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*Enter company name & insert company logo above if desired*

**FEDERAL RAILROAD ADMINISTRATION**

**CONTROL OF ALCOHOL AND DRUG USE**

**(49 CFR PART 219)**

**THIS MODEL PLAN IS FOR CONTRACTORS WHO ONLY PERFORM REGULATED DUTIES FOR RAILROADS WITH 15 OR FEWER HOURS OF SERVICE EMPLOYEES AND WITHOUT JOINT OPERATIONS, TO AID IN COMPLIANCE WITH THE MINIMUM EMPLOYEE EDUCATIONAL REQUIREMENTS OF 49 CFR §219.23** **(d) and (e)**

**Send plan submission via email to** [**FRA-DrugAlcoholProgram.email@dot.gov**](mailto:FRA-DrugAlcoholProgram.email@dot.gov)

**Date of FRA Plan Submission:**

*Click or tap to enter a date*

**Date of FRA Plan Courtesy Review:**

**(To be completed by FRA)**

*Click or tap to enter a date*

**This Plan Is (Select Below):**

*Choose an item*

**Name of Contractor:**

*Enter or paste text here*

**MODEL PART 219 RAILROAD CONTRACTOR COMPLIANCE PLAN**

The Federal Railroad Administration (FRA) recognizes railroads can use internal employees, contracted employees, and even volunteers to perform Part 219 “regulated service” subject to the Federal hours of service laws (covered employees) functions on the railroad. The railroad is responsible for ensuring **ALL** personnel performing these regulated service functions are in compliance with all Part 219 requirements.

FRA’s Model Part 219 Railroad Contractor Compliance Plan has been developed by FRA as a tool to help with compliance for any railroad that uses personnel other than internal employees to perform “regulated” functions. Utilization of this tool with the entity providing the “regulated” personnel will help demonstrate the railroad’s due diligence in ensuring non-railroad personnel are in compliance with Part 219.

Simply signing and adopting this plan does not constitute compliance. The actions required by the regulation, regardless of employment affiliation, must be in accordance with regulatory requirements to achieve compliance. Railroad contractors choosing to use this model plan should submit this plan, and the FRA courtesy review letter to all railroads for whom they are performing regulated service. A railroad should retain a copy of this document and provide a list of all FRA accepted contractor plans when submitting the railroad’s plan to FRA for approval. The FRA also expects the railroad to demonstrate its due diligence in complying with the regulation by instituting a self-audit program with entities providing “regulated” function personnel. As a reminder, FRA will review compliance with the regulations. FRA can choose to hold the employer responsible for any non-compliance whether it be the employer, contractor, or other entity last serving the employer; or if the facts warrant, the FRA could hold the entity responsible or both.

**In all cases where there is a difference between this plan and 49 CFR Part 219 or 49 CFR Part 40, the CFR takes precedence.** Railroad employers and entities (contractors) are reminded that Federal authority can be used only if authorized by 49 CFR Part 219. Therefore, entities having less than 16 covered employees in combination with the supported railroad entity (if appropriate) are not authorized to conduct Federal random or reasonable cause testing.

Title 49, CFR Part 40 requires employers to have a Designated Employer Representative (DER), defined in 40.3 as “An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40. Service agents cannot act as DERs.” In the past, this person may have been referred to as the Program Administrator.

**NOTE: In the body of the submittal email, please indicate any changes made to the compliance plan.**

**\*\* If you require additional pages to add information to this plan, add this information to the last page of this document \*\***

**\*\*\* All highlighted sections must be completed to expedite review by the FRA Drug & Alcohol Program Specialist. If a highlighted section does not apply to your company, place N/A in the box \*\*\***

1. **Policy Statement**

*Insert Name of Contractor* recognizes the problem of substance abuse in today’s society. This problem poses concerns to an employer who is subject to governmental regulations and seeks to promote the safety of the public. This company has a concern for the safety, health, and well-being of its employees as well as an obligation to comply with the United States Department of Transportation (DOT) and Federal Railroad Administration (FRA) regulations. This company will comply with all statutes and regulations administered by the FRA in implementing the required Part 219 Drug and Alcohol Program.

Programs have been established on this company 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.

In accordance with the applicable Federal regulations, this company prohibits persons who perform work regulated by the Federal Hours of Service (HOS) Laws (see 49 U.S.C. §§ 21101-21108); and/or employees performing duties as Maintenance-of-Way (MOW) workers as described in the definition of “Roadway Worker” in § 214.7; and/or employees performing Mechanical functions (MECH) duties covered by the definition of “Mechanical Employees” in § 219.5, 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 regulated service. Additionally, illegal substance use is prohibited **on or off duty**, except as allowed in 49 CFR § 219.103.

1. **Identifying Information.**

To add additional fields for the below entries hit the + sign at the bottom right of the box. To remove the extra field hit the “Undo Typing” button. Be sure to hit the enter button after your last entry before you add an extra field with the + sign, this will create space between your entries.

**Railroad Contractor:**

Name of Contractor:

Address:

Office Phone:

Cell Phone:

E-Mail:

Additional Notes:

**Designated Employer Representative:**

Name:

Address:

Office Phone:

Cell Phone:

E-Mail:

Additional Notes:

**Assistant Designated Employer Representative:**

Name:

Address:

Office Phone:

Cell Phone:

E-Mail:

Additional Notes:

**Medical Review Officer:**

Name:

Address:

Office Phone:

Fax Number:

E-Mail:

Additional Notes:

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

Name:

Address:

Office Phone:

Fax Number:

Additional Notes:

**Substance Abuse Professional (SAP)**:

Name:

Address:

Office Phone:

E-Mail:

Additional Notes:

1. **Scope**

**This policy applies to all Company personnel (including sub-contractors and volunteers) who perform the following FRA regulated duties:**

* **Subject to the Federal Hours of Service (HOS) Laws also commonly referred to as “Covered Service” or,**
* **Employees performing Maintenance-of-Way (MOW) duties covered by the definition of “Roadway Worker” in § 214.7 or,**
* **Employees performing Mechanical functions (MECH) duties covered by the definition of “Mechanical Employees” in § 219.5.**

This company provides personnel who perform regulated service for the following railroad(s):

Name of Railroad: *Enter or paste text here*

Regulated service (functions) positions: *Enter or paste text here*

**\*\*\* If adding more than five (5) railroads, use the attachment page at the end of this document \*\*\***

**Note: Each employee should only be counted under one of the below functions. If you have an employee that performs more than one (1) function, they should be placed in the category in which they perform the majority of their work.**

***\*\*\* YOU MUST TAB THROUGH EACH OF THE FILL BOXES BELOW TO ENSURE THEY ARE TOTALED \*\*\****

This company has a total of       regulated service employees (including volunteers and contractors) who perform **“Hours of Service”** functions.

This company has a total of      regulated service employees (including volunteers and contractors) who perform **“Roadway Worker”** functions.

This company has a total of      regulated service employees (including volunteers and contractors) who perform **“Mechanical Employee”** functions.

The total number of all regulated employees (**include covered service, roadway workers and mechanical employees**) at the time of this submission is: 0

If applicable, identify the following for any regulated sub-contractors your company is using **(if you have multiple regulated service sub-contractors please add additional fields as necessary. If you have more than five (5) regulated sub-contractors, use the attachment page at the end of this document)**

To add additional fields for the below entries hit the + sign at the bottom right of the box. To remove the extra field hit the “Undo Typing” button. Be sure to hit the enter button after your last entry before you add an extra field with the + sign, this will create space between your entries.

Name of sub-contractor:

Regulated service performed for your company:

Address:

Contact Person:

Office Phone:

Cell Phone:

E-Mail:

**APPLICATION OF PART 219**

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, and contractors who only perform regulated duties for only these railroads, **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 (HOS) Laws, or duties as Maintenance-of-Way (MOW) workers covered by the definition of “Roadway Worker” in § 214.7 or, persons performing Mechanical functions (MECH) covered by the definition of “Mechanical Employees” in § 219.5, will be subject to the above mentioned Part 219 subparts.*

Railroads and contractors 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.

**Previous Employer Checks:** This company is required to check on the drug and alcohol testing record of employees it is intending to use to perform regulated duties. This company 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. **See 49 CFR 40.25.**

An employee must 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 company.

1. **Testing Programs**

There are numerous situations when Federal **drug and/or alcohol tests** must be administered for the company to be in compliance with 49 CFR Part 219. Personnel performing functions listed in Section III of this policy will be required to submit to a drug and/or alcohol test in the instances set forth, as follows:

1. **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 company chooses to conduct Federal alcohol pre-employment testing? Check one of the following boxes:**

** **

1. **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 company 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.

Part 219.11(g) requires supervisory employees to have education and training on alcohol misuse and controlled substance use. The training will cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances. It will also prepare the supervisors to make the decisions necessary in reasonable suspicion and FRA post-accident situations (i.e., what is a qualifying event and who is to be tested).

The observation for alcohol must be made by at least one qualified supervisory employee who has received proper training in the signs and symptoms of alcohol use per 219.11(g). Documentation of this decision must be maintained, as required by Part 219 Subpart J.

The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per 219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

The observation for drugs must be made by at least two qualified supervisory employees, one of which has received proper training in the signs and symptoms of drug use/misuse per 219.11(g). One qualified supervisor must be on-site, but the supervisor trained per 219.11(g), although preferred does not have to be the supervisor on-site. Documentation of this decision must be maintained, as required by Part 219 Subpart J.

If operating on tracks of a railroad, this railroad contractor 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.

1. **FRA Post-Accident Drug/Alcohol Testing** – (49 CFR 219.201)

FRA regulations require blood and urine specimens from all surviving **regulated service personnel** when they are directly involved in a qualifying accident or incident. Tissues are also collected, in addition to urine and blood from any fatality involving an on-duty railroad employee **(direct or “regulated service” contractual employee)**. Events requiring FRA post-accident testing include (note regulatory exceptions will be followed):

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:
2. A fatality (any fatality).
3. A release of hazardous materials from railroad “lading” that results in an evacuation or reportable injury caused by the hazmat release.
4. Damage to railroad property of **$1.5 Million** or more.
5. **Impact Accident** involving reportable damage in excess of the current reporting threshold that results in:
6. A reportable injury; or
7. Damage to railroad property of $150,000 or more.
8. **Fatal Train Incident** involving any on-duty railroad employee or regulated contractor employee where damages do not exceed the current reporting threshold.
9. **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.
10. **Human-Factor Highway-Rail Grade Crossing Accident/Incident** meeting one of the following criteria:
11. 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.
12. 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.
13. 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) and (2), 234.106, or 234.107 (c)(1)(i), is subject to testing.
14. If there is a fatality of any regulated service employee regardless of fault. (fatally injured regulated employee must be tested)
15. 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.** Test any other regulated service employees that had a possible role in the cause or severity of the accident.

For an Impact Accident, Fatal Train Incident, Passenger Train Accident or Human-Factor Highway-Rail Grade Crossing Accident/Incident, test any other regulated service employees that had a possible role in the cause or severity of the accident. The railroad must exclude other regulated service 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.

If there is a fatality of any regulated service employee as result of a Highway-Rail Grade Crossing Accident/Incident, the fatally injured regulated employee must be tested regardless of fault.

**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.

The railroad supervisor(s) on the scene will make **timely** determinations as to the event being a qualifying event and which regulated service employees (if any) are required to be tested according to the rule.

The railroad will identify the appropriate personnel who must be tested and then ensure that specimens are collected and shipped.

**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 (or railroad contractor), to the FRA’s designated post-accident testing laboratory.

## Drug Testing Procedures

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

1. 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.
2. 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.
3. Test results will be reported from the laboratory only to the MRO for review and action consistent with 49 CFR Part 40.
4. 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.
5. The designated laboratory will only test for the drugs listed in 49 CFR 40.85.
6. 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 company’s DER.

1. Negative results. The DER will be mailed a copy of the negative test results.
2. Positive results. The BAT will immediately and directly notify the company’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 company 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:

1. 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.
2. 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, if the person has a legitimate medical explanation for the presence of any controlled substance, and whether there is any basis to question the scientific sufficiency of the test results. In the case of an opiate positive, the MRO will also make the special determinations required by the regulation.
3. If the MRO verifies the test result as positive, the MRO will report the result to the company’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 company’s DER in accordance with 49 CFR § 40.163.

**Negative-dilute results.** Unless the MRO directs a company to conduct a recollection under direct observation (for a result with creatinine greater than 2mg/dL but less than or equal to 5 mg/dL), per 40.197, a negative-dilute is considered a negative test, although a company 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 basis to do so. A company must treat all regulated employees the same. For example, it must not retest some employees and not others. A company may establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations).

**This company’s policy for negative-dilutes that do not require re-collection under direct observation (when ordered by the MRO) is as follows:**

*Enter or paste text here*

**VIII. Confidentiality**

1. 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 company except as provided in Part 40.
2. 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 company 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.

**IX. Regulated Service Personnel Training Program (49 CFR 219.11)**

Each regulated service person will receive a copy of this policy and the other information requirements in 49 CFR Part 219.23 (e) which clearly states the prohibitions required by the regulation. In addition, each regulated person will be given information concerning the problems caused by alcohol or controlled substances and available methods of intervening when an alcohol or controlled substance problem is suspected, including confrontation, referral to an employee assistance program and/or referral to management.

**X. Prescription Drugs (40 CFR 219.103)**

The use of controlled substances (on Schedules II through V of the controlled substance list) is not prohibited if they are prescribed or authorized by a medical practitioner and used at the dosage prescribed or authorized. Either one treating medical professional or a company-designated physician should determine that use of the prescription(s) at the prescribed or authorized dosage is consistent with the safe performance of the employee’s duties. Regulated service employees should also seek the advice of a medical professional whenever they are taking any over-the-counter drug that may adversely affect the safe performance of duties.

### XI. Compliance with Testing Procedures

1. All regulated service personnel/applicants requested to undergo a Federal drug and/or alcohol test are required to promptly comply with this request. This company 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 40.191).

1. All DOT Federal return-to-duty and follow-up urine specimens must be collected under direct observation (using the direct observation procedures in 40.67 (i)). 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.
2. 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.
3. 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.
4. 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.
5. Failure of the employee to permit any part of the direct observation procedure is a refusal to test.
6. 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.”

### XII. Positive Test Results

1. **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 company is not prohibited from taking further action under its own company policy.
2. **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 company 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 company 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 company 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 aFederal return-to-duty urine specimen and/or breath specimen for testing (which is negative) prior to being allowed to return to regulates 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 will 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 regulation does not guarantee the employee will maintain an employment relationship. This is determined via employer and employee negotiation. These Federal return-to-duty and follow-up drug tests must be collected under direct observation.

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

Enter or paste text here

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

Enter or paste text here

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

Enter or paste text here

**Employee Assistance** - These materials may be posted where employees go on duty

Provide information concerning the effects of drug and alcohol misuse on an individual’s health, work, and personal life:

*Enter or paste text here*

Provide information on the signs & symptoms of an alcohol or drug problem, and available methods of evaluating the misuse of alcohol and drugs:

*Enter or paste text here*

Provide names, addresses and telephone numbers of substance abuse professionals or EAP & counseling and treatment programs:

To add additional fields for the below entries hit the + sign at the bottom right of the box. To remove the extra field hit the “Undo Typing” button. Be sure to hit the enter button after your last entry before you add an extra field with the + sign, this will create space between your entries.

Name:

Address:

Phone Number:

**Additional Company Policies**

As applicable, include information on additional company 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 company’s authority independent of Part 219:

*Enter or paste text here*

**Company Policy Testing Programs**

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

*Enter or paste text here*

**ATTACHMENT 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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

**I-B.**

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

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

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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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

***Effective March 4, 2022***

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**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) **or** performing duties as Maintenance-of-Way (MOW) workers as described in the definition of “Roadway Worker” in § 214.7 **or** employees performing Mechanical functions (MECH) duties covered by the definition of “Mechanical Employees” in § 219.5. (e.g., train and engine employees, dispatchers, signal employees, roadway workers and mechanical 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 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 may be subject to Federal follow-up testing for up to 60 months. 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, opioids, 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 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)**.**

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**

* All 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 that of a co-worker.
* 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://railroads.dot.gov/divisions/partnerships-programs/drug-and-alcohol>.

**ADDITIONAL ATTACHMENT INFORMATION**

To add additional fields for the below entries hit the + sign at the bottom right of the box. To remove the extra field hit the “Undo Typing” button. Be sure to hit the enter button after your last entry before you add an extra field with the + sign, this will create space between your entries.

*Enter or paste any content that you wish to add to this document. Hit enter before using the + sign and adding another section*