

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

Effective June 12, 2017

**[This Model Plan is for Railroads with 15 or fewer Hours of Service Employees  
and without Joint Operations in order to comply with the minimum employee educational  
requirements of 49 CFR §219.23 (d) and (e)]**

## Policy Statement

**(INSERT FULL NAME AND FRA REPORTING CODE OF RAILROAD)** 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 regulated by the Federal Hours of Service Laws (see 49 U.S.C. §§ 21101-21108) and/or performing duties as Maintenance-of-Way (MOW) workers as described in the definition of "Roadway Worker" in 49 CFR § 214.7 are prohibited from using or the possession of illegal substances or alcohol while on duty. No employee may use alcohol for whichever is lesser of the following periods: within four hours of reporting for regulated service or after receiving notice to report for regulated service. Additionally, controlled substance use is prohibited at any time **on or off duty**, except as allowed in 49 CFR § 219.103.

Programs have been established on this railroad which requires regulated employees to demonstrate their safety posture through complying with:

1. Urine screens to detect the presence of marijuana, cocaine, opioids, phencyclidine and amphetamines (See 49 CFR § 40.85 and 49 CFR § 40.87);
2. Breath alcohol tests to detect the unauthorized use of alcohol; and
3. Breath, urine, blood and tissue (fatality) testing after qualifying FRA post-accident events.

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) **and/or** employees, contractors or volunteers performing duties as Maintenance-of-Way (MOW) workers as described in the definition of "Roadway Worker" in 49 CFR § 214.7. Regulated 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 regulated service.

This railroad has a total of \_\_\_\_\_ regulated service employees (including volunteers and contractors) who perform "**Hours of Service**" duties.

This railroad has a total of \_\_\_\_\_ regulated service employees (including volunteers and contractors) who perform "**Roadway Worker**" duties.

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

Identify whether you operate on tracks of another railroad (or otherwise engage in joint operations with another railroad, except as necessary for purposes of interchange). If so, which railroad (s) and mileage: \_\_\_\_\_

---

### **Identifying Information**

**Railroad:**

Name: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

E-Mail: \_\_\_\_\_

**Designated Employer Representative:**

Name: \_\_\_\_\_ Address: (If different from above)

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

E-Mail: \_\_\_\_\_

**Assistant Designated Employer Representative:**

Name: \_\_\_\_\_ Address: (If different from above)

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

E-Mail: \_\_\_\_\_

**Medical Review Officer:**

Name: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

**Testing Laboratory** (must be on HHS list of certified labs):

Name: \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

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

**Substance Abuse Professional (SAP):**

Name: \_\_\_\_\_

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

\_\_\_\_\_

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

## **APPLICATION OF PART 219**

**Effective June 12, 2017**, railroads that do not employ more than 15 covered service employees (*only counting employees subject to Hours of Service duties*) as defined by 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 **are subject to** compliance with the following Part 219 subparts:

- **A (General)**
- **B (Prohibitions)**
- **C (FRA Post-Accident Toxicological Testing)**
- **D (Federal Reasonable Suspicion Testing)**
- **F (Federal Pre-Employment Testing)**
- **H (Drug and Alcohol Testing Procedures)**
- **J (Recordkeeping Requirements)**

**Note:** *Persons performing duties regulated by the Federal Hours of Service Laws and/or duties as Maintenance-of-Way (MOW) workers as described in the definition of “Roadway Worker” in 49 CFR § 214.7 will be subject to the above mentioned Part 219 subparts beginning June 12, 2017.*

Railroads as described above **are not authorized or allowed to implement or use Federal authority** for any of the following Part 219 subparts:

- **E (Federal Reasonable Cause testing)**
- **G (Federal Random testing)**
- **K (Referral Programs)**

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 (49 CFR §219.101):**

No employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform regulated service. No employee may report for regulated service, or go or remain on duty in regulated 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 regulated service, or go or remain on duty in regulated 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 regulated service; or
- After receiving notice to report for regulated 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 regulated service functions for a railroad, nor may a railroad permit the employee to perform or continue to perform regulated 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 (49 CFR § 219.102):**

No employee who performs regulated 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 (49 CFR § 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).

49 CFR §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:

---

---

## **TRAINING**

### **Supervisor Training (49 CFR § 219.11 (g)):**

Each supervisor responsible for regulated employees (except a working supervisor within the definition of co-worker under this part) must have 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 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 regulated service employee and to each person subsequently hired for or transferred to a regulated 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 49 CFR § 219.23.

## **PREVIOUS EMPLOYER CHECK**

This railroad must check on the drug and alcohol testing record of employees it is intending to use to perform regulated 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 regulated 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 regulated 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.

### **CIRCUMSTANCES FOR TESTING REGULATED SERVICE EMPLOYEES**

**Pre-Employment Drug Testing** – (49 CFR § 219.501) Applicants will be informed that all individuals this company will use for regulated service must be drug-free. Passing a Federal pre-employment drug test is a condition prior to performing regulated service duties. If an applicant refuses to submit to the drug test, or tests positive on the drug test, the applicant will not be considered qualified to perform regulated service and will not be offered a position in regulated service.

**Federal Pre-Employment Alcohol Testing (Optional) – (49 CFR § 219.502)**  
**Authorized but not required. This railroad chooses to conduct Federal alcohol pre-employment testing? Place an "X" in one of the following boxes: Yes ☐ No ☐**

### **Federal Reasonable Suspicion Testing** – (49 CFR § 219.301)

Regulated service personnel will be required to submit to a Federal drug and/or alcohol test whenever a properly trained supervisory employee of this railroad has reasonable suspicion that a regulated employee is currently under the influence of or impaired by a controlled substance or alcohol. Reasonable suspicion must be based on specific, contemporaneous personal observations the supervisor can articulate concerning the employee's appearance, behavior, speech, body odor, chronic effects or withdrawal effects. The observations must be made by at least one qualified supervisor [49 CFR § 219.11 (g)] who has received proper training in the signs of alcohol use and/or at least two qualified (one of whom has been trained and is on-site) supervisors who have received proper training in the signs and symptoms of drug use, consistent with standards which meet the FRA regulatory requirements of 49 CFR § 219.11 (g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of another railroad, this railroad will coordinate with the host railroad and decide how the supervisor on the site will immediately communicate and coordinate decisions to test and who will administer the necessary testing. In all reasonable suspicion cases, the supervisor will ensure that the regulated service person is transported immediately to a collection site for a timely collection of a urine and/or breath specimen. If the regulated service person is deemed not fit to return to work, the supervisor will arrange transportation for the person. This is not a Federal requirement, but safety will be better assured if accomplished.

Supervisors must document their observations that led them to decide there was a "reasonable suspicion" to have the regulated service person subjected to Federal drug and/or alcohol testing.

### **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. Post-accident events are as follows:

1. **Major Train Accident** involving any rail equipment accident with reportable damages in excess of the current calendar year reporting threshold under 49 CFR Part 225 and one or more of the following:
  - a. A fatality (any fatality).
  - b. A release of hazardous materials from railroad “lading” that results in an evacuation or reportable injury caused by the hazmat release.
  - c. Damage to railroad property of \$1.5 Million or more.
2. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
  - a. A reportable injury; or
  - b. Damage to railroad property of \$150,000 or more.
3. Fatal Train Incident involving any on-duty railroad employee where damages do not exceed the current reporting threshold.
4. **Passenger Train Accident** with a reportable injury to any person in a train accident involving damage in excess of the current reporting threshold that involves a passenger train.
5. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
  - i. If regulated employee interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first providing for the safety of highway traffic that depends on the normal functioning of such a system, as prohibited by § 234.209, is subject to testing.
  - ii. If train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of a grade crossing system, as provided § 234.105 (c)(3), is subject to testing.
  - iii. If regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in § 234.5), but who failed to do so, due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by § 234.105 (c)(1) & (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.
  - iv. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
  - v. If regulated employee violates an FRA regulation or railroad operating rules and whose actions may have played a role in the cause or severity of the accident/incident, is subject to testing.

**Testing Decision:** For an accident that meets the criteria for a Major Train Accident, all assigned crew members of all involved trains and on-track equipment must be tested. For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human-Factor Highway-Rail Grade Crossing Accident/Incident, 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 five types of accidents, in any case where an operator, dispatcher, signal maintainer or other regulated 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 (including any on-track equipment) and a motor vehicle or other highway conveyance at a rail/highway grade crossing, unless it meets the criteria set forth above in Item 5 (i-v).

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 collected, packaged, and shipped via express courier service by the railroad. The shipping address is as follows:

Quest Diagnostics  
1777 Montreal Circle  
Tucker, GA 30084  
1-800-729-6432  
Fax: 678-406-1037

**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 regulated service, as well as employees in regulated service.

### **Drug Testing Procedures**

The designated collection agents will be qualified and follow the proper collection procedures as described in 49 CFR Part 40.

- a. The Medical Review Officer (MRO) will review drug test results as required in 49 CFR Part 40. All test results will be reported exclusively through the MRO.
- b. A laboratory certified by the Department of Health and Human Services/ Substance Abuse and Mental Health Service Administration (DHHS/ SAMHSA), under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, will perform all drug testing.
- c. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.
- d. The name of the individual providing the specimen will remain confidential and will not be provided to the laboratory performing the test. The testing laboratory is only able to identify the specimen by the specimen ID number printed on the chain-of-custody form. The laboratory will only use a urine custody and control form consistent with the requirements of 49 CFR Part 40.
- e. The designated laboratory will only test for the drugs listed in 49 CFR § 40.85.
- f. The MRO will verify the results and report (using procedures in 49 CFR Part 40) to the DER whether the test was positive or negative and the drugs for which there was a positive result.

### **Alcohol Testing Procedures**

Breath alcohol testing will be performed by fully trained and certified Breath Alcohol Technicians (BAT) using the National Highway Traffic Safety Administration (NHTSA) approved testing devices. The results will be documented on an approved Federal Breath Alcohol Testing Form and will be signed by the employee and the BAT. At the time of the alcohol test, the employee will receive a copy of the test result, with an identical copy being sent to the railroad's DER.

- a. Negative results. The DER will be provided a copy of the negative test results.
- b. Positive results. The BAT will immediately and directly notify the railroad's DER if the test results are positive (0.02 percent or higher) who will take appropriate action to remove or restrict the employee from regulated service as required by Part 219.

### **Drug Test Results**

For any FRA testing, the railroad should as a "best practice" notify the employee in writing of test results.

**Positive or Otherwise Non-Negative Results.** If the laboratory reports the drug test result as POSITIVE or otherwise non-negative, the following procedures will be followed:

- a. The MRO will immediately inform the regulated service person of the result and offer the person the opportunity for an interview to discuss the test result. If the MRO has difficulty reaching the employee, the procedures set forth in 49 CFR § 40.131 will be followed.
- b. The MRO will complete and document the review as required by 49 CFR Part 40 Subpart G, determining if the external chain of custody was intact and if the person has a legitimate medical explanation for the presence of any controlled substance. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.
- c. If the MRO verifies the test result as positive, the MRO will report the result to the railroad's DER. If the MRO determines that the result is non-negative and the non-negative result cannot be explained, the appropriate regulatory action will be pursued. The MRO will report the verified test result in accordance with 49 CFR § 40.163. The MRO will not provide the DER with the quantitative test results unless the employee, as stipulated in the regulation, disputes the test.

**Negative results.** If the MRO has determined that the drug test is NEGATIVE, the MRO will accomplish the required administrative review and report the negative results to the railroad's DER in accordance with 49 CFR § 40.163.

**Negative-dilute results.** Unless the MRO directs a railroad to conduct a recollection under direct observation (for a result with creatinine from 2 to 5 mg/dL), per 40.197, a negative-dilute is considered a negative test, although a railroad may, but is not required to direct the employee to immediately take another test. Such recollections must not be collected under direct observation unless there is another regulatory basis to do so. A railroad must treat all regulated employees the same. For example, it must not retest some employees and not others. A railroad may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). **This railroad's policy for negative-dilutes is as follows:**

---

### **Refusal To Test**

Failure to remain available for FRA post-accident testing following an accident or casualty (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 to provide specimens as required by Part 219/40 "has refused to test" and must be withdrawn from regulated service and must be deemed disqualified for regulated service for a period of nine (9) months. What constitutes a "refusal to test" is described in 49 CFR § 40.191. 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.

### **Confidentiality**

- a. Medical information a regulated person provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to the railroad except as provided in Part 40.
- b. Confidentiality of Federal drug or alcohol testing results will be maintained as required by the regulations. For example:
  - 1. The laboratory observes confidentiality requirements as provided in the regulations. This railroad does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two years.
  - 2. All test results will remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO will retain the reports of individual test results as required in Part 219 Subpart J.
  - 3. The DER will maintain all test results reported by the MRO, both positive and negative, in secure storage. The results will be retained as required in Part 219 Subpart J. Other personnel will be informed of individual test results only in the case of positive tests and authorized only on a need-to-know basis.

### **Compliance with Testing Procedures**

- a. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This railroad expects all prospective and current regulated service personnel to exercise good faith and cooperation in complying with any procedures required under this policy. Refusal to submit to a Federal drug or alcohol test required under FRA rules, engaging in any conduct which jeopardizes the integrity of the specimen or the reliability of the test result, or any other violations of the prohibited conduct in 49 CFR 219.101 or 219.102 could subject the person to disciplinary action (up to and including termination), independent and regardless of any test result. This includes failure to show up on time for a drug/alcohol test, failing to remain at the testing site until the testing process is complete, etc. (see 49 CFR § 40.191).
- b. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the new direct observation procedures in 49 CFR § 40.67 (i)) when the regulatory service employee has had a previous positive Federal drug test result, or has previously refused to take a Federal test (including adulteration or substitution). Note that a SAP may also require return-to-duty and follow-up “drug” tests in addition to alcohol tests following an alcohol positive of 0.04 percent or greater.
- c. Direct Observation Urine Collection Procedures: The collector (or observer) must be the same gender as the employee. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry “clean” urine and urine substitutes AND for watching the employee urinate into the collection container. The observer will request the employee to raise his or her shirt, blouse or dress/skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.

- 1) If the employee has a device, the observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of the testing form. The collector notifies the DER. This is a refusal to test.
  - 2) If the employee does not have a device, the employee is permitted to return his/her clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.
  - 3) Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
- d. As a minimum, a regulated service person will be removed from FRA regulated service for a minimum of nine months if there is a finding of "refusal to test."

### **Positive Test Results**

- a. Alcohol positive of 0.02 to 0.039: Regulated service personnel should receive written notification of test results which are other than negative. A Federal positive drug test or a Federal alcohol test result of 0.02 percent or greater or a refusal to test will result in immediate removal from regulated service under FRA regulations. A positive alcohol test of at least 0.02 percent but less than 0.04 percent will result in the removal of the person from regulated service for at least eight hours. The railroad is not prohibited from taking further action under its own company policy.
- b. **Federal violation:** A regulated service person with an MRO verified positive drug test or a breath alcohol test result of 0.04 percent or greater (or a refusal) has violated Federal regulations and must be immediately removed from regulated service. Prior to or upon withdrawing the employee from regulated 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 49 CFR Part 219.101 or 219.102, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing. **See 49 CFR § 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. Prior to returning to regulated service the employee will be required to undergo an evaluation by a qualified Substance Abuse Professional (SAP) that is railroad approved, to determine the need for treatment and/or education. The employee will be required to participate and comply with the SAP-recommended treatment and any after-care or follow-up treatment that may be recommended or required.

After successful treatment, for a Federal positive drug test (or alcohol test result of 0.04 percent or greater), per the SAP's requirements, the person must provide a Federal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulated service. In addition, the person will be subject to additional unannounced Federal follow-up testing, as determined by the SAP, for a maximum period of 60 months, with a minimum of six tests being performed in the first twelve months (**engineers and conductors – SAP with require a minimum of 6 drug tests and 6 alcohol tests in the first 12 months**). Failure to comply with these provisions and remain alcohol and/or drug-free will result in

subsequent removal from regulated service and could result in disciplinary action, up to and including termination. **Note:** Federal regulations do not guarantee the employee will maintain an employment relationship. This is determined via company policy and/or collective bargaining agreement. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

c. Identify other employer sanctions (if applicable) for a Federal alcohol test result of at least 0.02 percent but less than 0.04 percent:

---

Identify other employer sanctions (if applicable) for a Federal alcohol test result of 0.04 percent or greater:

---

Identify other employer sanctions (if applicable) for a Federal positive drug test:

---

---

### **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.

---

---

### **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.

---

---

---

### **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).

---

---

---

---

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