

(d) As used in this subpart, a “responsible railroad supervisor” means any responsible line supervisor (e.g., a trainmaster or road foreman of engines) or superior official in authority over the employee to be tested.

(e) In the case of a drug test, the eight-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 drug testing specimens within that period.

(f) [Reserved]

(g) Section 219.23 prescribes the notice to an employee that is required to provide breath or a body fluid specimen under 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 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