

## § 199.233

the information is permitted only in accordance with the terms of the employee's consent.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001]

### § 199.233 Removal from covered function.

Except as provided in §§ 199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

### § 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

### § 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

### § 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each operator shall provide educational mate-

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rials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under § 199.243.