

**FEDERAL RAILROAD ADMINISTRATION
CONTROL OF ALCOHOL AND DRUG USE
(49 CFR PART 219)**

**MODEL PART 219
RAILROAD CONTRACTOR
COMPLIANCE PLAN**

(For use for Plan submissions to FRA at sam.noe@dot.gov with effective date on or after June 12, 2017)

(Insert Name of Railroad Contractor)

(Insert Effective Date of Plan)

(Insert Date of FRA Plan Approval)

MODEL PART 219 RAILROAD CONTRACTOR COMPLIANCE PLAN

The Federal Railroad Administration (FRA) recognizes railroads can use internal employees, contracted employees, and even volunteers to perform Part 219 “regulated service” subject to the Federal hours of service laws (covered employees) functions on the railroad. The railroad is responsible for ensuring **ALL** personnel performing these regulated service functions are in compliance with all Part 219 requirements.

FRA’s Model Part 219 Railroad Contractor Compliance Plan has been developed by FRA as a tool to help with compliance for any railroad that uses personnel other than internal employees to perform “regulated” functions. Utilization of this tool with the entity providing the “covered” personnel will help demonstrate the railroad’s due diligence in ensuring these non-employees are in compliance with Part 219.

Simply signing and adopting this plan does not constitute compliance. The actions required by the regulation, regardless of employment affiliation, must be in accordance with regulatory requirements to achieve compliance. Railroads choosing to use this model plan should have their non-employee entity complete and submit this plan back to the railroad. The railroad should then append this plan to the required random plan and submit it to FRA for approval as part of the railroad’s random plan. The FRA also expects the railroad to demonstrate its due diligence in complying with the regulation by instituting a self-audit program with entities providing “covered” function personnel. As a reminder, FRA will review compliance with the regulations. FRA can choose to hold the employer responsible for any non-compliance whether it be the employer or contractor or other entity last serving the employer; or if the facts warrant, the FRA could hold the entity responsible or both.

In all cases where there is a difference between this plan and 49 CFR Part 219 or 49 CFR Part 40, the CFR takes precedence. Railroad employers and entities (contractors) are reminded that Federal authority can be used only if authorized by 49 CFR Part 219. Therefore, entities having less than 16 covered employees in combination with the supported railroad entity (if appropriate) are not authorized to conduct Federal random or reasonable cause testing.

NOTE: Title 49, CFR Part 40 requires employers to have a Designated Employer Representative (DER), defined in 40.3 as “An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs.” In the past, this person may have been referred to as the Program Administrator.

NOTE: Please make all entries, changes, or additions in bold, italics, color, or other distinguishing manner.

I. Policy Statement

(INSERT FULL NAME OF RAILROAD CONTRACTOR) recognizes the problem of substance abuse in today’s society. This problem poses particular concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the general public. This company has a concern for the safety, health and wellbeing of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. This company will comply with all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

Programs have been established on this company which requires regulated employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post-accident events.

In accordance with the applicable Federal regulations, this company prohibits persons who perform work regulated by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) and performing duties as Maintenance-of-Way (MOW) workers as described in the definition of “Roadway Worker” in § 214.7 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 regulated service. Additionally, illegal substance use is prohibited at any time **on or off duty**, except as allowed in 49 CFR § 219.103.

II. Identifying Information. Note: If any of the following personnel or entities change, the company is obligated to send FRA a change notice.

Company:

Name: _____

Address: _____

Phone: _____

E-Mail: _____

Designated Employer Representative:

Name: _____ Address: (If different from above)

Phone: _____

E-Mail: _____

Assistant Designated Employer Representative:

Name: _____ Address: (If different from above)

Phone: _____

E-Mail: _____

Medical Review Officer:

Name: _____

Address: _____

Phone: _____

Testing Laboratory (must be on HHS list of certified labs):

Name: _____

Address: _____

Phone: _____

Substance Abuse Professional (SAP):

Name: _____

Address: _____

Phone: _____

III. Scope

This policy applies to all Company personnel (including sub-contractors and volunteers) who perform regulated duties subject to either the Federal Hours of Service Laws “Covered Service” and/or performing Maintenance-of-Way (MOW) duties covered by the definition of “Roadway Worker” in § 214.7.

This company provides personnel who perform regulated service for the _____ railroad
(if multiple railroads attach Appendix with listings at end of this plan) for the following regulated service (functions) positions:

The total number of regulated employees performing “**Covered Service**” at the time of this submission is: _____.

The total number of regulated employees performing “**Roadway Worker**” duties at the time of this submission is: _____.

The total number of all regulated employees (both covered service and roadway workers) at the time of this submission is: _____.

NOTE: (Include any sub-contracted regulated service employees.)

Previous Employer Checks: This Company is required to check on the drug and alcohol testing record of employees it is intending to use to perform regulated duties. This Company will, after obtaining an employee’s written consent, request information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee’s application or transfer into regulated service. **See 49 CFR 40.25.**

An employee must also be asked whether he or she tested positive (or refused to test) on any Federal pre-employment drug or alcohol test administered by a DOT employer to which the employee applied for, but did not obtain regulated service work during the past two years.

With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee’s successful completion of DOT return-to-duty requirements (including Federal follow-up tests) must be provided to this Company.

IV. Testing Programs

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the railroad contractor to be in compliance with 49 CFR Part 219.

Personnel performing functions listed in Section III of this policy will be required to submit to a drug and/or alcohol test in the instances set forth, as follows:

- 1) **Pre-Employment Drug Testing** – (49 CFR 219.501) Applicants will be informed that all individuals this company will use for regulated service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing regulated service duties. If an applicant refuses to submit to the drug test, or tests positive on the drug test, the applicant will not be considered qualified to perform regulated service and will not be offered a position in regulated service.

Federal Pre-Employment Alcohol Testing (Optional) – (49 CFR 219.502)
Authorized but not required. This company chooses to conduct Federal alcohol pre-employment testing? Place an “X” in one of the following boxes:

Yes No

- 2) **Federal Reasonable Suspicion Testing** – (49 CFR 219.301)
Regulated service personnel will be required to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad contractor has reasonable suspicion that a regulated employee is currently under the influence of or impaired by a controlled substance or alcohol. Reasonable suspicion must be based on specific, contemporaneous personal observations the supervisor can articulate concerning the employee’s appearance, behavior, speech, body odor, chronic effects or withdrawal effects.

Part 219.11(g) requires supervisory employees to have education and training on alcohol misuse and controlled substance use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also prepare the supervisors to make the decisions necessary in reasonable suspicion and FRA post-accident situations (i.e., what is a qualifying event and who is to be tested).

The observation for alcohol must be made by at least one qualified supervisory employee who has received proper training in the signs and symptoms of alcohol use per 219.11(g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per 219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of a railroad, this railroad contractor will coordinate with the host railroad and decide how the supervisor on the site will immediately

communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable suspicion cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable suspicion” to have the regulated service person subjected to Federal drug and/or alcohol testing.

- 3) Federal Reasonable Cause Testing – (49 CFR 219.401) Authorized but not required. A company must designate whether or not they conduct Federal drug and alcohol Reasonable Cause testing. If a company selects to conduct Federal Reasonable Cause testing, then the company cannot perform company testing for any event described in 219.403. If a company selects to conduct company (non-DOT) Reasonable Cause testing only, then the railroad contractor cannot perform DOT testing for any event described in 219.403.**

This company chooses to conduct only Federal Reasonable Cause drug and alcohol testing for all train accident/incidents and rule violations that meet the criteria of 49 CFR 219.403. Please check the appropriate box:

Place an “X” in one of the following boxes: Yes No

A Federal reasonable cause drug and/or alcohol test may be required (employer’s decision) when a regulated service employee:

1. Was involved in a qualifying Train accident/incident per 219.403 (a) and a supervisor has a reasonable belief based on specific and articulable facts that the regulated service person’s acts or omissions contributed to the occurrence or severity of the accident/incident; or
2. Committed a rule violation described in 219.403 (b).

If operating on tracks of a railroad, this company will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable cause cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a “reasonable cause” to have the regulated service person subjected to Federal drug and/or alcohol testing.

4) **FRA Post-Accident Drug/Alcohol Testing** – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving **regulated service personnel** when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood from any fatality involving an on-duty railroad employee (direct or “regulated service” contractual employee). Events requiring FRA post-accident testing include (note regulatory exceptions will be followed):

1. **Major Train Accident** involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR Part 225 and one or more of the following:
 - a. A fatality (any fatality).
 - b. A release of hazardous materials from railroad “lading” that results in an evacuation or reportable injury caused by the hazmat release.
 - c. Damage to railroad property of **\$1.5 Million** or more.
2. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
 - a. A reportable injury; or
 - b. Damage to railroad property of \$150,000 or more.
3. **Fatal Train Incident** involving any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
4. **Passenger Train Accident** with a reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.
5. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
 - i. Regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.
 - ii. Train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.

- iii. Regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) and (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.
- iv. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
- v. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

Testing Decision: For an accident that meets the criteria for a Major Train Accident, all assigned crew members of all involved trains and on-track equipment must be tested. Test any other regulated service employees that had a possible role in the cause or severity of the accident.

For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human-Factor Highway-Rail Grade Crossing Accident/Incident, Test any other regulated service employees that had a possible role in the cause or severity of the accident. The company must exclude other regulated service employee if the responding railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident (considering any such information immediately available at the time).

For a fatal train incident, the fatally injured employee cannot be excluded from being tested.

If there is a fatality of any regulated service employee as result of a Highway-Rail Grade Crossing Accident/Incident, the fatally injured regulated employee must be tested regardless of fault.

Exceptions from Testing: No test may be required in the case of a collision between railroad rolling stock (including any on-track equipment) and a motor vehicle or other highway conveyance at a rail/highway grade crossing, unless it meets the criteria set forth above in Item 5 (i-v).

No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

The railroad supervisor(s) on the scene will make timely determinations as to the event being a qualifying event and which regulated service employees (if any) are required to be tested according to the rule.

This railroad will identify the appropriate personnel who must be tested and then ensure that specimens are collected and shipped.

A. Random Drug and Alcohol Testing – (49 CFR 219.601)

The railroad is responsible for ensuring that the random program meets regulatory requirements and is accepted by FRA (see Appendix A). The principles which are required in the FRA regulation for the plan to be in compliance are attached (see Appendix B). The selection process will ensure that each regulated service person has an equal chance of being selected at every random selection. The random plan shall ensure that testing is accomplished at the beginning and at the end of the duty period for alcohol. The minimum annual random percentage of alcohol testing at either end of the duty period is 10 percent over the course of the year.

Regulated Service (Covered Service)

Current employers must test at a minimum of **25 percent annual rate for drugs and 10 percent annual rate for alcohol** for employees who perform regulated duties subject to the Federal Hours of Service Laws “**Covered Service**”. A company is permitted to test at a higher rate than the minimum. A company is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

Regulated Service (Roadway Worker)

Beginning June 12, 2017, Current employers must test at a minimum **50 percent annual rate for drugs and 25 percent annual rate for alcohol** for employees who perform regulated duties defined as “**Roadway Worker**” in **49CFR § 214.7**. A company is permitted to test at a higher rate than the minimum. You must identify if you are testing at a higher rate and if so, the rate(s):

Random Testing Pools:

- a) Identify and maintain an up-to-date database or list of all personnel working in regulated service (at least once per quarter) and ensure they are all in the random pool(s). Identify how many random testing pools you have. For example, most contractors will have only one random pool, but larger contractors may have multiple pools (**FRA recommends Roadway Workers be placed in separate and stand-alone random pools. Railroads not normally required to submit MIS reports as required by 49 CFR Part**

219.800 should contact Sam Noe at sam.noe@dot.gov to discuss the combining of random pools):

- b) Identify what regulated service employee crafts/functions are in each of the company's random testing pool(s). For example, engineers, conductors, brakemen, switchmen, utility employees, hostlers, mechanical employees performing hostling duties, train dispatchers, signal maintainers, roadway workers, etc.

Random Selection and Testing Procedures:

1. There are only two acceptable methods of selection: computer program or random number table. The lottery style, e.g., drawing names out of a hat is no longer an acceptable method of selection. Identify your company's method of selection: _____
2. Identify whether your company is making selections by name, ID number, train number, job number, etc.

3. Random Pools are in a consortium: Yes No
4. If using TPA Consortium pools, please provide name of Consortium pool:
_____.
5. If your company is using a consortium/third party administrator (C/TPA) to assist in random testing, identify the following information for the C/TPA:
Name of C/TPA: _____
Address: _____
Contact Person: _____ Phone: _____

Please mark the following services the C/TPA are performing for your company:

___None

- ___ Random Pool Maintenance
- ___ Random Pool Selections
- ___ Collection Services Drug
- ___ Collection Services Alcohol
- ___ HHS Laboratory
- ___ Medical Review Officer
- ___ Substance Abuse Professional (SAP)
- ___ Employee Assistance Professional (EAP)
- ___ Drug and Alcohol Counselor (DAC)
- ___ Other: _____

6. Identify how often your company is making selections, e.g., monthly or quarterly:

Note: If selecting quarterly in order to maintain the deterrent effect of random testing for very small railroads and contractors, FRA is requiring each individual random testing pool established under subpart G to select and randomly test at least one entry per quarter, even if fewer tests are needed to meet FRA’s minimum random testing rates.

Objective Procedure, if making quarterly selections:

7. Identify how you determine whether a selection is to be tested for drugs, for alcohol, or both:

8. Identify your testing “window,” e.g., 30 days.

Note that if you’re making monthly selections, the testing windows may not exceed 30 days and not past the end of the month. If you’re making quarterly selections, the testing window is 90 days but not past the end of the quarter.

9. Provide additional descriptions of your random testing selection procedure, as applicable: _____

10. This company will safeguard these selection records to ensure that information concerning collection dates and selections are not disclosed until necessary to arrange for collection or provide notifications.

11. These random testing records are required to be maintained for 2 years. This includes an electronic or hard copy “snapshot” of the random testing pool each time selections are made, a copy of the list of selected employees, a copy of the drug chain of custody form and/or alcohol testing form, and the reason for not testing any of the selected employees.

12. In the event that all or a clearly defined portion of the railroad is subject to an emergency such as a flood or severe ice storm, the ranking operations officer on duty is authorized to declare an emergency by completing a memorandum setting forth the facts necessitating this action. If such an emergency determination is made, the date/time of the emergency and random drug/alcohol tests that were suspended must be entered into the DER's files. Random selections not administered because of the emergency are deemed void, and the selection numbers will be adjusted later to make the required percentage.
13. Only a substantiated medical emergency involving the selected person or an emergency involving an immediate family member (e.g., birth, death, or a medical emergency) provides the basis for excusing a regulated employee/person from being tested once notified. A medical emergency is defined as an acute medical condition requiring immediate emergency care. A person excluded under these criteria must provide substantiation from a credible outside professional (e.g., doctor, hospital, law enforcement officer, school authority, court official) which can be furnished prior to this release or within a reasonable period of time after the emergency has been resolved. Such excluded (excused) persons will not be tested based on this selection.
14. Once the regulated service person selection is made, the DER will arrange notification. No prior notification will be given. A selected person will only be tested during his/her tour of duty, extended only long enough to complete testing but not to exceed Federal hours of service law requirements. The person, once notified, must proceed to the selected testing facility IMMEDIATELY. Identify how your company will notify selected employees:

15. The collection date and time during the selection period (testing window) will be varied by the DER to ensure that it cannot be anticipated. It is not necessary for the company to randomly select the "testing date."

V. Drug Testing Procedures

The designated collection agents will be qualified and follow the proper collection procedures as described in 49 CFR Part 40.

- a. The Medical Review Officer (MRO) will review drug test results as required in 49 CFR Part 40. All test results will be reported exclusively through the MRO.
- b. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/ SAMHSA), under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing.

- c. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.
- d. The name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The testing laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form. The laboratory will only use a urine custody and control form consistent with the requirements of 49 CFR Part 40.
- e. The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
- f. The MRO will verify the results and report (using procedures in 49 CFR Part 40) to the DER whether the test was positive or negative and the drugs for which there was a positive result.
- g. External blind performance testing of specimens is now only required for those employers or C/TPAs with an aggregate of 2,000 or more DOT-regulated employees per 49 CFR 40.103.

VI. Alcohol Testing Procedures

Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices. The results will be documented on an approved Federal Breath Alcohol Testing Form and will be signed by the employee and the BAT. At the time of the alcohol test, the employee will receive a copy of the test result, with an identical copy being sent to the company's DER.

- a. Negative results. The DER will be mailed a copy of the negative test results.
- b. Positive results. The BAT will immediately and directly notify the company's DER if the test results are positive (0.02 percent or higher) who will take appropriate action to remove or restrict the employee from regulated service as required by Part 219.

VII. Drug Test Results

For any FRA testing, the company should as a "best practice" notify the employee in writing of test results.

Positive or Otherwise Non-Negative Results. If the laboratory reports the drug test result as POSITIVE or otherwise non-negative, the following procedures will be followed:

- a. The MRO will immediately inform the regulated service person of the result and offer the person the opportunity for an interview to discuss the test result.

If the MRO has difficulty reaching the employee, the procedures set forth in 49 CFR 40.131 will be followed.

- b. The MRO will complete and document the review as required by 49 CFR Part 40 Subpart G, determining if the external chain of custody was intact, if the person has a legitimate medical explanation for the presence of any controlled substance, and whether there is any basis to question the scientific sufficiency of the test results. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.
- c. If the MRO verifies the test result as positive, the MRO will report the result to the company's DER. If the MRO determines that the result is non-negative and the non-negative result cannot be explained, the appropriate regulatory action will be pursued. The chart at Appendix D delineates the appropriate action. The MRO will report the verified test result in accordance with 49 CFR § 40.163. The MRO will not provide the DER with the quantitative test results unless the employee, as stipulated in the regulation, disputes the test.

Negative results. If the MRO has determined that the drug test is NEGATIVE, the MRO will accomplish the required administrative review and report the negative results to the company's DER in accordance with 49 CFR § 40.163.

Negative-dilute results. Unless the MRO directs a company to conduct a recollection under direct observation (for a result with creatinine from 2 to 5 mg/dL), per 40.197, a negative-dilute is considered a negative test, although a company may, but is not required to direct the employee to immediately take another test. Such recollections must not be collected under direct observation unless there is another basis to do so. A company must treat all regulated employees the same. For example, it must not retest some employees and not others. A company may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). **This company's policy for negative-dilutes is as follows:**

VIII. Confidentiality

- a. Medical information a regulated person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the company except as provided in Part 40.
- b. Confidentiality of Federal drug or alcohol testing results will be maintained as required by the regulations. For example:
 1. The laboratory observes confidentiality requirements as provided in the regulations. This company does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two years.
 2. All test results will remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the

regulations and professional standards. The MRO will retain the reports of individual test results as required in Part 219 Subpart J.

3. The DER will maintain all test results reported by the MRO, both positive and negative, in secure storage. The results will be retained as required in Part 219 Subpart J. Other personnel will be informed of individual test results only in the case of positive tests and authorized only on a need-to-know basis.

IX. Regulated Service Personnel Training Program (49 CFR 219.11)

Each regulated service person will receive a copy of this policy and the other information requirements in 49 CFR Part 219.23 (e) which clearly states the prohibitions required by the regulation. In addition, each regulated person will be given information concerning the problems caused by alcohol or controlled substances and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

X. Prescription Drugs (40 CFR 219.103)

The use of controlled substances (on Schedules II through V of the controlled substance list) is not prohibited as long as they are prescribed or authorized by a medical practitioner and used at the dosage prescribed or authorized. Either one treating medical professional or a company-designated physician should determine that use of the prescription(s) at the prescribed or authorized dosage is consistent with the safe performance of the employee's duties. Regulated service employees should also seek the advice of a medical professional whenever they are taking any over-the-counter drug that may adversely affect the safe performance of duties.

XI. Compliance with Testing Procedures

- a. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This company expects all prospective and current regulated service personnel to exercise good faith and cooperation in complying with any procedures required under this policy. Refusal to submit to a Federal drug or alcohol test required under FRA rules, engaging in any conduct which jeopardizes the integrity of the specimen or the reliability of the test result, or any other violations of the prohibited conduct in 49 CFR 219.101 or 219.102 could subject the person to disciplinary action (up to and including termination), independent and regardless of any test result. This includes failure to show up on time for a drug/alcohol test, failing to remain at the testing site until the testing process is complete, etc. (see 40.191).
- b. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the direct observation procedures in 40.67 (i)).

Note that a SAP may also require return-to-duty and follow-up “drug” tests in addition to alcohol tests following an alcohol positive of 0.04 percent or greater.

- c. Direct Observation Urine Collection Procedures: The collector (or observer) must be the same gender as the employee. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry “clean” urine and urine substitutes AND for watching the employee urinate into the collection container. The observer will request the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.
- 1) If the employee has a device, the observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of the testing form. The collector notifies the DER. This is a refusal to test.
 - 2) If the employee does not have a device, the employee is permitted to return his/her clothing to its proper position for the observed collection. The observer must watch the urine go from the employee’s body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.
 - 3) Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
- d. As a minimum, a regulated service person will be removed from FRA regulated service for a minimum of nine months if there is a finding of “refusal to test.”

XII. Positive Test Results

- a. **Alcohol positive of 0.02 to 0.039:** Regulated service personnel should receive written notification of test results which are other than negative. A Federal positive drug test or a Federal alcohol test result of 0.02 percent or greater or a refusal to test will result in immediate removal from regulated service under FRA regulations. A positive alcohol test of at least 0.02 percent but less than 0.04 percent will result in the removal of the person from regulated service for at least eight hours. The company is not prohibited from taking further action under its own company policy.
- b. **Federal violation:** A regulated service person with an MRO verified positive drug test or a breath alcohol test result of 0.04 percent or greater (or a refusal) has violated Federal regulations and must be immediately removed from regulated service. Prior to or upon withdrawing the employee from regulated service, the company must provide notice to the employee of the reason for this action. If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 219.101 or 219.102, the employee may demand and must be

provided an opportunity for a prompt post-suspension hearing. **See 219.104 (c) for the hearing provisions.**

Even if the company does not wish to keep the employee in its employment, it must provide the above hearing (if requested) and at a minimum provide the employee with a list of qualified Substance Abuse Professionals. Prior to returning to regulated service the employee will be required to undergo an evaluation by a qualified Substance Abuse Professional (SAP) that is company approved, to determine the need for treatment and/or education. The employee will be required to participate and comply with the SAP-recommended treatment and any after-care or follow-up treatment that may be recommended or required.

After successful treatment, for a Federal positive drug test (or alcohol test result of 0.04 percent or greater), per the SAP's requirements, the person must provide a Federal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulated service. In addition, the person will be subject to additional unannounced Federal follow-up testing, as determined by the SAP, for a maximum period of 60 months, with a minimum of six tests being performed in the first twelve months (**engineers and conductors – SAP with require a minimum of 6 drug tests and 6 alcohol tests in the first 12 months**). Failure to comply with these provisions and remain alcohol and/or drug-free will result in subsequent removal from regulated service and could result in disciplinary action, up to and including termination. Note: Federal regulation does not guarantee the employee will maintain an employment relationship. This is determined via employer and employee negotiation. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

- c. Identify other employer sanctions (if applicable) for a Federal alcohol test result of at least 0.02 percent but less than 0.04 percent:

Identify other employer sanctions (if applicable) for a Federal alcohol test result of 0.04 percent or greater:

Identify other employer sanctions (if applicable) for a Federal positive drug test:

XIII. Self-referral, Co-worker referral, and Non-peer referral (optional) Policies

This company's policy to comply with 49 CFR Part 219.1001 and 49 CFR Part 219.1003 is as follows:

Employment Relationship. As per 219.1003(b), a regulated employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of an education, counseling, and treatment program as specified by a DAC. Before the employee is charged with conduct sufficient to warrant dismissal, the employee must seek assistance through the company for his or her alcohol or drug use problem or be referred for such assistance by another employee or by a representative of the employee's collective bargaining unit.

Imminent Detection. An employee may not use the referral program for the purpose of avoiding the imminent and probable detection of a rule violation by a supervising employee. No employee may take advantage of self-referral after being notified of a testing event or while in imminent risk of being detected for possession of alcohol or controlled substances.

Reasonable Suspicion. In the case of a Co-worker referral or a Non-peer referral (optional), if the employee accepts the referral and has agreed to a Rule G waiver, there is no need for the company to perform a Federal reasonable suspicion test. If the Federal reasonable suspicion test occurs, the referral takes precedence and a written request shall be submitted to the FRA Drug and Alcohol Program Manager for permission for reclassification to non-DOT status. This will allow the employer to vacate the return-to-duty and follow-up (RTD/FU) requirements of the reasonable suspicion test violation. Thus, the co-worker referral will take precedence and all subsequent RTD/FU testing will be appropriately conducted under non-DOT/company authority as per Part 219 Subpart K. In this scenario, the reasonable suspicion positive test result(s) are not subject to 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

In the case of a Co-worker referral or a Non-peer referral (optional), when the employee does not accept the referral and does not agree to a Rule G waiver, the company must properly observe the employee for signs and symptoms of alcohol and/or drug use/misuse. If signs and symptoms are observed, the company must perform a Federal reasonable suspicion testing. In this scenario, the reasonable suspicion positive test result(s) are subject to DOT-regulated RTD/FU testing and 49 CFR Part 40.25 requests from any subsequent DOT-regulated employers.

Referral Sources. The company must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the company) supervisory employees. Identify acceptable referral sources besides the affected regulated service employee:

This company accepts referrals from non-peer sources? Yes No

Examples of non-peer sources include friends and family, etc. that contact the company. A company representative will meet with the employee in person regarding the information and determine whether to the employee is unsafe to work with or in violation of 49 CFR Part 219. If the company representative determines that employee is unsafe, the employee may either accept or reject the referral.

If rejected, a company representative trained in signs and symptoms would perform a Rule G observation on the employee in question. If signs and symptoms are present, then the railroad representative would order reasonable suspicion testing of the on-duty employee.

General Conditions. If the employee accepts the referral they must contact the DAC within _____ days.

The employee must cooperate with the DAC in the recommended course of counseling or treatment. Locomotive engineers and conductors that do not cooperate with the DAC will be considered to have active substance abuse disorders as per 49 CFR Part 240.119 and 49 CFR Part 242.115 and would have their confidentiality waived.

Once an employee has contacted the DAC, the DAC's evaluation shall be completed within 10 working days. If more than one evaluation is required, the evaluations must be completed within 20 working days.

No follow-up treatment, care, or testing shall exceed 24 months unless it involved a Part 219 violation.

Confidentiality. The company treats the referral and subsequent handling, including counseling and treatment, as confidential. With respect to a certified locomotive engineer, conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the company shall receive from the Employee Assistance Professional (EAP) or DAC, official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

Any drug and/or alcohol testing conducted pursuant to this company's referral policy is non-Federal testing because a violation of Federal regulations has not occurred.

Leave of Absence. The company will grant a minimum leave of absence that the DAC recommends to complete a primary education, counseling, or treatment program and to establish control over the employee's drug or alcohol abuse problem. An employee with an active substance abuse disorder may not perform regulated service until the DAC reports that safety is no longer effected.

Return to Service. The employee will be returned to service on the recommendation of the DAC. The employee must be returned to service within five working days of the DAC's notification to the company that the employee is fit to return to regulated service and the receipt of a follow-up testing plan as per Part 219.1003(h)(2). The company may condition the employee's return on a return-to-duty medical evaluation.

This company requires a return-to-duty medical evaluation? Yes No

Compensation. 49 CFR Part 219.1001(d)(1) does not require the company to compensate the employee for any period that the regulated employee is restricted from performing regulated service under the referral program. However, compensation at a nominal rate has been seen to markedly increase participation in the referral program to enhance safety at the company.

This company compensates employees while engaged in a referral program of education, counseling, and treatment? Yes No

Compensation is at ___% of regular pay while participating in a referral program.

Self-referral: Regulated employees may contact the DAC at the following telephone and/or email address and contact hours:

<u>Drug and Alcohol Counselor (DAC):</u>	
Contact person:	_____
Address:	_____ _____
Phone:	_____

Optional Provisions.

1. The policy may provide that it does not apply to an employee who has previously been assisted by the company under a policy or program substantially consistent with 49 CFR Part 219.1005(c) or who has previously

elected to waive investigation under 49 CFR Part 219.1005 (co-worker report policy).

Adopts this option: Yes No

If you checked the above option “No”, please identify how many times and/or at what intervals an employee may use the referral programs:

2. A referral policy may provide that the rule of confidentiality is waived if the employee at any time refuses to cooperate in a DAC’s recommended course of counseling or treatment; and/or the employee is later determined, after investigation, to have been involved in an alcohol or drug related disciplinary offense growing out of subsequent conduct. Identify whether you adopt the first, second, or both options:

Adopts Both Options: Yes No

Adopts 1st Option only: Yes No

Adopts 2nd Option only: Yes No

3. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the company either during non-duty hours (i.e., at a time when the employee is off duty); or while unimpaired and otherwise in compliance with the company’s alcohol and drug rules consistent with 219.1005(d). Identify whether you adopt this optional provision:

Adopts this option: Yes No

4. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in regulated service. Identify whether you adopt this optional provision:

Adopts this option: Yes No

5. Other Optional Provisions: _____

Co-worker referral General Conditions and Procedures.

1. The alleged violation must come to the attention of the company as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of Part 219 or the company’s alcohol and drug rules.

2. If the company representative determines that the employee is in violation, the company will immediately remove the employee from service in accordance with its existing policies and procedures. The company must allow the employee the opportunity to accept the co-worker referral. If rejected, the company may proceed to reasonable suspicion testing based on signs and symptoms of prohibited alcohol or drug use as determined by a trained supervisor.

Alternate Programs.

The company may request FRA to consider the following alternate program to fulfill the requirements under 49 CFR Part 219.1001 with more favorable conditions to regulated employees troubled by drug or alcohol abuse problems. The alternate program must have the concurrence of the recognized representatives of the company employees as per 49 CFR Part 219.1007(b):

If applicable enter alternate program in this box.

This company requests FRA to consider an alternate program for consideration? Yes No

Submit to the FRA Drug and Alcohol Program Manager at:

U.S. Department of Transportation
Federal Railroad Administration, Office of Railroad Safety - RRS-19
1200 New Jersey Avenue SE
Washington DC 20590

APPENDIX A

Once the FRA has accepted a railroad contractors Random drug and alcohol testing plan, the company will receive an acceptance letter, which includes these conditions.

STANDARD APPROVAL CONDITIONS FOR RANDOM TESTING PROGRAMS

1. This acceptance is effective upon receipt with respect to all matters within its scope. FRA reserves administration jurisdiction over all approvals and may reopen review based upon experience gained during implementation (audits).
2. Acceptance 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 provisions of 49 CFR Parts 219 and 40 is required. All random program plans must be applied in accordance with the criteria listed in this Appendix A and Appendix B.
3. Acceptance is contingent upon the company 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 *Federal Register*, whichever is later.
4. Amendments to the program shall be submitted as required by 49 CFR 219.605 and 49 CFR 219.607 and 219.609 and shall not be implemented prior to acceptance. The following guidance is provided with respect to when a program is deemed to have been amended.
 - A. 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.
 - B. Substitution of incumbents performing the same function at the same organizational level (persons or contractors/volunteers) is not deemed to amend the program. Notification of these changes would be appreciated to assist FRA in maintaining liaison, but is not required.
 - C. Any change in a program that is occasioned by an amendment of an applicable DOT/FRA regulation and 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 under item 3 above. 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.
 - D. Any case not addressed above may be resolved by contacting the Office of Safety, Administrator for Safety or that individual's delegate.

APPENDIX B

CRITERIA FOR ASSESSING DEPARTMENT OF TRANSPORTATION (DOT) RANDOM DRUG AND ALCOHOL TESTING PROGRAMS

Section I. Random Testing Pools

- A. Random pool(s) must accurately and completely include all regulated service personnel. Whoever is performing the safety-sensitive “regulated service”, regardless of job title or status, is subject to 49 CFR Part 219 requirements (supervisors, volunteers, contractors, etc.). Pool lists must be retained for a minimum of two years.
- B. An employer may not mix regulated service and non-regulated service personnel in the same pool.
- C. Multiple pools for an employer are acceptable.
- D. Employees do not need to be placed in separate pools for drug and alcohol testing selection.
- E. 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 and 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.
- F. Pools may not be diluted with regulated service personnel who rarely perform regulated service duties (i.e., less than once per quarter).
- G. Pools must be routinely updated (i.e., at least monthly for employers with either a changing workforce or seasonal employees; and quarterly for employers with a generally stable workforce).
- H. Besides individual employees, specific jobs (i.e., third shift main 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.
- I. Pool entries may not be constructed in a way which could result in a manager/supervisor having discretion as to who would be actually provide 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).

Section II. Random Selections

- A. Everyone in a pool must have an equal chance of selection in each selection period.
 1. No individual, job, or operational unit may be removed from the pool if it is still actively performing regulated service. However, employees doing de minimus regulated service may be eliminated from the pool (see Section I.-F).

2. There may be no selections without replacement (i.e., an individual cannot be removed from the pool because he or she was previously tested).
 3. No selection weightings are allowed which would increase or decrease the chance of any individual being selected.
- B. The following selection options are acceptable. Note that manual selection using names or social security numbers drawn out of a hat (or equivalent) is no longer an acceptable practice:
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 two years; or
 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 two years. See Appendix C for Model Procedures to Conduct a FRA-Acceptable Random Testing Program Using a Random Number Table for Selections.
- C. 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 and which will not. The specific criteria used to make this determination must be detailed in writing and the determination itself must be retained as a record for a minimum of two years.
- D. If required drug and alcohol testing rates are different (i.e., 25% for drugs and 10% for alcohol) and a single pool is being used, it is permissible to select one list of employees and designate a proportion for both drug and alcohol testing and a proportion for drug testing only. The specific criteria used to make this determination must be detailed in writing, and the master selection list with both sub-groups clearly identified must be retained as a record for a minimum of two years.
- E. Employers should carefully monitor significant changes in its workforce in order to ensure that an appropriate number of tests will be conducted each year. Unless otherwise directed by the DOT Operating Administration, changes in the employee base of greater than 10% in a quarter should result in a recalculation of total tests required.

Section III. Implementation of Random Collections

- A. Collections must be distributed unpredictably throughout the designated testing period, covering all operating days (including holidays) and 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.

- B. Collections must be unpredictable within a work shift (some collections must be conducted at the beginning, middle, and end). There is no expectation that “within-shift” collection distributions be equal. Sufficient testing must be conducted at the start, middle and end of shifts to provide deterrence. Both beginning of and ending of shift collections are particularly important. For alcohol testing, at least 10% of successful collections must fall within each period of the shift.
- C. No discretion is allowed with collection dates or collection 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.
- D. Specific reasons for “no-tests” must be documented in writing by the employer, with records maintained for two 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.

Section IV. Records

All records which support the random testing program, including notes, memoranda, pool makeups, number tables, etc., must be retained for a minimum of two years.