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# UNION PACIFIC RAILROAD DRUG AND ALCOHOL POLICY

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## 1.0 PREFACE

- Union Pacific Railroad’s (Union Pacific) 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***”. These sections are only provided as a reference and employees should read the full CFR provisions.
- When elements of Union Pacific’s policy differ or are in addition to the CFR, the Union Pacific policy is shown in a “NOTE” or is shown in a “standard font”. In the case of a non-DOT (FRA/FMCSA) test, any reference to a “regulated employee” also applies to a non-regulated employee.
- In the case of a non-FRA test, any reference to a Substance Abuse Professional (SAP) also applies to the Employee Assistance Professional (EAP) or Drug and Alcohol Counselor (DAC).
- The use of the term “manager” is a generic reference to an employee who controls the work of others, i.e., supervisor or manager.
- Nothing in this policy supersedes any Department of Transportation (DOT), FRA, Federal Aviation Administration (FAA), or Federal Motor Carrier Safety Administration (FMCSA) regulation. If this policy conflicts with, or inadvertently omits any regulatory requirements, the regulatory requirement still remains valid and the employer or employee remains responsible for compliance. The principal governing regulations are:
  - 49 CFR § 219 – Control of Alcohol and Drug
  - 49 CFR § 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs
  - 49 CFR § 240 – Qualification and Certification of Locomotive Engineers
  - 49 CFR § 242 – Qualification and Certification Conductors
  - 49 CFR § 382 – Controlled Substances and Alcohol Use and Testing under the FMCSA
- Questions about this policy can be directed to the Union Pacific Drug & Alcohol Testing information help line at (800) 840-3784 or DAT@up.com.

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### 3.0 GENERAL

#### Purpose

The purpose of the 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 program. This policy prohibits the illegal use of drugs at any time and any use of alcohol in the workplace, on company property, or after accepting a call to duty, if employee is on call.

#### Union Pacific Commitment

Union Pacific is committed to providing a safe and healthy working environment that facilitates the highest level of employee productivity and customer focus. To meet this commitment, Union Pacific will comply with the requirement 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 Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA).

#### A Health Problem

Union Pacific has long recognized that substance abuse is a health problem which can be successfully addressed. Our 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, Union Pacific management and union leadership have committed to the principles of education, self-referral, and co-worker intervention.

#### 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 Federal Railroad Administration (FRA)

- *Any regulated employee who is subject to performing regulated service for a railroad is deemed to have consented to testing. A regulated employee must be on duty and subject to performing regulated service when the specimen collection is initiated and the alcohol testing /urine specimen collection is conducted with the exception of pre-employment testing. (49 CFR § 219.11)*
- *In any case where a regulated 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).*
- *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.*
- *In general, the testing provisions of the FRA regulations in 49 CFR § 219 apply only to employees who perform regulated service such as train and engine service employees, train dispatchers, mechanical department locomotive movers, bridge tenders, clerks who handle train orders, signal employees, and roadway workers. The regulations also require that samples be collected from the remains of any employee or contractor who is fatally injured in certain accidents or incidents.*
- *A Regulated employee who is required to be tested under subparts C, D, or E of 49 CFR 219 and who is taken to a medical facility for observation or treatment after an accident or incident is deemed to have consented to testing as described in § 219.11 (c).*

## 4.2 Federal Motor Carrier Safety Administration

- ***In general, the testing provisions of the FMCSA regulations in 49 CFR § 382 apply only to employees who operate a commercial motor vehicle in commerce in any state, and are subject to commercial driver's license requirements of 49 § 382.103.***

## 4.3 Union Pacific Policy

- All employees are subject to Union Pacific reasonable cause testing and reasonable suspicion testing. Reasonable suspicion testing may be performed under FRA authority, FMCSA authority, or company authority, as applicable.
- Any employee who is absent without leave after an incident or accident will be considered a refusal.
- Employees will be discouraged from eating, drinking, using tobacco product and urinating while waiting for a collection to begin. Medical needs and basic comfort will allow moderate exceptions to this policy.

## 5.0 PROHIBITIONS

### 5.1 Federal Railroad Administration

#### ***Alcohol and drug use prohibited:***

- ***Except as provided in 49 CFR § 219.103 (Prescribed and Over-the-Counter Drugs), no regulated employee may use or possess alcohol or any controlled substance (49 CFR § 219.101) when the employee is on duty and subject to perform regulated service for a railroad.***
- ***No employee may report for regulated service, or go or remain on duty in regulated service while:***
  - ***Under the influence of or impaired by alcohol,***
  - ***Having .04 or more alcohol concentration in the breath or blood (.02 is a Union Pacific policy violation),***

- *Under the influence of or impaired by any controlled substance.*
- *No employee may use alcohol for whichever is the lesser of the following periods:*
  - *Within four hours of reporting for regulated service, or*
  - *After receiving notice to report for regulated service.*
- *Prohibition on abuse of controlled substances.*
  - *No employee who performs regulated service may use a controlled substance at any time, whether on duty or off duty, except as permitted by 49 CFR § 219.102, Prescribed and Over-the-Counter Drugs.*

## 5.2 Federal Motor Carrier Safety Administration

- *No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in 49 CFR § 382.107, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle as per 49 CFR § 382.213.*
- *No driver will perform safety-sensitive functions within four hours after using alcohol. (49 CFR § 382.207)*
- *No driver required to take a post-accident alcohol test under 49 CFR § 382.303 will use alcohol for eight hours following the accident, or until the employee undergoes a post-accident alcohol test, whichever occurs first. (49 CFR § 382.209)*



### 5.3 Union Pacific Policy

- Union Pacific policy prohibits any illegal use or possession of a controlled substance, and any possession, use of, or impairment by alcohol (A confirmed breath or blood alcohol level of 0.02 or higher is considered under the influence) when any employee is subject to duty, reporting for duty, on duty, or on Union Pacific property.
- Any exception or modification to this policy must be cleared by the appropriate UP Vice President or higher.
- “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 have not been properly dispensed by a licensed physician or other practitioner who can dispense medications.
- Drugs which are prohibited under this policy include “controlled substances” on Schedule I through V of the Federal Controlled Substances Act, as revised. Controlled substances are listed in 21 CFR § 1308.
- The controlled substances list includes illegal drugs (Schedule I) and those that are distributed only by 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).

## 6.0 PRESCRIBED AND OVER-THE-COUNTER DRUGS

### 6.1 Federal Railroad Administration

- ***49 CFR § 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 medication(s) 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 medication(s) in combination).***
- ***This regulation does not restrict the railroad from requesting employees notify the railroad of therapeutic drug use.***

### 6.2 Federal Motor Carrier Safety Administration

- ***49 CFR § 382.213 - An employer may require a driver to inform the employer of any therapeutic drug use.***

### 6.3 Union Pacific Policy

- All Union Pacific employees are responsible to have a written copy of their treating medical practitioner's evaluation/determination (as above) available upon request of the Medical Review Officer (MRO) or the Fitness for Duty Nurse.
- Union Pacific may require an employee, to inform Health and Medical Services (HMS) of specific or general types of therapeutic (prescription or over-the-counter) drugs, if HMS concludes that use of such drugs poses significant safety risks for work.
- Union Pacific may place restrictions on the use of specific or general types of therapeutic (prescription or over-the-counter) drugs by an employee, or group of employees, if HMS concludes that use of such drugs poses significant safety risks for work. Work restrictions may include requirements for monitoring by EAP or HMS, including periodic drug screens.
- If Union Pacific managers become concerned that an employee's use of therapeutic drugs may pose safety risks for work, then this can be evaluated in a Fitness for Duty review by HMS. In such cases, the Fitness for Duty determination of HMS will supersede any statements from the employee's treating physician's statement regarding the employee's ability to use therapeutic drugs at work.
- Any use of another person's prescribed medication is prohibited.
- Employees must be knowledgeable of potential side effects of any prescribed or over the counter medication(s) they are taking.
- Any use of so-called "medical marijuana" is prohibited.
- Any use of or possession of synthetic/designer drugs is prohibited. This includes products that are labeled "not intended for human consumption," common names include (but are not limited to) K2 and Bath Salts.
- Union Pacific may at any time add other potentially impairing substances to the list of prohibited substances. Employees will be notified of such changes by usual communications methods.

- To be valid under this policy company authority testing, a prescription drug must have been issued within one year prior to the employee's use of the drug.
- Compliance with Union Pacific's Drug and Alcohol Policy is mandatory for all employees. Specifically, all employees are responsible for communicating their job description and responsibilities to prescribing medical practitioners to ensure no prescribed medication interferes with the employee's ability to safely perform the essential functions of his or her job.

## 7.0 RESPONSIVE ACTION

### 7.1 Federal Railroad Administration

#### *Regulated Employees (49 CFR § 219.104) removal from service:*

- *If the railroad determines that an employee has violated 49 CFR § 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 regulated 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 49 CFR § 219.107, the railroad must immediately remove the employee from regulated service.*
- *Notice: Before or upon removing a regulated employee from regulated service for violating 219.101 or 219.101 a railroad must provide written notice to the employee of the reasons for this action. Hearing procedures: If the regulated employee denies in writing that the test result is valid evidence of alcohol or drug use prohibited by 49 CFR § 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.*

#### *Railroad's duty to prevent violations (49 CFR § 219.105)*

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

## 7.2 Federal Motor Carrier Safety Administration

### ***Drivers Engaging in Substance Use-Related to Conduct (49 CFR § 382-501)***

- ***No employer shall permit any driver to perform safety-sensitive functions; including driving a commercial motor vehicle, if the employer has determined that the driver has violated 49 CFR § 382.501(b).***

## 7.3 Union Pacific Policy

- No employee shall perform any service under the influence of drugs or alcohol.

## 8.0 OFF-DUTY CONDUCT

### 8.1 Federal Railroad Administration

- ***Certified employees such as engineers and conductors, including hostlers or mechanical department locomotive movers, must report any conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, such violations . (In compliance with 49 CFR § 240.111(h) and § 242.115)***

### 8.2 Federal Motor Carrier Safety Administration

- ***Any employee who holds a commercial drivers license and subject to the DOT controlled substances and alcohol testing must notify current employers of any violations. The notification must be in writing before the end of the business day following the day the employee received notice of the violation. (49 CFR § 382.415) Reporting requirements are described under Union Pacific policy.***

### 8.3 Union Pacific Policy

Reporting requirements:

- Certified employees, whatever class of service, including hostlers or mechanical department locomotive movers, must report by contacting the National EAP Help Line 800-779-1212 within 48 hours of any completed state action:
- Operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance.
- Refusal to undergo such testing when a law enforcement official seeks to find out whether a person is operating under the influence of alcohol or a controlled substance.
- 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.
- 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.
- 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.

Employees holding a CDL or a CMV license must:

- Report within 48 hours to their supervisor any off duty arrest, conviction or completed state action for operating a personal motor vehicle while under the influence of or impaired by alcohol or a controlled substance.
- Reporting must be made to their supervisor who will then direct them to the National EAP Help Line, 800-779-1212 Employees that fail to make this contact will be subject to discipline, including losing

an opportunity to work with EAP and maintain their employment relationship with Union Pacific.

Non-regulated and non-licensed employees:

- Are encouraged to contact EAP for any off duty issues related to drug and alcohol problems, Union Pacific reserve the right to conduct a manager referral for issues that come to the attention of management.
- Employees convicted of such misdemeanor or felony must notify their supervisor of that fact within 48 hours after receiving a notice of the conviction. Failure to do so will negate that employee's opportunity, under this policy, for a one-time return to service, if applicable.
- The conduct of **any** employee leading to a 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. Employees convicted of such misdemeanor or felony must notify their supervisor of that fact within 48 hours after receiving notice of the conviction. Failure to do so will negate that employee's opportunity, under this policy, for the one-time return to service, if applicable.



## 9.0 DRIVING COMPANY VEHICLE

### 9.1 Federal Railroad Administration

- Federal regulations must be recognized when applicable. In addition to regulation Union Pacific Policy applies as described below.

### 9.2 Federal Motor Carrier Safety Administration

- Federal regulations must be recognized when applicable. In addition to regulation Union Pacific Policy applies as described below.

### 9.3 Union Pacific Policy

- Any employee driving a motor vehicle owned, leased, or rented by Union Pacific, while under the influence of alcohol and/or drugs, both on or off Union Pacific property and both on or off duty, is prohibited.
- Any employee arrested, ticketed, or convicted for driving a motor vehicle owned, leased, or rented by Union Pacific 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 opportunity under this policy for a one-time return to service, if applicable.

#### 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.

## 10.0 **VOLUNTARY MARK OFF**

### 10.1 **Federal Railroad Administration**

- Federal regulations must be recognized when applicable. In addition to regulation, Union Pacific Policy applies as described below.

### 10.2 **Federal Motor Carrier Safety Administration**

- Federal regulations must be recognized when applicable. In addition to regulation, Union Pacific Policy applies as described below.

### 10.3 **Union Pacific Policy**

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

## 11.0 POST ACCIDENT TOXICOLOGY TESTING

### 11.1 Federal Railroad Administration

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

**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 to any person; or
- A release of hazardous material lading from railroad equipment accompanied by –
  - An evacuation; or
  - Reportable injury resulting from hazardous material release (e.g., from fire, explosion, inhalation or skin contact with the material); or
- Damage to railroad property of \$1,500,000 (or current threshold as established by the FRA) or more, not including lading.

**Impact accident.** Any impact accident (i.e., a rail equipment accident defined as an “impact accident” in 49 CFR § 219.5) that involves damage in excess of the current report threshold, resulting in:

- A reportable injury; or
- Damage to railroad property of \$150,000 (or current threshold as established by the FRA) or more, not including lading.

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

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

**Human factor highway-rail grade crossing accident/incident.**

- ***A regulated employee who interferes with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for safety of highway traffic that depends on the normal functioning of such system, as prohibited by 49 CFR § 234.209.***
- ***A train crewmember who was or who should have been, flagging highway traffic to stop due to an activation failure of the grade crossing system, as provided by 49 CFR § 234.105(c) (3).***
- ***A regulated employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in 49 CFR § 234.5) due to activation failure, partial activation, or false activation of the grade crossing signal system, as provided by 49 CFR § 234.105(c)(2) 234.106, or 234.107(c)(1)(i).***
- ***A fatality to any regulated employee performing duties for the railroad, regardless of fault; or***
- ***A regulated employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.***

***Exceptions (49 CFR § 219.201(b))******Grade Crossings:***

- ***Except for human factor highway-rail grade crossing accident/incident described above, no test may be required in the case of a collision between railroad rolling stock and motor vehicle or other highway conveyance at a highway/rail grade crossing. No test may be required in the case of an accident***

***Natural cause or vandalism:***

- ***If the incident cause and severity are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s). No test is required.***

***Employees Tested (49 CFR § 219.203)***

- ***Following each accident or incident described in 49 CFR § 219.201, the railroad (or railroads) must take all practicable steps to assure that all regulated 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 § 219.***
- ***A railroad must take all practicable steps to ensure that all surviving regulated employees of the railroad who are subject to FRA post-accident toxicology testing under subpart C provide blood and urine specimens for toxicological testing required by the FRA. This includes any regulated employee who may not have been present or on-duty at the time or location of the event, but who's actions may have played a role in the cause or severity, including, but not limited to, an operator, dispatcher or signal maintainer.(49 CFR § 219.203(b)).***

***In a “major accident” all assigned crew members of all trains or other on-track equipment involved in the qualifying event must be subjected to post-accident toxicological testing, regardless of fault.***

- ***Other surviving regulated employees who are not assigned crew members of an involved train or other on-track equipment must be tested if a railroad representative can immediately determine, on the basis of specific information, that the employee may have had a role in the cause or severity of the accident/incident.***
- ***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 § 219.201(a)(2) (an “impact accident”), 49 CFR § 219.201 (a)(3)(“fatal train incident”), 49 CFRA § 219.201 (a)(5)or 49 CFR § 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.*

- *The remains of any on-duty employee or contractor performing duties for a railroad who is fatally injured in the event are always subject to post accident toxicological testing regardless of fault.*
- *Testing the remains of any on-duty employee or contractor performing duties for a railroad who is fatally injured in the event are always subject to post-accident toxicological testing, regardless of fault.*
- *All human-factor highway-rail grade crossing accident/incidents as described above; only a regulated employee whose actions may have contributed to the cause or severity of the event is subject to testing.*

#### ***Unlawful refusals; consequences (49 CFR § 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 regulated service and must be deemed disqualified for regulated service for a period of nine (9) months in accordance with the conditions specified in 49 CFR § 219.107.*

#### **11.2 Federal Motor Carrier Safety Administration**

##### ***FMCSA MANDATORY POST-ACCIDENT DRUG AND ALCOHOL TESTING (49 CFR § 382.303)***

***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 is towed from the accident scene.*

***Unlawful refusals; consequences (49 CFR 382.303): A driver who is subject to post-accident testing under 49 CFR § 382.303 shall remain readily available for such testing or may be deemed by the employer a refusal to submit to testing.***

### 11.3 Union Pacific Policy

- Following any accident or incident, a manager at the site must make a good faith determination on testing requirements before releasing any employees involved in an accident or incident.
- Following any accident or incident, employees involved in the accident must not leave the accident or incident site until a supervising manager notifies the employees of the determination regarding drug and alcohol testing. Leaving the site without authorization will result in a refusal to test.
- 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.

## 12.0 **REASONABLE SUSPICION TESTING**

### 12.1 Federal Railroad Administration

***Mandatory reasonable suspicion testing (49 CFR § 219.301, 219.303).***

- ***A railroad must require a regulated employee to submit to a breath 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 regulated 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.***
- ***With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with 49 CFR §***

**219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.**

- **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 § 219.11(g) and is on site.**
- **Testing must be conducted promptly following observations. If the test is not administered within two hours following determination the railroad must be prepared and maintain an explanation. 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 § 219.305(b)).**
- **Determination of drug use must be by two managers, at least one of whom is trained in accordance with 49 CFR § 219.11(g) and is on site.**

## 12.2 Federal Motor Carrier Safety Administration

- **Employers shall require drivers to submit to reasonable suspicion drug and alcohol testing based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.**
- **Determination of drug use must be by two managers, at least one of whom is trained in accordance with 49 CFR § 382.603.**



## 12.3 Union Pacific Policy

### Union Pacific Reasonable Suspicion Drug and Alcohol Testing

- Union Pacific requires reasonable suspicion drug and alcohol testing of all employees not covered under FRA or FMCSA regulations (management and agreement employees) or off-duty hours of service employees who are on railroad property when there is a reasonable suspicion, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee made by a manager.
- 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.
- Determination of influence by alcohol may be made by one manager trained in signs and symptoms and who is on site, the second manager can be over the phone

## 13.0 REASONABLE CAUSE DRUG AND ALCOHOL TESTING

### 13.1 Federal Railroad Administration

- No FRA cause testing is conducted by Union Pacific, see UP policy.

### 13.2 Federal Motor Carrier Safety Administration

- No FMCSA cause testing is conducted by Union Pacific, see UP policy

### 13.3 Union Pacific Policy

Union Pacific has chosen to exercise the discretion granted by FRA regulations to conduct reasonable cause testing in certain circumstances, as detailed below, where such testing is not mandated under FRA or FMCSA regulations. Union Pacific reasonable cause drug and/or alcohol testing policy applies to all

employees, agreement and non-agreement, regardless of job or craft. when:

- Union Pacific may conduct a drug and/or alcohol test based on the manager's good faith belief that an employee may have violated a rule that has a direct impact on safety.
- Personal injuries, standing alone, cannot trigger reasonable cause drug and/or alcohol testing.
- Reasonable cause testing must begin no later than eight (8) hours after incident.

## 14.0 PRE-EMPLOYMENT TESTS

### 14.1 Federal Railroad Administration

#### *Pre-employment drug testing (49 CFR § 219 Sub§ F)*

- ***Prior to the first time an applicant performs regulated service for Union Pacific, the applicant must undergo testing for drugs. No railroad may allow an individual to perform regulated service, unless the individual has been administered a test for drugs with a result that did not indicate the misuse of controlled substances.***
- ***This requirement applies to final applicants for employment and to employees seeking to transfer for the first time on this railroad from non-regulated service to duties involving regulated service.***

#### *Testing for Regulated Job Transfer Requirements*

- ***FRA requires DOT drug testing for all applicants transferring for the first time into regulated service positions.***
- ***An applicant who refuses to submit to pre-employment testing under this section may not be employed in regulated service. (49 CFR § 219.505)***
- ***An applicant can decline to be tested and withdraw their application and no record will be kept, unless the refusal***

*occurs after the collection process has begun. (49 CFR § 40.191 and 40.63 (c))*

#### 14.2 Federal Motor Carrier Safety Administration (382.301)

- *Prior to the first time a driver performs safety sensitive functions FMCSA requires DOT drug testing for all applicants who are initially qualifying for a DOT license or reactivating an expired license.)*
- *Employees who apply for or 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*
- *An applicant can decline to be tested and withdraw their application and no record will be kept, unless the refusal occurs after the collection process has begun. (49 CFR § 40.191 and 40.63 (c))*

#### 14.3 Union Pacific Policy

- Before the first time applicants perform any service for Union Pacific, they must undergo drug testing and have a negative result. Union Pacific does not conduct alcohol testing on pre-employment tests.
- Negative dilute results will require a second collection. If the second collection results in another negative dilute this will be accepted as a negative result.
- Applicants who refuse to take a pre-employment drug test after it has started will not be employed.
- Applicants with positive test results will have their application rejected and they will be ineligible to be retested for a period of six months.
- Applicants re-applying following a positive pre-employment drug test must present a certificate of rehabilitation from a substance abuse professional.

- Applicants that adulterate or provide a substitute sample on a pre-employment test will be banned from reapplying.
- Drug and alcohol tests will be given on randomly selected days to all new hire employees within their probationary period.
- Collection process has begun once the applicant has selected an individually wrapped or sealed collection container (40.191 references 4063.c).

## 15.0 **BACKGROUND CHECK**

### 15.1 Federal Railroad Administration and Federal Motor Carrier Safety Administration (49 CFR § 40.25)

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

### 15.2 UP Policy

- All employees applying for a safety sensitive position will be asked to verify if they have performed service for a previous DOT regulated company.

## 16.0 RANDOM ALCOHOL AND DRUG TESTING PROGRAMS

### 16.1 Federal Railroad Administration

- *Each railroad must submit for FRA approval a random testing program meeting the requirements of 49 CFR § 219, Subpart G.*
- *Each railroad must ensure that its random testing pools include all regulated employees who perform regulated service. 49 CFR 219.611(a)*
- *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 § 219.615(e)(1))*
- *An employee will be subject to random testing only while on-duty and subject to performing regulated service. 49 CFR 219.615(c)*

#### *Participation in testing (49 CFR § 219.617)*

- *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.*
- *A railroad may excuse an employee who has been notified of selection for a random test only if the employee can substantiate with verifiable documentation that a medical emergency involving the employee or an immediate family member (e.g., birth, death, or medical emergency). A medical emergency is defined as an acute medical condition requiring immediate emergency care.*

## 16.2 Federal Motor Carrier Safety Administration

- ***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 Commercial Motor Vehicle (CMV) (40 CFR § 382.305).***

## 16.3 UP Policy Random Testing

- Union Pacific will randomly test regulated employees in compliance with DOT requirements. Union Pacific will randomly test other employees using company authority.
- All non-agreement employees are subject to random testing.
- Advanced notice of a random test selection is strictly forbidden.

## 17.0 FITNESS EVALUATION

### 17.1 Federal Railroad Administration and Federal Motor Carrier Safety Administration 49 CFR § 40.327

- ***The Medical Review Officer (MRO) is required to report any drug test results or medical information learned in the verification process to the appropriate medical professionals without the employees consent if it is determined that in the MRO's reasonable medical judgment that the employee could be medically unqualified for an applicable DOT agency regulation or the information indicates safety sensitive functions for this employee poses a significant safety risk.***

### 17.2 Union Pacific Policy

#### 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.
- Employees will be given a single return to duty test that must be passed with negative results.

- Negative dilute results are not considered a negative and therefore will require a second collection. If the second collection results in another negative dilute, this will be accepted as negative result.

“Fitness for Duty” examinations as part of a “For Cause” Examination

- 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.

Other Medical Examinations

- 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 CMO, 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. Should a physician suspect during a physical or mental fitness examination 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 CMO and the CMO will order a drug test.
- 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 test as part of a physical or mental fitness examination upon general notice from the Union Pacific or specific notice from the examining physician.
- This policy serves as general notice that employees will be tested for drugs and/or alcohol during the physical examination process.

## 18.0 SAMPLE COLLECTION AND ANALYSIS (DRUG)

### 18.1 Federal Railroad Administration and Federal Motor Carrier Safety Administration

*All drug tests required by DOT will be performed in accordance with the specimen collection and laboratory analysis procedures in 49 CFR §40*

- *49 CFR § 40.193 requires 45 mL of urine for a drug test. Failure to provide this sample, i.e.: shy bladder, will result in the following actions:*
- *Employees are allowed up to three hours to provide a sample if cooperating. Leaving the site during this three hour period or refusing to make any attempts when requested can result in the test being canceled and ruled a refusal.*
- *The employee will then be scheduled within five (5) days from the date of the test for a medical evaluation.*
- *The MRO will make the final decision after receiving documentation from the medical evaluator. If the MRO decides the employee had a legitimate reason for the shy bladder the test will be cancelled. .*
- *If the MRO determines the test to be a refusal, no legitimate medical explanation found, the employee is subject to discipline up to and including dismissal, and disqualified from any FRA regulated service for a period of nine (9) months.*
- *Federal Testing Authority: Employees that have gone through this process before and have a shy bladder as determined by the MRO must go through this process each time the situation occurs per 49 CFR 40.193.*

### 18.2 Union Pacific Policy

- When possible, tests performed under Union Pacific authority will also follow 49 CFR §40
- Union Pacific reserves the right to add additional testing to its company drug panel, without notice.



- Union Pacific requires 45 mL of urine for a drug test. Failure to provide this sample, i.e.: shy bladder, will result in the following actions:
- After three hours without giving a sample, the employee may be pulled from service and will be given a form to sign that explains the process they must then follow. Leaving the site during this three hour period or refusing to make any attempts when requested can result in the test being canceled and ruled a refusal.
- The employee will be directed to contact Union Pacific's Medical Department, 800-635-7150, within twenty (24) hours. If contact is not made, the medical department will attempt to make contact with the employee. Once contact has been made, the medical department will work with the employee to set up an appointment to be evaluated by a medical practitioner to determine if a legitimate reason can be found for the shy bladder. This appointment must be scheduled within five (5) days from the date of the test.
- The MRO will make the final decision after receiving documentation from the medical evaluator. If the MRO decides the employee had a legitimate reason for the shy bladder the employee will be immediately reinstated if out of service.
- If the MRO determines the test to be a refusal, no legitimate medical explanation found, the employee is subject to discipline up to and including dismissal, and disqualified from any FRA regulated service for a period of nine (9) months.
- Union Pacific Authority: Employees that have gone through this process and have a condition that is ruled a shy bladder as determined by the MRO, and is not expected to improve with time or treatment, can be required to participate in alternative testing.

## 19.0 MRO REVIEW AND SPLIT SAMPLE REQUEST

### 19.1 Federal Railroad Administration and Federal Motor Carrier Safety Administration

***Part 40 regulation requires MRO review for all drug results.  
Split Sample Request (49 CFR § 40.171)***

- ***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.***
- ***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.***
- ***In mandatory post-accident testing situations, the FRA sets a 60-day time requirement for requesting a test of the split specimen. Requests must be in writing and addressed to the FRA, which will forward the request to the laboratory. (49 CFR § 219.211(i)).***

### 19.2 Union Pacific Policy

Requires MRO review for ALL TEST AUTHORITY

- Every drug test result reported by the laboratory will be reviewed by a qualified MRO who will be 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.

- 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.
- If neither the MRO nor Union Pacific, after making all reasonable efforts, has not 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".
- 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.
- 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. Results from an MRO negative will not be mailed. To obtain negative test results go to Union Pacific's Drug and Alcohol Program's web site (found on UP On-line).
- If the MRO verifies the test result as positive, the MRO will notify the employee they are positive and to contact their manager. The MRO will report the result to the Union Pacific DER to pull employee from service and to take administrative action.

Storage of Split Specimen (49 CFR § 40.99):

- Specimens that yield non-negative drug test results, on confirmation, will be retained by the laboratory in secure, 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 specimens for an additional period.

## 20.0 ALCOHOL TESTING PROCEDURES

### 20.1 Federal Railroad Administration and Federal Motor Carrier Safety Administration

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

### 20.2 Union Pacific Policy

- All alcohol tests required by Union Pacific will be performed in accordance with the collection procedures prescribed in 49 CFR § 40.
- All confirmations for alcohol tests will be performed using devices on the National Highway Traffic Safety Administration's conforming Products List for screening and evidentiary breath testing devices.
- A confirmed breath alcohol level of 0.02 or higher is considered a violation of Union Pacific's drug and alcohol policy.

## 21.0 REFUSALS TO PERMIT TESTING AND TAMPERING

### 21.1 Federal Railroad Administration and Federal Motor Carrier Safety Administration

#### *Refusal to take a DOT test (49 CFR § 40.191)*

- *An employee is considered to have refused to take a drug test if the employee:*
- *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.*
- *Fails to remain at the testing site until the testing process is complete; Providing, that an employee who leaves the testing site before the testing process commences (see 40.63 (c)) for pre-employment test is not deemed to have refused to test.*
- *In the case of a directly observed or monitored drug test collection, failure to permit the observation or monitoring of the specimen collected (see § 40.67(1) and § 40.69(g));*
- *Fail 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 (see 40.193(d)(2))*
- *Fail or decline to take an additional drug test the employer or collector has directed (see, for instance 40.197(b));*
- *Fail to undergo a medical examination or evaluations, as directed by the MRO as part of the verification process, or as directed by the DER under 40.193(d). In the case of pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or*
- *Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, or behaves in a confrontational way that disrupts the collection*

*process, fail to wash hands after being directed to do so by the collector)..*

- *For an observed collection, fails to follow observer's instruction or to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.*
- *Fail to allow for a monitored collection when required 49 CFR § 40.69).*
- *Possess or wears prosthetic or other device that could be used to interfere with the collection process.*
- *If the MRO reports that an employee has a verified adulterated or substituted test result, the employee has refused to take a drug test.*

## 21.2 UP Policy

### Refusal to Test and Tampering

- An employee, who refuses to provide breath or body fluid specimen(s) when required, or fails to remain available after an accident or incident, is considered a refusal and insubordinate under Union Pacific rules.
- An employee who is unable to provide breath or body fluid specimen(s) will be directed for a medical evaluation to a licensed physician who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen during a collection.
- Failure to provide a urine specimen (within three hours) for any drug test required by this policy, without a medical reason as determined by the MRO, is considered a refusal.
- An employee is required to immediately participate in a drug or alcohol test as directed or it will be considered a refusal.

- When an employee refuses to participate in a drug or alcohol test, the employee will be removed from service and subject to discipline, up to and including dismissal.
- Employees must place electronic devices, as defined in Rule 2.21, in the off position when directed to do so by the manager or collector during the drug or alcohol testing process. Failure to do so will be considered a refusal.
- Tampering, or attempting to tamper, with a sample in order to prevent a valid test (e.g., through substitution, dilution or adulteration) constitutes a refusal.
- An employee possessing adulterants, or a specimen substitution, or a device used for substitution on company property will be considered to have refused testing.
- Employees dismissed for refusal will not be allowed to take part in the EAP for the purpose of reinstatement.

## 22.0 REMOVAL FROM SERVICE AND DISCIPLINE

### 22.1 Federal Railroad Administration

#### *Federal Railroad Administration 49 CFR § 219.107)*

- *If a regulated employee is determined to have violated § 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 regulated service.*
- *If a regulated employee denies that a test result or other information is valid evidence of a § 219.101 or § 219.102 violation, the regulated employee may demand a post-suspension hearing.*
- *If an employee refuses to take a drug test, they may incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. A regulated employee, who refuses to provide breath or a body fluid specimen or specimens, when required by the railroad under a mandatory provision of federal regulations, must be withdrawn from regulated service for a period of nine (9) months (49 CFR § 219.107(a)).*
- *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 § 219.107(d)).*

### 22.2 Federal Motor Carrier Safety Administration

- *No driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by Subpart B of 49 CFR § 382 or an alcohol or controlled substance rule of another DOT agency. Employees may not perform safety-sensitive functions: including driving a commercial motor vehicle in commerce as defined in CFR § 382.107 and a commercial motor vehicle in interstate commerce as defined in part 390 of subpart E.*



## 22.3 Union Pacific Policy

Withheld from service:

- If Union Pacific determines there is reason to believe that an 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 related to drugs), the employee will immediately be withheld from service, pending disciplinary action.

Dismissal:

- If it is determined that an 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 EAP for the purpose of reinstatement.
- If a regulated employee who is not entitled to a hearing under normal agreements and wishes to request either a Redress Hearing as provided in Public Law 432 SEC. 409 § 20165. (LIMITATIONS ON NON-FEDERAL ALCOHOL AND DRUG TESTING BY RAILROAD CARRIERS), or a 49 CFR § 219.104 hearing to challenge the validity of his or her specimen results that were determined to be in violation of the Drug and Alcohol Policy can petition for a hearing if one is not already provided. In order to petition for a hearing send a written request via email [DAT@up.com](mailto:DAT@up.com) or via certified mail to UPRR, DAT Stop 1020, 1400 Douglas Street, Omaha NE 68179. Redress and 219 hearings will only be granted to those that qualify for such hearings.
- Refusing a drug or alcohol test is a level 5 dismissal.

## 23.0 SELF REFERRAL POLICY

### 23.1 Federal Railroad Administration

- ***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. (49 CFR § 219.1001)***
- ***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.***
- ***An employee will be returned to service on the recommendation of EAP, for non-federal tests, except as may be provided under 49 CFR § 219.Sub§ K), which may require a return-to-work medical exam. Approval to return to service will not be withheld unreasonably.***

### 23.2 Federal Motor Carrier Safety Administration

- See Union Pacific Policy

### 23.3 Union Pacific Policy

Voluntary referrals:

- If the employee is not cooperating with EAP/DAC/SAP or not following rehabilitation instructions, that employee will be placed in a medically disqualified status by the Chief Medical Officer (CMO).

- Union Pacific treats the referral and subsequent handling, including counseling and treatment, as confidential, subject to the exceptions set forth in EAP policy and procedures.
- The certification status of an Engineer, Conductor, or Remote Control Operator (RCO) will not be affected under the self referral policy, provided the employee cooperates with the rehabilitation program.
- The policy of confidentiality is waived (to the extent that Union Pacific receives official notice from EAP of the substance abuse disorder) and Union Pacific 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.

## 24.0 CO-WORKER REPORT

### 24.1 Federal Railroad Administration

- ***FRA Program designed to encourage co-worker participation in preventing violations of 49 § 219 Subpart K. For guidance on how this is applied see Union Pacific Policy (23.3)***

### 24.2 Federal Motor Carrier Safety Administration

- See Union Pacific Policy

### 24.3 Union Pacific Policy

- 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 Union Pacific's drug and alcohol policy. If the railroad manager, after being notified by a co-worker, determines that the employee is in violation, the employee will be immediately removed from service in accordance with its existing policies, agreements, and procedures.
- The employee must contact EAP within three (3) days. EAP will schedule necessary interviews for the employee with a SAP or DAC. The evaluation is to be completed within ten (10) calendar days of the date on which the employee contacts the SAP, 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.

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## 25.0 TREATMENT UNDER CO-WORDER REPORT

### 25.1 Federal Railroad Administration.

#### *When treatment is required:*

- *If the SAP/DAC 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:*
- *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 employee will agree to undertake and successfully complete a course of treatment deemed acceptable by a SAP/DAC.*
- *The railroad will promptly return the employee to service, upon recommendation of the SAP/DAC, 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.*
- *Following return to service, the employee, as a further condition on withholding discipline, may, as necessary, be required to participate in a reasonable program of follow-up treatment, as prescribed by the SAP/DAC. Referral programs that involve regulated employees without a policy violation will not exceed 24 months beyond the employee's initial removal from service.*
- *Follow-up testing for non regulated employees or any employee with a policy violation will not to exceed 60 months from the date the employee returned to duty.*

***When treatment is not required:***

- ***If the SAP/DAC 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 occupation or transportation safety.***

***Follow-up tests for co-worker referral:***

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

**25.2 Federal Motor Carrier Safety Administration**

- See Union Pacific Policy

**25.3 Union Pacific Policy****Co-Worker Referral:**

- 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 the SAP, DAC or EAP before qualifying to return to service.
- Employees will be given a single return to duty test that must be passed with negative results.
- Negative dilute results are not considered a negative and therefore will require a second collection. If the second collection results in another negative dilute this will be accepted as a negative result. The employee will be subject to follow-up drug or alcohol testing in this situation for up to 60 months from the return to duty test date

## **26.0 MANAGER REFERRAL**

### **26.1 Federal Railroad Administration**

- See Union Pacific Policy

### **26.2 Federal Motor Carrier Safety Administration**

- See Union Pacific Policy

### **26.3 Union Pacific Policy**

- Managers have an obligation to consistently observe all employees for signs and symptoms of drug and/or alcohol abuse. Managers are required by Federal Regulations and Union Pacific Drug and Alcohol policy to conduct a reasonable suspicion test, (Federal authority if on-duty in regulated service, UP authority if non-regulated service or off-duty regulated service) for drugs and/or alcohol if signs and symptoms are present. Managers have an obligation to help employees who exhibit signs and symptoms of drug

and/or alcohol abuse to seek help from EAP, while test results are pending.

- If the results of a test are negative or not immediately available, the manager also has an obligation to help employees who exhibit signs and symptoms of drug and/or alcohol abuse and to ensure the safety of our employees and the public. Therefore, when a manager has credible evidence which supports a finding of impairment or being under the influence, the manager will immediately initiate a manager referral for evaluation.
- Without credible evidence of drug or alcohol abuse, but with signs and symptoms of such abuse, the manager has an option to make a referral to the Medical Department for a Fitness for Duty (FFD) or EAP for a drug and alcohol evaluation. The employee will be required to make contact within three (3) business days with EAP or the FFD nurse, as directed.
- When an employee is referred to EAP by a manager for work-related problems, confidentiality regarding personal matters will be maintained. Both EAP and CMO can redirect a referral at any time. If an evaluation from CMO or EAP finds no reason to keep the employee from working, the employing department will be notified and the employee will be returned to service.
- 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 CMO may medically disqualify that employee. When an employee is referred to EAP under a manager referral, confidentiality will be maintained. If EAP determines there is an active substance abuse disorder and the employee refuses to



participate in the recommended treatment upon direction from EAP, the CMO may medically disqualify the employee.

- Employees will not be returned to work until they have met all conditions detailed in the 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. The instructions may also include a requirement that the employee will be subject to Union Pacific follow-up testing. Employees must meet all conditions and instructions issued by CMO, EAP and/or the employee's manager. Employees may be subject to discipline if they fail to follow any instructions including a requirement that the employee be subject to follow-up testing.

## **27.0 ONE TIME RETURN TO SERVICE AND TEN-YEAR POLICY**

### **27.1 Federal Railroad Administration**

- See Union Pacific Policy

### **27.2 Federal Motor Carrier Safety Administration**

- See Union Pacific Policy

### **27.3 Union Pacific Policy**

#### General

- 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 significant rule violation (as defined in Section 29.0 Definitions) triggered the resulting positive.

- 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.
- Events under the Self Referral Policy and Co-worker Report Policy do not count against this one time return to service agreement and ten (10) year policy. (49 CFR § 219, Subpart K)

#### Terms and Conditions

- The terms and conditions of an employee's rehabilitation and education program agreement for reinstatement will contain a twelve month probation period. During this probationary period, any violation by the employee of the terms established for their reinstatement will result in the employee being returned to dismissed status without the benefit of a hearing, unless a hearing is required by agreement or FRA regulations (49 CFR 219.104) or a Redress Hearing. To request a redress hearing pursuant to the provisions of Public Law 110-432 Statute 20165(b) (Federal Rail Safety Improvement Act of 2008) A petition must be submitted in writing within ten (10) calendar days of receipt of a charge letter to: Drug and Alcohol Testing, 1400 Douglas, Stop 1020, Omaha, NE 68179-1020 (via certified mail) or faxed to 402-997-3626.
- This probationary period, and the terms thereof, does not preclude Union Pacific from conducting follow-up testing for up to a sixty (60) month period following reinstatement, as detailed in this Policy for regulated service employees, where federal testing is not involved.

## **28.0 REINSTATEMENT INSTRUCTIONS**

### **28.1 Federal Railroad Administration**

- See Union Pacific Policy

### **28.2 Federal Motor Carrier Safety Administration**

- See Union Pacific Policy

### **28.3 Union Pacific Policy**

#### General

- An employee dismissed due to a drug and alcohol policy violation will be given a single return to duty test that must be passed with negative results.
- Negative dilute results are not considered negative results and therefore will require a second collection as a component of the single return to duty test. If the second collection results in another negative dilute this will be accepted as a negative result. Union Pacific requires follow-up drug and/or alcohol tests after reinstatement for the period, frequency determined by a SAP or EAP. An employee will be eligible for return to service based upon advice that they have successfully completed education, counseling and/or treatment determined to be necessary by EAP, a DAC or a SAP, including any drug and alcohol testing requirements of their designated personal program, and they have tested negative for drugs and alcohol, on the return-to-duty test.
- Reinstatement is to be on a leniency basis with vacation and seniority rights unimpaired, but without pay for time lost.

## Provisions

- 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/DAC/SAP within thirty (30) days after being dismissed following a disciplinary investigation, or within three (3) days of signing a waiver. The employee must enroll by calling the National EAP hotline, 800-779-1212.
- The employee must become drug and/or alcohol free by successfully completing any education, counseling or treatment determined by EAP/DAC/SAP.
- The employee must continue in any further program of counseling, treatment and follow-up determined by EAP/DAC/SAP.
- The employee must adhere to all the agreements in their designated personal program with EAP/DAC/SAP.
- The employee must test negative on a return-to-duty test for drugs and alcohol.
- 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 and Alcohol Policy for the time and frequency required by the SAP, DAC or EAP for up to 60 months from the date of return to service, unless otherwise specified by a SAP or DAC. 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 and when the employee is on duty. 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.
- 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 (10) years. These agreements remain in effect and supersede this policy where conflict, if any, exists.

## 29.0 FOLLOW-UP TESTING PROGRAM

### 29.1 Federal Railroad Administration

- ***Locomotive engineers, conductors, locomotive movers, and RCO’s returning to work from any federal drug and/or alcohol violation will be tested at least six (6) times for alcohol and at least six (6) times for drugs during year one. (49 CFR §240.119 and 242.115)***
- ***Before an employee can be returned to safety sensitive functions, an SAP must establish a written follow-up testing plan after determining that the employee has successfully complied with SAP recommendations for education and/or treatment.***
- ***Locomotive engineers, conductors, locomotive movers, and RCOs returning to work from any federal drug and/or alcohol violation will be tested at least six (6) times for alcohol and at least six (6) times for drugs during year one.***
- ***For DOT tests, the number and frequency of unannounced follow-up tests are directed by the SAP, and must consist of at least six (6) 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).*

- *All DOT follow-up drug tests are to be conducted under direct observation as described in 49 CFR § 40.67.*

## 29.2 Federal Motor Carrier Safety Administration

- *Before an employee can be returned to safety sensitive functions, an SAP must establish a written follow-up testing plan after determining that the employee has successfully complied with SAP recommendations for education and/or treatment. (49 CFR § 40.307, §40.309)*
- *For DOT tests, the number and frequency of unannounced follow-up tests are directed by the SAP, and must consist of at least six (6) 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).*
- *All other regulated employees and CMV operators who have a federal violation will be tested at least six (6) 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.*
- *All DOT follow-up drug tests are to be conducted under direct observation as described in 49 CFR § 40.67.*

### 29.3 Union Pacific Policy

- Before an employee can be returned to service the EAP will work with a DAC to establish any follow-up or treatment plan.
- Employee follow-up test dates are selected by Union Pacific following EAP/SAP/DAC determination of the number and frequency of testing.
- 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 will be conducted at least once per year of follow-up testing program, according to the procedures in 49 CFR § 40.67.
- Follow-up testing can be completed up to 60 months, unless otherwise recommended by a DAC/SAP. Unless otherwise directed by a SAP/DAC employees will be tested at least six (6) times the first year, four (4) times the second year, and at least (2) times 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. 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.

### 30.0 DEFINITIONS

As used in this policy:

- **Controlled substance:** is defined in 49 CFR § 219.5 as all substances listed on Schedules I through V. Examples of controlled substances are: Marijuana, Narcotics (such as heroin, codeine and opioids), Stimulants (such as cocaine and amphetamines) and Hallucinogens (such as PCP). 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)
- **Covered employee:** 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.
- **Co-worker:** Is another employee of Union Pacific, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other supervisor, special agent, or manager. A coworker is also defined as a subordinate
- **DAC:** Drug and Alcohol Counselor
- **DER:** Designated Employer Representative, as assigned by the FRA to be responsible for UP's Drug and Alcohol Program.
- **Drug:** Any substance (other than alcohol) that has known mind-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to controlled substances and substances that are not intended for human consumption.
- **EAP:** Employee Assistance Professional
- **SAP:** Substance Abuse Professional



- **Slit sample:** The employees original urine collection sample is split in two, one in an A bottle and the second in a B bottle. The A bottle is used by the laboratory to report initial findings; the B bottle is only used if the employee request their split sample to be tested.
- **Redress Hearing:** A hearing held in the same manner as a standard agreement hearing, but as provided in Public Law 432 SEC. 409 § 20165. (LIMITATIONS ON NON-FEDERAL ALCOHOL AND DRUG TESTING BY RAILROAD CARRIERS) and is designed to challenge the validity of a sample.
- **Regulated Employee:** Is a broader term that includes regulated service employees, hours of service employees, and roadway workers as defined in 214.7.
- **“Significant rule violation:** Defined as a triggering event in the Managing Agreement Professionals for Success (MAPS) policy.

### 31.0 **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.







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