

Amtrak ORB Template

FRA Request	BLET / ATDA / BRS / TCU / UTU Response	Amtrak Response
<p>FRA recommended that Amtrak review all ORB cases involving locomotive engineers to ensure that any engineer diagnosed with an active substance abuse problem was handled in accordance with Federal regulations.</p>	<p>ORB is a peer-operated referral program that was created with an absolute firewall between it and Amtrak. This firewall is intended to provide the confidentiality without which ORB would not have succeeded for more than 20 years, and the BLET is not agreeable to weakening or breaching this firewall in any manner.</p>	
<p>FRA indicated that it remains concerned that ORB has not provided documentation indicating that locomotive engineers who mark off with a possible substance abuse problem are receiving the appropriate diagnosis and treatment.</p>	<p>As indicated below, BLET supports providing FRA with documentation that will allay its concerns, provided the documentation fully protects confidentiality, except in cases where such confidentiality is expressly waived pursuant to existing collective bargaining agreements.</p>	
<p>Section 219.105(b) requires Amtrak to exercise “due diligence” to ensure that covered employees comply with the alcohol and drug prohibitions of §§ 219.101 and 219.102. Amtrak is also required to ensure that no certified locomotive engineer has an active substance abuse disorder as prohibited by § 240.119(b). As a matter of due diligence, FRA expects Amtrak’s ORB program to have procedures that (1) assess whether locomotive engineers who mark off under ORB have an active substance abuse problem, and (2) ensure that locomotive engineers identified with an active substance abuse problem receive the appropriate treatment and follow-up so that they can return to duty safely.</p>	<p>We believe Amtrak completely fulfills its § 219.105 obligations. Furthermore, ORB is a labor-sponsored program and not an Amtrak program. Therefore, Amtrak does not possess the authority to alter ORB by unilaterally changing or imposing new procedures or protocols. While we share FRA’s concern that no certified locomotive engineer with an active substance abuse disorder be permitted to operate a locomotive, program design changes must comply with existing collective bargaining agreements. Simply stated, any program changes going forward must be by agreement of all participating parties, and BLET is prepared to discuss and consider what options may be available in the event the resolution of the other outstanding issues identified in FRA’s letter leaves the agency with unaddressed concerns in this regard.</p>	

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<p>Amtrak has expressed concerns that requiring covered employees who use ORB to submit to an EAP evaluation would undermine confidentiality and deter employees from using the program. FRA agrees that confidentiality is an essential component of ORB, and would like to assure Amtrak that it does not expect that every covered employee who marks off will be subject to an EAP evaluation. Rather, FRA merely wishes to verify that covered employees (particularly locomotive engineers) whom ORB or a qualified substance abuse professional identified as having a possible active substance abuse problem are receiving the appropriate diagnosis and treatment. FRA does not believe that this expectation raises a confidentiality issue because Amtrak has already indicated that ORB waives confidentiality for employees identified as having an active substance abuse problem.</p>	<p>FRA misconstrues how the governing collective bargaining agreements treat confidentiality. The only way confidentiality is deemed waived is when an employee is relieved from service and required to undergo an EAP evaluation pursuant to the provisions of the Rule “G” Bypass Agreement. The trigger for such an event is when the employee either fails or refuses to self-report pursuant to ORB protocols. Thus, confidentiality is not waived by ORB; it is waived by the employee’s failure or refusal to participate in ORB. Accordingly, there is no basis for FRA to assert that the confidentiality waiver in Bypass situations justifies action by either FRA or Amtrak to deem confidentiality waived for employees who do follow ORB protocols. Indeed, to adopt FRA’s rationale would cause the immediate collapse of ORB, because employees use the program precisely because confidentiality is protected. Elimination of confidentiality protection for so much as a single employee would result in total distrust for the program, and the preventive and rehabilitative services ORB provides would disappear, to the patent detriment of safety. Moreover, there would be a domino effect from ORB failure that would claim Amtrak’s C³RS and Safe to Safer programs, which also share confidentiality as a cornerstone principle. Such a result would set back safety on Amtrak by at least 25 years.</p>	
<p>Documentation indicating how many covered employees marked off under ORB from 2007-present.</p>	<p>Numerical data should be provided, although the time increments across which the data are broken down must be discussed and agreed to.</p>	

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ORB mark-offs by Locomotive Engineers certified under 49 C.F.R. Part 240 (2007-present).	Numerical data should be provided, although the time increments across which the data are broken down must be discussed and agreed to.	
Number of first-time users of ORB, second-time users of ORB, etc. (2007-present)	Numerical data should be provided, although the time increments across which the data are broken down must be discussed and agreed to.	
Number identified as having an active substance abuse problem.	Numerical data should be provided, although the time increments across which the data are broken down must be discussed and agreed to.	
Number referred to Amtrak’s internal EAP.	ORB does not refer employees to EAP or to providers other than EAP. They are advised of all available options and provided sufficient information and guidance to determine for themselves whether to utilize EAP or an outside provider.	
Number referred to non-Amtrak EAP providers. Please provide contact information and certification documentation for these EAP providers.	ORB does not refer employees to EAP or to providers other than EAP. They are advised of all available options and provided sufficient information and guidance to determine for themselves whether to utilize EAP or an outside provider.	
Documentation indicating how Amtrak’s ORB program determined whether covered employees using the program did or did not have an active substance abuse problem. For example, did a ORB captain call the employee or schedule a face-to-face meeting with him or her? How was this initial evaluation conducted?	Requested documentation pertaining to ORB protocols should be provided, but we must clarify that under no circumstances does a ORB program representative “determine” whether an active substance abuse disorder exists.	

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<p>If Amtrak’s ORB program identified a covered employee as possibly having an active substance abuse problem, what substance abuse professional (or entity) made that determination? Additionally, what educational or clinical program was utilized to treat the employee? To whom was this specific employee referred? If the covered employee was not sent to Amtrak’s internal EAP, why not? Please provide all contemporaneous documentation directly related to each specific individual concerned.</p>	<p>The process should be explained in detail sufficient to satisfy FRA’s concern, but it should be underscored that (1) ORB does not make active substance abuse disorder diagnoses, and (2) ORB does not refer employees toward or away from EAP. Further, as to FRA’s query why referrals to EAP are not made, the BLET is firm in its position that — because EAP participation rates across all railroads and for all areas of support is minuscule — “sending” an employee who utilizes the ORB mark-off provision to EAP will undermine acceptance and reduce utilization of ORB, with a negative impact on safety. Moreover, if it is FRA’s position that all ORB mark-offs should or must be referred to EAP, we reiterate such a position is diametrically opposed to the principles upon which ORB was founded. We are unwilling to abandon those principles.</p>	
<p>If Amtrak’s ORB program referred a covered employee to a non-Amtrak EAP, please provide documentation indicating that the EAP used was aware of and complied with FRA regulations regarding the use of alcohol and drugs by covered employees (e.g., §§ 219.101, 219.102, 219.103, 219.105, and 240.119(e)). Please provide all contemporaneous documentation related to each specific individual concerned.</p>	<p>BLET does not object to providing copies of documentation that is provided to outside providers either directly or indirectly. If this documentation has changed from time to time since 2007, the various versions can be provided, with the effective dates of each noted. However, BLET opposes production of any “contemporaneous documentation related to each specific individual concerned” because providing the documents in that fashion would constitute a breach of confidentiality since the identity of one or more of the specific individuals may be discernible.</p>	

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<p>Amtrak’s Designated Employer Representative (“DER”) has indicated that Amtrak’s ORB program referred eight (8) covered employees to the Amtrak EAP for assistance from 2007-present. Please provide the case management files for these eight (8) employees so that FRA can determine whether they were properly evaluated and treated.</p>	<p>BLET opposes providing any case management files. This would breach the promise of confidentiality made to these employees when they turned to ORB for assistance, and compliance would cause the destruction of ORB as an effective program. Waiver of confidentiality occurs only when the Bypass Agreement is triggered; <u>it does not occur upon an ORB referral to EAP</u>, and we vehemently object to any attempt to breach confidentiality in a case of voluntary, rather than mandatory, referral. That being said, if any of the eight were certified locomotive engineers who underwent an active substance abuse disorder evaluation by Amtrak’s EAP, then a verified statement indicating that fact, along with a de-identified summary of the diagnosis, treatment and result should be more than sufficient to address FRA’s concerns as to compliance with Parts 219 and 240. If Amtrak’s EAP failed to conduct an active substance abuse disorder evaluation for a certified locomotive engineer referred to it by ORB, the failure lies with EAP — and not ORB — and that failure should be acknowledged and addressed so that it does not occur again in the future.</p>	
<p>Future documentation explaining the purpose and goals of any alcohol and drug misuse prevention program, and how the program works to identify and assist covered employees with possible substance abuse problems.</p>	<p>A commitment should be made to maintain these records and to provide them to FRA for audit purposes upon request.</p>	
<p>Future data indicating how many covered employees use these programs.</p>	<p>Subject to the qualifications set forth above, a commitment should be made to maintain these data and to provide them to FRA for audit purposes upon request.</p>	

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Future data indicating how the program assists covered employees who are identified as having active substance abuse problems either through mark-offs or other methodologies that are outside the programs required by Federal regulations.	Subject to the qualifications set forth above, a commitment should be made to maintain these data. BLET has not yet determined whether it is appropriate for FRA to have access to data concerning a program over which it has no regulatory authority. If it is found to be a proper exercise of FRA's authority, BLET would agree that the data should be provided in a manner that protects confidentiality absolutely.	
Future documentation indicating how program personnel have been trained to identify and assess potential substance abuse problems.	Subject to the qualifications set forth above, a commitment should be made to maintain these records and to provide them to FRA for audit purposes upon request.	
Future documentation establishing the qualifications of each individual providing rehabilitation services for the program.	Subject to the qualifications set forth above, a commitment should be made to maintain these records — to the extent they are available to ORB — and to provide them to FRA for audit purposes upon request.	
Future documentation indicating the follow-up program utilized for each covered employee identified as having an active substance abuse problem requiring treatment by an EAP or a substance abuse professional.	BLET believes all such records should be retained. With respect to disclosure to FRA, BLET is agreeable to providing only information that has been sufficiently redacted or de-identified to make it impossible for anyone to identify any individual employee, including but not limited to the name and location of workplace and residence, and the name and location of the treatment provider.	

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<p>Future documentation indicating that Amtrak is implementing the EAP/SAP follow-up plans for each employee identified as having an active substance abuse problem.</p>	<p>BLET believes all such records should be retained to the extent Amtrak is implementing such follow-up plans. With respect to disclosure of ORB records to FRA, BLET is agreeable to providing only information that has been sufficiently redacted or de-identified to make it impossible for anyone to identify any individual employee, including but not limited to the name and location of workplace and residence, and the name and location of the treatment provider.</p>	