



# **SUPERVISOR GUIDELINES FOR HANDLING RULE G CASES AND INCIDENTS OF DRUG TESTING**

**EFFECTIVE JANUARY 1, 2019**

# FOREWORD

These instructions supersede all previously issued instructions. While these guidelines constitute recommended procedures to be followed when handling incidents of drug testing, other procedures may also be appropriate in an individual case.

To assist the supervisor in using this guide, a preface to each section summarizes the information covered by that section.

All rules and instructions apply equally to men and women. All words of gender used in the rules and instructions mean both genders. [NS GR- H(b)]

**Norfolk Southern's drug and alcohol program is a continual company effort, with responsibilities shared among various departments. The success of NS' drug and alcohol program requires a commitment from each employee of the company. Everyone must strive to maintain a safe work environment for employees and the communities NS serves.**

# CONTACT INFORMATION

## **Subpart C Testing Division Point-of-Contact**

Director Transportation Services  
Division Road Foreman of Engines

## **Drug & Alcohol Procedural Issues**

Manager Compliance/DER

work phone 757-629-2442

mobile phone 757 284-1769

## **Drug & Alcohol Rehabilitation Services**

Manager EAP 757-629-2447

## **Health Services**

Phone 757-664-2025

Fax Machine 678-512-5056

**National Response Center** 800-424-8802

**Federal Railroad Administration** 202-493-6313

**Supplies (NS drug screen kits, breath alcohol** 757-823-5333

**Testing forms, FRA Post-Accident Tox Boxes)**

Please direct any questions regarding *Supervisor Guidelines for Drug & Alcohol Testing to NS' Manager Compliance.*

49 CFR Part 40 (DOT — Procedures for Transportation Workplace Drug and Alcohol Testing Programs), Part 219 (FRA — Control of Alcohol and Drug Use) and Part 382 (FMCSA — Controlled Substances and Alcohol Use and Testing) can be viewed in their entirety on the Employee Resource Center (ERC), Medical Information, and Health Services.

FRA Reporting Threshold for Rail equipment accidents/ Incidents varies by year. For example, the 2018 threshold is \$10,700. Contact the NS Government Reporting Office if you do not know the current FRA reporting threshold by calling 404-582-4986.

# TYPE OF TESTS

**Norfolk Southern's drug and alcohol program allows two kinds of tests for employees: breath testing for alcohol, and urine specimen collections for drugs.**

**Breath alcohol testing** is performed by trained Breath Alcohol Technicians (BAT), using calibrated evidential breath-testing devices (EBT) as published in the Conforming Products List in the Federal Register. The breath-test device measures breath alcohol content and provides immediate results.

**Urine specimens are collected by a third-party provider and/or medical facility, and split into two (2) containers.** The testing laboratory analyzes one sample and maintains the other in the event an employee requests a retest of the second sample after a positive, adulterated, or substituted test result. The urine samples are analyzed for controlled substances.

# AUTHORITY TO TEST

- Describes testing authority.
- Federal authority covers the Federal Railroad Administration (FRA) and the Federal Motor Carrier Safety Administration (FMCSA).
- Norfolk Southern (NS) has authority to test for additional reasons.

**FRA** drug and alcohol regulations apply only to employees performing service covered by the Hours of Service Act and Maintenance of Way roadway workers (cumulatively “**Regulated Employees**”)<sup>1</sup>. This includes, but is not limited to, train crews, dispatchers, hostlers, operators, bridge tenders, signal maintainers, as well as roadway workers. If the roadway worker also holds a commercial driver’s license (CDL), that employee will be tested under FMCSA authority (not FRA authority) if CDL service constitutes more than 50 percent of his/her duties.

**FMCSA** drug and alcohol regulations apply only to employees who hold active CDLs and perform CDL duties more than 50 percent of their time.

**NS** authority is governed by Norfolk Southern’s written practices. Every NS employee falls under NS authority.

**IMPORTANT: Only one (1) authority can be used for any given test(s).** If a urine drug screen is conducted under federal authority, then the breath alcohol test, if conducted, must also be under federal authority. If you have questions about which testing authority applies, contact the Manager Compliance.

<sup>1</sup> The term Regulated Employee includes contractors performing regulated service; however, NS supervisors are not responsible for testing the employees of a contractor.

## WHICH DRUG TESTING CUSTODY AND CONTROL FORM IS USED?

The correct drug testing custody and control form (Federal or Company) **MUST** be used for the urine drug screen collection to properly notify the employee of the appropriate testing authority and the reason for testing. The Federal and Company Policy custody and control forms are located in the NS urine drug screen kit. Use of the wrong form leads to federal violations and fines. The collector must be instructed by the accompanying supervisor of which form to use and the reason for testing. Note the use of the following:

<b>FEDERAL FORM</b>	<b>COMPANY FORM</b>
Regulated Employees <b>Pre-Employment testing</b> (employees changing jobs to a regulated job)	Non Regulated Employees <b>Pre-Employment testing</b>
Regulated or Covered Employees <b>Pre-Employment testing</b>	Non Regulated Employees <b>Pre-Employment testing</b>
All <b>Random</b> testing, except for company policy non-agreement random testing	All <b>Periodic</b> testing, including <b>T &amp; E Periodic Recertification and CDL Recertification</b>
<b>Federal Reasonable Suspicion testing of Regulated Employees or Covered Employees</b>	<b>Return-to-Work</b> , unless otherwise indicated by Health Services and/or Chief Medical Officer
<b>Federal Reasonable Cause testing</b>	<b>Fitness-for-Service</b>
<b>Follow-up</b> testing as instructed by Health Services	<b>Suspected Rule G (signs and symptoms) for employees - Company authority testing</b>

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**Post-Accident (Subpart C**  
and for CDL holders

**Follow-up** testing as  
instructed by the Chief  
Medical Officer

**NOTE:** The Federal drug custody and control form is never used for Post-Accident Testing for Hours of Service employees. Forms for Post-Accident events are provided in the FRA Post-Accident Toxicological Testing kit. A Post-Accident Testing form must be used.

# TESTING NOT COVERED BY FEDERAL REGULATION

## EMPLOYEE APPEARS UNDER INFLUENCE OF ALCOHOL OR DRUGS

- Describes procedures to be followed if an employee appears to be under the influence of alcohol and/or drugs.
- How to offer the employee an opportunity to have a test.
- What to do if the employee refuses the test or refuses company-provided transportation home.

**NOTE: A Regulated Employee who displays signs & symptoms of impairment while on duty must be given a Federal reasonable suspicion test(s) and a refusal is a Federal refusal. (See page 16)**

When an employee appears to be under the influence of alcohol and/or drugs and Federal Regulations do not provide for testing (e.g., an Hours of Service employee who missed a call at an away- from-home terminal who has not gone on duty or a non-Regulated Employee), the supervisor(s) must offer the employee the opportunity to have an alcohol (if alcohol is suspected) and/ or a drug test. In situations in which alcohol is suspected, a breath alcohol test must be offered if a qualified evidential breath alcohol testing device (EBT) and breath-alcohol technician (BAT) are available. The supervisor(s) must be able to explain and document the employee's actions, body and breath odors, etc. that made them think the employee was under the influence of alcohol and/or drugs. The employee may either take the test(s) or not take the test(s).

If the employee agrees to the test(s), the results will bear on any further handling. An employee found to be in violation of Rule G (i.e., one who reports for **duty** under the **influence** of alcohol or prohibited drug or who uses or possesses such substances while on duty or Company property) is subject to dismissal under Norfolk Southern policy.



A positive urine-drug test establishes the presence of a drug in the body but does not establish a level of intoxication. **In order to prove a violation of Rule G, the positive urine-drug test must be coupled with observable signs of drug use.**

If an employee declines testing, document that the test was offered and refused and, if possible, have the refusal witnesses provide a written statement. Employees should not be disciplined for refusing the test but may be subject to discipline for violating Rule G based on the supervisor(s)' observations of the employee's behavior and documented signs and symptoms. (Discipline may be upheld based on the testimony of a trained supervisor, but it is preferable to have more than one witness.)

If an employee appears to be under the influence, that employee should not be permitted to remain in service pending the results of a test or after an employee declines to be tested. An agreement employee should be removed from service pursuant to the provisions of the Collective Bargaining Agreement(s) applicable to the craft(s) in which the employee is working. Labor Relations is available to advise you in this matter. A nonagreement employee's status should be discussed with Health Services, HR, and the employee's department. The supervisor should offer the employee transportation home in lieu of letting him or her drive in a possibly dangerous condition. The local law enforcement officials should be notified if the employee refuses Company-provided transportation and seeks to drive himself or herself.

# **INFORMATION IS RECEIVED WHICH INDICATES THAT AN EMPLOYEE MAY BE USING DRUGS**

**Describes steps a supervisor should take if he or she receives information from an employee or other source which indicates that an employee may be using drugs.**

A supervisor may receive information which indicates that an employee is using drugs, although no obvious signs of impairment are observed. The resolution of this issue depends on the facts involved in the particular case. If the supervisor acts on anonymous calls or rumors, his or her action may not be upheld. An anonymous phone call is not enough to justify a decision to require a drug test.

If reliable information indicates that an employee is using drugs, or if an off-duty employee is arrested for a drug offense, there may then be a legitimate question as to whether that employee is using drugs. In such circumstances, the supervisor should discuss the case with Labor Relations (or Human Resources in the case of a nonagreement employee) and Health Services. The Chief Medical Officer may order a Company drug test if she believes that there is a reasonable question as to whether the employee meets the Company's medical standards (which preclude the active employment of those who use drugs). An employee who refuses instructions to participate in a test properly ordered by the Chief Medical Officer is subject to dismissal for failing to comply with instructions.

# **COMPANY POLICY ON DRUGS**

**Describes the company policy on drugs and indicates how employees who test positive or who refuse to be tested under the policy are handled.**

A urine-drug test is included in all company physical examinations. The drug screen is just one part of that exam which also may scrutinize an employee's blood pressure, vision, hearing, etc. An employee may not refuse to cooperate with a properly required physical examination — nor may an employee refuse to cooperate with any part of that examination — including the drug screen. An employee who refuses to cooperate with the drug screen portion of a physical examination should be instructed to cooperate with that test. If the employee refuses, disciplinary action should follow for failing to comply with instructions. Labor Relations (or Human Resources in the case of a nonagreement employee) should be consulted.

Employees who test positive for Prohibited Drugs (as that term is defined in the Norfolk Southern Policy on Alcohol and Drugs) are to be removed from service and instructed by the Chief Medical Officer to contact DARS by a specified date to facilitate an evaluation. The DARS program then evaluates the employee, who is handled as provided in the Norfolk Southern Policy on Alcohol and Drugs.

The employee will be returned to active service only after completing 1) the evaluation process, 2) any rehabilitation required by DARS, and 3) providing a negative urine sample and/or a negative breath alcohol test at a medical facility selected by the Company within 45 days of the date of the Chief Medical Officer's original letter of instruction, unless DARS determines additional time is required to complete rehabilitation. An employee who fails to contact DARS within the prescribed time or to cooperate with the evaluation process and rehabilitation required by DARS or fails to provide a negative urine sample as specified above will be subject to dismissal for failing to comply with instructions and company policy. Health Services will notify the supervisor if such discipline might be required so that the supervisor can schedule an investigation.

An employee who has been returned to service following a positive test is subject to follow-up testing under NS policy for up to two (2) to five (5) years. Employees subject to Federal

follow-up testing are governed by follow-up recommendations as specified by their SAP for up to two (2) to five (5) years. The Chief Medical Officer will order such follow-up tests by instructing the supervisor to take the employee, while on duty, to an appropriate collection site to have the sample collected. The reason for the follow-up test should be indicated on the appropriate (Federal or Company) custody and control form and a copy of the form given to the employee after the collection process has been completed. An employee who refuses to submit to a follow-up test after being instructed to do so is subject to discipline for failing to comply with instructions. A Regulated Employee refusing any Federal test must be removed from service for a minimum of nine (9) months. In addition, certified engineers and conductors refusing any Federal test are subject to having their certification suspended in accordance with 49 CFR parts 240 and 242.

Norfolk Southern policy also provides for employees who have been returned to service following positive tests to be instructed by the Chief Medical Officer to keep their systems free of Prohibited Drugs and to participate in any appropriate DARS continuing care recommendations. Such employees are advised that any future positive test will result in dismissal. The supervisor should receive a copy of the Chief Medical Officer's letter giving these instructions to the employee. If the supervisor does not receive the Chief Medical Officer's letter of instruction to the employee, he or she should contact Health Services.

# **GENERAL NOTES ON HOLDING INVESTIGATIONS INVOLVING DRUGS AND/OR ALCOHOL**

- **Recommended procedures to be used in conducting investigations involving drugs and/or alcohol.**
- **Discusses required documents and witnesses.**

Investigations involving drugs or alcohol will normally include laboratory reports, custody and control forms, and other correspondence. Supervisory officers required to testify in a drug-related investigation should be in receipt of and understand the laboratory report, the custody and control forms, any applicable correspondence, and any applicable rules or policy. The key fact to establish is that the test was a non-negative or positive, not the presence of a prohibited substance at any particular level, and that the non-negative or positive sample was that of the employee. If a supervisor does not understand the laboratory report, he or she should discuss it in advance with Health Services.

Inquiries may be brought by union representatives questioning the integrity of the collection procedures or laboratory analysis. In response to such questions, supervisory witnesses should explain that tests done under DOT regulations are performed in accordance with stringent collection and analysis procedures developed by the Department of Health and Human Services (DHHS). These procedures, as modified by DOT, are described in 49 CFR Part 40. Norfolk Southern has elected to follow these collection and analysis procedures regardless of whether a test is done under DOT regulations or under Company policy. The laboratory used by Norfolk Southern is certified by SAMHSA (Substance Abuse and Mental Health Services Administration, a division of DHHS).

Normally, it will not be necessary to have DARS counselors, Health Services personnel and contractors, or laboratory representatives present at investigations. In some cases, however, it may be necessary to do so when the question at issue involves a conflict

of facts rather than a factual report from the laboratory. For example, if an employee has been charged with failing to contact DARS in the prescribed timeline or refusing to cooperate with DARS, it might be necessary to have a DARS representative attend an investigation. If this appears to be necessary, the supervisor should discuss the matter with Labor Relations and the Health Services/DARS staff in advance of the investigation.

# GENERAL NOTES ON COLLECTION OF URINE SAMPLES

- Describes procedures used to collect urine samples and identifies circumstances where direct observation of urination is permissible.
- Covers collection facilities, custody and control form, approved laboratories and medical review officer procedure.
- Issues that are likely to be raised by employees.

Urine samples are collected at properly prepared restroom facilities on property or at designated medical facilities. A third-party collector normally collects random testing samples at appropriate restroom facilities on the property, although the Chief Medical Officer may occasionally order that a random test sample be collected at a medical facility.

When a test is done as part of a physical examination, the employee may be sent by the supervisor to a selected Company approved medical facility or physician. In all other cases, the supervisor should take the employee to a collection site and ensure that the collection instructions inside the Norfolk Southern urine-drug screen collection kit are called to the attention of collection personnel.

The supervisor should not make any statements about the employee during or after the sample collection process that might be construed as derogatory. The third-party collector does not need to know why the employee has been brought for testing other than as is required for completion of the testing form.

While the employee is required to empty pockets, check coats, hats, cell phones, etc., the employee should not be required to undress and put on a gown. Applicable regulations and Norfolk Southern policy allow for individual privacy except in the following circumstances:

- Conduct is observed and documented by the collector which clearly indicates an attempt by the employee to tamper with the sample.

- The temperature of the sample is outside of the specified range.
- The Chief Medical Officer or Designated Employer Representative (DER) instructs the accompanying supervisor and/or collection personnel to conduct a collection under direct observation.

If one of the previous conditions is present, direct observation of urination by an observer must be conducted, noting the following requirements:

- Observer must be the same gender as the employee being tested. **Never** permit a person of the opposite gender to act as the observer.
- The observer can be someone other than the collector and need not be a certified collector but may not be a direct supervisor of the employee.

The appropriate custody and control form (federal or company) must be properly completed in accordance with the instructions in the kit and the correct reason for the test must be marked. If the custody and control form is not properly completed or if a company form is used for a federal test, the company may be subject to civil penalties. The collector must be instructed by the accompanying NS Supervisor or order information for tests arranged by Health Services of which form to use and the reason for testing. The employee is notified of the testing authority by use of the correct custody and control form. **The employee also is notified of the reason for the test by the appropriate block on the custody and control form being marked before the specimen is collected. A copy of the form must be given to the employee when testing is completed.**

All drug test results initially reported by the laboratory as non-negative must be reviewed by a Medical Review Officer (MRO) before such results are confirmed. Norfolk Southern's Chief Medical Officer serves as the Company's Medical Review Officer. The MRO must discuss the results of any non-negative test with the employee so that the employee has an opportunity to explain the result. The employee's name and phone number must be shown on the appropriate page of the custody and control form so that the MRO can contact the employee. If the MRO is unable to contact the employee, the employee can be instructed to contact the MRO. An employee who fails to comply with such instructions is subject to discipline.



Some employees may have questions about their test and testing requirements. The following are samples of typical employee requests and suggested supervisory responses:

**Q:** Employee requests that a union representative or co-worker be present during sample taking.

**A:** *The Company intends for the required samples to be collected properly and promptly. There is no requirement that a union representative or co-worker be present during the sample collection; therefore, this request should be denied.*

**Q:** Employee asks why the Carrier wants to test him or her and on what basis.

**A:** *The employee should be informed of the reason he or she is being tested. The custody and control form (federal or company) indicates the testing authority for the collection, and the form also should be marked to indicate the reason for the test. A copy of the form should be given to the employee when testing is complete.*

**Q:** The employee asks about the consequences if he or she refuses to take the test or tests positive.

**A:** *If the employee is being tested under a Federal test, he or she should be advised that a refusal to test after being instructed will result in an investigation being held, and he or she will be subject to discipline.*

*If an employee refuses to take a test in a suspected Rule G incident, **under circumstances in which Federal regulations do not apply**, no disciplinary action will be taken on the basis of the refusal. However, the employee may still be subject to discipline for violation of Rule G based on supervisory observations. Finally, all physical examinations include a urine-drug test. An employee may not refuse to*

*complete that drug screen, just as he or she may not refuse to complete any other portion of the examination.*

*The supervisor may refer the employee to the Policy on Alcohol and Drugs of Norfolk Southern Corporation in the Safety and General Conduct Rule Book wherein the consequences of a non-negative test are described.*

**Q:** Employee asks what specific type test is being administered.

**A:** *Sample collection and analysis are done in accordance with Department of Health and Human Services procedures and DOT regulations. A screening test is performed on all urine specimens. A confirmatory test is performed on all urine specimens that screen at or above the cut-off levels established by the DOT. The confirmatory test utilizes an entirely different methodology from the screening test. Specimens are usually screened by an immunoassay test. Specimens, which screen positive, are confirmed by Gas Chromatography/Mass Spectrometry (GC/MS).*

**Q:** Employee asks about chain of custody.

**A:** *All samples are collected in accordance with procedures established by the Department of Transportation. Strict procedures are utilized to ensure the chain of custody of all specimens. All specimens are carefully identified and sealed in a tamper proof manner. The specimen is shipped from the collection site to the laboratory or is picked up by laboratory personnel for shipment to the testing lab.*

**Q:** Employee asks when he/she will be notified of results and status pending outcome of test.

**A:** *Normally, it takes from five (5) to seven (7) days for the Medical Review Officer to obtain the results. The DOT does not require that results be provided to the employee. In the event an employee would like to receive a copy of test results, the employee must submit a request in writing, which*

*should include employee name, ID number, date of test, and the address results are to be sent. This request can be faxed or mailed to the Chief Medical Officer and will be completed within ten (10) days of receipt of the request. An employee's status pending the outcome of the test will depend upon the circumstances relating to the incident leading to the test. An employee will ordinarily be held out-of-service pending the outcome of the test in cases **where there is independent evidence that a Rule G violation may have occurred.** When a test is performed in most other circumstances, such an employee will ordinarily be permitted to work pending the outcome of the test. Contact the Manager Compliance if you need assistance in determining if an employee should be taken out of service.*

**Q:** Employee insists in advance that his/her sample undergo a confirming test in the event it tests positive.

**A:** *Specimens that screen positive automatically undergo a confirmatory test.*

**Q:** Employee requests that he/she be provided with a portion of the specimen in order to run an independent test.

**A:** *There is no requirement that an employee be provided with a portion of the specimen in order to run an independent test because there would be no control over the chain of custody of the employee's portion of the sample, and no assurance that the laboratory used by the employee had properly performed the analysis. Therefore, the specimen should not be partitioned.*

**Q:** After submitting to a urine test, an employee insists that a blood sample be taken and tested for drugs.

**A:** *The employee's request for such a test should be declined. The employee may independently arrange for a blood test, but NS will not excuse him or her from duty for this purpose.*

**Q:** After submitting to the Company urine-drug screen collection, the employee may want to have an independent specimen collection and test performed by family doctor or private lab.

**A:** *This is the prerogative of the employee. However, any other testing does not negate the previously conducted test.*

**Q:** The employee may want to make a record of all prescriptions or over-the-counter drugs used by him around the time of the collection.

**A:** *The employee may note this information on his or her copy of the custody and control form; however, this information is not to be supplied to the laboratory.*

**Q:** An employee wants to sign the custody and control form under protest; or an employee refuses to sign said form; or employee is presented with a release to sign by the medical facility.

**A:** *If the employee will not sign the federal or company chain of custody form, the collector should note that fact on the form in the remarks area and proceed with the collection. If a facility will not collect a sample without the employee signing its medical release, another facility should be used. An employee is not required to sign a release for Federal drug tests, except for Subpart C — FRA Post-Accident Testing.*

# GENERAL NOTES ON COLLECTION OF BREATH SAMPLES

- Breath alcohol testing forms to be used.
- Breath alcohol testing measurements for DOT breath alcohol testing.
- Breath alcohol testing measurements for Company (NS) or Non-DOT testing.

Breath testing consists of an alcohol screening test and, if necessary, a confirmation test conducted by a Certified Breath Alcohol Technician (BAT) on an approved Evidential Breath Testing (EBT) device. If the employee also is going to take a urine drug screen test, you must, to the greatest extent practicable, ensure that the breath alcohol test is completed before the urine collection process begins.

## DOT Breath Alcohol Test

- **A DOT Breath Alcohol Testing form must be used for federal testing.**
- If the first test (alcohol screening test) result is **less than 0.020**, the test is negative and complete.
- If the alcohol screening test is **0.020 or greater**, another breath test is required to confirm the result, after a mandatory 15 to 30 minute wait.
- If the confirmation test is **less than 0.020**, the test is negative and complete, and the employee can continue working. If the testing is performed under Federal Reasonable Suspicion testing, further testing under company Rule G may only continue if there is an independent basis for testing, which means the employee must exhibit additional or continuing signs and symptoms of alcohol use. The results of the Federal test may not be used as a basis for additional testing.
- **If the confirmation test is 0.020 or greater, the test is positive for alcohol.** The employee is taken out-of-service pending an investigation for violation of NS Rule G and for violation of Federal regulations if the result is 0.04 or greater. An engineer or conductor who has a positive measure of 0.040 or above on a Federal breath test will be subject to suspension of their certification pursuant to 49 CFR parts 240 and 242.

**BE ADVISED:** A Federal/DOT breath alcohol test **MUST** be conducted while Regulated Employees are on duty. The Federal test must be completed on a DOT form prior to continuing any testing under NS policy. Results received on a federal test cannot trigger another test under NS policy, although further testing may be appropriate if there is an independent basis based on additional or continuing signs/symptoms of alcohol use following Federal Reasonable Suspicion testing. If you have a question about this requirement, contact the Manager Compliance/DER.

### **Company (NS) Breath Alcohol Test**

- **A Non-DOT or NS Breath Alcohol Testing form must be used for Company testing.**
- **If the first test (alcohol screening test) result is less than 0.006, the test is negative and complete. Allow employee to continue working unless testing is for Suspected Rule G and signs and symptoms were present.**
- **If the alcohol screening test is 0.006 or greater, a confirmation test is required, after a mandatory 15 to 30 minute wait.**
- **If the confirmation test is less than 0.006, the test is negative and complete. Allow employee to continue working unless testing is for Suspected Rule G and signs and symptoms were present.**
- **If the confirmation test is 0.006 or greater, the test is positive for alcohol. The employee is taken out-of-service pending an investigation for violation of NS Rule G. The presence of alcohol constitutes a violation of Rule G.**

# PROBLEMS IN DRUG AND/OR ALCOHOL COLLECTIONS

**Inability to Provide an Adequate Specimen: “Shy Bladder” procedures. “Shy Lung” procedures.**

At the start of each urine specimen collection, the employee must be instructed by the collector to take the specimen collection container, go into the restroom, and attempt to provide at least 45 mL of urine. If the employee does not cooperate with the collector, notify the employee that not cooperating with the collection process may be treated as a refusal and could result in discipline. However, when an employee is unable to provide an adequate amount of urine and/or breath sample, which constitutes a completed test, the following guidelines will be followed:

## **Urine-Drug Testing “Shy Bladder”**

The employee is given **up to three (3) hours** to provide an adequate specimen. The three-hour time frame begins when the employee leaves the restroom and makes the collector aware that he/she is unable to provide an adequate specimen after attempting to void. The employee may be encouraged to drink fluids up to, but not more than, 40 fluid ounces. The employee must attempt to provide a new urine specimen. Amounts of fluids and times administered, in addition to the times of subsequent attempts to provide a specimen, must be recorded by the collector.

## **Breath Alcohol Test “Shy Lung”**

The Breath Alcohol Technician (BAT) will direct the employee to make **up to three (3) attempts** at providing an adequate amount of breath.

**When a collector determines an employee has not provided an adequate urine specimen and/or breath sample, the following action must take place:**

- **Important:** Do not treat shy bladder or shy lung as a refusal.
- Collector will notify Norfolk Southern Health Services of an employee’s inability to void or provide a breath sample.
- The employee will be withheld from service until a medical evaluation is conducted and results provided to the NS Medical Review Officer.

If the MRO concludes the employee has no medical condition that would have prevented the employee from providing an adequate urine specimen or breath sample, the incident will be handled as a refusal to test. Refusal to test requires a minimum nine-month disqualification and the employee will be subject to discipline up to and including dismissal. In addition, certified engineers and conductors who refuse a federal test will be subject to suspension in accordance with 49 CFR parts 240 and 242.



# TESTING UNDER THE FRA RULE

(49 CFR PART 219)

The FRA Rule on control of alcohol and drug use in railroad operations **requires** railroads to test Regulated Employees in certain circumstances and **permits** testing in other circumstances. The rule is divided into a number of subparts:

## SUBPART A — GENERAL

**Host railroad is responsible for ensuring required FRA tests are done. FRA Rule applies principally to Regulated Employees, who are deemed to have consented to FRA tests. Notice of testing authority and reason for the test must be provided to employee. Authority of local law enforcement agencies pertaining to drug and/or alcohol testing following a train accident.**

Subpart A provides that when one railroad is operating over another road's tracks, the host railroad is responsible for conducting the tests required by FRA Regulations. While the two roads may agree on which one will collect such samples, the host railroad is responsible for ensuring that such samples are actually collected. Under Subpart A, a Regulated Employee is deemed to have consented to the tests authorized by the FRA Rule. Note that in the case of a fatality, any railroad employee (regulated or not) is deemed to have consented to removal of body fluid and/or tissue specimens necessary for toxicological analysis from the remains of such employee, if such employee dies within twelve (12) hours of an accident or incident that meet the testing criteria under Part 219 Subpart C — Post-Accident Testing. When an FRA authorized test is performed, the employee(s) must be given written notice that the test is being done under federal authority and also must be given written notice of the reason for the test. This notice is provided by use of the federal custody and control form, and the appropriate reason being marked. A copy of the form must be given to the employee after completion of specimen collection.

## Local Law Enforcement Agencies and Grade Crossing Accidents

Most local police do not have authority to require alcohol and drug tests of rail employees after train accidents because the testing of rail employees is governed by federal law:

- If local police state an intention to test a regulated employee following a grade-crossing accident, you can ask the police officer to call the FRA at (202) 493-6313 or visit their website at [www.fra.dot.gov/Page/P0345](http://www.fra.dot.gov/Page/P0345) to learn why FRA regulations preempt this type of test.
- FRA's alcohol and drug testing regulations MAY NOT preempt provisions of state criminal law that require drug and alcohol testing after highway-rail crossing accidents (or other train accidents).
- Any testing done by the state should not be allowed to interfere with testing required under FRA's Rule 219.13.

### **Training Required for Supervisors Responsible for Regulated Service Employees**

Each supervisor responsible for regulated service employees must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse. At a minimum, training shall provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. Training also must include the qualifying criteria for Subpart C — Post-Accident Testing and the role of the supervisor in Post-Accident collections.

### **SUBPART B — PROHIBITIONS**

- Describes FRA drug and alcohol prohibitions.
- NS Rule G continues unchanged.
- Use of prescription drugs approved in certain circumstances.
- Employee may demand an FRA hearing after a positive FRA test or a refusal.
- Describes handling of employees who test positive on FRA test and circumstances under which they may be returned to work.
- Follow-up testing required after positive FRA test.

### **Regulated Employees are prohibited from:**

1. Using or possessing alcohol or controlled substances while on duty;
2. Going or remaining on duty while under the influence of or impaired by alcohol or any controlled substance;

3. Having a 0.04 or more measurement of alcohol in the breath or blood;
4. Using alcohol prior to reporting for duty for whichever is the lesser of the following periods:
  - within four (4) hours of reporting for service; or
  - after receiving notice to report for service.
5. Performing or continuing to perform regulated service after an alcohol test result 0.02 or greater but less than 0.04 until the start of the employee's next regularly scheduled duty period, but not less than eight (8) hours following the administration of the test.

**NOTE:** Norfolk Southern and its subsidiary railroads continue to prohibit any possession and use of or impairment by alcohol or other prohibited Drugs (as that term is defined in the Norfolk Southern Policy on Alcohol and Drugs). Possession of any of the foregoing while on duty, or possession, use or being under the influence of any of the foregoing while on Company property or occupying facilities provided by the Company is prohibited. Therefore, if the results of an alcohol test indicated the presence of alcohol in an employee's system greater than 0.006, or if the test is a positive result on a reasonable suspicion or Suspected Rule G urine drug test, that employee will be subject to dismissal.

Regulated Employees also are forbidden from using prohibited Drugs on or off duty. (Under the FRA Rule, an employee may use a prescription drug when a physician has made a good-faith judgment based on knowledge of the employee's duties and medical history that the use of the substance at the prescribed dosage is consistent with safety; and the substance is used at the prescribed dosage. If a regulated employee is being treated by more than one physician, at least one physician must be aware of all prescription drugs being taken.)

An employee found to be in violation of Rule G (i.e., one who reports for duty under the influence of alcohol or other Prohibited Drugs, controlled substance or any combination thereof or who uses or possesses such substances while on duty or Company property) is subject to dismissal under Norfolk Southern policy. A positive drug test alone is not sufficient to establish a violation of Rule G. In order to prove a violation of Rule G, the positive drug test must be coupled with observable signs of drug use.

FRA requires that a regulated employee who tests positive for a controlled substance be immediately disqualified from regulated service. Under the FRA Rule, such an employee may not return to regulated service until the employee:

- Is evaluated by a Substance Abuse Professional (SAP) to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
- Completes any education or rehabilitation required by the SAP; and
- Presents a urine sample that tests negative for controlled substances and/or a breath sample that has an alcohol measurement of less than 0.02.

Norfolk Southern's policy is consistent with the above FRA requirements **EXCEPT** if the results of an NS company policy alcohol test indicate the presence of alcohol in the employee's system above 0.006.

The FRA Rule (like NS policy) provides that employees who have been returned to service following a positive FRA test or who are reinstated following a refusal are subject to follow-up testing for up two (2) to five (5) years following the employee's return to safety sensitive functions. The Chief Medical Officer will order such follow-up tests by instructing the supervisor to take the on-duty employee to an appropriate testing site to have the sample collected. The federal custody and control form should be used, and the reason for the test (in this case follow-up) should be indicated on the custody and control form. A copy of the form must be given to the employee after completion of the specimen collection. An employee who refuses to submit to a follow-up test after being instructed to do so is subject to discipline for failing to comply with instructions. Refusing a Federal test disqualifies a Regulated Employee for a minimum of nine (9) months. In addition, certified engineers and conductors will be subject to suspension of their certification pursuant to 49 CFR parts 240 and 242.

Although the FRA Rule does not address the number of times that an employee may be returned to service after a positive test, Norfolk Southern policy provides that an employee who is returned to service after a positive test will be instructed by the Chief Medical Officer to keep his or her system free of Prohibited Drugs and participate in recommended aftercare. The employee is advised that any future positive test will result in dismissal. The

supervisor should receive a copy of the Chief Medical Officer's letter giving these instructions to the employee. If the supervisor does not receive a copy of the Chief Medical Officer's letter of instructions to the employee, he or she should contact NS Health Services.

Subpart B of the FRA regulations gives a regulated employee the right to request a "hearing" upon being removed from service as a result of a positive FRA test or refusal. The procedures to be used in conducting the hearing must conform to that required by the employee's collective bargaining agreement. The hearing may be combined with any disciplinary hearing from the same incident but separate findings must be rendered by the hearing officer with respect to the alcohol and/or drug violation. If the hearing concludes the test is valid, the employee should be advised that, "As a result of the FRA required hearing, it has been determined that the test results are valid evidence of drug use (or refusal) prohibited by FRA Regulations."

Norfolk Southern policy requires an employee to request the FRA hearing within five (5) days of his/her removal from service. The hearing must then be held within the number of days specified in the agreement starting from the date the employee's request for the hearing is received. In the absence of an agreement provision specifying when the hearing must be held, Subpart B requires that it be held within ten (10) days.

## SUBPART C — FRA POST-ACCIDENT TESTING

- Describes criteria which require Post-Accident Testing.
- How a decision to test is made, damage estimates, and making a good faith determination.
- Who is tested?
- When can an employee be recalled for testing?
- Subpart C — FRA Post-Accident Testing Criteria Flowchart.
- How samples are collected.
- What if there is a testing delay?
- Guidelines for FRA Post-Accident Testing for survivors.
- Guidelines for FRA Post-Accident Testing for fatalities.
- Reporting of Post-Accident Testing to the FRA, NRC and NS Health Services.
- On-line notification of testing.
- What happens if employee refuses to be tested?
- What happens if employee tests positive?
- Collection procedures and Hours of Service questions are also discussed.

Subpart C requires samples to be collected after certain accidents or incidents. After an on-track accident/incident involving **on-track equipment** that results in damage, injuries, fatalities, or a hazardous material release, involves a passenger train, or a railroad **grade crossing accident**, a decision must be made by NS management responsible for train operations whether the accident/incident qualifies for mandatory FRA Post-Accident Testing per this subpart. **On-track equipment** includes equipment consist (train, locomotive, cut of cars or a single car not coupled to another car or locomotive), locomotive, motorcar, train, yard switching trains, or work train. A **car** is any unit of on-track equipment designed to be hauled by locomotives or any unit of on-track equipment, such as a track motorcar, hi-rail vehicle, push car, crane or ballast tamping machine.

The responding railroad officer (meaning an officer at the scene of the accident/incident) is responsible for making the **factual** determinations necessary to determine if Post-Accident Testing is required based on available information. The responding officer making these factual determinations may **not** be someone who was directly involved in the accident. The officer on the scene may consult with higher railroad officials, but the responding officer must make the factual determinations. If supervisory officers other than the responding officer are involved in the decision, the Company must be prepared to furnish a report within 72 hours of an FRA request explaining the extent to which those other officials were involved in the decision. Thus, all officers involved in deciding whether to require Subpart C testing should keep notes of the decision-making process in order to be able to satisfy this reporting requirement if it becomes necessary. The Director Transportation Services is the management official responsible for ensuring Subpart C testing is performed correctly for Norfolk Southern. In his or her absence, that responsibility can be shared with the Division Road Foreman of Engines. Factual determinations made on good faith after a reasonable inquiry, that later turn out to be incorrect, will not constitute an FRA Rule violation. However, misapplication of the Rule itself may be a violation.

**The railroad supervisor responding to the scene must make a good-faith determination if the accident or incident qualifies for FRA Post-Accident Testing.** That determination should be made promptly upon arriving at the scene, realistically be made in an hour or less in order to complete testing within the required four(4)-hour window for regulated employees, and be made without interfering with emergency response efforts. A good-faith determination is based on available information for two scenarios: 1) property damage/hazmat release; and 2) potential human factor causes for crossing accidents.

1. Good-Faith Determinations for railroad property damage are based on standard dollar amount thresholds and other qualifiers (HazMat releases, evacuations, reportable injuries, fatalities).

**Damage estimate required to make a good-faith determination whether to test:**

- Car and locomotive damage. Use actual value of the equipment. **Does not include the cost of lading (contents of cars) or trailers mounted on top of cars, PLUS;**
- Damage to track, track structure, bridges, tunnels, and roadbed, including labor costs and all other costs for repair or replacement in kind, PLUS;
- Damages to signals, signal bungalows and signal equipment.

Example: Cars & Locomotives                      \$ \_\_\_\_\_ +

Track & Bridges    \$ \_\_\_\_\_ +

Signal Equipment                                        \$ \_\_\_\_\_ +

FRA Post-Accident Damage Estimates \$ \_\_\_\_\_ =

**The responding railroad supervisor also must take into account available information for HazMat releases, evacuations, reportable injuries, and fatalities.**

**Once the damage estimate and other qualifying information is known, a good-faith determination may be made.**

## 2. Good-Faith Determinations for crossing accidents involving human factors.

The following human-factor grade-crossing accidents require mandatory post-accident testing of the involved employee(s):

1. A regulated employee interferes with the normal functioning of a grade-crossing signal systems, in testing or otherwise, without first taking measures to provide for the safety of highway traffic;
2. A crew member fails to properly flag a crossing with an activation failure;
3. A regulated employee fails to properly flag a crossing with a signal activation failure, partial activation or false activation;
4. A regulated employee violates an FRA regulation or NS operating rule and that violation played a role in the cause or severity of the crossing accident; or
5. A regulated employee is fatally injured in the grade- crossing accident.



To determine if any of these circumstances occurred, the supervisor responding to the scene should evaluate the information in the form CT25A and other information shared by the crews or other employees, NS police, the NS claims agent (if present), local emergency responders, and credible witnesses. This determination must be made promptly upon arriving at the scene, but without interference with emergency response or medical services being provided to any person. If upon completing his/her inquiry, the supervisor concludes none of the criteria listed above apply, testing is not needed, and no further action is required. If the supervisor concludes one of the criteria applies, he/she must contact the Director Transportation Services for further instructions.

Readily available information should be reviewed so that a prompt decision to test, or not test, is made before employees covered by hours of service requirements go off duty, or other regulated employees are released from service. Not all information may be known to the supervisor before the crew must go off-duty. Supervisors should not speculate as to what may or may not have happened. Good-faith decisions must be made based upon facts that are immediately available after a reasonable inquiry. Testing must be conducted as soon as practical in order to determine the presence or absence of impairing substances.

Even if the above circumstances did not happen in connection with a grade-crossing accident/incident, the obligation to test may exist on the basis of signs and symptoms under federal Reasonable Suspicion testing. Testing on the basis of a Rule G violation also may be appropriate. In any of these circumstances, testing should only be conducted at the direction of the Director Transportation Services.

**Exceptions to FRA Post-Accident Testing.** Subpart C testing is not to be performed:

- If the incident is a Rail-Highway Grade-Crossing Accident where a good-faith determination concluded the regulated employee/s did not cause or contribute to the accident or its severity (see above);
- If the incident is **wholly** attributable to natural causes, such as flood, tornado, etc.; or
- If the incident is attributable to vandalism or caused by a trespasser.

Unless one of these exceptions applies, Post-Accident Testing is required after the following events:

1. **MAJOR TRAIN ACCIDENT** — Any train accident (i.e., a rail equipment or rolling stock) involving damage meeting the FRA reporting threshold which involves one or more of the following:
  - A fatality to **any** person, including a fatality to an on duty employee that dies within twelve (12) hours of the incident;
  - A release of hazardous material lading from railroad equipment **combined** with an evacuation or reportable injury from the HazMat material; or
  - Damage to railroad property of \$1,500,000 or more.

**Applicable Definitions —**

**Train** means one or more locomotives coupled, with or without cars.

**Train Accident** means a rail equipment accident involving damage in excess of the current reporting threshold.

**Reportable Injury** means an injury reportable under Part 225.

**Railroad Property Damage** refers to damage including railroad locomotives, cars, self-propelled rail grinders, signals, track, track structures, bridges, tunnels, or roadbed, including all costs for repair or replacement in kind.

**Who gets tested? Test all crew members of all involved trains.** Such employees shall specifically include each and every operating employee assigned as a crew member of any train involved in the accident. Test operator, dispatcher, signal maintainer, or other Regulated Employee directly and contemporaneously involved.

2. **IMPACT ACCIDENT** — A train accident involving damage meeting the FRA reporting threshold resulting in:
  - A reportable injury; or
  - Damage to railroad property of \$150,000 or more.

**Applicable Definitions —**

**Impact** includes a train accident involving a head-on collision, a rear-end collision, a side collision, a switching collision, or impact with a deliberately placed obstruction such as a bumping post.

**NOTE:** The following are **not** Impact Accidents:

- Accident in which the derailment of equipment causes an impact with other rail equipment;
- Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.; or
- Raking collisions caused by derailment of rolling stock or operation of equipment in violation of clearance limitations.

**Who gets tested?** Test all crew members of all involved trains with the exception of any employee for whom a determination has been made had no role in cause or severity of the accident. Test operator, dispatcher, signal maintainer, or other regulated employee directly and contemporaneously involved.

- 3. FATAL TRAIN INCIDENT** — A fatal train incident is any train incident involving the movement of railroad on-track equipment that involves a fatality to any on duty railroad employee. Equipment damage **does not** have to exceed the FRA reporting threshold.

**Applicable Definitions —**

**Train Incident** is an event involving the operation of railroad on-track or fouling equipment that results in a casualty but in which railroad property damage does not exceed the reporting threshold.

**Who gets tested?** Test the deceased if an on-duty railroad employee. Also, test crew members of all trains involved, and any other Regulated Employees who had a possible role in the cause or severity of the accident.

- 4. PASSENGER TRAIN ACCIDENT** — A train accident involving damage meeting the FRA reporting threshold involving a passenger train and resulting in a reportable injury to any person.

**Applicable Definitions —**

**Passenger Train** is a train transporting persons in intercity passenger service, commuter or other short-haul service, or for excursion or recreational purposes (revenue train).

**Who gets tested?** Test all crew members of all involved trains with the exception of any employee, where a determination has been made, that the employee had no role in cause or severity of

the accident. Test operator, dispatcher, signal maintainer, or other regulated employee directly and contemporaneously involved.

**How are Subpart C (Post-Accident) samples collected?** The railroad must make **every reasonable effort** to ensure that blood and urine samples are collected from Regulated Employees subject to testing **as soon as possible** (employees may be required to provide breath for testing, if such testing does not interfere with timely collection of required blood and urine samples). Employees who may be subject to testing **must** be kept on duty while the supervisory officer determines if testing is required.

**Who can be recalled for testing?** Employees who fail to remain available for testing are deemed to have refused to submit to testing and may be recalled; **however**, if an employee goes off duty under normal procedures before being instructed to remain available for testing, that employee can be recalled for Subpart C testing without violating the Hours of Service Act if **ALL** the following apply:

- Accident/Incident occurred during employee's tour of duty; **and**
- There is a clear probability that the employee played a major role in the cause or severity of the accident; **and**
- The employee went off duty prior to being notified by a supervisor of the requirement to be tested.

Employees to be tested under Subpart C **must** be transported by the railroad to an **independent** medical facility for collections of specimens.

If an employee has been transported to a medical facility for treatment for an injury, the railroad should request the treating facility to collect the samples. However, necessary medical treatment must take priority over the collection of samples. The FRA will provide assistance in securing the cooperation of the medical facility in collecting the samples upon notification through the toll-free number contained in the regulations. Should the medical facility not cooperate, contact the Manager Compliance. If necessary, the Manager Compliance will request the FRA issue subpoenas to the collector to provide samples. If the Manager Compliance is unavailable, contact the FRA through the National Response Center (NRC) at 800-424-8802, and provide the NRC with a clear report of the problem with obtaining samples.

The samples are to be collected using a toxicology kit provided for this purpose. Appendix C of the FRA Rule describes in detail the collection procedure for samples collected under Subpart C. The railroad representative need not know all these details but must be aware of the following responsibilities (note that if the kit contains expired blood sample tubes, the facility may use collection tubes of the correct size and number if needed – see survivor Tox Box information below for details):

- Make the decision if Subpart C testing applies to the event and who needs to be tested or excluded from testing.
- Transport the employees to be tested to the medical facility.
- Provide the FRA toxicology kit (“Tox Box”) to be used to collect the samples to the medical facility.
- Make medical facility personnel aware of the collection instructions contained in the kit.
- Read instructions for railroad representative and distribute copies of instructions to railroad employees.
- Verify the identity of the employee(s) to the medical facility personnel for sample identification purposes.
- Complete in its entirety, FRA Form 6180.73 (revised) (73 Form) and notify the collector that the 73 Form must be included in the box with the specimens prior to being sealed.
- Review FRA Form 6180.74 (74 Form) once completed by the collector.
- Promptly report of samples collected and any employees who refused to be tested to the NS Manager Compliance/DER at 757-629-2442.
- When at all possible, Post-Accident samples are to be shipped overnight directly from the collection facility to the laboratory designated by FRA. If necessary, the railroad representative must take the FRA Post-Accident shipping box containing the samples to the nearest point for overnight shipping. The NS supervisor is not to be included on the custody and control form (74 Form). If the railroad representative transports the samples to the overnight courier in order to expedite shipping, he or she should separately document, outside the custody and control form, that he or she received the samples from the medical facility and kept the samples

secure in his or her possession until the FRA Post-Accident shipping box containing the samples was turned over to the overnight courier. The statement should be filed until such time as FRA might ask for it.

**What if there's a testing delay?** It is critical NS provide a good- faith determination in a timely manner to allow surviving employees to arrive at medical facilities for testing to be completed within four (4) hours of the accident. If testing is not completed within four (4) hours of the event, a written report must be made detailing the reasons and/or events why testing was delayed. Unacceptable delay in completing testing will result in civil penalties levied against NS by the FRA.

<b>Acceptable Delay</b>	<b>Unacceptable Delay</b>
Remote Location	Delay in determining event met testing criteria
Restricted access to site	Waiting for Tox Boxes
Crew requires medical attention	Territory belongs to 'other' division
Inclement weather	Nearest medical facility not used

**Time at Collection Site:** Employees remain “on duty” during the sample collection process. The railroad is required to take all reasonable steps to make the employees available at the collection site as soon after the event as possible. The railroad also may require employees to provide breath for testing if such testing does not interfere with timely collection of required blood and urine samples. If breath-alcohol testing is conducted, use a Federal (DOT) Breath Alcohol Testing Form and include a copy in the Tox Box, if practicable. Under Subpart C, the employee may be required to remain at the collection site, while consuming moderate amounts of liquid, for four (4) hours in order to collect a urine sample. Upon the expiration of four (4) hours, the urine collection process may be stopped if a blood sample has been collected.

**Exceeding Hours of Service:** In order to collect samples under Subpart C, the FRA permits the Hours of Service Law to be exceeded (although it still must be reported).

**Refusal:** Subpart C requires Regulated Employees to cooperate with Post-Accident toxicological testing. Under the FRA Rule, employees who refuse to cooperate with such testing must, at a

minimum, be removed from regulated service for a nine-(9) month period and may be subject to suspension of their Part 240 or 242 certification. As a matter of policy, however, Norfolk Southern and its subsidiary railroads intend to make every effort to collect samples when Post-Accident Testing is required. Thus, if Post-Accident toxicological testing is required, the supervisor should instruct the employee to cooperate with that testing. Employees who fail to do so will be subject to dismissal for failing to comply with instructions.

Subpart C requires a hearing in cases in which employees refuse to cooperate with Post-Accident Testing. This hearing will usually be held together with any other disciplinary hearing arising out of the accident or incident. The conducting officer will, however, make separate findings and will consider:

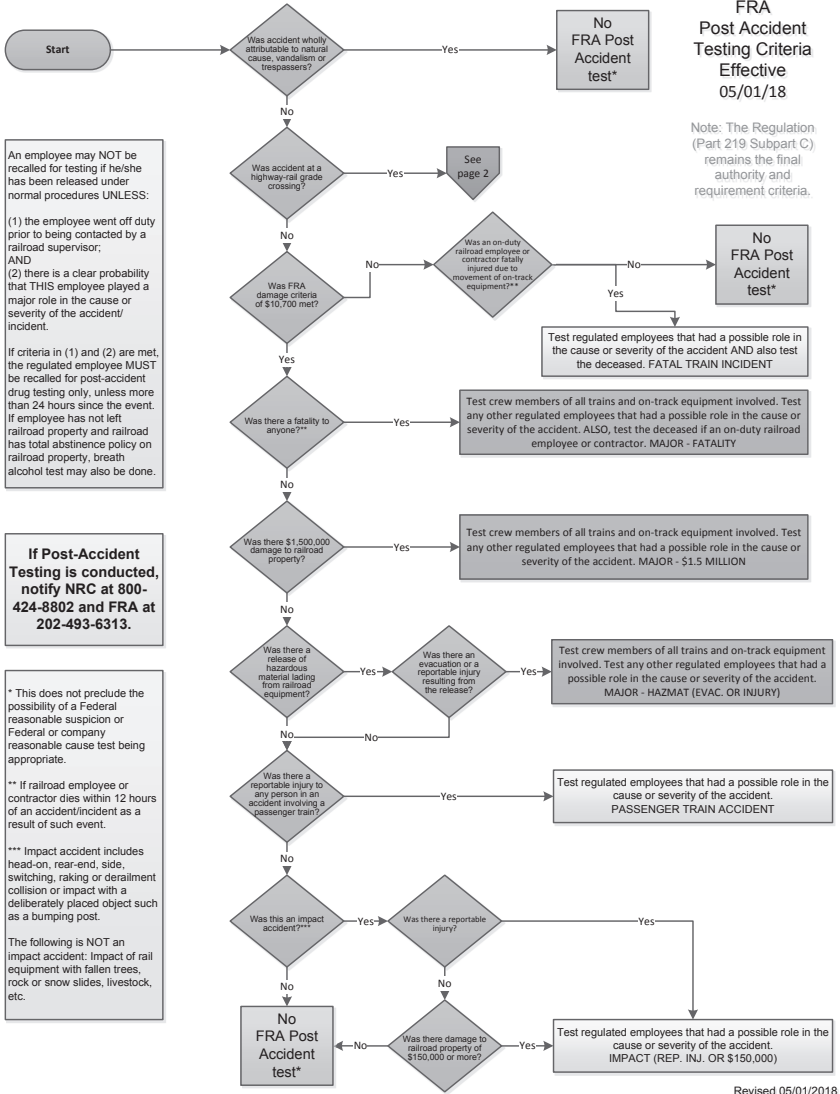
1. Whether the railroad supervisor made a “good-faith determination” that the accident or incident was within the mandatory testing requirement of this subpart; and
2. If a blood test was refused due to health considerations, whether that refusal was made in good faith and based on medical advice.

Employees who refuse to cooperate with Subpart C testing should be removed from service and given notice of charge as required by the collective bargaining agreement and by the FRA Rule. Labor Relations should be consulted.

**Detailed guidelines follow as to the responsibilities of the accompanying NS supervisor, donor and medical facility personnel for Subpart C — Post-Accident Testing of survivors and fatalities.**

# FRA Post Accident Testing Criteria Effective 05/01/18

Note: The Regulation (Part 219 Subpart C) remains the final authority and requirement criteria.



An employee may NOT be recalled for testing if he/she has been released under normal procedures UNLESS:

- (1) the employee went off duty prior to being contacted by a railroad supervisor; AND
- (2) there is a clear probability that THIS employee played a major role in the cause or severity of the accident/incident.

If criteria in (1) and (2) are met, the regulated employee MUST be recalled for post-accident drug testing only, unless more than 24 hours since the event. If employee has not left railroad property and railroad has total abstinence policy on railroad property, breath alcohol test may also be done.

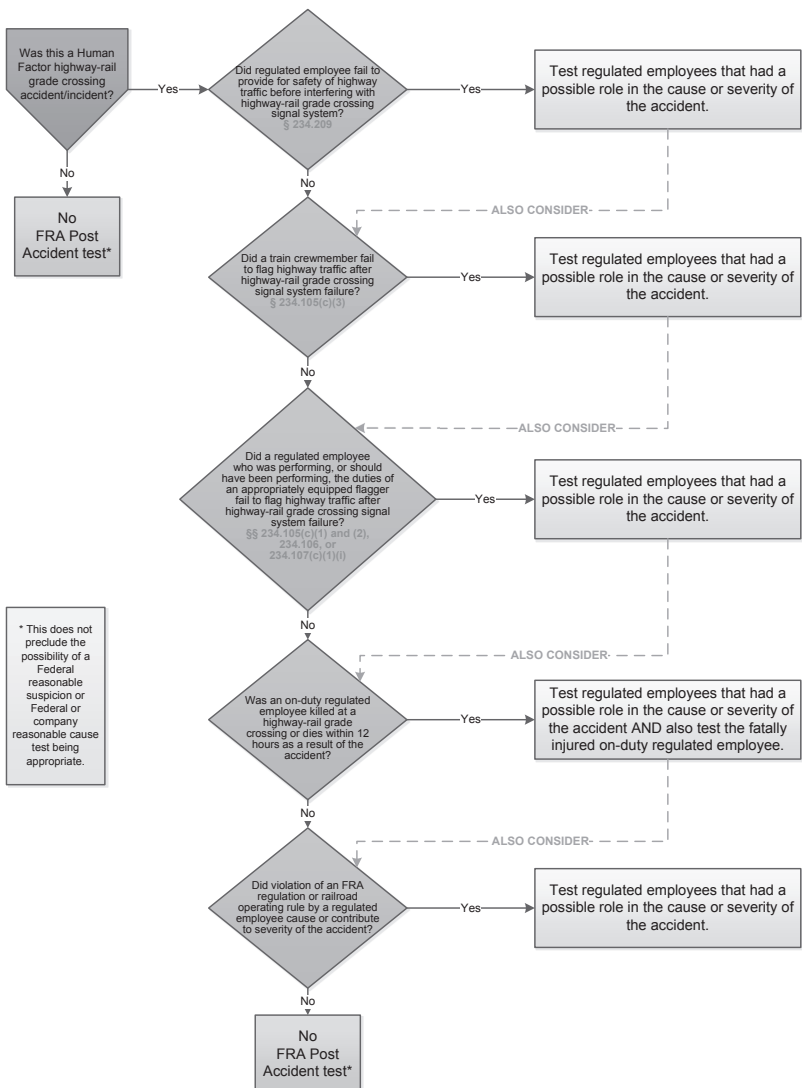
\* This does not preclude the possibility of a Federal reasonable suspicion or Federal or company reasonable cause test being appropriate.

\*\* If railroad employee or contractor dies within 12 hours of an accident/incident as a result of such event.

\*\*\* Impact accident includes head-on, rear-end, side, switching, raking or derailment collision or impact with a deliberately placed object such as a bumping post.

The following is NOT an impact accident: Impact of rail equipment with fallen trees, rock or snow slides, livestock, etc.





Revised 05/01/2018

# **GUIDELINES FOR FRA POST-ACCIDENT TESTING FOR SURVIVORS**

## **Survivor Toxicology Boxes**

White, toxicology boxes ('Tox Box') are designated for surviving Regulated Employees. Post-Accident toxicology boxes have been assigned to each Division. Prior to use, verify contents are complete and current. Contact the Manager Compliance for supplies or replacement of kits.

**Each survivor Tox Box contains supplies to test three (3) employees.**

**The plastic ziploc bag should contain:**

- ☐ 1 Accident Information Report Form, FRA Form 6180.73 (revised) (73 Form)
- ☐ 3 custody and control forms, FRA Form 6180.74 (74 Form)
- ☐ Instructions for testing
- ☐ 1 Shipping label addressed to designated FRA laboratory
- ☐ 1 Red shipping container security seal
- ☐ Bluing tablets

**Three (3) smaller kits each containing:**

- ☐ 2 blood vials, 10 mL (current date)
- ☐ 1 urine collection cup
- ☐ 2 urine sample bottles

## **Place of Sample Collection**

Transport employees to an independent medical facility (clinic or hospital or lab) for collection of specimens within four (4) hours from the time of the accident. On-site urine and blood collections are prohibited from being conducted on Company property.

- Whenever possible, testing facilities shall be in reasonable proximity to railroad operations, and should be contacted before they are needed to ensure their willingness and ability to conduct sample collections.

If possible, call ahead to the medical facility and inform them that a serious train accident has occurred and federal law requires railroad employees undertake a specialized test within four (4) hours of the incident. Ask if they have a laboratory technician or other NS Supervisor Guidelines for Handling Rule G Cases and

Incidents of Drug Testing 37 on-call employees that can perform blood and urine collections. Inform them how many employees will be tested.

Should the medical facility not cooperate, contact the Manager Compliance. If necessary, the Manager Compliance will request the FRA issue subpoenas to the collector to provide samples. If the Manager Compliance is unavailable, contact the FRA through the National Response Center (NRC) at 800-424-8802, and provide the NRC with a clear report of the problem with obtaining samples.

### **Provide Oversight to the Collection Process**

The NS Officer assigned to oversee FRA Post-Accident Testing **must** be familiar with testing requirements should the medical facility need further direction or have questions or concerns. The Director Transportation Services is the management official responsible for ensuring Subpart C testing is performed correctly for Norfolk Southern. In his or her absence, that responsibility can be shared with the Division Road Foreman of Engines. The NS Manager Compliance also is available for assistance.

### **Request the Collection Facility Representative(s) Review the Collection Instructions**

The NS supervisor will open the Tox Box, remove the instructions located in the plastic ziploc bag, and distribute the appropriate instructions to the collection facility, collector of blood specimens, and collector of urine specimens(note that the blood and urine collector could be the same individual), to use as a resource and tool during the collection process. The NS Supervisor shall provide a brief explanation to the medical staff and verify that the medical staff has a clear understanding of the written instructions they have been provided. **Please make sure that the medical staff understands that urine specimens are to be split.**

### **Instructions to Donors and NS Supervisors**

Provide the printed instructions to each donor, and request they read their instructions. Notify the employees they are required to provide blood and urine samples for FRA Post-Accident Testing. The NS Supervisor shall read and follow the printed instructions labeled “Railroad Representative”.

### **Employee Injuries**

If employees are injured, request the treating facility obtain the samples. If an injured employee is unconscious and the

medical facility declines to obtain blood samples, the Manager Compliance should be immediately contacted, and he or she will immediately notify the duty officer at the National Response Center. If the Manager Compliance is not available contact the NRC directly. (NRC) at 800-424-8802, and the FRA at 202-493-6313.

Subpart C does not limit discretion of physician to determine when and/or if drawing blood may be life threatening.

- For an unresponsive patient, only a blood sample is required. Taking of urine by catheter is neither requested nor authorized by implied consent. If the employee is catheterized for medical purposes, a urine sample may be requested for testing, provided the circumstances are fully documented, and the specimen is handled in accordance with applicable requirements.

### **Affirm the Identity of Employees**

The NS Supervisor may be required to confirm the identity of employees to be tested if employees do not have a picture ID.

### **Complete FRA Form 6180.73 (revised) Accident Information (73 Form)**

While the samples are being collected, the NS Supervisor completes FRA Form 6180.73 (revised) (73 Form). Notify the medical staff that this form must be included in the shipping box prior to sealing.

### **Monitor Progress of Collection Process and Review FRA Form 6180.74 (74 Form)**

The medical staff will take charge of the employees to collect blood and urine samples. The medical staff completes FRA Form F6180.74 (74 Form) Blood/Urine Custody and Control forms as the collections are taking place. The samples are obtained, marked, and sealed into FRA containers by qualified medical personnel only. After specimens are collected, the NS Supervisor must review the 74 Form as completed by the medical staff. **Key items include: SSN or EIN of the donor, employee name, employee and collector signatures and medication provided area. If no medication was provided, have the collector document 'none.'**

### **Packing and Sealing the Tox Box & Shipment to the Lab**

The hospital or clinic will pack and seal the kit. Prior to sealing, the NS Supervisor **must ensure all forms are completed properly and packed in the toxicological shipping box before sealing.**

**Kits:** Each individual specimen kit used should contain two (2) blood vials and two (2) urine bottles for each employee tested. Each individual specimen kit should be sealed using the appropriate custody and control form seal by medical personnel.

**Forms:** Place the below noted forms in the plastic ziploc bag, close, and place bag into Tox Box on top of the three individual specimen boxes. **Copies to be placed in the plastic bag include:**

- a. Accident Information Form FRA 6180.73 (revised) — First 2 pages, completed White (FRA) and Gold (Laboratory) copies.
- b. Blood/Urine Chain of Custody Form FRA F6180.74 — First 3 pages, completed White (Copy 1-FRA), Gold (Copy 2-Lab), and Gold (Copy 3-Laboratory Split).

**The Post-Accident Tox Box is then sealed with the red Shipping Container Security Seal.**

**The 2-inch square shipment label is then affixed to the outside of the Tox Box addressed to:**

**Quest Diagnostics  
1777 Montreal Cir.  
Tucker, GA 30084**

### **Shipment to FRA Post-Accident Testing Laboratory**

The NS Supervisor is responsible to expedite shipment of Post-Accident specimens to the testing laboratory as designated by the FRA.

**Determine if the medical facility has overnight mailing service:**

- If the medical facility has overnight mail courier service (FedEx, UPS, etc.), request the medical facility ship the Tox Box to the designated FRA laboratory. The NS Supervisor is to document the overnight mail courier service used and the tracking number.
- If the medical facility does not have overnight mail courier service, request the medical facility maintain possession of the Tox Box until arrangements can be made for an overnight courier. The NS Supervisor is required to contact an overnight courier and have them pick up the Tox Box. The NS Supervisor is to document the overnight mail courier service used and the tracking number.
- It is ultimately the responsibility of the carrier (NS) to ensure delivery within 24 hours from the time of shipment. If necessary, the railroad representative must take the kit to the

nearest point of shipping. If the railroad representative does have to transport the sample(s), he or she should document the custody and control form. This is accomplished by a written statement signed by the officer that he or she received the sample from the medical facility and kept it secure in his or her possession until he or she turned it over to the air shipment company. The statement should be filed until such time as FRA might ask for it.

**Record the overnight mail courier service used and the tracking number. The carrier is responsible for pre-paid air express or air freight to ensure delivery. Norfolk Southern's account number for Federal Express is: Account # 1059-8374-3**

### **Obtain Clear Copies of Documents**

The NS Supervisor must obtain clear copies of the 74 Form(s) when complete. Fax the name of the overnight mail courier service, the tracking number and the 73 and 74 Forms to NS Health Services at 757-629-2704.

**Report all Subpart C — FRA Post-Accident Testing to the FRA, NRC and NS Health Services and complete on-line notification of testing(Form 6891-D) as detailed in Reporting of FRA Post-Accident Testing.**

# GUIDELINES FOR FRA POST-ACCIDENT TESTING OF FATALITIES

Post-mortem testing is required if an employee or regulated service contractor is fatally injured or dies from injuries within twelve (12) hours of the qualifying accident/incident as described in § 219.201. In the case of an employee fatality, body fluid and/or tissue samples shall be obtained from the remains of the employee for toxicological testing. To ensure that samples are collected in a timely manner, the railroad shall immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the Post-Mortem Toxicological kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue samples. The railroad also shall seek the assistance of the custodian of the remains if a person other than the local authority.

## **Fatality or Post-Mortem Tox Boxes**

The fatality Tox Box looks similar to Survivor or white Tox Box, but is light blue and has the word FATALITY printed on the top. Fatality Tox Boxes have been assigned to each Division. Prior to use, verify contents are complete and current, except in cases where blood vials are expired (facilities can use vials of similar size and number).

**Each fatality Tox Box contains supplies to test one (1) employee.**

**The plastic ziploc bag should contain:**

- ☐ 1 Accident Information Report Form, FRA Form 6180.73 (revised) (73 Form)
- ☐ 1 Post-Mortem Chain of Custody Form, FRA Form 6180.75 (75 Form)
- ☐ Instructions for testing.
- ☐ 1 Shipping label addressed to designated FRA laboratory
- ☐ 1 Red shipping container security seal

**Sample Collection Containers:**

- ☐ 2 blood vials, 10 mL tubes (current date)
- ☐ 1 vitreous humor vial, 6 mL tube (current date)
- ☐ 8 tissue sample containers

### **Determine where the employee remains are located.**

Contact the NS Supervisor in charge of the accident to determine where the employee remains have been transported. If the NS Supervisor in charge does not know, contact the local law enforcement agency for the location and phone number of the medical examiner/coroner (ME/c) to determine where the remains of the employee may have been transported.

### **Contact the Medical Examiner or coroner (ME/c)**

Immediately contact the appropriate ME/c and request their assistance obtaining samples. Inform them a serious train accident has occurred and federal law requires postmortem testing of a deceased employee and “the railroad” will provide a self-contained post-mortem collection kit, which includes all necessary instructions, forms, and collection materials.

Post-mortem collections are normally conducted during an autopsy. If specimen collections cannot be completed immediately, request the remains not be embalmed.

If the ME/c refuses or is unable to collect samples as outlined, the Manager Compliance must be contacted at 757-284-1769. If necessary, the Manager Compliance can request FRA prepare subpoenas to provide body fluids and tissue samples.

### **Collection of samples**

- NS Supervisor is required to be at Medical Examiner/coroner’s office.
- Provide the name and SSN or EIN of the fatality to the ME/c.
- Open the fatality Tox Box and provide the ME/c with the pamphlet “Instruction for the Collection of Specimens” and ask the ME/c to read the instructions and if they have any questions to contact NS Health Services at 757-629-2442 or 757-284-1769.
- After all questions have been answered, the collection process begins. Historically, the ME/c will advise the NS Supervisor when the Fatality Tox Box will be ready to be picked up.

### **Complete FRA Form 6180.73 (revised) Accident Information (73 Form)**

While the samples are being collected, the NS Supervisor completes the 73 Form, Accident Information and is to advise the



ME/c that the form is required to accompany the specimens to the lab and **must** be included in the post-mortem shipping box prior to being sealed.

### **Review FRA Form 6180.75 Collection of Post-Mortem Toxicology Samples (75 Form)**

After samples are collected, the NS Supervisor must ensure the 75 Form is completed properly. **Key items include: deceased's name, name and address of ME/c, and printed name and signature of ME/c.**

### **Packing and Sealing the Fatality Tox Box & Shipment to the Lab**

The Medical Examiner/coroner's office will seal the fatality Tox Box. NS supervisors must ensure all forms are completed properly and included in the fatality box before sealing.

**Forms: Place the below noted forms in the plastic ziploc bag, close, and place bag into post-mortem shipping box. Copies to be placed in the plastic bag include:**

- a. Accident Information Form FRA 6180.73 (revised) — *First 2 pages*, completed White (FRA) and Gold (Laboratory) copies
- b. Post-Mortem Chain of Custody Form FRA 6180.75 — *First 2 pages*, completed White (Copy 1-FRA), Gold (Copy 2-Lab)

**The Fatality Tox Box is then sealed with the red Shipping Container Security Seal.**

**The 2-inch square shipment label is then affixed to the outside of the Tox Box addressed to:**

**Quest Diagnostics  
1777 Montreal Circle  
Tucker, GA 30084**

### **Shipment to FRA Post-Accident Testing Laboratory**

The NS Supervisor is responsible to expedite shipment of Post-Accident specimens to the testing laboratory as designated by the FRA.

**Determine if the Medical Examiner/coroner has overnight mailing service:**

- If the ME/c has overnight mail courier service, request his or her office to ship the Tox Box to the designated FRA laboratory. The NS Supervisor is to document the overnight mail courier service used and the tracking number.

- If the ME/c **does not** have overnight mail courier service, request the ME/c to maintain possession of the Tox Box until arrangements can be made for an overnight courier. The NS Supervisor is required to contact an overnight courier and have them pick up the Tox Box. The NS Supervisor is to document the overnight mail courier service used and the tracking number.
- It is ultimately the responsibility of the carrier (NS) to ensure delivery within 24 hours from the time of shipment. If necessary, the railroad representative must take the kit to the nearest point of shipping. If the railroad representative does have to transport the sample(s), he or she should document the chain of custody. This is accomplished by a written statement signed by the officer that he or she received the sample from the ME/c and kept it secure in his or her possession until he or she turned it over to the air shipment company. The statement should be filed until such time as FRA might ask for it. The NS Supervisor is to document the overnight mail courier service used and the tracking number.

**Record the overnight mail courier service used and the tracking number. The carrier is responsible for pre-paid air express or air freight to ensure delivery. Norfolk Southern's account number for Federal Express is: Account # 1059-8374-3**

### **Obtain Clear Copies of Documents**

The NS Supervisor must obtain clear copies of the 75 Form when complete. Fax the name of the overnight mail courier service, the tracking number and the 73 and 75 Forms to NS Health Services at 757-629-2704.

**Report all Subpart C — FRA Post-Accident Testing to the FRA, NRC and NS Health Services and complete on-line notification of testing (Form 6891-D).**

# REPORTING OF FRA POST-ACCIDENT TESTING

## **To NS Health Services:**

Obtain a clear copy of all forms and scan and email to Drugs.AlcoholTesting@exchange.nscorp.com, or if unable to scan, fax to the NS Health Services at 757-629-2704 after test completion. Call 757-629-2442 or 757-284-1769 and provide details of the qualifying event, overnight mail service used to transport specimens and tracking number.

## **To the FRA:**

Call and verify if the NS Control Center (404-529-1785) made the report to the National Response Center. The NRC relays Track Incident information to the FRA. If the NS Control Center has not contacted the NRC, the RR Supervisor is required to notify the FRA of the incident.

To report FRA Post-Accident Testing: Call the FRA Drug and Alcohol Program Manager at 202-493-6313. An answering machine may pick up. If so, leave the following information:

1. Name of railroad (NS)
2. Supervisor's name, title and phone number
3. Time, date & location of accident/incident
4. Brief summary of the accident/incident
5. Total number employees tested, including names and occupations.

**On-Line Notification of Testing:** All drug and/or alcohol testing under Subpart C must be reported via the Norfolk Southern intranet as follows:

1. Form is located at: <http://drugtesting.nscorp.com/>
2. Or, for authorized supervisors, in TRAIN under the "Incidents" tab at the top of the screen.

**Disciplinary action following a positive Subpart C test:** The time limits set forth in any Collective Bargaining Agreement (CBA) for charging employees and holding investigations with respect

to any disciplinary action that might arise from an accident or incident that required Post-Accident Testing are suspended until the results of the analysis are received. However, the time limits for charging an employee are not suspended when the company obtains sufficient information to charge an employee prior to the receipt of the analysis. Thus, while an employee might be charged with certain violations after an accident which required Post-Accident Testing, the investigation of the charge(s) would not have to be held until the results were received. At that time, depending on those results, the employee might be charged with additional rule violations.

Since blood is collected and analyzed for drugs (as well as alcohol) when a Subpart C test is conducted, it may be possible to establish a violation of Rule G if a Subpart C blood test is positive. (This is true because the blood test for drugs will provide information concerning how recent the use of the drug was.) The supervisor should discuss the results with the NS Chief Medical Officer to determine if the results demonstrate that the employee used or was under the influence of alcohol and/or drugs while on duty or Company property. If the results indicate a possible violation of Rule G, the employee should be charged under the Collective Bargaining Agreement, and an investigation should be held. If the results do not indicate a violation of Rule G, the employee will be handled under the Company's medical policy on drugs. A positive test result, as verified by an MRO, is a violation of Federal regulations (219.101 and/or 219.102).

## **SUBPART D — MANDATORY REASONABLE SUSPICION TESTING**

**Describes circumstances which require a railroad to test regulated employees if a trained supervisor suspects that an employee is under the influence of or impaired by alcohol or drugs.**

Subpart D, reasonable suspicion requires testing when two supervisors (one in the case of alcohol suspicion) have reason to believe that an employee is under the influence of or impaired by alcohol or a controlled substance or a controlled substance in combination with alcohol. This suspicion must be in the form of specific observances that the supervisors can describe and document that have to do with the employee's appearance, behavior, speech, or body odors. (In the case of suspicion involving a controlled substance, only one of the two supervisors must have received training in the signs of alcohol and drug intoxication and be on-site.) These observations must be promptly documented by entering them on form 6891-D as soon as the supervisor(s) making the observation is able. Supervisors also should make sure that collectors circle the word "suspicion" after checking the box for reasonable cause/suspicion located on the custody and control form.

With respect to an alcohol test, only a breath-alcohol technician (BAT) trained to proficiency on the evidential breath-testing (EBT) device he or she is using may conduct a test. If a screening test results in a measurement of 0.02 or greater, a confirmation test using an EBT capable of printing out a copy of the results must be conducted. The supervisor who makes the determination that reasonable suspicion exists may not conduct the test on the employee.

- **Prompt sample collection; time limitations**
- **Describes the time limitations within which to conduct a Subpart D test.**
- **How the time is satisfied and what report is to be made if tests are not conducted promptly.**
- **Time at collection site.**
- **Notification of testing.**
- **Hours of Service time limitations.**

**Subpart D** requires samples to be collected **PROMPTLY** following the observations upon which the testing decision is based, consistent with the need to protect life and property. This means that a supervisor should not normally choose to let a crew finish its assignment before testing. Employees who have been released from duty may not be recalled and tested under Subpart D. (This is different from Subpart C, which permits the recall of an employee for Post-Accident Testing in limited circumstances.)

The FRA Rule permits testing under Subpart D if the collection procedure starts prior to the expiration of the eight-(8) hour period following the triggering event. The triggering event begins at the time of the occurrence of the rule violation, observations, or accident/incident (except that in the case of an accident/incident, the time does not start to run until a supervisor receives notice of the accident/incident). The eight-hour period is satisfied if the employee has been delivered to the collection site (where the collector is present), and the request has been made to commence collection of the urine specimens within that period.

In the case of a breath alcohol test, the test must be administered within eight (8) hours after the determination to test has been made. If the test is not conducted within two (2) hours following determination, a report must be made and kept on file stating the reasons the test was not more promptly made. If a breath alcohol test is not administered within eight (8) hours following determination to test, it shall be considered a “missed test”, and the report shall include the following:

1. Triggering event (including date, time, and location);
2. Employee category (do not include employee name or other identifying information);
3. Reason(s) test could not be completed within eight (8) hours, and
4. If breath alcohol testing could have been completed within eight (8) hours, the name, address, and telephone number of the testing site where breath testing could have been conducted.

The report shall be submitted to the FRA should the Administrator request it.

**Time at collection site:** Once the employee is delivered to the collection site and the testing process has begun, the employee will be required to remain at the collection site in order to

complete the collection process. The employee will be instructed by the urine collector to provide an adequate specimen as defined in 49 CFR Part 40. Be advised, the employee must make an attempt to provide an adequate specimen. Upon exiting the prepared restroom facility with an inadequate specimen (i.e., not enough volume, signs of tampering, temperature outside range) or no specimen at all, a three-(3) hour time period begins in which the employee is to provide a specimen as previously instructed. The employee is to remain at the collection site and consume up to 40 ounces of liquid (administered at reasonable intervals) and make subsequent attempts during this three-(3) hour period in order to provide an adequate specimen. If the employee does not produce a sample within the three-(3) hour period when testing under Subpart G, the Manager Compliance should be notified, and the employee will be referred by the MRO to a doctor to determine if the employee's inability to urinate is genuine or constitutes a refusal to test. **(See Problems in Drug and/or Alcohol Collections)**

**Exceeding Hours of Service:** As in Subpart C, the time limits in the Hours of Service Law may be exceeded (although it still must be reported) in order to collect a sample under Subpart D if the railroad has used **due diligence** in promptly delivering the employee to the collection site after the incident or observance which triggered the testing.

**On-Line Notification of Testing:** All drug and/or alcohol testing under Subpart D must be reported via the Norfolk Southern intranet by filling out Form 6891-D:

1. Form is located at: <http://drugtesting.nscorp.com/>
2. Or, for authorized supervisors, in TRAIN under the "Incidents" tab at the top of the screen.

# SUBPART E — REASONABLE CAUSE TESTING

## Authorized Reasonable Cause Testing

**Describes circumstances which permit testing of Regulated Employees for reasonable cause under Federal regulations.**

Subpart E authorizes a railroad to test Regulated Employees under certain circumstances. NS will perform reasonable cause tests when authorized by the FRA regulations, but may also use company authority for circumstances not covered by the FRA regulations.

**When is testing for cause permitted?** The following events permit a railroad to test a regulated employee for drugs and/or alcohol under Subpart E:

- 1. ACCIDENT/INCIDENT:** A regulated employee has been involved in a reportable accident or incident involving damage to railroad equipment that meets the current FRA reporting threshold, and the supervisor has a reasonable belief, based on specific articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident.
- 2. RULE VIOLATION:** The responsible regulated service employee(s) is directly involved in one or more of the following rule violations:
  - A. Noncompliance with a train order, track warrant, track bulletin, track permit, stop and flag order, timetable, signal indication, special instruction or other directive with respect to movement of a train that involves:**
    - (2) Occupancy of a block or other segment of track to which entry was not authorized;
    - (3) Failure to clear a track to permit opposing or following movements to pass;
    - (4) Moving across a railroad crossing at grade without authorization; or
    - (5) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);



- B. Failure to protect on-track equipment, including leaving on-track equipment fouling an adjacent track;
- C. Operation of a train or other speedometer-equipped on-track equipment 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;
- D. 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 on-track equipment, or unauthorized running through a switch;
- E. Failure to restore and secure a main track switch as required
- F. Failure to apply or stop short of derail as required;
- G. Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;
- H. Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed;
- I. Failure to provide point protection by visually determining that the track is clear and giving the signals or instructions necessary to control the movement of on-track equipment when engaged in a shoving or pushing movement
- J. In the case of a person performing a dispatching function or block operator function, issuance of a mandatory directive or establishment of a route that fails to provide proper protection for a train
- K. 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;
- L. Failure to perform stop-and-flag duties necessary as a result of a malfunction of a grade crossing signal system;

- M. Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a Regulated Employee;
- N. Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits;
- O. Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment;
- P. Failure to ascertain that provision was made for on-track safety before fouling a track;
- Q. Improper use of individual train detection in a manual interlocking or control point; or
- R. Failure to apply three-point protection (fully apply the locomotive and train brakes, center the reverser, and place the generator field switch in the off position) that results in a reportable injury to a Regulated Employee.

Before testing is ordered, make sure that the Operating Rule that was violated is on the above list.

#### **Prompt sample collection; time limitations**

**Describes the time limitations within which to conduct a Subpart E test. How the time is satisfied and what report is to be made if tests are not conducted promptly. Time at collection site. Notification of testing. Hours of Service time limitations.**

Subpart E requires samples to be collected **PROMPTLY** following the events upon which the testing decision is based, consistent with the need to protect life and property. This means that a supervisor should not normally choose to let a crew finish its assignment before testing. Employees who have been released from duty may not be recalled and tested under Subpart E. (This is different from Subpart C, which permits the recall of an employee for Post-Accident Testing in limited circumstances.) Supervisors should also make sure that collectors circle the word “cause” after checking the box for reasonable cause/suspicion located on the custody and control form

The FRA Rule permits testing under Subpart E if the collection procedure starts prior to the expiration of the eight-(8) hour period that follows the triggering event. The triggering event begins at

the time of the occurrence of the rule violation, observations, or accident/incident (except that in the case of an accident/incident, the time does not start to run until a supervisor receives notice of the accident/incident). The eight-hour collection period is satisfied if the employee has been delivered to the collection site (where the collector is present), and the request has been made to commence collection of the urine specimens within that period.

In the case of a breath-alcohol test, the test must be administered within eight (8) hours after the determination to test has been made. If the test is not conducted within two (2) hours following determination, a report must be made and kept on file stating the reasons the test was not more promptly made. If a breath-alcohol test is not administered within eight (8) hours following determination to test, it shall be considered a “missed test”, and the report shall include the following:

1. Triggering event (including date, time, and location);
2. Employee category (do not include employee name or other identifying information);
3. Reason(s) test could not be completed within eight (8) hours; and
4. If breath alcohol testing could have been completed within eight (8) hours, the name, address, and telephone number of the testing site where breath testing could have been conducted.

The report shall be submitted to the FRA should the Administrator request it.

**Time at collection site:** Once the employee is delivered to the collection site and the testing process has begun, the employee will be required to remain at the collection site in order to complete the collection process. The employee will be instructed by the urine collector to provide an adequate specimen as defined in 49 CFR Part 40. Be advised, the employee must make an attempt to provide an adequate specimen. Upon exiting the prepared restroom facility with an inadequate specimen (i.e., not enough volume, signs of tampering, temperature outside range) or no specimen at all, a three-(3) hour time period begins in which the employee is to provide a specimen as previously instructed. The employee is to remain at the collection site and consume up to

40 ounces of liquid (administered at reasonable intervals) and make subsequent attempts during this three-(3) hour period in order to provide an adequate specimen. If the employee does not produce a sample within the three-(3) hour period when testing under Subpart G, the Manager Compliance Officer should be notified and the employee will be referred by the MRO to a doctor to determine if the employee's inability to urinate is genuine or constitutes a refusal to test. (See **Problems in Drug and/or Alcohol Collections**)

**Exceeding Hours of Service:** As in Subparts C & D, the time limits in the Hours of Service Law may be exceeded (although it still must be reported) in order to collect a sample under Subpart E if the railroad has used **due diligence** in promptly delivering the employee to the collection site after the incident or observance which triggered the testing.

**On-Line Notification of Testing:** All drug and/or alcohol testing under Subpart E must be reported via the Norfolk Southern intranet by filling out Form 6891-D:

1. Form is located at: <http://drugtesting.nscorp.com/>
2. Or, for authorized supervisors, in TRAIN under the "Incidents" tab at the top of the screen.

## **SUBPART G — RANDOM TESTING PROGRAM**

**Describes FRA random testing requirements. Norfolk Southern's random testing plan collection procedure and supervisory responsibilities. Time at collection site. Hours of Service time limitations. Also discusses employee refusal and related FRA required hearing.**

Subpart G requires railroads to develop a random alcohol and drug testing program for testing on duty Regulated Employees. The primary requirements of the program are:

- All employees subject to random testing must have a **substantially** equal chance of being selected; and
- The program must produce a number of tests per year equal to a designated percentage of employees subject to random testing.

The selections for the Norfolk Southern Random Testing Program are made by computer and consist of randomly selected train crews and other positions regulated under the law or covered by company policy. For example, the computer may select certain trains departing from Inman Yard in Atlanta, GA, to be tested. When the collector arrives in Atlanta, the crews on those trains will be tested.

Subpart G requires that someone collect the samples other than the employee's supervisor or a co-worker. An independent contractor has been hired and will be used to collect most Subpart G samples. The collection contractor will collect most random testing samples at an appropriate restroom facility on the property. The contractor will contact the appropriate local supervision in advance of collecting samples at a particular location.

The role of the supervisor in random testing consists primarily of the following:

1. Be verbally notified (no more than 24 hours in advance) by the division or by the collection contractor that the collection contractor will be at a particular location.
2. Ensure an adequate space is available to the contract collector consisting of an area to complete paperwork, a room that affords visual and aural privacy for breath-alcohol

testing, and a restroom facility that is clean and orderly.

3. Arrange for the presence of the employees to be tested and advise the employees that they are being tested under the Random Testing program required by FRA regulations and that selection is on a random basis.
4. Ensure that an orderly and professional environment is maintained at the collection site.
5. Identify the employee if the employee does not have a picture ID.
6. Instruct the employee to cooperate with the test. If an employee refuses to cooperate with the required test, the officer will remove the employee from service unless the employee establishes a clear medical or family emergency. An employee who refuses will be charged with failure to comply with instructions and a hearing will be scheduled pursuant to the employee's Collective Bargaining Agreement and the FRA Rule. Labor Relations should be contacted.
7. Monitor an employee at the collector's request who had provided an insufficient specimen and who is allowed to provide a sample within three (3) hours. Ensure that an adequate supply of drinking water is available at this time.
8. Remove from service any employee who tests positive for alcohol with a confirmation result of 0.02 or greater following the completion of the urine collection.

**Time at collection site:** If the employee also is going to take a DOT urine-drug screen test, the collector, to the greatest extent practicable, ensures that the alcohol test is completed before the urine collection process begins. Once the employee is delivered to the collection site and the testing process has begun, the employee will be required to participate in a breath-alcohol test. The employee may then be required under this subpart to attempt to provide an adequate urine sample as instructed by the urine testing collector. Be advised, the employee must make an attempt to provide an adequate specimen. Upon exiting the prepared restroom facility with an inadequate specimen (i.e., not enough volume, signs of tampering, temperature outside range) or no specimen at all, a three-(3) hour time period begins in which the employee is to provide a specimen as previously instructed.

The employee is to remain at the collection site and may

consume up to 40 ounces of liquid (administered at reasonable intervals) and make subsequent attempts during this three-(3) hour period in order to provide an adequate specimen. If the employee does not produce a sample within the three-(3) hour period when testing under Subpart G, the Manager Compliance should be notified and the employee will be referred by the MRO to a doctor to determine if the employee's inability to urinate is genuine or constitutes a refusal to test. **(See Problems in Drug and/or Alcohol Collections)**

**Hours of Service Act may not be exceeded in order to collect Subpart G (random) samples unless a direct observation collection is prompted.** (This is different from Subpart C, D and E Testing.) If an Hours of Service violation is about to occur, the Subpart G collection process must be stopped. **An employee is subject to testing under Subpart G only while on duty.**

**Refusal:** Part 219 Subpart G says that if an employee refuses to be tested on a random test, he or she will be immediately removed from regulated service for a minimum of nine (9) months and may only be permitted to return to service after evaluation by a Substance Abuse Professional (SAP), completion of any rehabilitation required by the SAP, and testing negative for drugs and/or alcohol. As a matter of policy, however, Norfolk Southern and its subsidiary railroads intend to make every effort to collect samples when called for under the random testing program. Thus, when an employee has been delivered to the collection site and notified of his or her selection for random testing under Subpart G, the supervisor should immediately instruct the employee to cooperate with that testing. Employees who fail to do so will be subject to dismissal for failing to comply with instructions. Employees who refuse to cooperate with random testing should be removed from service and given notice of charge as required by the collective bargaining agreement. Labor Relations should be consulted.

Part 219 Subpart G requires a hearing in cases in which employees refuse to cooperate with random testing. This FRA required hearing will usually be combined with the disciplinary hearing arising out of the incident. The hearing officer must, however, make separate FRA findings with respect to the following:

1. Whether the employee refused to provide a sample after being instructed to do so; and

2. Whether the employee can establish a basis for refusing because of a documented family or medical emergency.

**Operating Exigencies:** Specimens may be collected at any appropriate time during an employee's tour of duty. In extraordinary circumstances, specimen collection may be postponed when there is an operating emergency. Director Transportation Services must approve the decision not to collect specimens. The circumstances must be documented and submitted in a report to the Manager Compliance/DER. The collector may return and collect specimens from the selected train symbol or position selected by the end of the selection period.



## **SUBPART K — REFERRAL PROGRAMS TO HELP EMPLOYEES**

Subpart K requires railroads to have a formal programs designed to identify and assist employees with alcohol and drug problems. Norfolk Southern's Voluntary Referral Program and Co-Worker Report Policy satisfy this requirement. (Although the FRA Rule only requires such policies to apply to Regulated Employees, Norfolk Southern's DARS Program applies to all employees.)

### **NS Voluntary Referral Program**

An employee may be referred to DARS by a fellow employee, a union representative, the Company's physician or Chief Medical Officer, or a supervisor, or the employee may make a self-referral. A referral can be made by contacting the regional DARS counselor listed in company telephone directory or by calling the Manager EAP at 757-629-2447, or for assistance 24 hours a day, call 1-844-215-4188.

An employee who voluntarily requests help from DARS prior to the time that he or she violates the Company's rules with respect to alcohol or drugs may do so without jeopardizing his or her employment.

Such employees will, to the extent necessary for treatment and rehabilitation, be granted unpaid leave to complete any recommended education, treatment and rehabilitation. Furthermore, the employee will be returned to service on the recommendation of the DARS counsellor, conditioned upon a return-to duty medical evaluation. Any such request and subsequent counseling and treatment will be confidential. Such confidentiality applies as well to certified locomotive engineers and conductors; however, confidentiality for certified engineers and conductors may be considered waived if the employee fails to cooperate in the recommended course of action.

Voluntary Referral will not be available in cases in which the referral is made for the purpose or with the effect of anticipating the imminent and probable detection by a supervisory employee of a rule violation. While violation of the Company's rules or policies will result in disciplinary action, volunteering to participate in DARS will not of itself result in discipline.

## **NS Co-Worker Report Policy**

An employee who, as a result of a report by a co-worker, is found to have violated Rule G or a Federal alcohol and/or drug regulation may elect to waive investigation and contact DARS. Such an employee must report to a DARS counselor within seven (7) days of being accused.

The counselor will complete an evaluation within ten (10) calendar days unless further evaluation is needed, in which case all necessary evaluations will be completed within twenty (20) calendar days of the date on which the employee reported to the DARS counselor.

If the DARS counselor finds the employee to have an active substance abuse disorder, the employee may be granted an unpaid leave of absence to complete any recommended education, treatment, and rehabilitation. The employee's return to service is conditioned upon authorizing the release of all DARS information to the Company or any third party involved in the return-to-service evaluation. The employee must elect to undertake the course of treatment and will be returned to service upon successful completion of the treatment as evidenced by a return-to-service recommendation by a substance-abuse professional and as determined by the Chief Medical Officer. The employee must pass the Company's required physical examination before being returned to service, and he or she also will be required to participate in a reasonable program of Federal follow-up treatment for up to five (5) years after returning to service.

If the DARS counselor finds the employee does not have an active substance abuse disorder, the employee will be returned to service with five (5) days after completion of the counselor's evaluation, if the employee authorizes the release of his or her DARS information to the Company or any third party for use in the return to service evaluation. The employee will, however, be required to participate in a program of follow-up education concerning the effects of drugs or alcohol. An employee who is returned to service under this provision will be advised in writing that the use of prohibited drugs is contrary to Company policy. The employee will be instructed by the Chief Medical Officer to keep his or her system free of such drugs. That employee will be subject to dismissal if any future drug test is positive. An employee returned to service in this manner may be required by

the Health Services during the follow-up period following the date of his or her return to service to report to a medical facility for further testing to determine whether he or she is using prohibited drugs and/or alcohol.

The co-worker report provisions will not apply in cases in which: 1) the referral is made for the purpose or with the effect of anticipating the imminent and probable detection by a supervisory employee of a rule violation, or 2) the reported employee previously has either waived investigation when accused of violating the Company's rules or policies with respect to drugs or alcohol, or has been returned to service after having been discharged for violating these rules.

### **Training Program**

Training is available for Supervisors and Co-Workers by EAP staff for the purpose of early intervention and referral of employees. The purpose of the training is to detect employees who may have an alcohol or substance abuse problem, based upon job performance or outstanding behavior indicators, prior to rule violations.

Contact your local EAP Coordinator, Specialist, or Manager EAP for more information.

## SUBPART F - PRE-EMPLOYMENT TESTING

Applicants for regulated jobs, **including** employees transferring for the first time from a non-regulated position, must complete a **Federal Pre-Employment** drug test. Please consult with NS Health Services regarding information concerning the pre-employment testing on file for an employee. Civil penalties can quickly accrue if a federal pre-employment drug screen is not on file for an employee working a regulated position.

# TESTING UNDER FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION REGULATIONS

Federal Motor Carrier Safety Administration (FMCSA) Regulations require holders of commercial motor vehicle drivers licenses and drivers of Commercial Motor Vehicles (vehicles operated in commerce which: (1) have a gross combination weight rating of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds or have a gross vehicle weight rating of 26,001 or more pounds, or (2) are designated to transport 16 or more passengers, or (3) are used to transport hazardous materials in a quantity requiring placarding) to be tested for drugs and alcohol in the following circumstances:

## **Pre-employment Testing**

Applicants for covered driver positions must be tested for the use of controlled substances. A Federal pre-employment drug screen must be on file.

## **Mandatory Reasonable Suspicion Testing**

A driver is required to give a urine and breath sample for testing if there is reasonable suspicion that he or she is using alcohol or controlled substances. The specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver, which lead to the test(s), must be witnessed by a supervisor or company official. The supervisor making the determination to require an alcohol test may not also conduct the test. The supervisory officer must have received training which includes the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

In order for an FMCSA reasonable suspicion test to be required under the rule, an employee must be a “driver” who is “on duty,” and must be driving a covered vehicle, have driven such a vehicle during his or her current tour of duty, or be subject to being assigned to do so in the balance of his or her tour of duty.

If a FMCSA reasonable suspicion test is required, the supervisor(s) involved must document the observations of the driver that led them to suspect that the driver was under the influence of

prohibited drugs. This documentation should be done within 24 hours and consist of a signed statement from the supervisor(s) setting forth their observations. A copy of this statement must be forwarded to the NS Health Services.

If a reasonable suspicion (or a Post-Accident) alcohol test is not administered within two (2) hours following determination that a test is required, a report must be prepared and maintained on file stating the reasons the alcohol test was not more promptly administered. If an alcohol test is not administered within eight (8) hours following the determination, attempts to administer the test shall cease, and it shall be considered a “missed test”. A report must be made stating the reasons the test was not made and shall include the following information:

1. Type of test (reasonable suspicion/Post-Accident);
2. Triggering event (including date, time and location);
3. Reason(s) test could not be completed within eight (8) hours; and
4. If breath alcohol testing could have been completed within eight (8) hours, the name, address, and telephone number of the testing site where breath testing could have been conducted.

### **Post-Accident Testing**

After a reportable accident, a driver **must** be tested for drugs and alcohol if: a) the accident involves a fatality, or b) the driver received a citation for a moving traffic violation arising from the accident. A “reportable accident” is one resulting in the death of a person, or bodily injury to a person who immediately receives medical treatment away from the scene of the accident, or damage resulting in tow-away of one or more vehicles. The Post-Accident sample must be collected as soon as possible, but in no case more than eight (8) hours after the accident for alcohol and 32 hours after the accident for the urine drug test. When Post-Accident Testing is required, all employees holding CDLs who are in or on the involved covered vehicles must be tested. Post-Accident Testing documentation must be done on “Highway Vehicle Accident Report,” Form 11250, at end of “description of accident” by indicating that FMCSA Post-Accident Testing was performed.

## Random Testing

Drivers must be tested on an unannounced basis using a random selection process. The number of random tests conducted during each twelve (12) months must be equal to a designated percentage of employees subject to testing. A designated contractor will undertake sample collection and handling as directed by NS' Chief Medical Officer.

## Prohibitions and Disqualification

Employees subject to testing under FMCSA regulations ("covered" employees) are prohibited from:

1. Using or possessing alcohol or controlled substances while on duty;
2. Going or remaining on duty while under the influence of or impaired by alcohol or any controlled substance;
3. Having 0.04 or more measurement of alcohol in the breath;
4. Reporting for duty and performing covered service within four (4) hours of using alcohol;
5. Continuing to perform safety-sensitive functions if tested for alcohol under the provisions of the FMCSA rule and whose test result is 0.02 or greater but less than 0.04 may not perform or continue to perform covered service until the start of his or her next regularly scheduled duty period, but not less than 24 hours following administration of the test;
6. Using alcohol for eight (8) hours following an accident requiring Post-Accident Testing until the employee undergoes the Post-Accident alcohol test; and
7. Using a controlled or prohibited substance **on or off duty** except when use is pursuant to the instructions of a physician who has advised the employee that the controlled substance does not adversely affect the driver's ability to operate a Commercial Motor Vehicle.

**NOTE:** Norfolk Southern and its subsidiary railroads continue to prohibit any possession and use of or impairment by alcohol or other prohibited Drug (as that term is defined in the Norfolk Southern Policy on Alcohol and Drugs). Possession of any of the foregoing while on duty, or possession, use or being under the influence of any of the foregoing while on Company property or occupying facilities provided by the Company is prohibited.

Therefore, if the results of an alcohol test indicated the presence of alcohol in an employee's system or a positive result on a reasonable suspicion or Suspected Rule G urine drug test, that employee will be subject to dismissal for violation of Rule G.

Drivers may not be on duty if they use or test positive for alcohol or controlled substances. A person who tests positive for a controlled substance or alcohol is medically unqualified to operate a motor vehicle. If a driver refuses to be tested under applicable FMCSA regulations, that refusal would render the employee medically unqualified to operate a commercial motor vehicle. As a matter of policy, however, Norfolk Southern and its subsidiary railroads intend to make every effort to collect samples when required under FMCSA regulations. Thus, when an employee has been delivered to the collection site and notified of the reason for testing under FMCSA regulations, the supervisor should immediately instruct the employee to cooperate with that testing. Employees who fail to do so will be subject to dismissal for failing to comply with instructions. Employees who refuse to cooperate with testing pursuant to FMCSA regulations should be removed from service. Labor relations should be consulted.

Employees who are disqualified from driver positions must participate in an appropriate after care program and are subject to follow-up testing for up to five (5) years following the employee's return to covered service. The NS Chief Medical Officer will order such follow-up tests by instructing the supervisor to take the employee to an appropriate testing site to have the sample collected. The federal custody and control form should be used and the reason for the test (in this case, follow-up) should be indicated on the custody and control form. A copy of the form must be given to the employee. An employee who refuses to submit to a follow-up test after being instructed to do so is subject to discipline including and up to dismissal for failing to comply with instructions.

### **Training Program**

FMCSA regulations require employers to have a training program for persons designated to supervise drivers which at a minimum must include at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substance use. Training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.



FMCSA requires employers to provide to employees, educational materials that explain drug and alcohol testing requirements and the employer's policies and procedures with respect to meeting those requirements. The materials must be distributed to each driver prior to the start of alcohol and drug testing under the current rules and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of the materials.



**FOR EMERGENCIES INVOLVING  
NORFOLK SOUTHERN  
TRACK OR EQUIPMENT  
USE RADIO DTMF CODE**

**911**

**OR**

**CALL THE NORFOLK SOUTHERN  
POLICE COMMUNICATION CENTER  
1-800-453-2530**

**(24 HOURS)**