

DRUG AND ALCOHOL TESTING OF RAILROAD EMPLOYEE BY STATE OR LOCAL AUTHORITIES

CONRAIL employees involved in a grade crossing or other railroad accident have no obligation to submit to a breath or other toxicological test requested by a state or local law enforcement authority **unless** the authority has **specific cause to believe the individual** they wish to test has committed a criminal law violation, which may include being impaired by alcohol or drugs.

Section 205 of the federal Railroad Safety Act of 1970 (45 U.S.C. 434) prohibits states from adopting laws with respect to railroad safety if the Federal Railroad Administration (FRA) has adopted standards governing the subject matter, unless the state requirement: 1) is necessary to eliminate a local safety hazard; and 2) is not incompatible with Federal Law: and 3) will not unduly burden interstate commerce. In no event may localities adopt laws with respect to railroad safety.

CROSSING ACCIDENTS

In Part 219 of Title 49 of the Code of Federal Regulations, the FRA has promulgated broad regulations regarding the control of the use of alcohol and drugs by railroad employees. These regulations include very specific provisions concerning testing operating employees for reasonable cause and after major accidents. In adopting these regulations, the FRA specifically determined that in the absence of reasonable cause to believe a specific individual is impaired based on his appearance or behavior, train crews should not be tested in connection with collisions of a train and an automotive vehicle at a rail/highway grade crossing. (49 CFR 219.201(b))

TRESPASSER FATALITY

The FRA also determined testing should not be required in the case of a fatality to a trespasser. 49 CFR 219.13 specifies that the regulations have the preemptive effect contemplated by Section 205 of the 1970 Federal Railroad Safety Act.

IF TEST REQUESTED

If a CONRAIL employee is requested to submit to testing after a grade crossing accident, he should show this instruction to the law enforcement officer and may state that he is **not** volunteering to be tested. The employee may also request a specific statement of the legal requirement under which the officer asserts the authority to test, including a correct citation to it. In some instances, law enforcement authorities have attempted to apply highway laws requiring testing to CONRAIL crews even though the laws clearly did not cover railroad employees. If the officer insists that the employee be tested, the employee may cooperate but be sure to obtain the name and identification number of all officers involved in requiring the test to be performed.

TRAIN/VEHICLE ACCIDENT REPORT

CONRAIL employees involved in a highway crossing accident involving a train and motor vehicle will be governed by the following instructions:

1. Employees must be sure all injured parties are cared for and police emergency personnel are requested.
2. Police responding to the scene must be informed that a train is not a "vehicle" as described in motor vehicle accident reports. They should note that the accident involved a "train."
3. Whenever a grade crossing accident or a trespasser incident is investigated by a law enforcement officer, when requested, the Engineer should give his name and position with CONRAIL. In addition, tell the officer the speed of the train, whether crossing protection was functioning, whether whistle was sounded at whistle post, whether headlight was displayed and the crew's on duty time. If requested, it is proper to tell the officer the train's origin and destination, how many cars in the train and what if any hazardous materials are in the train.
4. Any other specific information about the incident should not be given. The Engineer should advise the officer that he will have to consult with either his personal or company's counsel about such matters.
5. An Engineer's authority to operate a locomotive is controlled by Federal Regulations at 49 CFR Part 209. His motor vehicle driver's license number is not required on the accident report. His motor vehicle license is in no way connected to his authority to operate a locomotive.
6. All names, addresses and telephone numbers of witnesses should be written down and the information given to railroad officials responding to accident scene or to the Train Dispatcher.
7. Employees are prohibited from taking photographs of the accident scene.
8. The Engineers must not leave the engine or control compartment unless potential danger exists, he is relieved, or he is threatened with arrest by local authorities. The Engineer is responsible for controlling the movement of the train and can only be removed when relieved by another qualified Engineer.

CONRAIL employees will cooperate with local authorities conducting an investigation of an accident scene.