§ 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 must 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.

§ 219.107 Consequences of unlawful refusal.

(a) An employee who refuses to provide breath or a body fluid specimen or specimens when required to by the railroad under a mandatory provision of
this part must be deemed disqualified for a period of nine (9) months.
(b) Prior to or upon withdrawing the employee from covered service under
this section, the railroad must provide notice of the reason for this action, and
the procedures described in §219.104(c) apply.
(c) The disqualification required by
this section applies with respect to em-
ployment in covered service by any
railroad with notice of such disquali-
fication.
(d) The requirement of disqualification
for nine (9) months does not limit
any discretion on the part of the rail-
road to impose additional sanctions for
the same or related conduct.
(e) 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(d), and the employee must be
subject to follow-up tests, as provided
by that section.

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 must be
conducted after any event that in-
volves one or more of the cir-
cumstances described in paragraphs
(a)(1) through (4) of this section:
(1) Major train accident. Any train ac-
cident (i.e., a rail equipment accident
involving damage in excess of the cur-
rent reporting threshold) that involves
one or more of the following:
(i) A fatality;
(ii) A release of hazardous material
lading from railroad equipment accom-
panied 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
$1,000,000 or more.
(2) Impact accident. An impact acci-
dent (i.e., a rail equipment accident
defined as an “impact accident” in §219.5) that involves damage in excess of the
current reporting threshold, resulting in—
(i) A reportable injury; or
(ii) Damage to railroad property of
$150,000 or more.
(3) Fatal train incident. Any train in-
cident that involves a fatality to any
on-duty railroad employee.
(4) Passenger train accident. Report-
able injury to any person in a train ac-
cident (i.e., a rail equipment accident
involving damage in excess of the cur-
rent reporting threshold) involving a
passenger train.
(b) Exceptions. No test may be re-
quired in the case of a collision be-
tween railroad rolling stock and a
motor vehicle or other highway con-
voyance at a rail/highway grade cross-
ing. No test may be required in the
case of an accident/incident the cause
and severity of which are wholly at-
tributable to a natural cause (e.g.,
flood, tornado, or other natural dis-
aster) or to vandalism or trespasser(s),
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
must determine whether the accident/incident falls within the requirements
of paragraph (a) of this section or is
within the exception described in para-
graph (b) of this section. It is the duty
of the railroad representative to make
reasonable inquiry into the facts as
necessary to make such determinations.
In making such inquiry, the rail-
road representative must consider the
need to obtain specimens as soon as
practical in order to determine the
presence or absence of impairing sub-
stances reasonably contemporaneous
with the accident/incident. The rail-
road representative satisfies the re-
quirement of this section if, after mak-
ing reasonable inquiry, the representa-
tive exercises good faith judgement in
making the required determinations.
(ii) The railroad representative mak-
ing the determinations required by this
section may not be a person directly
involved in the accident/incident. This
section does not prohibit consultation
between the responding railroad rep-
resentative and higher level railroad