



U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

# Memorandum

cc *Leaman*  
*ALL OF*  
*Chief Insp.*

Date:

MAR 28 1995

Reply to Attn. of:

OP-95-04

*RMC*  
*3/31*

Subject:

**Information: Consolidated Part 219, Part 40 and  
Drug/Alcohol Program Changes - Slides**

From:

*Edward R. English*  
Edward R. English  
Director, Office of Safety Enforcement

To:

Regional Administrators

Attached please find combined the updated Parts 219 and 40, and a briefing package on the FRA Alcohol and Drug program. These documents are provided to assist in oversight and enforcement of the alcohol and drug program. Our thanks to Kathy Schankenbergh for her efforts on the consolidation and briefing package.

Please distribute to your operating practices inspectors/primary inspectors.

#

Attachments

cc: OP Division Staff

95 MAR 31 AM 10:54  
FEDERAL RAILROAD ADMIN.  
CHICAGO, ILLINOIS

# **DRUG AND ALCOHOL FINAL RULE**

- o Rules were required to implement Omnibus Transportation Employee Testing Act of 1991**
- o Implemented by FRA, FHWA, FAA, FTA & RSPA**
- o Effective January 1, 1995, except for urine drug split sample testing, which was effective 8-15-94**
- o Requires alcohol/drug testing for Pre-Employment, Reasonable Suspicion, Random, Post-Accident, Return-To-Duty, and Follow-Up testing**
- o For alcohol testing, only Evidential Breath Testing (EBT) devices on NHTSA's Conforming Products List (CPL) meet rule specifications**
- o NHTSA recently issued a CPL notice of other alcohol testing devices (saliva and 4 non-evidentiary EBTs) that have been technically approved - HOWEVER, there are presently no DOT-approved procedures for the devices to be used yet**

- o On Jan. 17, 1995, DOT issued a "proposed" procedures rule for the use of non-evidentiary alcohol screening devices. These devices including saliva could be used for "screening" only by a Screening Test Technician (STT).**
- o Conduct RANDOM ALCOHOL testing of covered service employees at an initial rate of 25% (after full implementation of 25%, FRA will set future random alcohol testing rates according to industry "performance" as measured by the railroad violation rate)**
- o Prohibits pre-duty consumption of alcohol by covered service employees (for 4 hours or after receiving a duty call (whichever is the lesser of the two periods))**
- o Prohibits covered employees from performing safety-sensitive functions when their confirmation test indicates an alcohol concentration equal to or greater than .02 but less than .04 percent, from going or remaining on duty in covered service for a minimum of 8 hours after administration of that test (railroad may take further action)**
- o Requires mandatory REASONABLE SUSPICION (not reasonable cause) testing for both alcohol and drugs**

- o Requires incorporation of new procedures for breath alcohol testing and split sample urine testing (DOT does not authorize BLOOD ALCOHOL testing)**
- o "Split sample" method means a procedure in which urine specimens obtained for drug testing are subdivided into two containers and processed as two specimens**

**This procedure makes a second, sealed specimen available for testing at a second DHHS-certified lab if the test of the first specimen is positive**

**Required 45 ml sample is subdivided into 30 ml (primary) and 15 ml (split - secondary)**

**If employee cannot produce 45 ml, the employer will direct him to drink up to 24 oz. of fluid in a period of up to 2 hours. If still cannot provide a complete sample, testing is discontinued; referred to MRO to determine whether inability constitutes a refusal**

**FRA no longer allows retests of primary samples. An employee will have 72 hours (from time MRO notifies him of positive) to request a test of his split sample**

- o If test of the split sample fails to confirm the presence of drugs, the entire test is cancelled**
- o Requires railroads to provide 3 hours of combined training on the symptoms of alcohol/drug abuse for direct supervisors of covered service employees**
- o Requires education of covered employees on the availability of substance abuse evaluation and treatment resources**
- o Requires reporting and recordkeeping requirements**
- o References to EAP Counselor were removed and Substance Abuse Professional (SAP) substituted**
- o SAP means a licensed physician (MD or DO) or a licensed or certified psychologist, social worker, EAP, or a certified addiction counselor (knowledge & clinical experience in diagnosis & treatment) of A/D disorders**
- o FRA will amend Appendix C to include changes in PAT collection/kits mandated by new "split sample" procedure**

- o Mandatory use of Federal Drug Testing Custody and Control Form for all DOT urine collections (except FRA PAT) after February 16, 1995. It is not a fatal flaw if old 7-part forms are used, but it is a Federal violation**
- o Small railroads (15 or fewer covered employees that do not operate on tracks of another railroad) continue to be exempt from for cause testing (including mandatory reasonable suspicion), pre-employment and random testing**

**However, the small railroads are required to provide information on substance abuse services to their covered employees, but otherwise remain exempt from Subpart E (voluntary referral and co-worker report policies)**

**Railroads with fewer than 400,000 total manhours are exempt from the new Management Information System annual reporting requirements (except for 25 randomly selected shortlines which will be surveyed each year)**

## **REASONABLE SUSPICION**

- o Reasonable suspicion testing is now mandatory whenever use of alcohol or a controlled substance is suspected**
- o Based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors; may include indications of chronic and withdrawal effects of drugs**
- o FRA reasonable cause (accident/incident and rule violation testing components) testing remains discretionary**
- o For "alcohol" one trained supervisor may make a determination that reasonable suspicion exists. The supervisor who makes the determination may not also conduct the breath test (act as the BAT) on that employee**
- o FRA retains its existing requirement of two trained supervisors to make a determination that reasonable suspicion exists to test an employee for "drugs."**
- o Railroad must prepare and retain a report whenever a reasonable suspicion test cannot be conducted within 2 hours of the observations or events**

## **REASONABLE SUSPICION, continued**

- o Long term job performance is not considered a factor**
- o Recommended "Logic Tree" (symptoms consistent with either alcohol or drug use):**
  - Alcohol test first**
  - If breath test below .02, collect urine sample for drug testing**
  - If breath test is .02 or more, drug analysis is optional**



# **REASONABLE CAUSE TESTING**

- o Previous Breath and Blood testing procedures were repealed**
- o If FRA authority is used, Part 40 procedures must be followed**
- o Breath and/or urine testing (no blood option)**
- o Standard is employee's acts or omissions contributed to the occurrence or severity of an accident/incident (reportable under Part 225) or the employee was directly involved in a specified operating rule violation or error**
- o Test must be conducted within 8 hours of supervisor receiving notice of accident/incident or from time of observation**

# **SUPERVISORY TRAINING**

- o Signs and symptoms of alcohol and drug influence, intoxication and misuse**
  - Acute behavioral/apparent physiological effects of alcohol/drugs**
  - Qualifying criteria and supervisory role in Post-Accident testing**
- o Training must be a minimum of 3 hours**
- o Program of instruction on file with the railroad**
- o Must retrain old supervisors**
- o No refresher training is required**
- o Supervisor cannot make determination until trained (no time limit)**

# **EMPLOYEE TRAINING**

- o FRA testing program**
- o Consequences of abuse**
- o Where to obtain help**

## **POST-ACCIDENT TESTING**

- o Effective Jan. 1, 1995, railroad property damage threshold for major train accidents was raised to \$1 Million; and for impact accidents, raised to \$150,000**
- o Accidents that otherwise qualify, but are clearly attributable to vandalism are excluded from PAT (grade crossing and accidents wholly attributable to a natural cause such as flood, tornado, or natural disaster continue to be excluded)**
- o Railroad may conduct breath alcohol testing if an evidentiary breath testing device and a BAT are available, provided breath testing does not interfere with or delay collection of mandatory blood/urine samples. Any such breath testing results obtained should be attached to the PAT testing forms**
- o FRA will modify the supplies, forms and collection instructions contained in its port-accident tox kits to allow for split urine sample testing (blood is already split) and optional breath testing. FRA will announce when these new kits become available and take effect**

## **POST-ACCIDENT, Continued**

- o Railroad must prepare and retain a report, explaining the reasons for the delay, whenever a PAT test cannot be completed within 4 hours of the accident/incident**
- o Qualifying MAJOR TRAIN ACCIDENT is a train accident more than \$6,300 property damage, involving one or more of following:**
  - a) Fatality**
  - b) Release of hazmat lading from railroad equipment accompanied by an evacuation OR a reportable injury from the release**
  - c) \$1 Million or more property damage**

**FOR MAJOR TRAIN ACCIDENT, "ALL" CREWMEMBERS ON TRAIN/S MUST BE TESTED (also dispatchers, signalman or other covered employees "directly and contemporaneously" involved)**

- o Qualifying IMPACT ACCIDENT involving more than \$6,300 property damage, resulting in:**
  - a) Reportable injury; or**
  - b) \$150,000 or more property damage**

## **POST-ACCIDENT, Continued**

- o Qualifying FATAL TRAIN INCIDENT, involving a fatality to any on-duty railroad employee**
- o Qualifying PASSENGER TRAIN ACCIDENT, involving a reportable injury and more than \$6,300 property damage**

**FOR IMPACT ACCIDENTS, FATAL TRAIN INCIDENTS AND PASSENGER TRAIN ACCIDENTS, an employee may be excluded from testing if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause/severity of the accident/incident**

- o The only time a non-covered service employee is subject to PAT is when he is fatally injured in a train accident/incident; testing of the remains is required**

# **RANDOM ALCOHOL TESTING**

- o Railroads must submit random alcohol testing plans for FRA approval - may combine their alcohol and drug random testing plans and/or testing**
- o Random alcohol testing implementation deadlines:**
  - Class I - Plan submitted Aug. 15, 1994;  
Testing implemented Jan. 1, 1995**
  - Class II - Plan submitted Feb. 15, 1995;  
Testing implemented July 1, 1995**
  - Class III - Plan submitted Aug. 15, 1995;  
Testing implemented Jan. 1, 1996**
- o The initial minimum rate for random alcohol testing is 25 %. After full implementation, FRA will determine future minimum rates based on the overall violation rate for the rail industry (random drug testing rate is now 25% also)**
- o Random alcohol testing rate will increase to 50% if industry's violation rate is 1% or higher and will decrease to 10% if rate is less than 0.5%**
  - 2 years of data required to decrease rate**
  - 1 year of data required to increase rate**

## **RANDOM ALCOHOL, Continued**

- o DOT and FRA have also implemented a similar performance-based system to set future random "drug" testing rates**
- o Breath Alcohol Technician (BAT) training required**
- o Evidential Breath Testing Devices (EBT's) have to be listed on the Conforming Products List, published periodically by NHTSA**
- o Must use EBT's for screening tests. If EBT does not meet all evidentiary requirements, the employer must use a log book**



## **RANDOM ALCOHOL, Continued**

- o For confirmation tests, employers must use EBT's that are able to:**
  - 1. Print three copies of each test result;**
  - 2. Number each test sequentially (printed);**
  - 3. Print on each copy, the manufacturer's name for the device, serial no. and time of test;**
  - 4. Distinguish alcohol from acetone at the .02 level;**
  - 5. Test an air blank prior to each breath collection; and**
  - 6. Perform an external calibration check**
- o For screening or confirmation tests, the EBT must have a Quality Assurance Plan (QAP)**

## **ALCOHOL SCREENING TESTS**

- o Use a prescribed standard testing form (copies to BAT, railroad, employee)**
- o BAT completes Step 1 and employee completes Step 2 and signs certification (refusal to sign in Step 2 is a refusal to take the test)**
- o Use a log book for each device used for screening that does not meet all EBT evidentiary requirements**
- o BAT places individually-sealed mouthpiece into EBT and employee blows forcefully into mouthpiece for 6 seconds or until EBT indicates adequate breath obtained**
- o Employee is shown result and BAT records information in Step 3 (if using log book, employee initials log book)**
- o If less than .02, BAT dates and signs certification in Step 3 and employee signs and dates in Step 4 (refusal to sign in Step 4 is not a fatal flaw)**
- o If printed result does not match result on EBT or if sequential test no. printed by EBT does not match that displayed on EBT prior to test, the test is invalid**

## **ALCOHOL SCREENING, Continued**

- o BAT reports test result to railroad in a confidential manner**
- o If .02 or greater, a confirmation test must be performed**

## **CONFIRMATION TEST**

- o Can be a second test on the same EBT, but a new mouthpiece must be used**
- o Before confirmation test, a 15-minute waiting period is required (no food/drink/anything in mouth/avoid belching). The waiting period must be no longer than 20 minutes**
- o Same procedures, except BAT must ensure the EBT registers 0.00 on an air blank test before the test**
- o When confirmation result is different from screening result, the confirmation test will be used**
- o After every positive confirmation test, FRA recommends an external calibration check be conducted because if the next calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP, every test result of .02 or above, obtained on the EBT since the last valid calibration check shall be invalid (fatal flaw)**

## **INABILITY TO PROVIDE SAMPLE**

- o When an employee cannot provide sufficient breath: First, must attempt to breathe into EBT (failure to attempt is a refusal)**
- o If still unable, the BAT notes on form and immediately notifies employer**
- o Employer directs employee to see a physician. if physician determines no medical condition, shall be considered a refusal (9 month disqualification)**

## **INVALID BREATH TESTS**

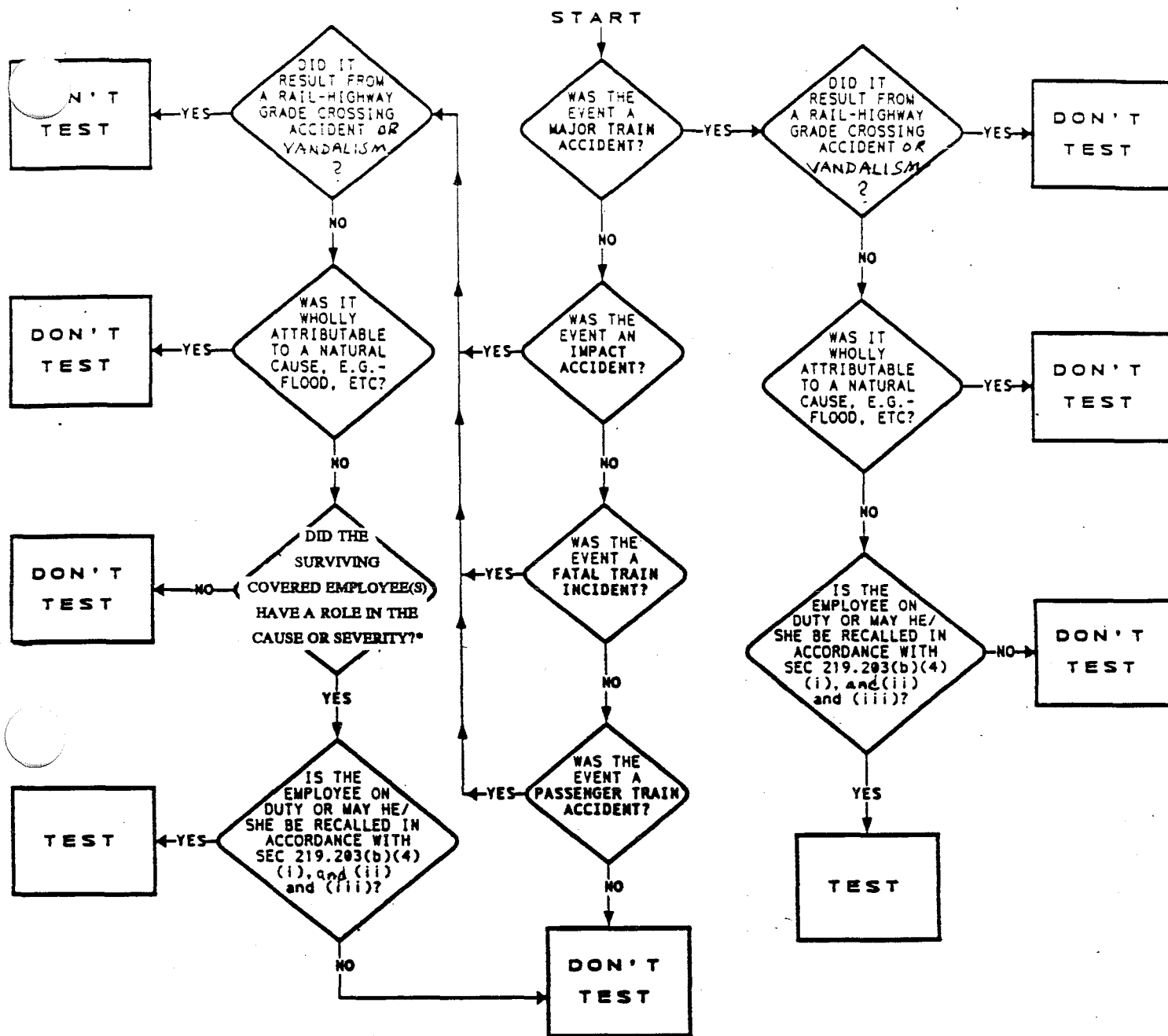
- o Calibration Failures**
- o No 15-Minute Waiting Period Prior to Confirmation Test**
- o No Air Blank Prior to Test**
- o No BAT Signature on Form**
- o No Remarks about Donor's Refusal to Sign Form**
- o No Printed Result (Confirmation Test)**
- o Inconsistent Sequential Test Number or Inconsistent Alcohol Concentration Reading on the EBT and Printed Result**

# **RETURN TO SERVICE AND FOLLOW-UP TESTS**

- o May now test for both alcohol and drugs at "return to service" and "follow-up" testing
- o If recommended by the SAP
- o Minimum of 6 follow-up tests first 12 months, regardless of SAP recommendation
- o May conduct additional testing for up to 60 months
- o For locomotive engineers, Part 240 REQUIRES both a negative alcohol and drug test for return to service. Must also have 6 alcohol and 6 drug (may be combined) follow-up tests in the first 12 months

# **PRE-EMPLOYMENT TESTING**

- o Pre-employment breath alcohol (and drug) testing is routinely required for new hours of service employees, including first-time transfers from non-covered service**
- o An applicant whose test result indicates an alcohol concentration between .02% and .039% will not be allowed to perform covered service until he has a later test result indicating an alcohol concentration of less than .02% (FRA adopted the proposed retest option only for final applicants for employment)**
- o Only type where a retest is allowed; not inconsistent with Rule G**
- o Railroad employees in covered service prior to the implementation dates are not subject to pre-employment testing**



# DEFINITIONS:

**MAJOR TRAIN ACCIDENT:** A rail equipment accident involving damages of at least \$6300 that involves one or more of the following:

- (i) A fatality;
- (ii) Release of hazardous material lading from RR equipment accompanied by:
  - (a) an evacuation; or
  - (b) a reportable injury resulting from the hazardous material release; or
- (iii) Damage to railroad property of \$1,000,000 or more.

**IMPACT ACCIDENT:** A rail equipment accident meeting the definition in § 219.5 (certain collisions) involving damages of at least \$6300 that results in:

- (i) A reportable injury; or
- (ii) Damage to railroad property of \$150,000 or more.

**FATAL TRAIN INCIDENT:** Any event involving the movement of railroad on-track equipment that results in a fatality to any on-duty RR employee but in which RR property damage does not exceed \$6300.

**PASSENGER TRAIN ACCIDENT:** A reportable injury to any person in a train accident (at least \$6300) involving a passenger train.

The remains of a fatally injured covered or non-covered employee must be tested. However, surviving non-covered employees are not subject to testing.