



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**Oversight Weaknesses Limit FRA's
Review, Approval, and Enforcement of
Railroads' Drug and Alcohol
Testing Programs**

FRA

Report No. ST2020030

April 29, 2020





Oversight Weaknesses Limit FRA's Review, Approval, and Enforcement of Railroads' Drug and Alcohol Testing Programs

Self-initiated

Federal Railroad Administration | ST2020030 | April 29, 2020

What We Looked At

Preventing accidents in railroad operations that result from employees' illicit drug and/or alcohol impairment is critical to ensuring the safety of the traveling public. Illicit drug use discovered during investigation of fatal railroad accidents and a recent increase in the percentage of railway workers testing positive for drug use underscore the importance of the Federal Railroad Administration's (FRA) oversight of railroads' drug and alcohol testing programs. Given the importance of drug and alcohol testing to protecting transportation safety, our office is conducting a series of reviews on drug testing programs within the transportation industry. Our objectives for this self-initiated audit were to assess FRA's (1) review and approval of railroads' random alcohol and drug testing program plans, and (2) controls for enforcing compliance with the plans and minimum annual random alcohol and drug testing rates.

What We Found

FRA has not adequately reviewed and approved railroads' drug and alcohol testing plans as required or documented its review and approval process. Our review found that FRA reviewed and approved incomplete plans that do not fully adhere to FRA regulations. Specifically, we reviewed 102 drug and alcohol testing plans from applicable railroads and determined that approximately 51 percent of the reviewed and approved plans were incomplete and did not contain key elements required by FRA regulations. In addition, FRA's ability to verify and enforce railroads' compliance with drug and alcohol testing requirements is limited by internal control weaknesses. For example, FRA's program guidance for overseeing drug and alcohol testing compliance is outdated and does not reflect current regulations or provide for supervisor review. FRA has also not established a process for following up on action items issued to railroads during compliance audits to verify they undertake recommended actions. Furthermore, FRA procedures do not fully meet its drug and alcohol testing compliance audit goals.

Our Recommendations

FRA concurred with all four of our recommendations to improve its guidance and oversight of the drug and alcohol testing program and proposed appropriate actions and completion dates.

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Memorandum

Date: April 29, 2020

Subject: ACTION: Oversight Weaknesses Limit FRA's Review, Approval, and Enforcement of Railroads' Drug and Alcohol Testing Programs | Report No. ST2020030

From: David Pouliott 
Assistant Inspector General for Surface Transportation Audits

To: Federal Railroad Administrator

Preventing accidents in railroad operations that result from employees' illicit drug and/or alcohol impairment is critical to ensuring the safety of the traveling public. According to the National Transportation Safety Board's (NTSB) 2019-2020 Most Wanted List of Transportation Safety Improvements, the use of alcohol and other drugs is a contributing factor in far too many transportation accidents.

The Federal Railroad Administration (FRA) has regulated the use of alcohol and drugs by certain railroad employees under Title 49, Code of Federal Regulations (CFR), Part 219 (Part 219). The purpose of Part 219 is to promote railroad safety by deterring certain railroad employees from misusing alcohol or using illicit drugs through various types of testing. Illicit drug use discovered during investigations of fatal railroad accidents and a recent increase in the percentage of railway workers testing positive for drug use underscore the importance of FRA's oversight of railroads' drug and alcohol testing programs. For example, in April 2016, an Amtrak train struck a backhoe near Chester, PA, killing two track workers and injuring 39 passengers. Using FRA's post-accident toxicological testing results, NTSB's accident investigation determined that the train's engineer and both track workers had tested positive for drug use, including marijuana, cocaine, and opioids.¹ Since the accident, FRA has implemented a rule requiring random urine drug screening for Maintenance-of-Way (MOW) employees,² effective June 12, 2017.

¹ NTSB Accident Report NTSB/RAR-17/02, April 2016.

² A Maintenance-of-Way employee is any employee of a railroad, or a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of roadway track, bridges, roadway, signal and communication systems, electric traction systems, and roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, as well as flagmen and watchmen/lookouts.

Given the importance of drug and alcohol testing to protecting transportation safety, our office is conducting a series of reviews on drug testing programs within the transportation industry.³ Our objectives for this self-initiated audit are to assess FRA's (1) review and approval of railroads' random alcohol and drug testing program plans and (2) controls for enforcing compliance with the plans and minimum annual random alcohol and drug testing rates.

We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A details our Scope and Methodology, and exhibit B lists the organizations we visited or contacted. For a list of acronyms used in this report, see exhibit C.

We appreciate the courtesies and cooperation of Department of Transportation representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5630 or Wendy Harris, Program Director, at (202) 366-2794.

cc: The Secretary
DOT Audit Liaison, M-1
FRA Audit Liaison, ROA-2

³ We recently reviewed the Federal Aviation Administration's oversight of drug and alcohol testing programs in the aviation industry: *FAA Needs To Adopt a Risk-Based, Data-Driven Scheduling Process To Improve the Effectiveness of Its Drug Abatement Inspection Program* (OIG Report No. AV2019055), June 25, 2019. OIG reports are available on our website at <http://www.oig.dot.gov/>.

Results in Brief

FRA has not adequately reviewed and approved railroads' drug and alcohol testing plans as required or documented its review and approval process.

FRA requires that each full-compliance railroad⁴ submit a random drug and alcohol testing plan for review and approval to the FRA Drug and Alcohol Program Manager, who must verify that railroads' plans meet Federal requirements. FRA must also review and approve plans whenever railroads update them, such as updates made to reflect the June 2017 requirement to include MOW employees in the random drug and alcohol testing program required by Part 219. However, our analysis of the 87 railroad plans in our sample⁵ requiring FRA review and approval found that approximately 51 percent of the plans FRA reviewed and approved were incomplete. This is because the plans did not include one or more key requirements or FRA did not provide them to us. For example, one plan that FRA reviewed and approved did not include details on the method the railroad would use to make random selections of employees for drug and alcohol testing—a key requirement of drug and alcohol testing plans. Currently, FRA relies on one employee in FRA's Drug and Alcohol program office—the Drug and Alcohol Program Specialist—to review and approve railroad random testing plans. Moreover, FRA has not documented the process the Program Specialist follows or instituted any oversight controls, such as a supervisory or second-level review, to validate the Program Specialist's results. According to FRA officials, FRA relies on one experienced individual to perform these evaluations because other staff in the office lack the same level of expertise for assessing whether the plans comply with Federal alcohol and drug regulations. As a result, FRA is at risk of experiencing an extended backlog of plans that need to be reviewed and approved, should the Program Specialist become unavailable to perform those duties. Without documenting and following its review and approval procedures, FRA cannot reasonably ensure that railroads are taking all the actions required to effectively detect and prevent impaired workers and maintain safety.

⁴ For the purposes of this report, a full-compliance railroad is a railroad that must fully comply with Part 219 requirements because it meets the criteria specified in the regulations. Full-compliance railroads are those with more than 15 covered service employees or a railroad that has joint operations with another railroad in the United States (except for purposes of interchange).

⁵ We selected a simple random sample stratified by railroad class of 102 from a universe of 877 railroads for which we requested random alcohol and drug testing plans from FRA. Of these 102 plans, 15 plans were partial-compliance plans, which are not required to have a review or approval from FRA. As such, we excluded those 15 plans from our analysis.

FRA lacks processes for initiating and tracking audits to enforce railroads' compliance with drug and alcohol testing plans and requirements.

According to FRA guidance, FRA is responsible for conducting both initial and follow up audits of railroads' drug and alcohol plans to verify and enforce whether railroads are complying with their plans and meeting Federal requirements. FRA established audit goals for each class of railroad to help meet this requirement but has experienced challenges in fully meeting its goals. For example, although FRA's goal is to conduct Part 219 audits of two Class II or commuter railroads, six audits of full-compliance Class III railroads, and 12 Class III partial-compliance⁶ railroads per region each calendar year, FRA officials reported that one region only conducted two audits in 2018. According to FRA, this was because a staffing shortage in the region limited the number of employees who could perform these audits. For example, the Chief Inspector position was vacant for over a year. Moreover, FRA has not established a standardized process for tracking its drug and alcohol audits, limiting its ability to determine whether the Drug and Alcohol program is meeting its overall goals across the regions. In addition, FRA lacks a process for tracking and following up on all action items issued to railroads during compliance audits to verify that railroads take recommended actions. Consequently, FRA may not be positioned to identify repeat patterns that rise to the level of deficiencies at railroads as well as potential systemwide safety trends across the regions. Finally, FRA's program guidance for overseeing drug and alcohol testing compliance is outdated. Although FRA's drug and alcohol regulations were updated in 2017 to require drug and alcohol testing for MOW employees, the Agency's current guidance does not reflect the updated regulations. As a result, FRA may not be able to ensure that all railroads and inspectors are effectively and consistently meeting drug and alcohol testing requirements as required.

We are making recommendations to improve FRA's guidance and oversight of the drug and alcohol testing program.

⁶ A full-compliance review must be conducted on full-compliance railroads, which generally includes Class I, Class II, commuter, and some Class III railroads, since these railroads are required to have programs that implement the entire regulation. However, for those Class III railroads that have fewer than 16 covered service employees and do not operate on tracks of another railroad (except for purposes of limited interchange), only partial audits are required since they only have responsibility for partial programs.

FRA Has Not Adequately Reviewed and Approved Railroads' Drug and Alcohol Testing Plans

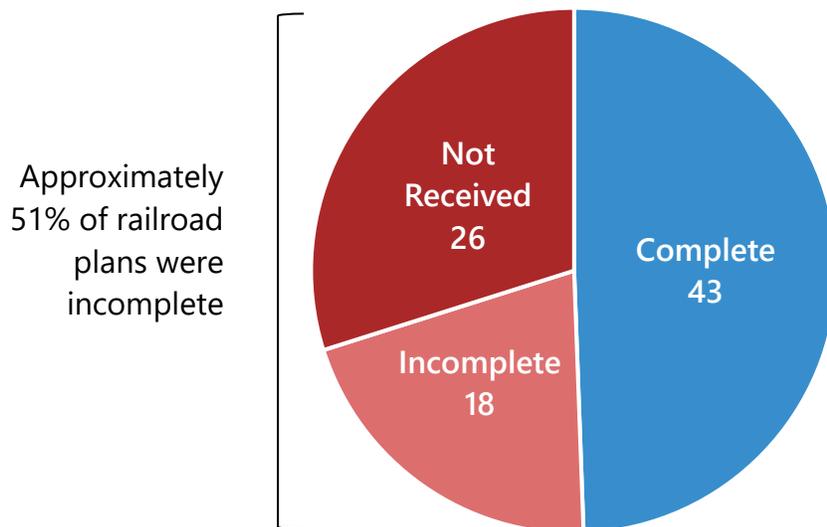
FRA's review and approval process has not effectively ensured that railroads' drug and alcohol testing plans comply with Federal requirements. Specifically, FRA requires that each full-compliance railroad submit a random testing plan for review and approval to the FRA Drug and Alcohol Program Manager in accordance with Part 219—the main Federal regulation addressing drug and alcohol testing requirements at railroads. FRA drafted its Drug and Alcohol Program Compliance Manual to assist the railroads and FRA safety inspectors on the Agency's expectations for a successful Part 219 drug and alcohol program. In addition to the Compliance Manual, the Agency provides optional model compliance templates for railroads to use and frame their individual random testing plans. While FRA provides templates, a railroad is not required to use them and could therefore draft its own random testing plan or use a hybrid of sections from the template and the railroad's own plan. Regardless of the methodology a railroad pursues to draft its random testing plan, the plan must adhere to Part 219, which the FRA Drug and Alcohol Program Manager determines by reviewing and subsequently approving the plan.

However, our review determined that FRA has reviewed and approved incomplete plans that do not fully adhere to Part 219 requirements. Specifically, we analyzed 87 drug and alcohol testing plans selected using a simple random sample stratified by railroad class⁷ from Class I, Class II, Class III, and commuter railroads.⁸ FRA did not provide 26 plans we requested and therefore, we considered them incomplete. In addition, 18 of the plans we received and reviewed were incomplete. Thus, we determined that 44 (approximately 51 percent) of the 87 plans were incomplete (see figure).

⁷ We selected a simple random sample stratified by railroad class of 102 from a universe of 877 railroads for which we requested the random alcohol and drug testing plans from FRA. Of these, 15 were partial-compliance plans, which do not require review and approval from FRA. Therefore, we excluded those 15 from our analysis.

⁸ 49 CFR Part 1201 defines Class I carriers as those having annual carrier operating revenues of \$250 million. Class II carriers are those having annual carrier operating revenues of less than \$250 million but in excess of \$20 million. Class III carriers have annual carrier operating revenues of \$20 million or less.

Figure. Complete and Incomplete Railroad Plans From Our Sample



Source: OIG analysis

Specifically, the incomplete plans did not contain key elements required by Part 219 regulations. For example, one plan for a Class III railroad did not contain the required details on the method used to ensure that its drug and alcohol testing plans included regulated service contractor employees and volunteers. Other elements missing in other railroad plans included a detailed description of the method used to randomly select employees for drug and alcohol testing.

FRA's Drug and Alcohol Program Specialist stated that he reviews and approves railroads' drug and alcohol testing plans as required. However, we found that the Agency has no documentation as to how or to what extent these plans were reviewed.

Moreover, although FRA regulations state that the Drug and Alcohol Program Manager should conduct reviews and approvals of railroads' testing plans, an FRA official told us that the Program Specialist is currently the only person conducting these reviews and approvals. According to the Program Specialist, he reviews an average of approximately 1,500 plans a year. We found that whenever the Program Specialist is temporarily unable to fulfill his duties, this resulted in a backlog of railroads' random testing plans yet to be reviewed and approved. FRA regional officials stated that while the Program Specialist is the primary point of contact, in his absence, railroad staff would be able to contact the Junior Specialist and/or the Program Manager with any questions in regards to the status of railroad plans. However, according to FRA, the Junior Specialist and the Program Manager currently do not review or approve plans because they do not have the same level of extensive expertise as the Program Specialist.

The Program Specialist stated that he is currently training a Chief Inspector to assist him in the review process. However, FRA has not documented the process for reviewing and approving railroads' plans to ensure the continuation of the review and approval process in the event of an unexpected departure of the Specialist or other interruption. FRA has also not instituted oversight controls, such as a supervisory or second-level review, to validate the Program Specialist's results. As a result, FRA is conducting incomplete or inconsistent approvals. Further, FRA could experience—as we identified—an extended backlog of unapproved plans should the Program Specialist become unavailable or if the number of plans needing approval significantly increases due to more workers being added to the drug and alcohol testing program.

FRA Lacks Effective Controls and Processes To Enforce Railroads' Compliance With Drug and Alcohol Testing Plans

Internal control weaknesses limit FRA's ability to verify and enforce railroads' compliance with drug and alcohol testing requirements. First, FRA is not fully meeting its drug and alcohol testing compliance audit goals. Second, FRA has not established a process for following up on action items issued to railroads during compliance audits to verify they undertake recommended actions. Finally, FRA's program guidance for overseeing drug and alcohol testing compliance is outdated and does not reflect current regulations.

FRA Is Not Fully Meeting Its Drug and Alcohol Testing Compliance Audit Goals

FRA inspectors are responsible for conducting audits of railroads' compliance with Part 219 drug and alcohol testing regulations. Specifically, each region has a designated Drug and Alcohol Team Leader (Chief Inspector) and a designated Assistant Team Leader (Inspector). Both of these individuals are trained on the drug and alcohol regulations and tasked with overseeing the performance of drug and alcohol compliance reviews within their region.

To help meet this requirement, FRA established audit goals for each class of railroad (see table).

Table. Part 219 Audit Goals for FRA Inspectors

Class of Railroad	Part 219 Compliance Review Goals	Responsible for Inspection
Class I	4 railroads each fiscal year	FRA Headquarters
Class II	2 railroads each fiscal year	FRA Regional Office
Class III	6 full-compliance and 12 partial-compliance railroads each calendar year	FRA Regional Office

Source: Part 219 Inspection Tools Manual for FRA and State Inspectors FRA Updated January 2007

Although FRA conducts Part 219 audits of railroads, we found that the Agency is not fully meeting its goals. For example, we found that one of the regions we visited faced challenges in completing Part 219 compliance audits in line with FRA’s guidance. Specifically, although the goal is to conduct audits of 12 Class III railroads per region each calendar year, FRA reported that one region only conducted 2 audits in 2018. According to an FRA regional official, this occurred in part because the Chief Inspector position—who is responsible for setting up and completing audits—was vacant for over a year and a half prior to being filled. As a result, there were fewer resources available to conduct Part 219 compliance audits.

In addition, an FRA regional official stated that when Part 219 compliance audits are not completed, there is no accountability from FRA Headquarters. This is in part because FRA does not have a formal process to track inspectors’ Part 219 compliance audits. Instead, FRA Headquarters relies on regional Chief Inspectors to plan for, schedule, and complete Part 219 compliance audits in accordance with inspection goals. We found that these Chief Inspectors each had individual processes for tracking the Part 219 compliance audits for their regions. As a result, FRA lacks a comprehensive picture of its Drug and Alcohol program across the regions and limits the Agency’s ability to identify systemwide program gaps and determine whether the program is meeting its goals.

FRA Lacks a Process for Following Up on All Action Items Issued to Railroads During Part 219 Compliance Audits

FRA determines whether railroads are adequately adhering to their random testing plans through audits but does not follow up on action items issued during audits. According to FRA guidance, the Chief Inspector is responsible for

conducting both initial and follow up drug and alcohol compliance audits⁹ as well as suggesting remedies for findings of non-compliance. Following the audit, the FRA inspectors meet to discuss what they have found and decide as a team whether instances of non-compliance warrant comments, deficiencies, or violations¹⁰ (in very limited serious circumstances). In addition, inspectors might issue action items to address non-compliance issues—for example, remedying collection deficiencies and ensuring compliance with required drug and alcohol collection procedures. Furthermore, according to FRA guidance, if the non-compliance is a repeat from a previous audit and the error continues to be made by the employer, the inspector may choose to apply a violation rather than a deficiency to ensure the employer will prioritize remedying the ongoing problem.

However, neither the FRA regions nor FRA Headquarters have a formal process to track and follow up on all non-compliance action items issued during Part 219 compliance audits. Instead, FRA's regional staff sometimes rely on subsequent Part 219 compliance audits, which may not be conducted until several years later, to identify improvements in railroads' drug and alcohol testing processes and procedures. As a result, FRA lacks the ability to effectively track all open audit action items to better focus inspection efforts or timely determine whether railroads have addressed all non-compliance action items. By not tracking all non-compliance action items from each Part 219 audit, FRA is unable to identify repeat patterns that could elevate an instance of non-compliance to the level of a deficiency, which could require more serious attention. FRA also cannot readily identify potential systemwide safety trends across the regions.

FRA officials stated that they are aware of weaknesses in tracking the regions' Part 219 compliance audits and action items. As such, FRA officials stated that the Agency is developing a more centralized inspection tracking tool that will incorporate the ability to track these audits and related action items. However, FRA has not established a timeline for when this tool will be implemented. Without formal processes for tracking Part 219 compliance audits and all non-compliance action items, FRA cannot fully determine whether railroads are consistently complying with Federal drug and alcohol testing requirements and addressing all identified public safety concerns.

⁹ Specifically, FRA guidance states that Chief Inspectors are expected to lead and issue final inspection reports covering the Class II (regional), Class III, and commuter railroad alcohol/drug compliance reviews (initial and follow-up), and assist in educating and suggesting remedies for findings of non-compliance.

¹⁰ According to the FRA Inspection Tools Manual, any Part 219 program performance element that results in an adverse conclusion by the Inspector for any of the required inspection concerns are considered violations. All other problems identified during the inspection are generally considered deficiencies or comments.

FRA Regional Offices Lack Updated Guidance on Overseeing Part 219 Compliance

FRA's guidance for overseeing railroads' compliance with Part 219 requirements is outdated. Current guidance is critical to help ensure that railroads and inspectors effectively and consistently understand and implement Part 219 requirements. However, FRA has not updated its Drug and Alcohol Compliance Manual since 2002—a public guidance document for railroads that describes what FRA expects in a successful Part 219 drug and alcohol program. Additionally, FRA has not, since 2007, updated the Inspection Tools Manual—an internal supplement to its compliance manual to assist FRA inspectors in conducting Part 219 compliance audits. Further, FRA has not updated its Drug and Alcohol Program Interpretation Manual since 2010—a public guidance document which describes FRA's interpretation of the regulation.

This outdated guidance raises a public safety concern in part because it does not include recent regulatory changes that expand the scope of the Drug and Alcohol testing program to cover MOW employees.¹¹ This significant expansion, which reflects a 2008 congressional mandate¹² and related 2008 NTSB recommendation,¹³ became effective on June 12, 2017. Yet, as of February 2020, FRA had not incorporated this expansion into its compliance manual, inspection tools manual, or guidance. FRA stated that it has not yet updated its guidance to incorporate the MOW requirements in part because it anticipates making additional changes to Part 219 applicability requirements that will require a final rulemaking. FRA stated that it plans to update its guidance when this anticipated final rulemaking is complete, although it remains uncertain when this will be.

Moreover, because FRA has not updated its guidance, the Agency has had to provide extensive support to regional inspectors and industry staff who do not understand the Part 219 requirements. For example, to clarify the Part 219 requirements that are currently in effect, FRA Headquarters and regional staff field phone calls from those affected by the regulation, participate in industry training and workshops, and conduct annual and on-the-job training. A lack of up-to-date Part 219 guidance can hamper this process and make it more challenging for FRA and industry employees to properly implement Federal drug and alcohol testing requirements.

¹¹ Control of Alcohol and Drug Use: Coverage of Maintenance of Way (MOW) Employees and Retrospective Regulatory Review-Based Amendments, vol. 81 (June 10, 2016) (codified at 49 CFR 219).

¹² Pub. L. No. 110-432 (2008).

¹³ NTSB Safety Recommendation R-08-007 (2008).

FRA officials acknowledged the need to update its guidance. FRA explained that a draft update is in circulation, but that the update has not yet been approved for distribution.

Conclusion

Ensuring that key railroad workers are not impaired by drug or alcohol is a vital component to maintaining rail safety. FRA has taken steps to oversee whether railroads are complying with Federal drug and alcohol testing requirements, including reviewing and approving railroads' testing plans as well as conducting periodic audits of railroads' compliance as required. However, without documenting its review and approval procedures and following up on action items issued during its compliance audits, FRA cannot reasonably ensure that railroads are taking all the actions needed to effectively detect and prevent impaired workers and maintain safety.

Recommendations

To improve FRA's oversight of railroads' compliance with drug and alcohol testing requirements, we recommend that the Federal Railroad Administrator:

1. Develop and implement written procedures for reviewing and approving railroads' Part 219 compliance plans, to include an oversight control, such as a supervisory or second-level review, to validate results.
 2. Develop and implement a written process for tracking all Part 219 audits.
 3. Develop and implement a written process for tracking and following up on all action items issued from Part 219 compliance audits to verify that railroads have taken corrective actions.
 4. Update Drug and Alcohol program guidance for both railroads and inspectors to reflect the 2017 Maintenance-of-Way requirements.
-

Agency Comments and OIG Response

We provided FRA with our draft report on March 11, 2020, and received its response on April 14, 2020, which is included as an appendix to this report. FRA concurred with all four of our recommendations and proposed appropriate

actions and completion dates. Accordingly, we consider all recommendations as resolved but open pending completion of the planned actions.

Actions Required

We consider recommendations 1 through 4 resolved but open pending completion of the planned actions.

Exhibit A. Scope and Methodology

We conducted our work from March 2019 through March 2020 in accordance with generally accepted Government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To assess FRA's review and approval process of railroads' random alcohol and drug testing plans approved between fiscal years 2013 and 2018, we received a list from FRA with 877 railroads. We selected a statistical sample of 102 railroads for which we requested the random alcohol and drug testing plans from FRA. FRA provided 76 plans. Fifteen of the plans were partial-compliance plans, which are not required to have a review or approval from FRA. We asked for the remaining 26 plans, but FRA did not provide them to us. We used our sample to test the accuracy of FRA's list and found that three railroads were not classified correctly. We were unable to independently validate the completeness of the railroad universe list we received from FRA because there was no other source available. Therefore, we had to rely on FRA's spreadsheet. We deemed the list reliable for purposes of this audit because it enabled us to identify a sufficient number of incomplete plans to support our findings.

We stratified this universe by type of railroad and selected a stratified sample of 102 out of 877 railroads as follows: Stratum 1 was a census of all 7 Class I railroads, Stratum 2 was a census of all 11 Class II railroads, Stratum 3 was a simple random sample of 63 out of 829 Class III railroads, and Stratum 4 was a simple random sample of 21 out of 30 commuter railroads. We computed Stratum 3 and 4 sample sizes based on an expected non-compliance rate of 50 percent to allow for estimates at a 90-percent confidence level and a desired precision no greater than +/-10 percent.

To assess FRA's controls for enforcing compliance with the railroads' random alcohol and drug testing plans we selected a stratified sample of three out of eight FRA regions where Stratum 1 was a census of one region. This region, Region 8, was selected because it experienced three types of crash scenarios involving (1) passenger, (2) freight, and (3) hazardous materials, which pose greater risk. Stratum 2 was a simple random sample of two out of seven regions.

To assess FRA's review and approval process for railroads' random alcohol and drug testing plans, we identified plans subject to full compliance and partial compliance. For full-compliance plans, we used the Part 219 regulation, which requires full-compliance plans to have the 14-point criteria and FRA approval.

Without FRA having an established threshold, we determined 10 out of the 14-point criteria with an approval or acceptance from FRA would deem a railroad plan to be complete. Partial-compliance plans are not authorized to use Federal authority to conduct Federal random or reasonable cause testing and therefore should use "Company Policy Testing" as their authority. With regards to partial-compliance plans, we did not assess the completeness because they do not require review or approval by FRA.

Exhibit B. Organizations Visited or Contacted

FRA Facilities

FRA Headquarters

Office of Chief Counsel, Washington, DC

Office of Railroad Safety, Washington, DC

- Office of Technical Oversight
- Office of Safety Analysis
- Drug and Alcohol Program

FRA Regions

Region 1, Cambridge, MA

Region 3, Atlanta, GA

Region 8, Vancouver, WA

DOT Facilities

Office of the Secretary of Transportation

Office of Drug & Alcohol Policy & Compliance, Washington, DC

Office of Audit Relations, Washington, DC

Other Organizations

Alaska Railroad

CSX Transportation

Florida East Coast Railway

Midland Testing Services, Inc.

Montana Rail Link

OmniTRAX

Paducah & Louisville Railway

PanAm Railways

Rapid City, Pierre and Eastern Railroad

Regional Health Rapid City, South Dakota Hospital & Health Care

Western New York and Pennsylvania Railroad, LLC

Exhibit C. List of Acronyms

AMTRAK	National Railroad Passenger Corporation
CFR	Code of Federal Regulations
DOT	Department of Transportation
FAA	Federal Aviation Administration
FRA	Federal Railroad Administration
FY	Fiscal Year
GAO	Government Accountability Office
MOW	Maintenance of Way
NTSB	National Transportation Safety Board
OIG	Office of Inspector General
OMB	Office of Management and Budget
Part 219	49 CFR Part 219

Exhibit D. Major Contributors to This Report

WENDY HARRIS

PROGRAM DIRECTOR

RYAN SANDERS

PROJECT MANAGER

BRIAN CHAPMAN

SENIOR ANALYST

SHARLENA DELANEY

SENIOR ANALYST

DALE ABRAHAM

ANALYST

AUDRE AZUOLAS

SENIOR TECHNICAL WRITER

FRITZ SWARTZBAUGH

SENIOR COUNSEL

GEORGE ZIPF

SUPERVISORY STATISTICIAN

PETRA SWARTZLANDER

SENIOR STATISTICIAN

Appendix. Agency Comments



**U.S. Department
of Transportation**

Federal Railroad Administration

MEMORANDUM

Subject INFORMATION: Management Response to Office of
: Inspector General (OIG) Draft Report on FRA Oversight
of Railroads' Drug and Alcohol Testing Programs

Date: April 14, 2020

From: Ronald L. Batory
Federal Railroad Administrator

A handwritten signature in black ink, appearing to read "Ronald L. Batory".

To: David Pouliott
Assistant Inspector General for
Surface Transportation Audits

Reply to the Attn ROA-3
of:

The Federal Railroad Administration (FRA) has a comprehensive approach to preventing railroad accidents and casualties due to illicit drug use and alcohol misuse. As a result, since 2009, railroad industry-wide random test results have consistently been at or below 1.0 percent positive for drugs and 0.5 percent positive for alcohol. To drive positive test rates even lower, FRA conducts extensive outreach, provides technical assistance, and implements oversight activities related to deterring and detecting illicit drug use and alcohol misuse. FRA works proactively with railroads, by providing model program plans and supporting railroads through implementation of their random testing programs. For example, FRA recently developed a training and policy toolkit to help the industry understand prescription and over-the-counter medications that might cause impairment through drowsiness and fatigue. Further, FRA funds the post-accident toxicological testing program, which provides post-mortem testing of all railroad employee fatalities and tests additional types of specimens, such as blood and tissue.

In addition to our existing program activities, FRA has the following initiatives under way to address specific issues OIG described in its draft report:

- FRA is writing standard operating procedures for review and approval of railroads' testing plans. These procedures will document primary and second-level evaluation steps and the criteria that FRA uses to determine whether each testing plan includes all required elements.
- FRA is populating a recently developed audit tracking database and tool that will help regional staff identify which railroads to audit each year. The database will also help FRA to systematically track audit status and serve as the repository for audit documentation.
- FRA is training regional specialists and inspectors who conduct audits of the smaller and commuter railroads' implementation of their testing plans.

- FRA is updating the Part 219 Alcohol and Drug Program compliance manual and guidance to help employers effectively implement Federal railroad drug and alcohol testing requirements.

Based on our review of the draft report, we concur with OIG's four recommendations as written. We plan to complete actions to address recommendations 1 and 4 by March 15, 2021, and recommendations 2 and 3 by December 15, 2020.

We appreciate the opportunity to review the OIG draft report. Please contact Rosalyn G. Millman, at 202-493-1339 with any questions.

U.S. DOT IG Fraud & Safety Hotline

hotline@oig.dot.gov | (800) 424-9071

<https://www.oig.dot.gov/hotline>

Our Mission

OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

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