Policy on the Use of Alcohol and Drugs

Effective Date April 15, 2009
TO ALL MEMBERS OF THE BNSF COMMUNITY:

This policy helps protect you, your co-workers and BNSF alike from the potentially devastating consequences of employee alcohol or drug abuse. BNSF recognizes the value of retaining our skilled and experienced workforce and supports an extensive Employee Assistance Program (EAP). Our goal is to provide treatment before abuse causes safety, health, legal, emotional or financial problems at work or at home.

The BNSF Policy on the Use of Alcohol and Drugs accomplishes two major things:

- Sends a clear message that alcohol and drug use in the workplace is prohibited.
- Encourages employees who have problems with alcohol and other drugs to voluntarily seek help.

This policy has continued to evolve and reflects regulatory changes from the Department of Transportation, which cover the Federal Railroad Administration (FRA) and the Federal Motor Carrier Safety Administration (FMCSA).

Please review this policy and realize that help is available to all employees through BNSF’s Employee Assistance Program. If you have any concerns, you may also want to talk with your local representative in the peer prevention program, Operation Stop.

Our drug-free workplace policy is paramount to ensuring the health and safety of employees, customers, and the public. You can play a pivotal role in making this happen.

Thomas Pace, MD, MPH
Chief Medical Officer
Fort Worth, Texas
About the New Policy

The revised policy incorporates Federal Railroad Administration (FRA) and Federal Motor Carrier Safety Administration (FMCSA) guidelines. It attempts to integrate company and federal requirements in a clear and understandable format. Each supervisor and employee is responsible for reviewing the policy and becoming familiar with its requirements.

In addition to the corporate program, many employees are required to participate in alcohol and drug testing programs provided under U.S. DOT regulations. For BNSF purposes, FRA regulations (Part 219, Control of Alcohol and Drug Use and Part 240, Qualification and Certification of Locomotive Engineers) dictate rules that govern employees performing safety-sensitive railroad operations. FMCSA regulations dictate rules that govern employees operating Commercial Motor Vehicles (CMV’s) that require a Commercial Driver’s License (CDL). (CMV defines a vehicle that weighs 26,001 pounds or more; a gross combination vehicle rating of 26,001 lbs or more, and/or the towed vehicle exceeds 10,000 lbs; a vehicle designed to transport sixteen passengers including the driver; or the vehicle is placarded to transport hazardous materials.) All U.S. DOT Alcohol and Drug Testing must also comply with the rules governing testing procedures in 49 CFR Part 40.
While many policy elements are essentially the same, there are some changes that have been made to the following Sections in the revised policy.

- Section 2 (Definitions)
- Section 3.3 (Prescription Medications)
- Section 3.5 (Violation without administering a test)
- Section 4.0 (Types of Testing)
- Section 4.6 (Reasonable Cause Testing)
- Section 4.7 (Return-to-Work Testing)
- Section 4.8 (Follow-Up Testing)
- Section 6.5.1 (Observed Testing Required by MRO)
- Section 6.6 (MRO Notifying BNSF of non-DOT test information)
- Section 7.6 (Waivers)
- Section 8.7 (Following EAP recommendations)
- Section 10.3 (Return to Duty after Co-Worker Report)
- Section 11 (Operation Stop)
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Section 1.
Objective

1.1 BNSF is committed to protecting the safety, health and well being of all employees in our workplace. We have established a drug-free workplace program that balances our respect for individuals with the need to maintain a healthy environment. We recognize that alcohol and drug use poses a significant threat to our goals.

*This policy replaces and supersedes all previous company policies and procedures regarding the use and possession of alcohol and drugs.*
Section 2.
Definitions

These definitions are consistent with DOT Regulations.

Adulterated Specimen: A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Air Blank: An air blank is a function performed by the Breath Alcohol Technician prior to a breath test to verify no alcohol is within the breath test device by displaying 0.00%. In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol. This includes, but is not limited to, beer, wine, hard liquor and medications containing alcohol.

Alcohol use means the drinking or ingesting of any beverage, liquid mixture or preparation, (including any medication), containing alcohol.

Class III Railroads: Refers to and applies to all employees on BNSF’s associated Class III Railroads and Terminal Companies who are subject to the Federal hours of service laws (i.e. operating employees or covered service employees, including contractors and volunteers).

CDL (Commercial Drivers License): A license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR 383, to an individual which authorizes the individual to operate a class of a commercial motor vehicle (CMV).

CMV (Commercial motor vehicle) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle

1. Has a single or gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

2. Is designed to transport 16 or more passengers,
including the driver; or

(3) Is placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

CMV Medical Certification: Employer-issued medical certification regulated by FMCSA guidelines.

Commingled Service is the total on-duty time performed by an employee during a tour of duty consisting of both covered hours-of-service and non-covered service. When an employee performs service covered by more than one restrictive provision, the more restrictive provision determines the total lawful on-duty time. This is known as the principle of “commingled service”.

Consortium/Third Party Administrator: A service agent that provides and coordinates the provisions of a variety of drug and alcohol testing services to employers.

Creatinine is an indicator of metabolic function. It is waste product of muscle tissue produced at a constant rate by the kidneys and excreted in the urine.

Designated Employer Representative (DER): A company employee authorized by the company to take immediate action to remove employees from safety sensitive duties, or cause employees to be removed from these covered duties, and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the company consistent with the requirements of the regulations.

Dilute Negative Specimen: A negative urine test result with creatinine and/or specific gravity values lower than expected for human urine.

DOT: United States Department of Transportation

Drugs: DOT Controlled substances tested for under DOT agency regulations include marijuana, cocaine, amphetamines, phencyclidine (PCP) and opiates (5 panel). Testing under FRA Sub Part C also includes barbiturates and benzodiazepines.
Section 2 (cont.)

BNSF Tests for the same drugs identified above but may be expanded to include additional controlled substances at any time.

Controlled substance has the meaning assigned by 21 U.S.C. 802, and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Part 1308).

Employee Assistance Program (EAP) is a confidential company-sponsored program providing immediate professional assistance for personal and emotional problems. These services are provided as a company benefit, and include assistance with marital, family, work-related conflicts, and alcohol or drug abuse. Supervisors may refer employees to the EAP for help with a job-related issue.

EBT (Evidential Breath Testing Device): A device approved by the DOT for the evidential testing of breath alcohol.

FMCSA (Federal Motor Carrier Safety Administration): an agency within the Department of Transportation. www.fmcsa.dot.gov

FRA (Federal Railroad Administration): an agency within the Department of Transportation. www.fra.dot.gov

MRO (Medical Review Officer): A licensed physician who has satisfactorily completed an examination administered by certifying organizations that provide proficiency training which meets qualifying criteria of the DOT for MRO’s.

The MRO is responsible for:

1. Receiving, reviewing, and verifying laboratory results generated by the BNSF drug testing program in accordance with applicable Federal and State laws and regulations and BNSF company policy;
2. Reporting verified drug test results to the DER or designee in a timely fashion; and
3. Advising BNSF of any additional testing or other requirements for BNSF employees or job applicants.

Non-Negative means a verified Positive test result that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.


**Observed Test** means a urine specimen collection where a same gender observer watches the employee’s urine exit the employee’s body into the collection container.

**Possess** means to have on one’s person or in one’s personal effects or under one’s control. As used in this policy, possession does not include control by virtue of presence in the employee’s personal residence or other similar location off railroad property.

**Private Health Care Provider:** A person trained and licensed to practice medicine.

**SAP (Substance Abuse Professional):** A person who evaluates employees who have violated a DOT alcohol and drug regulation, and makes recommendations concerning education, treatment, Follow-up Testing and aftercare.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.
Section 3.
Policy on the Use of Alcohol and Drugs

3.1 While on BNSF property, on-duty, or operating BNSF work equipment or vehicles, no employee may:
  • Use or possess alcohol;
  • Use or possess controlled substances (except as described in FRA 219.103 and Sections 3.2, 3.3 below) or illegally obtained drugs. Prohibited for on or off-duty FRA covered employees;
  • Possess drug paraphernalia;
  • Possess drug test adulterants or specimen substitutions;
  • Report for duty or remain on-duty or on property when his or her ability to work safely is impaired by alcohol, controlled substances or illegally obtained drugs;
  • Report for or remain on-duty or on property with a blood or breath-alcohol concentration greater than or equal to 0.02%;
  • Report for or remain on-duty or on property while exhibiting symptoms of alcohol or illicit or illegally obtained drugs.

3.2 The following additional restrictions apply to employees covered by the Hours of Service Act, per FRA statutes:
  • Use of alcohol within 4 hours of reporting for covered service, or, after receiving notice to report for covered service (whichever time is less) is prohibited.
  • Use of controlled substances at any time, whether on or off-duty is prohibited, except where both:
    1. Such use is prescribed by a private health care provider who has been informed of the employee’s assigned duties and has made a determination that the prescribed dosage is consistent with the employee’s safe performance of his or her assigned duties; and
    2. Such controlled substances are used at the prescribed dosage.

Prescription and over-the-counter medications.

3.3 Employees taking either prescribed or over-the-counter medications must be knowledgeable of potential adverse effects these medications have on judgment, decision-making, alertness, coordination, and reaction/response
time. The employee must notify his/her private health care provider(s) regarding the full scope of assigned duties to ensure that the use of medication at the prescribed dosage level is consistent with the safe performance of his/her duties.

Q. Is an employee required to contact the medical department or a supervisor to approve an over-the-counter or prescription medication?
A. No.

Q. What responsibility does an employee have when taking an over-the-counter or prescription medication?
A. An employee must be knowledgeable of potential adverse effects that medications have on judgment, decision making, alertness, coordination, and/or reaction/response time.

Q. How does an employee determine the effects of a prescription medication?
A. An employee should have a conversation with his or her private health care provider(s).

Q. What if an employee is being treated by more than one private health care provider?
A. The employee must inform at least one private health care provider of all medications prescribed. Furthermore, it is the private health care provider’s responsibility to indicate whether the use of the substance at the prescribed dosage level is consistent with the safe performance of the employee’s duties. The employee must observe any restrictions imposed with respect to the use of the substances in combination.

**Prescription and over-the-counter medications.**

Q. When would an employee taking over-the-counter or prescription medication be in violation of this policy?
Section 3 (cont.)

A. • If the prescription is not in the employee’s name.
   • If the medication is not taken at the prescribed dosage level.
   • If the substance has an adverse effect on the employee’s ability to work safely. (Reference: CFR Part 40.135 and 40.327)

Q. What happens if an employee is using over-the-counter or prescription medication and is required to take a drug test?

A. The employee should complete testing as required. Employees should record medication they are taking. If test results are positive, the Medical Review Officer (MRO) will determine whether a legitimate medical explanation exists for the test result. Certain prescription medications may cause an initial positive result from the laboratory. It is the role of the MRO to determine whether a legitimate medical explanation exists or if the test result should be verified as a positive drug test. The MRO will instruct the employee to provide medical documentation for review as appropriate. If the employee refuses to participate in testing, a violation of this policy will result. (See Section 7.4).

3.4 Employees may consume alcohol at pre-arranged business related events on company property provided the event:
   • Is authorized by the President, CEO, and Executive Vice President, or a Vice President,
   • Does not interfere with normal business operations,
   • Is restricted to designated locations.

3.5 BNSF reserves the right to verify a violation of this policy without the administration of drug and/or alcohol tests based on admission of substance use and/or documented observations made by railroad officers trained in “signs and symptoms” of drug and alcohol use, subject to applicable law.
Section 4
Forms of Alcohol and Drug Testing

4.1 When required, BNSF employees must participate in all aspects of the drug and alcohol testing program. Failure to do so constitutes refusal (Federal refusal mandates 9 months out of covered service), and can result in discipline, including dismissal. Employees who verify positive for controlled substances, adulterate or substitute samples, or confirm positive for alcohol are subject to discipline for violation of BNSF’s alcohol and drug policy. Admission of using controlled substances or alcohol at work may constitute a violation of BNSF’s alcohol and drug policy.

Q. How can I be tested?

A. Under Federal authority
   • Breath
   • Urine
   • Blood
   • Other matrices when approved

Under Company authority
   • Breath
   • Urine
   • Hair
   • Other matrices when approved

Testing Categories: Authority
   • Random (FRA, FMCSA, BNSF)
   • Post-Accident (FRA, FMCSA)
   • Reasonable Suspicion (FRA, FMCSA, BNSF)
   • Reasonable Cause (BNSF)
   • Return-to-Duty (FRA, FMCSA, BNSF)
   • Follow-up (FRA, FMCSA, BNSF)
   • Pre-Employment (FRA, FMCSA, BNSF)

Q. Is written notification of a negative drug test result required?

A. Federal regulations no longer require written notification. Therefore, employees who test negative for controlled substances will not be provided test results in writing.
4.2 Random Testing. The Medical Department issues computer-generated random selections for hours-of-service employees, CDL holders, certain exempt employees, and designated Class III Railroads. Random Testing requires drug screens and breath-alcohol testing. Employees selected for testing must provide the required specimens and complete the required paperwork and certifications. Employees may be tested at any time during their tour of duty on the test date. Compliance by the employee may be excused only in the case of a documented medical or family emergency. A medical emergency is defined as an acute medical condition requiring immediate emergency care.

Q. Who is subject to Random Testing?

A • All employees covered by the Hours of Service Act and those in commingled service are subject to Random Testing at any time while on-duty.
• Employees holding an active commercial driver’s license (CDL) are subject to Random Testing at any time while on-duty.
• Scheduled employees who transport BNSF employees as a Crew Hauler. (Includes Extra or Guaranteed Rotating Extra Board (GREB) positions that may be called upon at any time to perform Crew Hauler duties.)
• Scheduled employees who perform duties as Intermodal Equipment Operators. (Includes Crane Operator, Crane Director, Groundman, Hostler, Leadman, Extra or Guaranteed Rotating Extra Board (GREB) positions that may be called upon at any time to perform Intermodal duties).
• BNSF: Scheduled employees who perform Maintenance-of-Way activities. (In accordance with Section 412 of the Rail Safety Improvement Act HR-2095)
• BNSF: Exempt non-Hours-of-Service employees who supervise employees in safety-sensitive positions, who are assigned company vehicles, or who carry firearms, and all vice-presidents and above are subject to Random Testing under BNSF authority.
Q. What are the methods of selection for Random Testing?

A. BNSF’s random drug and alcohol testing program is operated by a combination of database and application software integrated for the purpose of generating and tracking random drug and alcohol tests.

I. Exempt Employees that perform Hours of Service (at a rate of at least once per quarter) are subject to FRA random testing. Employees are selected individually based on performance of Hours of Service. The donor and test date are specified by computer-generated random selection. The individual selected is to be tested.

II. Exempt Employees

Exempt non-Hours-of-Service employees are selected individually. The donor and test date are specified by computer-generated, random selection. The individual selected is to be tested.

III. Scheduled employees who work a position as a Crew Hauler. Employees are selected individually. The donor and test date are specified by computer generated, random selection. The individual selected is to be tested.

IV. Scheduled employees who perform duties as Intermodal Equipment Operators. Employees are selected individually. The donor and test date are specified by computer-generated, random selection. The individual selected is to be tested.

V. Scheduled employees who perform Maintenance-of-Way activities. Employees are selected individually. The donor and test date are specified by computer-generated, random selection. The individual selected is to be tested. (In accordance with Section 412 of the Rail Safety Improvement Act HR-2095)

VI. FMCSA CDL Drivers

CDL Drivers holding an active commercial driver’s license are selected individually. The donor and test date are specified by computer-generated random selection. The individual selected is to be tested.
Section 4 (cont.)

VII. FRA Hours of Service:

• Road Trains

BNSF uses a modified site testing method to test members of road train crews. Window opens at selected date and time, remaining open for four hours. During the window, the Railroad officer will test 1.) the first outbound road crew reporting for covered service during the window, and 2.) the first inbound road crew arriving at final terminal. Arrival at final terminal is defined by yard, station, terminal, yard office, lodging facility, or mechanical device such as an electronic reader.

• Road Trains

If only one crew meeting either of these criteria is available, then only one crew will be tested. If no crews are available, the test is canceled. Road train tests cannot be rescheduled to a different date. Road trains include all train designations without a "Y" or yard code designation, including road switchers.

• Yard Trains

Yard trains are selected by train symbol. At any time on the test date, the Railroad officer will test the crew assigned to the selected yard train symbol. The crew includes all train crew members, trainees, and switchmen. If no crew is working the train with the symbol selected on the test date, the test is canceled. Yard train tests cannot be rescheduled to a different date.

• Mechanical

Employees who perform Hours of Service at a rate of at least once per quarter as locomotive movers are subject to FRA Random Testing. Positions for mechanical locomotive movers are specified individually by computer-generated, random selection. The individual working the position selected is to be tested.

• Train Dispatchers, Signal, and Other Hours of Service (Hostlers, Pilots, Bridge Tenders, Clerk Tower Operators.)

Dispatchers, Signal Hours-of-Service employees, and other Hours-of-Service employees are selected individually based on ICC code. The donor and test date
are specified by computer generated random selection. The individual selected is to be tested.

4.3.1 **FRA Post-Accident Testing** is conducted after any event that involves one or more of the listed circumstances:

- Major Train Accident: Any train accident that meets the current FRA Damage Threshold, and results in one or more of the following:
  1. A fatality.
  2. A release of hazardous materials with an evacuation or a reportable injury, or
  3. Damage to railroad property totaling more than $1,000,000.

- Impact Accident: An impact accident meeting the current FRA Damage Threshold and resulting in either:
  1. A reportable injury, or
  2. Damage to railroad property totaling $150,000 or more.

- Fatal Train Incident: A train accident involving a fatality to an on-duty railroad employee.

- Passenger Train Accident: Reportable injury to any passenger or crewmember in a passenger train accident, which meets the current FRA Damage Threshold.

4.3.2 Rail/highway crossing accidents, accidents entirely attributable to natural causes, trespassing, or vandalism do not qualify for FRA Post-Accident Testing.

4.4 **FMCSA Post-Accident Testing.** Federal statute requires drug screens and breath-alcohol testing. CDL Holders operating Commercial Motor Vehicles must be tested whenever:

- The accident results in a fatality.
- The driver receives a citation and the accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident.
- The driver receives a citation and one or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
Section 4 (cont.)

4.5 Reasonable Suspicion Testing. All BNSF employees are subject to Reasonable Suspicion Testing. This testing may include a urine drug screen, a breath-alcohol test, or both as deemed appropriate by management. Reasonable Suspicion Testing is performed when a supervisor suspects an employee is under the influence of drugs and/or alcohol, based on specific, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.

4.5.1 For on-duty employees covered by the Hours of Service Act, and for employees holding active Commercial Driver's Licenses, Reasonable Suspicion Testing is mandated by the U.S. Department of Transportation (federal authority), using federal forms. For all other employees (including off-duty HOS employees), Reasonable Suspicion Testing is performed under BNSF's authority, using BNSF company forms.

4.5.2 Employees tested for drugs using Reasonable Suspicion procedures will be removed from service pending the receipt of the results.

4.6 BNSF Reasonable Cause Testing

BNSF employees are subject to BNSF testing at any time while on-duty. Testing is performed under BNSF authority, using BNSF company forms, and may include a urine drug screen and/or a breath-alcohol test, as deemed appropriate by management. BNSF Reasonable Cause Testing may be used whenever:

• Any employee is involved in an accident, injury, near-miss or incident in which evidence indicates the employee’s performance may have caused or contributed to the incident or its severity, and the employee exhibits any of the following behaviors:

1. Neglect of established safety or other BNSF procedures

2. Errors in judgment and control.

3. Inability of employee to reasonably account details of an accident and/or incident; or

4. Altercations and extreme display of negative behavior.

4.6.1 BNSF Reasonable Cause Testing should be performed using BNSF authority exclusively. Managers must make
an effort to conduct drug and/or alcohol testing without exceeding hours of service.

4.6.2 Employees tested for drugs using Reasonable Cause procedures will not be withheld from service pending receipt of drug test results, but may be withheld from service as a result of a rules violation.

4.7 Return-to-Duty Testing. (DOT Authority). Employees must pass a drug screen and/or a breath-alcohol test prior to returning to duty after:

- a removal from service following verified/confirmed positive, adulterated, or substituted test results,
- possession, refusal to test, or Federal violations of this policy,

The employee must successfully complete a Substance Abuse Professional’s recommendations including prescribed education and/or treatment, when returning to duty under federal authority (FRA or FMCSA). DOT Return-to-Duty tests may be required to be conducted under direct observation.

4.7.1 Return-to-Service Testing (BNSF Authority).

Employees must pass a drug screen and/or a breath-alcohol test prior to returning to service after:

- an absence greater than six months (drug screen only),
- a removal from service following verified/confirmed positive, adulterated, or substituted test results,
- admission of use, possession, refusal to test, or company authority violations of this policy,

The employee must successfully complete an EAP Manager’s recommendations including prescribed education and/or treatment, when returning to service under company authority (BNSF).

4.8 Follow-up Testing (DOT Authority). Employees (including Class III Railroad Employees) permitted to return to duty following a federal violation of this policy, will be required to participate in Follow-up Testing as determined appropriate by a Substance Abuse Professional when returning under federal authority (FRA or FMCSA). A minimum of six (6) unannounced tests will be conducted during the first year following the return to duty. Additional Follow-up Testing may be specified by the SAP for a maximum of five (5) years.
Section 4 (cont.)

DOT Follow-Up tests (FRA or FMCSA) may be required to be conducted under direct observation.

4.8.1 Follow-up Testing (BNSF Authority). Employees (including Class III Railroad Employees) permitted to return to service following a company authority violation of this policy, will be required to participate in Follow-up Testing as determined appropriate by an EAP Manager when returning under company authority (BNSF). A minimum of six (6) unannounced tests will be conducted during the first year following the return to service. Additional Follow-up Testing may be specified by the EAP Manager for a maximum of five (5) years. An employee’s Follow-up urine test result reported as dilute-negative may require future Follow-Up tests to be performed under direct observation.

4.9 Pre-Employment Testing. Each BNSF new hire must pass a drug screen prior to employment with BNSF. New hires who test positive for controlled substances, or who adulterate, substitute or otherwise tamper with their urine sample, will be denied employment.

Q. Who is tested?
A. • All new hires.
  • Transfers into covered service from positions not performing hours-of-service functions.
  • Transfers to positions requiring a CDL.

Q. Must BNSF check on the drug and alcohol testing record of employees that will be performing safety-sensitive duties?
A. Yes, according to CFR 49, Part 40, BNSF must require first-time candidates for employment in safety-sensitive duties who were previously employed by DOT employers, to provide drug and alcohol testing information from two years prior to the date of the candidate’s application. Furthermore, this information is also required of current BNSF employees who transfer into safety-sensitive duties from non-HOS positions and positions requiring a Commercial Drivers License if they have worked for BNSF less than the two-year requirement. If the employee does not provide the information, BNSF will not permit him or her to perform safety-sensitive
functions. BNSF will release information regarding an employee's drug and alcohol tests to subsequent employers when specific, written consent from an employee authorizing the release is received.

Q. What if the employment candidate has a previous alcohol and drug violation from the past two years?

A. If the employee had a positive test, refusal to test, or other violations under DOT regulations, the employee will not be permitted to perform safety-sensitive functions for BNSF until the employee documents successful completion of the return-to-duty process including follow-up test information.

4.9.1 Employees who test positive for drugs will be denied a requested transfer, and be subject to discipline for violation of BNSF's alcohol and drug policy.

4.9.2 BNSF is under no obligation to provide SAP evaluation or any subsequent recommended education or treatment for an individual who has violated a DOT alcohol and drug regulation. A listing of SAPs is available with names, contact information, and will be provided to individuals at their request.

4.9.3 Employees who hold positions subject to FMCSA mandated Random Testing must pass a Federal drug screen if, for any reason, they have been not been subject to Random Testing for a period of six (6) months or more.
Section 5.
Alcohol and Drug Testing Procedures

5.1 At least one (1) BNSF supervisor must oversee testing activities related to:
   • Random Drug Testing.
      (In the case of Random Testing, a BNSF supervisor need not be physically present at the test site, but must be readily available by phone or pager, should questions or problems arise.)
   • Post-Accident Testing for FRA and FMCSA.
      (Note: For FRA Post-Accident Testing, the supervisor must NOT have been directly involved in the incident.)
   • BNSF Reasonable Cause Testing.

5.2 At least one (1) BNSF supervisor, trained in recognition of signs and symptoms related to alcohol and drug abuse must make the determination to perform breath-alcohol testing related to:
   • FRA, FMCSA or BNSF Reasonable Suspicion Testing.

5.3 At least two (2) BNSF supervisors, one of whom is trained in recognition of signs and symptoms related to alcohol and drug abuse must make the determination to perform drug testing related to:
   • FRA, FMCSA or BNSF Reasonable Suspicion Testing.

5.4 The Medical Department will oversee testing activities related to:
   • Return-to-Duty Testing
   • Follow-up Testing
   • Pre-Employment Testing

5.5 All breath-alcohol and urine collections will be performed by qualified technicians or collectors, certified to be proficient in urine and breath-alcohol specimen collection, as specified in 49 CFR Part 40.

5.6 All breath-alcohol and urine collections will be performed according to procedures specified in 49 CFR Part 40, except BNSF authority Return-to-Service tests and BNSF authority Follow-Up tests may be conducted under observed conditions.

5.7 Urine and breath-alcohol collections will be performed
Section 5 (cont.)

in a location and manner that provide reasonable privacy for the employee being tested, consistent with applicable regulations.

5.8 BNSF supervisors participating in testing activities must respect the confidentiality of test procedures and results they may obtain during the course of testing.

5.9 Recommended Procedures for Employees Providing a Urine Specimen

1) Present photo identification to collection official. If no photo ID is available, a BNSF supervisor can identify employee. BNSF authorized testing requires that employees provide their social security number or seven digit employee identification number (no letters) for test tracking purposes by the BNSF Medical Department.

2) You will be directed to remove and leave outside the testing area any outer clothing (e.g. coverall, jacket, coat, hat...etc) and any electronic device, briefcase, purse, or other personal belongings.

3) You will be directed to empty your pockets and display the items in them to ensure no items present could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen or conceal an adulterant, you can place the items back into your pockets. Items include keys, wallets, money or jewelry.

   Items to be secured by the collector before specimen collections include eye drops, inhalers, medications, cosmetic make-up, cell phones, pagers or any items that could be used to tamper a specimen. These items will be placed in an envelope and the envelope sealed until specimen collection process is completed, then returned to the donor.

4) Wash and dry hands prior to providing a specimen

5) You will be directed by the collector to take the specimen collection container, go into the restroom and make an attempt to void. After voiding, give specimen to collection official.
Section 5 (cont.)

If you do not make an attempt to provide a urine specimen—the testing process is stopped and handled as a refusal.

6) An Airblank is required on the Evidential Breath Testing Device (EBT) before beginning the confirmation breath test to ensure the EBT does not have any residual alcohol. After the waiting period the collector will again instruct you to blow into the EBT mouthpiece for approximately 6 seconds or until the EBT indicates that a successful test has been recorded.

7) Watch collection official seal the specimen by placing bottle custody seal over the bottle cap and down the sides.

8) Employee and collection official should complete the information required on bottle custody seal. This certifies that the specimen is yours.

9) Read and sign CHAIN OF CUSTODY FORM certifying that the specimen identified as having been collected from you is in fact your specimen.

10) You may record on the back-side of your copy of the CHAIN OF CUSTODY FORM medications taken or administered in the past 30 days whether or not by prescription.

11) Secure your copy of the completed CHAIN OF CUSTODY FORM that certifies proper completion of the collection.

5.10 Recommended Procedures for Employees Providing a Breath-Alcohol Sample

1) Present photo identification to collection official. If no photo ID is available, a BNSF supervisor can identify employee. BNSF authorized testing requires that employees provide their social security number or seven digit employee identification number (no letters) for test tracking purposes by the BNSF Medical Department.

2) The collector will instruct you to complete step two (2) of the Breath-Alcohol Testing Form.

3) The collector will then instruct you to blow into the
Evidential Breath Testing (EBT) mouthpiece for approximately 6 seconds or until the EBT indicates that a successful test has been recorded.

4) If the test is **negative (less than 0.02)** the test is complete and the collector will instruct you to sign and date Step four (4) of the Breath-Alcohol Testing Form.

5) If the test is **positive (0.020 or greater)** the collector will instruct you to wait 15 to 20 minutes for a confirmation test. During this time period you should not smoke, eat, drink fluids, belch, or put anything in your mouth.

6) An Airblank is required on the Evidential Breath Testing Device (EBT) before beginning the confirmation breath test to ensure the EBT does not have any residual alcohol. After the waiting period the collector will again instruct you to blow into the EBT Evidential Breath Testing (EBT) mouthpiece for approximately 6 seconds or until the EBT indicates that a successful test has been recorded.

7) You will then be instructed by the collector to sign and date Step Four (4) of the Breath-Alcohol Testing Form.

8) Secure your copy of the completed Breath-Alcohol Testing Form that certifies proper completion of the collection.
Section 6.
Handling and Interpretation of Test Results

6.1 BNSF’s Medical Department receives all alcohol and drug test results.

6.2 Positive breath-alcohol test results will be communicated to the appropriate BNSF supervisor and the employee by the breath-alcohol technician immediately after a test is completed.

6.3 Any employee whose blood, or breath-alcohol tests indicate a level greater than or equal to 0.02% (positive test) will be considered in violation of BNSF policy, subject to applicable law. Blood or breath-alcohol concentrations greater than or equal to 0.04% are also in violation of federal statutes for safety-sensitive employees, provided federal authority forms are used. FRA also requires that the employee must be removed from covered service until at least the next duty period or eight hours (whichever is more) if their confirmed alcohol level is 0.02% to 0.039%. This is not a violation of FRA prohibitions; however, any alcohol result greater than or equal to 0.02% is a violation of BNSF Policy, subject to applicable law.

6.4 All positive drug test results are reported by the testing laboratory directly to the BNSF Medical Review Officer (MRO). After the positive test result is received, the MRO will discuss the findings directly with the employee and determine whether any factors exist that could affect test validity, or if there is a valid medical reason for the positive result. After positive test results are verified, the MRO will then notify BNSF. The MRO will verify a positive test result if unable to contact the employee within ten days of receiving the test result.

6.5 When the MRO informs BNSF of a dilute negative test result, the employee will be required to take another test immediately. Pre-Employment and Return-to-Duty are the only testing categories for which re-collections for a dilute-negative urine specimen apply. Such urine specimens may be collected under direct observation, when there is another basis for use of direct observation.

When a retest is required, an employee will be provided the minimum possible advance notice. Re-collection testing will be conducted on property when practical. When an employee is directed to take another test and the employee declines to do so, the employee has refused the test for purpose of this part and DOT agency regulations, if applicable.
6.5.1 When the MRO informs BNSF a urine test was reported by the testing laboratory as Invalid and the test result has been canceled by the MRO, the employee will be required to take another test immediately under direct observation. In accordance with DOT guidelines, federal authority (FRA or FMCSA). Return-to-Duty and Follow-Up tests may be conducted under direct observation.

6.6 After review of drug and/or alcohol test results by the Medical Review Officer (MRO), any information from records or information obtained during the review of the results of any specimen submitted by an employee/job applicant may be released to or shared with the DER or designee. This information may be released or shared with BNSF supervisors, legal, claims, human resources, EAP representatives, and labor relations personnel as necessary to facilitate discipline, assessment, treatment, return-to-work and follow-up processes; and for the specific purpose of reporting potential safety risks by virtue of medications taken, conditions suffered, or other circumstances.

6.7 Employees who wish BNSF to release drug and alcohol testing information to their union representative, attorney, or other third party must submit a written request to the Medical Department.

6.8 Any employee whose urine contains levels of controlled substances exceeding the current Federal thresholds (positive test) will be considered in violation of BNSF policy.

6.9 Employees who test positive for drugs may request a reconfirmation test provided the request is made in writing within 72 hours from the time and date the employee is notified of the test results by the MRO. The written request will provide the address where the reconfirmation test result will be mailed.

- The employee will remain out of service pending results of the reconfirmation test.
- If the split specimen test is negative, the entire test is considered cancelled (no violation).
- After the MRO has verified the drug test result including a split specimen, no additional test results will be considered.

6.10 No retesting, additional testing or alternate testing, such as blood alcohol testing, is offered for breath-alcohol tests. The results of a properly conducted breath-alcohol test are considered final and valid.
Section 7.
Guidelines for Alcohol and Drug Violations

7.1 Following an employee’s first positive drug or alcohol test, they will be removed from service pending evaluation by a SAP and subject to the guidelines set forth in this policy.

7.2 For positive drug tests, the Medical Department will notify the supervisor who will remove the employee from service. The following guidelines will apply:

- Removal-from-service will be effective immediately following the MRO verification of the positive test result with the employee.
- The Medical Department will contact the employee’s supervisor by phone promptly for the employee’s removal from service, and for scheduling the appropriate disciplinary action.
- The employee, the supervisor and the EAP Manager will be notified in writing of the employee’s positive results.

7.3 A positive result of a breath-alcohol test is determined at the time of the test. The appropriate supervisor will make an effort to coordinate with the employee to arrange transportation to the employee’s home or tie-up point. The supervisor will then notify the EAP Manager and the Medical Department to report the test, employee name, SSN or employee ID, and the actions taken.

7.4 Employees refusing to participate in any federal or BNSF drug test will be removed from service immediately and disqualified from service for a period of at least nine (9) months, and subject to dismissal from service with BNSF.

7.5 All alcohol and drug violations are considered serious. Drug and alcohol violations will be considered with any and all existing violations on an individual’s employment record for assessing appropriate discipline.

7.6 Waivers. Available for first time drug and alcohol violations only. Upon written notification of the Investigation, the employee may also be offered, in writing, a Waiver of the formal Investigation required under collective bargaining agreements. The employee may exercise the Waiver at any time prior to the investigation date specified in the written notification. If the employee elects to complete and sign the Waiver, the
employee is admitting to the violation. The violation will be recorded in the employee's personal record.

7.7 Special Requirements for Locomotive Engineers.
FRA specifies additional restrictions and procedures regarding alcohol and drug use for locomotive Engineers in 49 CFR 240.119. These restrictions include the following:

• No person with an active substance abuse problem may hold an Engineer certification. An Engineer evaluated by a Substance Abuse Professional and found to have an active substance abuse problem will be ineligible to hold a certificate during evaluation and any required primary treatment. This restriction applies to voluntary referral cases as well.

• No Engineer can return to work following a drug and/or alcohol violation, including co-worker referrals, until the evaluation and return-to-work procedures specified in Section 8 of this policy are successfully completed.

• After a Federal breath-alcohol test showing 0.04% or greater, an Engineer is ineligible to hold a certificate for nine (9) months. If the violation qualifies for handling exclusively under the coworker report procedures specified in Section 10 of this policy, the nine-month decertification period is waived.

• Following the second violation for using controlled substances on or off-duty, an Engineer is ineligible to hold a certificate for two (2) years. More than two such violations will render an Engineer ineligible to hold a certificate for five (5) years.

• An Engineer whose certification is suspended due to an alcohol violation will be notified in writing of the suspension and the Engineer's right to a hearing, as specified in 49 CFR 240.307.

See BNSF Policy for Employee Performance Accountability for discipline related items. This policy can be found electronically on the BNSF internal home page under the policy tab.
Section 8.
EAP and Return to Service

8.1 The Employee Assistance Program provides evaluation, counseling and support services to employees.

8.2 All employees having a first time violation of this policy will be referred to an EAP Manager, either by the employee's supervisor or the Medical Department.

8.3 Upon removal from service, the employee must contact the EAP Manager within 5 days to schedule an evaluation. Otherwise, the employee is subject to immediate additional discipline for failure to follow instructions.

8.4 The EAP Manager will provide the employee with Substance Abuse Professional (SAP) contact information. Employee must schedule and complete an initial, face-to-face SAP evaluation within ten (10) days of receiving this information from the EAP Manager. Employee will pay expenses such as travel and SAP fees not covered by the employee's insurance plans. Failure to complete the initial, face-to-face SAP evaluation may subject the employee to dismissal for failure to follow instructions.

8.5 If the SAP determines the employee is not affected by an identifiable and treatable mental or physical disorder, the employee upon recommendation from the EAP Manager, and passing a return-to-work drug/alcohol test, shall be returned to service within five (5) days subject to the limitations specified in Section 7 of this policy.

8.6 Employees will be granted Leave of Absence (LOA) in accordance with BNSF's LOA policies. If the SAP determines the employee is alcohol or drug dependent, the employee will be approved for a medical leave of absence extending up to sixty (60) days, for initial treatment.

8.7 Employees may be required by the SAP and/or the EAP Manager to participate in education, treatment programs, and/or after-care before returning to work and during the Follow-up Testing period. Failure to complete SAP and/or EAP recommended treatment and/or education programs may subject the employee to discipline, including dismissal.
8.8 After the employee has completed treatment, the SAP must evaluate the employee in person and establish an aftercare and follow-up drug and/or alcohol testing regimen to be implemented upon the employee’s return to work. Follow-up Testing will include a minimum of six (6) tests within the first twelve months following the employee's return-to-service. Follow-up Testing for locomotive engineers must include at least six (6) alcohol tests and six (6) drug tests within the first twelve months. Additional Follow-up Testing may be specified by the SAP for a maximum of five (5) years following the employee's return to service. The Substance Abuse Professional may terminate the Follow-up Testing at any time after the initial tests required during the first twelve months have been administered.

8.9 When the Return-to-Duty test is negative, the employee may return to work with the approval of his supervisor, the EAP Manager, and the Medical Department, subject to the limitations specified in this policy.

8.10 If a Return-to-Duty or Follow-Up test is positive, the employee will be considered in violation of BNSF's alcohol and drug policy.
Section 9.
Voluntary EAP Enrollment

9.1 Employees with alcohol and drug dependency problems are encouraged to take the opportunity to obtain counseling or treatment before these problems manifest themselves in violations of this policy. Employees may elect to voluntarily enroll in BNSF’s Employee Assistance Program without being subject to discipline. Employees are not limited regarding the number of times they can request voluntary enrollment.

An employee may seek assistance by initiating direct contact with an EAP Manager during non-duty hours (i.e., at a time when the employee is off-duty/off property); or while unimpaired and otherwise in compliance with the BNSF’s Policy on the use of Alcohol and Drugs.

Employees will also be granted enrollment if an employee’s supervisor, coworker, or representative of the employees collective bargaining unit contacts the EAP Manager, and subsequent interviews result in the employee’s voluntary enrollment.

Voluntary referral and subsequent handling, including counseling and treatment will be considered confidential. This rule of confidentiality is waived

• if the employee at any time refuses to cooperate in a recommended course of counseling or treatment; and or

• after investigation, the employee is determined to have been involved in an alcohol or drug related disciplinary offense.

The Employee Assistance Program handles all voluntary enrollments confidentially, with an exception for engineers:

• With respect to a certified locomotive Engineer or a candidate for certification, per 49 CFR Part 240.119 (e), confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor, official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a
recommended course of counseling or treatment.

9.2 **Voluntary enrollment is not available under the following circumstances:**

- While an employee is under investigation or discipline for a positive alcohol/drug test or violation of this policy,
- After an employee is charged with an incident or rules violation associated with alcohol or drug use,
- During the time when an employee has committed an act which may reasonably be subject to discipline, but no formal charge has been leveled,
- Once an employee has been notified they are to be tested for alcohol and/or drugs, and
- When the employee is under the influence of controlled substances or alcohol when on-duty or on company property.

9.3 Within ten (10) days of initial contact with the employee, the EAP Manager will schedule an initial assessment with a Substance Abuse Professional.

9.4 The employee secures his/her own medical leave of absence with their immediate supervisor.

- Employees enrolling voluntarily in EAP are required to follow all specified treatment and education instructions.
- Employees may be returned to service on the recommendation of the EAP Manager (BNSF) or a Substance Abuse Professional (FRA or FMCSA).
Section 10.
Co-Worker Report Policy

This section is designed to foster employee participation in preventing violations of BNSF’s alcohol and drug policy and encourage co-worker participation. An employee eligible for treatment under the provisions of this Section may avoid discipline based on the co-worker report and maintain an employment relationship with BNSF provided the employee fulfills all conditions outlined below.

10.1 To qualify for handling under this section of the policy, the following conditions must exist:

1. The employee must be engaged in work covered by the Hours of Service Act.
2. The employee must have no prior alcohol or drug offenses.
3. The alleged violation must come to a railroad officer’s attention exclusively as the result of a report by a coworker that:
   • An employee is apparently unsafe to work with, or,
   • An employee is or appeared to be in violation of BNSF’s alcohol and drug policy.

10.2 Upon receiving such a report, the railroad officer will investigate the report by holding a counseling session with the employee as follows:

• A BNSF supervisor, trained in signs and symptoms, will make a determination which may involve a Federal Reasonable Suspicion test, whether a violation occurred and inform the employee of the specific allegations made. The name of the person making the report will not be revealed.

• A BNSF supervisor will inform the employee of the consequences of alcohol or drug abuse as outlined in this policy.

• The supervisor will inform the employee of the services available through BNSF’s Employee Assistance Program and employee rights under the co-worker report procedures as outlined in this policy.

• The supervisor will ask the employee whether he or she wishes to work with the EAP Manager using the co-worker report procedures as outlined in this policy.

10.3 The employee may elect to waive the Investigation for the rule violation and contact an EAP Manager to schedule an assessment by a SAP. The formal investigation will be canceled if the employee signs the waiver. The employee will be referred to the Employee Assistance Program for evaluation and treatment.
• The employee has five days from accepting the Waiver to contact the EAP Manager.
• Within ten days of contacting the EAP Manager the employee must complete a SAP evaluation.
• This process may be extended by the SAP to maximum of 20 days if further evaluation is required.
If the SAP determines the employee is affected by psychological or chemical dependence or identifies a treatable mental or physical disorder involving the abuse of alcohol and/or drugs:
• Employees will be granted medical leave of absence extending up to sixty (60) days, for initial treatment.
• The employee must agree to undertake and successfully complete a course of treatment deemed acceptable by the SAP.
• When the employee has established control over the substance abuse problem he/she will be returned to service on the recommendation of the SAP. Employees returning to service after taking advantage of Co-Worker Report process must complete Federal Return-to-Duty testing and will be required to complete any Follow Up testing recommended by the SAP. This process may also require a successful return-to-service medical examination.
• Upon the employee’s return to duty, he/she may be required to participate in a follow-up program. Follow-up Testing will include a minimum of six (6) tests within the first twelve months following the employee’s return to service. Follow-up Testing for locomotive engineers must include at least six (6) alcohol tests and six (6) drug tests within the first twelve months. Additional Follow-up Testing may be specified by the SAP for a maximum of five (5) years following the employee’s return to service. The Substance Abuse Professional may terminate the Follow-up Testing at any time after the initial tests required during the first twelve months have been administered.
• If the employee refuses to participate in a recommended course of counseling or treatment, provisions of Section 8.7 of this Policy will apply.
Section 10 (cont.)

When treatment is not required:
If the SAP determines the employee is not affected by an identifiable and treatable mental or physical disorder,

1. The railroad must return the employee to service within 5 days after completion of the evaluation.

2. During or following the out-of-service period, the railroad may require the employee to participate in a program of education and training concerning the effects of alcohol and drugs on occupational or transportation safety. If there has been a violation of federal regulations (219.101 or 219.102) the railroad must conduct federal Return-to-Duty and Follow-Up test (as described in 219.104) of an employee who Waives an Investigation and is determined to be ready return to service under 219.405.

10.4 If the employee does not exercise the Waiver, an investigation will be scheduled and proceed normally per applicable labor agreements.

10.5 If the employee does not exercise the Waiver, and the railroad officer(s) determines, through direct observation, that the employee exhibits signs or symptoms of drug or alcohol abuse, the employee will be immediately alcohol and/or drug tested using Reasonable Suspicion Testing procedures. The employee will be withheld from service pending the results of the test.
Section 11.
OPERATION STOP: Peer Prevention Program

11.1 BNSF’s Operation Stop Program began in 1984 and is a grassroots effort comprised of concerned co-workers who believe and promote a workplace free from the problems associated with the use and/or abuse of alcohol and other drugs.

Mission Statement
To promote a workplace that is free from the problems associated with the use of alcohol and other drugs, thereby promoting a healthier lifestyle for our employees and reducing the incidence of workplace injuries.

According to the 2007 data from the Substance Abuse and Mental Health Services Administration (SAMHSA):

- An estimated 19.9 million Americans were current illicit drug users. The rate of current illicit drug use among Americans has remained stable since 2002, hovering around 8 percent.
- Nearly 58 million people, or more than one-fifth (23.3 percent) of the population age 12 and over, participated in binge drinking (having 5 or more drinks on the same occasion at least once in the last 30 days). About 17 million people or 6.9 percent of the population age 12 and over, reported heavy drinking (defined as binge drinking on at least 5 of the past 30 days).
- Among adults ages 50-59, current illicit drug use increased from 2.7 percent to 5.0 percent between 2002 and 2007, as the baby boom population continued to enter this age bracket.
- In 2007, an estimated 22.3 million persons (9.0 percent of the population age 12 and over) were classified with substance dependence or abuse in the past year. Of these,
  - 15.5 million abused or were dependent on alcohol,
  - 3.7 million abused or were dependent on illicit drugs, and
  - 3.2 million abused or were dependent on both alcohol and illicit drugs.

The prevalence of substance use among workers is lower than the prevalence among the unemployed, but a sizable number of employed individuals use drugs and alcohol (SAMHSA 2007).

- In 2007, 8.4 percent of those employed full-time were current illicit drug users, and 8.8 percent reported heavy alcohol use.
Section 11 (cont.)

The Goals of Operation Stop are to:

- Promote an alcohol and drug-free workplace
- Prevent employees from reporting to work under the influence
- Save lives and jobs
- Outreach into the communities
- Engage in activities designed to promote awareness of the mission statement
- Distribute educational materials
- Promote a sensible alternative instead of ignoring behaviors and risking the consequences, including loss of job and/or physical harm
- Create a proactive, non-threatening support system for all employees who may be experiencing personal problems or issues
- Encourage healthy and safe behaviors
- Respect co-worker confidentiality

Operation Stop Interventions *DO NOT*:

- Report any information back to management
- Place the employee in the disciplinary arena
- Appear on employee’s personnel record

For additional information about the Operation Stop Program, locate a committee in your area or if your area has not formed an Operation Stop Committee, contact (309) 345-6208 to reach the Program Director.
Section 12.
Policy Implication

12.1 Nothing in this policy is intended or shall be construed to create or form the basis of an express or implied contract or covenant of employment between BNSF and any employee or group of employees.

12.2 BNSF reserves the right to alter, modify, expand, amend or cancel this policy and the programs described herein at any time, without notice.

12.3 BNSF reserves the exclusive right to interpret and apply this policy.
Section 13.
Medical Department Contact Information

*Important Contacts:*

If you have questions about substance abuse testing, dial… (817) 352-1648

Medical and Environmental Health Department
Medical and Environmental Health 24 Hour Consolidated Help Line 1-888-634-1011

wait for the recording to start, then select options from menu…

For confidential assistance with personal, emotional, or substance abuse issues, dial

Employee Assistance Program (EAP)
1-800-383-2327

This number provides direction to area EAP Managers. For more information about the EAP refer to Section 2 and Section 8 of this policy.

For an electronic copy of this policy use

http://bnsfweb.bnsf.com/policies.html

Questions regarding this policy should be referred to the Assistant Vice President Medical and Environmental Health.
“Support Your Local Committee”