

## FRA MODEL POLICY FOR COMPLIANCE WITH ALCOHOL/DRUG USE REGULATIONS

**[Designed For Railroads With Less than 16 Hours of Service Employees  
And No Joint Operations But Can Be Used by All Railroads to Comply with the  
Minimum Employee Educational Requirements of 219.23 (d) and (e)]**

\_\_\_\_\_ recognizes that there is a problem of substance abuse, both in drugs and alcohol, in today's society. As an employer who is subject to governmental regulations and seeks to promote the safety of its employees and the public, willingly complies with Federal regulations that are designed to restrict and prohibit the unauthorized use of drugs and alcohol on its property. This company will comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations and all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

In accordance with the applicable Federal regulations, this railroad prohibits persons who perform work covered by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) from being under the influence and/or possession of illegal substances and/or under the influence of alcohol while on duty or within four hours of reporting for covered service. Additionally, controlled substance use is prohibited at any time **on or off duty**, except as allowed in 219.103.

This program applies to all employees who are subject to the Federal hours of service laws (i.e. operating employees or covered service employees, including contractors and volunteers). Covered service employees are required to be in compliance with the applicable sections of Part 219 when they are on duty and are required to perform or are available to perform covered service.

This railroad has a total of \_\_\_\_\_ hours of service employees (including volunteers and contractors who perform hours of service functions).

The following classes or crafts of employees are subject to the hours of service laws on this railroad, and to applicable sections of Part 219:

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### APPLICATION OF PART 219

Part 219 subparts **D (for cause testing)**, **E (voluntary referral & co-worker report policies)**, **F (pre-employment testing)** and **G (random testing)** **do not apply** (and cannot be implemented using Federal authority) at this time because the railroad does not employ more than 15 covered service employees as defined 49 U.S.C. 21103, 21104, or 21105, and/or the railroad does not operate on tracks of another railroad (or otherwise

engage in joint operations with another railroad) except as necessary for purposes of interchange.

Employer-authority programs that mirror the Federal programs are not prohibited as long as Federal authority and Federal forms are not used. For employer-authorized testing, non-Federal testing forms must be used.

## **PROHIBITED CONDUCT UNDER PART 219 SUBPART B “Rule G” or Equivalent**

### **Alcohol and Drug Use Prohibited (219.101):**

No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service. No employee may report for covered service, or go or remain on duty in covered service while under the influence of or impaired by alcohol or having 0.02 percent (Federal violation at 0.04 percent or more) or more alcohol concentration in their breath or blood.

No employee may report for covered service, or go or remain on duty in covered service while:

- Under the influence of or impaired by alcohol; or
- Having 0.02 percent (Federal violation at 0.04 percent or more) or more alcohol concentration in their breath or blood; or
- Under the influence of or impaired by a controlled substance.

No employee may use alcohol for whichever is the lesser of the following periods:

- Within four hours of reporting for covered service; or
- After receiving notice to report for covered service

No employee tested under Part 219 whose test results indicates an alcohol concentration of 0.02 percent or greater but less than 0.04 percent may perform or continue to perform covered service functions for a railroad, nor may a railroad permit the employee to perform or continue to perform covered service, until the start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

### **Prohibition on Abuse of Controlled Substances (219.102):**

No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by 219.103.

**Use of Prescribed or Over-the-Counter Drugs (219.103):**

Part 219 subpart C does not prohibit the use of a controlled substance (on Schedules II through V of the controlled substance list) prescribed by a medical practitioner, or possession incident to such use, if:

- The treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee’s assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage is consistent with the safe performance of the employee's duties;
- The substance is used at the dosage prescribed or authorized; and
- In the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).

Part 219.103 does not restrict any discretion available to the railroad to require that employees notify the railroad of therapeutic drug use or obtain prior approval for such use. This railroad’s policy regarding notification of use is:

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**TRAINING**

**Supervisor Training (219.11 (g)):**

Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must have at least two hours of training in the recognition of signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program should also cover supervisor responsibilities for “Rule G” observations under Part 217 and subsequent action such as reasonable suspicion testing.

The program must also provide at least one hour training on the qualifying criteria for post-accident testing contained in subpart C of Part 219, and the role of the supervisor in post-accident decisions and collections described in subpart C and Appendix C to Part 219.

**Employee Training:**

This railroad will provide educational materials that clearly explain the requirements of Part 219, and the railroad’s policies, prohibitions, and procedures with respect to meeting those requirements. A copy of this plan and any other educational materials will be distributed to each covered service employee and to each person subsequently hired for or transferred to a covered service position. At the end of the policy, there is an employee educational handout that was developed jointly by FRA, the Association of American Railroads, the American Short Line & Regional Railroad Association, and railroad labor organizations which helps to explain railroad alcohol/drug testing. This railroad will also provide written notice to representatives of employee organizations of the availability of this information per 219.23.

**Railroad Contact:**

The following person is designated by this railroad to answer employee questions about the educational materials

\_\_\_\_\_ Phone: \_\_\_\_\_

**PREVIOUS EMPLOYER CHECK**

Effective September 2001, a gaining employer must check on the drug and alcohol testing record of employees it is intending to use to perform hours of service duties. This railroad will, after obtaining an employee’s written consent, request information from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee’s application or transfer into covered service. A copy of the employee release form is attached as Appendix A to this policy. (49 CFR 40.25)

An employee will also be asked whether he or she tested positive (or refused to test) on any Federal pre-employment drug or alcohol test administered by a DOT employer to which the employee applied for, but did not obtain covered service work during the past two years.

With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee’s successful completion of DOT return-to-duty requirements (including Federal follow-up tests) must be provided to this railroad. See Appendix B for a copy of 49 CFR 40.25.

## CIRCUMSTANCES FOR TESTING COVERED SERVICE EMPLOYEES

### **FRA Post-Accident Toxicological Testing:**

**Part 219 subpart C requires** this railroad to collect certain employee's urine, blood and/or breath specimens (tissue in the event of a fatality) after qualifying FRA Post-Accident events. This railroad will provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and Appendix C to Part 219. The duration of such training will not be less than 1 hour, as previously addressed. Post-accident events are as follows:

**Major Train Accident:** Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold, \$9,900 in 2013) that involves one or more of the following:

- A fatality
- A release of hazardous material lading from railroad equipment accompanied by an evacuation; or
- A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or
- Damage to railroad property of \$1,000,000 or more.

**Impact Accident:** An impact accident (i.e., a rail equipment accident defined as an "impact accident" in 219.5) that involves damage in excess of the current reporting threshold, resulting in:

- A reportable injury; or
- Damage to railroad property of \$150,000 or more.

**Fatal Train Incident:** Any train incident (involving the movement of on-track equipment) that involves a fatality to any on-duty railroad employee (covered or non-covered service, including an hours of service contractor). This type does not have to meet the reportable property damage threshold.

**Passenger Train Accident:** Reportable injury to any person in a train accident, (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

**Testing Decision:** For an accident that meets the criteria for a Major Train Accident, all crewmembers of all trains must be tested. For an Impact Accident, Fatal Train Incident, or Passenger Train Accident, the railroad must exclude an employee if the responding railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident (considering any such information immediately available at the time). For a fatal train incident, the fatally injured employee cannot be excluded from being tested.

For all four types of accidents, in any case where an operator, dispatcher, signal maintainer or other covered service employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees must also be required to provide specimens.

Exceptions from Testing: No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

Collection of Urine and Blood Specimens: Employee specimens will be collected at a medical facility, i.e., hospital, clinic, physician's office, or laboratory where toxicological specimens can be collected according to recognized professional standards. Specimen collections will be accomplished using the FRA Post-Accident Toxicological Testing Kit. Specimens will be tested at FRA's contracted post-accident testing laboratory, currently Quest Diagnostics, 1777 Montreal Circle, Tucker, GA 30084; 800-729-6432.

Implied Consent: Employee(s) required to participate in body fluid testing under subpart C of Part 219 (post-accident toxicological testing) consent to taking of specimens, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

Any railroad employee who performs service for a railroad is deemed to have consented to removal of body fluid and/or tissue specimens necessary for toxicological analysis from the remains of such employee, if such employee dies within 12 hours of an accident or incident described in subpart C of Part 219 as a result of such event. This consent is specifically required of employees not in covered service, as well as employees in covered service.

## **REFUSAL TO TEST**

Failure to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) is considered a refusal to participate in testing, without regard to any subsequent provision of specimens. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent

testing does not excuse such refusal by the employee to provide the required specimens in a timely manner.

**For all types of Federal testing, an employee who refuses to cooperate in providing specimens as required by Parts 219/40 “has refused to test” and must be withdrawn from covered service and must be deemed disqualified for covered service for a period of nine (9) months.** The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct.

### **RAILROAD’S RESPONSIVE ACTION TO A POSITIVE FRA TEST**

A covered service employee who has tested positive on an FRA drug test or alcohol test at 0.04 percent or greater must be immediately removed from covered service. Prior to or upon withdrawing the employee from covered service, the railroad must provide notice to the employee of the reason for this action. If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 219.101 or 219.102, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing. See 219.104 (c) for the hearing provisions.

Even if the railroad does not wish to keep the employee in its employment, it must provide the above hearing (if requested) and at a minimum provide the employee with a list of qualified Substance Abuse Professionals.

The employee may not return to duty in any DOT-covered service unless he/she has complied with the return to service provisions described here. Before the employee is returned to covered service, he/she must be evaluated by a Substance Abuse Professional (SAP), complete any required education and/or treatment, be recommended for return to duty by the SAP, have a negative Federal drug and/or alcohol return-to-duty test, and be subject to Federal follow-up testing for up to 5 years, per the SAP’s recommendations. For a Federal violation of 219.101 or 219.102, any Federal return-to-duty and/or Federal follow-up tests required by the SAP must be directly observed under the new direct observation procedures per 40.67. Please contact FRA’s Alcohol/Drug Program Manager at 202-493-6313 for guidance if your railroad plans to return an employee to covered service following a post-accident positive test result.

### **RAILROAD’S RESPONSIVE ACTION TO A POSITIVE FEDERAL ALCOHOL TEST 0.02 TO 0.039**

As previously discussed, a test result of 0.02 to 0.039 percent is a positive alcohol test for which the railroad must at a minimum, remove the employee from covered service for a minimum of 8 hours, but may take further action under its company policy. However, since it does not reach the level of a Federal violation (0.04 percent or more) there are no Federal sanctions which may be taken other than the employee’s removal from covered

service for a minimum of 8 hours. The following is this railroad's company policy for additional railroad action for a 0.02 to 0.039 percent Federal alcohol test result, if applicable:

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### **NEGATIVE ALCOHOL TEST RESULT**

If an employee tested under the provisions of this part has a test result indicating an alcohol concentration below 0.02, the test must be considered negative and is not evidence of alcohol misuse. A railroad may not use a federal test result below 0.02 either as evidence in a company proceeding or as a basis for subsequent testing under company authority.

### **EMPLOYEE ASSISTANCE**

(Provide info concerning the effects of drug and alcohol misuse on an individual's health, work and person life; signs & symptoms of an alcohol or drug problem; and available methods of evaluating the misuse of alcohol and drugs, and the names, addresses and telephone numbers of substance abuse professionals or EAP & counseling and treatment programs. These materials may be posted where employees go on duty. See <http://www.dol.gov/asp/programs/drugs/workingpartners/materials/materials.asp>.

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### **ADDITIONAL RAILROAD POLICIES**

(As applicable, include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of Part 219).

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### **COMPANY POLICY TESTING PROGRAMS**

(Identify whether this railroad is conducting pre-employment, random testing, etc. under company authority. If so, note that all such testing will be conducted using non-DOT forms).

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# APPENDIX A

## Suggested Format: "Release of Information Form -- 49 CFR Part 40 Drug and Alcohol Testing"

### **Section I. To be completed by the new employer, signed by the employee, and transmitted to the previous employer:**

Employee Printed or Typed Name: \_\_\_\_\_

Employee SS or ID Number: \_\_\_\_\_

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in *Section I-B*, to the employer listed in *Section I-A*. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in *Section II-A* by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Have you worked for a DOT-regulated employer in the last 2 years? \_\_\_\_\_

Have you tested positive, or refused to test, on any Federal pre-employment drug/alcohol test? \_\_\_\_\_

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

#### **I-A.**

New Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Designated Employer Representative: \_\_\_\_\_

#### **I-B.**

Previous Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Designated Employer Representative (if known): \_\_\_\_\_

### **Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:**

**II-A.** In the two years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

- |   |                        |
|---|------------------------|
| 1. Did the employee have alcohol tests with a result of 0.04 or higher?                                   | YES ___ NO ___         |
| 2. Did the employee have verified positive drug tests?  | YES ___ NO ___         |
| 3. Did the employee refuse to be tested?  | YES ___ NO ___         |
| 4. Did the employee have other violations of DOT agency drug and alcohol testing regulations?             | YES ___ NO ___         |
| 5. Did a previous employer report a drug and alcohol rule violation to you?                               | YES ___ NO ___         |
| 6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process? | N/A ___ YES ___ NO ___ |

*NOTE: If you answered “yes” to item 5, you must provide the previous employer’s report. If you answered “yes” to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).*

**II-B.**

Name of person providing information in *Section II-A*: \_\_\_\_\_

Title: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX B – REGULATION ON PREVIOUS EMPLOYER CHECKS PER 40.25

### **§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?**

(a) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);
- (4) Other violations of DOT agency drug and alcohol testing regulations; and

(5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).



## What You Need to Know About Federal Drug and Alcohol Testing

Federal drug & alcohol testing in the railroad industry must comply with DOT and FRA Federal regulations/procedures. This flier is a cooperative effort among the FRA, DOT, AAR, ASLRRA, ATDA, BLET, BRS, IBEW & UTU to provide covered service employees like you with the information you need to comply with Federal testing. Any other testing would be conducted under company authority.

- DOT and FRA testing regulations (49 CFR Parts 40 and 219) apply to all employees covered under the hours of service law (e.g., train and engine employees, dispatchers, and signal employees).
- Always conduct yourself in a business-like manner and do not joke or make fun of the collection process. Testing is part of your responsibilities as a safety-sensitive rail employee.
- Follow the specimen collector's instructions; e.g., remove your coat and empty your pockets.
- Be alert during the collection process and save the copies of the forms that are given to you.
- The paper form that is used to record the testing information will identify whether the test is under Federal or company authority, and state the reason for the test. A special form is used for FRA post-accident testing.
- Only the results of a **Federal** test (positive, adulterated or substituted drug test; positive alcohol test - concentration of 0.04 or more; or refusal) trigger Federal sanctions, which include engineer decertification under Part 240.
- If you feel you have been wrongfully charged with a Federal drug or alcohol violation, you are entitled to a railroad hearing per 219.104 (c).
- Testing for **drugs** requires a urine specimen. Testing for **alcohol** uses a breathalyzer or a saliva swab (blood is taken for FRA post-accident testing only).

### Drug and Alcohol Prohibitions

You are in violation of Federal regulations if you are in possession of alcohol or illegal drugs while assigned to perform covered service; or if you use alcohol on duty; or within 4 hours of reporting for covered service; or after receiving notice to report (whichever is the lesser period). Use of illegal drugs is prohibited on or off-duty.

**Alcohol Concentration Below 0.02:** A railroad **may not** use a Federal test result below 0.02 for Federal or company action. Breathalyzers are not certified at levels below 0.02, so a test result below 0.02 is negative.

**Alcohol Concentration 0.02 to 0.039:** If you are on railroad property with an alcohol test result from 0.02 through 0.039, your test result is "positive" for alcohol, and the railroad must remove you from covered service for at least 8 hours. The railroad is not prohibited from taking further disciplinary action under company policy.

**Alcohol Concentration 0.04 or More and/or Illegal/Unauthorized Drug Use:** If you test positive for illegal or unauthorized drugs, and/or if you test positive for alcohol at 0.04 or higher, you are in "violation" of the Federal rules and the railroad must remove you from covered service. To be allowed to return to covered service, you must first:

- Complete the Federal return-to-duty requirements, including evaluation by a Substance Abuse Professional and any recommended education and/or treatment; and have a negative result on your Federal return-to-duty test.
- If the railroad chooses to return you to duty, you will have to take Federal follow-up tests for up to five years. You will take a minimum of six follow-up tests in the year after you return to work.

**Drugs Tested:** A certified laboratory tests your urine specimen for marijuana, cocaine, opiates, amphetamines (methamphetamines and ecstasy (MDMA, MDA and MDEA)), & PCP (and additional drugs for FRA post-accident testing).

**Non-Negative Drug Test:** The testing laboratory will report a non-negative (positive, adulterated, invalid, or substituted result) to your railroad’s Medical Review Officer (MRO).

- If your test result is non-negative, the MRO will interview you to determine whether you have a legitimate medical explanation for your test result (for example, use of a prescribed medication).
- The MRO will inform you of your right to request a test of your “split specimen” at a different laboratory. The railroad may charge the cost of testing your split specimen back to you if your split specimen test result is positive; and you only have 72 hours to make this request.

### **Prescription and Over-The-Counter Medications**

You must inform one of your treating physicians of all the prescribed and over-the-counter drugs you are taking so that your doctor can determine if your use of these drugs is consistent with the safe performance of your duties.

- You must use the medication at the doctor’s prescribed or authorized dosage.
- The railroad may require you to obtain prior approval for any drugs you are taking.
- **Use Only Prescriptions in Your Name:** You may only legally use medications prescribed for you. You are not authorized to use medication prescribed for someone else, such as medications prescribed for your spouse, parents, or children. Using someone else’s prescription drugs can result in a positive Federal test result.

### **Direct Observation Urine Collection**

Federal regulations require a collector or observer to directly observe you while you provide your urine specimen if:

- Your previous urine specimen was out of normal temperature range; or
- The collector previously observed you attempting to tamper or substitute a specimen; or
- Your previous test result was invalid due to an interfering substance and you did not have a legitimate medical explanation; or
- Your split specimen could not be tested following a non-negative test result; or
- A Federal return-to-duty or follow-up test (after you’ve had a Federal positive test result or refusal to test). The collector (or the observer) must be of the same gender as you for direct observation collections.

### **Shy Bladder (If you have difficulty providing a urine specimen)**

- After your first unsuccessful attempt to provide an acceptable specimen, you have up to 3 hours to produce a single specimen of sufficient volume (you can’t combine specimens). You can consume up to 40 ounces of fluid.
- If you do not provide a specimen within those 3 hours, you must undergo a medical evaluation to determine if there was a medical reason for your inability to do so. If a physician determines that there was no medical reason for your failure to provide a urine specimen, you will be charged with a refusal.
- Hours of service limitations generally apply to random collections except when the collector determines a direct observation collection is required (as referenced above).

### **Refusal to Test**

A refusal to take a Federal test usually has harsher penalties than a positive test result. **Never** refuse to cooperate with the testing requirements. Take the test and if needed, address any issues you have later. A refusal includes:

- Failure to appear for a test or remain at the testing site
- Failure to cooperate with the testing process
- Failure to provide a sufficient amount of breath or urine (without an adequate medical explanation as determined by a physician through a required medical evaluation)
- Adulteration or substitution of your urine specimen
- Failure to permit any part of the new direct observation procedures.

### **Fatal Flaws**

There are only a few procedural errors serious enough to be considered “fatal” flaws that cause a Federal drug or alcohol test to be cancelled. A fatal flaw is a non-correctable procedural error which calls into question whether the specimen tested was really yours or whether the test result on your specimen was correct (for example, if the specimen ID numbers on your specimen bottle do not match those on your test form).

### **Highway/Rail Grade Crossing Accidents**

If you are involved in a collision at a grade crossing and a law enforcement officer asks you to take a drug and/or alcohol test, advise him/her that FRA does not permit railroads to conduct Federal post-accident testing on train crews involved in grade crossing collisions. Since FRA regulations cover this situation, State and local laws on toxicological testing after rail accidents usually do not apply. **But**, an officer can still require you to be tested if he or she has “probable cause” to suspect that you were impaired (this has to be more than just the fact that an accident occurred - for example, the officer finds an open beer bottle in the cab) at the time of the accident. FRA does **not** advise resistance to law enforcement action. You must comply if the officer decides to test you. A carrier officer should become involved in this discussion immediately.

### **Voluntary Referral and Co-Worker Report Policies**

- Most railroad employers must have both of these programs available if you decide to voluntarily initiate action to address a substance abuse problem, whether that problem is yours or a co-worker’s.
- If you ask for help or a co-worker refers you under one of these programs, the railroad must keep you in their employment, maintain your confidentiality, and provide you up to 45 days leave of absence for treatment.
- You must follow the program’s guidelines to maintain these employee protections. The railroad is required to offer you only one “bite at the apple,” but programs vary. Check with your employer.

For more complete information review 49 CFR Part 40 and Part 219, ask your union representative, or your employer’s Designated Employer Representative (DER) to share additional information with you. *Text of the CFR is available at <http://www.fra.dot.gov> (click on Railroad Safety, then Programs, then [drug and alcohol](#)).*