

EXHIBIT 4-C

Docket No. DCA-08-MR009

**NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594**

**Union Pacific Railroad's Most Recent Drug and
Alcohol Policy**



UNION PACIFIC RAILROAD DRUG AND ALCOHOL POLICY

Effective January 15, 2004

1.0 PREFACE

- Union Pacific Railroad's Drug and Alcohol Policy is based largely upon the requirements of Title 49 of the US Code of Federal Regulations (CFR). Regulations, requirements, rules, and information from the CFR are incorporated throughout this policy and are printed in a "***bold italic font.***"
- When elements of this policy differ from the CFR, the Union Pacific policy is shown in a "NOTE" or is shown in a "standard font."
- In the case of a non-Federal Railroad Administration (FRA) test, any reference to a "covered employee" also applies to a non-covered employee.
- In the case of a non-FRA test, any reference to a Substance Abuse Professional (SAP) also applies to the Employee Assistance Program (EAP).
- The use of the term "manager" is a generic reference to a non-agreement employee who controls the work of others, i.e., supervisor or manager.
- Nothing in this policy supercedes any Department of Transportation (DOT), FRA, Federal Aviation Administration (FAA), or Federal Motor Carrier Safety Administration (FMCSA) regulation. If this policy is in conflict with, or inadvertently omits any regulatory requirements, the requirement remains valid. The employer or employee remains responsible for compliance. The principle governing regulations are:
 - ◆ **49 CFR Part 219** - Control of Alcohol and Drug Use is available at <http://www.fra.dot.gov/Content3.asp?P=504>
 - ◆ **49 CFR Part 40** - Procedures for Transportation Workplace Drug and Alcohol Testing Programs is available at <http://www.fra.dot.gov/Content3.asp?P=504>
 - ◆ **49 CFR Part 240** - Qualification and Certification of Locomotive Engineers is available at <http://www.access.gpo.gov/nara/cfr/>
 - ◆ **49 CFR Part 382** - controlled Substances and Alcohol Use and Testing is available at <http://www.access.gpo.gov/nara/cfr/> under the FMCSA
- Questions about this Policy can be directed to the Union Pacific Drug & Alcohol Testing Information help line at (800) 840-3784.

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3.0 GENERAL

3.1 Purpose

- The purpose of Union Pacific Drug and Alcohol Policy is to ensure compliance with applicable federal regulations and to establish policies, priorities, and objectives for the company's drug and alcohol control program. This policy prohibits the illegal use of drugs at any time and any use of alcohol in the workplace, on Company property or within four hours of reporting for duty.

3.2 Union Pacific Commitment

- Union Pacific is committed to providing a healthy and safe working environment that facilitates the highest level of employee productivity and customer focus.
- To meet this commitment, Union Pacific will comply with the requirements of the Drug-Free Workplace Act of 1988, the Omnibus Transportation Employee Testing Act of 1991, and with the drug and alcohol testing requirements of the United States Department of Transportation (DOT), Federal Railroad Administration (FRA), the Federal Motor Carriers Safety Administration (FMCSA), and the Federal Aviation Administration (FAA).

3.3 A Health Problem

- Union Pacific has long recognized that substance abuse is a health problem which can be successfully addressed.
- Our Employee Assistance Program (EAP) was developed to assist employees with personal and work-related problems. However, many substance abusers deny their problems and do not seek help voluntarily.
- For this reason, the Union Pacific and union leadership have committed to the principles of education, self-referral, and co-worker intervention.

3.4 Required Compliance.

- This statement of policy and procedure supersedes all prior statements of policy and procedure governing drug and alcohol use by Union Pacific employees.
- Compliance with the requirements of this policy is a condition of employment at Union Pacific.

4.0 GENERAL CONDITIONS FOR CHEMICAL TESTS

4.1 Conditions (49 CFR Part 219.11)

- 4.1.1 *Any employee who performs covered service for a railroad is deemed to have consented to testing as required . . . and consent is implied by performance of such service.*
- 4.1.2 *In any case where an employee has sustained a personal injury and is subject to alcohol or drug testing under the regulations (or company policy), necessary medical treatment must be accorded priority over provision of the breath or body fluid specimen(s).*
- 4.1.3 *Failure to remain available following an accident or casualty as required by railroad rules (i.e., being absent without leave) is considered a refusal to participate in testing, without regard to any subsequent provision of specimens.*
- 4.1.4 *In general, the testing provisions of the FRA regulations in 49 CFR Part 219 apply only to employees who perform service covered by the Hours of Service law, such as train and engine service employees, train dispatchers, mechanical department locomotive movers, bridge tenders, clerks who handle train orders, and signal employees. The regulations also require that samples be collected from the remains of any employee who is fatally injured in certain accidents or incidents.*

4.2 UP Policy

- 4.2.1 All employees are subject to reasonable cause and reasonable suspicion testing. Testing may be performed under FRA authority, FMCSA authority, or company authority, as applicable.

5.0 PROHIBITIONS (49 CFR Parts 219.101, 219.102, 219.103)

5.1 Alcohol and drug use prohibited

- 5.1.1 ***Prohibitions. Except as provided in 49 CFR Part 219.103 (Prescribed and over-the-counter drugs), no employee may use or possess alcohol or any controlled substance while assigned by a railroad to perform covered service.***
- 5.1.2 ***No employee may report for covered service, or go or remain on duty in covered service while:***
- ***Under the influence of or impaired by alcohol,***
 - ***Having .02 or more alcohol concentration in the breath or blood (.04 is a Federal violation),***
 - ***Under the influence of or impaired by any controlled substance.***
- 5.1.3 ***No employee may use alcohol for whichever is the lesser of the following periods:***
- ***Within four hours of reporting for covered service, or***
 - ***After receiving notice to report for covered service.***
- 5.1.4 ***Prohibition on abuse of controlled substances.***
- ***No employee who performs covered service may use a controlled substance at any time, whether on duty or off duty, except as permitted by 49 CFR Part 219.103, Prescribed and Over-the-counter Drugs.***

5.2 UP Policy

- 5.2.1 Union Pacific policy prohibits any illegal use of a controlled substance, and any possession, use of, or impairment by alcohol when any employee is subject to duty, reporting for duty, on duty, or on Union Pacific property.
- 5.2.2 "Illegal use" includes those substances which are used without a proper valid prescription by a licensed practitioner whose scope of practice includes appropriate prescriptions of medications. Illegal "possession" includes those drugs specified under the federal controlled substances act which has not been properly dispensed by a licensed physician or other practitioner who can dispense medications.
- 5.2.3 Drugs which are prohibited under this policy include "controlled substances" on Schedules I through V of the Federal Controlled Substances Act, as revised. Controlled substances are listed in 21 CFR Part 1308. (<http://www.deadiversion.usdoj.gov/21cfr/cfr/2108cfrt.htm>)
- 5.2.4 The controlled substances list includes drugs (Schedule I) that are distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and certain preparations for which distribution is through documented over the counter sales (Schedule V only).

5.3 Prescribed and over-the-counter drugs (49 CFR Part 219.103)

- 5.3.1 ***49 CFR Part 219.103 does not prohibit the use of a controlled substance (on Schedules II through V of the controlled substance list) prescribed or authorized by a medical practitioner, or possession incident to such use, if the treating medical practitioner or a physician designated by the railroad has made a good faith judgment, with notice of the employee's assigned duties and on the basis of the available medical history, that use of the substance by the employee at the prescribed or authorized dosage level is consistent with the safe performance of the employee's duties; The substance is used at the dosage prescribed or authorized; and in the event the employee is being treated by more than one medical practitioner, at least one treating medical practitioner has been informed of all medications authorized or prescribed and has determined that use of the medications is consistent with the safe performance of the employee's duties (and the employee has observed any restrictions imposed with respect to use of the medications in combination).***

5.4 UP Policy

- 5.4.1 Union Pacific requires employees to have a written copy of their treating medical practitioner's

evaluation/determination (as above) available upon request of their manager or the Medical Review Officer (MRO).

5.4.2 Any use of another person's prescribed medicine is prohibited.

5.4.3 Any use of so-called "medical marijuana" is prohibited.

5.5 Responsive action (49 CFR Part 219.104)

5.5.1 Removal from covered service

- ***If the railroad determines that an employee has violated 49 CFR Parts 219.101 or 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from covered service.***
- ***If an employee refuses to provide breath or a body fluid specimen or specimens when required to by the railroad under a mandatory provision of this part, the railroad must immediately remove the employee from covered service***
- ***Notice: Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action.***
- ***Hearing procedures: If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by 49 CFR Part 219 (including refusals), the employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official.***

5.6 Railroad's duty to prevent violations (49 CFR Part 219.105)

5.6.1 ***A railroad may not, with actual knowledge, permit an employee to go or remain on duty in covered service in violation of the prohibitions of 49 CFR Part 219.101 (alcohol), 49 CFR Part 219.102 (drugs) or 49 CFR Part 219.103 (prescribed and over-the-counter drugs).***

6.0 UNION PACIFIC POLICY ON PROHIBITIONS

6.1 Off-Duty Conduct

- 6.1.1 The conduct of any employee leading to conviction of any misdemeanor or felony involving the unlawful use, possession, manufacture, distribution, dispensation or transportation of any illegal drug or controlled substance, is prohibited.
- 6.1.2 Employees convicted of such misdemeanor or felony must notify their supervisor of that fact no later than the end of the first business day immediately following the day the employee receives notice of the conviction. Failure to do so will negate that employee's right under this policy for a one-time return to service, if applicable.
- 6.1.3 Certified locomotive engineers and remote control operators, whatever class of service, i.e., including hostlers, must report to the EAP any conviction for operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance. Report must be made either to the National Employee Assistance Help Line, 800-779-1212, or to their supervisor, within forty-eight hours of the conviction. (49 CFR Part 240.111(h)).
- 6.1.4 State-sponsored diversion programs, deferred case decisions, guilty pleas, and completed state actions to cancel, revoke, suspend, or deny a driver's license are considered convictions as applied to this policy.
- 6.1.5 Employees charged with such an offense, who believe that they may be convicted of the charge, are encouraged to contact an EAP representative for counseling prior to the actual conviction. This may reduce lost time after the conviction, because EAP may be able to release them for work sooner if an active substance disorder is not detected.

6.2 Driving Company Vehicle

6.2.1 Driving a motor vehicle owned, leased, or rented by the company, while under the influence of alcohol and or drugs, both on or off Union Pacific property and both on or off duty, is prohibited.

6.2.2 Any employee arrested, ticketed, or convicted for driving a motor vehicle owned, leased, or rented by the company under the influence of alcohol and or drugs, must notify a supervisor as soon as possible, but no later than the end of the first business day immediately following the day the employee is arrested, ticketed, or convicted. The failure to do so may negate that employee's right under this policy for a one-time return to service, if applicable.

6.3 Actual Knowledge of Off-duty or Pre-Duty Use

- If Union Pacific has actual knowledge of off-duty use of drugs, or pre-duty use of alcohol (within four hours of work), or if a manager directly observes consumption, use, or possession of drugs or alcohol, by any on-duty employee, this policy has been violated and the employee is subject to disciplinary action without the necessity of testing.

6.4 Voluntary Layoff

- Union Pacific permits off-duty employees subject to duty, or called for duty, to layoff with an admission that they are under the influence of alcohol or drugs (illegal or legal), except at an away from home terminal. However, if this privilege is abused, employees may be referred to EAP and may be subject to disciplinary action.

6.5 FMCSA Regulations (49 CFR Part 382, 49 CFR Part 383)

6.5.1 ***No driver will perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours will permit a driver to perform or continue to perform safety-sensitive functions.***

6.5.2 ***No driver required to take a post-accident alcohol test under 49 CFR Part 382.303 will use alcohol for eight hours following the accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first.***

6.6 UP Policy

- All DOT certified drivers, including CMV operators, must notify a supervisor when their license has been revoked, suspended or withdrawn for any reason, including drug or alcohol-related revocations, within forty-eight hours.

7.0 FEDERAL POST-ACCIDENT TOXICOLOGICAL TESTING

7.1 ***Events for which FRA Mandatory Post Accident testing is required (49 CFR Part 219.201), except as provided in 49 CFR Part 219.201(b), post-accident toxicological tests must be conducted after any event that involves one or more of these circumstances:***

7.1.1 ***Major train accident. Any train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) that involves one or more of the following:***

- ***A fatality;***
- ***A release of hazardous material lading from railroad equipment accompanied by an evacuation; or a reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or***
- ***Damage to railroad property of \$1,000,000 or more, not including lading.***

7.1.2 ***Impact accident. An impact accident (i.e., a rail equipment accident defined as an "impact accident" in 49 CFR Part 219.5) that involves damage in excess of the current reporting threshold, resulting in:***

- ***A reportable injury; or***
- ***Damage to railroad property of \$150,000 or more, not including lading.***

7.1.3 ***Fatal train incident. Any train incident that involves a fatality to any on-duty railroad employee.***

7.1.4 ***Passenger train accident. Reportable injury to any person in a train accident involving a passenger train (i.e., a rail equipment accident involving damage in excess of the current reporting threshold).***

7.1.5 Exceptions (49 CFR Part 219.201(b))

- No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing.
- No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s).

7.1.6 Employees Tested (49 CFR Part 219.203).

- Following each accident and incident described in 49 CFR Part 219.201, the railroad (or railroads) must take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine specimens for toxicological testing by FRA. Such employees must cooperate in the provision of specimens as described in the regulations and Appendix C of 49 CFR part 219.
- In any case where an operator, dispatcher, signal maintainer, bridgetender, or other covered employee is directly involved in the circumstances of an accident which occurred during their tour of duty (49 CFR Part 219.203(b)(4)(iii), those employees must also be tested.
- In a "major accident" all crew members of all trains must be tested.

7.1.7 An employee must be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under 49 CFR Part 219.201(a)(2) (an "impact accident"), 49 CFR Part 219.201(a)(3) ("fatal train incident"), or 49 CFR Part 219.201(a)(4) (a "passenger train accident with injury") if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident.

- Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

7.1.8 Unlawful refusals; consequences (49 CFR Part 219.213)

- An employee who refuses to cooperate in providing breath, blood or urine specimens following an FRA mandatory post accident or incident testing situation must be withheld from covered service and must be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in 49 CFR Part 219.107.

7.2 UP Policy

- 7.2.1 The DOT requirement for post accident testing does not limit the discretion of Union Pacific to impose additional sanctions or discipline for this same or related conduct.
- 7.2.2 Following any accident, a manager at the site must make the determination whether an FRA mandatory post accident test is required before releasing any employees involved in the accident.
- 7.2.3 Following any accident, employees involved in the accident must not leave the accident site until a supervising manager notifies the employees of the determination regarding drug and alcohol testing.
- 7.2.4 Railroad managers who were on and supervising the train involved in the accident or incident, but not a member of the crew, or who were directly and contemporaneously involved in the accident or incident, will be tested under company authority.

7.3 FMCSA Mandatory Post-Accident Drug and Alcohol Testing (49 CFR Part 382.303)

7.3.1 The FMCSA mandates post-accident drug and alcohol testing if:

- There is a fatality, no matter who is at fault.
- There is a non-fatal accident where the CMV operator receives a citation for a moving violation and there is:
 - An injury requiring medical treatment away from the scene of the accident, or
 - A vehicle towed from the accident scene.

8.0 FRA MANDATORY TESTING FOR REASONABLE SUSPICION

8.1 Mandatory reasonable suspicion testing (49 CFR Parts 219.300, 219.301, 219.302).

- 8.1.1 *A railroad must require a covered employee to submit to an alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.*
- 8.1.2 *A railroad must require a covered employee to submit to a drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.*
- 8.1.3 *With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with 49 CFR Part 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.*
- 8.1.4 *With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with 49 CFR Part 219.11(g) and is on site.*
- 8.1.5 *If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test.*
- *In the case of a drug test, the eight-hour requirement 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 drug testing specimens within that period (49 CFR Part 219.302(E)).*

9.0 UP POLICY ON REASONABLE SUSPICION AND REASONABLE CAUSE

9.1 Union Pacific Reasonable Suspicion Drug and Alcohol Testing

- 9.1.1 Union Pacific will require reasonable suspicion drug and alcohol testing of all employees not covered under FRA or FMCSA regulations (management and agreement employees) when there is a reasonable suspicion, based on specific, personal observations by a manager.
- 9.1.2 Actual knowledge of pre-duty use of alcohol (within four hours of work) and/or illegal drugs, or the on-duty use and/or possession of illegal drugs and/or alcohol does not require a drug or alcohol test.

9.2 Union Pacific Reasonable Cause Drug and Alcohol Testing

- 9.2.1 An accident or incident in which drug and alcohol testing is not mandatory under FRA or FMCSA regulations may require testing under Union Pacific authority. Union Pacific requires reasonable cause drug and alcohol testing of all employees, including Hours of Service (HOS) employees and commercial motor vehicle (CMV) operators, non-agreement, and agreement, when:
- An employee's acts or omissions result in the violation of any safety or operating rule which has the potential to (1) result in an accident and/or personal injury to self or others or (2) actually results in personal injury or significant property damage; or
 - Any other narrowly-circumscribed and verifiable individualized cause that has been approved by the Safety and the Law Departments (e.g., an indictment for violation of the Controlled Substances Act which Union Pacific investigators verify to be based on reasonably credible evidence).

9.3 Manager's decision to test

- 9.3.1 Determination of influence by alcohol may be made by one trained manager.

9.3.2 Determination of drug use must be by two managers, at least one of whom is trained in accordance with 49 CFR Part 219.11(g) and is on site.

9.3.3 Note that for reasonable suspicion drug testing, the second manager may be consulted by telephone.

10.0 PRE-EMPLOYMENT TESTS

10.1 Pre-employment drug testing (49 CFR Part 219.501)

10.1.1 ***Prior to the first time an applicant performs covered service for Union Pacific, the applicant must undergo testing for drugs. No railroad may allow an individual to perform service, unless the individual has been administered a test for drugs with a result that did not indicate the misuse of controlled substances.***

10.1.2 ***This requirement applies to final applicants for employment and to employees seeking to transfer for the first time on this railroad from non-covered service to duties involving covered service.***

10.2 Refusals

10.2.1 ***An applicant who refuses to submit to pre-employment testing under this section may not be employed in covered service. (49 CFR Part 219.505)***

10.2.2 ***An applicant can decline to be tested and pull their application and no record will be kept, unless the refusal occurs after the collection process has begun. (49 CFR Part 219.501(b))***

10.3 Background Check (49 CFR Part 40.25)

10.3.1 ***Union Pacific will request information from other employers about an employee's drug and alcohol testing records (49 CFR Part 40.25).***

10.3.2 ***This requirement applies only to employees seeking to begin performing safety-sensitive duties for Union Pacific for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, the employee will not be permitted to perform safety-sensitive functions.***

10.4 UP Policy

10.4.1 ***Before the first time applicants perform any service for Union Pacific, they must undergo drug testing, and have a negative result.***

10.4.2 ***Applicants who refuse to take a pre-employment drug test after it has started, will not be employed.***

10.4.3 ***Applicants with positive test results, will have their application rejected and they will be ineligible to be retested for a period of six months.***

10.4.4 ***Applicants re-applying following a positive pre-employment drug test, must present a certificate of rehabilitation from a substance abuse professional.***

11.0 RANDOM ALCOHOL AND DRUG TESTING PROGRAMS

11.1 ***Each railroad must submit for FRA approval a random testing program meeting the requirements of 49 CFR Part 219, Subpart G. (219.601(a), drugs; 219.607, alcohol)***

11.2 Railroad random alcohol and drug testing programs

11.2.1 ***Notice of an employee's selection for random testing may not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to***

ensure the employee's presence at the time and place set for testing. (49 CFR Part 219.601(b)(4)).

11.2.2 *An employee will be subject to random testing only while on duty.*

11.3 Participation in testing (49 CFR Parts 219.603 and 219.609)

11.3.1 *An employee selected through the random testing program to cooperate in breath and urine testing, must provide the required breath and urine specimens and complete the required paperwork and certifications. Compliance by the employee may be excused from random testing only in the case of a documented medical or family emergency.*

11.3.2 *The FMCSA requires random drug and alcohol testing of all employees who are required by law to have a Commercial Drivers License (CDL) and who operate a CMV (Commercial Motor Vehicle, as defined by the FMCSA) in the course of their employment with Union Pacific Railroad. (40 CFR Part 382.305)*

11.4 UP Policy

- Union Pacific will randomly test covered employees in compliance with FRA, FMCSA, and FAA requirements. Unless prohibited by law, Union Pacific will randomly test safety-sensitive non-agreement employees using company authority.

12.0 UP POLICY ON FITNESS EVALUATION

12.1 General Notice about drug and alcohol tests

12.1.1 Union Pacific employees subject to periodic, return-to-work, job transfer, or follow-up physical examinations under management prerogative, existing collective bargaining agreements, or DOT requirements, may be required to participate in a drug and/or alcohol tests as part of a physical or mental fitness examination upon general notice from the Union Pacific or specific notice from the examining physician.

12.1.2 This policy serves as general notice that employees will be tested for drugs and/or alcohol during the physical examination process.

12.2 Job Transfer Examinations

- Employees who apply for transfer to a safety-sensitive job which requires a physical examination prior to transfer will have a DOT pre-employment drug test as a part of that examination. (The FRA requires drug testing of all applicants for transfer into HOS positions, as well as pre-employment testing for HOS positions. The FMCSA requires drug testing of all applicants who are initially qualifying for a DOT license.)

12.3 Return-to-Work Examinations

- Employees who are required by the Company's medical rules to have an evaluation prior to returning to work will have a drug test as a part of that evaluation.

12.4 "Fitness for Duty" or "For Cause" Examinations

- Employees who are required by a supervisor to undergo a "For Cause" exam to ascertain "Fitness for Duty" will have a drug test as a part of the examination process

12.5 Other Medical Examinations

- If in any other required physical or mental fitness examination, or evaluation situation, the examining physician has reason to believe that an employee may be using illegal drugs, or abusing prescription drugs which may have an adverse effect on alertness, coordination, reaction, responses or safety, the physician or their designee should notify the Office of the Medical Director and the Office of the Medical Director will order a drug test. Any employee providing a urine sample which tests positive for illegal or unauthorized drugs during a required physical examination may, upon the recommendation of the Office of the Medical Director, be medically disqualified from service without pay. If the test results establish that the employee has failed to follow previous instructions to remain drug free, the employee may be subject to discipline.

13.0 SAMPLE COLLECTION AND ANALYSIS

13.1 Drug Tests

- 13.1.1 All drug tests required by DOT will be performed in accordance with the specimen collection and laboratory analysis procedures in 49 CFR Part 40. All drug tests required by Union Pacific will be performed in accordance with the specimen collection and laboratory analysis procedures prescribed in 49 CFR Part 40.
- 13.1.2 Whether drug testing is performed under DOT or Union Pacific authority, the analysis of samples will be performed by laboratories certified by the US Department of Health and Human Services.

13.2 Alcohol Tests

- 13.2.1 All alcohol tests required by DOT or Union Pacific will be performed in accordance with the collection procedures prescribed in 49 CFR Part 40.
- 13.2.2 All confirmations for alcohol tests will be performed using devices on the National Highway Traffic Safety Administration's Conforming Products List for screening and evidential breath testing devices.

14.0 MRO REVIEW (49 CFR Part 40, Subpart G)

- 14.1 *Every drug test result reported by the laboratory will be reviewed by a qualified Medical Review Officer (MRO) who will be the medical director or an MRO selected by Union Pacific. In each case, prior to making a final decision to verify a positive test result reported by the laboratory, the MRO will make a reasonable effort to contact the employee tested and give them an opportunity to discuss the result.***
- 14.2 *If the MRO, or a staff person under the MRO's supervision, is unable to reach the employee directly after reasonable efforts, the MRO will contact the Designated Employer Representative (DER) or designee, who will direct the employee to contact the MRO as soon as possible. If it becomes necessary to reach the employee in this way, the manager will employ procedures that ensure, to the maximum extent practicable, that the instruction to contact the MRO is held in confidence.***
- 14.3 *If neither the MRO nor the Union Pacific, after making all reasonable efforts, has been able to contact the employee within 10 days of the date the MRO receives a positive test result from the laboratory, the test will be declared a "no-contact positive."***
- 14.4 UP Policy**
- After making all reasonable efforts, if the Union Pacific manager is unable to contact the employee, the manager will place the employee in "physical pending" status.
- 14.5 *The MRO will verify a test as positive without communicating directly with an employee when the employee expressly declines the opportunity to discuss the test; or when the Union Pacific has instructed the employee to contact the MRO and more than seventy-two hours have passed after that instruction was conveyed, or the MRO or UP is unable to contact the employee within 10 days.***
- 14.6 *If, after successfully contacting the employee, the MRO determines there is a legitimate medical explanation for the positive test result, the MRO will report the test result as negative.***
- 14.7 *If the MRO verifies the test result as positive, the MRO will instruct the employee not to report to, or perform any service. The MRO will report the result to the Union Pacific DER, as needed for administrative action.***

15.0 SPLIT DRUG TEST SAMPLE

15.1 Storage of Split Samples (49 CFR Part 40.99)

- *Samples that yield non-negative drug test results, on confirmation, will be retained by the laboratory in properly secured, long-term, frozen storage for 365 days. Within this 365-day period the individual, Union Pacific, or DOT may request that the laboratory retain the sample for an additional period.*

15.2 Split Sample Request (49 CFR Part 40.171)

- 15.2.1 *When employees are notified by the MRO that they have a verified positive drug test or refusal to test because of adulteration or substitution, they have 72 hours from the time of notification to request a test of the split specimen. A request may be verbal or in writing to the MRO.*
- 15.2.2 *If an employee does not request a test of the split specimen within 72 hours, the employee may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented the employee from making a timely request.*
- 15.2.3 *In mandatory post-accident testing situations, the FRA sets a 60-day time requirement for requesting a test of the split sample. Requests must be in writing and addressed to the MRO who will forward the request to the FRA. (49 CFR Part 219.211(l)).*

16.0 REFUSALS TO PERMIT TESTING AND TAMPERING

16.1 Refusal to take a DOT drug test. (49 CFR Part 40.191)

- 16.1.1 *An employee is considered to have refused to take a drug test if the employee:*
- 16.1.2 *Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by a railroad supervisor.*
- 16.1.3 *Fails to remain at the testing site until the testing process is complete.*
- 16.1.4 *Fails to provide a urine specimen for any drug test required by the regulations or DOT agency regulations (within three hours) (49 CFR Part 40.193(b)(4)).*
- 16.1.5 *Fails to permit the observation or monitoring of a test, when required (49 CFR Part 40.67(l) and 49 CFR Part 40.69(g)).*
- 16.1.6 *Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (49 CFR Part 40.193).*
- 16.1.7 *Fails or declines to take a second test the employer or collector has directed the employee to take.*
- 16.1.8 *Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under 49 CFR Part 40.193(d).*
- 16.1.9 *Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).*
- 16.1.10 *Fails to remain available following an accident or casualty as required by company rules (i.e., being absent without leave) is considered a refusal to participate in testing, without regard to any subsequent provision of specimens (49 CFR part 219.11(b)(3)).*
- 16.1.11 *If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.*

16.2 Consequences of unlawful refusal (49 CFR Part 219.107)

16.2.1 *An employee who refuses to provide breath or a body fluid specimen or specimens when required to by the railroad under a mandatory provision of Federal regulations must be deemed disqualified from covered service for a period of nine (9) months (49 CFR Part 219.107(a)).*

16.2.2 *The requirement of disqualification for nine (9) months does not limit any discretion on the part of the railroad to impose additional sanctions for the same or related conduct (49 CFR Part 219.107(d)).*

16.3 UP Policy: Refusal to Test and Tampering

16.3.1 An employee who refuses to provide breath or a body fluid specimen or specimens when required, or remain available after an accident, is considered insubordinate under Union Pacific rules.

16.3.2 An employee who is unable to provide a breath or a body fluid specimen or specimens will be directed to a licensed physician who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen for a medical evaluation.

16.3.3 Failure to provide a urine specimen within three hours for any drug test required by this policy, is considered refusal.

16.3.4 An on-duty employee is required to immediately participate in a drug or alcohol test required by a manager.

16.3.5 When an employee refuses to participate in a drug or alcohol test, the employee will be removed from service and be subject to discipline, up to and including dismissal.

16.3.6 Employees dismissed for refusal will not be allowed to take part in the Employee Assistance Program.

16.3.7 Tampering, or attempting to tamper, with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration of the sample) constitutes refusal.

17.0 REMOVAL FROM SERVICE AND DISCIPLINE

17.1 Withheld from service

- If Union Pacific determines there is reason to believe that any employee has violated this drug and alcohol policy, as evidenced by a verified positive drug test result reported by the MRO, or based on a positive alcohol test or observation of pre-duty use or on-duty use or possession or other verifiable reasons (e.g., criminal conviction of drug use), the employee will immediately be withheld from service, pending disciplinary action.

17.2 Dismissal

- If it is determined that any employee violated this drug and alcohol policy the employee will be subject to discipline, up to and including dismissal. Employees dismissed for refusal will not be allowed to take part in the Employee Assistance Program.

18.0 VOLUNTARY REFERRAL POLICY (49 CFR 219.403)

18.1 Provisions

18.1.1 *An employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through EAP for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit.*

18.1.2 *The railroad will, to the extent necessary for treatment and rehabilitation, grant an employee a leave of absence for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The leave of absence will be not less than 45 days, if*

necessary, for the purpose of meeting initial treatment needs.

18.1.3 UP Policy

- If the employee is not cooperating with EAP/SAP or not following rehabilitation instructions, that employee will be placed in a medically disqualified status by the Office of the Medical Director.

18.1.4 *The railroad treats the referral and subsequent handling, including counseling and treatment, as confidential, subject to the exceptions set forth in the EAP policy and procedures.*

18.1.5 *The certification status of an engineer or Remote Control Operator (RCO) will not be affected under the voluntary referral policy, provided they cooperate with the rehabilitation program.*

18.1.6 *The policy of confidentiality is waived (to the extent that the railroad receives official notice from EAP of the substance abuse disorder) and the railroad will suspend or revoke the certification, as appropriate, if the employee at any time refuses to cooperate in a recommended course of counseling or treatment and/or the employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.*

18.1.7 *An employee will be returned to service on the recommendation of EAP, for non-federal tests, except as may be provided under 49 CFR part 219.403(c)(2), which requires a return-to-work medical exam. Approval to return to service will not be withheld unreasonably.*

19.0 CO-WORKER REPORT (49 CFR Part 219.405)

19.1 General

19.1.1 *An employee may maintain an employment relationship with the railroad following an alleged first offense, if the alleged violation comes to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of FRA regulations or the railroad's drug and alcohol policy. If the railroad manager, after being notified by a co-worker, determines that the employee is in violation, the railroad must immediately remove the employee from service in accordance with its existing policies, agreements, and procedures.*

19.1.2 *The employee must contact the EAP, as appropriate, within three (3) days. The EAP must schedule necessary interviews with the employee and complete an evaluation within 10 calendar days of the date on which the employee contacts the EAP, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional, if possible.*

19.1.3 *Union Pacific will give all employees, agreement and non-agreement, one co-worker referral opportunity without exercise of disciplinary action for a violation of UP policy or DOT regulations prohibiting the use of alcohol, drugs, or the misuse of prescription drugs (49 CFR Parts 219.101, 219.102, or 219.103).*

19.2 When treatment is required

19.2.1 *If the EAP determines that the employee is affected by psychological or chemical dependence on alcohol or a drug or by another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation, the following conditions and procedures apply:*

19.2.2 *The railroad will to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs.*

19.2.3 *The employee will agree to undertake and successfully complete a course of treatment deemed acceptable by EAP.*

19.2.4 *The railroad will promptly return the employee to service, on recommendation of the EAP, when the employee has established control over the substance abuse problem. Return to service may also be conditioned on successful completion of a return-to-service medical examination. Approval to return to service may not be withheld unreasonably.*

19.2.5 *Following return to service, the employee, as a further condition on withholding of discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment, as prescribed by the SAP, for a period not to exceed 60 months from the date the employee was originally withheld from service.*

19.3 When treatment is not required

- *If the EAP determines that the employee is not affected by an identifiable and treatable mental or physical disorder, the company will return the employee to service within five days after completion of the evaluation. During or following the out-of-service period, the railroad will require the employee to participate in a minimum program of education and/or training concerning the effects of alcohol and drugs on occupational or transportation safety.*

19.4 Follow-up tests for co-worker referral

- *The company will conduct return-to-service and/or follow-up tests (as described in 49 CFR Part 219.104) of an employee who waives investigation and is determined to be ready to return to service under this section.*

19.5 Co-Worker Report Summary

19.5.1 Union Pacific will afford all employees a one-time co-worker referral opportunity which provides that an employee maintains an employment relationship with Union Pacific following an alleged first offense of Rule 1.5 or this Policy subject to the following conditions:

- No other rule violation is involved.
- The alleged violation must come to the attention of Union Pacific as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this Policy.
- If Union Pacific's representative can independently confirm that the employee is in violation, that employee will immediately be removed from service.
- The employee must elect to waive investigation on the rule charge and must contact EAP within three days of the waiver election.
- The employee must cooperate in an evaluation. If a disorder is identified, the employee must successfully complete the minimum education, counseling or treatment prescribed by EAP before qualifying to return to service.
- The employee will be subject to the follow-up drug or alcohol testing program in this situation.

19.5.2 Certain employee labor organizations have a "bypass" agreement that permits a one-time waiver of disciplinary investigation upon a confirmed report from a co-worker that an employee has violated Union Pacific's Drug and Alcohol Policy. Those agreements, where applicable, are in lieu of the provisions of this section.

20.0 MANAGER REFERRAL

20.1 Managers have an obligation to help employees who exhibit signs and symptoms of drug and/or alcohol abuse, to seek help from EAP, before test results are pending, or before an accident or incident occurs.

20.2 When an employee is referred to EAP by a manager for work-related problems, confidentiality regarding personal matters will be maintained.

20.3 If EAP determines there is an active substance abuse disorder, or if a condition indicating a need for treatment is identified and the employee refuses to participate in the recommended treatment (or refuses to provide information concerning an alternate treatment program designed to help that employee) then, upon advice from EAP, the Office of the Medical Director may medically disqualify that employee.

20.4 Employees will not be returned to work until they have met all conditions detailed in instructions issued by

EAP or the employee's manager. Employees may be subject to discipline if they fail to follow any instructions issued as a result of this referral. Their instructions may also include a requirement that the employee may be subject to Union Pacific follow-up testing.

21.0 ONE TIME RETURN TO SERVICE AND TEN-YEAR POLICY

21.1 General

- 21.1.1 An employee who has been dismissed for a violation of the Union Pacific Drug and Alcohol policy will be permitted a one-time return to service following successful completion of a rehabilitation program approved by EAP, provided that the employee has had no previous violation of the Union Pacific Drug and Alcohol Policy in the previous ten (10) years and provided further that no other major rule violation is involved.
- 21.1.2 An employee who has been granted a one-time return to service under this provision and who violates the Union Pacific Drug and Alcohol Policy again within a ten (10) year period will be dismissed permanently.
- 21.1.3 ***Events under the Voluntary Referral Policy and Co-Worker Report Policy do not count against this one time return to service agreement and ten-year policy. (49 CFR Part , Subpart E)***

21.2 Terms and Conditions

- 21.2.1 The terms and conditions of an employee's rehabilitation and education program agreement for reinstatement will contain a twelve month probation period. During this probation period, any violation by the employee of the terms established for their reinstatement will result in the employee being returned to dismissed status without benefit of a hearing, unless a hearing is required by agreement or FRA regulations (49 CFR 219.104).
- 21.2.2 This probationary period, and the terms thereof, do not preclude Union Pacific from conducting follow-up testing for a minimum 3-year period following reinstatement, as detailed in this Policy (except as prescribed by a SAP) for covered service employees, where Federal tests are involved.

22.0 REINSTATEMENT INSTRUCTIONS

22.1 General

- 22.1.1 Any employee dismissed because of a non-negative test result or a refusal, must have a negative test result for drugs and/or alcohol before being allowed to return to service.
- 22.1.2 Union Pacific requires follow-up drug and/or alcohol tests after reinstatement for the period and frequency determined by a SAP or EAP. Employees will be eligible for return to service based upon advice that they have successfully completed the education, counseling and/or treatment determined to be necessary by EAP/SAP, including any drug and alcohol testing requirements of a program or personal program, and they have tested negative for drugs (and alcohol, if appropriate) on the return-to-duty test.
- 22.1.3 Reinstatement is to be on a leniency basis with vacation and seniority rights unimpaired, but without pay for time lost.

22.2 Provisions

- 22.2.1 To return to service and/or remain qualified once an employee has returned to service, the employee must agree to these reinstatement conditions:
- The employee must enroll and begin a personal rehabilitation program with EAP/SAP within 30 days after being dismissed following a disciplinary investigation, or within three days of signing a waiver. The employee must enroll calling the National Employee Assistance hotline, 800-779-1212.
 - The employee must become drug and/or alcohol free by successfully completing any education, counseling or treatment determined by EAP/SAP.
 - The employee must continue in any further program of counseling, treatment and follow-up determined by EAP/SAP.

- The employee must adhere to all the agreements in the personal program with EAP/SAP.
- The employee must test negative on a return-to-duty test.
- Prior to reinstatement, the employee will be required to meet with the employee's manager to discuss the conditions and understanding of the reinstatement.
- Following reinstatement, the employee must submit to follow-up drug, alcohol, or drug and alcohol testing as required by federal regulations and Union Pacific Railroad's Drug & Alcohol Policy for the time and frequency required by the EAP for at least three (3) years from the date of return to service, unless otherwise specified by a SAP. In addition, the employee will also submit to required education, counseling, or treatment.
 - ◆ Follow-up drug and/or alcohol testing will be scheduled on dates chosen by Union Pacific when the employee is on duty or subject to duty (i.e., not on vacation or leave of absence). Follow-up tests must be unannounced. The employee will be given no advanced notice of the test.
 - ◆ Follow-up testing is in addition to any other testing required by regulation or Union Pacific policy.
- The employee must not violate any Union Pacific rule with reference to drugs or alcohol.
- Failure to comply with these instructions may be grounds for immediate disciplinary action.

22.2.2 Certain Labor organizations have a "Companion Agreement" that provides for the opportunity to return to service upon the recommendations of EAP/SAP, further provided there has been no proven violation of Rule 1.5 in the preceding ten years. These agreements remain in effect and supersede this policy where conflict, if any, exists.

23.0 FOLLOW-UP TESTING PROGRAM

23.1 General (49 CFR Parts 40.307, 40.309)

- 23.1.1 *After returning to work following any drug or alcohol violation or disqualification from service by the Office of the Medical Director, with particular reference to drugs or alcohol, employees will under go follow-up testing designated by a SAP/EAP.*
- 23.1.2 *For DOT tests, the number and frequency of unannounced follow-up tests are directed by the SAP, and must consist of at least six tests in the first 12 months following the employee's return to safety-sensitive duties. If poly-substance use has been indicated, the follow-up testing plan should include testing for drugs as well as alcohol (for the alcohol rule violator) and for alcohol as well as drugs (for the drug rule violator). Follow-up testing can last up to 60 months, or as determined by a SAP, but can be terminated by the SAP any time after one year (if all tests recommended up to that point are completed).*

23.2 Follow-up Testing

- 23.2.1 *Employee follow-up test dates are selected by the Union Pacific following EAP/SAP determination of the number and frequency of testing.*
- 23.2.2 *Locomotive engineers and RCOs returning to work from any federal drug and/or alcohol violation will be tested at least six times for alcohol and at least six times for drugs during year one.*
- 23.2.3 *All other HOS employees and CMV operators who have a federal violation will be tested at least six times for alcohol or at least six times for drugs or at least six times for both drugs and alcohol as determined by the SAP on an individual basis during year one.*

23.3 UP Policy

- 23.3.1 An employee in the follow-up program is subject to:
- Follow-up testing under this Policy. It applies to all employees and is applied independently of the terms of any "probationary period" that may be established.
 - A positive result on a Follow-Up test, or any other Drug or Alcohol test administered during the "probationary period" is a violation of the terms of the probation.
 - A "Directly Observed" test at least once in years one and two, and will be conducted according to the procedures in 49 CFR part 40.67.
 - Follow-up testing for a minimum of three (3) years, unless otherwise recommended by a SAP. Employees will be tested at least four (4) times a year in the first two years of follow-up testing and at

least once during the third year.

- Follow-up drug and/or alcohol testing will be scheduled on dates chosen by Union Pacific when the employee is on duty or subject to duty (i.e., not on vacation or leave of absence). Follow-up tests must be unannounced. Employees will be given no advanced notice of the test.
- Follow-up testing is in addition to any other testing required by regulation or Union Pacific policy.

24.0 DEFINITIONS

24.1 As used in this policy:

24.1.1 *Controlled substance is defined in 49 CFR Part 219.5. Controlled substances are:*

- *marijuana*
- *narcotics (such as heroin and codeine)*
- *stimulants (such as cocaine and amphetamines)*
- *depressants (such as barbiturates and minor tranquilizers), and*
- *hallucinogens (such as PCP).*

24.1.2 *Controlled substances also include:*

- *Illicit drugs (Schedule I)*
- *Drugs that are required to be distributed only by a medical practitioner's prescription or other authorization (Schedules II through IV, and some drugs on Schedule V), and*
- *Certain preparations for which distribution is through documented over the counter sales (Schedule V only).*

24.1.3 *Covered employee means a person who performs service subject to the hours of service laws (49 USC 211). If an employee performs covered service at least once per quarter and is in the random testing program, the employee will be tested upon selection, regardless if the employee is performing covered service that day. For the purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform covered service.*

24.1.4 *Co-worker means "another employee" of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent, or manager.*

24.1.5 *Drug means any substance (other than alcohol) that has known mind-altering or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.*

24.1.6 **UP Policy**

- **"Major rule violation"** means any rule infraction that is specified as a Level 4 or higher under applicable discipline policy or any rule infraction that results in dismissal.

25.0 RESERVATION OF RIGHTS

- If any future governmental action results in the nullification or preemption of any part of this policy, the remainder will remain intact unless changed by Union Pacific. Union Pacific reserves the right to interpret or change this policy at any time.

