



**US EAST REGION
GENERAL MANAGER NOTICE NO.26**

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NOTICES IN EFFECT: 1-10, 11-26

TO: ALL EMPLOYEES

RE FRA Drug and Alcohol Testing Regulation Changes Effective June 12, 2017

Effective June 12, 2017, the Federal Railroad Administration (FRA) is expanding the scope of its drug and alcohol regulation, 49 CFR 219, to include Maintenance of Way (MOW) employees defined by 49 CFR Part 214.7 as Roadway Workers. This regulation is already in place for employees that meet the requirements of an Hours of Service (HOS) employee or contractor. HOS and MOW employees and contractors will now be classified as Regulated Employees.

Additionally, the FRA has made two significant changes to its FRA Post Accident Testing Criteria. A fifth FRA Post Accident Testing Category has been created: Human-Factor Highway-Rail Grade Crossing Accident/Incidents. Additionally, the damage threshold for a Major Train Accident has increased from \$1 million to \$1.5 million.

This policy is applicable to those defined in 49 CFR §219.5:

A. Covered employee

1. Means an employee (as defined in this section to include an employee, volunteer, or probationary employee performing activities for a railroad or a contractor to a railroad) who is performing covered service under the hours of service laws at 49 U.S.C. 21101, 21104, or 21105 or who is subject to performing such covered service, regardless of whether the person has performed or is currently performing covered service. (An employee is not a “covered employee” under this definition exclusively because he or she is an employee for purposes of 49 U.S.C. 21106.) For the purposes of pre-employment testing only, the term “covered employee” includes a person applying to perform covered service in the United States.

B. Maintenance-of-way (MOW) employee

1. Means a roadway worker as defined in § 214.7 of this chapter (49 CFR §214).
 - a. Roadway worker means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section (49 CFR § 214).

C. Regulated employee

1. Means a covered employee or maintenance-of-way employee who performs regulated service for a railroad subject to the requirements of this part (49 CFR §219).

Post-Accident Testing – (49 CFR §219 Subpart C)

FRA regulations require blood and urine specimens from all surviving regulated service personnel (except as provided more specifically below) when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood fatality to an on-duty employee (as defined in § 219.5) who dies within 12 hours of the incident as a result of the operation of on-track equipment, regardless of whether that employee was performing regulated service. FRA post-accident

toxicological tests must be conducted after any event that involves one or more of the circumstances the as described below (note regulatory exceptions will be followed):

1. **Major train accident.** Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:
 - a. A fatality to any person;
 - b. A release of hazardous material lading from railroad equipment accompanied by—
 - i. An evacuation; or
 - ii. A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or
 - c. Damage to railroad property of \$1.5 Million or more.
2. **Impact accident.** Any 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. A reportable injury; or
 - b. Damage to railroad property of \$150,000 or more.
3. **Fatal train incident.** Any train incident that involves a fatality to an on-duty employee (as defined in § 219.5) who dies within 12 hours of the incident as a result of the operation of on-track equipment, regardless of whether that employee was performing regulated service.
4. **Passenger train accident.** Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train and a reportable injury to any person.
5. **Human-factor highway-rail grade crossing accident/incident.** A highway-rail grade crossing accident/incident when it involves:
 - i. A regulated employee who interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for the safety of highway traffic that depends on the normal functioning of such system, as prohibited by 49 CFR § 234.209;
 - ii. A train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of the grade crossing system, as provided by 49 CFR § 234.105(c)(3);
 - iii. A regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in 49 CFR § 234.5) due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by 49 CFR §§ 234.105(c)(2), 234.106, or 234.107(c)(1)(i);
 - iv. A fatality to any regulated employee (within 12 hours of the incident) performing duties for the railroad, regardless of fault; or
 - v. A regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.

Effective June 12, 2017

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 to provide regulated 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 regulated employees 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 § 214.7. (e.g., train and engine employees, dispatchers, signal employees and roadway workers).
- 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 and conductor decertification under Part 242.
- If you feel you have been wrongfully charged with a Federal drug or alcohol violation, you are entitled to a 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 regulated service; or if you use alcohol on duty; or within 4 hours of reporting for regulated 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 regulated employer 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 regulated employer must remove you from regulated service for at least 8 hours. The regulated employer 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 regulated employer must remove you from regulated service. To be allowed to return to regulated 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 regulated employer 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 and 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 the regulated employer'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 regulated employer 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 regulated employer 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 Highway-rail grade crossing, the event would *not* normally meet the criteria for Post-Accident testing, unless it meets specific Human Factor criteria described in 49 CFR Part 219.201(5)(i-v), **effective June 12, 2017**.

Since FRA regulations cover specific criteria for post-accident testing at highway-rail grade crossings, State and local laws on toxicological testing after rail accidents may 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 regulated 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 regulated employer must keep you in their employment, maintain your confidentiality, and provide you a leave of absence as specified by the Drug and Alcohol Counselor (DAC) for treatment.
- You must follow the program’s guidelines to maintain these employee protections. The regulated employer 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 regulated 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 Program**).*

Drug and Alcohol Assistance CP provides Drug and Alcohol Assistance for employees through the Company's Employee Assistance Program (EAP). Additionally, employees who are experiencing problems with the abuse of alcohol and/or use of controlled substances may request such assistance through Company's Voluntary Referral Program. An employee who has questions or concerns regarding the Voluntary Referral Program or Drug and Alcohol Testing Policies may seek clarification directly from CP's Designated Employer Representative (DER).

Employee Assistance Provider: New Directions Behavioral Health, LLC. Phone: 800-624-5544
www.NDBH.COM Login: CP For questions regarding CP's Drug and Alcohol Program contact: **CP's Manager of Drug and Alcohol Programs/Designated Employer Representative:** Holly Rainwater Office: 612-904-6301 Email: holly_rainwater@cpr.ca

No job on our railway will ever be so important that we can't take the time to do it safely

Work Smart, Stay Safe

Nick Walker
General Manager
U.S. Operations

Derek Harter
Asst. Chief Engineer
US East

****REMEMBER****

Please contact your Employee Assistance Program at 1-800-432-5155 for any social or personal problems that you or your family need assistance with.