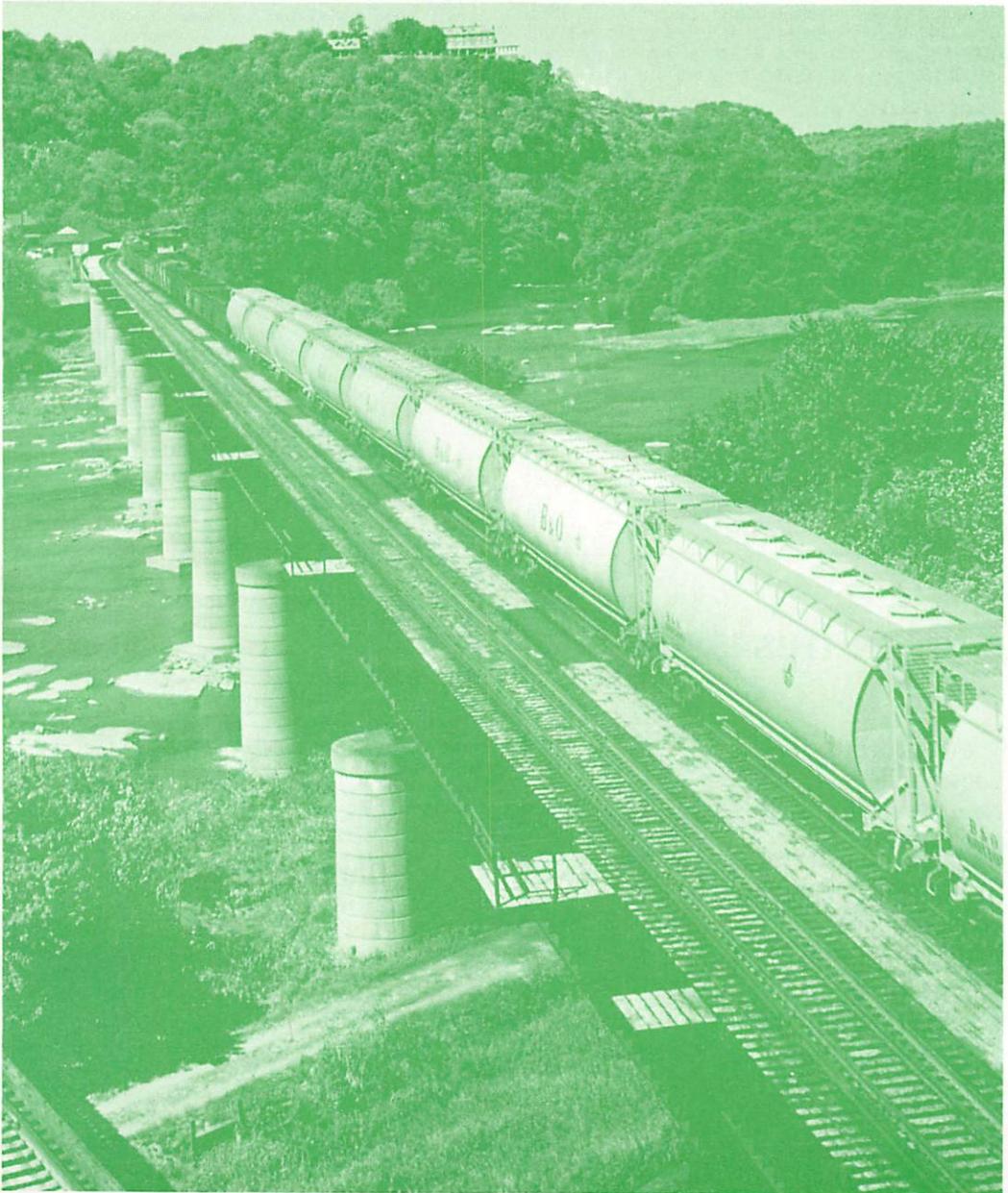


SPRING 1990

THE TRAIN DISPATCHER



Baltimore & Ohio covered hoppers passing over bridge at Harpers Ferry, WV

THE TRAIN DISPATCHER

The TRAIN DISPATCHER

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MERCER CO.  Ottumwa, Iowa

MEMBER



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Train Dispatchers' Building, 1401 South Harlem Ave.,
Berwyn, Illinois 60402
Telephone: Area 708-795-5656
Affiliated with the A.F.L./C.I.O. and the Railway Labor Executives Association

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Change of Address Notice

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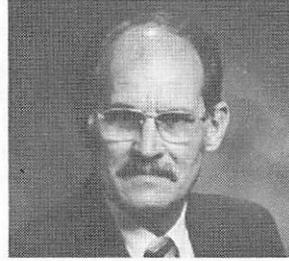
State of _____ Zip Code _____

Old Address _____

(Due to THE TRAIN DISPATCHER mailing list being prepared two weeks or more before delivery, it is about three weeks before a change of address becomes effective.)

THE PRESIDENT'S PAGE

By R. J. Irvin, President



On November 17, 1989, we wrote to all System Committee officers and all members through the office Chairmen, reporting on the status of our national negotiations. While there are many large and small carriers not in national handling, the national negotiations probably predict what occurs in local handling.

We expect negotiations to resume about March 1. The Health and Welfare Committee continues to meet with the carriers on the health insurance issue. That has been the carriers' excuse to withhold meaningful bargaining, since they argue they must have a handle on insurance costs before going forward on other matters. It seems there's not much progress on the insurance question, however, and we must go ahead on other issues. We cannot wait indefinitely.

It is noted that several other organizations are making moves toward strike action. One or two have already taken votes, which indicate their members strongly favor such action if that's what it takes to bring the wage and rule movements to a head. We'll have to review our options after the next meeting with the carriers.

Elsewhere in this issue of THE TRAIN DISPATCHER, you will find reproduced the entire text of the Department of Transportation's Procedures for Transportation Workplace Drug Testing Programs, and the Federal Railroad Administration's Alcohol/Drug Regulations. These are the latest regulation on these subjects, which affect you, and there are some changes from the previously published regulations.

We have reproduced these so you may have a copy to retain for your own use, with all the legal language just as published by the government agencies. It will be dull reading, but it's important. We intend to furnish, in the near future, a simplified summary of the principal points that are essential for your information and guidance, with cross-references to the regulations by number.

—•—

We have been holding discussions with the Brotherhood of Locomotive Engineers, to determine whether an affiliation of our two organizations would be feasible. The sole purposes would be to strengthen our collective positions in bargaining, legislative, regulatory, and judicial affairs. There are some issues that present problems to us, and if they can be solved, we may reach the point that an affiliation plan will be presented to our membership for a vote. It's important to realize this is still in the talking stage.

—•—

For the first time, to the best of our knowledge, the ATDA will participate in the AFL-CIO Union-Industries Show in Cincinnati on May 18-21, 1990. Thanks to the cooperation of CSX Transportation and Union Switch and Signal, we will have a simulated train dispatching operation manned by our members. We look forward to this show as an opportunity to demonstrate our skills for the public, which knows so little about our work.

—•—

We have been asked to bring to your attention a new Federal regulation.

When taxpayers file their 1989 tax returns they must show the Social Security number of any claimed dependent age 2 or older. It is suggested that parents obtain the Social Security numbers as soon as possible after the birth of a child. Applications can be obtained from a local Social Security office.

—•—

Many of our members have been inconvenienced and perhaps frustrated by some irregularities involving their dues payments, loss of checks, and such lack of order. Some have sent us checks that never cleared the bank, and were then billed for shortages. Some paid shortages, only to receive refunds in return. There were some bitter exchanges of correspondence. All these problems came to a head last year, and it was necessary to terminate an inefficient employee. We are still working on problems that have arisen from lost records and, apparently, destroyed checks. We were far behind with supplying dues receipts and refunding System dues to the System Committees. Some general ledger records had received no entries for a year. Some bills had not been paid and we incurred some interest and penalties.

Thanks to the efforts of Secretary-Treasurer Rafferty, and the diligent work of our office employees, we have finally overcome most of the problems referred to above. Most of you were patient and we are grateful for your forbearance during those stressful times. We are now moving toward a computerized dues and bookkeeping system and we hope this will result in greater efficiency and more cost-effectiveness.

—•—

We have mentioned on these pages before our little esteem for our conservative government. The Reagan-Bush administrations have given us diminished personal liberties in the drug testing programs, anti-labor bias in Federal agencies, such as the National Labor Relations Board, the National Mediation Board, the Interstate Commerce Commission, the Federal Railroad Ad-

ministration; the PATCO massacre; leveraged buy-outs; and the fading of the middle class. In that light, nationally-syndicated columnist Jack Anderson confirmed a President Bush-Frank Lorenzo connection recently. He noted that a revolving door seems to exist between Lorenzo's Texas Air empire (Continental and Eastern) and the federal government. He stated that 30 Texas Air Officials have moved into jobs with the Bush administration. "This raises troubling questions," wrote Anderson. "Are Bush staffers whispering the Lorenzo line into Bush's ear?"

Non-partisan legislation was introduced by Congress and passed, but Bush vetoed this bill which would have ended the Eastern strike and would create a panel to make recommendations for settlement. Bush's veto came just hours before the Christmas adjournment of Congress, leaving no time for an override. The bill had overwhelming bipartisan support in both houses of Congress.

—•—

Long before this is printed, you should each have received a mailing with a Stress Audit Questionnaire. It was accompanied by my letter outlining the benefits offered our members by Matrix Health Management, Inc. We believe these benefits can be very useful for those needing them.

—•—

Finally, we express our appreciation to those of you who have accepted offices with our System Committees. We still have a few spots that remain unfilled. Thanks, too, to those who served in the past and whose terms of office ended December 31, 1989.



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LEGAL NOTICES

Maintenance of Membership

Article II, Section 7 of the Constitution and By-Laws, setting forth requirements for maintenance of membership in good standing in the Association, provides:

"Members who fail to pay dues, both National and System, within one calendar month from the beginning of the calendar year, or in case of members who have elected to pay dues semi-annually or quarterly, within one calendar month from the beginning of each semi-annual or quarterly period, will be considered delinquent and will be so notified by the Secretary-Treasurer. The failure of the Secretary-Treasurer to notify such delinquent member will not constitute an excuse not to pay dues. Should such delinquent member fail to pay dues within one calendar month after becoming delinquent, A PENALTY OF TEN PERCENT (10%) PER MONTH OF THE TOTAL DELINQUENCY FOR EACH MONTH OR FRACTION THEREOF SHALL BE IMPOSED UNTIL THE DELINQUENCY IS CURED, provided, however, that if the delinquency continues for six months, he shall be automatically expelled from membership in the Association and dropped from the roll. ★★ Members who are delinquent are not entitled to any voice, vote or participation in Association matters, whether National or System."

Notice of delinquency is hereby given all members who, as of Feb. 1, 1990 have not paid dues for the current period.

1990 Dues

For those who have elected to pay their 1990 dues on a quarterly basis, dues for the second quarter become payable on April 1, 1990. Second Quarter amounts are: Active \$135.00, Active Extra \$67.50.

Associate membership dues are

payable on an annual basis only.

System dues in the amount established by the System Committee on each road must be added to and accompany the National dues for the same dues paying period as National dues are paid.

Notice of Supplemental Tax Rate For January-March 1990 Quarter

As you know, the Railroad Retirement Board is required by law to determine the work-hour supplemental railroad retirement tax rate needed to finance supplemental annuities and administrative costs for each calendar quarter.

The Board has determined that for the quarter beginning January 1, 1990 the rate shall be 26 cents per work-hour.

Man Arrested For Making False Claim

William J. Doyle III, Inspector General for the United States Railroad Retirement Board, and Chief Terry Knowles, Springfield Police Department, announced that a 35 year old man of Springfield, Missouri was arrested on January 18, 1990, for making false claims and statements against the United States Government. He was indicted by a federal Grand Jury in the Western District of Missouri at Springfield.

Following his arrest, he plead guilty to making false claims and false statements against the United States Railroad Retirement Board in order to obtain unemployment insurance benefits, in violation of Title 45, United States Code, Section 359(a). He faced up to one year imprisonment and a fine of \$100,000, and will be required to repay all benefits fraudulently obtained.

Mr. Doyle stated that investigation of alleged abuse of United States Railroad Retirement Board programs would continue in this district. Mr. Doyle further commended the United States Attorney's Office for their valuable assistance in handling this case. □

NEW MEMBERS

August 1989

M.V. Sorell
 P.E. Teague
 A. Boyd
 R.G. Allman
 N.N. Zajac
 T.M. Ray
 P. Black
 R.J. Ruggiero
 W.R. Wilkinson, Jr.
 M.J. Sorensen
 D.R. Russell
 J.J. Hennes
 G.A. McClelland
 J.R. Edwards
 K.S. Davis
 H.J. Nelsen
 R.C. Paulsen
 M.F. Sughrounge

CONRAIL
 CONRAIL
 AMTRAK
 NJTR
 SP
 SP
 NJTR TD
 NJTR TD
 KCS/L&A
 B-N
 KCS/L&A
 SOO LINE
 MONONGAHELA
 CONRAIL
 CONRAIL
 B-N
 B-N
 B-N

September 1989

V.R. Beggs
 M.G. Jakusz
 S.R. Siegler
 K.E. Krisher
 M.A. Davis
 M.S. Goodson
 F.E. Payne
 G.R. Bell
 P.A. Paige
 S.C. Scoville
 J.A. Townley
 T.L. Wilt
 D.W. Zec
 D.W. Trepainer
 R.T. Kraft, Jr.
 B.C. Wilkins
 M.R. Townsley

VIRGINIAN
 SOO LINE
 SOO LINE
 B-N
 SP EAST
 B-N
 CONRAIL
 SCL
 AMTRAK
 B-N
 SP EAST
 CONRAIL
 CONRAIL
 B-N
 MONOGAHELA
 CONRAIL
 AMTRAK

October 1989

F.A. Bayliss
 R.A. Hennes
 P.J. Ruiz
 D.L. Landry
 H. Galvan
 J.W. Elkington
 J.L. Hausmann
 J.D. Schmid
 D.A. Rossbach
 J.C. Trotchie
 R.J. Stone

SP
 B-N
 SP EAST
 SP EAST
 SP EAST
 SP EAST
 SP EAST
 SP EAST
 B-N
 B-N
 B-N
 PATH

M.F. Greenwell
 M.J. Alandora
 R.B. Davis
 A.B. Garzs, Jr.
 B.J. Hatfield
 R.G. Howard, Jr.
 D.J. Marvain
 M.W. Swint
 M.L. Fender
 F.C. Besch
 E.M. Urbanowski
 M.A. Penrice
 B.R. Walton
 R.C. Jahn
 W.D. Nobles
 J.M. Cooley

November 1989

None

December 1989

None

January 1990

M.F. Cogdill
 J.L. Hennessey
 G.J. Trout
 L.J. Dutcher
 J.E. Addison
 J.W. Adams
 B.G. Barger
 F.J. Bennett
 W.E. Bilanz
 T.G. Blair
 R.A. Blaha
 J. Brown
 J.S. Cox
 C.J. Dawley
 R.J. Forgues
 T.P. Hartman
 E.R. Holtzman
 R.W. Jensen
 D.S. Johnson
 H. Jones
 D.W. Kane
 L. Lopez
 G.L. McDaniel
 R.C. Mies
 J.S. Mikel
 M.L. Newsham
 J.J. O'Leary
 G.S. Pardlo
 L.P. Rios
 M.J. Royce
 B.J. Ruden
 R. Ruisenar
 L.G. Phares

WABASH
 SP
 SP EAST
 SP EAST
 SP EAST
 SP EAST
 SP EAST
 SP EAST
 CONRAIL
 SP EAST
 METRO NORTH
 SP EAST
 SP EAST
 SP EAST
 CONRAIL
 SOO LINE
 B-N

CONRAIL
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 NJTR TD
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 NJTR TD
 CONRAIL
 SP
 NJTR TD
 St. LSF
 B-N
 SP
 PATH
 SOO LINE
 SP
 St.LSF
 CONRAIL
 B-N
 B-N
 CONRAIL
 NJTR TD
 SP
 B-N
 SOO LINE
 SP
 CONRAIL

J.F. Zwit
 R.T. Swenson
 C.A. Scull
 T.E. Campbell
 R.E. Brenz
 K.E. Shelby
 J.P. Starks
 P.R. Johnson
 J.A. Nelson
 B.C. Davidson
 M.H. Hawkins
 E.M. Leeson
 T.W. Holland
 G.A. Fry
 J.J. Pendyke
 R.B. Smith
 W.T. Slinkard
 M.C. Salvatore

C&NWT
 C&NWT
 NJTR TD
 CONRAIL
 C&NWT
 NJTR TD
 Ft. W&D
 NJTR TD
 B-N
 AMTRAK
 CSXT
 B-N
 CONRAIL
 CONRAIL
 CONRAIL
 B-N
 SP

We have a 3.5 inch floppy disk drive and a cartridge tape drive. We use the cartridge tapes for system back-ups and the floppy disks for incremental back-ups. This way if the system were to crash, we can reload the last system back-up plus the incremental back-ups made subsequent to that and we are back in business. This would take about 45 minutes for a complete reload of information.

We are using the AT&T UNIX operating system with Union International Systems software package for dues and grievance information. The accounting software is by American Business Systems, Inc. and includes accounts payable, payroll and general ledger sections. The word processing is Word Perfect 4.2 version. The entire system, hardware and software, is Union designed, built and installed. The entire package is recommended by the AFL/CIO and is in use by many other organizations including IBEW and International Laborers. It has been quite a lot to learn for all of us, but it certainly will help us greatly in our future operations.

The Railroad Retirement Board has furnished me with a list of all the locations around the country where information is available to anyone who is seeking information concerning their unemployment, sick benefits and/or retirement figures. The list is too great to publish here, but if you are interested in where and when a representative would be available for you, drop me a note or give me a call and I'll check it out for you. They have also furnished me a list of all the Informational Conferences for the year 1990. They are happy for you and your spouse to attend one of these and, from past experience, I can tell you they can sure answer a lot of questions you might have. If you would like to attend one of these, just let me know and I'll let you know when and where.

I guess that's about all for this time, as a matter of information, even my wife didn't show a tremendous amount of interest in the last writing, but who knows, maybe it will improve. PEACE AND UNION.

FAST TRACK

*By R. L. Rafferty,
 Secretary-Treasurer*

Things are beginning to shape up around here finally. Our newly installed computer system is presently being filled with all kinds of good (hopefully) information. This will speed up the process of dues receipts and membership records. We have recently had an awful time with addresses. There have been a tremendous number of transfers etc., however, it is very important that we have a current address for each member. During the recent General Chairman-Delegate elections, we had a lot of the letters which were sent out returned, unable to forward. Each time the Train Dispatcher magazine is mailed, we have a lot of expense incurred due to forwarding. They charge the organization for each one that is forwarded. The personnel reports which will be coming out of the computer in the near future will list names and addresses, and I will be asking the Office Chairman to make such corrections that they are aware of, so if you have had a change of residence please advise your local representative who in turn will let us know.

Our computer system is an AT&T 6386 WGS with a 125 MB hard drive.

LETTERS

Bro. Rafferty,

I am a retired Train Dispatcher but I still am interested in the Union movement. I am amazed at the changes over the years and the membership's seemingly indifference.

Back then, we had no CTC, radios or computer screens. We had telegraph, train orders and messages. Our computer screen was our mind, the train sheet, a copy of the current time table (which we had looked at so many times we had memorized it's contents), a Hamilton 992-B and a morse instrument clicking away.

We had no prescribed forms of train orders, we made them up out of our heads and then wrote them in the book as the operator repeated them. We had no compensation for breaking in. We had no compensation for making road trips, it was just assumed that you had worked most of the stations hence you already knew everthing about the physical characteristics of the road and if you didn't, you rode trains at your own expense and time without compensation from the company. All you got was a call from the Chief to start breaking in. You did this on your own time and if the Train Dispatcher didn't like you, you just stood there. We had no health insurance, if you told the Chief you were sick, he'd say, "help yourself to the aspirin . . ." We worked 6 days a week for \$16 a day. To qualify, we had to work 90 days on our own, then the Chief and Assistant Chief's would write a letter to the Superintendent evaluating your performance. If they didn't approve of you, you simply didn't get a job and were disqualified. We had no air conditioning and the sweat smeared the ink on the train sheet. You opened the windows and listened to the organ music coming out of the taverns across West Madison St. (Skid Row), well realizing that you were only fifty feet away from oblivion. We had no Personal days for funerals, etc. I remember

one dispatcher that died and the Chief stated that the SOB looked better dead than he did when he was alive.

When they closed or moved an office from one point to another, there was no "66" agreement you were simply told to be there. No "lace curtain" money, no moving expenses, no motel expense for 10 days, no allowance for food, no implementing agreement at all.

My how things have changed! I'm reminded of an old dispatcher who used to say, "it's a long alley, that doesn't have a trash can and what goes around, comes around".

J.D. Nichols C&NW
1422 W. Liberty Dr.
Wheaton, IL 60187

Reimbursed Expenses

Reimbursed expenses may complicate employer reports and worker returns. Problems can occur if companies include nontaxable reimbursements in 1989 wages on Form W-2 reports to the IRS, says Pamela Pecarich of Coopers & Lybrand, CPAs. A firm may make that slip for more than one reason: it may expect employees to deduct accounted for business expenses from gross income (not as a miscellaneous item), or it may not allow for the 1989 tax act's retroactive restoration of exemptions for employee education and legal aid benefits.

New IRS guidance on reporting employee expenses doesn't say what to do if a company errs. Further, the IRS deleted from the front of the 1989 Form 1040 personal return a line for deducting reimbursed expenses. Coopers & Lybrand is advising employers to take nontaxable payments out of wages before issuing W-2s on Jan. 31-and to adjust for any withheld income or Social Security taxes on those amounts. If necessary, an employee may write in a deduction for reimbursed expenses on Line 30 of the 1040.

But if employers don't refund excess Social Security taxes, employees must file separate refund claims for them.

RECENT BOARD AWARDS

In *Third Division Award 28216, AT-DA v. ConRail, Referee Eischen*, our claims were sustained when four employees were improperly disciplined for being "excessively absent" when their absences were due to their own personal illness or the illness of a family member. This is an important case and it is quoted fully here, although lengthy.

On various dates in April, 1986, each of these Claimants called in and marked off from work due to illness. Each sick pay Claim was paid by Carrier and the bona fide of these Claims are not contested by Carrier. However, Claimants each were charged with failure to report for duty on the days they marked off sick in April, 1986, and also notified "in light of your prior attendance record this constitutes excessive absenteeism." Prior to the issuance of these disciplinary notices each Claimant had been interviewed by Supervisor Kaufman and informed that his attendance was not satisfactory, whatever the reasons might be.

Following a Hearing into the alleged excessive absenteeism and failure to report for duty each Claimant was assessed a five-day suspension without pay, which was deferred. The Organization filed timely and proper appeals of these disciplinary actions and the Claims are now properly before the Board for determination.

The Organization appeals on behalf of Claimants on grounds that they were not at fault for being ill and Carrier abuses its managerial discretion when it disciplines employees for being legitimately sick and collecting sick leave benefits. Carrier counters with several arbitration decisions which hold generally that excessive absenteeism, even for legitimate reasons, need not be tolerated indefinitely by an employer.

Carrier relies especially upon two 1983 cases involving the same Parties and issues in which the Board upheld disciplinary action against train dispatchers who were "excessively absent" due to illness, but reduced the penalty from five days deferred suspension to a letter of warning. See *Third Division Awards 24540 and 24541*. We have reviewed these Awards and find them so internally inconsistent that they are of little value in the present case. At the outset in those decisions the majority held that Carrier's right to discipline employees for excessive absenteeism was preconditioned upon a fair and thoughtful determination as to what reasonably constitutes "excessive" absenteeism. After holding that Carrier failed to meet that "precondition", however, for some reason the majority abandoned its central premise and issued a split

decision reducing the discipline to a letter of warning. It is easy to understand why both Parties filed Dissents to portions of these Awards.

We concur that a precondition of employer implementation of discipline for "excessive" absenteeism is a fair and thoughtful determination as to what really constitutes "excessive" absenteeism and communication of that information to employees. By necessary implication, therefore, disciplinary action for "excessive" absenteeism without such a determination and communication is unreasonable on its face and must be set aside, not just split down the middle. Further, even if this precondition is met by the employer, the fundamental premise for progressive discipline in such cases is that an employee has it within his control to modify or improve his attendance and can be prodded into doing so by the negative inducement of disciplinary action. It necessarily follows that application of disciplinary action against a chronically and legitimately sick employee is unreasonable. In cases where the employer has clearly proven that an employee is unable, despite his best intentions and efforts, to appear regularly and promptly for work, the Employer may be justified ultimately in severing the employment relationship. When there is reasonable doubt whether a case is appropriate for disciplinary action, in the absence of any contractual limitation the employer is well within its right to counsel and warn employees and/or require a medical verification of claimed illness. These and other fundamental principles were discussed in a similar case decided by PLB 2263 in Award No. 37, as follows:

"... care must be taken to distinguish between culpable excessive absenteeism for no good reason, which is 'subject to discipline' and 'no fault' excessive absenteeism over which an employee has no control. In the latter situation, the approach properly utilized by personnel managers and the principle upon which the better-reasoned arbitration decisions turn is a balancing of interests analysis.

Fundamental to the employment relationship is the payment of a fair day's pay in return for a fair day's work. Implicit in this arrangement is the understanding that an employee must be reasonably prompt and regular in his/her attendance at work. Repeated failure to report for assigned duties undermines efficiency, unfairly increases the burden on fellow employees and improperly increases operating costs. If such excessive absenteeism is caused by intentional or negligent dereliction or by abuse of sick leave by an employee, management may use reasonable progressive discipline to modify the misbehavior, following which dismissal might be warranted. If the excessive absenteeism is neither intentional nor negligent in its origin, but rather beyond the employee's control as in chronic illness, then discipline is not the answer.

Absent contract language to the contrary,

In our society the employer is not obligated to carry forever on the payroll an individual who is incapable of providing reasonably prompt and regular attendance at work in return for wages and benefits. We cannot compel Carrier to subsidize year after year the excessive absenteeism of a chronically ill employee who has demonstrated beyond doubt his inability to be a regular fulltime employee . . .”

Application of the foregoing principles to the present facts leads us to sustain these Claims and reverse the disciplinary action. Even if Carrier had properly developed and communicated to Claimants a reasonable standard of “excessive” absence, there is no proof on this record that Claimants abused sick leave or were otherwise culpable for those absences on the “triggering” dates in April, 1986. For Claimants Didyong (stress due to wife’s heart attack) and Castaldo (recovery from spleen surgery) there is not even a suggestion of chronic uncontrollable absenteeism. For Claimants Bednar (hypertension and sciatica) and Arneith (diabetes) the evidence of uncontrollable chronicity is not conclusive. Given the state of this record, neither disciplinary action nor “no fault” severance is justifiable at this time. Claimants would be well advised, however, to heed carefully the warnings issued previously by Carrier and reinforced in this decision that “excessive” absenteeism whether for legitimate reason or otherwise need not be tolerated indefinitely by an employer.

—•—

The Claimant was also sustained in *Third Division Award 28239, ATDA v. SP (EL), Referee Roukis*, an allegation of unjust treatment when a Train Dispatcher was removed from a partially excepted job without cause. Although the Award’s language is not crystal-clear, it is reproduced here for its precedent value:

The basic facts in this case are set forth as follows: Claimant entered Carrier’s service in September, 1958, and was promoted to Train Dispatcher in May, 1971. Prior to the relocation of the Dispatcher’s Office from Lafayette, Louisiana, to Houston, Texas, Claimant was assigned as a Planner Chief Dispatcher headquartered in Lafayette. In September, 1987, when the above move and consolidation with the Train Dispatchers Office in Houston occurred, Claimant was one of three train dispatchers appointed by Carrier to Item 3 Planner Chief Dispatcher positions in Houston, Texas. The Item 3 positions were established pursuant to the December 22, 1971 Memorandum of Agreement between the Southern Pacific Transportation Company - Texas & Louisiana Lines and the Train Dispatchers represented by the American Train Dispatchers Association. The provision thereof which relates to Item 3 positions is referenced as follows: “There may be one Chief Dispatcher

position on each assigned Chief Dispatcher’s District which may be filled from the Train Dispatchers’ Official Seniority List without regard to seniority and will not be subject to displacement rules of this Agreement.” By notice dated September 25, 1987, Claimant was apprised that effective the end of his duty tour that day he was to be removed from his position as Planner Chief Dispatcher. There was no reason given for this personnel action, though Claimant was advised that he could exercise his seniority consistent with the current Agreement. By letter of the same date, Claimant requested an Unjust Treatment Hearing and said Hearing was held on November 24, 1987. He was later informed by letter dated December 1, 1987, that he was not found unjustly treated.

In support of the Claim, the Organization contended that Claimant was unjustly treated since he was not accorded due process rights under Rule 25 of the Controlling Agreement. In effect, if asserted Claimant was demoted without a proper Rule 25 hearing. In addition, it argued that Claimant was never informed by supervisory management that his work performance was below normative standards or that his superiors were dissatisfied with his work. The Organization took umbrage to Carrier’s assertion that Claimant was not as qualified as the other two Item 3 Chiefs, arguing that his performance was never questioned or compared with the other Item 3 Chiefs. It also maintained that Carrier’s statement to the Board that only two such positions were authorized was never raised during the on situs appeals process and thus constituted new argument.

In response, Carrier asserted that the consolidation of the Lafayette-Houston Train Dispatchers Offices necessitated a broader scope of planning and train operations. Consequently, authority for three Item 3 Chief positions was later reduced to two positions. It observed that in view of this change, management decided to remove Claimant from his Planner Chief Dispatcher appointment. It further argued that consistent with the explicit unambiguous language of the December 22, 1971 Dispatchers’ Memorandum of Agreement, it was not barred or restricted from removing an employee from one of the three established Item 3 Chief positions. In other words, it contended that since the applicable language of the aforesaid Agreement stated that such positions will be filled without regard to seniority or other regulations of this Agreement (translated to mean current Agreement), Carrier was not prevented from removing an incumbent employee. It argued that to conclude otherwise would be tantamount to creating lifetime assignments.

In considering this case, the Board concurs with the Organization’s position that Carrier never notified Claimant of any performance shortfall. In fact, the record indicates that for all intents and purposes, Claimant’s performance was consistent with expected norms and stan-

dards. Similarly, when Claimant was notified on September 25, 1987, that he was being removed from the Planner Chief Dispatcher position, he was never given any reason for the removal. If it were Carrier's decision then to authorize only two Item 3 Chief positions, it should have notified him of this personnel action. Perhaps this would have prevented a claim filing. On the other hand, it is not estopped from abolishing positions or implementing a planned reorganization, subject, of course to collective bargaining agreement constraints.

In this instance, however, Claimant was never informed that he was removed for that reason and the first time it is raised is when the Superintendent Houston-Lafayette Division testified in part, at the November 24, 1987 Hearing that "Mr. Morrissey was not removed from service - but rather removed from an Item 3, Chief position because we only have authority for two Item 3 Chiefs." During the on-property handling, this rationale was never advanced; instead Carrier justified its actions upon its analysis of the December 22, 1971 Memorandum of Agreement. Since the critical pertinent language of that Agreement stated that said positions would be filled without regard to seniority or other regulations of this Agreement, Carrier concluded that it also had the reciprocal right of removal.

Upon this record, we agree that Carrier has a rather broad prerogative in appointing dispatchers to Item 3 Chief positions. It also has the right to abolish positions. We agree with the Organization that its broad prerogative relates to the filling of positions and to matters relating to discipline and unjust treatment. Hence, depending upon preceived circumstances, Rule 25 could be invoked. As an illustration, let us suppose that an Item 3 Chief employee was in-subordinate. Is he precluded from contesting a suspension or removal from service assessment? If the same employee is removed and the brother-in-law of a manager is assigned the position, is he precluded from contesting this action as unjust treatment? We do not think the December 22, 1971 Memorandum of Agreement contemplated this result. There is no evidence that another employee filled Claimant's position nor evidence that the position is still extant. Since Carrier was not prevented from abolishing this position, and since it did not raise this line of justification at the time it removed him on September 25, 1987, or during the on-situs claim handling, it is new argument and technically inadmissible. As we indicated herein we cannot estop Carrier from abolishing or eliminating positions and we cannot compel Carrier to establish a position. If the position is still existent, Claimant is to be restored to his prior position and compensated for any net loss of wages. If the position had been abolished, we cannot reestablish it, but Claimant is to be compensated for any net loss of wages suffered up until the time of abolishment. Said compensation, if any, shall not include the overtime rate provided in

the May 29, 1974 Letter Agreement. This Agreement has no application to these specific circumstances.

Boycott Tactic Traced To Ireland, 1880s

Working people, in exercising their collective strength to protect their rights, frequently call for boycotts to apply economic pressure against companies which resist employee efforts to win fair agreements and fair treatment. THE TRAIN DISPATCHER regularly publishes a "Don't Buy" list of national boycotts sanctioned by the AFL-CIO and the Association urges all members to review the list and join other union members in refusing to purchase products or services from companies on the boycott list.

Boycotts have been proven as one of labor's most effective tactics and the history of the boycott shows the tactic works when a group of otherwise powerless people act collectively in their struggle for justice.

The term "boycott" comes from Ireland and the struggle of Irish tenant farmers fighting for land reform in the 1880s. Britons owned most of the land in Ireland at the time, and in an area along the Irish west coast, farmers directed their anger and discontent on England land agent Captain Charles Boycott.

The farmers, applying a tactic which captured the imagination of the whole world, completely ostracized Captain Boycott. They froze Boycott out of all social activity. They refused to work his land, tend his animals, and harvest his crops. They wouldn't sell him any goods.

The action provoked the state and other employers to step in. They sent in the militia and a "citizens army of relief volunteers" — more commonly known today as scabs — to harvest Boycott's crops. The political pressure of the first boycott prevailed, however, and within a few years resulted in land reform.

Today, we tend to see the boycott as a consumer action. The first boycott in

Ireland was a political action, however, and strictly speaking, it was illegal. There were some acts of intimidation and refusals to pay rent, but through mass resistance, the Irish peasants made the law inoperative and they forced political change with the solidarity of their actions.

The boycott became a very popular tactic after its success in Ireland and its use spread worldwide. The tactic provoked an extreme and inevitable reaction from the landed class. They went to incredible lengths to force an end to the boycott to prove it ineffective.

They branded it immoral, illegal and uncivilized. They argued that the Irish tenant farmers would prove they were politically mature and worthy of land reform only by abandoning the tactic. But the Irish stuck to their boycott and never lost sight of their strategic goal of land law reform and justice for tenants.

The use of boycotts by organized labor came into prominence in the late 1880s and early 1900s with the legalization of trade unions. Unions combined the boycott, using workers' power as consumers, with the strike, using workers' power as producers of good and services, in campaigns to win justice.

Today, workers continue to combine those two tactics in the continuing struggle to protect their rights. The strike against Eastern Airlines is a classic example. Eastern's employees, unable to secure a fair agreement through negotiation, have resorted to a strike against Frank Lorenzo's union busting management. The AFL-CIO has sanctioned a boycott against Eastern and Continental, Lorenzo's other non-union airline, in an effort to bring more pressure against Lorenzo's anti-worker empire.

The first boycott in Ireland succeeded through the solidarity of the Irish peasants and boycotts today depend on the same solidarity among working people. Read the national boycott list and do your part by refusing to purchase products or services from companies on the list.

HONOR MEMBERS

January 1990

H.E. Harper	L&N
T.R. Long	Conrail
P. Cain	SP
R.E. Bailey	SP
J.V. Vaisvil	NIRC

February 1990

E. Santa	Camas Prairie
J.R. Oberg, Jr.	Maine Central
E.J. Moltz	SP
C.J. Sauls	BN
J.A. Enfinger	L&N

March 1990

L.L. Barfield	Panama
J.F. Corder	BN
R.C. Hale	SP
H.E. Mullinax	CSXT



**Take
stock
in America.**

DO NOT BUY

SHELL OIL COMPANY

Subsidiary of Royal Dutch Shell (parent company of Shell South Africa); Gasoline, petroleum and natural gas products

AFL-CIO

STERLING RADIATOR

Baseboard heaters for the home

United Automobile, Aerospace & Agricultural Workers of America International Union

UNITED STATES PLAYING CARD CO.

Brand names: Bee, Bicycle, Tally Ho, Aviator and Congress
Retail, Wholesale and Department Store Union

DO NOT BUY**NATIONAL BOYCOTTS OFFICIALLY SANCTIONED BY THE AFL-CIO EXECUTIVE COUNCIL.**

All trade unionists and their families are asked not to patronize the products and services of the boycotted firms listed below. List current as of first day of month of publication. Subject to change.

ACE DRILL CORPORATION

Wire, jobber & letter drills, routers and steel bars
United Automobile, Aerospace & Agricultural Implement Workers of America International Union.

AEROMEXICO AIRLINES

Airline passenger and freight carrier
International Association of Machinists & Aerospace Workers

BLUE CROSS/BLUE SHIELD OF MEMPHIS, TN

Carrier of union health plans
AFL-CIO

BROWN & SHARPE MFG. CO.

Measuring, cutting and machine tools and pumps
International Association of Machinists and Aerospace Workers

BRUCE CHURCH, INC.

Iceberg Lettuce: Red Coach, Friendly, Green Valley Farms, Lucky
United Farm Workers of America

CALIFORNIA TABLE GRAPES

Table grapes that do not bear the UFW union label on the carton or crate
United Farm Workers of America

CLARK GRAVE VAULT COMPANY

Copper and steel burial vaults
United Automobile, Aerospace & Agricultural Implement Workers International Union

COLT FIREARMS COMPANY

Manufacturers of handguns and rifles
United Automobile, Aerospace & Agricultural Implement Workers of America International Union

CONTINENTAL AIRLINES

Commercial airline carrier
International Association of Machinists & Aerospace Workers Transport Workers of America

EASTERN AIRLINES

Commercial Airline Carrier
International Association of Machinists & Aerospace Workers Transport Workers of America

FORT HOWARD PAPER CO.

Green Bay, Wisconsin and Muskogee, Oklahoma
Mardi-Gras, Page, Sof-Knit tissues and napins, Antique towels, Pom-etta, Eldon and Dolly Madison tissues
United Paperworkers International Union

GARMENT CORPORATION OF AMERICA

Workclothes and uniforms
Amalgamated Clothing & Textile Workers Union

HOLIDAY PAPER CUPS, Div. of Imperial Cup Corporation

Holiday Paper Cups brand name
United Paperworkers International Union

HOLLY FARMS

Chickens and processed poultry products
International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America

INTERNATIONAL PAPER COMPANY

Producer International and Hammermill bond, offset and writing paper and related products
United Paperworkers International Union

JOHN MORRELL & COMPANY

Meat products: John Morrell, Rath Blackhawk, Nathan's Famous, Tobins First Prize, Hunter, Tom Sawyer, Krey, Partridge, Rodeo, Scott Petersen, Bob Ostrow, E-Z Cut, Table Trim, Golden Smoked, Carson Ribs

United Food and Commercial Workers International Union

JOHN PORTMAN COMPANIES

Shopping malls, hotels, property management companies, real estate development investment.

Service Employees International Union

KRUEGER INTERNATIONAL, INC.

Brand name chairs: Matrix, Poly, Dorsal, Vertebra, Stax, Afka, Modular, Auditorium and University Seating (for airports and auditoriums)

International Association of Machinists & Aerospace workers

LA MODE du GOLF CO. OF LOS ANGELES

LaMode and Lady La Mode men's and women's golf apparel
International Ladies' Garment Workers Union

LOUISIANA-PACIFIC CORP.

Brand name wood products: L-P Wolmanized, Cedartone, Waferwood, Fibrepine, Oro-Bord, Redex, Sidex, Ketchikan, Pabco, Xonolite
United Brotherhood of Carpenters and Joiners of America and International Woodworkers of America

MOHAWK LIQUEUR CORP.

Brand name products: Chaska and Vodstok Vodka, Arandas Tequila, Canadian Can-Am Whiskey, Mohawk labeled Gin, Rum, Peppermint Schnapps, Cordials, and Sambuca
Distillery, Wine and Allied Workers International Union

NAPA VALLEY CO-OP

Bergfeld 1885 (Sauvignon Blanc) wine
Distillery, Wine and Allied Workers International Union

PLYMOUTH RUBBER COMPANY

Insulating material, rubber bands and vinyl products
United Rubber, Cork, Linoleum and Plastic Workers of America

R.J. REYNOLDS TOBACCO CO.

Cigarettes: Camel, Winston, Salem, Doral, Vantage, More, Now, Real, Bright, Century, Sterling, YSL/Ritz; Smoking Tobaccos: Prince Albert, George Washington, Carter Hall, Apple, Madeira Mixture, Royal Comfort, Top, Our Advertiser; Little Cigars: Winchester
Bakery, Confectionery & Tobacco Workers International Union

ROME CABLE CORPORATION

Cables used in mining and construction industry
International Association of Machinists & Aerospace Workers

SEATTLE-FIRST NATIONAL BANK

Withdraw funds
United Food and Commercial Workers International Union

SHELL OIL COMPANY

Subsidiary of Royal Dutch Shell (parent company of Shell South Africa); Gasoline, petroleum and natural gas products
AFL-CIO

STERLING RADIATOR

Baseboard heaters for the home
United Automobile, Aerospace & Agricultural Workers of America International Union

UNITED STATES PLAYING CARD CO.

Brand names: Bee, Bicycle, Tally Ho, Aviator and Congress
Retail, Wholesale and Department Store Union

Status of Disputes Submitted by A.T.D.A. to Third Division

National Railroad Adjustment Board

Docket No.	Railroad	Subject of Dispute	Submitted	Status as of 2-3-90
TD-27822	ConRail	Discipline (Arneith, et al. - Elizabethport)	5-21-87	Sustained 12-4-89 Award No. 28216
TD-28197	DM&IR	Transportation Costs - Gersetich	2-2-88	Sustained 12-4-89 Award No. 28221
TD-28418	SP (EL)	Unjust Treatment (Morrissey Houston)	7-1-88	Sustained 1-11-90 Award No. 28239
TD-26835	NYC&StL (N&W)	Work Outside Scope (Muncie, IN)	12-23-85	Assigned to Referee Muessig
TD-27956	Soo Line	Off Assignment (J.P. Erickson)	6-25-87	Assigned to Referee Eischen
TD-27774	C&NWT	Temporary Vacancies - Boone, IA	8-12-87	Assigned to Referee Dennis
TD-28117	SP (EL)	Discipline (Neill - San Antonio)	1-12-88	Assigned to Referee Zusman
TD-28374	B&O (CSXT)	Compensation - Chief Dispatcher Work	4-7-88	Assigned to Referee LaRocco
TD-28415	L&N (CSXT)	Transfer of Work - Mobile, AL	5-16-88	Assigned to Referee Roukis
TD-28441	Amtrak	Discipline - (Luedtke - NY)	6-6-88	Assigned to Referee Muessig
TD-28512	SCL (CSXT)	Discipline (Sellars - Tampa)	8-26-88	Assigned to Referee Benn
TD-28520	N&W	Transfer of Work - Power Distribution	8-31-88	Assigned to Referee Benn
TD-28708	B&OCT (CSX)	Discipline (Wallerich - Riverdale)	2-8-89	(a)
TD-28719	Amtrak	Transfer of Work (Miller-Philadelphia)	3-10-89	(a)
TD-28740	NYC&StL (N&W)	Discipline (Hipsher - Ft. Wayne)	3-16-89	(a)
TD-28673	KCS	Overtime (Tucker & Fleming)	3-17-89	Assigned to Referee Goldstein

TD-28680	Amtrak	Discipline (Murdock-Philadelphia)	3-31-89 (a)
TD-28766	GTW	Sick Leave - Rasmussen, et al.	3-31-89 (a)
TD-28774	StLSW	Extra Work - G.W. Miller	4-11-89 (a)
TD-28781	W&LE (N&W)	Discipline (Geissman - Brewster)	4-13-89 (a)
TD-28862	C&NWT	Discipline (Miller-St. Paul)	6-15-89 (a)
TD-28910	Southern	Discipline (Adcock - Knoxville)	6-23-89 (a)
TD-28898	Southern	Classification (Superintendent Transportation-Locomotive)	7-7-89 Proceedings stayed by order of Federal Court pending appeal to higher court
TD-28968	NYC&StL	Discipline (Hipsheer - Ft. Wayne)	9-1-89 (a)
TD-29038	Southern	Jury Duty Compensation (Heflin - Birmingham)	10-5-89 (a)
TD-28988	Amtrak	Discipline (Bucci - Philadelphia)	11-16-89 (a)
TD.....	C&O (CSX)	Compensation - Assistant Chief Work (Grand Rapids, Mich.)	12-20-89 (c)
TD.....	NYC&StL	Transfer of Work (Van Loon & 80th St.)	12-29-89 (c)
TD.....	Amtrak	Discipline (Akins - Philadelphia)	1-23-90 (c)
TD.....	Amtrak	Sick Leave (Owings - Philadelphia)	1-23-90 (c)

Explanation of Reference Marks in "Status" column:

- (a) Awaiting Referee Assignment
- (c) Awaiting Ex Parte Submissions

WHATS GOING ON?

Dispatchers Collect 2,500 Toys For Disadvantaged And Hospitalized Children

By Fran Leins

Santa came to the train dispatcher's office this year at New York's Metro-North Commuter Railroad headquarters where ATDA members Jim Fahey, Pat Kennedy and Jim Tierney led their colleagues in the annual drive to collect and distribute toys for hospitalized and homeless youngsters. What started only four years ago by word-of-mouth among a handful of Metro-North dispatchers has turned into a welcome tradition for less fortunate children.

Drive organizer Fahey and his fellow dispatchers collected and distributed more than 2,500 toys, not only from Metro-North employees, but from clerks to corporate executives in the public and private sectors, from mid-Manhattan to Connecticut.

"It's the first year we have had outside help to distribute the toys," said Tierney, who on December 23rd dressed as Santa Claus and played the rotund legend of the North Pole to multitudes of hospitalized kids at the Westchester County Medical Center and the Blythedale Children's Hospital in Valhalla, as well as for homeless children at the Hamilton Place Welfare Hotel on 137th street in Harlem.

"This is the first time we've distributed to homeless children. It's the least we can do for them. For some of these kids this is the only Christmas party and presents they have," said Fahey. "I'm thankful I have two healthy sons up in Buffalo. You have to give back some of the good fortune you've had all year and share it with the less fortunate, especially little children," he explained.

"This is my first time doing volunteer work like this," said Shelley Rudinsky, who collected for Metro-North some 200

toys from employees at Ally and Gargtano Advertising in Westport, Connecticut, where she works as an account executive. Rudinsky helped the dispatchers distribute two trucks full of toys — among them, dolls, toy soldiers, fighter bombers, Golden's fantasy books, sweaters, stuffed animals and musical instruments — many of which had been sitting under the dispatchers' tree throughout December.

"Jim Fahey is the leader and we are his friends so we are just glad to help out," said Eddie Reardon of McCann's restaurant. Reardon personally collected more than 300 toys from business people who frequent the restaurant on 5th Avenue and 45th Street, a long time meeting place for Metro-North's train dispatchers.

"I remember Jimmy always talking about the drive," said Terrienne Howell, data processing specialist under contract with the Indian Point Nuclear Power Plant. "I asked around here and so many people responded with toys. I was overwhelmed."

"In 1986 we started with only 50 presents for hospitalized and mentally retarded kids at the Medical Center. Those kids, some of them just break your heart," said Fahey. Many of the mentally handicapped children have literally been abandoned by their parents.

Westchester County Medical Center, first built more than 150 years ago as the County Alms House, was reconstructed in 1977 into a 600-bed, acute care facility, with 27 acute care beds in the pediatric wing.

"There weren't enough hours in the day to personally distribute all the toys, so we had to leave some with the director at Blythedale," explained Fahey.

Unlike some large corporations that don't divulge where their Christmas toy collections wind up, the dispatchers have made it a point to let all donors know just where their toys were distributed. "We don't do this for a tax write-off," said Kennedy.

"This is hard work, but we will continue to do it every year as long as we're

needed," said Fahey.

"Some of our children in the intensive care unit can't even get out of bed. It warms the spirit to see their eyes light up when they see Santa," said Westchester County Medical Center Director of Volunteers, Jeannette Pandolofu. "The toys are always beautiful and useful to."

"I've been in support of this program since they started it," said Metro-North Executive Vice President, Donald N. Nelson. "This year has been an enormous success to such an extent that we had to move a lot of the toys into another room so we could operate the Railroad. I think it's great that these guys got together in leading this effort."

"It's our way of trying to ease the pain and strife these kids feel during the year," said ATDA member Favilla, Supt. Train Operations for Metro-North.

"I had been on the train bringing bags of toys into Grand Central throughout December," said Tierney.

Grand Central Terminal, which is owned by the Metropolitan Transportation Authority and operated by Metro-North, was built in 1913. An historic landmark, and hub of mid-town Manhattan activity, Grand Central Terminal serves more than 500,000 people daily. Metro-North, formerly a Conrail commuter line, was created by the MTA in 1983. Its three service routes, the Harlem, Hudson and New Haven lines, transport 100,000 daily riders to and from the Terminal and Westchester, Orange and Dutchess Counties. Last year Metro-North celebrated serving its one millionth customer.

What To Do When A Friend Is Depressed

When a simple case of "the blahs" goes on for several weeks, it's no longer simple. Bad feelings that last long may be symptoms of clinical depression -- one of the most common mental disorders. Clinical depression affects about 10 million Americans of all ages,

and cultures. If you'd like to learn more about how to recognize clinical depression and how it can be treated, the National Institute of Mental Health has two free publications that can help. They include a checklist to help teenagers identify symptoms of depression and uses a myth/fact format to give straight answers about this illness. You can get copies of both of these publications by sending your name, address, and the appropriate item numbers to: S. James, Consumer Information Center, Pueblo, Colorado 81009.

Sometimes it's hard to tell when friends or loved ones are depressed. Often they try to hide feelings of sadness, pessimism, worthlessness, and guilt. They seem indecisive, disinterested in activities they normally find exiting, and unable to concentrate. They lose their appetite and have a hard time getting to sleep. This can lead to a loss of energy, backaches, headaches, and other physical symptoms. Sudden changes of behavior are also common among depressed people.

If the symptoms persist for more than two weeks or so, your friend may be suffering from clinical depression. It's important not to ignore the problem. Since depression destroys self-esteem, it is very important that your friend knows you care. Acknowledge that he or she is suffering. Express affection and offer compliments, but try to maintain as normal a relationship as possible. It can also be productive to point out overly negative thinking or self-criticism, but do so without sounding critical of your friend.

To learn more about depression, get your copies of *Depressive Illnesses: Treatments Bring New Hope* (Item 587V, free) and *What to Do When A Friend is Depressed* (Item 557W, free). You'll also get a free copy of the *Consumer Information Catalog*. Published quarterly by the Consumer Information Center of the U.S. General Services Administration, the Catalog lists about 200 free and moderately-priced consumer publications on a wide variety of subjects. □

Unions Oppose Random, Mandatory tests: Drug Tests for Millions in Transportation Industries

*By Janey Cohen
PAI Staff Writer*

WASHINGTON (PAI)--With lawsuits pending in appeals court, labor continues its opposition to drug testing as workers in certain safety and security-related jobs in industries regulated by the Dept. of Transportation become subject to drug testing programs.

When the programs are in full swing, an estimated 4 million workers will be subject to drug testing.

"Ideologically, we've always been opposed to random, mandatory testing and will continue to take that position," said Transport Workers spokesman James Gannon. He said the TWU would follow through on lawsuits pending in Washington and take them "to the bitter end--the Supreme Court," if necessary. "The prognosis isn't good," he acknowledged, "but we'll go ahead any way."

Art Hanford, spokesman for the United Transportation Union, said UTU is "continuing to oppose random testing as unconstitutional." He mentioned the UTU's involvement in lawsuits filed "months and months ago" along with other transportation unions in protest of the new regulations.

In December, testing began for 538,000 aviation employees; 3 million interstate truck and bus operators regulated under the Federal Highway Administration; 195,500 mass transit workers in systems receiving funds from the Urban Mass Transportation Administration; and 120,000 commercial vessel mariners regulated by the Coast Guard.

Most of these workers will be subject to full testing programs. However, random and post-accident testing for interstate truck and bus drivers is held up by a court injunction.

Random testing begins in January for 90,000 railroad workers regulated by

the Federal Railroad Administration; and in April for 116,500 pipeline industry workers.

The rules, published in November 1988, call for five kinds of testing: pre-employment, periodic (for certain employees who undergo regularly required medical exams), random, reasonable cause, and post accident. Testing is for the presence of marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP).

Gannon said the TWU was "realistic" about the drug testing situation, noting that at the union's recent convention it passed a resolution for locals to "do the best they can to negotiate a system of drug testing that complies with federal mandates but at the same time goes much further than that in protecting worker rights."

"There is a very strong feeling among workers that there is no room for drug and alcohol abuse. This peer pressure program is far more effective than drug testing programs," Hanford said.

All of the drug testing rules provide for a phase-in period for random testing. The first year rate must be 25 percent; after that time, the rate must be 50 percent.

Starting on Next Page:

PROCEDURES for DRUG TESTING from THE FEDERAL REGISTER

December 1, 1989

December 27, 1989

PART 40-PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS

Sec. 40.1 Applicability.

40.3 Definitions.

40.5-40.19 (Reserved)

40.21 The Drugs.

40.23 Preparation for testing.

40.25 Specimen collection procedures.

40.27 Laboratory personnel.

40.29 Laboratory analysis procedures.

40.31 Quality assurance and quality control.

40.33 Reporting and review of the results.

40.35 Protection of employee records.

40.37 Individual access to test and laboratory certification results.

40.39 Use of DHHS-certified laboratories.

Appendix A to Part 40-Drug testing Custody and Control Form

Authority: 49 U.S.C. 102, 301, 322.

§40.1 Applicability.

This part applies to transportation employers (including self-employed individuals) conducting drug urine testing programs pursuant to regulations issued by agencies of the Department of Transportation and to such transportation employers' officers, employees, agents and contractors, to the extent and in the manner provided in DOT agency regulations.

§40.3 Definitions.

For purposes of this part the following definitions apply:

Aliquot.

A portion of a specimen used for testing.

Blind sample or blind performance test specimen.

A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

Chain of custody.

Procedures to account for the integrity of each urine specimen collection to final disposition of the specimen. These

procedures shall require that an appropriate drug testing custody form (see §40.23(a)) be used from time of collection to receipt by the laboratory chain of custody forms(s) accounts(s) for the sample or sample aliquots within the laboratory.

Collection container.

A container into which the employee urinates to provide the urine sample used for a drug test.

Collection site.

A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection site person.

A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

Confirmatory test.

A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phenylidine.)

DHHS.

The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

DOT agency.

An agency (or "operating administration") of the United States Department of Transportation administering regulations requiring compliance with this part, including the United States Coast Guard, the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Urban Mass Transportation Administration and the Research and

Special Programs Administration.**Employee.**

An individual designated in a DOT agency regulation as subject to drug urine testing and the donor of a specimen under this part. As used in this part "employee" includes an applicant for employment. "Employee" and "individual to be tested" have the same meaning for purposes of this part.

Employer.

An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part, "employer" includes an industry consortium or joint enterprise.

Initial test (also known as screening test).

An immunoassay screen to eliminate "negative" urine specimens from further consideration.

Medical Review Officer (MRO).

A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

Secretary.

The Secretary of Transportation or the Secretary's designee.

Shipping Container.

A container capable of being secured with a tamper proof seal that is used for transfer of one or more specimen bottle (s) and associated documentation from the collection site to the laboratory.

Specimen bottle.

The bottle which, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory.

§40.21 The drugs

(a) DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

(b) An employer may include in its testing protocols other controlled substances or alcohol only pursuant to a DOT agency approval, if testing for those substances is authorized under agency regulations and if the DHHS has established an approved testing protocol and positive threshold for each such substance.

(c) Urine specimens collected under DOT agency regulations requiring compliance with this part may only be used to test for controlled substances designated or approved for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT agency regulations.

(d) This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

§40.23 Preparation for testing.

The employer and certified laboratory shall develop and maintain a clear and well documented procedure for collection, shipment, and accessioning of urine specimens under this part. Such a procedure shall include, at a minimum, the following:

(a) Utilization of a standard drug testing custody and control form (carbonless manifold). The form shall be a multiple-part, carbonless record form with an original (copy 1), and a "second original" (copy 2), both of which shall accompany the specimen to the laboratory. Copies shall be provided for the Medical Review Officer (copy 3, to go directly to the MRO), the donor (copy 4), the collector (copy 5), and the employer representative (copy 6). If the employer desires to exercise the split sample option, then an additional copy of the urine custody and control form is required. This copy (copy 7) shall be the "split specimen original," and is to accompany the split specimen to the same lab, a second lab, or an employer storage site. There must be a positive link established between the first specimen and the split specimen through the

specimen identification number; the split specimen identification number shall be an obvious derivative of the first specimen identification number. The form should be a permanent record on which identifying data on the donor, and on the specimen collection and transfer process, is retained. The form shall be constructed to display, at a minimum, the following elements, which shall appear on its respective parts as indicated:

(1) The following information shall appear on all parts of the form:

(i) A pre-printed specimen identification number, which shall be unique to the particular collection. If the split sample option is exercised, the pre-printed specimen identification number for split specimen shall be an obvious derivative of the first specimen: e.g., first specimen identification number suffixed "A," split specimen suffixed "B."

(ii) A block specifying the donor's employee identification number or Social Security number, which shall be entered by the collector.

(iii) A block specifying the employer's name, address, and identification number.

(iv) A block specifying the Medical Review Officer's name and address.

(v) Specification for the reason for which drugs the specimen identified by this form will be tested.

(vi) Specification for the reason for which this test conducted (pre-employment, random, etc.), which shall be entered by the collector.

(vii) A block specifying whether or not the collector read the temperature within 4 minutes, and then notation, by the collector, that the temperature of specimen just read is within the range of 32.5-37.7C/90.5-99.8F; if not within the acceptable range, an area is provided to record the actual temperature.

(viii) A chain-of-custody relevant biomedical information. block providing areas to enter the following information for each transfer of possession: Purpose of change; released by (signature/print name); date. The

words "Provide specimen for testing" and "DONOR" shall be pre-printed in the initial spaces.

(ix) Information to be completed by the collector: Collector's name; date of collection; location of the collection site; a space for remarks at which unusual circumstances may be described; notation as to whether or not to split specimen was taken in accordance with Federal requirements if the option to offer the split specimen was exercised by the employer; and a certification statement as set forth below and a signature block with date which shall be completed by the collector:

I certify that the specimen identified in this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(2) Information to be provided by the laboratory after analysis, which shall appear on parts 1, 2 and 7 (if applicable) of the form only: Accession number; laboratory name; address; a space for remarks; specimen results; and certification statement as set forth below, together with spaces to enter the printed name and signature of the certifying laboratory official and date:

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen.

(3) A block to be completed by the Medical Review Officer (MRO), after the review of the specimen, which shall appear on parts 1, 2 and 7 (if applicable) of the form only, provides for the MRO's name, address, and certification, to read as follows, together with spaces for signature and date:

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is:

(4) Information to be provided by the donor, which shall appear on parts 3 through 6 of the form only: Donor name (printed); daytime phone number; date

of Birth; and certification statement as set forth below, together with a signature block with date which shall be completed by the donor.

I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

(5) A statement to the donor which shall appear only on parts 3 and 4 of the form as follows:

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications as a "memory jogger." **THIS LIST IS NOT NECESSARY.** If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4-Donor) of this form-**DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.**

A form meeting the requirements of this paragraph is displayed at appendix A to this part.

(6) The drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the Social Security number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.

(b)(1) Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen. A clean, single-use collection container (e.g., disposable cup or sterile urinal) that is securely wrapped until used may also be employed. *If urination is directly into the specimen bottle*, the specimen bottle shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided: *If a separate collection container is used for urination*, the collection container shall be provided to the

employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided; and the collection site person shall unwrap the specimen bottle in the presence of the employee at the time the urine specimen is presented.

(2) Use of a tamper-proof sealing system, designed in a manner such to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form, and space shall be provided to initial the bottle affirming its identity. For purposes of clarity, this part assumes use of a system made up of one or more pre-printed labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which the specimen and associated paperwork may be transferred and which can be sealed and initialled to prevent undetected tampering. When the split specimen option is exercised, the split specimen and associated paperwork shall be sealed in a shipping (or storage) container and initialled to prevent undetected tampering.

(d) Written procedures, instructions and training shall be provided as follows:

(1) Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required in this part.

(i) A non-medical collection site person shall receive training in compliance with this part and shall demonstrate

proficiency in the application of this part prior to serving as a collection site person. A medical professional, technologist or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person is provided instructions described in this part and performs collection in accordance with those instructions.

(ii) Collection site persons shall be provided with detailed, clear instructions on the collection of specimens in compliance with this part. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(3) Unless it is impractical for any other individual to perform this function, a direct supervisor of an employee shall not serve as the collection site person for a test of the employee. If the rules of a DOT agency are more stringent than this provision regarding the use of supervisors as collection site personnel, the DOT agency rules shall prevail with respect to testing to which they apply.

(4) In any case where a collection is monitored by non-medical personnel or is directly observed, the collection site person shall be of the same gender as the donor. A collection is monitored for this purpose if the enclosure provides less than complete privacy for the donor (e.g., if a rest room stall is used and the collection site person remains in the rest room, or if the collection site person is expected to listen for use of unsecured sources of water.)

§40.25 Specimen collection procedures.

(a) *Designation of collection site.* (1) Each employer drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory. An independent medical facility may also be utilized as a collection site provided the other ap-

plicable requirements of this part are met.

(2) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this part, including a properly equipped mobile facility. A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(b) *Security.* The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen.

(1) Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(2) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access (e.g., through a rear door not in the view of the collection site person) is not possible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the employee or distraction of the collection site person.

(3) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply. The specimen shall remain under the direct

control of the collection site person from delivery to its being sealed in the mailer. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

(c) *Chain of custody.* The chain of custody block of the drug testing custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to authorized personnel only.* No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person and ensure against any confusion in the identification of specimens, the collection site person shall have only one donor under his or her supervision at any time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialed, the drug testing custody and control form has been executed, and the employee has departed the site (or in the case of an employee who was unable to provide a specimen, has entered a waiting area).

(e) *Privacy.* (1) Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided, as further described in this paragraph.

(2) For purposes of this part, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or

substitute the specimen:

(i) The employee has presented a urine specimen that falls outside the normal temperature range (32.5-37.7C/90.5-99.8F), and

(A) The employee declines to provide a measurement of oral body temperature, as provided in paragraph (f)(4) of the part; or

(B) Oral body temperature varies by more than 1 C/1.8 F from the temperature of the specimen;

(ii) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;

(iii) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented etc.); or

(iv) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to service.

(3) A higher level supervisor of the collection site person, or a designated employer representative, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described in subparagraph (2) of this paragraph.

(f) *Integrity and identity of specimen.* Employers shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the urine was collected. The following minimum precautions shall be taken to ensure that the unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl remains blue. Where practical, there shall be no other source of water (e.g., shower, or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.

(2) When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the employers representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests it, the collection site person shall provide the employee a receipt for any personal belongings.

(5) The individual shall be instructed to wash and dry hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container, if applicable, for this purpose.

(8) The collection site person shall note any unusual behavior or appearance on the urine custody control form.

(9) In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public restroom may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10)(i) Upon receiving the specimen from the individual, the collection site person shall determine if it contains at least 60 milliliters of urine. If the individual is unable to provide 60 milliliters of urine, the collection site person shall instruct the individual to drink fluids and, after a reasonable time, again attempt to provide a complete sample using a fresh specimen bottle (and fresh collection container if employed). The original specimen shall be discarded. If the employee is still unable to provide a complete specimen, the following rules apply:

(A) In the case of a post-accident test or test for reasonable cause (as defined by the DOT agency), the employee shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to eight hours from the beginning of the collection procedure.

(B) In the case of pre-employment test, periodic test or other test not for cause (as defined by the DOT agency), the employer may elect to proceed as specified in paragraph (f)(10)(i)(A) of this section (consistent with any applicable restrictions on hours of service) or may elect to discontinue the collection and conduct a subsequent collection at a later time.

(C) If the employee cannot provide a complete sample within the up to 8-hour period or at the subsequent collection, as applicable, then the employer's MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. (In the pre-employment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral.) Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

(ii) The employer may, but is not required to, use a "split sample" method of collection.

(A) The donor shall urinate into a collection container, which the collection site person, in the presence of the donor, after determining specimen temperature, pours into two specimen bottles.

(B) The first bottle is to be used for the DOT-mandated test, and 60ml of urine shall be poured into it. If there is no additional urine available for the second specimen bottle, the first specimen bottle shall nevertheless be processed for testing.

(C) Up to 60ml of the remainder of the

urine shall be poured into the second specimen bottle.

(D) All requirements of this part shall be followed with respect to both samples, including the requirement that a copy of the chain of custody accompany each bottle processed under "split sample" procedures.

(E) Any specimen collected under "split sample" procedures must be stored in a secured, refrigerated environment and an appropriate entry be made in the chain of custody form.

(F) If the test of the first bottle is positive, the employee may request that the MRO direct that the second bottle be tested in a DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first bottle. The result of this test is transmitted to the MRO without regard to the cutoff values of §40.29. The MRO shall honor such a request if it is made within 72 hours of the employee's having actual notice that he or she tested positive.

(G) Action required by DOT regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the second test.

(H) If the result of the second test is negative, the MRO shall cancel the test.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

(13) A specimen temperature outside the range of 32.5-37.7 C/90.5-99.8 F constitutes a reason to believe that the individual has altered or substituted the specimen (see paragraph (e)(2)(i) of this

section). In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

(15) All specimens suspected of being altered shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in para (e)(2)(i) or (iii) of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamper-proof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual being tested shall be present at the same time during procedures outlined in paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamper-proof seal shall also be applied.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the drug testing custody form all information identifying the specimen. The collection site person shall sign the drug testing custody form certifying that the collection was accomplished according to the applicable Federal requirements.

(22)(i) The individual shall be asked to read and sign a statement on the drug testing custody form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided.

(ii) When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collection of the specimen for designated controlled substances, and release of the results to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

(23) The collection site person shall complete the chain of custody portion of the drug testing custody form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.

(24) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

(25)(i) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work

station momentarily, the collection site person shall take the specimen and drug testing custody form with him or her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

(ii) The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the custody form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the employer) a new collection begun.

(g) *Collection control.* To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled.

(h) *Transportation to the laboratory.* Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the shipping containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.

(i) *Failure to cooperate.* If the employee refuses to cooperate with the collection process, the collection site person shall inform the employer representative and shall document the non-cooperation on the drug testing

custody and control form.

(j) *Employee requiring medical attention.* If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.

(k) *Use of chain of custody forms.* A chain of custody form (and a laboratory internal chain of custody document, where applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling the specimens.

§40.27 Laboratory personnel.

(a) *Day-to-day management.* (1) The laboratory shall have a qualified individual to assume professional, organizational, educational and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology; Minimum qualifications are:

(i) Certification as a laboratory director by a State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraph (a)(2) (i), (ii), or (iii) of this section, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drug abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day to day management of the drug testing laboratory even where another individual has overall responsibility for an entire multi-specialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in §40.29(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy,

precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the test results provided are accurate and reliable.

(b) *Test validation.* The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) *Day-to-day operations and supervision of analysts.* The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other personnel.* Other technicians or non technical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make

available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience, certification or license if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as tests for color blindness, if appropriate.

§40.29 Laboratory analysis procedures.

(a) Security and chain of custody.

(1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of DHHS, all authorized visitors, maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.* (1) When a shipment of

specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the employer's chain of custody forms attached to the shipment shall be immediately reported to the employer and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(2) Specimen bottles generally shall be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.

(c) *Short term refrigerated storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 8C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) *Initial test.* (1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used to determine whether they are negative for these five drugs or classes of drugs:

	Initial test cutoff levels (ng/ml)
Marijuana metabolites	100
Cocaine metabolites	300
Opiate metabolites	*300
Phencyclidine	25
Amphetamines	1,000

*25 ng/ml if immunoassay specific for free morphine

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(f) *Confirmatory test.* (1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite ¹	15
Cocaine metabolite ²	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine	500

¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid.

² Benzoylcegonine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(g) *Reporting results.* (1) The laboratory shall report test results to the employer's Medical Review Officer within an average of five working days after receipt of the specimen by the

laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number).

(2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the employer. *Provided*, that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day

management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide to the employer official responsible for coordination of the drug testing program a monthly statistical summary of urinalysis testing of the employer's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information: (i) Initial testing: (A) Number of specimens received; (B) Number of specimens reported out; and (C) Number of specimens screened positive for: Marijuana metabolites Cocaine metabolites Opiate metabolites Phencyclidine Amphetamine (ii) Confirmatory testing: (A) Number of specimens received for Confirmation; (b) Number of specimens confirmed positive for: Marijuana metabolites Cocaine metabolites Opiate metabolites Phencyclidine Amphetamine Methamphetamine Monthly reports shall not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory will so inform the employer in writing.

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory

for a minimum of 2 years.

(h) *Long-term storage.* Long-term frozen storage (-20 C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1-year period, an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received, the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

(i) *Retesting specimens.* Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in this part. This paragraph does not prohibit subcontracting of laboratory analysis if specimens are sent directly from the collection site to the subcontractor, the subcontractor is a laboratory certified by the DHHS as required in this part, the subcontractor is responsible to the employer for compliance with this part and applicable DOT agency regulations as if it were the prime contractor.

(k) *Laboratory facilities.* (1) Laboratory facilities shall comply with applicable provisions of any State licensing requirements.

(2) Laboratories certified in accordance with DHHS Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, a DOT agency, any employer utilizing the laboratory, DHHS or any organization performing laboratory certification on behalf of DHHS reserves the right to inspect the laboratory at any time. Employer contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the employer and the DOT agency of jurisdiction (directly or through an agent) to conduct unannounced inspections.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

(n) *Additional requirements for certified laboratories.*-(1) *Procedure manual.* Each laboratory shall have a procedure manual which includes the principles of each test preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of methods, cutoff values, mechanisms for reporting results, controls criteria for unacceptable specimens and results, the remedial actions to be taken when the test systems are outside of acceptable limits,

reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Standards and controls.* Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) *Instruments and equipment.* (1) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventative maintenance.

(4) *Remedial actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) *Personnel available to testify at proceedings.* A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

§40.31 Quality assurance and quality control.

(a) *General.* Drug testing laboratories

shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) *Laboratory quality control requirements for initial tests.* Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level. In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure the carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) *Laboratory quality control requirements for confirmation tests.* Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or

metabolite at or near the cutoff level. The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) *Employer blind performance test procedures.*

(1) Each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures as provided in this paragraph.

(2) Each employer covered by DOT agency shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter. A DOT agency may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

(3) For employers with 2000 or more covered employees, approximately 80 percent of the blind performance test samples shall be blank (i.e., containing no drug or otherwise approved by a DOT agency) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibit spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.

(4) Employers with fewer than 2000 covered employees may submit blind performance test specimens as provided in paragraph (d)(3) of this section. Such employers may also submit two separately labeled portions of a specimen from the same non-covered employee.

(5) Consortiums shall be responsible

for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium.

(6) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individual responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the findings to DHHS.

(7) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mix-up etc.), the employer shall promptly notify the DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and, if there is reason to believe the error could have been systematic, the DOT agency may also require review and reanalysis of previously run specimens.

(8) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality control data from the batch of specimens which included the false positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual

responsible for day-to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

§40.33 Reporting and review of results.

(a) *Medical Review Officer shall review confirmed positive results.* (1) An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to the employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.

(2) The duties of the MRO with respect to negative results are purely administrative.

(b) *Medical Review Officer- qualifications and responsibilities.* (1) The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.

(2) The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing

or quality control operations of the laboratory.

(3) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results or urine samples that are not obtained or processed in accordance with this part.

(c) *Positive test result.* (1) Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test result with him or her.

(2) The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph (c)(5) of this section, the MRO shall talk directly with the employee before verifying a test as positive.

(3) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated management official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practical, the requirement that the employee contact the MRO is held in confidence.

(4) If after making all reasonable ef-

forts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave.

(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

(i) The employee expressly declines the opportunity to discuss the test;

(ii) The designated employer representative has successfully made and documented contact with the employee and instructed the employee to contact the MRO (see paragraphs (c)(3) and (4) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated employer representative; or

(iii) Other circumstances provided in DOT agency drug testing regulations.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5)(ii) of this section, the employee may present to the MRO information documenting that serious injury, illness, or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

(7) Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or to take administrative action (or the official's designated agent), or both.

(d) *Verification for opiates; review for prescription medication.* Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence-in addition to the urine test-of unauthorized use of any opium, opiate, or opium

derivative (e.g., morphine/codeine). (This requirement does not apply if the employer's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) *Reanalysis authorized.* Should any question arise as to the accuracy or validity of a positive test result, only the MRO is authorized to order reanalysis of the original sample and such retests are authorized only at laboratories certified by DHHS. The MRO shall authorize a reanalysis of the original sample if requested to do so by the employee within 72 hours of the employee's having received actual notice of the positive test. If the retest is negative, the MRO shall cancel the test.

(f) *Result consistent with legal drug use.* If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the employer as negative.

(g) *Result scientifically insufficient.* Additionally, the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. (The MRO may request that reanalysis as provided in §40.33(e) be performed by the same laboratory or, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the DHHS Guidelines.) The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who has equivalent forensic experience in urine drug testing, to provide specific consultation as required by the employer. The employer shall include in any required annual report to a DOT agency a summary of any negative findings based on scientific insufficiency but shall not include any

personal identifying information in such reports.

(h) *Disclosure of information.* Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.

(1) The MRO may disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable only if

(i) An applicable DOT regulation permits or requires such disclosure;

(ii) In the MRO's reasonable medical judgement, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

(iii) In the MRO's reasonable medical judgement, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her safety-sensitive function could pose a significant safety risk.

(2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

§ 40.35 Protection of employee records.

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

§ 40.37 Individual access to test and laboratory certification results.

Any employee who is subject of a drug test conducted under this part shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

§ 40.39 Use of DHHS-certified laboratories.

Employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988, and subsequent amendments thereto.

Part 219-CONTROL OF ALCOHOL AND DRUG USE

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Appendix A-Schedule of civil Penalties

Appendix B-Designation of Laboratory for Post-Accident Toxicology Testing

Appendix C-Post-Accident Testing Sample Collection

Authority: 45 U.S.C 431,437,and 438, as amended; Pub. L.100-342; and 49 CFR 1.49(m).

Subpart A-General

§219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drug use.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§219.3 Application.

(a) Except as provided in paragraph (b), this part applies to—

(1) Railroads that operate rolling equipment on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by section 202(e) of the Federal Railroad Safety Act of 1970, as amended).

(b)(1) This part does not apply to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation.

(2) Subparts D,E,F and G do not apply to a railroad that employs not more than 15 employees covered by the Hours of Service Act (45 U.S.C. 61-64b) and that does not operate on tracks of another railroad (or otherwise engage in joint operations with another railroad) except as necessary for purposes of interchange.

(c)(1) Subpart G of this part shall not apply to any person for whom compliance with that subpart would violate the domestic laws or policies of another country.

(2) Subpart G is not effective until January 2, 1992, with respect to any employee whose place of reporting of point of departure ("home terminal") for rail transportation services is located outside the territory of the United States.

§219.5 Definitions.

As used in this part—

Alcohol means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

"Class I", "Class II", and "Class III" have the meaning assigned by regulations of the Interstate Commerce Commission (49 CFR Part 1201' General Instructions 1-1), as those regulations may be revised and applied by order of the Commission (including modifications in class thresholds based revenue deflator adjustments).

Controlled substance has the meaning assigned by (21 CFR parts 1301-1316).

Covered employee means a person who has been assigned to perform service subject to the Hours of Service Act (45 U.S.C 61-64b) during a duty tour, whether or not the person has performed or is currently performing such service. (An employee is not "covered" within the meaning of this part exclusively by reason of being an employee for purposes of section 2(a)(3) of the Hours of Service Act, as amended (45 U.S.C. 62(a)(3)).)

Covered service means service for a railroad that is subject to the Hours of Service Act (45 U.S.C. 61-64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

Co-worker means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor

or yard foreman, but not including any other railroad supervisor, special agent or officer.

Drug means any substance (other than alcohol) that has known mind or function altering effects on a human subject, specifically including any psychoactive substance and including but not limited to, controlled substances.

EAP Counselor means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An "EAP counselor" may be a qualified full-time salaried employee of the railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or drug abuse evaluation or counseling. As used in these rules, an EAP counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee.

Field manual refers to the document described in §219.19 of this subpart.

FRA means the Federal Railroad Administration, U.S. Department of Transportation.

FRA Representative means the Associate Administrator for Safety, FRA, the Associate administrator delegate (including a qualified State inspector acting under part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

Impact accident means a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, \$5,700 in 1989 and 1990) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grad), a switching collision, or impact

with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes impact with other rail equipment;

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; and

(3) Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

"Independent" means not under the ownership or control of the railroad and not operated or staffed by salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform tests of railroad employees does not, by itself, remove the facility from this definition.

Medical facility means a hospital, clinic, physicians office, or laboratory where toxicological samples can be collected according to recognized professional standards.

Medical practitioner means a physician or dentist licensed or otherwise authorized to practice by the state.

Medical Review Officer or (MRO) refers to a licensed physician designated by the railroad who is responsible for receiving laboratory results generated by the railroad's drug testing program (including testing mandated or authorized by this part), who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate an individual's positive test result (as reported by the laboratory) together with his or her medical history and any other relevant biomedical information.

NTSB means the National Transportation Safety Board.

Passenger train means a train

transporting persons (other than employees, contractors or persons riding equipment to observe or monitor railroad operations) in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes.

Possess means to have on one's person or in one's personal effects or under one's control. However, the concept of possession as used in this part does not include control by virtue of presence in the employee's personal residence or other similar location off of railroad property.

Railroad means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including:

(1) Commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by Consolidated Rail Corporation as of January 1, 1979, and

(2) High speed ground transportation that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Railroad property damage or damage to railroad property refers to damage to railroad property, including railroad on-track equipment, signals, track, track structures (including bridges and tunnels), or roadbed, including labor costs and all other costs for repair or replacement in kind. Estimated cost for replacement of railroad property shall be calculated as described in the FRA Guide for Preparing Accident/Incident Reports. (See 49 CFR 225.21.) However, replacement of passenger equipment shall be calculated based on the cost of acquiring a new unit for comparable service.

Reportable injury means an injury reportable under part 225 of this title.

Reporting threshold means the

amount specified in 225.19(c) of this title, as adjusted from time to time in accordance with appendix A to part 225 of this title (i.e., \$5,700 in 1989 and 1990).

Supervisory employee means an officer, special agent, or other employee of the railroad who is not a co-worker and is responsible for supervising or monitoring the conduct or performance of one or more employees.

Train, except as context requires, means locomotive, or more than one locomotive coupled, with or without cars. (A locomotive is a self-propelled unit of equipment which can be used in train service.)

Train accident means a passenger, freight, or work train accident described in §225.19(c) of this title (a "rail equipment accident" involving damage in excess of the current reporting threshold, \$5,700 in 1989 and 1990), including an accident involving a switching movement.

Train incident means an event involving the movement of railroad on-track equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold. §219.7 Waivers.

(a) A person subject to a requirement of this part may petition the Federal Railroad Administration for a waiver of compliance with such requirement.

(b) Each petition for waiver under this section must be filed in a manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any necessary conditions.

§219.9 Responsibility for compliance.

(a) Any person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$250 and not more than

\$10,000 per violation. except that: Penalties may be assessed against individuals only for willful violations has created an imminent hazard of death or injury, or has caused death or injury, a penalty not to exceed \$20,000 per violation may be assessed; and the standard of liability for a railroad will vary depending upon the requirement involved. See, e.g., §219.105, which shall be construed to qualify the responsibility of a railroad for the unauthorized conduct of an employee that violates §219.101 or §219.102 (while imposing a duty of due diligence to prevent such conduct). Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b)(1) In the case of joint operation, primary responsibility for compliance with this part with respect to determination of events qualifying for breath or body fluid testing under subparts C and D or this part shall rest with the host railroad consistent with this part. However, nothing in this paragraph shall restrict the ability of the railroads to provide for an appropriate assignment of responsibility for compliance with this part as among those railroads through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with applicable portions of this part against the host railroad, the employing railroad, or both.

(2) Where an employee of one railroad is required to participate in breath or body fluid testing under subpart C or D and is subsequently subject to adverse action alleged to have risen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad shall be made available to the employee on a reasonable basis.

§219.11 General conditions for chemical tests.

(a) Any employee who performs covered service for a railroad shall be deemed to have consented to testing as required in subparts B, C, D, and G of

this part; and consent is implied by performance of such service.

(b) (1) Each such employee shall participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

(2) In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under this part, necessary medical treatment shall be accorded priority over provision of the breath or body fluid sample. No employee who is unable to urinate normally (based on judgement of a medical professional that catheterization would be required) as a result of a personal injury or resulting medical treatment shall be required to provide a urine sample.

(3) Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) shall be considered a refusal to participate in testing, without regard to any subsequent provision of samples.

(4) Tampering with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal to provide a sample.

(c) A covered employee who is required to be tested under subpart C or D and who is taken to a medical facility for observation or treatment after an accident or incident shall be deemed to have consented to the release to FRA of the following:

(1) The remaining portion of any body fluid sample taken by the treating facility within 12 hours of the accident or incident that is not required for medical purposes, together with any normal medical facility record(s) pertaining to the taking of such sample; and

(3) The identity, dosage, and time of administration of any drugs administered by the treating facility or prior to the time the samples were taken in compliance with this part.

(d) An employee required to participate in body fluid testing under subpart C (post-accident toxicological

testing) or testing subject to subpart H shall, if requested by the representative of the railroad or the medical facility (including under subpart H of this part, a non-medical contract collector), evidence consent to taking of samples, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or indemnify any person for the negligence of others. Any consent provided consistent with this section shall be construed to extend only to those actions specified herein.

(e) Nothing in this part shall be construed to authorize the use of physical coercion or any other deprivation of liberty in order to compel breath or body fluid testing.

(f) Ant railroad employee who performs service for a railroad shall be deemed to have consented to removal of body fluid and/or tissue samples necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C as a result of such event. This consent is specifically required of employees not covered in service, as well as employees covered in service.

(g) Nothing in this subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing, however, no such testing may be performed on urine or blood samples provided under this part. For purposes of this paragraph, all urine from a void constitutes a single sample.

§219.13 Preemptive effect

(a) Under section 205 of the Federal

Railroad Safety Act of 1970 (45 U.S.C. 434), issuance of these regulations preempts any State law, rule, regulation, order or standard covering the same subject matter, except a provision directed at a local hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

(b) FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury or damage to property, whether such provisions apply specifically to railroad employees or generally to the public at large.

§219.15 Alcohol concentrations in blood and breath.

(a) In this part, blood alcohol concentration (BAC) is expressed as a "percentage" weight to volume. For example, a BAC of ".04 percent" means that there is .04 gram (four hundredths of one gram) of alcohol in 100 milliliters of whole blood. This is the same quantity as "40 milligrams percent" (40 milligrams in 100 milliliters).

(b) For purposes of determining blood alcohol concentration through an analysis of the breath, the amount of alcohol in one part of blood shall be presumed to equal the amount of alcohol in 2100 parts of an expired breath sample (by volume).

§219.17 Construction.

Nothing in this part—

(a) Restricts the power of FRA to conduct investigations under section 208 of the Federal Railroad Safety Act of 1970, as amended; or

(b) Creates a private right of action on the part of any person for enforcement of the provisions of this part or for damages resulting from non compliance with this part.

§219.19 Field Manual.

(a) Recommended practice standards for breath testing under subpart D of this part, and related materials designed to assist the railroads in establishing programs for control of alcohol and drug use are contained in the FRA Alcohol

and Drug Field Manual, which is revised from time to time by the Office of Safety, FRA.

(b) The field Manual may be inspected at the Office of the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington DC 20590. The field Manual may be purchased at the National Technical Information Service, Order Department, 5285 Port Royal Road, Springfield, Virginia 22161.

§219.21 Information collection.

(a) The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C 3501 *et seq.*) and have been assigned OMB control number 2130-0526.

(b) The information collection requirements are found in the following sections:

Section 219.7. Section 219.23. Section 219.104. Section 219.201. Section 219.203. Section 219.205. Section 219.207. Section 219.209. Section 219.211. Section 219.213. Section 219.303. Section 219.307. Section 219.309. Section 219.401. Section 219.403. Section 219.405. Section 219.407. Section 219.501. Section 219.503. Section 219.601. Section 219.605. Section 219.701. Section 219.703. Section 219.705. Section 219.707. Section 219.709. Section 219.711. Section 219.713.

§219.23 Notice of employees.

(a) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the test is being required under Federal Railroad Administration regulations. Clear annotation of the drug testing custody form ("reason for test") with the letters "FRA" prior to providing a copy to the employee satisfies the requirement of this paragraph. Rather than providing writ-

ten notice for each individual test, a company that requires breath and/or body fluid tests only under the authority of this part for a clearly delineated portion of its employees may satisfy this requirement by publishing this fact in a manner that provides effective notice to each employee.

(b) Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in subpart D, random selection, follow-up, etc). Annotation of the urine custody and control form with the specified basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph.

(c) Use of approved forms for mandatory post-accident toxicological testing under subpart C of this part provides the notifications required under this section with respect to such tests. Use of those forms for any other test is prohibited.

Subpart B-Prohibitions

§219.101 Alcohol and drug use prohibited.

(a) *Prohibitions.* Except as provided in §219.103—

(1) No employee may use or possess alcohol or any other controlled substance while assigned by a railroad to perform covered service;

(2) No employee may report for covered service, or go or remain on duty in covered service while

(i) Under the influence of or impaired by alcohol;

(ii) Having .04 percent or more alcohol in the blood; or

(iii) Under the influence of or impaired by any controlled substance.

(b) *Controlled substance.* "Controlled substance" is defined by §219.5 of this part. Controlled substances are grouped as follows: Marijuana, narcotics (such as heroin and codeine), stimulants (such as cocaine and amphetamines), depres-

sants (such as barbituates and minor tranquilizers), and hallucinogens (such as the drugs known as PCP and LSD). Controlled substances include illicit drugs (Schedule I), drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

(c) *Railroad rules.* Nothing in this section restricts a railroad from imposing an absolute prohibition on the presence of alcohol or any drug in the body fluids of persons in its employ, whether in furtherance of the purpose of this part or for other purposes.

(d) *Construction.* This section shall not be construed to prohibit the presence of an unopened container of an alcoholic beverage in a private motor vehicle that is not subject to use in the business of the railroad; nor shall it be construed to restrict a railroad from prohibiting such presence under its own rules.

§219.102 Prohibition on abuse of controlled substances.

On and after October 2, 1989, no employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by §219.103 of this subpart.

§219.103 Prescribed and over-the-counter drugs.

(a) This subpart does not prohibit the use of a controlled substance (on Schedule II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if—

(1) The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of available medical history, that the use of the substance by the employee at the prescribed and authorized dosage level

is consistent with safe performance of the employee's duties;

(2) The substance is used at the dosage prescribed or authorized; and

(3) In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

(b) This subpart does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use.

§219.104 Responsive action.

(a) *Removal from covered service.* If there is reason to believe that an employee has violated §219.101 or §219.102 as evidenced by a positive test result reported by the railroad's Medical Review Officer for a test conducted under this subpart, subpart C, subpart D, or subpart G of this part (or on the basis of a positive breath alcohol test for which the employee has not exercised the blood test option), the railroad shall immediately remove the employee from covered service.

(b) *Notice.* Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice for the reason for this section.

(c) *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and shall be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to compliance with §219.101

and 219.102 of this part.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(4) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to the removal or other adverse taken as a consequence of a positive test result in a test authorized or required by this part.

(5) Nothing in this part shall restrict the discretion of the railroad to treat an employee's denial of prohibited alcohol or drug use as a waiver of any privilege the employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

(d) *Return to covered service.* An employee who has been determined to have violated §219.101 or §219.102 of this part as a result of a positive test result described in paragraph (a) shall not be returned to covered service unless the employee has

(1) Been evaluated by an EAP counselor to determine if the employee is affected by a psychological or physical dependence on alcohol or one or more controlled substances or by another identifiable and treatable mental

disorder involving abuse of alcohol or drugs as a primary manifestation;

(2) Successfully completed any program of counseling or treatment determined to be necessary by the EAP counselor prior to return to covered service; and

(3) Presented a urine sample for testing under subpart H of this part that tested negative for controlled substances assayed (in the case of an employee who had tested positive for a controlled substance) or has tested negative for alcohol under paragraph (e) of this section (in the case of an employee who had tested positive for alcohol).

An employee returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the EAP counselor and, in the case of an employee who had tested positive for a controlled substance, shall be subject to a reasonable program of follow-up drug testing without prior notice for a period of not more than 60 months following return to service. Such tests shall be performed consistent with the requirements of subpart H of this part.

(e) *Return-to-service tests for alcohol* tests required by paragraph (d) of this section shall consist of

(1) Analysis of a breath specimen for alcohol under safeguards consistent with those specified for reasonable cause breath testing under subpart C of this part; or

(2) Analysis of a blood specimen for alcohol in the same manner as prescribed in §219.303(c) of this part. §219.105 Railroad's duty to prevent violations.

(a) A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of §219.101 or §219.102. As used in this section, the knowledge imputed to the railroad shall be limited to that of a railroad management employee (such as a supervisor deemed an "officer" whether or not such person is a corporate officer) or a supervisory employee in the offending

employee's chain of command.

(b) A railroad must exercise due diligence to assure compliance with §219.101 and §219.102 by each covered employee.

Subpart C-Post-accident toxicological testing

§219.201 Events for which testing is required.

(a) *List of events.* Except as provided in paragraph (b) of this section, post-accident toxicological tests shall be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (4) of this section:

(1) *Major train accident.* Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, \$5,700 in 1989 and 1990) that involves one or more of the following:

(i) A fatality;

(ii) Release of hazardous material lading from railroad equipment accompanied by

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of \$500,000 or more.

(2) *Impact accident.* An impact accident (i.e., a rail equipment accident defined as an "impact accident" in 219.5 of this part that involves damage in excess of the current reporting threshold, \$5,700 in 1989 and 1990) resulting in

(i) A reportable injury; or

(ii) Damage to railroad property of \$50,000 or more.

(3) *Fatal train incident.* Any train incident that involves a fatality to any on-duty railroad employee.

(4) *Passenger train accident.* Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current

reporting threshold, \$5,700 in 1989 and 1990) involving a passenger train.

(b) *Exceptions.* No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident the cause and severity of which are wholly attributed to a natural cause (e.g., flood, tornado or other natural disaster), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) *Good faith determinations.* (1)(i) The railroad representative responding to the scene of the accident/incident shall determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of this section. It is the duty of the railroad representative to make a reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative shall consider the need to obtain samples as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making required determinations.

(ii) The railroad representative making the determinations required by this section shall not be a person directly involved in the accident/incident. This section does not prohibit consultation between the responding railroad representative and higher level railroad officials; however, the responding railroad representative shall make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad shall provide a report describing any

decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report shall be affirmed by the decision maker and shall be provided to FRA within 72 hours of request. The report shall include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not on the scene shall be based on descriptions of specific physical damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the damage estimates provided by the passenger railroad (whether present on the scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad shall not require an employee to provide a blood or urine specimen under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgement. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgement, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in these regulations).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgement but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made

reasonable inquiry and exercised good faith judgement in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of sample analysis, reporting, and other purposes.

(5) In the event samples are collected following an event determined by FRA not to be a qualifying event within the meaning of this paragraph, FRA directs its designated laboratory to destroy any sample material submitted and to refrain from disclosing to any person the results of any analysis conducted.

§219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1) Following each accident and incident described in §219.201, the railroad (or railroads) shall take all practical steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine samples for toxicological testing by FRA. Such employees shall cooperate in the provision of samples as described in this subpart and Appendix C.

(2) Such employees shall specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees shall also be required to provide samples.

(3) An employee shall be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under §219.201(a)(2) of this subpart (an "impact accident"), or §219.201(a)(3) (a "fatal train incident"), or §219.201(a)(4) (a passenger train accident with injury") if the 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. The railroad representative shall consider any such informa-

tion immediately available at the time the qualifying event determination is made under §219.201 of this subpart.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely sample collection.* (1) The railroad shall make every reasonable effort to assure that samples are provided as soon as possible after the accident or incident.

(2) This paragraph shall not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad shall utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad shall consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew shall be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart shall be retained in duty status for the period necessary to make the determinations required by §219.201 and this section and (as appropriate) to complete the sample collection procedure. An employee may not be recalled for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad, except that an employee shall be immediately recalled for testing if—

(i) The railroad's preliminary investigation (contemporaneous with the determination required by §219.201 of

this subpart) indicates a clear probability that the employee played a major role in the cause or severity of the accident; and

(ii) The accident/incident actually occurred during the employee's duty tour. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee to timely provide the required specimens.

(c) *Place of sample collection.* (1) Employees shall be transported to an independent medical facility where the samples shall be obtained. The railroad shall pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation shall be made on the basis of the willingness of the facility to conduct sample collection and the ability of the facility to complete sample collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood shall be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad shall request the treating medical facility to obtain samples.

(d) *Obtaining cooperation of facility.*

(1) In seeking the cooperation of a medical facility in obtaining a sample under this subpart, the railroad shall, as necessary make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain a blood sample after having been acquainted with the requirements of this subpart, the railroad shall immediately notify FRA by toll free telephone (880-424-0201), stating the employee's name, the medical facility,

its location, the name of appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required sample.

(e) *Discretion of physician.* Nothing in this subpart shall be construed to limit the discretion of a physician to determine whether drawing a blood sample is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

§219.205 Sample collection and handling

(a) *General.* Samples shall be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this section and the technical specifications set forth in Appendix C to this part.

(b) *Information requirements.* In order to process samples, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative shall complete the information required by FRA Form 6180.73 (revised) for shipping with the samples. Each employee subject to testing shall cooperate in completion of the required information on FRA form 6180.74 (revised) for inclusion in the shipping kit and processing of the samples. The railroad representative shall request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.73 (revised) shall be forwarded in the shipping kit with each group of samples.

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological samples under this subpart. Whenever possible, samples shall be placed in the shipping kit prepared

for shipment according to the instructions provided in the kit and Appendix C. Specifications for kits are contained in the field manual.

(2) Kits may be ordered directly from the laboratory designated in Appendix B of this part.

(3) FRA maintains a limited number of kits at its field offices. A class III railroad may utilize kits in FRA possession, rather than maintaining such kits on its property.

(d) *Shipment.* Samples shall be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from the time of shipment) to the laboratory designated in Appendix B to this part. Where express courier pickup is available, the railroad shall request the medical facility to transfer the sealed toxicology kit directly to express courier for transportation. If courier pickup is not available at the medical facility where the samples are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad shall promptly transport the sealed shipping kit holding the samples to the most expeditious point of the shipment via air express, air freight or equivalent means. The railroad shall maintain and document secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in appendix C.

§219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in §219.201, body fluid and/or tissue samples shall be obtained from the remains of the employee for toxicological testing. To ensure that samples are timely collected, the railroad shall immediately notify the appropriate authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad shall also seek the assistance of the custodian of

the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary samples, the railroad shall immediately notify FRA by toll free telephone (800-424-0201) providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue samples from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the Administrator under section 208 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 437) (but not the agent of the Secretary for purposes of the Federal Tort Claims Act). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under these rules.

(d) Appendix C to this part specifies body fluid and/or tissue samples required for toxicological analysis in the case of a fatality.

§219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which samples were obtained shall provide prompt telephonic notification summarizing such events. Notification shall be provided to the Office of Safety, FRA, at (202) 366-0501 (8:30 a.m. to 5:00 p.m. e.s.t. or e.d.t.) during the Federal work week.

(2) Each telephonic report shall contain:

(i) Name of railroad;

(ii) Name, title and telephone number of person making the report;

(iii) Time, date and location of the accident/incident;

(iv) Brief summary of the circumstances of the accident/incident,

(v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a sample and cause it to be provided to FRA as required by this subpart, the railroad shall make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report shall be appended to the report of the accident/incident required to be submitted under part 225 of this subchapter

§219.211 Analysis and follow-up.

(a) The laboratory designated in Appendix B to this part undertakes prompt analysis of samples provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Samples are analyzed for alcohol and controlled substances specified by FRA. Samples may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad shall treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory shall be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with 219.103 of this part) that could ac-

count for the laboratory findings. The Medical Review Officer shall promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report shall be in writing and shall reference the employing railroad, accident/incident date, and location; and the envelope shall be marked "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report shall state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer shall not disclose to FRA the underlying physical condition for which any medication was authorized or administered. Neither the Federal Railroad Administration nor the National Transportation Safety Board shall be bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with §219.103 (and other information concerning medically authorized drug use or administration provided incident to testing) as administratively confidential and withholds public disclosure, except where it is necessary to consider this information in an accident investigation in relation to determining of probable cause. (However, as further provided in this section, FRA may provide any result of testing under this subpart and associated documents to the National Transportation Safety Board.)

(e) An employee may respond in writing to the results of the test prior to the preparation of any final investiga-

tion report concerning the accident or incident. An employee wishing to respond shall do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, SW, Washington DC 20590 within 45 days receipt of the test results. Any such submission shall refer to the accident date, railroad and location, shall state the position occupied by the employee on the date of the accident/incident, and shall identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request shall be made by the FRA on the basis of controlling law). Results of toxicological analysis and any response from the employee are also promptly made available to the National Transportation Safety Board on request.

(f)(1) The toxicology report may contain a statement of pharmacological significance to assist FRA and other parties in understanding the data reported. No such statement may be construed as a finding of probable cause in the accident or incident.

(2) The toxicology report is a part of the report of the accident/incident and therefore subject to the limitation of section 4 of the Accident reports Act (45 U.S.C.41) (prohibiting use of the report for any purpose of the action for damages).(g)(1) It is in the public interest to ensure that any railroad disciplinary actions that may result from accidents and incidents for which testing is required under this subpart are disposed of on the basis of the most complete and reliable information available so that responsive action will be appropriate. Therefore, during the interval between an accident or incident and the date that the railroad receives notification of the results of the toxicological analysis, any provision of collective bargaining agreements establishing maximum periods for charging employees with rule violations, or for holding an investigation, shall not be deemed to run as to any offense involving the accident or incident (i.e., such periods shall be tolled).

(2) This provision shall not be construed to excuse the railroad from any obligation to timely charge an employee (or provide other actual notice) where the railroad obtains sufficient information relating to alcohol or drug use, impairment or possession or other rule violations prior to the receipt of toxicological analysis.

(3) This provision does not authorize holding any employee out of service pending receipt of toxicological analysis; nor does it restrict a railroad from taking such action in an appropriate case.

(h) Except as provided in 219.201 (with respect to non-qualifying events), each sample provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a sample testing positive for alcohol or a controlled substance) and may be made available to the National Transportation Safety Board (on request).

(i) An employee (donor) may, within 60 days of the date of the toxicology report, request that the employee's blood and/or urine sample be retested by the designated laboratory or by another laboratory certified by the Department of Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest shall be in writing, specify the railroad, accident date and location, be signed by the employee/donor, be addressed to the Associate Administrator for Safety, FRA, Washington, DC 20590, and be designated "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The expense of any employee-requested retest at a laboratory other than the

laboratory designated under this subpart shall be borne by the employee.

§219.213 Unlawful refusals; consequences.

(a) *Disqualification.* (1) An employee who refuses to cooperate in providing a blood or urine sample following an accident or incident specified in this subpart shall be withdrawn from covered service and shall be deemed disqualified for covered service for a period of nine (9) months.

(2) The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such disqualification.

(3) The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(4) Upon the expiration described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in §219.104 of this part, provided that return-to-service tests shall be conducted for both alcohol and designated controlled substances; and the employee shall be subject to follow-up drug tests as provided by that section.

(b) *Procedures.* (1) Prior to or upon withdrawing the employee from covered service under this section, the railroad shall provide notice of the reason for this action and an opportunity for hearing before a presiding official. This hearing may be consolidated with any other disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer shall make separate findings as to the disqualification required by this section.

(2) The hearing shall be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the employee may demand that the hearing be convened within 10

calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the charged employee becomes available for hearing.

(3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under section 3 of the Railway Labor Act, shall be deemed to satisfy the procedural requirements of this paragraph.

(c) *Subject of hearing.* The hearing required by this section shall determine whether the employee refused to submit for testing, having been requested to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

Subpart D-Authorization to test for cause
§219.301 Testing for a reasonable cause.

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or urine testing, or both, to determine compliance with §219.101 and §219.102 of this part or a railroad rule implementing the requirements of §219.101 and §219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon authority conferred by

this section. Section 219.23 prescribes the notice to an employee that is required to provide a breath or body fluid sample under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *Reasonable cause for breath tests.* The following circumstances constitute reasonable cause for the administration of breath alcohol tests under this section:

(1) *Reasonable suspicion.* A supervisory employee of the railroad has a reasonable suspicion that the employee is currently under the influence of or impaired by alcohol, or alcohol in combination with a controlled substance, based upon specific, personal observations that the supervisory employee can articulate concerning the appearance, behavior, speech or body odors of the employee;

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under part 225 of this title, and a supervisory employee of the railroad has reasonable suspicion that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident ; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violation or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication with respect to movement of a train that involves

(A) Occupancy of block or other segment of track to which entry was not authorized;

(B) Failure to clear track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as re-

quired by a rule consistent with §218.37 of this title (including failure to protect a train that is fouling an adjacent track, where required by the railroad rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *Reasonable cause for urine test.*

(1) *Accident/incident and rule violation.* Except as provided in paragraph (c)(2) of this section, each of the conditions set forth in (c)(2) of this section, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting reasonable cause for breath alcohol testing also constitutes reasonable cause with respect to urine drug testing.

(2) *Reasonable suspicion.* Reasonable cause also exists where a supervisory employee is currently under the influence of or impaired by a controlled substance or a controlled substance in combination with alcohol, based upon specific, personal observations that the employee can articulate concerning the appearance, behavior speech, or body odors of the employee, subject to the following limitations:

(i) An employee may be required to submit to urine testing for a reasonable suspicion only if the determination is made by at least two supervisory

employees; and

(ii) If the determination to require urine testing is based upon a suspicion that the employee is under the influence of or impaired by a controlled substance, at least one supervisory employee responsible for the decision to require urine testing must have received at least three (3) hours of training in the signs of drug intoxication consistent with a program of instruction on file with FRA under part 217 of this title. Such program shall, at a minimum, provide information concerning the acute behavior and apparent physiological effects of the major drug groups on the controlled substances list (narcotics, depressants, stimulants, hallucinogens, and marijuana).

(d) (Reserved)

(e) *Limitation for Subpart C events.*

The compulsory urine testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by §219.201 of this part. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of samples under subpart C.

(f) *Prompt sample collection; time limitation.* (1) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(2) No employee shall be required to participate in breath alcohol or urine drug testing under this subsection after the expiration of an 8-hour period from—

(i) The time of the observations or other events described in this section; or

(ii) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(3) An employee may not be tested

under this subpart if that employee has been released from duty under the normal procedures of the railroad. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave)

(4) As used in this section a "responsible railroad supervisor" means any responsible line supervisor (e.g., a trainmaster or road foreman to be tested.)

(5) In the case of a urine drug test, the 8-hour requirement is satisfied if the employee has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the urine specimen within that period.

(g) *Construction.* Nothing in this subpart requires a railroad to undertake breath testing as a requisite to any disciplinary action or restricts the discretion of a railroad to proceed based solely on evidence of behavior, personal observations, or other evidence customarily relied upon in such investigations or hearings.

§219.303 Breath test procedures and safeguards.

(a) Except as provided in paragraph (d), the following conditions apply to breath testing authorized by this subpart.

(1) Testing devices shall be selected from among those listed on the Conforming Products List of Evidential Breath Measurement Devices amended and published in the Federal Register from time to time by the National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

(2) Each device shall be properly maintained and shall be calibrated or verified as to correct calibration by use of a breath alcohol simulator (calibrating unit) listed on the NHTSA Conforming Products List of Calibrating Units for Breath Alcohol Testers (as amended and published) with sufficient

frequency to ensure the accuracy of the device (within plus or minus .01 percent), but not less frequently than provided in the manufacturer's instructions.

(3) Tests shall be conducted by a trained and qualified operator. The operator shall have received training on the operational principles of the particular instrument employed and practical experience in the operation of the device and use of a breath alcohol calibrating unit. A copy of the training program shall be filed with FRA in conjunction with the filing required by §217.11 of this title.

(4) Tests shall be conducted in accordance with procedures specified by the manufacturer of the testing device, consistent with sound technical judgment, and shall include appropriate restrictions on ambient air temperature.

(5) If an initial test is positive, the employee shall be tested again after the expiration of not less than 15 minutes, in order to confirm that the test has properly measured the alcohol content of deep lung air.

(b) Because of the inherent limitations of the instrumentation, any indicated breath test result of less than .02 percent shall be deemed a negative test.

(c)(1) In any case where a breath test is intended for use in the railroad disciplinary process and the result is positive, the employee shall be given the prompt opportunity to provide a blood sample at an independent medical facility for analysis by a competent independent laboratory. The railroad shall provide the required transportation to facilitate the blood test.

(2) A blood test under this section shall conform to the following standards:

(i) The specimen shall be collected in a medically acceptable manner by a qualified medical professional or technician using a non-ethanol swab and shall be deposited into a single-use sterile vacuum tube containing at least one percent sodium fluoride (and a anticoagulant).

(ii) While the specimen remains in full view of the employee, the specimen shall be clearly labeled with the employee's name and/or a unique identifying number and shall be sealed with a tamperproof seal.

(iii) The sample shall be handled in accordance with chain of custody procedures from the point of collection through analysis and secure storage at the laboratory.

(iv) The sample shall be screened for alcohol only by a method reliable at a detection limit of not higher than .02 percent. Any presumptive positive shall be confirmed by gas chromatography with a suitable internal standard. The screening run shall include at least 10% quality control samples. The confirmation run shall include ethanol standards (including an ethanol standard certified against or traceable to a primary standard), at least one blank specimen, other appropriate volatiles (e.g., isopropanol), and at least one control purchased commercially or provided through an external quality control program. Results declared positive on confirmation shall be consistent with pre-established criteria for retention time of internal and external standards. Blood alcohol concentration shall be reported only at values of .02 percent or greater within the linear portion of the standard curve. Unconfirmed presumptive positive results and values below .02 percent shall be reported as negative. Any quantitations to the third digit shall be rounded downward to two digits (i.e., .238% to .23%).

(v) The remaining portion of any specimen testing positive shall be retained in storage for at least one year, and the employee shall have the right to request a retest of the specimen at a competent independent laboratory within 60 days of the date of the laboratory report.

(vi) Test results shall be reported to the Medical Review Officer who shall review and act upon the results in the same manner provided for drug urine testing in subpart H of this part, except that fully quantitated results shall be

made available to the employer representative.

(3) If the blood test under this section is reported as negative, the breath test shall be deemed negative for all purposes.

(d)(1) Under the circumstances set forth in §219.301, a railroad may require an employee to participate in a breath alcohol screening test solely for the purpose of determining whether the conduct of a test meeting the criteria of paragraph (a) is indicated. If the screening test is negative within the meaning of paragraph (b), the employee shall not be required to submit to further breath testing under this subpart. If the screening test is positive, no consequence shall attach except that the employee may be removed from covered service for the period necessary to conduct a breath test meeting the criteria of paragraph (a) of this section or a urine test meeting the requirements of §219.305 and §219.307 of this subpart (consistent with §219.301(d) of this subpart)

(2) Except as provided in paragraph (d)(2)(iii) of this section, the conduct of a screening test under paragraph (d)(1) of this section does not excuse full compliance with respect to any breath test procedure which is then undertaken. If a screening test is positive, the following procedures govern:

(i) If that test is positive, a second breath test shall be conducted meeting the criteria of paragraph (a) of this section.

(iii) The second test meeting the criteria of section (a) of this section must be conducted at least 15 minutes after the positive screening test conducted under paragraph (d)(1) of this section. However, since a waiting period of 15 minutes is sufficient to permit the disposition of any alcohol in the mouth, the requirement of paragraph (a)(5) of this section that there be a period of at least 15 minutes between the two tests meeting the criteria of paragraph (a) of this section does not apply.

§219.305 Urine test procedures and safeguards.

The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not inconsistent with this part) part 40 of subtitle A of this title.

§219.307 (Reserved)

§219.309 Employee notice.

A railroad utilizing the reasonable cause testing authority provided by this part shall provide prior effective notice by covered employees of the circumstances under which they will be subject to testing, shall describe the consequences of a determination that the employee has violated §219.101, §219.102, or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. This notice may be combined with the notice required by §219.601 of this part.

Subpart E-Identification of Troubled Employees

§219.401 Requirement for policies.

(a) The purpose of this subpart is to prevent the use of alcohol and drugs in connection with covered service.

(b) Each railroad shall adopt, publish and implement—

(1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and

(2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter "co-worker report policy").

(c) A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §219.403 and §219.405 of this subpart or by complying with §219.407.

(d) If a railroad complies with this part

by adopting, publishing and implementing policies consistent with §219.403 and §219.405, the railroad shall make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart shall be construed to—

(1) Require payment of compensation for any period an employee is out of service under a voluntary referral or co-worker report policy;

(2) Require a railroad to adhere to a voluntary referral or co-worker report policy in a case where the referral or report is made for the purpose, or with the effect, of anticipating the imminent and probable cause detection of a rule violation by a supervising employee; or

(3) Limit the discretion of a railroad to dismiss or otherwise discipline an employee for specific rule violations or criminal offenses, except as specifically provided by this subpart.

§219.403 Voluntary referral policy.

(a) *Scope.* This section prescribes minimum standards for voluntary referral policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a voluntary referral policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §219.101 and §219.102.

(b) *Required provisions.* A voluntary referral policy shall include the following provisions:

(1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad shall specify whether, and under what circumstances, it's

policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees.

(2) Except as may be provided under paragraph (c) of this part, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential.

(3) 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.

(4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the EAP Counselor. Approval to return to service may not be unreasonably withheld.

(c) *Optional provisions.* A voluntary referral policy may include any of the following provisions, at the option of the railroad:

(1) The policy may provide that the rule of confidentiality is waived if

(i) The employee at any time refuses to cooperate in a recommended course of counseling or treatment and/or;

(ii) The employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(2) The policy may require successful completion of a return-to-service medical examination as a further condition on reinstatement in covered service.

(3) The policy may provide that it does not apply to an employee who has been previously assisted by the railroad under a policy or program substantially consistent with this section or who has previously elected to waive investigation under §219.405 of this section (co-worker report policy).

(4) The policy may provide that, in order to invoke its benefits, the employee must report to the contact designated by the railroad either:

(i) During non-duty hours (i.e., at a time when the employee is off duty) or

(ii) When unimpaired or otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

§219.405 Co-worker report policy.

(a) *Scope.* This section prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §219.101 and §219.102.

(b) *Employment relationship.* A co-worker report policy shall provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under these rules or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

(c) *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 this part or the railroad's alcohol and drug rules.

(2) If the railroad representative determines that the employee is in violation, the railroad may 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 EAP Counselor within a reasonable period of time specified by the policy.

(4) The EAP Counselor must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the

employee contacts the counselor with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the counselor.

(d) When treatment is required. If the EAP Counselor determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures shall apply:

(1) The railroad must, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for a 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) The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the EAP Counselor.

(3) The railroad must promptly return the employee to service, on recommendation of the EAP Counselor, 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. Approval to return to service may not be unreasonable withheld.

(4) 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.

(e) *When treatment is not required.* If the EAP Counselor determines that the employee is not affected by an iden-

tifiable and treatable mental or physical disorder—

(1) The railroad shall return the employee to service within 5 days after completion of the evaluation.

(2) During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety.

(1) *Follow-up tests.* A railroad may conduct return-to-service and/or follow-up tests (as described in §219.104 of this part) of an employee who waives investigation and is determined to be ready to return to service under this section.

§219.407 Alternate policies.

(a) In lieu of a policy under §219.403 (voluntary referral) or §219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies has the written concurrence of the recognized representatives of such employees.

(b) The concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad employee representatives that the alternate policy shall apply in lieu of the policy required by §219.403, §219.405, or both.

(c) The railroad shall file the agreement or other document described in paragraph (b) with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad shall file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

(d) This section does not excuse a railroad from adopting, publishing and implementing the policies required by §219.403 and §219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

Subpart F-Pre-employment Drug Screens

§219.501 Pre-employment drug screens.

(a) Each applicant who is given favorable consideration for a position with a railroad that involves the performance of covered service shall be tested for the presence of drugs prior to being employed in covered service. This requirement shall apply to final applicants for employment and to employees seeking further transfer for the first time from non-covered service to duties involving covered service. The test shall be accomplished through analysis of a urine sample. Whenever feasible, the sample shall be obtained in connection with a pre-employment medical examination.

(b) Prior to the collection of the urine sample, the applicant shall be notified that the sample will be tested for the presence of drugs. In the case of an applicant who declines to be tested and withdraws the application for employment, no record shall be maintained of the declination.

(c) The conduct of urine drug testing under this subpart is governed by subpart H of this part and (to the extent not consistent with this part) part 40 of subtitle A of this title. As used in subpart H with respect to a test required under this subpart, the term "employee" includes an applicant.

§219.503 Notification; records.

The railroad shall provide for medical review of laboratory test results and shall notify the applicant of the results of any test in the same manner as required for employees in subpart H. Records shall be maintained confidentially and shall be retained in the same manner as required under subpart H for employee test records, except that such records need not reflect the identity of an applicant whose application for

employment for covered service was denied.

§219.505 Refusals; consequence of positive.

(a) An applicant who has refused to submit to pre-employment testing under this section shall not be employed in covered service based upon the application and examination with respect to which such refusal was made. This section does not create any right on the part of the applicant to have a subsequent application considered; nor does it restrict the railroad to entertain a subsequent application for employment from the same person.

(b) An applicant who is using a controlled substance without medical authorization shall not be employed in covered service. This section shall not be construed to bar employment based on subsequent application if the applicant no longer uses a controlled substance without medical authorization.

Subpart G-Random Drug Testing Program

§219.601 Railroad random testing programs.

(a) *Submission.* Each railroad shall submit for FRA approval a random testing program meeting the requirements of this subpart. A Class I railroad (including the National Railroad Passenger Corporation) or a railroad providing commuter passenger service shall submit such a program not later than October 2, 1989. A Class II railroad shall submit such a program not later than April 2, 1990. A Class III railroad (including switching and terminal or other railroad not otherwise classified) shall submit such a program not later than July 2, 1990. A railroad commencing operations after the pertinent date specified in this paragraph shall submit such a program not later than 30 days prior to such commencement. The program shall be submitted to the Associate Administrator for Safety, FRA, for review and approval by the administrator. If, after approval, a railroad desires to amend the random testing

program implemented under this subpart, the railroad shall file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program shall not be implemented prior to approval.

(b) *Form of programs.* Random testing programs submitted by or on behalf of each railroad under this subpart shall meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents shall conform to such criteria in implementing the program:

(1) Selection of covered employees for testing shall be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specific time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as a result of the exercise of discretion by the railroad. The selection method shall be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection shall be retained for not less than 24 months from the date upon which the particular samples were collected.

(2) The program shall select for testing a sufficient number of employees so that, during the first 12 months

(i) The random testing program is spread reasonably through the 12-month period:

(ii) The last test collection during the year is conducted at an annualized rate of 50 percent; and

(iii) The total number of tests conducted during the 12 months is equal to at least 25 percent of the number of covered employees.

During each subsequent 12-month period the program shall select for testing a sufficient number of employees so that the number of tests conducted will equal at least 50 percent of the

number of covered employees. Annualized percentage rates shall be determined by reference to the total number of covered employees employed by the railroad at the beginning of the particular twelve-month period or by an alternate method specified in the plan approved by the Administrator.

(3) Railroad random testing programs shall ensure to the maximum extent practicable that each employee shall perceive the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection shall not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place of testing.

(5) The program shall include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee shall be subject to testing only while on duty. Only employees who perform covered service for the railroad shall be subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program shall specify the extent to which, and the circumstances under which they shall be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program shall provide that employees shall be subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is selected for random testing the employee will be informed that selection was made on a random basis. The program shall provide that the employee will be permitted to retain a copy of a writing to that effect (e.g., a drug testing custody and control form with this information set forth).

(c) *Approval.* The Administrator will

notify the railroad in writing whether the program is approved as consistent with the criteria set forth in this part. If the Administrator determines that the program does not conform to those criteria, the Administrator will inform the railroad of any matters preventing approval of the program, with specific explanation as to necessary revisions. The railroad shall resubmit its program with the required revisions within 30 days of such notice. Failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this subpart.

(d) *Implementation.* (1) No later than 45 days prior to commencement of random testing, the railroad shall publish to each of its covered employees, individually, a written notice that they will be subject to random drug testing under this part. Such notice shall state the date for commencement of the program, shall state that the selection of employees for testing will be done on a strictly random basis, shall describe the consequences of a determination that the employee has violated §219.102 or any applicable railroad rule, and shall inform the employee of the employee's rights under subpart E of this part. A copy of the notice shall be provided to each new employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph creates a defense to a violation of §219.102 of this part.

(2) Each Class I railroad (including the National Railroad Passenger Corporation) and each railroad providing commuter passenger service shall implement its approved random testing program not later than January 16, 1990. Each Class II railroad shall implement its approved random testing program not later than July 2, 1990. Each Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall implement its approved random testing program not later than November 1, 1990. In the case of a railroad commencing operations after the pertinent date set forth in paragraph (a) of this section for filing of a program,

the railroad shall implement its approved random testing program not later than the expiration of 60 days from approval by the Administrator or by the pertinent date set forth in this paragraph, whichever is later.

§219.603 Participation in testing; refusals.

(a) *Participation.* A railroad shall under the conditions specified in this subpart and subpart H, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with §219.102, and the employee shall provide the required sample and complete the required paperwork and certifications. Compliance by the employee shall be excused only in the case of documented medical or family emergency.

(b) *Refusals.* (1) An employee who, upon being notified of the requirement to provide a sample under this subpart, refuses to provide a sample shall be withdrawn from covered service and shall be deemed disqualified for a period of nine (9) months. The disqualification required by this paragraph shall apply with respect to employment in covered service by any railroad with notice of such refusal. The requirement of disqualification for (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

(2) Upon being withdrawn from service under this section, the employee shall be entitled to the same procedural protections as those set out in §219.213(b) of this part with respect to refusal of post-accident testing. The purpose of the hearing shall be to determine whether the employee refused to provide a sample, having been notified of the requirement to do so, and whether the employee can establish a basis for being excused under the criteria stated by paragraph (a) of this section.

(c) Upon the expiration of the 9-month period described in this section, a railroad may permit the employee to return to covered service only under the same conditions specified in §219.104

of this part, provided that the return-to-service tests shall be conducted for both alcohol and designated controlled substances; and the employee shall be subject to follow-up drug tests as provided by that section.

§219.605 Positive test results; procedures.

(a) *Medical review.* The result of a test required under this subpart shall be deemed positive only after it has been properly confirmed as required in subpart H of this part and reviewed by a Medical Review Officer (MRO) as provided in subpart H to determine if it is evidence of prohibited drug use under §219.102.

(b) Procedures for administrative handling by the railroad in the event a sample provided under this subpart is reported as positive by the MRO are set forth in §219.104 of this part.

Subpart H-Procedures and Safeguards for Urine Drug Testing.

§219.701 Standards for urine drug testing.

(a) Urine drug testing required or authorized by subparts B, D, F, and G of this part shall be conducted in the manner provided by this subpart and (to the extent not consistent with this part) part 40 of subtitle A of this title. Laboratories employed for these purposes must be certified by the Department of Health and Human Services under that Department's Mandatory Guidelines for Federal Workplace Drug testing Programs.

(b) Each railroad's contract with a laboratory conducting testing subject to this subpart shall provide that the FRA and the railroad shall have the right to unannounced inspection during normal working hours through qualified personnel or designated contractors. Such inspection rights shall, at minimum, include reasonable accompanied access to all records pertinent to testing under this part, quality control data incident thereto, samples submitted under this part, and equipment and personnel related to analysis of those samples.

(c) Each such contract shall also re-

quire that the laboratory comply with all applicable provisions of this part and 49 CFR part 40, including requirements for employee access to specified laboratory records and any applicable conditions imposed upon approvals issued under this subpart or 49 CFR part 40.

§219.703 Collection.

(a) Urine samples shall be collected and handled as required in 49 CFR part 40 and this section.

(b) The collection site person (collector) shall meet the requirements of 49 CFR part 40.

(c) A person with management or supervisory responsibility over the employee to be tested, or a co-worker of the employee to be tested, may not serve as a collector. For purposes of this paragraph, "co-worker" means a person with whom the person to be tested is assigned in a crew or other working unit to perform normal transportation duties on the railroad.

(d) If an employee fails to provide a urine specimen within a reasonable time and is to be given a subsequent opportunity to provide a specimen under the conditions described in 49 CFR 40.25, the subsequent collection shall be conducted either—

(1) Immediately upon the expiration of the employee's required off-duty period under the Hours of Service Act (45 U.S.C. 62-64b); or

(2) On an unannounced basis within the next 30 days.

§219.705 Drugs tested.

(a) Urine samples shall be analyzed for the presence of controlled substances designated in paragraph (b) of this section and may be analyzed by procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of PH or tests for specific gravity, creatinine concentration, or presence of adulterants).

(b) Each sample submitted shall be analyzed for marijuana, cocaine, phenylidene (PCP), opiates (morphine and codeine), and amphetamines (amphetamine and methamphetamine).

(c) As part of the reasonable cause

testing program established by subpart D of this part, a railroad may test for additional controlled substances in addition to those specified in this section only with approval granted by FRA and for substances for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

§219.707 Review by MRO.

(a) Test results reported positive by the laboratory as provided in 49 CFR part 40 shall not be deemed positive or disseminated to any person (other than to the employee tested in a medical interview, if conducted) until they are reviewed by a Medical Review Officer (MRO) of the railroad as required by 49 CFR part 40 and this section. For purposes of this part, medical use of controlled substances by a covered employee is a legitimate medical explanation for presence of a controlled substance (i.e., a basis for declaring the result "negative") only to the extent such use was consistent with §219.103 of this part.

(b) The MRO shall complete review of test results within not more than 10 regular working days of receipt of the laboratory report or they shall be declared negative, unless any portion of the delay shall result from the unwillingness or inability of the employee to appear for an interview or provide documentation of prescription or other authorized use of medications. If the employee is responsible for such delay, the 10-day period may be extended by a period equal to the period attributed to the employee's delay. This paragraph shall not be read to bar reporting of a positive result if the employee, without a reasonable basis, fails to respond to an opportunity to provide supplementary information.

(c) After the MRO has reviewed the pertinent information and the laboratory assessment is verified as indicating presence of controlled substances without medical authorization consistent with §219.103 of this part (and the review required by paragraph (b) of this section is com-

pleted), the MRO shall report the results to a designated railroad officer for action in keeping with the requirements of this part (or take appropriate action under the railroad's medical standards). The employee shall be provided a copy of the approved test results, or such results shall be dispatched by U.S. Mail or other suitable means providing prompt delivery, not later than 24 hours following any adverse action.

(d) Test results reported as negative by the laboratory shall also be communicated through the MRO. The MRO shall promptly transmit the negative finding to the employee. If the MRO provides the railroad with negative test results in a nonaggregated manner, all negative test results, including results involving medical use or administration of controlled substances or insufficiency of laboratory data, shall be transmitted to the designated railroad officer over the MRO's signature in a manner that does not disclose medical use of drugs which is permitted under §219.103 of this part.

§219.709 Retest.

(a) Samples that yield positive results on confirmation shall be retained by the laboratory in properly secured, long-term frozen storage for at least 365 days, as required by part 40 of this title. Within this 365-day period, the railroad, or the FRA may request that the laboratory retain the sample for an additional period. If within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.

(b) In the case of a test declared positive by the MRO, the original sample shall be retested if the employee makes a written request to the Medical Review Officer for retesting within 60 days. The employee may specify retesting by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services as described in 49 CFR part 40. The railroad may require the employee

to advance the cost of shipment (if any) and reanalysis of the sample, but the employee shall be reimbursed for such expense if the retest is negative.

(c) If the employee specifies retesting by a second laboratory, the original laboratory shall follow approved chain-of-custody procedures in transferring a portion of the sample.

(d) Any retest of a sample is subject to 49 CFR 40.29 (i) (quantitation for retest not subject to cutoff requirement due to deterioration or loss of analytes).

§219.711 Confidentiality of test results.

(A laboratory reporting results of tests conducted under this subpart shall report those results only to the Medical Review Officer of the railroad. The results shall not be disclosed by the laboratory to any other person, except that the laboratory may affirm the test result to the employee to whom the sample was identified. This paragraph shall not be read to bar normal access to analytical data for laboratory accreditation or certification processes.

(b) The MRO may not disclose medically approved drug use or administration information obtained under this part (whether ascertained through testing or reported by the employee or the employee's medical practitioner at the employee's request) to non-medical railroad personnel or any third party; however, nothing in this part bars use of such information by the railroad's medical officer in the context of an established medical qualifications program. This paragraph shall not be construed to permit medical disqualification of an employee based upon a laboratory report indicating presence of a controlled substance prior to completion of the MRO review, nor to limit the discretion of the railroad under §40.33 (c) of this chapter.

(c) No record tests conducted subject to this subpart or information drawn therefrom shall be used or disseminated by the railroad or within the railroad for any purpose other than providing for compliance with this part (and railroad rules consistent herewith), unless with

the voluntary written consent of the employee. Such written consent shall specify the person to whom the information may be provided. Each railroad shall adopt and implement procedures to guard this information against unauthorized disclosure both within the external to the railroad company.

§219.713 Reports; FRA access to records.

(a) Each railroad shall retain for at least 2 years from the date of sample collection all records of each test conducted under this subpart that is reported as positive by the Medical Review Officer, including drug testing custody and control forms, laboratory reports, and certification statements. Records of negative tests shall be retained for at least 1 year.

(b) Each railroad shall maintain for at least 5 years summary records of employee alcohol and drug test results conducted under this part (including subpart C) and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee.

(c) Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

Appendix A—Schedule of Civil Penalties¹

Section	Violation	Willful Violation
Subpart A—General		
219.11 General Conditions for Chemical Tests (b)(1), (3), or (4) Employee unlawfully refuses to participate in testing	(—)	\$ 5,000
(b)(2) Failure to give necessary medical treatment priority or improperly requiring urine sample....	\$3,000	\$ 8,000
219.23 Notice to employees:		
(a) Failure to give notice of FRA test.....	\$1,000	\$ 4,000
(b) Failure to give notice of basis for FRA test.....	\$ 500	\$ 2,000
(c) Use of Subpart C forms for other types of tests....	\$ 500	\$ 1,000
Subpart B—Prohibitions		
219.101 Alcohol and drug use: Employee violates prohibition	(—)	\$10,000

219.104 Responsive action:					
(a) Failure to remove from service immediately	\$3,000	\$ 8,000			
(b) Failure to provide notice	\$1,000	\$ 4,000			
(c) Failure to provide prompt post-suspension hearing	\$2,000	\$ 7,000			
(d) Unlawful return to service	\$2,000	\$ 7,000			
(e) Improper alcohol test	\$1,000	\$ 4,000			
219.105 Railroad's duty to prevent violations:					
(a) Permitting employee to go or remain on duty in violation of prohibitions	\$7,000	\$10,000			
(b) Failure to exercise due diligence to assure compliance with prohibition	\$2,500	\$ 5,000			
Subpart—C: Post-Accident Testing:					
219.201 Events for which testing is required:					
(i) Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgment with respect to circumstances of accident/incident by failing to take all practicable steps to require employee participation; or by otherwise failing to comply with Subpart C such that test cannot be conducted (each employee not tested is a violation)	\$5,000	\$ 7,500			
(ii) Required employee to provide samples under authority of Subpart C where one or more testing criteria not present, due either to mistake of law or failure to make reasonable inquiry or exercise good faith judgment	\$5,000	\$10,000			
(iii) Failure to promptly provide FRA with report describing decision on whether event qualified for testing	\$1,000	\$ 3,000			
			(b) Failure to provide properly prepared information sheets with samples	\$1,000	\$ 2,000
			(d) Failure to promptly forward samples	\$2,500	\$ 5,000
			219.207 Fatality:		
			(a) Failure to contact custodian and request assistance	\$2,500	\$ 5,000
			(b) Failure to notify FRA where intervention needed	\$2,500	\$ 5,000
			219.209 Reports of tests and refusals:		
			(a) Failure to provide telephonic report	\$1,000	\$ 2,000
			(b) Failure to provide written report (samples not provided)	\$1,000	\$ 2,000
			219.213 Unlawful refusals, consequences:		
			(a) Failure to take action against employee who refuses to provide samples or permitting employee to return without meeting conditions	\$2,500	\$ 5,000
			(b), (c) Failure to provide timely notice and proper handling	\$2,500	\$ 5,000
Subpart D—Authorization to test for cause					
			219.301 Testing for reasonable cause:		
			(a) Employee required, under authority of this subpart, to submit to testing without reasonable cause	\$5,000	\$ 7,500
			(f)(2) Employee required to participate in testing after expiration of 8 hours	\$2,000	\$ 4,000
			(f)(4) Employee tested after release from duty	\$1,500	\$ 3,000
			219.303 Breath testing procedures and safeguards (inc. optional blood test)	\$2,000	\$ 4,000
			219.305 Urine test: failure to comply with Subpart H procedures and safeguards	\$2,000	\$ 4,000
			219.309 Employee notice	\$1,000	\$ 4,000
Subpart E—Identification of troubled employees					
			219.4G1 Requirements for policies:		
			(i) Failure to adopt or publish or wholesale failure to implement policy required by Subpart E	\$5,000	\$ 7,500
			(ii) Failure to implement as to individual employee	\$2,500	\$ 5,000
			219.407 Alternate policies: Failure to file agreement or other document or provide timely notice or revocation	\$1,000	\$ 2,000
Subpart F—Pre-Employment Drug Screen					
			219.501 Pre-employment drug screens:		
			(a) Failure to perform preemployment drug screen prior to employing applicant in covered service	\$2,500	\$ 5,000
			(b)(i) Failure to provide prior notice of drug screen	\$2,000	\$ 5,000
			(ii) Maintaining record or declination of test	\$ 500	\$ 1,000
			(c) Failure to comply with Subpart H—Procedures and safeguards	2,000	\$ 4,000
			219.503 Notification records: Failure to notify applicant of test results or to properly maintain or retain records	\$2,000	\$ 4,000

Appendix A—Schedule of Civil Penalties' Continued

Section	Violation	Willful Violation		
219.203 Responsibilities of Railroads and Employees:				
(a) Failure to exclude employee from impact of fatal train incident testing where appropriate	\$2,500	\$ 5,000		
(b)(1) Delay in obtaining samples account failure to make every reasonable effort	\$2,500	\$ 5,000		
(b)(4) Improper release of or failure to recall employee subject to testing, or improper recall to duty	\$4,000	\$ 7,500		
(c) Place of sample collection; by whom	\$2,500	\$ 5,000		
(d) Failure to notify FRA of an employee injury requiring FRA intervention	\$2,500	\$ 5,000		
219.205 Sample collection and handling:				
(a) Failure to observe requirements with respect to sample collection, marking and handling	\$2,500	\$ 5,000		

219.505 Refusals: consequences of positive:		
(a) Employing one who has refused test in covered service	2,500	\$ 5,000
(b) Employing applicant who has tested positive in covered service	\$3,000	\$ 8,000
Subpart G—Random Drug Testing		
219.601 Programs:		
(a) Failure to submit to FRA on a timely basis a random testing program that satisfies requirements of this subpart and subpart H	\$5,000	\$10,000
(b)(1) Required employee to provide sample in reliance on this subpart based on other than random selection	\$5,000	\$10,000
(b)(2) through (b)(7) Fail to conform to approved criteria in implementing program	\$2,000	\$ 4,000
(d)(1) Failure to provide timely notice to each employee	\$1,000	\$ 4,000
(d)(2) Failure to implement program on timely basis	\$5,000	\$ 7,500
219.603 Participation in testing refusals:		
(a) Failure to require a selected employee to cooperate in random testing	\$2,500	\$ 5,000
(b)(1) Failure to take action against employee who refuses to provide sample	\$2,500	\$ 5,000
(b)(2) Failure to provide timely notice and proper hearing	\$2,500	\$ 5,000
(c) Permitting employee to return without meeting conditions	\$2,500	\$ 5,000
219.605 Positive test results:		
(a) Test deemed positive without following Subpart H procedures	\$2,000	\$ 4,000
Subpart H—Procedures and Safeguards For Urine Durg Testing		
219.701 Standards for urine drug testing: use of uncertified lab or absence of required provisions in lab contract	\$5,000	\$ 7,500
219.703 Collection	\$2,000	\$ 4,000
219.705 Drugs tested	\$2,000	\$ 4,000
219.707 Review by MRO	\$2,000	\$ 4,000
219.709 Retest	\$2,000	\$ 4,000
219.711 Confidentially	3,000	\$ 6,000
219.713 Reports; FRA access	500	\$ 2,000

*A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

Appendix B-Designation of Laboratory for Post-Accident Toxicological Testing

The following laboratory is currently designated to conduct post-accident toxicological analysis under subpart C of this part:

CompuChem Laboratories-Western Division,
 Attention: Clinical Department,
 600W North Market Boulevard,
 Sacramento, California 95834.

Telephone No. (916) 023-0840.

Outside normal business hours contact (916) 782-3921.

Appendix C-Post-Accident Testing Sample Collection

1.0 General.

This appendix prescribes procedures for collection of samples for mandatory post-accident testing pursuant to subpart C of this part. Collection of blood and urine specimens is required to be conducted at an independent medical facility.

(Surviving employees)

2.0 Surviving employees.

This unit 2 provides detailed procedures for collecting post-accident toxicological samples from surviving employees involved in train accidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

2.1 Collection procedures; General.

All forms and supplies necessary for the collection and transfer of blood and urine specimens for five surviving employees can be found in the FRA post-accident toxicology kit, which is made available to the collection site by the railroad representative. Each kit contains supplies for blood/urine collections from five individuals, including instructions and necessary forms. The railroad is responsible for ensuring that kit materials are fresh, complete and meet FRA requirements.

2.1.1 Responsibility of the Railroad Representative.

In the event of an accident/incident for which testing is required under subpart C, the railroad representative shall, upon arrival at the independent medical facility, promptly make available to the medical facility representative a toxicology kit or kits and shall identify to the medical facility representative the instructions contained in the kit for conduct of collection. (Each kit contains supplies to collect samples from five employees.) The railroad representative shall request the medical facility representative to review the instructions

provided (Exhibit C-1) and, through qualified medical personnel, to provide for collection of the specimens according to the procedure set out.

The railroad representative shall undertake the following additional responsibilities—

- Complete Form 6180.73 (revised) describing the testing event and identifying the employees whose samples are to be deposited in the toxicology kit.

- As necessary to verify the identity of individual employees, affirm the identity of each employee to the medical personnel.

- To the extent consistent with the policy of the medical facility and the privacy of the employee, follow the progress of the collection procedure.

Warnings: The railroad representative shall not observe urination or otherwise disturb the privacy of urine donation. The railroad representative shall not handle sample containers.

2.1.2 Employee Responsibility.

An employee who is identified for post-accident toxicological testing shall cooperate in testing as required by the railroad and personnel of the independent medical facility. Such cooperation will normally consist of the following, to be performed as requested:

- Provide a blood sample, which a qualified medical professional or technician will draw using a single use sterile syringe. The employee should be seated for this procedure.

- Provide, in privacy of an enclosure, a urine sample into a single-use cup or the specimen bottle. The urine sample shall be presented to the medical facility personnel.

- Monitor the collection to ensure that the blood and urine samples are properly identified and sealed before they leave your sight. Verify the sample and seal by placing your initials on the seal.

- Complete the employee portions of the Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised) when requested.

- If required by the medical facility, complete a separate consent form for

taking of the samples and their release to FRA for analysis under the FRA rule.

Note: The employee may not be required to complete any form that contains any waiver of rights the employee may have in the employment relationship or that releases or holds harmless the medical facility with respect to negligence in the collection.

2.2 The Collection.

Exhibit C-1 contains instructions for collection of samples for post-accident toxicology from surviving employees. These instructions shall be observed for each collection. Instructions shall be contained in each collection kit and shall be provided to medical facility personnel involved in the collection and/or packaging of specimens for shipment.

(Post Mortem Collection)

3.0 Fatality.

This unit 3 provides procedures for collecting post-accident body fluid/tissue samples from the remains of employees killed in train accidents and train incidents, as required by 49 CFR part 219, subpart C. Subpart C specifies qualifying events and employees required to be tested.

3.1 Collection.

In the event of a fatality, for which testing is required under subpart C, the railroad shall promptly make available to the custodian of the remains a copy of Exhibit C-2 to this Appendix and a toxicology kit. The railroad representative shall request the custodian to review the instructions contained in Exhibit C-2 and, through qualified medical personnel, to provide the specimens as indicated.

(Surviving Employees and Fatalities)

4.0 Shipment.

The railroad is responsible for arranging overnight transportation of the sealed toxicology kit containing the specimens. When possible without incurring delay, the kit should be delivered directly from the medical personnel providing the specimens to an overnight express service courier. If it

becomes necessary for the railroad to transport the kit from point of collection to point of shipment, then—

1. Individual specimen boxes and the Large shipping kit shall be sealed by the medical personnel providing the specimens before the kit is turned over to the railroad representative;

2. The railroad shall limit the number of persons handling the kit to the minimum necessary to provide for transportation;

3. If the kit cannot immediately be delivered to the express carrier for transportation, it shall be maintained in secure temporary storage; and

4. The railroad representative handling the kit shall document chain of custody of the kit and shall make available such documentation to FRA on request. Exhibit C-1-Instructions for Collection of Blood and Urine Specimens: Mandatory Post-Accident Toxicology Testing

A. Purpose

These instructions are for the use of personnel of medical facilities conducting collection of blood and urine samples from surviving railroad employees following railroad accidents and casualties that qualify for mandatory alcohol/drug testing. The Federal Railroad Administration appreciates the participation of medical facilities in this important public safety program.

B. Prepare for Collection

Railroad employees have consented to provisions of samples for analysis by the Federal Railroad Administration as a condition of employment (49 CFR 219.11).

A private, controlled area should be designated for collection of specimens and completion of paperwork.

Only one specimen should be collected at a time, with each employee's blood draw or urine collection having the complete attention of the collector until the specific sample has been labeled, sealed and documented.

Please remember two critical rules for the collections:

All labeling and sealing must be done in the sight of the donor, with the sample never having left the donor's presence until the sample has been labeled, sealed and initialed by the donor.

Continuous custody and control of blood and urine samples must be maintained and documented on the forms provided. In order to do this it is important for the paperwork and the specimens to stay together.

To the extent practical, blood collection shall take priority over urine collection. To limit steps in the chain of custody, it is best if a single medical professional or technician handles both collections from a given employee.

You will use a single Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6108.74 (revised), consisting of six steps to complete the collection for each employee. We will refer to it as the Control Form.

C. Identify the Donor

The donor must provide photo identification to each collector, or lacking this, be identified by the railroad representative.

The donor should remove all unnecessary outer garments such as coats or jackets, but may retain valuables including wallet. Donors should not be asked to disrobe, unless necessary for a separate physical examination required by the attending physician.

D. Draw Blood

Assemble the materials for collecting blood from each employee: two 10 ml grey-stoppered blood tubes, the Control Form and an indelible marker.

Ask the donor to complete STEP 1 on the Control Form.

With the donor seated, draw (2) 10 ml tubes of blood using standard medical procedures (sterile, single-use syringe into evacuated grey-top tubes provided). CAUTION: Do not use alcohol or an alcohol based swab to cleanse the venipuncture site.

Once both tubes are filled and the site of venipuncture is protected, immediately—

- Seal and label each tube by placing a numbered blood specimen label from the label set on the Control Form over the top of the tube and securing it down the sides.

- Ask the donor to initial each label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of the Control Form.

- As collector, sign and date each blood tube label at the place provided.

- Skip to STEP 5 and initiate chain of custody for the blood tubes by filling out the first line of the block to show receipt of the blood samples from the donor.

- Complete STEP 2 on the form.

- Return the blood tubes into the sponge liner of the individual specimen kit. Keep the paperwork and specimens together. If another medical facility representative will be collecting the urine sample from this employee, transfer both the form and the individual box with blood tubes to that person, showing the transfer of the blood tubes on the second line of STEP 5 (the chain of custody block).

E. Collect Urine

The collector should assemble at his/her station the materials for collecting urine from each employee: one plastic collection cup (with protective seal intact), one 100 ml polyethylene specimen bottle (with protective seal intact), the Control Form, and an indelible marker. Blood samples already collected must remain in the collector's custody and control during this procedure.

After requiring the employee to wash his/her hands, the collector should escort the employee directly to the urine collection area. To the extent practical, all sources of water in the collection area should be secured and a bluing agent (provided in the toxicology kit) placed in any toilet bowl, tank, or other standing water. The employee will be provided a private place in which to void. Urination will not be directly observed. If the enclosure contains a source of running water that cannot be secured or any

material (soap, ect.) that could be used to adulterate the specimen, the collector should monitor the provision of the sample from outside the enclosure. Any unusual behavior or appearance should be noted in the remarks section of the Control Form or on the back of that form. The collector should then proceed as follows: Unwrap the collection cup in the employee's presence and hand it to the employee (or allow the employee to unwrap it). Ask the employee to void at least 60 ml into the collection cup (at least to the line marked). Leave the private enclosure. **IF THERE IS A PROBLEM WITH URINATION OR SAMPLE QUANTITY, SEE THE "TROUBLE BOX" AT THE BACK OF THESE INSTRUCTIONS.** Once the void is complete, the employee should exit the private enclosure and deliver the specimen to the collector. Both the collector and the employee must proceed immediately to the labeling/sealing area, with the specimen never leaving the sight of the employee before being sealed and labeled. Upon receipt of the specimen, proceed as follows:

- In the full view of the employee, remove the wrapper from the urine specimen bottle.

- As you pour the specimen into the specimen bottle, please inspect for any unusual signs indicating possible adulteration or dilution. Carefully secure the top. Note any unusual signs under "remarks" at STEP 3 of the Control Form.

- Within 4 minutes after the void, measure the temperature of the urine by reading the strip on the bottle. Mark the result at STEP 3 of the Control Form. **IF THERE IS A PROBLEM WITH THE URINE SAMPLE, SEE THE TROUBLE BOX AT THE BACK OF THESE INSTRUCTIONS**

- *Before* removing the numbered urine label from the Control Form, ask the employee to enter his/her social security or employee I.D. number on the numbered urine label.

- Remove the numbered urine specimen label from the Control Form,

place it over the top of the bottle, and secure it to the sides.

- Ask the donor to initial the label. Please check to see that the initials match the employee name and note any discrepancy in the "Remarks" block of STEP 3.

- As collector, sign and date the urine label.

- Skip to STEP 5 and initiate Chain-of-custody by showing receipt of the urine sample from the donor. (If you collected the blood, a check under "urine" will suffice. If someone else collected the blood, first make sure transfer of blood to you is documented. Then using the next available line, show "Provide specimen" under purpose, "Donor" under released by, check under "urine" and place your name, signature and date in the space provided.)

- Complete the remainder of STEP 3 on the Control Form.

- Have the employee complete STEP 4 on the Control Form.

- Place the filled urine bottle in the foam liner of the individual employee box. Keep the paperwork and specimens together. If another medical facility representative will be collecting the blood sample from this employee, transfer both the form and the box to that person, showing the transfer of the urine specimen on the next available line of STEP 5 (the chain of custody block).

F. Seal the Individual Employee Box

The blood and urine specimens have now been collected for this employee. The blood/urine specimens will now be sealed into the individual employee box, while all paperwork will be retained for further completion. After rechecking to see that each specimen is properly labeled and initialed, close the plastic bag to contain any leakage in transportation, and apply the box security seal to the small individual box. As collector, sign and date the box seal.

Before collecting samples from the next employee, complete the next line on the chain-of-custody block showing release of the blood and urine by

yourself for the purpose of "Shipment" and receipt by the courier service or railroad representative that will provide transportation of the toxicology kit, together with the date.

G. Complete Treatment Information

Complete STEP 6 of the Control Form.

H. Prepare the Kit for Shipment

Sealed individual employee boxes should be retained in secure storage if there will be a delay in preparation of the shipping kit. The shipping kit shall be prepared and sealed by a medical facility representative as follows:

- Inspect STEP 5 of each Control Form to ensure chain-of-custody is continuous and complete for each fluid (showing specimens released for shipment). Retain the medical facility copy of each Control Form and the Accident Information form for your records.

- Place sealed individual employee boxes in shipping kit. Place all forms in zip-lock bag and seal securely. Place bag with forms and unused supplies in kit, but keep the marker, green tape, and label instruction.

- Close kit around the closure with green tape provided.

- Affix label instruction provided to outside of kit.

I. Ship the Kit

The railroad must arrange to have the kit shipped overnight air express or (if express service is unavailable) by freight, prepaid, to FRA's designated laboratory. Whenever possible without incurring delay, the medical facility collector should deliver the kit directly into the hands of the express courier or air freight representative.

Where courier pickup is not immediately available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit for expeditious shipment by air express, air freight or equivalent means. If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody on the copy of the form 6180.73 (revised) ("Accident Information") retained by the collection site.

"TROUBLE BOX"

1. **PROBLEM:** The employee claims an inability to urinate, either because he/she has recently voided or because of anxiety concerning the collection.

ACTION: The employee may be offered moderate quantities of liquid to assist urination. If the employee continues to claim inability after 4 hours, the urine collection should be discontinued, but the blood samples should be forwarded and all other procedures followed. Please note in area provided for remarks what explanation was provided by the employee.

2. **PROBLEM:** The employee cannot provide approximately 60 ml. of specimen.

ACTION: The employee would remain at the medical facility until as much as possible of the required amount can be given (up to 4 hours). The employee should be offered moderate quantities of liquid to aid urination. The first bottle should be sealed and securely stored with the blood tubes and Control Form pending shipment and a second bottle should be used for the subsequent void using a second Control Form with the words "SECOND VOID-FIRST SAMPLE INSUFFICIENT" in the remarks block and labels from that form).

3. **PROBLEM:** The urine temperature is outside the normal range of 32.5-37.7 C/90.5-99.8 F and a suitable medical explanation cannot be provided by an oral temperature or other means; or

4. **PROBLEM:** The collector observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.) and a collection site supervisor or the railroad representative agrees that the circumstances indicate an attempt to tamper with the sample.

ACTION: Document the problem on the Control Form. If the collection site supervisor or railroad representative concur that the temperature of the specimen, or other clear and unequivocal evidence, indicates a possible

attempt to substitute or alter the specimen, another void should be taken under direct observation by a collector of the same gender. If a collector of the same sex is not available, do NOT proceed with this step. If a collector of the same gender is available, proceed as follows: A new Control Form must be initialed for the second void. The original suspect specimen should be marked "Void 1" with the indelible marker and the follow-up void should be marked "Void 2", with both voids being sent to the laboratory and the incident clearly detailed on the Control Form. Exhibit C-2-Instructions for Collection of Post Mortem Toxicology Samples: Employees Killed in a Railroad Accident/Incident

TO THE MEDICAL EXAMINER, CORONER, OR PATHOLOGIST:

In compliance with Federal safety regulations (49 CFR part 219), a railroad representative has requested that you obtain samples for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such samples, as a matter of Federal law, by performing service on the railroad (49 CFR 219.11 (f)).

Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety of those who work on the railroads.

Materials:

The railroad will provide you a shipping kit that contains necessary supplies, including a pen that will write directly on all surfaces. If the kit is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

Samples Requested, in order of preference:

(1) *Blood-20, milliliters or more.* Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in grey stopper tubes individually by site and shake to mix specimen and preservative.

Note-If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for quantitative purposes; but do not label as blood. Please indicate source and identity of sample on label of tube.

(2) *Urine*-as much as 100 milliliters, if available. Deposit into plastic bottle provided.

(3) *Vitreous fluid*-all available, deposited into smallest available tube (e.g., 3 ml) with 1 percent sodium fluoride, or grey-stopper tube (provided). Shake to mix specimen and preservative.

(4) *If available at autopsy, organs*-50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic toxicology specimens.

(5) *If vitreous or urine is not available*, please provide

a. *Spinal fluid*-all available, in 8 ml. container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

b. *Gastric content*-up to 10 milliliters, as available, into plastic bottle.

Sample collection:

Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with the sampling. Blood samples should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of sample or dissipation of volatiles (ethyl alcohol). Note-If only cavity fluid is available, please open cavity to collect sample. Note condition of cavity.

Please use smallest tubes available to accommodate available quantity of fluid sample (with 1 percent sodium fluoride).

Sample identification, sealing:

As each sample is collected, seal each

blood tube and the urine container using the identifier label from the set provided with the Post-Accident Testing Blood/Urine Custody and Control Form (FRA Form 6180.74 (revised)). Make sure the unique identification number on the label matches the pre-printed number on the Control Form. Please label other specimens with name and sample set identification number. Secure with tamperproof seal.

Annotate each label with sample description and source (as appropriate) (e.g., blood, femoral vein).

Please provide copy of any written documentation regarding condition of body and/or toxicology sampling procedure that is available at the time samples are shipped.

Handling:

If samples cannot be shipped immediately as provided below, samples other than blood may be immediately frozen. Blood samples should be refrigerated, but not frozen.

All samples and documentation should be secured from unauthorized access pending delivery for transportation.

Information:

If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY" listing the specimens provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the kit for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

The railroad representative will provide FRA form 6180.73 (revised).

Both forms should be placed in the shipping kit when completed; but you may retain the designated medical facility copy of each form for your records.

Packing the shipping kit:

Place urine bottle and blood tubes in sponge liner of individual box, close plastic bag locking feature and apply individual box seal provided. Use additional box for each tissue sample, being careful to identify specimen by tissue and name of deceased. Apply box security seals to individual boxes and sign/initial across seal.

Place all forms in zip-lock bag and seal securely. Place bag in kit.

Seal kit with green tape provided and sign and date across seal with indelible marker provided. Affix label instruction provided to outside of kit.

If shipping by Federal Express, place strap inside the kit. Secure the top of the shipping kit with green vinyl tape provided.

Otherwise, secure strap around lid after taping.

Shipping the kit:

The railroad should arrange to have the kit shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible without incurring delay, deliver the kit directly into the hands of the express courier or air freight representative.

Where courier pickup is not immediately available at the medical facility where the samples are taken, the railroad is required to transport the shipping kit to the nearest point of shipment via air express, air freight or equivalent means.

If railroad is given custody of kit to arrange shipment, please record name of railroad official taking custody.

Other toxicology:

FRA requests that the person taking the samples advise if additional toxicological analysis will be undertaken with respect to the fatality. FRA toxicology reports are available to the coroner or medical examiner on request.

New Time Limit on Cashing U.S. Checks

New Federal banking laws limit the time allowed for cashing U.S. Government checks, including Railroad Retirement Board benefit checks issued by the U.S. Treasury. The new law also limits the time allowed for filing claims for lost or missing checks, and for replacing such checks.

Railroad retirement and unemployment and sickness benefit checks issued by the U.S. Treasury on or after October 1, 1989, must be cashed within 12 months after the date of the check. Benefit checks issued by the Treasury prior to October 1, 1989, must be cashed no later than September 30, 1990. Under Prior law, there was no time limit.

However, only the negotiability of a check is limited by the new law; beneficiaries will not lose entitlement to a payment if a check is not cashed within 12 months. But, beneficiaries will have to contact their local Railroad Retirement Board office to request authorization of a new check if a check is not cashed within the one-year time limit.

The new law also limits the time for filing claims for lost or missing checks issued on or after October 1, 1989, to one year from the date of issue; under prior law, the limit was six years. Beneficiaries will have until September 30, 1990, to make claims against Government checks issued prior to October 1, 1989.

To alert recipients that they have one year in which to cash their checks, U.S. Government checks issued on or after October 1, 1989, will carry the legend VOID AFTER ONE YEAR. This legend is notice to payees and endorsers of the new general limitation on cashing U.S. Government checks.

The new law does not affect Direct Deposit/Electronic Funds transfer payment or processing; it applies only to situations where a paper check is used to make a payment.

THE A.T.D.A. NATIONAL WOMEN'S ORGANIZATION

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The Trouble with Television

The couple on TV are having an intense discussion at a table for two in an expensive restaurant. She says, "We've got to stop seeing each other," and he says, "But without you my life is meaningless, I can't go on," and just then the waiter appears to take their order.

The girl shrugs, I don't care, anything is fine," and the man tells the waiter, "We'll both have veal." The waiter says "Very good sir." He disappears and the couple resumes the discussion where it left off, but I'm not listening. I can't get my mind off the waiter's inexplicable behavior. Why didn't he ask them what kind of salad dressing--blue cheese, french, thousand island or vinegar--they prefer? Not only that, he didn't even find out whether they want baked potatoes, french fries or rice pilaf.

It's little things like this that bother me when I watch television. I can accept vampires, witches, cute young men from Outer Space, and heroes who can keep their balance on the wings of airplanes. What strains my credulity is a hero who can always get a taxi when he needs one; and I have trouble relating to hero-over boyfriends who jilt them for Somebody Else.

People in real life always seem to be in a rush. They're either ten minutes late for an appointment or they're in the middle of writing a report. People on TV are different. They're never too busy to listen to each other's problems. Let some-one show up in the middle of the morning to say, "Hank, there's something I want to discuss with you." It doesn't matter that Hank is the chief-of-staff in a city hospital, or chairman of the board of Allied Freightways, he has all the time in the world to talk about Charlie's suicide attempt or Margo's drinking problem or Dr. Lowell Curtis' indictment for manslaughter.

Another scene I find untrue to life is

the one where the wife announces that she can't go on living like this, she's splitting, getting on the next plane for San Antonio. She grabs a suitcase out of the closet, throws a few things into it, and off she goes, presumably forever. This is patently ridiculous. I've never known a woman who could leave home for an overnight visit to her mother without writing a three-page list of instructions on feeding the cat, watering the plants, picking her skirt up at the dry cleaners, cancelling her hair appointment and reminding the plumber to fix the bathroom faucet.

Amnesia is as commonplace in TV dramas as the common cold is in real life. Somebody is always coming down with it. But even people who know who they are can't seem to remember who anybody else is. Luckily there's always somebody around who can jog their memories with a remark like "Isn't that man sitting at the bar your ex-husband, Jonny Barbarelli, the pinball king whom you divorced after a bitter custody fight in 1971?" Or take the scene where the heroine walks into her apartment to be greeted by her roommate who says, "You had a phone call from your fiance, Dan O'Leary, the hard hitting editor of the Evening Sentinel."

Now there may be people in this world who can't recall the names of their betrothed, but this is the girl who on the same program a few weeks ago answered the phone to hear a voice say, "Go to the car leasing agency located at 17892 East 139th Street and ask to look at the two-doors. See if you can find a 1976 blue Plymouth with license number LJV739. Check it for a dent in the right fender. Call me back. I'll be at 753-8754. Got it?"

"Got it, J.B.," she says, and hangs up. Now honestly.

Still, in one way television has it all over real life. You can always switch TV to another channel.

RETIREMENTS OF MEMBERS

A.J. Swartz BN

Retired on Oct. 30, 1989: Alden J. Swartz of the Seattle, WA, office, Burlington Northern Railroad, after 37 years of railroading including 20 years as a train dispatcher.



Bro. Swartz was born in Coalridge, MT, on Nov. 2, 1927. He began his railroad career as an agent/telegrapher on the Butte Division on July 8, 1952. He was promoted to train dispatcher on Dec. 3, 1969.

He has been a continuous member of the A.T.D.A. since March 23, 1970. His career has included experience with the last of the oil burning steam engines, morse code, train order dispatching, CTC relay, telegraph and teletype, physical & carrier communications and microwave. BN merger compass reporting. The 1985 move of Havre-Glendive and Missoula to Billings and track warrants. The Rail Link, 1989 move to Seattle Regional dispatching office and computerized CTC communications.

Retirement plans include lots of fishing and other outdoor activities in northwestern Montana.

His address is Box 4304 Whitefish, MT 59937.



J.E. Kirtley NS(WAB)

Retired on Aug. 23, 1989: Jack E. Kirtley of the Moberly, MO, office Norfolk Southern Railroad, after 37 years of

railroading including 25 years as a train dispatcher.

Bro. Kirtley was born at Madison, MO on Sept. 14, 1989. He began his railroad career as an agent/telegrapher on May 26, 1952. He was promoted to train dispatcher on Nov. 30, 1963. He retired as Assistant Chief Dispatcher.

He has been a continuous member of the A.T.D.A. since July 29, 1965.

Retirement plans include some traveling and gardening.

His address is 408 N. Main St., Huntsville, MO 65259.



W.C. Beans Amtrak

Retired on Disability Oct. 21, 1985: Willis C. Beans of the Penn Station, NY., NY. office, Amtrak, after 29 years of railroading including 18 years as a train dispatcher.

Bro Bean was born in Pennington, NJ, on Aug. 22, 1928, and began his railroad career as a block operator, working from May 21, 1956 until May 21, 1962. He worked as extra Movement Director until June 21, 1962, when he was promoted to train dispatcher, and worked as dispatcher until Dec. 1, 1980. He then worked as extra Movement Director until Dec. 5, 1968, and then as Rules Examiner from Dec. 1, 1980 to Oct. 21, 1985.

He has been a continuous member of the A.T.D.A. since July 28, 1965.

Retirement plans are to golf, travel and do charitable work for the Heart & Lung Center, Brown Mills, NJ.

His address is 53 Wickom Ave., Hamilton Square, NJ 08690.



R. L. Milton Conrail

Retired on June 13, 1989: Robert L. Milton of the Indianapolis In. office, Conrail, after 45 years of railroading including 25 years as a train dispatcher.

Bro. Milton was born in Marshall, Il. on June 13, 1927. He began his railroading career as a telegraph operator on June 12, 1944 and was promoted to train dispatcher on Nov. 22, 1963.

He first joined the A.T.D.A. on July 25, 1956, and rejoined on Feb. 4, 1971.

His address is 229 N. Peterman Rd., Greenwood, IN 46142.



T.E. O'Brien BN

Retired on Nov. 30, 1989: Thomas E. O'Brien of the Galesburg, IL, office, Burlington Northern Railway, after 44 years of railroading including 41 years as a train dispatcher.



Bro. O'Brien was born in Waukon, IA, on Nov. 7, 1927. He began his railroad career as a freight handler clerk for the Milwaukee Railroad at Harlowtown, MT. In July 1946 he started as a telegraph

operator after attending Telegraph School in Chillicothe Business College in Chillicothe, MO. He worked for 1½ years at the depot at Quincy, IL, working with steam engines and Morse

telegraph, 7 nights a week on the third shift. He was asked to learn three jobs in the Galesburg, IL, office as an operator, putting him in the position to post for a job in the dispatchers office. To be dispatcher was his goal when he started telegraph school. He was promoted to train dispatcher in October 1948, and worked under 7 Superintendents and 7 Chief Dispatchers.

He has been a member of the A.T.D.A. since Sept. 2, 1952, and was awarded the 25-year membership Honor Emblem on Sept. 1, 1977.

Retirement plans are to stay out of the cold weather and spoil his six grandchildren. He plans to stay in Galesburg and use his spare time working on the Galesburg Railroad Museum, to help preserve the art of telegraphy. His address is 1442 N. Academy, Galesburg, IL 61401.



F. M. Gosselin GTW

Retired on Sept. 30, 1989: Fernand M. Gosselin of the Pontiac, MI, office, Grand Trunk Western Railroad, after 41 years of railroading including 36 years as a train dispatcher.



Bro. Gosselin was born on May 31, 1929, in Coniston, Ontario, Canada. He began his railroad career on the Canadian National Railway in northern Ontario in 1948 as a telegraph operator.

He was promoted train dispatcher in 1953 and worked in Belleville, Ontario. He left the Canadian National Railroad in 1956 and was hired as a train dispatcher on the Detroit & Toledo ShoreLine in River

Rouge, MI. He transferred to the Toledo, OH, office in 1968, and the DTSL merged with the Grand Trunk Western Railroad in 1981. The Toledo office consolidated with the Pontiac, MI office in 1984.

He first joined the A.T.D.A. on April 1, 1957, and rejoined on Sept. 9, 1964, serving as General Chairman from 1965 to 1984. He attended the General Assemblies from 1967 thru 1983. He was awarded the 25-year membership Honor Emblem.

Retirement plans are to travel, play golf, fish, enjoy his grandchildren and to work around his new home. His address is 4212 Templar St., Toledo, OH 43613.



W.P. Grizard SP

Retired on June 30, 1989: William P. Grizard of the Roseville, CA, office, Southern Pacific Railroad, after 40 years of railroading including 24 years as a train dispatcher.



Bro. Grizard was born in Irvine, KY, on July 12, 1926. He began his railroad career as a telegrapher-clerk on June 12, 1949, and was promoted to train dispatcher in December 1964.

He has been a continuous member of the A.T.D.A. since June 15, 1966.

Retirement plans are to golf, fish and travel. His address is 18320 Dog Bar Rd., Grass Valley, CA 95949.

V.L. Meyer Conrail

Retired on Jan. 12, 1990: Vernon L. Meyer of the Indianapolis, IN, office, Conrail, after 45 years of railroading including 26 years as a train dispatcher.



Bro. Meyer was born in Paris, IL, on Jan. 12, 1928. He began his railroad career on June 30, 1944, as a block operator. He also worked as a relay operator "MX" at Mattoon, IL, and as a car distributor from 1953 thru 1958. From 1958 thru 1964, he worked as Wire Chief. He was promoted to train dispatcher on Aug. 23, 1963, and worked as extra dispatcher and galloping agent from 1964 through 1967, and acting Chief Dispatcher from 1968 through 1976, finishing his career as a train dispatcher.

He has been a continuous member of the A.T.D.A. since July 20, 1976.

Retirement plans are to continue as Director-Financial Clerk/Secretary for the Hart Lake Conservancy board, squeeze in some golf and fishing, and look for a warmer climate. He also has a couple of cave passages to explore before the "bones and muscles give out". Most importantly he plans to "continue serving the Lord Jesus Christ." His address is 184 Lake Hart, Mooresville, IN 46158.



H.G. Teske Soo Line

Retired on May 31, 1989: Harvey G. Teske of the St. Paul, MN office, Soo Line Railroad, after 46 years of railroading including 36 years as a train dispatcher.

Bro. Teske was born in Java, SD, on May 1, 1928. He began his railroad

career as a section laborer on April 23, 1943, on the Milwaukee Railroad, Java, SD. He then worked on the extra gang and as extra gang timekeeper in the same area. On Aug. 8, 1948, he became an agent-operator on the Trans-Mo division. He was promoted to train dispatcher on June 15, 1953, and worked at Mobridge, Butte, Miles City and Aberdeen. Because of office closings, he went back and forth from dispatcher to operator and relay offices. He became Chief Dispatcher in 1973. In 1979, he moved to the Minneapolis office when Aberdeen-Austin consolidated. Then he moved to St. Paul when the Minneapolis office closed. When the St. Paul office moved to Milwaukee, he retired under the Soo Line severance package.

He first joined the A.T.D.A. on Nov. 11, 1951, and rejoined on Sept. 25, 1985.

Retirement plans are to travel in his recently purchased motor home and "when not traveling just bum around taking it easy doing things when I want to and subject to wife's approval."

His address is: 4800 Flag Ave. N., New Hope, MN 55428.



D.J. Samois Conrail

Retired on Oct. 11, 1989: Deryl J. Samois of the Harrisburg, PA, office, Conrail, after 39 years of railroading including 30 years as a train dispatcher.

Bro. Samois was born in Pottsville, PA, on Oct. 9, 1927. He began his railroad career as a clerk, on June 12, 1950. He was promoted to train dispatcher on June 14, 1959, and worked for the Penn Central and Conrail.

He has been a continuous member of the A.T.D.A. since April 24, 1962, and was awarded the 25 year membership Honor Emblem on Feb. 27, 1987.

Retirement plans include traveling around the United States, walking daily, gardening and "watching the Baltimore Orioles win the pennant in 1990." His address is 701 Midland Rd., Mechanicsburg, PA 17055.

"BUY AMERICAN" LAWS won a major victory in Washington, D.C. recently. A federal court ruled against the Defense Department in a suit brought by the National Council for Industrial Defense (NCID). NCID has presented evidence to the court that these MOU's provide for the illegal circumvention of a complex series of "Buy American" laws intended by Congress to increase the economic and military strength of the United States. The suit charges Pentagon procurement officials with entering illegal military trade agreements known as "MOU's" (Memoranda of Understanding) with at least 50 foreign defense officials for the purchase by the U.S. of foreign-made defense equipment and foreign-made parts.

The practical effect of the judge's decision is to cast doubt on the validity of all the existing Pentagon agreements, and to place the international arms-trade negotiations of the Pentagon's procurement officials under judicial scrutiny.

NCID is a non-partisan coalition of American companies, professional associations, labor unions and individuals committed to increasing the competitiveness of American industries.

STRIKEBOUND EASTERN AIRLINES MUST PAY at least 3,600 members of Air Line Pilots Association \$60 million to \$100 million in back pay, a federal arbitrator has ruled. The ruling was based on a 1986 agreement made the night before Texas Air Corporation bought Eastern. The pilots agreed to 20 percent pay cuts but said they were promised they would get any raises given to other workers' groups. That year the International Association of Machinists won an eight percent increase.

Eastern, which is operating under Chapter 11 of the bankruptcy code, will now have to factor the pilot's claim into its reorganization plan. ALPA has been on strike in sympathy with Eastern's machinists.

RRB NOTES**Changes in Railroad Retirement and Unemployment Insurance Taxes**

*By R. L. Rafferty,
Secretary Treasurer*

The Federal Omnibus Budget Reconciliation Act of 1989, enacted in December 1989, included a number of railroad retirement and social security provisions which affect taxes in 1990 and subsequent years. This legislation increased the amount of earnings subject to social security and railroad retirement payroll taxes and specified 401(k) contributions and some employer-paid life insurance premiums as subject to railroad retirement payroll taxes.

The following questions and answers describe these changes affecting railroad employers and employees.

1. How did the new budget law change the amounts of earnings subject to railroad retirement payroll taxes?

The new law includes contributions to deferred compensation plans in the computation of average national wages for the purpose of determining annual increases in the amounts of earnings subject to social security taxes. This provision revises the social security, railroad retirement, and railroad unemployment insurance tax bases for 1990 and subsequent years.

The maximum amount of an employee's compensation subject to the tier I tax increases from \$48,000 in 1989 to the social security maximum of \$51,300 in 1990 under the new legislation, rather than \$50,400 under prior law. The maximum amount of compensation subject to the tier II tax increases from \$35,700 in 1989 to \$38,100 in 1990, rather than \$37,500 under prior law.

The railroad retirement tier I tax rate for employers and employees increases, like the social security tax rate, from 7.51 percent in 1989 to 7.65 percent in

1990. The 1990 railroad retirement tier II tax rates remain the same as in 1989, 4.90 percent on employees and 16.10 percent on employers. The increase in the social security and tier I tax rate was scheduled by 1977 social security legislation.

2. What are the maximum amounts of railroad retirement taxes payable by employees and employers in 1990?

The maximum amount of railroad retirement taxes that an employee can pay rises from \$5,354.10 in 1989 to \$5,791.35 in 1990. For railroad employers, the maximum regular retirement tax on an employee's earnings rises from \$9,352.50 in 1989 to \$10,058.55.

3. Are railroad unemployment insurance taxes changing in 1990?

The basic unemployment insurance tax rate of 8 percent paid by railroad employers will, except in the case of certain commuter railroads, remain in effect for 1990, but the tax will be experience rated for each employer in subsequent years. However, the \$710 maximum on monthly compensation subject to the tax rises to \$745 in January 1990, rather than \$735 under prior law.

In 1990, as in 1989, public commuter railroads covered by the Railroad Unemployment Insurance Act will be exempt from paying the 8 percent tax and will instead reimburse the unemployment insurance system for the amount of benefits paid during the year to their employees plus certain administrative costs. In 1991 those railroads will again pay taxes on the same basis as other railroads.

The temporary unemployment insurance loan repayment tax, paid in addition to the basic rate, will remain in force at a 4 percent rate until the Railroad Unemployment Insurance Account debt to the Railroad Retirement Account is fully repaid with interest. But the amount of earnings subject to the tax also increases from \$710 per month to \$745 per month in 1990.

4. What other changes in railroad

retirement payroll taxes were effected by the new budget law?

The tax provisions of the budget law also specify that contributions to 401(k) deferred compensation plans will be subject to railroad retirement payroll taxes. This brings the treatment of 401(k) plans under railroad retirement law into conformity with the treatment of such plans under social security law. In addition, the value of employer-paid premiums for group-term life insurance coverage in excess of \$50,000 are made subject to railroad retirement payroll taxes, also bringing the treatment of such premiums under railroad retirement law into conformity with the treatment under social security. Another provision regarding the treatment of meals and lodging furnished on the business premises by an employer likewise conforms railroad retirement with social security.

Federal Income Tax and Railroad Retirement Benefits

The following questions and answers describe the annual benefit information statements issued by the Railroad Retirement Board each January to beneficiaries for Federal income tax purposes.

Railroad Retirement Board beneficiaries needing information about these statements, or tax withholding form their benefits, should contact the nearest office of the Railroad Retirement Board.

For further Federal income tax information, railroad retirement beneficiaries should contact their local Internal Revenue Service Office.

1. Are the annuities paid under the Railroad Retirement Act subject to different Federal income tax provisions?

Certain portions of a railroad retirement annuity are treated like private and public service pensions for Federal income tax purposes, while another portion is treated as a social security benefit. Most annuitants are consequently sent two benefit information statements from the Railroad Retirement Board each January, even though they receive only one annuity check from the Board each month.

2. Which railroad retirement benefits are treated as social security benefits for Federal income tax purposes?

The railroad retirement annuity portion equivalent to a social security benefit based on comparable earnings is treated for Federal income tax purposes the same way as a social security benefit.

In addition, certain special minimum guaranty payments, ensuring that an employee's benefit will at least equal the amount that would be payable to the family under social security, are treated the same as social security benefits for Federal income tax purposes.

Depending on the amount of other income received in the taxable year, part of these railroad retirement benefits

1990 Regular Railroad Retirement Taxes

	Tax Rate	Taxable Annual Earnings	
Tier I			
Employees and Employers	7.65%	\$51,300	
Tier II			
Employees	4.90%	\$38,100	
Employers	16.10%	\$38,100	
<i>Maximum Annual Regular Retirement Taxes</i>			
	Tier I	Tier II	Total
Employees	\$3,924.45	\$1,866.90	\$ 5,791.35
Employers	\$3,924.45	\$6,134.10	\$10,058.55

1990 Railroad Unemployment Insurance Taxes

	Basic Tax Rate	Taxable Monthly Earnings	
Employer	8%	\$745	
	Loan Repayment Tax	Taxable Monthly Earnings	
Employer	4%	\$745	
<i>Maximum Annual Railroad Unemployment Insurance Taxes Per Employee</i>			
	Basic Tax	Loan Repayment Tax	Total
Employer	\$715.20	\$357.60	\$1,072.80

for Federal income tax purposes.

Depending on the amount of other income received in the taxable year, part of these railroad retirement benefits may be subject to Federal income tax. Retirees must consider a part of their social security equivalent benefits as taxable income if their adjusted gross income plus nontaxable interest income and half of their social security equivalent benefits exceed a certain base amount. The base amount is: \$25,000 for an individual; \$32,000 for a married couple filing jointly; and zero for a married individual who files separately but lived with his or her spouse any part of the year.

3. Which railroad retirement benefits are treated like private and public service pensions for Federal income tax purposes?

Railroad retirement annuity payments exceeding social security equivalent payments, plus any vested dual benefits, and supplemental annuities are all treated like private and public service pensions for Federal income tax purposes. In some cases, primarily early retirement benefits payable to retired employees and spouses between ages 60 and 62, and some occupational disability benefits, the entire annuity may be treated like a private pension because social security retirement benefits are not payable before age 62 and social security disability benefits require total disability.

For annuities beginning after July 1, 1986, railroad retirement benefits exceeding social security equivalent levels are taxable under the Internal Revenue Code General Rule, which subjects annuities to income tax immediately upon retirement. For tax reporting purposes, benefit payments are prorated on the basis of estimated life expectancies to exempt an employee's previously-taxed pension contributions. Beneficiaries whose annuities began after July 1, 1986, may also be able to use an alternate method, known as the Simplified General Rule.

For annuities beginning before July, 1986, portions exceeding social

security equivalent benefits were generally taxable under the Three-Year Rule, which allowed retirees to first recover their previously taxed pension contributions from cumulative benefit payments, after which benefits became fully subject to income tax.

5. What other information is included with the railroad retirement benefit statements?

Attached to the statements are detailed explanations of all items on the two statements, the worksheet for determining social security equivalent benefit taxability, and help in obtaining the toll-free telephone numbers of Internal Revenue Service offices throughout the country.

Additional information about the tax treatments of railroad retirement benefits over and above social security equivalent benefits can be found in IRS Publication 575, "Pension and Annuity Income (including Simplified General Rule)," and Publication 939, "Pension General Rule (Nonsimplified Method)." If the employee died during the taxable year, survivors should also refer to these publications because the death benefit exclusion may apply.

6. What if a person receives social security as well as railroad retirement benefits?

Railroad retirement annuitants who also received social security benefits during the taxable year receive a Form SSA-1099 and a Notice 703 worksheet from the Social Security Administration. They should add the net social security equivalent or special guaranty amount shown on Form RRB-1099 to the net social security income amount shown on Form SSA-1099 to get the correct total amount of these benefits. They should then enter this total on the worksheet from the Railroad Retirement Board to determine if their social and railroad retirement social security equivalent benefits are to be considered as taxable income.

Additional information on the taxability of these benefits can be found in IRS Publication 915, "Social Security Benefits and Equivalent Railroad Retirement Benefits."

Catastrophic Coverage Act affect 1989 Federal income tax liability?

Catastrophic coverage was to be financed primarily by supplemental premiums based on Medicare beneficiaries' Federal income tax liability, with the first premiums paid on 1989 income tax returns filed in 1990. Since the repeal of the Catastrophic Coverage Act, these supplemental premium payments are not applicable to a Medicare beneficiary's income tax liability and these premium payments will not be required. Since most 1989 IRS tax forms were printed prior to the repeal legislation, instructions on the forms for the payment of these premiums should be disregarded. Beneficiaries who increased their withholding, or made estimated tax payments in 1989 on account of the Medicare supplemental premiums, can claim a refund or credit towards their 1989 income tax liability on their tax forms.

8. Are Federal income taxes withheld from railroad retirement annuities?

In the absence of a request not to withhold, taxes are withheld from U.S. citizens or residents whose railroad retirement benefits in excess of the social security equivalent level, vested dual benefit payments, and supplemental annuities total more than certain annual threshold amounts. Any amounts withheld during the taxable year will be re-elected on the annual statement.

9. How is tax withholding applied to the railroad retirement benefits of nonresident aliens?

Under the Internal Revenue Code, nonresident aliens are subject to a 30 percent tax on income from sources within the United States not connected to a U.S. trade or business. The Code also requires the Board to withhold the tax. The tax can be at a rate lower than 30 percent or can be precluded entirely if a tax treaty between the United States and the country of residence provides such an exemption, and the nonresident alien claims the exemption every three years. The majority of nonresident aliens receiving annuities from the

Board are citizens of Canada, which has a tax treaty with the United States.

10. Are unemployment benefits paid under the Railroad Unemployment Insurance Act subject to Federal income tax?

All unemployment benefit payments are subject to Federal income tax.

Each January the Board sends Form 1099-G to individuals, showing the total amount of railroad unemployment benefits paid during the previous year.

11. Are sickness benefits paid by the Railroad Retirement Board subject to Federal income tax?

Sickness benefits paid by the Board, except for sickness benefits paid for on-the-job injuries, are subject to Federal income tax under the same limitations and conditions that apply to the taxation of sick pay received by workers in other industries. Each January, the Board sends Form W-2 to affected beneficiaries.

12. Does the Board withhold Federal income tax from sickness benefits?

The Board withholds Federal income tax from sickness benefits only if requested to do so by the beneficiary.

13. Are railroad retirement and railroad unemployment and sickness benefits paid by the Board subject to State income taxes?

In the opinion of the Board's General Counsel, these benefits are not subject to State income taxes, and higher court decisions have upheld this position.

14. Can a railroad employee claim a tax credit or refund on his or her Federal income tax return if the employer withheld excess railroad retirement taxes during the year?

If any one railroad employer withheld more than the annual maximum amount, the employee must ask that employer to refund the excess. It cannot be claimed on the employee's return.

15. Can a railroad employee working two jobs during the year get a tax credit and/or refund if excess retirement payroll taxes were withheld by the employers?

Railroad employees who also worked

for a social security covered employer in the same year may, under certain circumstances, receive a tax credit or refund equivalent to any excess social security taxes withheld.

Employees who worked for two or more railroads in a year, or who had tier I taxes withheld from their Railroad Retirement Board sickness benefits in addition to their railroad earnings, may be eligible for a tax credit or refund of any excess tier I or tier II railroad retirement taxes withheld. The amount of tier I taxes withheld from sickness benefits paid by the Board is shown on Form W-2 issued to affected beneficiaries.

Such tax credits or refunds may be claimed on an employee's Federal income tax return.

Employees who worked for two or more railroads, or had both railroad retirement and social security taxes withheld from their earnings, should see IRS Publication 505, "Tax Withholding and Estimated Tax," for information on who to figure any excess railroad retirement or social security tax withheld.

WASHINGTON WINDOW

Rural Housing Crisis Less Visible, No Less Real

The nation's crisis in affordable housing calls up visions of homeless men and women sleeping on steam grates and of families living in city welfare hotels.

Yet the shortage of decent, low-income housing is not just an urban problem. The problem is widespread in rural America as well, and will get worse unless action is taken.

The facts about this less visible housing situation are contained in a recent report titled, "The Other Housing Crisis: Sheltering the Poor in Rural America."

The 69-page report was compiled by two Washington-based non-profit organizations: the Center on Budget and Policy Priorities, and the Housing Assistance Council. The report is based on data released in early 1989 by the

Census Bureau and the Dept. of Housing and Urban Development (HUD).

Although the data looks at the year 1985, it is the first comprehensive set of data on U.S. housing conditions released in four years. It is also the first government survey that includes specific information on the housing conditions of those below the poverty line. There are reasons to assume that the situation in rural America has not improved since 1985.

"The Other Housing Crisis" shows that large proportions of rural poor households pay extremely high percentages of their limited incomes for housing. In fact, 72 percent of these families paid more than 30 percent of their income for shelter.

Under HUD standards, housing costs--rent or mortgage payments plus utilities--are outside the affordable range if they consume more than 30 percent of income.

The report found that 42 percent of rural poor households spent at least half of their income for housing, and that 26 percent spent 70 percent or more of their income for shelter.

Many of these families are the "near homeless," the report said. They are families for whom an emergency or a disruption of income can result in being unable to pay the rent, mortgage or utility bills. They are families who often pay their housing bills each month only by squeezing funds for other necessities, such as food, clothing, or medical care.

While housing costs tend to be lower in rural than in urban areas, income is also lower. Housing quality generally is lower as well, the report said. The rural poor are more likely to live in substandard housing than their urban counterparts, it said.

Despite decades of progress, a significant proportion of the rural poor still occupy housing that is dilapidated or lacks such basics as indoor plumbing. Many still have adequate water supplies or sewage disposal systems, the report said.

Regionally, housing problems faced

by poor rural households are most serious in the South, where 51 percent of these households lived in 1985, the report said. It also found that the proportion of rural families living in substandard housing was greater in the South than in any other region.

The report said the rural housing crisis has been worsening for many years. It said a key reason has been a "dramatic shift from a surplus to a shortage of low-income rental housing."

In 1970, there were 500,000 more low-income rental housing units in rural America than there were low-income renter households. But by 1985, the situation was reversed: there were nearly 500,000 fewer low-rent units in rural areas than there were low-income renter households, the report said.

Federal cutbacks in housing programs during the 1980s are largely to blame for the shrinkage of affordable housing in both urban and rural areas, the report said.

If the number of housing units added to the federally subsidized housing stock continued in the 1980s at the same rate as in the late 1970s, commitments would have been made to provide housing assistance to nearly a million additional low-income families in rural areas, the report said.

The report warned that the available supply of low-income housing units could shrink substantially over the next few years as contracts for privately-owned, federally-subsidized housing expire. It said the housing situation for the rural poor is likely to deteriorate "unless major changes are made in government policies and in the actions of the private sector."

On Oct. 7, some 150,000 Americans from 215 cities and small towns rallied in Washington to demand the restoration of federal funds for housing programs gutted during the Reagan years.

Congressional Democratic leaders have promised that pending legislation to preserve existing subsidized housing and to get the government back in the business of assisting construction of low-cost housing will be a top priority for

the second session of the 101st Congress.

FIFTY YEARS AGO

In the Spring 1940 issues of THE TRAIN DISPATCHER, we find: The railroad retirement Board is now in the process of discussing with the budget bureau some new plans for obtaining funds so that arrangements could be made with railroads on a co-operative basis or on a piece-work basis for collecting prior service records over the next three or four years. Last year W.P.A. started to do this- the work to be done by unemployed railroad men. The budget Bureau has taken the position that the railroads are obligated under the law to furnish these prior service records. . . . Under the title "New Men Coming Into Train Dispatching Offices Find Demands of Work Too Severe," President C. L. Darling develops a thoughtful article which is featured in this issue. He believes that the long period of contraction has prevented proper training of employees who do not enter our vocation with the youth, vigor, and adaptability required. He urges that better plans for replacing veteran dispatchers be developed. . . . The achievement of a million miles by America's first diesel-powered streamline train, the Pioneer Zephyr made its initial run, April 9, 1934. After a period of nationwide exhibition, the train entered regular service between Lincoln, NE. and Kansas City, MO, on Nov 11, 1934. . . . A decision of widespread importance and of great influence, especially to the members of the A.T.D.A., was handed down on Jan. 9, 1940. The decision restores the positions of Assistant Chief Dispatchers on the Lehigh Valley (which the carrier had abolished) and orders that the men affected have their monetary losses restored to them as a result of renaming the position (movement director) and reducing the pay \$60 per month.

OBITUARIES

It is with sincere sorrow that the Association records the death of these members, a significant part of whose lives have been spent in support of our mutual ideals and purposes. We extend our sympathy to the bereaved families.

It is with deep regret that we must report the death of Mrs. Nola Pfenning, widow of Past President, Richard Pfenning. Nola, who many of us remember, died suddenly December 12, 1989. She was born in Sandstone, Minnesota February 3, 1922.

Graveside services were held at Fair Oaks Cemetery, Fair Oaks, California at 1:30 p.m. December 16, 1989 with Father Peters of St. Joseph's Church officiating. Our deepest condolences to the family of Dick and Nola.

JOSEPH P. DICKINSON, 99, of Harrisburg, Pa., on September 9, 1989. He retired on May 1, 1957 from the Harrisburg, Pa. office, Pennsylvania Railroad, after 46 years of railroading including 29 years as a train dispatcher.

Bro. Dickinson was born at Chester Mills Springs, Pa. on May 5, 1890. He began his career as a clerk in the Motive Power Dept. on Sept. 20, 1911. Later he worked as locomotive dispatcher until he entered the Transportation Department, June 10, 1932, where he served as clerk and passenger crew dispatcher until his appointment as Assistant Movement Directory on Jan. 11, 1943. He worked as Movement Director during World War II.

He joined the A.T.D.A. on March 16, 1944 and again in 1952, and was awarded the 25-year membership Honor Emblem on Nov. 11, 1977.

Survivors include his wife, Ruth, 5003 Devonshire Road, Harrisburg, PA; a son, Kenneth; five grandchildren; nine great-grandchildren; and seven great-great-grandchildren.

EDWARD "TED" WRIGHT, 58, of St. Thomas, Ontario, Canada, on Dec. 30, 1989. Death was caused by a heart attack. He was employed in the St. Thomas, Ontario, office, Chessie Systems, with a railroad career of 34 years including 22 years as a train dispatcher.

Bro. Wright was born in Hamilton, Ontario, on April 9, 1931. He began his railroad career as an operator in 1955 and was promoted to train dispatcher in 1967. Ted had been a continuous member of the A.T.D.A. since July 18, 1969, and was a member of the Seymour Masonic Lodge and the London International Air Show. He was well known as a collector of Railroadiana and visited many shows in Canada and the U.S.

Survivors include his brother, Roger Wright, 8 Virgil Rd., Nepean, Ontario, Canada K2H 6B3 and a sister, Gloria, also of Canada.

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KERWIN M. FRANK, 79, of Palatka, FL, on Nov. 12, 1989. Death was caused by a heart attack. He retired from the Anchorage, AK, office, Alaska Railroad, retiring in 1969, after a railroad career of 28 years including 20 years as a train dispatcher. He moved to Fruitland, FL, in 1983.



Bro. Frank was born at Lewiston, MI, on Oct. 21, 1910, and began his railroad career as a section laborer in April 1941. He became a maintenance of way foreman in September 1942. During WWII he

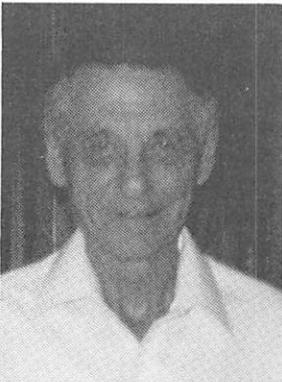
learned telegraphy and transferred to the operations department of the Alaska RR in June 1947, working as agent-telegrapher until his promotion to train dispatcher in September 1949. He was Chief Train Dispatcher at the time of his retirement.

He had been a continuous member of the A.T.D.A. since July 1950 and was awarded the 25 year membership Honor Emblem on July 1, 1975. He served as office chairman in the Anchorage office.

Survivors include a daughter, Darlene Nix, SR2 - Box 437, Crescent City, FL 32102; a son, Merle Frank, Anchorage, AK; a brother, Darrell, Palmer, AK, and a sister, Lorene DeGracia, Howell, MI.

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JOHN S. CORYELL, 73, of Bloomington, MN, on Aug. 17, 1989. Death was caused by a heart attack. He had retired from the Minneapolis, MN, office, Burlington Northern Railroad, on May 20, 1977, after 42 years of railroading including 34 years as a train dispatcher.



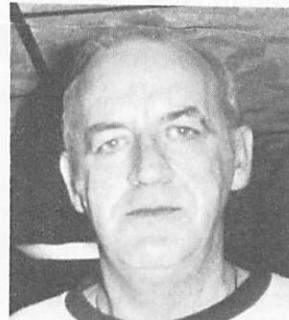
Bro. Coryell was born on Dec. 4, 1916, in Dilworth, MN. He began his railroad career in June 1935, as an operator-agent. He worked various towns in North Dakota until being promoted to train dispatcher on Dec. 25, 1943. He then moved to Fargo and worked until 1968 when he moved to Bloomington, MN, when the Duluth, Fargo & Minneapolis offices were consolidated. He worked in Minneapolis moving to Bloomington, MN, when he retired.

John had been a continuous member of the A.T.D.A. since Aug. 20, 1945, and was awarded the 25-year membership Honor Emblem on Aug. 24, 1970. He also was a member of the Moose Lodge, Eagles Club and the Legion of the Moose, all in Fargo, ND.

Survivors include three sons, Stanley 1617 N. 1st St., Fargo, ND 58102, and a sister, Catherine McManus, of Vancouver, WA.

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ROBERT T. ROTRUCK, 57, of Genoa, OH, on Nov. 28, 1989. Death was caused by lung cancer. He was employed in the Darborn, OH, office, Conrail. He had a railroad career of 39 years including 20 years as a train dispatcher.



Bro. Rotruck was born in Willard, OH, on March 20, 1932, and began his railroad career in June 1950 as a tower operator and was promoted to train dispatcher in 1968. Bob was an avid Sprint car racer and liked working on his 1965 Mustang.

He had been a continuous member of the A.T.D.A. since Aug. 5, 1969, and a member of the Genoa St. Johns United Church of Christ, and the American Legion, Post 324.

Survivors include his wife, Barbara, 1310 Superior St., Genoa, OH 43430; daughters Cali Rotruck and Joni Hillman; a son, Robert M.; two grandsons and his mother Mrs. Helen Babcock.

ROY M. JOHNSON, 85, of Pleasanton, CA, on Dec. 26, 1988. He retired from the Burlington Northern Railroad on May 1, 1967, after 48 years of railroading including 26 years as a train dispatcher.



Bro. Johnson was born in Braham, MN, and began his railroad career in 1919 as a telegrapher. He was promoted to train dispatcher in 1941.

He was a continuous member of the A.T.D.A. since Feb. 23, 1942, and was awarded the 25-year membership Honor Emblem on May 15, 1967. He also was a lifetime member of the Masonic Lodge, Glendive, MT, and the First Congregational Church of Fargo, ND.

Survivors include two daughters, Joan Radford, 318 W. Audubon Dr., Fresno, CA 93711, and Elizabeth Emmons; two sons, James Johnson and Richard Johnson; three sisters, 13 grandchildren and 11 great grandchildren.

CONVERSATION PIECES

NINE OUT OF TEN PEOPLE POLLED by Associated Press and Media General recently said Uncle Sam should limit imports from countries that don't let the U.S. sell products there freely. Two out of three urged the U.S. to slap higher taxes on imports.

Multinational companies that grew out of America, that made their first millions off the sweat of Americans and are still headquartered here, are now more foreign than they are American. They adjust to "protectionism" abroad while they fight it in the U.S.A. According to *Business Week*, "The only way for American corporations to sell in most of Europe and the Third World is to offer a deal. In exchange for permission to sell in the local market, they promise to invest, to provide jobs, taxes, and technology, Mexico's 'maquiladora' zone across the Texas border is a perfect example. The amount of money those companies sent out of the country into foreign factories doubled in 1987".

Why aren't they listening? Could that be why U.S. multinationals spend huge amounts of money and energy convincing our "experts" that a "free trade" policy is the only way to go?

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SANDHOUSE SNICKERS

If you think you are getting too much government, just be thankful you're not getting as much as you are paying for.

"You usually talk for two hours, how come it was only half an hour this time?" "Wrong number," answered the teenager.

The meek shall inherit the earth. If it is alright with the rest of you.

"Is my neckline too low?" questioned his wife. "Oh, I thought you just weren't in it far enough."

Sign on an old wood shed, "Tanning Parlor".

Do you know why I stopped you ma'am? asked the officer. "Sure do," said the woman. "I was the only one you could catch."

The newspaper's food editor took a call from a youthful sounding woman who asked how long to roast a 20 pound turkey. "Just a minute," said the editor as she checked her chart. "Thanks alot! said the caller, as she hung up.

If you think there is a lot of room at the top, take another look at a pyramid.

Grandpa offered to take little Markie to get his first haircut. But, when Markie heard about it, he started to cry. Asked why, he said "Grandpa's barber always cuts a hole in the top of Grandpa's hair."

Today when you set out for the East Indies, you get to the East Indies. It's your baggage that winds up in the Carribean. 500 years sure change things.

A Junior College lists "13-Star Wars and the British Strikes Back", Translated that means "The American Revolution and the War of 1812."

"Sorry if my speech seemed long," concluded the speaker, "but I forgot to wear my watch and I don't see a clock anywhere." "There's a calendar on the wall right next to you," called a voice from the back.

The two friends stopped when they saw a mountain lion in their path staring at them. The one froze, the other one got out his running shoes. "What's the matter with you?" asked the first one "you can't outrun a mountain lion." "All I have to do is outrun you!" came back the answer.



THE DOCTOR'S SAY

House Dust Allergies

*By Phillip L. Polakoff, M.D.
Director, Western Institute for
Occupational/Environmental
Sciences*

Far from being "just dust," house dust contains many different components--animal dander, pollen, fungi, etc.--that can cause reactions.

But the major allergen in house dust is none of these, but is caused by a tiny creature whose existence was discovered only 25 years ago: the house dust mite.

In studying the dust mite, researchers began to suspect that dust mite allergies were not caused by the little critter itself but by a substance that the mite either secreted or excreted.

It turned out that a substance in the feces of the dust mite caused the allergic reaction. It is the fecal pellets--so light they are easily airborne--that cause symptoms of rhinitis, the breathing difficulty of asthma, and the skin rashes of eczema. A single gram of dust may contain as many as 250,000 dust mite feces.

Indications that a person may be allergic to dust mites include:

- ★ repeated sneezing upon awakening
- ★ worsening of symptoms when beds are made
- ★ feeling better when outside the house
- ★ a "stuffed-up" feeling in the ears (especially in the wintertime)

The diagnosis of mite allergy can be made by an allergist, who will take a history, do a physical exam, and perform the appropriate tests.

The best way to control dust mite allergy is to institute environmental controls, particularly in the bedroom.

Studies in the United States and Canada have shown that the single most effective measure one can take to reduce the level of dust mite allergen in the bedroom is encasing mattresses and pillows in dust-proof covers. In addition, the bedding should be washed every 10 days in hot water. If possible, the carpet should be removed.

It is not possible or desirable to remove carpets (and upholstered furniture,) they can be sprayed with a solution that inactivates the mite allergen. You might inquire at a drug or hardware store about such preparations.

Studies have shown that regular cleaning and vacuuming can't reduce mite levels to a low enough level to reduce symptoms. On the other hand, if the house isn't cleaned regularly, mite antigen levels will rise.

Improvement of symptoms may be immediate once environmental controls are put in place. More often, however, there is a time lag before symptoms improve noticeably.

Around the world, the correlation between an increase in the dust mite population and a dramatic rise in asthma has been noted by researchers. Some reasons for the increase:

★ Introduction of the vacuum cleaner, which means that carpets are no longer taken outside and beaten. Wall-to-wall installation is also part of the problem.

★ Increased use of central heating which often keeps the temperature high enough to encourage mite breeding.

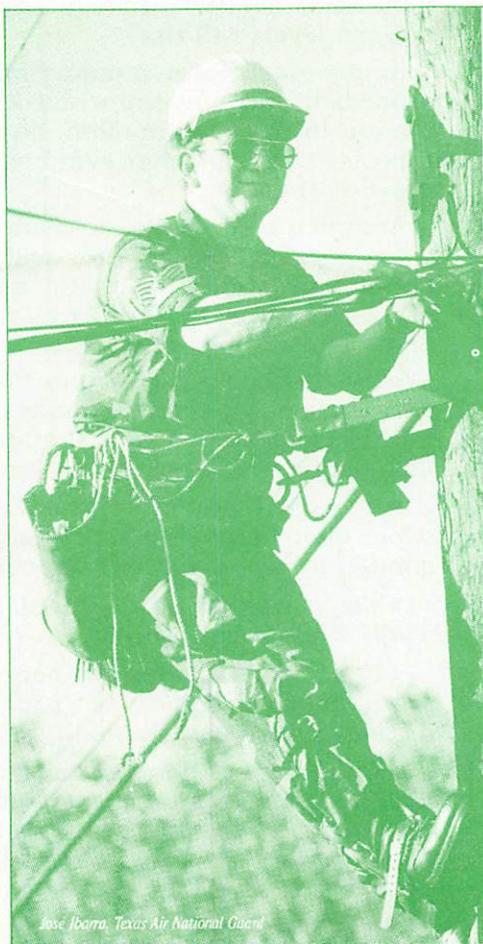
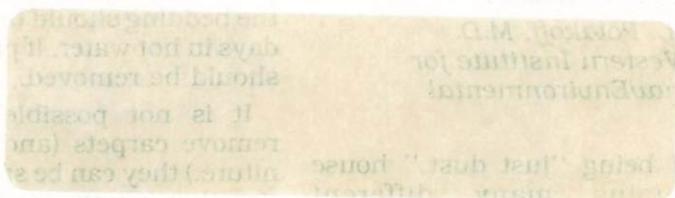
★ Use of cool-water detergents. Cool water will not harm mites.

★ Reduced ventilation for energy conservation which will cause a problem if it leads to increased humidity.

★ Air-humidification systems that can maintain relative humidity at more than 50 percent. To reproduce, dust mites require conditions of warmth and high humidity.

If you have any questions, or suggestions for future articles, write to me at WIOES, 5655 College Ave., Suite 310, Oakland, CA 94618.

THE TRAIN DISPATCHER



José Ibarra, Texas Air National Guard

National Guardsman. Father Of Twins. Great American Investor.

As a Communications Technician, José Ibarra spends a lot of time up in the air. But when it comes to his children's education, he's got his feet firmly planted on the ground.

José has been buying U.S. Savings Bonds through the Payroll Savings Plan at work for nearly eight years. "I like Bonds because they're an easy way to save for my children's future," José said. "And they're always there if you need some extra cash."

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