



RAILTOWN 1897
State Historic Park
Jamestown, California

Railtown 1897 State Historic Park Railroad

**Federal Railroad Administration
Control of Alcohol and Drug Use
49 CFR Part 219**

Compliance Plan

Approved March 10, 2010

Railtown 1879 State Historic Park- Part 219 Compliance Plan

Railtown 1897 State Historic Park Railroad operates on tracks of another railroad (Sierra Northern Railroad) therefore, we are authorized to utilize Federal authority to conduct Federal random, pre-employment, or reasonable cause testing

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.

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.”

I. Policy Statement

The Railtown 1897 State Historic Park Railroad, recognizes the problem of substance abuse in today's society. This railroad has a concern for the safety, health and well being 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 railroad 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 railroad which require covered employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opiates (morphine, codeine), phencyclidine and amphetamines (methamphetamines);
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 railroad prohibits persons who perform work covered by the Federal hours of service laws (**Brakemen, Conductor, Firemen and Engineers**) 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, illegal substance use is prohibited at any time on or off duty.**

Railroad: Railtown 1897 State Historic Park Railroad
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Kimberly Baker, Park Superintendent
Phone: (209) 984-4622
FAX: (209) 984-4936
Cell: (916)-718-2800
Email: kbaker@parks.ca.gov

Designated Employer Representative (DER):

Name: Lisa Smithson, Curator I
Address: SAB
Phone: (209) 984-8719
Cell: 209-373-6881
FAX: (209) 984-4936
Email: lsmithson@parks.ca.gov

Medical Review Officer (MRO)

Dr. A. A. Armstrong
Western Pathology
1321 Broadway
Scottsbluff, NE 69361
(800) 682-5176

Testing Laboratory

Quest Diagnostics, Van Nuys

Third Party Administrator

DNT Health Check
400 12th Street, Suite 23
Modesto, CA 95354
Ph: (209) 492-9549
Fax: (209) 492-9473

Scope

This policy applies to all personnel (including contractors and volunteers) who are subject to performing duties subject to the Federal hours of service laws (Brakemen, Conductors, Firemen and Engineers). The total number of hours of service employees at the time of this submission is: **22**.

Railtown 1897 State Historic Park Railroad operates on the tracks of the Sierra Northern Railroad. Primarily from milepost 41.5 to 38.5.

Testing Programs

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the railroad 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 railroad will use for covered service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing covered 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 covered service and will not be offered a position in covered service.
2. **Testing For Cause** – (49 CFR 219.300 and 219.301)
Federal Reasonable Suspicion Testing – (49 CFR 219.300)
Covered service personnel will be required to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad has reasonable suspicion that a covered 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. The observations must be made by at least one qualified supervisor [219.11 (g)] who has received proper training in the signs of alcohol use and/or at least two qualified (one of whom has been trained and is on-site) supervisors who have received proper training in the signs and symptoms of drug use, consistent with standards which meet the FRA regulatory requirements of 219.11 (g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

Federal Reasonable Cause Testing – (49 CFR 219.301) Authorized but not required. A Federal reasonable cause drug and/or alcohol test may be required (employer's decision) when a covered service employee:

Was involved in a qualifying accident/incident [219.301 (b)(2)] and a supervisor has a reasonable belief based on specific and articulable facts that the covered service person's acts or omissions contributed to the occurrence or severity of the accident/incident; or committed a rule violation described in 219.301 (b)(3).

In all reasonable suspicion and reasonable cause cases, the supervisor will ensure that the covered service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the covered 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 the observations that led them to decide that there was a "reasonable suspicion or cause" to have the covered service person submit to a Federal drug and/or alcohol test.

3. FRA Post-Accident Drug/Alcohol Testing – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving covered 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. 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 reporting threshold under 49 CFR Part 225 (\$9,200 in 2010) 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 million or more.
- 2 Impact Accident involving reportable damage in excess of the current reporting threshold (\$9,200 in 2010) 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 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 (\$9,200) that involves a passenger train.

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

Specimens for any FRA post-accident testing will be collected using procedures required in Part 219 Appendix C. The railroad's FRA post-accident specimen kits must be used. Specimens will be collected, packaged, and shipped via express courier service by the railroad. The shipping address is as follows:

Quest Diagnostics
3175 Presidential Drive
Atlanta, GA 30340
1-800-729-6432 (Monday through Saturday)
1-770-519-1654 (Sunday)
Fax: 770-936-5012

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

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

The selection process will ensure that each covered 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 percentage of alcohol testing at either end of the duty period is 10 percent over the course of the year. Current (2010) employers must test at a minimum 10 percent rate for alcohol and 25 percent rate for drugs.

Random Testing Pools:

1. Railtown 1897 State Historic Park Railroad maintains one pool of covered employees, and ensures that it is updated, at least quarterly.
2. Covered service employees in Railtown 1897 State Historic Park's random testing pool includes; engineers, conductors, brakemen, firemen.

Random Selection and Testing Procedures:

1. Railtown 1897 State Historic Park Railroad employs a third party administrator to randomly select the testing date.
2. We test all covered service employees scheduled to work on the testing day. **Dee Paule/DNT Health Check functions as the collector. The collector collects specimens, completes paperwork, leaving appropriate copies with the DER, prepares and mails specimens via DHL Express to MEDTOX.**
4. We make selections on a quarterly basis.

Procedure:

- **The C/TPA will randomly select 4 operating dates, 1 per quarter. (For the months of January-March, when no operating dates are scheduled, the C/TPA will randomly select any date in the quarter). The railroad will supply the C/TPA a list of scheduled operating days for the year. The collector will notify the DER of the selected date, and the DER will notify all scheduled employees on the test date immediately prior to the test.**
 - **Two of the positions working on the testing day will be randomly selected for alcohol testing, in addition to drug testing.**
 - **The collector then completes paperwork (in private, interior office of the Freight Shed), collects the sample (in the public stalled restroom at the Freight Shed, which will be closed for this purpose), leaves appropriate copies for the DER, then prepares and mails the specimens to MEDTOX.**
 - **This railroad 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.**
 - **Testing times during the randomly selected work day will be unpredictable and will include, start, middle, and end of shifts.**
3. We will retain the random testing for 2 years. This includes:

- an electronic or hard copy “snapshot” of the random testing date 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 (if applicable, see below)
4. 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.
 5. 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 covered 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.
 6. Once the covered 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. **Railtown employees will be notified by personal contact.**
 7. The collection date and time during the selection period (testing window) will be varied by the DER to ensure that it cannot be anticipated.

III. Drug Testing Procedures

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

- 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.

- 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.
- Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.
- 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.
- The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
- 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.
- In the event the test results in “dilute”, **Railtown employees are not required to re-test.**

IV. 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 railroad’s DER.

- Negative results. The DER will be mailed a copy of the negative test results.
- Positive results. The BAT will immediately and directly notify the railroad’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 covered service as required by Part 219.

V. Drug Test Results

For any FRA testing, the railroad 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:

- The MRO will immediately inform the covered 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.
- 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.
- If the MRO verifies the test result as positive, the MRO will report the result to the railroad'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 provide the DER with a certified copy of copy two of the custody and control form, showing verification by the MRO. 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 this railroad's DER who should "as a best practice" provide the person with a negative report.

VIII. Confidentiality

- a. Medical information a covered person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the railroad 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 railroad 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. Covered Service Personnel Training Program (49 CFR 219.11)

- a. Supervisors will have the required three (or more) hours of 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).
- b. Each covered 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 covered 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 ones treating medical professional or a railroad-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. Covered

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 covered service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This railroad expects all prospective and current covered 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. **Effective August 31, 2009, all DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the new direct observation procedures in 40.67 (i)) when the covered service employee has had a previous positive Federal drug test result, or has previously refused to take a Federal test (including adulteration or substitution). 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 covered service person will be removed from FRA covered service for a minimum of nine months if there is a finding of "refusal to test."

XII. Positive Test Results

- a. Covered 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 covered 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 covered service for at least eight hours.
- b. A covered service person with a positive drug test or a breath alcohol test result of 0.04 percent or greater will be required to undergo an evaluation by a qualified Substance Abuse Professional (SAP) that is railroad 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 covered 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 – 6 drug tests and 6 alcohol tests). Failure to comply with these provisions and remain alcohol and/or drug-free will result in subsequent removal from covered 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.**

XIII. Rehabilitation

- a. This railroad has an employee assistance program (EAP) and SAP which provides covered service personnel with a comprehensive EAP/SAP that can help individuals with alcohol and/or drug abuse problems.

Employee Assistance Professional:

Contact person: EMPLOYEE ASSISTANCE PROGRAM-ON DUTY STAFF
Phone: 1 (866) 327-4762

Substance Abuse Professional:

Contact person: EMPLOYEE ASSISTANCE PROGRAM-ON DUTY STAFF
Phone: 1 (866) 327-4762

b. Other rehabilitation information is as follows:

Voluntary Referral Policy. This railroad's policy to comply with Part 219.403 is as follows:

Employment Relationship. A covered employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of the program. Before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee must seek assistance through the railroad for his or her alcohol or drug use problem.

Referral Sources. Acceptable referral sources besides the affected covered service employee include **Supervisory employees**

Confidentiality. The railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. With respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor, 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 railroad's voluntary referral policy is non-Federal testing because a violation of Federal regulations has not occurred.

Leave of Absence. The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.

Return to Service. The employee will be returned to service on the recommendation of the SAP. Approval to return to service may not be unreasonably withheld.

Optional Provisions.

1. The policy may provide that it does not apply to an employee who has previously been assisted by the railroad under a policy or program substantially consistent with 219.403 or who has previously elected to waive investigation under 219.405 (co-worker report policy).
Identify whether you adopt this optional provision: **Adopt**
2. A voluntary referral policy may provide that the rule of confidentiality is waived if the employee at any time refuses to cooperate in a 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:

Adopt both

3. The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad 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 railroad's alcohol and drug rules consistent with 219.403. Identify whether you adopt this optional provision: **Adopt**
4. The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service. Identify whether you adopt this optional provision: **Adopt**

Co-Worker Report Policy. This railroad's policy to comply with 219.405 is as follows:

Employment Relationship. A covered employee who enters and follows the tenants of this program as discussed below, will maintain his or her position upon successful completion of the program. This policy applies to an employee following an alleged first offense under Part 219 or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in 219.405.

General Conditions and Procedures.

- 1) The alleged violation must come to the attention of the railroad 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 railroad's alcohol and drug rules.
- 2) If the railroad representative determines that the employee is in violation, the railroad will immediately remove the employee from service in accordance with its existing policies and procedures.
- 3) The employee must elect to waive investigation on the rule charge and must contact the substance abuse professional within a reasonable period specified by the policy. Contact time: **10 DAYS.**
- 4) The SAP must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the professional with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In such case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional.

When Treatment is Required. If the SAP determines the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures apply:

- 1) Leave of Absence. The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.
- 2) Agreement. The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the SAP.
- 3) Return to Service. The railroad must promptly return the employee to service, on recommendation of the SAP, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Identify whether your railroad will be requiring a return-to-service medical examination: **YES**
- 4) Follow-Up Treatment. Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment for a period not to exceed 60 months from the date the employee was originally withdrawn from service.
- 5) Follow-Up Testing. If there has been a violation of Federal regulations (219.101 or 219.102), the railroad must conduct Federal return-to-service and follow-up tests (as described in 219.104) of an employee who waives investigation and is determined to be ready to return to service under 219.405.

When Treatment is Not Required. If the SAP determines that the employee is not affected by an identifiable and treatable mental or physical disorder, (1) The railroad must return the employee to service within 5 days after completion of the minimum education requirements. (2) During or following the out-of-service period, the railroad will require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety. If there has been a violation of Federal regulations (219.101 or 219.102), the railroad must conduct Federal return-to-service and follow-up tests (as described in 219.104) of an employee who waives investigation and is determined to be ready to return to service under 219.405.

APPENDIX A Once the FRA has approved a Random drug and alcohol testing plan, the railroad will receive an approval letter, which includes these conditions.

STANDARD APPROVAL CONDITIONS FOR RANDOM TESTING PROGRAMS

1. This approval 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. Approval of the subject random testing program does not constitute or imply the granting of a waiver or exemption from any provision of Federal law or regulation. Compliance with all applicable 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. Approval is contingent upon the railroad making appropriate amendments to the program to conform to any pertinent regulatory amendments that may be issued hereafter. Any such program amendments that may be required shall be submitted to the Associate Administrator for Safety at FRA by the effective date of the subject regulatory amendments, or by the expiration of 30 days from publication of the regulatory amendments in the *Federal Register*, whichever is later.
4. Amendments to the program shall be submitted as required by 49 CFR 219.601(a) and 49 CFR 219.607 (a) and shall not be implemented prior to approval. 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 covered service personnel. Whoever is performing the safety-sensitive “covered 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 covered service and non-covered 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 covered service personnel who rarely perform covered 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 covered service. However, employees doing de minimus covered 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.