chapter, and a supervisory employee of
the railroad has a reasonable belief,
that the employee's acts or omissions
contributed to the occurrence or sever-
lity of the accident or incident; or

(3) Rule violation. The employee has
been directly involved in one of the fol-
lowing operating rule violations or er-
rors:

(i) Noncompliance with a train order,
track warrant, timetable, signal indi-
cation, special instruction or other di-
rection with respect to movement of a
train that involves—

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

(B) Failure to clear a 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 chapter (including failure to
protect a train that is fouling an adja-
cent track, where required by the rail-
road's 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 max-
imum authorized speed, whichever is
less;

(iv) Alignment of a switch in viola-
tion of a railroad rule, failure to align
a switch as required for movement, op-
eration of 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 per-
forming 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) For cause drug testing. In addition
to reasonable suspicion as described in
§219.300, each of the conditions set
forth in paragraphs (b)(2) ("accident/in-
cident") and (b)(3) ("rule violation") of
this section as constituting cause for
alcohol testing also constitutes cause
with respect to drug testing.

(d) [Reserved]

(e) Limitation for subpart C events. The
compulsory drug testing authority con-
ferred by this section does not apply
with respect to any event subject to
post-accident toxicological testing as
required by §219.201. 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 ma-
terially impede the collection of speci-
mens under subpart C of this part.

§219.302 Prompt specimen collection;
time limitation.

(a) Testing under this subpart may
only be conducted promptly following
the observations or events upon which
the testing decision is based, con-
sistent with the need to protect life
and property.

(b) No employee may be required to
participate in alcohol or drug testing
under this section after the expiration
of an eight-hour period from—

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

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

(c) An employee may not be tested
under this subpart if that employee has
been released from duty under the nor-
mal procedures of the railroad. An em-
ployee who has been transported to re-
ceive medical care is not released from
duty for purposes of this section. Noth-
ing in this section prohibits the subse-
quent testing of an employee who has
failed to remain available for testing
as required (i.e., who is absent without
leave).

(d) As used in this subpart, a "re-
sponsible railroad supervisor" means
any responsible line supervisor (e.g., a
trainmaster or road foreman of en-
gines) or superior official in authority
over the employee to be tested.
§ 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 must 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 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 must make such policies, and publications announcing such policies, available for inspection and copying by FRA.

(e) Nothing in this subpart may 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 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 must 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 must specify whether, and under what circumstances, its 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 section, 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.