

Part 219 Short Line Training Presentation

Drug & Alcohol Testing for Railroads

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FRA Regional A/D Leaders

Region 1: Pat Corcoran	617-283-3482 (MA)
Region 2: Dennis Bowman	540-890-5298 (VA)
Region 3: Vacant	XXX-XXX-XXXX
Region 4: Alan Hallstrom	317-847-2370 (IN)
Region 5: Ken Werres	713-213-2026 (TX)
Region 6: Barb Anderson	402-350-1888 (NE)
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Region 8: Darryl Morrow	360-608-2714 (WA)

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Alcohol & Drug Testing Programs

PARTIAL COMPLIANCE:

- Part 219 Subpart A – General
- Subpart B – Prohibitions
- Subpart C – FRA Post-Accident Testing

FULL COMPLIANCE:

- Cover remainder of Part 219 for those railroads that have 16 or more covered employees or joint operations

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General

- Part 219 Subpart A

(Applicable to All Railroads Subject to Part 219)

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Partial Application of Part 219

A railroad is presently generally subject only to Subparts A (General), B (Prohibitions), & C (Post-Accident Testing) of Part 219 if FRA's regional inspectors determine that:

- It is part of the general railroad system of transportation AND
- Has less than 16 HOS employees (including HOS contractors & volunteers) AND
- Has no joint operations other than for limited interchange purposes

219.3

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Partial Compliance Railroads

Those railroads with less than 16 HOS employees and no joint operations:

- Presently cannot conduct pre-employment, reasonable cause or random testing under “Federal” authority
- But can do so under their own independent company authority (using non-DOT testing forms)

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Implied Consent for Testing

- A covered employee has consented to testing by performance of hours of service duties
- A railroad employee or HOS contractor (including a non-covered service employee) who performs service for a railroad has consented to FRA post-accident testing if he or she dies as a result of a qualifying accident or incident within 12 hours of that event

219.11

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Covered Service (Hours of Service)

Functions covered by the hours of service laws:

- Train, yard & engine service employees
 - Including Inside & outside hostlers/helpers who move locomotives into or out of locomotive shops (or who fuel, sand or service locomotives within the shop)
- Train dispatchers, control operators, etc. (transmit mandatory directives)
- Signalmen (install, repair or maintain signal systems)
- Questions: Call Rich Connor 202-493-1351

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Consent to Testing Forms

- For FRA post-accident tests only, an employee may be required to sign a consent form as long as it doesn't waive liability
- For all other Federal tests, consent to testing forms are now prohibited by 40.27
 - For example, if you send your HOS applicants to a clinic for Federal pre-employment testing, the clinic cannot have them sign a consent form

219.11

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Previous Employer Checks

Before an employee is hired or transferred to perform covered service for the first time, a railroad must have them sign a written consent/release form to:

- Request from any DOT-regulated employers whom the employee has worked for within the last 2 years
- Information concerning any Federal alcohol and/or drug positives/refusals/violations by the employee

This is to ensure that the employee has met any outstanding Federal return-to-service requirements before performing covered service for a new railroad or other DOT employer.

40.25

Suggested Format: "Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing"

Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name: _____

Employee SS or ID Number: _____

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in Section I-B, to the employer listed in Section I-A. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in Section I-A by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Have you worked for a DOT regulated employer in the last two years? _____

Have you tested positive, or refused to test, on any pre-employment drug/alcohol test? _____

Employee Signature: _____ Date: _____

I-A.

New Employer Name: _____

Address: _____

Phone #: _____ Fax #: _____

Designated Employer Representative: _____

I-B.

Previous Employer Name: _____

Address: _____

Phone #: _____

Designated Employer Representative (if known): _____

Previous Employer Checks

- If feasible, obtain & review this information from the previous railroad's **DER** before the new employee performs covered service
- If not feasible, do ASAP
- Must not permit new employee to perform covered service after 30 days unless you've obtained or made a good faith effort to obtain
- Call FRA if you're having a difficult time obtaining the info from the previous DOT employer

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Previous Employer Checks

- Railroad must also ask the new employee if they tested positive or refused a Federal pre-employment drug and/or alcohol test in last 2 years (we've included these questions on the sample consent/release form on your CD)
- If yes, must complete Federal return-to-service requirements before performing covered service

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Previous Employer Checks

- This has been a requirement since August 2001
- If your railroad hasn't been conducting these checks, please start the process for those covered employees your railroad has hired in the last 2 years
- If the applicant has not worked for a previous DOT employer, just have him/her complete the consent/release form & your railroad should maintain the signed form on file

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Employee Educational Materials

- Identify the person designated to answer employee questions
- Identify classes/crafts subject to Part 219
- Provide info to ensure employees understand their responsibilities
- Provide info on prohibited conduct, e.g., Rule G (1.5) and 219.101, 219.102 & 219.103 violations (must also prohibit off-duty use of drugs)

219.23

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Employee Educational Materials

- Identify circumstances for testing (e.g., FRA post-accident qualifier)
- Identify testing procedures
- Identify what constitutes a refusal & the consequences
- Identify consequences for violations of the prohibitions

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Employee Educational Materials

- Identify consequences for alcohol positive of 0.02 to 0.039
- Provide info on effects of alcohol & drug use, signs & symptoms of a problem, available methods of evaluating misuse, and SAP contacts & counseling/treatment programs

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Employee Educational Materials

- Provide a copy to each employee
 - Could do this by posting on a bulletin board or web site
- Provide written notice to union reps of availability of this info, if applicable

NOTE: See next slide for the first page of FRA's model policy covering the prohibitions and the employee educational materials requirements

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FRA MODEL POLICY

- **FRA MODEL POLICY FOR COMPLIANCE WITH ALCOHOL/DRUG USE REGULATIONS**
 - [Designed For Railroads With Less than 16 Hours of Service Employees
- **And No Joint Operations But Can Be Used by All Railroads to Comply with the Minimum Employee Educational Requirements of 219.23 (d) and (e)]**
- _____ recognizes that there is a problem of substance abuse, both in drugs and alcohol, in today's society. As an employer who is subject to governmental regulations and seeks to promote the safety of its employees and the public, willingly complies with Federal regulations that are designed to restrict and prohibit the unauthorized use of drugs and alcohol on its property. This company will comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations and all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.
- In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work covered by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) from being under the influence and/or possession of illegal substances and/or under the influence of alcohol while on duty or within four hours of reporting for covered service. Additionally, controlled substance use is prohibited at any time **on or off duty**, except as allowed in 219.103.
- This program applies to all employees who are subject to the Federal hours of service laws (i.e. operating employees or covered service employees, including contractors and volunteers). Covered service employees are required to be in compliance with the applicable sections of Part 219 when they are on duty and are required to perform or are available to perform covered service.

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Employee Educational Materials

- For the larger railroads, if your railroad's random plan is the means to comply with the employee educational materials requirements, then your railroad would need to provide a copy of your railroad's random plan (or applicable portions) to your covered employees (or post it)
- If you don't want to give your random plan to your covered employees, then have a separate A/D policy that covers the employee educational materials requirements

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Employee Educational Materials

- One resource is the handout ***What You Need to Know About Federal Drug and Alcohol Testing*** that you were provided today that was prepared by the major labor organizations, FRA, AAR, and the ASLRRRA
- However, it does not contain all of the required elements

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Supervisor Training

Railroad supervisors responsible for covered employees must be trained in:

- **Signs & Symptoms:** The recognition of signs & symptoms of A/D misuse - minimum 2 hours
- **FRA Post-Accident Testing:** Qualifying criteria for FRA post-accident testing & the role of the supervisor - minimum 1 hour

219.11 (g)

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Supervisor Training

Sources:

- ASLRRRA (CD on signs & symptoms that CSX shared with FRA/ASLRRRA)
- Your EAP/SAP provider
- Commercial sources
- FRA has a PowerPoint presentation on FRA post-accident testing

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Prohibitions

- Part 219 - Subpart B

(Applicable to All Railroads Subject to Part 219)

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Alcohol Prohibitions

Alcohol (219.101 Violation):

- May not “use or possess” while assigned to perform covered service
- May not report, go, or remain on duty:
 - Under the influence/impaired;
 - Having 0.04 or more BAC result

Note: It is not necessary to conduct a Federal reasonable suspicion alcohol test for on-duty possession of alcohol



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Alcohol Prohibitions

Alcohol:

- May not use alcohol for whichever is the lesser period:
 - Within 4 hours of reporting;
 - or
 - After receiving notice to report



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Alcohol Prohibitions

Alcohol (Positive, but not a 219.101 Violation of Federal Regulations):

- With Federal test result of 0.02 – 0.039:
 - May not perform covered service for minimum of 8 hours (only Federal sanction)
 - Railroad can take further action under its company policy
 - Any SAP referral, or return-to-duty or follow-up testing is non-Federal

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Drug Prohibitions

Drugs (219.101 Violation):

- May not use or possess drug(s) while assigned to perform covered service
- May not report, go, or remain on duty under the influence of or impaired by drug(s)

NOTE:

- It is difficult to prove a 219.101 “drug” violation because the employee must be caught using or possessing drugs while “on duty”
- No test is required for illegal drug “possession”

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Drug Prohibitions

Drugs (219.102 Violation):

- May not use drug(s) at any time, whether on duty or off-duty
- Except per 219.103 (prescriptions & OTC)

NOTE:

- Federal drug violations are almost always a 219.102 violation.
- Why does it matter whether it’s a 219.101 or 219.102 violation?

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Engineer & Conductor Decertification

If a locomotive engineer or conductor has a first 219.101 violation (alcohol at 0.04 or higher on a Federal test), his/her certificate is revoked for a minimum of how long?

What's the certification suspension period for a first time 219.102 violation (drugs)?

240.119(c)(4) & 242.115(e)(4)

Engineer & Conductor Decertification

- A locomotive engineer or conductor has a marijuana positive on a Federal random drug test & your railroad decides to terminate him or he resigns. Is the railroad still required to revoke his engineer certificate?
- Yes, get him/her to sign a written waiver to the hearing & if he/she won't sign it, then send him/her a notice for the hearing & hold the hearing "in absentia" if he/she fails to attend.
- Call Joe Riley at 202-493-6318 or email him at Joseph.Riley@dot.gov

Prohibitions

Prescribed & OTC Drugs:

- One treating medical practitioner or doctor designated by the railroad
- Makes fitness-for-work determination based on:
 - All medications in combination
 - Assigned duties
 - Available medical history

219.103

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Prohibitions

Prescribed & OTC Drugs:

- Must be used at dosage prescribed or authorized
- Railroad is authorized to require employees to notify it of therapeutic drug use or obtain prior approval for such use

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Rule 1.5 Observations (all railroads)

- Are you conducting adequate & effective Rule 1.5 observations on your covered employees?
- FRA expects that covered employees have a documented Rule 1.5 observation at a rate of at least once per quarter
- For example, a railroad with 20 HOS employees should do at least 80 such observations each year
-  Proposed rule: Will include these requirements in the Part 219 rule text

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219 Presentation – Part 2 Alcohol & Drug Testing Programs

We've covered the partial compliance railroad subparts

- Part 219 Subpart A – General
- Subpart B – Prohibitions
- Subpart C – FRA Post-Accident Testing

We'll next:

- Cover the remainder of Part 219 for those railroads that have 16 or more covered employees or joint operations

Types of Federal Testing

We will cover:

- Pre-employment (Subpart F)
- Reasonable suspicion (Subpart D)
- Reasonable cause (Subpart D)
- Random (Subpart G)
- Return-to-Duty
- Follow-Up

Other Topics

- New Part 40 Rules
- How to handle non-negatives (Part 40)
- Handling of shy bladder/lung (Part 40)
- Voluntary referral & co-worker report policies (Subpart E)
- Other railroad responsibilities
- Common problem areas & violations

Part 219 Subpart F
Pre-Employment Tests
(Full Compliance Railroads)

- Pre-Employment Tests
- Must have a Federal “negative” drug test before a new-hire or first-time transfer performs covered service
 - First-time transfers most often occur when mechanical employees are transferred into covered service as hostlers or hostler helpers
- 219.501

Pre-Employment Testing

- Presently, only one Federal pre-employment drug test is required for each railroad (if employee quits & later returns, can do a “company” test)
- Keep a record of the date and result of each employee’s pre-employment drug test (or if they were grandfathered before 1986)

Pre-Employment Testing

- If a railroad corporation owns several railroads & employees are used interchangeably, it can request relief from FRA (email Jerry or Sam)
- Federal “**alcohol**” pre-employment testing is **authorized** (but not required). If your railroad chooses to conduct Federal alcohol pre-employment testing, it must apply to ALL covered service applicants & first-time transfers
- A railroad is not prohibited from conducting non-DOT pre-employment “alcohol” tests

Pre-Employment Testing

- Biggest problem FRA sees is use of the wrong form
- Railroads improperly use a non-DOT form for covered employees or a DOT form for non-covered employees

Use of Wrong Form

- If a non-DOT form is used for a Federal test, this can be corrected with a signed statement from the collector – if certified lab is used, test for same 5 drugs & Part 40 collection procedures were followed
- If a Federal form is used in error for a non-covered employee's test, this cannot be corrected (should note error)
- Call FRA if a wrong form was used and the test result is positive

40.205 (b)(2)

Part 219 Subpart D

Reasonable Suspicion Testing

Reasonable Suspicion

- Mandatory alcohol and/or drug Federal test when signs & symptoms are present & covered employee is on duty
- Trained supervisor(s) makes observation (appearance, behavior, speech, body odors)
- Justification for test must be documented
- For possession of alcohol or illegal drugs, a test is not required

Reasonable Suspicion Test

- One on-site trained supervisor for alcohol test
- Two supervisors (one of whom is trained and on-site) for drug test
- Supervisor must document signs/symptoms being observed (e.g., I smelled alcohol on his breath, his pupils were dilated)
- Can railroad exceed hours of service?

Group Quiz

A conductor is off work but comes into the yard office to pick up a portable radio for his work at an outlying location the next day. A trainmaster stops to talk with the conductor and smells alcohol on the conductor's breath.

- Does this meet the criteria for a Federal reasonable suspicion alcohol test?
- What should the trainmaster do?

Group Quiz

On Sunday night, a trainmaster receives a call from a switchman's mother who tells him that she's worried about her son because since his divorce, he's been drinking heavily and sometimes goes to work after he's been at the bar all night. The trainmaster immediately calls for a collector to be at the yard office at 8 am the next morning & upon the switchman's arrival, the switchman is given a Federal reasonable suspicion breath alcohol test. Is this proper?

Part 219 Subpart D Reasonable Cause Testing

Reasonable Cause Testing

- There is no requirement to conduct reasonable cause testing (it is optional)
- Railroad is authorized to test using Federal authority if it meets criteria in 219.301
- Many railroads test under “company” authority
- Type of test must not be marked “post-accident”
- Biggest problem is use of wrong form

Reasonable Cause Testing Events

May use FRA authority only for:

- FRA reportable accidents (\$10,500) or incidents (reportable injury) in which employee’s acts or omissions contributed to cause or severity
- Operating rule violations specified in 219.301 (test only those employees the railroad can show were directly involved, not generally a whole crew)

RC Qualifying Rule Violations

An employee has been directly involved in one of the following operating rule violations or errors:

Failure to comply with a train order, track warrant, timetable, signal indication, special instruction or other direction involving:

- Unauthorized occupancy of a block/track
- Failure to clear a track to permit others to pass
- Unauthorized movement across a RR crossing at grade (where tracks of 2 railroads cross)
- Passing an absolute or restrictive signal without stopping, as required

RC Qualifying Rule Violations

- Failure to protect a train (including failure to protect a train fouling an adjacent track)
- Excessive speed of 10 mph or 50% of maximum authorized speed (lesser)
- Aligning a switch in violation of a rule, failure to align a switch as required, operating a switch under a train or unauthorized running through a switch
- Failure to apply or stop short of a derail
- Failure to secure a hand brake or sufficient hand brakes

RC Qualifying Rule Violations

- Entering a crossover before both switches are lined for movement
- Dispatcher or block operator issues a train order or establishes a route that fails to provide proper protection for a train

Reasonable Cause - HOS

Hours of service may be exceeded for Federal or company RC tests:

- If the 219.301 criteria are met; and
- Due diligence is shown to get test completed ASAP; and
- Railroad reports excess service to FRA (F6180.3 form)

RAILROAD SUPERVISOR JUSTIFICATION FOR FEDERAL REASONABLE SUSPICION OR REASONABLE CAUSE TESTING	
<input type="checkbox"/> REPORT OF FRA OPTIONAL REASONABLE CAUSE TEST (Rule Violation or Reportable Accident/Incident)	
<input type="checkbox"/> REPORT OF FRA REASONABLE SUSPICION TEST (Signs & Symptoms)	
Division: _____	Date: _____
Location: _____	Time: _____
FRA REASONABLE CAUSE TEST: Rule Violation? Yes or No	
If yes, identify rule for testing each person: _____ _____	
FRA REPORTABLE ACCIDENT/INCIDENT involving hours of service employee whose acts or omissions contributed to the occurrence or severity? Yes or No (minimum \$10,500 or REPORTABLE INJURY)	
If yes, describe accident or incident and culpability of each employee tested: _____ _____	
FRA REASONABLE SUSPICION TEST: If FRA Reasonable Suspicion Test where hours of service employee is <u>on duty</u> and displaying signs & symptoms of alcohol and/or drug misuse, a Federal test must be conducted. Identify the signs & symptoms: _____	

Reasonable Cause – Group Quiz

- A switch engine collided head-on with a tank car the 2-person switch crew had just handled that had rolled out and was fouling an adjacent yard track
- Resulting in \$8,000 of damage to the tank car
- Does this event qualify for Federal reasonable cause testing?
- If no, why not?
- If yes, who should be tested?

Reasonable Cause – Group Quiz

- A switch crew has a head-on collision with another switch crew
- Resulting in \$25,000 and a reportable injury to an engineer
- What type of testing should be conducted?

Part 219 Subpart G

Random Alcohol & Drug Testing

Random Testing Plan

- Make sure your plan is up-to-date & any substantive amendments are filed with FRA
- FRA has a “model” fill-in-the-blank plan for railroads to utilize
- Sam approves all random plans so email them to him for approval – sam.noe@dot.gov
- If you have changes to service providers, email them to Sam Noe - re-approval is not required for these minor changes
- Your railroad will receive a formal FRA letter of approval

Random Plan – HOS Contractors

If your railroad uses an hours of service contractor (e.g. signalman):

- You could place the contractor in your railroad’s random pool; or
- The contractor has to have a Federal random testing plan that’s acceptable to FRA
- FRA has a model fill-in-the-blank contractor random plan the contractor can utilize

Remember that HOS contractors & volunteers count towards your railroad’s total number of HOS employees

Random Plan – HOS Contractors

- Once the HOS contractor's plan is acceptable to FRA, Sam will send them a letter
- The contractor must send a copy of their random plan to all railroads they provide HOS employees to
- Your railroad will attach the contractor's random plan to your railroad's random plan & re-submit to FRA for approval

Random Testing Pools

- Ensure "all" employees who perform hours of service functions at a rate of at least once per quarter are in a Federal random testing pool
- Larger railroads normally have several random pools
- Cannot combine covered employees & non-covered employees in the same pool
- Keep pools updated – inspectors write deficiencies if someone is selected who is retired, etc.

Random Testing Pools

- If you have an HOS signal employee who also has a CDL, put him in the “FRA” random pool if he spends 51% or more of his time doing HOS signal work
 - Should not be in both the FRA & FMCSA pool
- You can combine FRA & FMCSA covered employees in the same random pool as long as you test **everyone** in the pool at the highest minimum rate
 - FMCSA’s minimum random drug testing rate is 50%
- FRA’s minimum random testing rate is presently 25% for drugs & 10% for alcohol

Random Selections

Only Two Methods of Selection:

1. Computer program
 - Free one at www.randomizer.org
2. Manual selection using a random number table (in FRA’s model plan)
 - No need to select a test date (can be limiting)
 - Can have a third party consortium make selections (e.g., NADE/Pembrooke)

Random Collections

- If you make selections monthly, collections must be completed within that month
- If selecting individuals, you can have a testing window such as 30 days which should match the selection period
- A selected employee must be tested even if they're not performing covered service that day
 - If subject to performing covered service
 - If not subject, then shouldn't be in the random pool

Random Collections

- If selected and not tested, railroad must document reasons in writing – inspectors will write deficiencies or violations if an employee is not tested without an acceptable reason
- Examples of non-acceptable reasons:
 - Collector not available
 - Railroad supervisor not available
 - Supervisor forgot

Random Collections

- Once an employee is notified of random testing, he/she is excused from testing only for an emergency involving the selected person or an immediately family member (birth, death, medical emergency)
- Medical emergency is an acute medical condition requiring immediate emergency care
- Must be substantiated in writing by a credible outside professional (e.g., doctor, hospital, police officer, school authority, court official)

Random Collections

- Spread collections throughout year & work week (including weekends)
- Collect at beginning & end of shifts (middle if possible)
- If you usually test at the beginning of a shift, FRA expects 10% of alcohol tests to be done at the end of the shift

Random Collections - HOS

- This is a planned test so the railroad must prepare for it in advance
- Try to allow 3 hours for random collections in case of a shy bladder because once notified of the test, if their HOS expires, random testing must stop
- For a random collection, hours of service may NOT be exceeded unless it becomes necessary to do a “direct observation” collection because:
 - Specimen temperature is out of range
 - Specimen tampering (or attempt)

Random Testing Records

Keep copies of:

- Random selections
- Testing forms & test results
- Snapshot of pool entries for each draw
- Reasons for non-tests

NOTE: Keep information at least 2 years (5 years for positives)

Part 40 Testing Procedures

Apply to all Federal tests except
FRA Post-Accident Testing

Important Information for Railroad DERs

Part 40 Testing Procedures

DOT - ODAPC

- DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) is responsible for Part 40 issues
- Applies to all DOT modes

Modal contacts

- FMCSA - Jim Keenan 202-366-2096
- FTA - Vacant 202-366-2395
- FAA – Rafael Ramos 202-267-8442
- PHMSA – Stanley Kastanas 202-550-0629
- USCG – Bob Schoening 202-372-1033

*New DOT Alcohol Testing Form (ATF)

- New DOT Alcohol Testing Form – **must be used as of January 1, 2011**
- Minor changes
- Instructions on back now say that if the results are to be affixed to the form, the tamper-evident tape must not obscure the original printed info
- For FRA, if a Federal reasonable cause test, cross out “Susp” and write in “Cause”

U.S. Department of Transportation (DOT) Alcohol Testing Form <i>(The instructions for completing this form are on the back of Copy 3)</i>		<i>Print Sc Here or Tamper</i>
TO BE COMPLETED BY ALCOHOL TECHNICIAN Name _____ (Print) (First, M.I., Last) Employee ID No. _____ Name _____ Zip _____ _____ _____ e and No. _____ () DER Name _____ DER Phone Number _____ Test: <input type="checkbox"/> Random <input type="checkbox"/> Reasonable Susp <input type="checkbox"/> Post-Accident <input type="checkbox"/> Return to Duty <input type="checkbox"/> Follow-up <input type="checkbox"/> Pre-employment		<i>Print Co Results A with Tan Tape</i>
TO BE COMPLETED BY EMPLOYEE I am about to submit to alcohol testing required by US Department of Transportation regulations and that the information provided on the form is true and correct. _____ Employee _____ Date _____ / _____ / _____ _____ _____		
TO BE COMPLETED BY ALCOHOL TECHNICIAN I am conducting the screening test is not the same technician who will be conducting the confirmation test,		

*Added Testing for New Drugs But Still a 5-Panel Urine Drug Test

New drugs are in red:

- | | |
|-------------------------|--------------------------------|
| 1. Marijuana (THC) | 4. Opiates |
| 2. Cocaine | - Codeine |
| 3. Amphetamines | - Morphine |
| - Amphetamine | - 6-AM (Acetylmorphine) |
| - Methamphetamine | 5. Phencyclidine (PCP) |
| - MDMA (ecstasy) | |
| - MDA (ecstasy) | |
| - MDEA (ecstasy) | |

No Legitimate Medical Explanations

An MRO is prohibited from accepting an assertion that there is a legitimate medical explanation for the presence of the following drugs in a urine specimen:

- Ecstasy (MDMA, MDA, MDEA)
- 6-AM (marker for heroin)
- PCP

40.151 (g)

Medical Marijuana

A doctor in Colorado has recommended that a conductor use medical marijuana and he comes up positive on a Federal random drug test. Can the MRO downgrade the test result to a negative?



*New Federal Drug Testing CCF

- DOT published an Interim Final Rule on the HHS' New Federal Drug Testing Custody and Control Form (CCF)
- Mark both DOT and FRA on new CCF under Specific Testing Authority
- Still mark the box for THC, COC, PCP, OPI, AMP for the same 5-Panel Drug Tests to be Performed

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM



SPECIMEN ID NO. **000001** ACCESSION NO. _____

STEP 1: COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address, I.D. No. _____ B. MRO Name, Address, Phone No. and Fax No. _____

C. Donor SSN or Employee I.D. No. _____

D. Specify Testing Authority: HHS NRC DOT - Specify DOT Agency: FMCSA FAA FRA FTA PHMSA USCG

E. Reason for Test: Pre-employment Random Reasonable Suspicion/Cause Post Accident Return to Duty Follow-up Other (specify) _____

F. Drug Tests to be Performed: THC, COC, PCR, OPI, AMP THC & COC Only Other (specify) _____

G. Collection Site Address: _____

Collector Phone No. _____
Collector Fax No. _____

STEP 2: COMPLETED BY COLLECTOR (make remarks when appropriate) Collector reads specimen temperature within 4 minutes.

Temperature between 90° and 100° F? Yes No, Enter Remark _____ Collector: Spill Single None Provided, Enter Remark _____ Observed, Enter Remark _____

REMARKS: _____

STEP 3: Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s). Donor completes STEP 5 on Copy 2 (MRO Copy)

STEP 4: CHAIN OF CUSTODY - INITIATED BY COLLECTOR AND COMPLETED BY TEST FACILITY

I certify that the specimen given to me by the donor identified in the certification section on Copy 2 of this form was collected, labeled, sealed and released to the Delivery Service noted in accordance with applicable Federal requirements.

X Signature of Collector _____ AM _____ PM (PRINT) Collector's Name (First, MI, Last) _____ Date (Mo/Day/Yr) _____ Time of Collection _____	SPECIMEN BOTTLE(S) RELEASED TO: _____ Name of Delivery Service _____
RECEIVED AT LAB OR IITF: X Signature of Accessioner _____ _____ (PRINT) Accessioner's Name (First, MI, Last) _____ Date (Mo/Day/Yr) _____	Primary Specimen Bottle Seal Intact <input type="checkbox"/> YES <input type="checkbox"/> NO If NO, Enter remark in Step 5A. _____ SPECIMEN BOTTLE(S) RELEASED TO: _____

STEP 5A: PRIMARY SPECIMEN REPORT - COMPLETED BY TEST FACILITY

NEGATIVE DILUTE POSITIVE for: Marijuana Metabolite (Δ9-THCA) 6-Acetylmorphine Methamphetamine MDMA Cocaine Metabolite (BZE) Morphinine Amphetamine MDA PCP Codeine MDEA

REJECTED FOR TESTING ADULTERATED SUBSTITUTED INVALID RESULT

REMARKS: _____

Test Facility (if different from above) : _____
 I certify that the specimen identified on this form was examined upon receipt, handled using chain of custody procedures, analyzed, and reported in accordance with applicable Federal requirements.

OMB No. 0305-0118
PRESS HARD - YOU ARE MAKING MULTIPLE COPIES

- ## *New Federal Drug Testing CCF
- On the MRO/copy 2 of the CCF, there is now a new line item "Other" for the MRO to use to document other refusal to test situations such as shy bladder with no medical explanation
 - The lab reports to the railroad's MRO will contain the drug metabolite quantitations

*Lower Drug Cutoff Levels

- The drug cutoff levels have been lowered for cocaine and amphetamines to coincide with HHS recommended criteria (ng/mL)
- **Cocaine cutoff levels:**
 - From 300 to 150 on the initial test
 - From 150 to 100 on the confirmation test
- **Amphetamine cutoff levels:**
 - From 1,000 to 500 on the initial test
 - From 500 to 250 on the confirmation test

Part 40 - Handling Federal
Non-Negatives or Refusals

*MRO Requalification Training

- Instead of 12 hours of CEU every 3 years, MROs now have to be re-qualified every 5 years (including passing an exam)
- Remember that your MRO must be either a Medical Doctor (MD) or a Doctor of Osteopathy (DO) – see 40.121
- An individual doing MRO work when he was not a licensed physician was recently sentenced to 22 months in a federal prison and directed to pay more than \$200,000 in restitution

Federal Non-Negatives

- Alcohol test results of 0.04% or more (immediate result)
- Non-negative drug test results:
 - Positives
 - Adulterated (refusal)
 - Substituted (refusal)
 - Invalid (lab can't obtain valid result)
- Other refusals to test

MRO Review

For non-negative drug test results:

- Lab reports result to railroad's Medical Review Officer (MRO)
- MRO interviews employee by phone to determine if there is a legitimate explanation (e.g. prescription medication)
- MRO reports result to railroad (Designated Employer Representative)

Removal From Service

- For alcohol positives, employee must be immediately removed from covered service (0.04 or more is a Federal violation of 219.101)
 - Remember that the only Federal sanction for a 0.02 to 0.039 alcohol result is removal from covered service for 8 hours
- For MRO-verified drug non-negatives , employee must be removed as soon as practicable

Invalid Drug Test Result

- Invalid means an unidentified adulterant or interfering substance that prevents the lab from obtaining a valid result
- If the lab reports an “invalid” test result to the railroad’s MRO
- MRO interviews the employee & if there is no medical explanation, the MRO will report the invalid result to the railroad’s DER
- Railroad must conduct an immediate re-collection under “direct observation” regardless of hours of service limitations

Invalid Drug Test Result

*New Part 40 Rule – 40.159 (a)(6)

- When the lab reports an invalid because **pH is 9.0 to 9.5**, the MRO will interview the employee & will also consider the transport time to the lab and temperature conditions
- MRO will cancel if determines time & temperature account for the pH value
- If they did not account for the pH value, MRO will cancel the test & direct the railroad’s DER to conduct an immediate re-collection under “direct observation” regardless of HOS limitations

Negative Dilutes

- Negative dilutes are considered to be “negative” & will be discussed later
- Exception: If a urine specimen’s creatinine concentration is **2 to 5 mg/dL**, your MRO will direct the railroad’s DER to immediately conduct a recollection under “direct observation”
- Regardless of hours of service limitations

Refusals to Test

- Employee must be removed from covered service for minimum of 9 months under Part 219
- Must go through standard return to covered service procedures before they can perform covered service for any railroad
- FRA is the only DOT mode that has the 9-months disqualification from covered service following a refusal

Refusals to Test

Includes:

- Failing to appear for the test
- Leaving collection site before completed
- Failing to provide a sufficient amount of urine or breath (unless has an acceptable medical explanation)
- Failing to cooperate with testing process

Refusals to Test

- Failing to permit a monitored (collector stands outside stall door) or direct observation collection (if required)
- Possessing or wearing a prosthetic device
- Failing or declining to take an additional drug test as required (e.g., after invalid test result)
- Failing to undergo a medical evaluation as directed by MRO or DER
- Verified adulterated or substituted result (including admissions to collector or MRO)

Refusals to Test – Group Quiz

Question 1- Is it a refusal if the employee refuses to sign Step 4 of the drug testing form?

Question 2 - Is it a refusal if the employee refuses to sign Step 2 of the alcohol testing form?

Refusal to Test – Group Quiz

You've decided to hire an applicant for a conductor position and have told him to report for his Federal pre-employment drug test on Monday morning at 8 am at a clinic. At 10 am, the clinic calls you and says that the employee failed to report. You call the applicant and he says he decided he doesn't want the conductor job. Is this a refusal to test?

Notice to Employee

- Following a Federal violation of 219.101 or 219.102
- Prior to or upon withdrawing the employee from covered service
- The railroad must provide notice to the employee of the reason for this action

Proposed rule: That this notice be
“in writing”



219.23 (b)

219.104 Hearing

- If an employee disputes the results of his Federal test, he/she may demand & must be provided an opportunity for a prompt post-suspension hearing
- Hearing by presiding officer other than the charging official
- Separate findings if consolidated with a disciplinary hearing

General Rail Industry Standard

- Railroad's only obligation is to provide a list of Substance Abuse Professionals (SAP) to the employee (minimum of 2) if it's not returning the employee to work
- Some railroads terminate an employee after a first positive & some terminate after the second positive
- Most railroads terminate an employee who has a refusal to test

Return to Covered Service

For Federal alcohol (.04 or more) or drug positives or refusals, employee may not return to covered service until they:

- Have initial and follow-up SAP evaluations & prescribed education/treatment
- Have a Federal negative return-to-duty test(s)
 - *Drug tests must be directly observed
 - Engineers and conductors require both a drug and alcohol RTD test

Return to Covered Service

The SAP also recommends the number & frequency of Federal follow-up tests:

- Minimum of 6 follow-up tests in the first year
- Engineers and conductors require 6 drug & 6 alcohol tests
- For up to 5 years
- *These follow-up tests are required to be directly observed
- Railroad can't require additional or supplemental "company" follow-up tests even under the auspices of an EAP after-care program

*New Direct Observation Procedures

- A railroad is required to conduct direct observation collections for:
 - All Federal return-to-duty drug tests following a positive Federal test
 - All resulting Federal follow-up tests
- Direct observer must be same gender as employee

40.67

*New Direct Observation Procedures

- Direct observer must request donor to:
 - Raise his/her shirt, blouse, or dress/skirt above the waist (just above the navel);
 - Lower clothing and underpants (to mid-thigh) to show, by turning around, they don't have a prosthetic device (can then return clothing to proper position for observed urination)
- If the employee has a device, the observer immediately notifies the collector and
 - The collector thoroughly documents the circumstances in the remarks section of the CCF
 - The collector notifies the DER. This is a refusal to test.

Return to Covered Service - Quiz

- A locomotive engineer or conductor tests positive for alcohol at 0.05 on a Federal random test in January
- The railroad sends him/her to a SAP and he completes an inpatient treatment program
- In March, the SAP sends the follow-up evaluation letter with the follow-up testing plan to the DER saying that the engineer or conductor is ready to return to work
- Can the railroad return him to service as a locomotive engineer or conductor in March?

Return to Covered Service - Quiz

- A conductor has an alcohol positive of 0.05 on a Federal random test
- The SAP recommends both a drug and alcohol return-to-duty test and both drug and alcohol follow-up tests for a 2-year period
- Do the conductor's return-to-duty and follow-up tests drug tests need to be directly observed?

Shy Bladder/Lung

- After 3 hours (urine) or 2 to 3 attempts (breath), collection is discontinued
- Collector notes failure to provide a specimen in the "remarks" section of the form & notifies the railroad's DER
- For a shy bladder, the DER consults with the MRO

Shy Bladder/Lung

- The DER directs the employee to obtain an evaluation within 5 business days from a physician who:
 - Has expertise in medical issue raised
 - Is acceptable to MRO (for shy bladder)
 - Could be the MRO if has expertise

Shy Bladder/Lung

- Physician determines whether the employee has a medical condition which precluded him/her from providing sufficient breath or urine
- If medical condition is found, test is cancelled (not a refusal)
- If no medical condition is found, it is considered a refusal to test

Identification of Troubled Employees

Voluntary Referral & Co-Worker Report Policies Part 219 Subpart E

Written Policies

Railroads must adopt, publish & implement both:

- Voluntary referral policy; and a
- Co-worker report policy

NOTE: If you used the model railroad policy to submit your random plan, these policies are included (if not, must have separate policies)

Voluntary Referral Policy

- Employee self-refers before being charged with a rule violation
- Referral, handling, counseling & treatment is treated as confidential unless:
 - Employee refuses to cooperate
 - Employee is subsequently involved in an alcohol or drug-related disciplinary offense

Voluntary Referral Policy

- Leave of absence up to 45 days granted for treatment
- Returned to duty on recommendation of EAP/SAP
- Any return-to-duty or follow-up testing recommended by the EAP/SAP would be “company” testing

Co-Worker Report Policy

- Employee is reported to the railroad by a co-worker
- Alleging he/she is unsafe to work with or was, or appeared to be in violation of 219.101, 219.102, or Rule G (1.5)
- For alleged “first” offenses

Co-Worker Report Policy

- Railroad may conduct a Federal reasonable suspicion test(s)
- If railroad determines employee is in violation, he/she must be removed from covered service
- Employee must elect to waive investigation on the rule charge

Co-Worker Report Policy

- Employee must contact SAP & successfully complete treatment
- Leave of absence of up to 45 days granted for treatment
- Employee is returned to service on recommendation of SAP
- Minimum education & Federal return-to-duty test & follow-up tests

Railroad Responsibilities

- Ensure testing lab is HHS certified (must conduct specimen validity testing)
- Ensure SAP is an MD; DO; licensed or certified social worker, psychologist, EAP or marriage & family therapist; or D & A Counselor certified by NAADAC, ICRC, or NBCC
- Ensure MRO is an MD or DO
- Ensure both MRO & SAP have also received required qualification training & continuing education units (SAP) or re-qualification training (MRO)

Railroad Responsibilities

- Ensure urine collectors, breath alcohol technicians & screening test technicians (using non-EBT breath or saliva) have received required qualification training & refresher training
- Ensure collector or technician receives error-correction training within 30 days of causing a test to be cancelled

Railroad Responsibilities

- Document any errors in the testing process of which you become aware
- If MRO reports a “negative-dilute” urine specimen, a railroad must have a policy on whether it will direct the employee to take another test immediately (unobserved); but must treat all employees the same, although can have different policies for certain types of tests (e.g., pre-employment, reasonable suspicion, etc.)
- Lab must now report numerical values for creatinine & specific gravity for negative-dilutes

FRA Web Page

- www.fra.dot.gov
- Click on Railroad Safety
- Click on Programs (twice)
- Click on Drug and Alcohol Program

Common Problem Areas & Violations

- Employees aren't given a Federal pre-employment drug test "prior" to first performing HOS duties
- Use of the wrong testing form
- Inadequate prohibitions policy (must also prohibit off-duty use of drugs)
- Inadequate employee educational materials

Common Problem Areas & Violations

- Previous employer checks not being conducted or evidence of performing them not maintained – keep copy of signed employee consent/release form
- FRA post-accident testing not completed following qualifying event
- Inadequate documentation of reason for Federal reasonable suspicion or reasonable cause tests

Common Problem Areas & Violations

- Minimum random testing rates not met
- Employees selected for random tests tested outside testing window
- Random tests not completed with no explanation or an unacceptable explanation
- Employees returned to work following a positive test result don't receive the minimum required number of follow-up tests per the SAP