

SUMMARY OF FRA DRUG & ALCOHOL 49 CFR PART 219

ROADWAY WORKER CHANGES EFFECTIVE JUNE 12, 2017

The following is a summary/overview of the FRA Drug and Alcohol Final Rule published in the Federal Register (Docket No. FRA-2009-0039, Notice No. 3) on June 10, 2016. The Final Rule, which expands FRA's drug and alcohol testing regulation (49 CFR, Part 219) to cover persons who perform maintenance of way activities, has an effective date of June 12, 2017.

This summary is not intended to be all inclusive. Please refer to the Final Rule.

Scope

FRA is expanding the scope of Title 49 CFR Part 219, Control of Alcohol and Drug Use, to cover railroad employees and contractors/sub-contractors who perform MOW activities for a railroad. Effective June 12, 2017, MOW employees will be subject to all Part 219 testing, reasonable cause testing, post-accident toxicological (PAT) testing, reasonable cause testing, pre-employment testing, return-to-duty testing, and follow up testing.

Railroads must provide the employee with clear and unequivocal written notice of the type of federal test that will be conducted. (e.g., random, reasonable suspicion, reasonable cause, follow-up, return-to-work, etc.)

Key Definitions

- 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 communications system, 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. (see 49 CFR 214.7, definitions)
- Employee means any individual (including a volunteer, or probationary employee) performing activities for a railroad or a contractor to a railroad.

- Regulated Employee means any employee or maintenance-of-way employee who performs regulated service for a railroad subject to the requirements of Part 219.
- Regulated Service means covered service or maintenance-of-way activities, the performance of which makes an employee subject to the requirements to Part 219.

Random Testing

The final rule mandates random testing of employees who meet the definition of roadway worker as defined in Part 214.

Railroads must establish and maintain FRA-compliant random testing programs meeting the criteria of Part 219 for regulated employees. IHB may also conduct “company policy” testing independent of, and in addition to, the FRA testing requirements. FRA has set the initial minimum annual random testing rates for MOW employees at 50 percent for drugs and 25 percent for alcohol.

Random Testing Selection

Railroads must ensure that each regulated employee has an equal chance of being selected for random testing whenever selections are made, using a random selection method that is compliant with FRA/DOT regulatory guidelines.

In essence ever MOW employee will be included in the noted random selection pool, those previously tested under FMSCA (CDL) random testing will now be placed in the FRA random testing pool

Post-Accident Toxicology (PAT) Testing

FRA PAT testing predates the Department of Transportation (DOT) required procedures [49 CFR Part 40] for conducting drug and alcohol testing for federally regulated transportation employees. Therefore, PAT testing is unique to FRA and FRA establishes its own PAT testing protocols independent of DOT.

FRA PAT testing authorizes the collection of both blood and urine specimens for certain triggering events. Collection of PAT specimens must be performed at an independent medical facility, such as a hospital or physician’s office. By definition, an independent medical facility cannot be railroad owned or controlled.

FRA established a new triggering mechanism in which it's mandatory to collect blood and urine specimen from a regulated employee if an accident/incident occurred. This mechanism is "human-factor highway-rail grade crossing accident/incidents," when it involves:

- 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 the highway traffic that depends on the normal function of the system;
- A regulated employee who was performing, or should have been performing the duties of a flagger due to an activation failure, partial activation, or false activation of the grade crossing signal system;
- A fatality to any regulated employee performing duties of the railroad, regardless of fault; or
- A regulated employee violated an FRA regulation or railroad operating rule at, on, or near a grade crossing and whose actions may have played a role in the cause or severity of the accident/incident.

EXCEPTIONS

- Except for a human-factor highway-rail grade crossing accident/incident, no test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a highway/rail grade crossing
- No test may be required for an accident/incident when the cause and severity is wholly attributable to a natural cause (i.e., flood, tornado, or other natural disaster) or to vandalism or trespasser(s).
- For a qualifying impact accident, passenger train accident, fatal train incident, or human-factor highway-rail grade crossing accident/incident, a surviving crewmember or other regulated employee must be excluded from testing if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause or severity of the accident/incident.

Reasonable Cause Testing

The IHB's decision process regarding whether Reasonable Cause testing is authorized will be completed and documented before reasonable cause testing is performed, as required under Part 219. The circumstances in which a reasonable cause test would be authorized include those found in the attached "Reasonable Cause Testing Authorization Form" for your review.

Pre-Employment Testing

Moving forward a candidate intended to be hired for service as a regulated employee must have a negative DOT pre-employment drug and alcohol test result. Additionally a record search of a candidate's past two years drug and alcohol testing, as it relates to any prior DOT regulated employment must be conducted (40.25 Records Request).

Reasonable Suspicion Testing

- Breath alcohol test: May be performed when a railroad has reasonable suspicion to believe a regulated employee may be intoxicated or under the influence of alcohol. Railroads bases for determining if a regulated employee is in violation has to be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the regulated employee.
- Drug test: The observation must be made by a responsible railroad supervisor who is trained in accordance with Part 219. For drug testing on the grounds of reasonable suspicion, the required observation must be made by two (2) responsible railroad supervisors with at least one of whom must be both on site and trained in accordance with Part 219. If the second responsible railroad supervisor is off-site, the on-site supervisor must communicate with the off-site supervisor by telephone or electronic communication, but not radio, any information necessary to make the required observation.

Post-Fatality Testing

Post-Fatality Testing will now include railroad employees, contractor and sub-contractor employees and volunteers who have been fatally injured. This applies regardless of whether the employee was performing regulated service, was at fault, or had a role in the cause of the incident.

Refusal of Breath or Body Fluid Specimen

A regulated employee who refused to provide a breath or body fluid specimen or specimens when required under a provision of Part 219, must be withheld from service for a period of nine (9) months. The same applies to a specimen that was adulterated or substituted, which is automatically deemed to be a refusal to test.

FRA Reasonable Cause Drug & Alcohol Testing Authorization

**For Engineers, Trainmen, Signal Maintainers, Train Dispatchers, Hostlers, CDL, Regulated On Track Employee
NOTICE TO SUPERVISOR: PLEASE READ**

- 1) Use this form for any employee working a position listed above, who, after your preliminary investigation you have reasonable determine to have violated one or more of the rules listed in **Section 3**. Please indicate which rule(s) was violated.
- 2) Use this form every time there is a **Reportable Incident**, (\$ amount exceeds FRA reporting threshold) and the individual employee's acts or omissions contributed to the occurrence or the severity of the accident. **Reportable Incidents** do not require the involvement of those rules listed in section 3 see **Section 4**.

If the individual is not working in any of the positions listed above, use PINK PACKET T.

DATE: _____

Collection Authorized by (Supervisor):	
Employee name (Last, First, MI):	
Employee ID number:	
Position:	Engineer_____ Trainman_____ Signal Maintainer_____ Train Dispatcher_____ Hostler _____ CDL Driver _____ MOW Regulated On Track Employee _____
Basis for Test:	_____ Rule Violation (Complete the section below) _____ Reportable Incident / Accident

3) Basis for FRA Reasonable Cause Test—Rule Violations(s): (Supervisor: check all that apply)

Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:

- _____ Occupancy of a block or other segment of track to which entry was not authorized;
- _____ Failure to clear a track to permit opposing or following movement to pass;
- _____ Moving across a railroad crossing at grade without authorization;
- _____ Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required):
- _____ Failure to protect a train as required by federal flag protection regulations as outlined in CFR 218.37
- _____ Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less
- _____ Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch
- _____ Failure to apply or stop short of derail as required
- _____ Failure to secure a hand brake or failure to secure sufficient handbrakes
- _____ (For train dispatchers) Issuance of a train order or establishment of a route that fails to provide proper protection for a train.
- _____ Failure to restore and secure a main track switch as required
- _____ Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed
- _____ Failure to provide point protection and giving instructions controlling a shoving movement

- _____ Failure to perform stop and flag duties necessary as a result of a malfunction of grade crossing signal system
- _____ Failure to apply three point protection that results in a reportable injury to a regulated employee.
- _____ Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a regulated employee.
- _____ Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits
- _____ Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment
- _____ Failure to ascertain that provision was made for on-track safety before fouling track
- _____ Improper use of individual train detection in a manual interlocking or a control point.
- _____ Interference with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but is not limited to, failure to provide alternative methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system

4) _____ During the preliminary investigation of a reportable accident/incident the supervisor has a reasonable belief, based on specific, articulable facts that your acts or omissions contributed to the occurrence or its severity.

NOTICE TO EMPLOYEE:

As authorized by the Federal Railroad Administration (FRA) regulation 49 CFR 219.301-309, the IHB requires you to provide a urine specimen which will be tested for the presence of drugs and/or a breath sample to test for the presence of alcohol. You will receive instructions for providing and sealing the urine specimen and/or to provide the breath sample. Refusal to provide a urine or breath sample constitutes a refusal to test under FRA regulations (CFR 219.107) and will subject you to a nine month suspension. All laboratory test results will be reviewed by the Medical Review Officer (MRO). If the MRO determines that a test result is a verified positive for a prohibited drug, you will be removed from service. If the breath sample you provide indicates the presence of alcohol in your system at a level of 0.02 or greater, you will be removed from service. You will receive a letter explaining the options available to you. You will not be able to return to duty until you have: been evaluated by a Substance Abuse Professional (SAP); undertaken any recommended treatment to the point where return to work can be recommended by the SAP; and you can demonstrate the absence of prohibited drugs or alcohol with a negative urine and breath sample arranged by the IHB as part of a return to duty physical examination. When you are returned to work under these circumstances you will be subject to follow-up testing as recommended by the SAP for up to five (5) years after you return to duty.

___ I agree to provide a urine specimen for drug testing ___ I agree to provide a breath sample to test for alcohol.

_____ I refuse to provide a urine specimen _____ I refuse to provide a breath sample

Employee signature	Date	Supervisor Signature	Date