



U.S. Department of Transportation  
Federal Railroad Administration

## FRA POST-ACCIDENT ALCOHOL AND DRUG TESTING

**Alcohol and Drug Testing:** The Federal Railroad Administration is the Federal agency responsible for regulating rail safety. As part of its mission, FRA investigates significant rail accidents, including those involving fatalities, passenger trains, evacuations due to the release of hazardous materials, and/or major damage to railroad property. With the exception of the three types of accidents discussed below, FRA requires train and engine crewmembers who have been involved in a significant rail accident to provide urine, blood, and sometimes breath specimens for alcohol and drug testing. The purpose of this testing is to yield useful information as to the cause of the accident. FRA specimens are collected under the supervision of a railroad official; blood specimens must, in addition, be collected at an independent medical facility.

**Exceptions:** There are three types of accidents where FRA **prohibits** railroads from conducting post-accident testing. All three involve situations where the train crew(s) would have had little or no chance to avoid the accident: (1) **highway-rail grade crossing accidents** (e.g., a train hits a vehicle stopped on the tracks); (2) accidents wholly attributable to **natural causes** (e.g., a storm leaves debris on the tracks); and (3) accidents wholly attributable to **vandalism** (e.g., vandals misaligned a switch). In the case of highway-rail grade crossing accidents, FRA exempts train crews from testing because the long stopping distances required to stop a train safely make it unlikely that the crew could have had sufficient time to avoid a collision by the time they spotted a vehicle on the tracks.

**Preemption:** FRA's regulations on the alcohol and drug testing of railroad employees (49 Code of Federal Regulations Part 219) generally preempt State regulations on the same subject (See section 20106 of Title 49, United States Code). However, they do not preempt provisions of State criminal laws that may require alcohol and/or drug testing after train accidents *if such provisions impose sanctions for reckless conduct* that leads to actual loss of life, injury or damage to property.

**Message to Local Law Enforcement:** As a law enforcement officer, you may conduct alcohol and drug testing of a railroad employee after an accident if certain conditions are met. Testing may be conducted under your own authority **if:** (1) there is *probable cause* to suspect that the railroad employee was impaired at the time of the accident); (2) the testing has an independent basis upon which to withstand constitutional scrutiny; and (3) the collection of your specimens does not interfere with the collection of any required FRA specimens. FRA does not allow non-Federal testing on specimens conducted under Federal authority.

If you have any questions, please contact Lamar Allen, FRA Drug and Alcohol Program Manager, at (202) 493-6313, or at [lamar.allen@fra.dot.gov](mailto:lamar.allen@fra.dot.gov).

## RAILROAD ALCOHOL & DRUG TESTING

1. How do I know whether an alcohol or drug test is being conducted under Federal or company authority?

The testing form will provide this information. Only a "U.S. Department of Transportation (DOT) Alcohol Testing Form" may be used for a Federal alcohol test. Only a "Federal Drug Testing Custody and Control Form" may be used for a Federal drug test. Both of these forms have check-off boxes that indicate the reason for the test, e.g., Pre-employment, Random, Reasonable Suspicion/Cause, Return to Duty, Follow-up, etc.

A Federal testing form may not be used for company tests.

2. What is considered a positive Federal alcohol test?

Federal regulations allow both breath and saliva alcohol testing, although most Federal alcohol tests are conducted on evidential breath testing devices (EBTs are breathalyzers that meet strict Federal specifications). If your first, or screening, test result shows a breath alcohol concentration (BAC) of 0.02 or less, you have a negative Federal alcohol test. No further Federal or company action may be taken except for very limited circumstances when the railroad has an independent basis for conducting additional company testing.

If your screening test shows a BAC of .02 or higher, you will be required to wait 15-30 minutes for a second, or confirmation, breath test. The waiting time between tests is to ensure that any alcohol in your mouth from mouthwash, cough medicine, or other preparations containing alcohol, has time to dissipate.

You have a positive Federal alcohol test if your confirmation test result indicates a BAC of 0.02 to 0.039. FRA regulations require your employer to remove you from covered service for at least 8 hours, since this BAC indicates the presence of alcohol in your body. The railroad may also take additional disciplinary action under its own authority. You are not guilty of a Federal violation at this BAC, however.

You will be charged with a Federal violation if your confirmation test indicates a BAC of 0.04 or more. Your employer is required to remove you from covered service and refer you to a SAP for evaluation and treatment. (See Questions 7-8 for information on your return-to-duty test requirements.)

3. What is a positive drug test?

Two steps must happen before you can be found to have a positive drug test. First, the laboratory must test your urine specimen and find that it contains drug metabolites at or above certain specified cutoff levels of concentration, and (2) the railroad's Medical

Review Officer (MRO) must interview you and determine that you do not have a legitimate medical explanation for the presence of drug metabolites in your urine. The MRO informs your employer of your positive drug test only after both of these steps have occurred. (See Questions 5-7 for more information about what happens next if your test result is positive.)

4. What drugs does the laboratory test for?

With one exception, random and other types of Federal testing test for only 5 drugs (marijuana, cocaine, amphetamines, opiates, and phencyclidine). The exception is FRA post-accident testing, which tests for an additional 2 drugs (barbiturates and benzodiazepines). Company tests can be for additional drugs, since FRA regulations do not apply to tests under company authority.

5. What if my Federal drug test result is reported as positive or as non-negative (i.e., adulterated, substituted, or invalid)?

The MRO will contact you and interview you by telephone or in person to find out if there is any medical information that might explain your positive or non-negative (adulterated or substituted) test result. For example, a positive test result may be explained by prescription use. The MRO will record and check any information that you provide during the interview. If the MRO finds that you had a legitimate medical explanation for your positive or non-negative test result, the MRO will report to your employer that your test result was negative. However, if the MRO finds that you did not have a legitimate medical explanation for your positive or non-negative test result, the MRO will verify the result as positive or non-negative and report it to your employer.

Under FRA regulations, an adulterated or substituted test result is a refusal to test, with a mandatory 9-month suspension from covered service. (See Question 6 for return-to-service provisions.)

If your test result is **invalid** (the laboratory could not obtain a valid test result from your specimen because it contains an unidentified adulterant or interfering substance or because the specimen has abnormal physical characteristics or concentrations), the MRO will cancel your test. If you cannot provide a legitimate medical explanation for the characteristics of your specimen, the MRO will instruct your employer to collect a second specimen from you immediately. This second specimen will be collected under direct observation (a same-sex observer will watch you provide your specimen).

6. When and how can I request a split specimen test?

If the MRO verifies your test result as positive, adulterated, or substituted, the MRO will notify you that you have the right to have your split specimen tested. To exercise this right, you must make a request to the MRO within 72 hours of when the MRO notifies you. You are not required to pay in advance for the split specimen test, but the railroad

may later seek reimbursement for the costs of the test if this is required by your collective bargaining agreement.

7. What happens if the MRO verifies my test result as positive? Adulterated? Substituted?

If the MRO verifies your drug test result as positive, adulterated or substituted, the railroad must remove you from covered service and refer you to a Substance Abuse Professional (SAP) for evaluation. The SAP will evaluate you to determine whether you need treatment for a substance abuse disorder and when you are ready to return to covered service (remember that an adulterated or substituted test result is considered a refusal and requires you to be removed from covered service for a minimum of 9 months). You must comply with the SAP's treatment recommendations before you can return to covered service.

If you are a covered service employee other than a locomotive engineer (if you are an engineer, see Question 8 below), to return to covered service you must have a negative return-to-duty test for whatever you had originally tested positive for (e.g., you must at a minimum have a negative drug test if your original positive was for drugs, although the SAP can require you to be return-to-duty tested for both alcohol and drugs). You will be required to take a minimum of 6 alcohol and/or drug follow-up tests during the first year after your return to covered service (again, these could be only for the substance of your original positive or for both alcohol and drugs, depending on your SAP's recommendation). The SAP can recommend that you undergo additional follow-up testing for up to 5 years after your return.

8. I'm a locomotive engineer. Are the return-to-duty and follow-up testing requirements different for me?

Yes. You have different return-to-duty and follow-up testing requirements than those discussed in above Question 7 for other covered service employees. You are required to have both a negative drug and a negative alcohol return-to-duty test before you can return to covered service. During your first year following a positive drug test or refusal to test, you must also have a minimum of 6 follow-up tests for drugs and 6 for alcohol regardless of what you had originally tested positive for. As with other covered service employees, you can be follow-up tested only for a maximum of 5 years after your return to covered service.

9. Under what circumstances can the railroad require me to provide a urine specimen under direct observation?

You are required to provide a specimen under direct observation if:

the collector observes conduct clearly indicating that you are attempting to tamper with your specimen;

the collector finds adulteration or substitution materials on or with you at the collection site;

the temperature of your urine specimen is outside the normal human range (outside 90-100 degrees Fahrenheit);

your previous test result was invalid and you did not have a legitimate medical explanation; or

your original positive, adulterated, or substituted test result was cancelled because your split specimen could not be tested.

In addition, the railroad may require you to provide a urine specimen under direct observation if the test is a return-to-duty or follow-up test. For direct observation collections, the collector (or observer) must be the same gender as the donor.

9. What am I required to do if I'm taking prescription medication and/or over-the-counter drugs?

If you are taking prescription medication and/or over-the counter drugs, you must inform one of your treating medical practitioners of all the drugs that you are taking so that he/she can determine if your drug use is consistent with the safe performance of your safety-sensitive duties. Additionally, you must use the medication at the prescribed or authorized dosage. You are not authorized to use medication prescribed for someone else; such use can result in a Federal violation. The railroad may require you to obtain prior approval for any drugs that you are taking.

10. Where can I get help if I have a drug or alcohol problem?

Railroads that have 16 or more covered service employees or engage in joint operations are required to have self-referral and co-worker report policies. These policies basically allow you "one bite of the apple" by allowing you to refer yourself or be referred by a co-worker for treatment without employment consequences, provided that your referral is not made to avoid being caught in a violation, and that you waive any investigation. The railroad must allow you a leave of absence of at least 45 days, but does not have to pay you during this period. Treatment is confidential so long as you comply with the counselor's recommendations and do not have any subsequent alcohol or drug-related disciplinary offenses.

In addition, your railroad must provide you basic information on its alcohol and drug program, and a list of treatment resources.

11. What should I do if I'm involved in a grade crossing accident and a city, county, or state police officer asks me to take an alcohol and/or drug test?

Advise the officer that the Federal Railroad Administration, the Federal agency responsible for rail safety, requires alcohol and drug testing after all significant rail accidents. Explain that FRA does not require post-accident testing following highway-rail grade crossing accidents, and explain the reason why - that the heavy volume of a train combined with its long stopping distances makes it unlikely that you or train crews in general could have sufficient stopping distance to avoid impact by the time you spotted the vehicle or person on the tracks.

If necessary, you may also want to advise the officer that FRA's alcohol and drug testing regulations generally preempt state and local laws on toxicological testing after rail accidents. A law enforcement officer may test pursuant to local police authority if the officer has "probable cause" (other than the fact that an accident happened) to suspect that a railroad employee was impaired at the time of the accident. Advise the officer that FRA does not share Federal specimens with the police, and that any separate testing the officer decides to undertake must not interfere with the collection of FRA post-accident specimens.

Of course, you must comply if the officer still decides to test you under his or her own police authority. In no circumstance does FRA advise or condone resistance to local law enforcement.