but not required.</li> <li>- A railroad could continue to conduct pre-employment alcohol testing under its own railroad authority.</li> </ul>	

**PART 219**  
**SUBPART G - RANDOM ALCOHOL AND DRUG TESTING PROGRAMS**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.601</b>	<b>Railroad random drug testing programs</b>	
(a) Submission (pools)  Contractors/ volunteers  Pool type  Discretion  Diluted  Mixed pools	<ul style="list-style-type: none"> <li>- Everyone in a pool must have an equal chance of selection in each selection period.</li> <li>- Random pool(s) must accurately &amp; completely include all covered service personnel. Whoever if performing covered service, regardless of job title or status, is subject to random testing (including supervisors, volunteers, contractors, etc.).</li> <li>- Pools must be routine updated (i.e., at least monthly for employers with either a changing workforce or seasonal employees; &amp; quarterly for employers with a generally stable workforce.</li> <li>- Besides individual employees, specific jobs (i.e., 3<sup>rd</sup> shift dispatcher at XYZ location) or operational units (i.e., trains) may also be pool entries. However, there may not be a significant difference in the size of the entries in the pool.</li> <li>- Pool entries may not be constructed in a way which could result in a supervisor having discretion as to who would be actually providing a sample (e.g., a specific job cannot be selected with multiple people working in it at the same time, but with only one to be tested).</li> <li>- Pools may not be diluted with covered service personnel who rarely perform covered service duties (i.e., less than once per quarter).</li> <li>- An employer may <u>not</u> mix covered service &amp; non-covered service personnel in the same pool.</li> <li>- Employees do not need to be placed in separate pools for drug &amp; alcohol testing.</li> <li>- Employees from different DOT operating administrations can be included in the same pool. It is strongly recommended, however, that employers not mix groups of personnel subject to different drug or different alcohol testing rates (i.e., having some employees subject to a 50% rate for drugs &amp; other employees subject to a 25% rate in the same pool). If they do, they must test the entire pool at the highest selection rate for any of the groups with personnel in the pool.</li> </ul>	FRA Standard Approval Conditions for Random Testing Programs

**PART 219**  
**SUBPART G - RANDOM ALCOHOL AND DRUG TESTING PROGRAMS**

Multiple pools	- Multiple pools for an employer are acceptable.	
(a) Approval	<p>- FRA reserves administration jurisdiction over all approvals &amp; may reopen review based upon experience gained during implementation.</p> <p>- Approval of the subject random testing program does not constitute or imply the granting of a waiver or exemption from any provision of Federal law or regulation. Compliance with all applicable provision of Parts 219 &amp; 40 is required. All random program plans must be applied in accordance with the criteria listed in this document.</p> <p>- Approval is contingent upon the railroad making appropriate amendments to the program to conform to any pertinent regulatory amendments that may be issued hereafter. Any such program amendments that may be required shall be submitted to the Associate Administrator for Safety at FRA by the effective date of the subject regulatory amendments, or by the expiration of 30 days from publication of the regulatory amendments in the <i>Federal Register</i>, whichever is later.</p> <p>- Amendments to the program shall be submitted as required by 219.601(a) &amp; shall not be implemented prior to approval. The following guidance is provided with respect to when a program is deemed to have been amended:</p> <p>1) Any change in the selection methodology, the criteria for scheduling collections, non-availability criteria, or other structural element is a program amendment. Any change in the organizational level at which a function is carried out is a program amendment.</p> <p>2) Substitution of incumbents performing the same function at the same organization level (persons or contractors) is not deemed to amend the program. Notification of these changes would be appreciated to assist FRA in maintaining liaison, but is not required.</p> <p>3) Any change in a program that is occasioned by an amendment of an applicable DOT/FRA regulation &amp; that involves the exercise of discretion to choose between or among one or more courses of action is a program amendment required to be filed (approved). Any non-discretionary change in a program that is required by amendment of an applicable DOT/FRA regulation is not considered a program amendment requiring approval; however, the Office of Safety, FRA, would appreciate receipt of an informational copy of the revised program document showing current compliance.</p>	FRA Standard Approval Conditions for Random Testing Programs
Amendments continued	4) Any case not addressed above may be resolved by contacting the Office of Safety, FRA. Any such guidance is provided in writing over the signature of the Associate Administrator for Safety or that individual's delegate.	

**PART 219**  
**SUBPART G - RANDOM ALCOHOL AND DRUG TESTING PROGRAMS**

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<p>(b)(1) Selections</p> <p>Options</p> <p>Selection periods</p> <p>Alcohol and/or drugs</p>	<p>- Everyone in a pool must have an equal chance of selection in each selection period.</p> <p>- No individual, job, or operational unit may be removed from the pool if it is still actively performing covered service (except employees doing de minimus covered service, that is, less than once per quarter).</p> <p>- An individual cannot be removed from the pool because he or she was previously tested.</p> <p>- No selection weightings are allowed which would increase or decrease the chance of any individual being selected.</p> <p>- The following selection options are acceptable:</p> <p>1) Computer programs which randomly select entries from an employee list without apparent bias. The specific selection criteria used by the computer must be extensively detailed in writing, and each computer draw must be retained as a record for a minimum of 2 years.</p> <p>2) Manual selection from a list of employees using a random number table. The specific criteria used to select from the table must be documented in writing, including detail on how the initial starting point in the table was determined. Each draw, as well as a copy of the table portion used, must be retained as a record for a minimum of 2 years.</p> <p>- If the employee testing pool is so small that it does not allow testing each selection period, then the employer must have in place a mechanism to randomly determine which selection periods will have selections &amp; which will not. The specific criteria used to make this determination must be detailed in writing &amp; the determination itself must be retained as a record for a minimum of 2 years.</p> <p>- If required drug &amp; alcohol testing rates are different (i.e., 25% for drugs &amp; 10% for alcohol) &amp; a single pool is being used, it is permissible to select one list of employees &amp; designate a proportion for both drug &amp; alcohol testing &amp; a proportion for drug testing only. The specific criteria used to make this determination must be detailed in writing, &amp; the master selection list with both sub-groups clearly identified must be retained as a record for a minimum of 2 years.</p>	<p>FRA Standard Approval Conditions for Random Testing Programs</p>

SECTION	INTERPRETIVE GUIDANCE	SOURCE
Different rates for different pools	<p>This is in response to your letter requesting clarification as to whether the UP may conduct Federal random drug &amp; alcohol testing of its train dispatcher employee pool at a higher random rate than its other employee testing pools... On Oct. 13, 2004, FRA received a written response from ODAPC stating that FRA is free to decide this issue under its own alcohol &amp; drug regulations, since Part 40 is silent... 219.601(b)(1) states that “Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame.” As stated in FRA’s 2002 Alcohol/Drug Program Compliance Manual, a railroad is expected to achieve this by “Determin(ing) that every entry in a pool (individual employee, job assignment, or operational unit) has an equal chance of selection in each selection period.” While FRA requires the chances of random selection to be equal within each testing pool, there is no requirement that different pools test at the same random rate. To implement its proposal, UP should begin by submitting to FRA a proposal to amend its testing plan. The submission should include documentation explaining why UP seeks authorization to test its employee pools at different random rates. UP may not implement this amendment until it has been approved by FRA. If the amendment is approved, UP must continue to set the random rate for each pool at or above the minimum random rates set by FRA each year.</p>	11/22/04 FRA letter to UP
Workforce changes	- Employers should carefully monitor significant changes in its workforce in order to ensure that an appropriate number of tests will be conducted each year.	
(b)(3) 5 employees	A short line railroad program’s testing frequency of twice a year is too infrequent. The program would have to schedule a minimum of 5 different testing days to complete a testing rate of 5 employees per year.	FRA 3/15/91 letter to short line

SECTION	INTERPRETIVE GUIDANCE	SOURCE
(b)(3) Less than 16 employees	If, at some time during the year, the number of covered employees falls below 16, a railroad does not become exempt from random testing. If a railroad can anticipate seasonal or cyclical employment, they may choose to adjust the program so that more persons are tested during the periods of peak employment, provided that some testing is also performed during the non-peak periods as well. That way, the railroad can achieve the annualized testing rate at the end of the 12-month period.	
(b)(3) Part-time employees	For part-time or seasonal positions, FRA suggests the following procedure: <ul style="list-style-type: none"> <li>- First consider estimating the average number of days or weeks each year that such positions perform covered service.</li> <li>- Second, add all of the estimates to obtain a total for the year.</li> <li>- Third, specify how many hours constitute a “normal” work shift or week.</li> <li>- Fourth, determine the number of equivalent “normal” shifts there would be during the year (i.e., divided the total hours/ weeks by a “normal” shift/week).</li> <li>- Fifth, add this result to the number of whole year positions subject to testing. Finally, 25% (rate for drugs) of that total, then, would comprise the number of tests required for the year.</li> </ul>	
(b)(6) First out on extra board	- A railroad could call covered employees to duty & then notify them they were selected for a random test. FRA has advised the railroads that employees must be on duty in conjunction with a normal work assignment or be “first out” on the extra list when called to duty & then notified of the sample provision requirement.	FRA 8/5/91 memo to RA’s

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<p>Test during limbo time</p> <p>(b)(6) Hours of service implications</p>	<ul style="list-style-type: none"> <li>- A scenario arose in which a covered service employee was “relieved from duty” on line of road with 12 hours on duty time, &amp; was waiting on the deadhead transportation vehicle to take them to their hotel (limbo time). The person left the railroad’s property &amp; consumed some alcohol. He returned to the property to catch his ride to the hotel &amp; ran into a supervisor who made the determination that the person had been drinking &amp; required him to submit to a Federal breath-alcohol test. The person tested positive &amp; was removed from service.</li> <li>- A train employee is always considered in one of three categories when determining his status for hours of duty purposes (on duty, limbo-relieved but not released, or off-duty). When a train employee is simultaneously in two of these categories, the provisions of the most restrictive category prevails.</li> <li>- In response to the argument that an employee had worked 12 hours &amp; was therefore, not subject to duty, it is entirely possible the employee could be required to perform duty if there was a valid emergency.</li> <li>- For more information, contact Dan Norris at 202-493-6243.</li> <li>- Railroads are not permitted to allow employees to exceed the hours of service laws for random drug and/or alcohol testing. Railroads should allow sufficient time in the event there are delays, including shy bladder situations.</li> <li>- An exception is the occurrence of a situation which requires a direct observation collection. In this case, FRA expects the collection to be completed. FRA will use its prosecutorial discretion but expects the railroad to use due diligence to get the collection completed as soon as possible. Of course, any excess service sustained would have to be reported to FRA on the F6180.3 form.</li> </ul>	<p>Guidance regarding an on-going Part 219 &amp; 228 issue</p> <p>FRA 11/9/90 Memo to RAs OP-97-03</p>
	<ul style="list-style-type: none"> <li>- Deadheading following urine collections is usually considered “limbo time.”</li> </ul> <p>See Page 27 for additional guidance on hours of service.</p>	

SECTION	INTERPRETIVE GUIDANCE	SOURCE
(d) Implementa- tion  Days  Shifts   Discretion   Testing window  No-tests   Known long- term medical condition	<ul style="list-style-type: none"> <li>- Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) &amp; shifts (24-hour clock). There is no expectation that day/night or shift collection distributions be equal but there has to be sufficient testing to establish deterrence by generally mirroring employer operations.</li> <li>- Collections must be unpredictable within a work shift (some collections must be conducted at the beginning, middle, &amp; end). There is no expectation that “within-shift” collection distributions be equal. Sufficient testing must be conducted at the start, middle &amp; end of shifts to provide a deterrence. Both beginning of &amp; ending of shift collections are particularly important. For alcohol testing, at least 10% of successful collections must fall within each period of the shift.</li> <li>- No discretion is allowed with collection dates or times which would result in a subjective choice by a field manager/supervisor as to who was actually collected. That is, if a test time frame is permitted in the employer’s program, a manager/supervisor with knowledge of specific personnel assignments may not have discretion in the selection of who will be tested.</li> <li>- A testing window normally should not exceed 30 days, or the end of the selection month (except for very small railroads).</li> <li>- Specific reasons for “no-tests” must be documented in writing by the employer, with records maintained for 2 years. Acceptable reasons for no-tests should relate to critical safety concerns, unforeseen or unpredictable significant adverse impact to operations, or employee illness or vacation</li> <li>- When a selected covered employee has a current diagnosis of a long-term medical condition, which prevents him/her from providing an adequate urine sample, a railroad “may” choose the following option: Upon selection, the railroad should make an appointment for the employee with the MRO (during testing window). Employee is directed to contact the MRO. MRO determines any clinical evidence of illicit drug use per 40.195 &amp; reports the test as positive or negative. The MRO must also determine the employee’s inability to provide a urine specimen. If the employee no longer has a medical condition, this option would no longer be applicable. If employee was selected for an alcohol test also, the employee should contact the MRO after the alcohol test.</li> </ul>	DOT written interpre- tation

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<b>219.603</b>	<b>Participation in drug testing</b>	
Work stoppage	<p>- A railroad subjected to a legal, prolonged work stoppage, must be prepared to continue administration of their random testing plan. FRA expects railroads to exercise due diligence to administer respective random programs within a reasonable time after a strike (certainly no longer than 24-36 hours) is effected. - - FRA expects “nonagreement employees” to be tested in the same manner as workers they may temporarily replace, within a reasonable time after an anticipated, lawful strike occurs.</p>	FRA 1/17/91 letter to AAR
Ramadan and fasting period	<p>The religious holiday Ramadan begins on about September 23<sup>rd</sup> and lasts for 30 days. DOT’s drug &amp; alcohol testing program is one in which public safety considerations are first &amp; foremost. Therefore, if a covered employee is selected for a drug test, he/she must report to the collection site in order to provide a urine specimen.</p> <p>- Generally, the DOT Agencies would permit employers to send fasting employees selected for random tests to collection sites at sundown. They may also permit employers who conduct random drug test selections on a monthly or quarterly basis to schedule fasting employees before or after the fasting time period-as long as the random tests were not predictable.</p> <p>- An employee’s decision not to ingest fluids following submission of an inadequate amount of urine is not, in and of itself, a refusal to test. However, fasting is not considered a legitimate medical reason for an employee’s failure to provide a urine specimen.</p> <p>- All other test types would be subject to normal procedures. That is, for pre-employment (which could be conducted a sundown), reasonable suspicion/cause, post-accident, return-to-duty, and follow-up.</p>	8/28/06 email from DOT

SECTION	INTERPRETIVE GUIDANCE	SOURCE
<p>Can random turn into reasonable suspicion test?</p>	<p>A train is selected for a random test. After the crew leaves its home away-from-home terminal, a housekeeper discovers drug paraphernalia in the motel room of one of the crew members. It is reported to “the Rail” and is under investigation. The same person is a crew member selected for testing at his home terminal. When the gentleman arrives, he is observed by a trained supervisor who notices signs &amp; symptoms of drug abuse. The individual in question is falling asleep in the manager’s office &amp; is not answering questions properly, etc. It is getting close to hours of service for this individual. My question is two fold: A) If the donor does not exceed hours of service should we conduct this test as a FRA Suspicion instead of the Random selected (which of course gives us the advantage of a direct observation) or should we continued with the Random test? B) If he exceeds hours of service &amp; a choice was originally made to conduct the test as a Random can we now change the authority to a FRA Suspicion?</p> <p>Answer: In answer to your first question, a Federal RS test may only be collected under direct observation if one of the criteria in 40.67 is met (e.g., specimen temperature out of range, attempted tampering/substitution). If a trained supervisor observes an employee displaying signs &amp; symptoms indicating possible impairment, the railroad <i>must</i> conduct a Federal RS test. If the railroad uses due diligence &amp; reports the excess service, the collection may proceed past the employee’s hours of service limitations if necessary. In answer to your second question, the basis for a test may not be changed after the employee has been notified of the type of test &amp; the CCF has been marked. The employee is entitled to know <i>at the time of notification</i> both the basis for &amp; the authority for the test.</p>	<p>FRA’s response to ADTS’ questions</p>

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SECTION	INTERPRETIVE GUIDANCE	SOURCE
Negative test results	<p>- As of August 1, 2001, FRA regulations no longer require the MRO to notify an employee of a Federal test result which is negative. However, FRA encourages railroads to continue to do so as a best practice.</p> <p>- See Q &amp; A on FRA's A/D web page.</p>	Q & A - Employee Notification of Lab Test Results
Engineer DUI	<p>A certified locomotive engineer was convicted of driving under the influence (DUI) of alcohol. An EAP evaluates the engineer &amp; recommends an aftercare program that includes follow-up testing. Should this follow-up testing be conducted using a DOT form under FRA authority or a non-Federal form under company authority?</p> <p>Answer: If the DUI occurred while the engineer was off-duty, it did not violate FRA's prohibitions against alcohol use (219.101). Follow-up testing must therefore be conducted under company policy using a non-Federal CCF.</p>	FRA's response to ADTS' questions
Screening tests	<p>For the initial or screening drug test, there are three generally accepted immunoassay techniques available today:</p> <ol style="list-style-type: none"> <li>1) RIA (Radioimmunoassay) - Radioactive indicator</li> <li>2) EIA (Enzyme Immunoassay) - Enzyme indicator</li> <li>3) FPIA (Fluorimunoassay or Fluorescence Immunoassay) - measure of intensity of polarized light</li> <li>4) KIMS - Kinetic interaction of microparticles in solution</li> </ol>	George Ellis

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<p>NHTSA's conforming products list of alcohol "screening" devices</p>	<p>See Federal Register Notice Vol. 74 No. 239, Page 66399 12/15/09</p>	
<p>NHTSA's conforming products list of EBTs          (only those devices without an asterisk * are authorized for DOT testing per 40.231)</p>	<p>See Federal Register Vol. 75, No. 47, Page 11624, 3/11/10</p>	

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DHHS certified labs	<ul style="list-style-type: none"> <li>- ACL Laboratories, West Allis, WI (formerly Bayshore Clinical Laboratory)</li> <li>- ACM Medical Laboratory, Inc., Rochester, NY</li> <li>- Advanced Toxicology Network, Memphis, TN</li> <li>- Aegis Analytical Laboratories, Inc., Nashville, TN</li> <li>- Alere Toxicology Services, Richmond, VA (formerly Kroll)</li> <li>- Baptist Medical Center Toxicology Laboratory, Little Rock, AR (formerly Forensic Toxicology Laboratory Baptist Medical Ctr.)</li> <li>- Clinical Reference Lab, Lenexa, KS</li> <li>- Doctors Laboratory, Inc., Valdosta, GA</li> <li>- DynaLIFE Dx, Alberta, Canada (formerly Dynacare Kasper Medical Laboratories)</li> <li>- ElSohly Laboratories, Inc., Oxford, MS</li> <li>- Gamma-Dynacare Medical Laboratories, London, ONT, Canada</li> <li>- Laboratory Corporation of America Holdings, Houston, TX</li> <li>- Laboratory Corporation of America Holdings, Raritan, NJ (formerly Roche Biomedical Laboratories, Inc.)</li> <li>- Laboratory Corporation of America Holdings, Research Triangle Park, NC (formerly LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.)</li> <li>- Laboratory Corporation of America Holdings, Southaven, MS (formerly LabCorp Occupational; MedExpress)</li> </ul>	DHHS  FR, Vol. 75, No. 177, Page 55795, 9/14/10
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DHHS  
certified labs  
continued

- LabOne, Inc. d/b/a Quest Diagnostics, Lenexa, KS
- MAXXAM Analytics, Inc., Mississauga, ON, Canada (formerly NOVAMANN)
- MedTox Laboratories, Inc., St. Paul, MN
- MetroLab-Legacy Laboratory Services, Portland, OR
- Minneapolis Veterans Affairs Medical Center, Minneapolis, MN
- National Tox. Laboratories, Inc., Bakersfield, CA
- One Source Toxicology Laboratory, Inc., Pasadena, TX (formerly UN. of TX Medical Branch, UTMB Pathology-Tox., Lab)
- Pacific Toxicology Laboratories, Chatsworth, CA (formerly Centinela Hospital Airport Tox. Lab.)
- Pathology Associates Medical Laboratories, Spokane, WA
- Pharmatech, Inc., San Diego, CA
- Quest Diagnostics Inc., Tucker, GA (formerly SmithKline Beecham Clinical Labs, SmithKline Bio-Science Labs)
- Quest Diagnostics Inc., Norristown, PA (formerly SmithKline Beecham Clinical Labs, SmithKline Bio-Science Labs)
- Quest Diagnostics Inc., West Hills, CA (formerly SmithKline Beecham Clinical Labs)
- S.E.D. Medical Laboratories, Albuquerque, NM
- South Bend Medical Foundation, Inc., South Bend, IN
- Southwest Laboratories, Phoenix, AZ
- St. Anthony Hospital Toxicology Laboratory, Oklahoma City, OK
- STERLING Reference Laboratories, Tacoma, WA
- Toxicology & Drug Monitoring Laboratory University of MO Hospital & Clinics, Columbia, MO
- Toxicology Testing Service, Inc., Miami, FL
- US Army Forensic Toxicology Drug Testing Laboratory Fort Meade, Fort George G. Meade, MD

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Previous  
 DHHS  
 certified labs

- Clinical Laboratory Partners, LLC, Newington, CT 0611; withdrew 11/2/02
- Universal Toxicology Laboratories, LLC, Midland, TX; withdrew 6/5/02
- Universal Toxicology Laboratories (Florida), LLC, Fort Lauderdale, FL (formerly Integrated Regional Labs, Cedars Medical Center, Dept. of Pathology); withdrew 6/5/02
- Quest Diagnostics Inc., San Diego, CA (formerly Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), Corning Nichols Institute, Corning Clinical Labs); taken out April 2002
- San Diego Reference Laboratory, San Diego, CA; withdrew 3/16/01
- UNILAB, Tarzana, CA (formerly MetWest-BPL Tox. Lab); withdrew 4/1/01
- PharmChem Laboratories, Inc., Menlo Park, CA; withdrew 5/31/01
- Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL; withdrew 11/1/01
- Quest Diagnostics, Inc. Leesburg, FL (formerly SmithKline Beecham Clinical Labs, Doctor & Physicians Lab); withdrew 10/1/01
- Quest Diagnostics Inc., Auburn Hills, MI (formerly Health Care/Preferred Labs, HealthCare/MetPath, Corning Clinical Labs); withdrew 10/1/01
- Quest Diagnostics Inc, Teterboro, NJ (formerly MetPath, Inc., Corning MetPath Clinical Labs, Corning Clinical Lab); withdrew 10/1/01
- Quest Diagnostics LLC, Wood Dale, IL (formerly Quest Diagnostics Inc., MetPath, Inc., Corning MetPath Clinical Labs, Corning Clinical Labs, Inc.); withdrew 2/1/00
- Info-Meth, Peoria, IL (formerly Methodist Medical Center Tox. Lab); withdrew 3/9/00
- Quest Diagnostics of Missouri LLC, St. Louis, MO (formerly Quest Diagnostics Inc., Metropolitan Reference Labs, Inc., Corning Clinical Labs, South Central Division); withdrew 3/31/00

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Previous  
 DHHS  
 certified labs  
 continued

- Quest Diagnostics Inc., Pittsburgh, PA (formerly Med-Chek Labs, Inc., Med-Chek/Damon, MetPath Labs, Corning Clinical Labs); withdrew 5/1/00
- Quest Diagnostics Inc., Nat'l Center for Forensic Science, Baltimore, MD (formerly MD Medical Lab, Inc., Nat'l Center for Forensic Science, Corning Nat'l Center for Forensic Science); withdrew 8/12/00
- American Medical Laboratories, Inc., Chantilly, VA; withdrew 1/31/03
- Medical College Hospitals Toxicology Lab, Toledo, OH; withdrew 3/17/03
- Doctor's Laboratory, Inc., Valdosta, GA; suspended 10/6/03, but suspension was lifted on 6/23/04.
- PharmChem Laboratories, Inc., Haltom City, TX withdrew 10/5/04
- Kroll Laboratory Specialists, Inc., Gretna, LA suspended due to hurricane Katrina; 10/12/05, but reinstated 2/17/06.
- Sciteck Clinical Laboratories, Inc, Fletcher, NC suspended 11/15/05 and 2/8/06.
- Express Analytical Labs, Marion, IA withdrew 6/15/06.
- Alliance Laboratory Services, Cincinnati, OH (formerly Jewish Hospital of Cincinnati, Inc.)
- Cox Health Systems, Dept. of Toxicology, Springfield, MO (formerly Cox Medical Centers)
- DrugProof, Division of Dynacare, Montgomery, AL (formerly Alabama Reference Laboratories, Inc.)
- Quest Diagnostics, Inc., West Valley City, UT (formerly Northwest Tox.) (withdrew December 31, 2006)
- Quest Diagnostics Inc., Irving, TX (moved from Dallas 3/31/01; formerly SmithKline Beecham Clinical Labs, SmithKline Bio-Sciences Lab) (withdrew December 13, 2006)
- Meriter Laboratories, Madison, WI withdrew 10/12/07
- Marshfield Laboratories, Marshfield, WI 54449 withdrew 11/30/07
- Physicians Reference Laboratory, Overland Park, KS withdrew 1/15/08.
- Laboratory Corp. of America Holdings, San Diego, CA (formerly Poisonlab, Inc.)
- Laboratory Corp. of America, Seattle, WA (formerly DrugProof)
- Oregon Medical Laboratories, Springfield, OR withdrew 1/9/09
- Sparrow Health System, Tox Testing Center, Lansing, MI (formerly St. Lawrence Hospital & Healthcare System) withdrew 3/31/09
- Diagnostic Services, Inc. dba DSI, Fort Myers, FL
- Clendo Reference Lab in Bayamon, Puerto Rico withdrew 12/1/09

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Sources of  
blind quality  
control  
material  
301-443-  
6014

- Abuse Control Associates, 7 Robinson Spur, Huntsville, TX 77320, Charles Rushing, 936-436-9026
- Professional Toxicology Services (formerly A.T. Laboratories) 7917 Bond St., Lenexa, KS 66214, Dr. Stan Kammerer 913-599-3535
- Duo Research Inc., 0085 Bunkhouse Place, PO Box 3360., Eagle, CO 81631, Dr. Robert Willette, 970-328-5385
- Dyna-Tek, Inc., 8369 Nieman Rd., Lenexa, KS 66214, Kevin J. Dyches; 913-438-6363
- ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, Dr. Mahmoud ElSohly, 662-236-2609
- Protect Services, 2184 Silveridge Trail, Westlake, OH 44145, Dr. David Fretthold, 440-899-9923
- RTI International, Center for Forensic Sciences, 3040 Cornwallis Rd., Bldg. #3, RTP, NC 27709, Dr. Francis M. Esposito, 919-316-3837
- Quality Assurance Co., 310 Commerce Dr., Martinez, GA 30907, Dr. Roy Altman, 706-863-6536
- Sure-Tech Diagnostic Associates, Inc., 11040 Lin Valle Dr., Suite D, St. Louis, MO 63123, Dr. Quincy Crider, 314-894-8933

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<p>MRO association list</p>	<ul style="list-style-type: none"> <li>- American Assoc. of MROs (AAMRO), <a href="http://www.aamro.com">www.aamro.com</a> P.O. Box 12873, Research Triangle Park, NC 27709, Ted Shults (training exam, voluntary certification, MRO ALERT newsletter), 800-489-5407</li> <li>- American Society of Addiction Medicine (ASAM), <a href="http://www.asam.org">www.asam.org</a> 4601 North Park Ave., Suite 101, Chevy Chase, MD 20815, Sandy Schmedtje (training, information on addiction medicine), 301-656-3920</li> <li>- American College of Occupational and Environmental Medicine (ACOEM), <a href="http://www.acoem.org">www.acoem.org</a> 55 W. Seegers Rd., Arlington Heights, IL 60005, E. Eugene Handley (education &amp; training courses, conferences, educational material, MRO Update newsletter), 847-228-6850</li> <li>- MRO Certification Council (MROCC), 9950 W. Lawrence Ave., Suite 106A, Schiller Park, IL 60176, Brian Compney (voluntary certification, research grants), 847-671-1829</li> </ul>	<p>DOT web site</p>
<p>SAP Training and Exams – Sources</p>	<ul style="list-style-type: none"> <li>- Blair Consulting Group, Inc., 14-hr classroom training course; about \$395, contact Lee Mauk 612-827-4147 <a href="http://www.blairconsultants.com">www.blairconsultants.com</a></li> <li>- Program Services, Continuing Education for Mental Health Professionals, live, home study, or online &amp; exam \$275-\$295; 800-285-2423 <a href="http://www.programservices.org">www.programservices.org</a></li> <li>- The Institute for the Advancement of Human Behavior &amp; Buckley Productions, Inc. (IAHB); home study course &amp; exam \$289; 800-258-8411 <a href="http://www.iahb.org">www.iahb.org</a></li> <li>- American Substance Abuse Professionals, Inc (ASAP) home study course \$150 (NAADAC &amp; EAPA offer 15% reduction in SAP exams for those taking the ASAP SAP course); 888-792-2727 <a href="http://www.go2asap.com">www.go2asap.com</a></li> </ul>	<p>DOT's web site 9/14/10</p>

**PART 219**  
**SUBPART H - DRUG AND ALCOHOL TESTING PROCEDURES**

<p>SAP Training and Exams – Sources, continued</p>	<ul style="list-style-type: none"> <li>- National Assoc. of Alcoholism &amp; Drug Abuse Counselors (NAADAC); classroom training &amp; exam; also home study course &amp; exam; \$207-\$282. 800-548-0497 <a href="http://www.naadac.org">www.naadac.org</a> <a href="mailto:sbeckett@naadac.org">sbeckett@naadac.org</a></li> <li>- Internat’l Certification &amp; Reciprocity Consortium (ICRC) exam; \$120; in partnership with Professional Training Center below; 717-540-4457x10 <a href="http://www.icrcaoda.org">www.icrcaoda.org</a></li> <li>- Professional Training Center/Tom Foley &amp; Associates 2 day classroom training; \$295; 888-876-7770 <a href="http://www.professionaltrainingcenter.com">www.professionaltrainingcenter.com</a></li> <li>- Employee Assistance Professionals Association (EAPA) Classroom training &amp; on-line exam \$150-\$200; 703-387-1000 <a href="http://www.eapassn.org">www.eapassn.org</a></li> <li>- Substance Abuse Program Administrators Assoc. (SAPAA) classroom &amp; home study course \$295. See SAPACC 301-540-2783 <a href="http://www.sapaa.com">www.sapaa.com</a></li> <li>- Substance Abuse Program Administrators Certification Commission (SAPACC); exam \$200; 866-538-4788 <a href="http://www.sapacc.org">www.sapacc.org</a></li> <li>- American Substance Abuse Professionals, Inc. (ASAP); home study course &amp; CEU course options; \$150; 888-792-2727x200 <a href="http://www.go2asap.com">www.go2asap.com</a></li> <li>- Blair Consulting Group, Inc., 14-hour classroom \$395 612-827-4147 <a href="http://www.blairconsultants.com">www.blairconsultants.com</a></li> <li>- Institute for the Advancement of Human Behavior and Buckley Productions, Inc. (IAHB); home study course &amp; exam \$289 800-258-8411 <a href="http://www.iahb.org">www.iahb.org</a></li> <li>- Program Services, Continuing Education for Mental Health Professionals; SAP training and exam (live, home study or on-line \$275 to \$295) exam only \$125 800-285-2423 <a href="http://www.programservices.org">www.programservices.org</a></li> <li>- SAPlist U; online CEU; \$100 to \$175; 612-827-4147 <a href="http://www.saplist.com">www.saplist.com</a></li> </ul>	<p>DOT’s web site 9/14/10</p>
<p>Random testing rates</p>	<ul style="list-style-type: none"> <li>- FRA - 25 percent drugs &amp; 10 percent alcohol (2000 - 2010)</li> <li>- FMCSA - 50 percent drugs &amp; 10 percent alcohol (2001 - 2010)</li> <li>- FAA - 25 percent drugs &amp; 10 percent alcohol (2001 - 2010)</li> <li>- FTA - 25 percent drugs &amp; 10 percent alcohol (2010)</li> <li>- PHMSA - 25 percent drugs (alcohol-N/A) (2001 - 2010)</li> <li>- USCG - 50 percent drugs (alcohol-N/A) (2001 –2010)</li> </ul>	

<b>PART 219 SUBPART H - DRUG AND ALCOHOL TESTING PROCEDURES</b>		
BAT training course (model)	- In July 1994, DOT published its BAT Training Instructor Training Curriculum (model course) and it was revised in September 2001 and is available through the Transportation Safety Institute, Marti Bludworth, DTI-100, 400 Will Rogers Parkway, Suite 205, Oklahoma City, OK 73108; 405-949-0036x323 for \$26 (\$12 for Student Handbook). The STT Training: DOT Model Course is \$28 (\$15 for the Student Handbook).	

<b>PART 219 SUBPART I - ANNUAL REPORT</b>		
<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
<b>219.800</b>	<b>Annual reports.</b>	
	Railroads with 400,000 or more annual employee hours are required to file a calendar year MIS report to FRA by March 15 <sup>th</sup> of each year. These railroads report their MIS report electronically to <a href="http://damis.dot.gov/">http://damis.dot.gov/</a> using a unique username and password supplied by Volpe National Transportation Systems Center in Cambridge, MA (provided to the railroads by FRA each year).	

**PART 219**  
**SUBPART J - RECORDKEEPING REQUIREMENTS**

<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
Centraliza- tion of records	<ul style="list-style-type: none"> <li>- A railroad may elect to retain FRA-related records at a central location or at its system headquarters. This policy statement covers manually generated records required by Parts 217, 219, 225, 228, and 240.</li> <li>- Electronic records generated under these CFR parts, with the exception of 228.11, may also be retained at a central location.</li> <li>- All records so maintained shall be available for inspection &amp; copying by the Administrator of the FRA, or the Administrator's agent, during the railroad carrier's normal business hours at its centralized recordkeeping location.</li> </ul>	
	<p>Note that there are Part 40 recordkeeping requirements in 40.333. If there is a variance between Part 219 and Part 40, the most restrictive provision applies.</p>	

**PART 219**  
**SUBPART J - RECORDKEEPING REQUIREMENTS**

Consultant  
auditors

Q. As a railroad’s program administer, can I contract with an outside consultant to audit our FRA alcohol & drug program?  
A. Yes. In general, Parts 219 & 40 allow a railroad to contract with consultants or independent contractors (see also service agents as defined in 40.3) for services to help it meet FRA & DOT alcohol & drug program requirements. Keep in mind, though, that use of a service agent does not relieve the railroad of the ultimate responsibility for ensuring its own compliance.

In Subpart B on Employer Responsibilities, DOT states in 40.15 (c) that “your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug & alcohol regulation may have resulted form the service agent’s conduct.” Additionally, if responsibility for compliance is not spelled out in the contract, 219.9 (c) allows FRA to hold a railroad & an independent contractor performing covered service for the railroad jointly and severally liable for any noncompliance. (DOT may also separately sanction the service agent for serious instances of noncompliance by issuing a Public Interest Exclusion against it (see Subpart P).)

Currently, each operating administration decides on its own whether to allow its regulated employers to use independent auditing services to inspect for program compliance. FRA allows such auditing in the railroad industry. You must check with the alcohol & drug program manager for the relevant operating administration(s) if you plan to have the consultant audit other than FRA program records.

Remember, too that an independent audit must comply with all Part 219 and Part 40 confidentiality requirements (e.g., an auditor may not report to the railroad that an employee’s test result had been downgraded).

FRA Q & A

<b>PART 219</b>		
<b>APPENDIX B - DESIGNATION OF LAB FOR POST-ACCIDENT TESTING</b>		
<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
Shipping address	Quest Diagnostics, 1777 Montreal Circle, Tucker, GA 30084; phone 678-406-1100; Fax 678-406-1037	
Order tox boxes	See order form that is included at the end of this manual.	
Fatality tox boxes	<ul style="list-style-type: none"> <li>- Beginning on April 1, 2003, railroads must use a new Post-Mortem Tox Testing kit.</li> <li>- FRA distributed 500 free kits to the 34 largest railroads</li> <li>- For urine, blood and tissue specimens</li> <li>- Smaller railroads can obtain one when they report the qualifying accident/incident to the NRC; and or by calling Kathy Schnakenberg at 816-561-2714 or cell 202-262-4998</li> <li>- Kathy will ensure one is over-nighted to the medical examiner's office</li> <li>- If a fatality tox box is unavailable within a reasonable amount of time, and after conferring with Lamar Allen or Kathy, a railroad could use the standard tox box</li> <li>- Includes new instructions and new F6180.75 form</li> </ul>	

<b>PART 219</b>		
<b>APPENDIX C - POST-ACCIDENT TESTING SPECIMEN COLLECTION</b>		
<b>SECTION</b>	<b>INTERPRETIVE GUIDANCE</b>	<b>SOURCE</b>
	Remember that FRA post-accident testing is not subject to Part 40, so the instructions are found in the tox boxes and are also in Appendix B to Part 219 (Designated laboratory/address/phone) and Appendix C to Part 219 (Post-Accident Testing Specimen Collection).	

**ORDER FORM  
FRA POST ACCIDENT TOXICOLOGY BOXES  
FOR DRUG AND ALCOHOL TESTING**

1. Railroads should complete the order form below.
2. Each railroad may only have ONE contact person who will order these Boxes.
3. Make the check or money order (no cash or credit cards are accepted) out to Federal Railroad Administration and mail it to:

DOT/FRA  
Mike Monroney Aero Center  
General Accounting Division, AMZ-300  
Oklahoma City, OK 73125

4. Make a copy of the check or money order.
5. Fax a copy of the check or money order AND the order form to FRA's contract laboratory at 888-445-2507.

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Railroad Name: \_\_\_\_\_  
Contact Person's Name: \_\_\_\_\_  
Street Address: (no PO Box) \_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip: \_\_\_\_\_  
Phone: (\_\_\_\_) \_\_\_\_\_  
Fax: (\_\_\_\_) \_\_\_\_\_  
Email: \_\_\_\_\_

Number of regular Tox Boxes \_\_\_\_ X \$25.00 = \$\_\_\_\_ (Each Box contains 3 employee kits)  
Number of Fatality Tox Boxes \_\_\_\_ X \$40.00 = \$\_\_\_\_ (Each Box contains 1 employee kit)

Note: Only the railroads that were distributed Fatality Tox Boxes may order more Fatality Tox Boxes. If you have questions please call Lamar Allen @ 202-493-6313 or Kathy Schnakenberg @ 816-561-2714 (Kathy.Schnakenberg@dot.gov)

TOTAL = \$

If the address to which the tox-boxes should be sent is different from the above-named address, please indicate where the boxes should be sent:

Attn: