

February 7, 2006

ALL LEGISLATIVE REPRESENTATIVES
AND SECRETARIES,
UTU LOCALS,
STATE OF OHIO

RE: Employee Educational Handout

Dear Sirs and Brothers:

Attached is a two-page handout for all railroad hours of service employees that was developed by the FRA, DOT, AAR, ASLRRRA, and railroad labor organizations to provide general information on Federal drug and alcohol testing.

The handout was developed for railroads that are subject to all of 49 CFR Part 219, but most of the information is still valid for the smaller railroads that are only subject to Subparts A (General), B (Prohibitions), and C (Post-Accident Testing), with the exception to references to the voluntary referral and co-worker report policies and any tests other than FRA post-accident tests.

Please arrange to make copies available for your local members and post on your railroad's bulletin boards.

Fraternally yours,

JOSEPH A. BODA, JR., Chairman
& State Legislative Director

JAB/jvs

cc: Mr. Paul C. Thompson,
International President
Mr. James M. Brunkenhoefer,
National Legislative Director

File
Enclosure



What You Need to Know About Federal Drug and Alcohol Testing

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

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

Drug and Alcohol Prohibitions

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

Alcohol Concentration Below 0.02: A railroad **may not** use a Federal test result below 0.02 for Federal or company action.

Breathalyzers are not certified at levels below 0.02, so a test result below 0.02 is negative.

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

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

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

Drugs Tested: A certified laboratory tests your urine specimen for marijuana, cocaine, opiates, amphetamines, & PCP.

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

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

Prescription and Over-The-Counter Medications

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

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

Direct Observation Urine Collection

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

- Your previous urine specimen was out of normal temperature range; or
- The collector previously observed you attempting to tamper or substitute a specimen; or
- Your previous test result was invalid due to an interfering substance and you did not have a legitimate medical explanation; or
- Your split specimen could not be tested following a non-negative test result.

The railroad may also collect your specimen under direct observation if your test is a return-to-duty or follow-up 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
- Failure to 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.

Fatal Flaws

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

Highway/Rail Grade Crossing Accidents

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

Voluntary Referral and Co-Worker Report Policies

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

For more complete information review 49 CFR Part 40 and Part 219, ask your union representative, or your employer's Designated Employer Representative (DER) to share additional information with you. Text of the CFR is available at <http://www.fra.dot.gov> (site search for Drug and Alcohol Program).