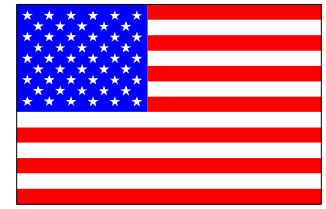




Federal Railroad Administration



FRA Requirements and Expectations for Amtrak Compliance With 49 CFR 219.105 (the D&A Due Diligence Regulation)



Amtrak Meeting
Washington DC
December 7, 2010

FRA's Mission

- **FRA primary mission is railroad safety**
- **As part of that, FRA is committed to ensuring a drug and alcohol (D&A) free railroad (RR) workplace**
 - Protects employees (safety, confidentiality, health and welfare)
 - Protects employers (employee safety, brand, health care costs, productivity)
 - Protects public safety

FRA Mission – cont.

- **Responsible for monitoring compliance with Federal regulations, including:**
 - Part 219.105 (D&A due diligence)
 - Part 240.119 (engineer qualification and certification – substance abuse (SA) disorders, D&A compliance)
 - Part 242.119 (in rule-making – conductor qualification and certification – same SA and D&A standards as for engineers)

Today's Focus

- **FRA's ability to audit Amtrak's compliance with 219.105 for Covered Service (CS) employees**
 - Railroad's duty to prevent violations of 219.101 (possession, CS use, under the influence) and 219.102 (use any time)
 - RR may not, with actual knowledge, allow employee to perform CS if violating 101/102
 - RR must exercise due diligence

Today's Focus – cont.

- **FRA's ability to audit Amtrak's compliance with 240.119(e) for engineers**
 - Cannot perform CS with active SA disorder
 - Any certification affect suspended while engineer is successfully participating in compliant counseling, treatment
 - Employer notified & certification affected if engineer fails to cooperate with program

Today's Focus – cont.

- **FRA's ability to audit Amtrak's compliance with 242.119(e) –in rulemaking—for conductors**
 - Cannot perform CS with active SA disorder
 - Any certification affect suspended while conductor is successfully participating in compliant counseling, treatment
 - Employer notified & certification affected if conductor fails to cooperate with program

Today's Focus – cont.

- **RR potential sources of actual knowledge:**
 - Drug and alcohol tests/refusals
 - Subpart E referrals (voluntary referral, co-worker report)
 - EAP utilization
 - Other company program utilization (i.e. ORB)
- **FRA is committed to employee confidentiality but must verify 219.105 program compliance [NO NAMES]**

FRA Obligations Under 219.105

- **Verify that Amtrak is using due diligence to ensure that active substance abusers are not performing CS**
- **Verify that Amtrak company programs are not intentionally or unintentionally circumventing or undermining Federal regulations, standards, or policies**

Expected/Required Documentation

- **What documentation can Amtrak provide that demonstrates 219.105 compliance?**
 - Accurate program descriptions (need to compare with actual practice)
 - Aggregated program management/program effectiveness data
 - How many CS cases (utilization, scope)
 - Action taken on each case (no names)
 - Result/consequences/outcomes

What FRA Found When Attempting to Evaluate Company Programs

- Little or no useful program data?
- Data provided not credible or misleading?
- No case tracking data? No problem resolution data?
- Opaque processes?
- Artificial barriers to program oversight?

What FRA Found When Attempting to Evaluate Company Programs – cont.

- Program appears to undermine Federal regulation compliance and rehab standards?
- Program appears to undermine cooperation and utilization of other quality employee support programs?
- Creates red flags, invites Federal questions and/or investigation
 - Forces FRA into asking for case files to verify program integrity, credibility, compliance

FRA Concerns

- **Are employees with possible substance abuse issues:**
 - Continuing to perform CS while using?
 - Using revolving door mark-offs without consequences or useful help?
 - Being hidden behind artificial walls to avoid accountability or consequences?
 - Getting the right level of treatment or any treatment at all?

FRA Support of Company Programs in the RR Industry

- **FRA strongly supports ORBs, other peer prevention/intervention/education/rehab programs, EAPs**
- **All have important places in a strong safety program**
 - Effective peer programs cut through cultures of enabling, neglect, and misplaced tolerance of SA

EAP and Peer Prevention Programs

- **A quality Peer Prevention Program and EAP should complement each other, not compete**
- **FRA continues to embrace the value of Peer Prevention Programs**
 - Enriches and strengthens the EAP model
 - Offers earlier intervention, predicting better outcomes
 - Provides strong peer support and reinforcement
 - Offers reduced tolerance for on-the-job misbehavior

Best Practice Railroad Programs

- **Strong company management and labor support**
- **Strong internal documentation systems (DS)**
- **Strong cooperation between program options (Subpart E programs, the EAP, and peer prevention/intervention programs)**
- **Strong commitment to confidentiality for employees who cooperate**
- **DS produces useful & auditable program data**

A Final Word

- **Due Diligence requires Accountability and Accountability requires Documentation**
- **Trust but verify**
- **FRA is committed to supporting Peer Prevention -- Help us support YOU!**