

Authorised Version No. 001
**Rail Safety National Law (Victoria) (Drug
and Alcohol Controls) Regulations 2019**

S.R. No. 117/2019

Authorised Version as at
2 December 2019

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Part 1—Preliminary

1 Objective

The objective of these Regulations is to promote safe rail operations in Victoria by prescribing requirements for drug and alcohol controls for rail safety workers.

2 Authorising provision

These Regulations are made under section 51 of the **Rail Safety National Law Application Act 2013**.

3 Commencement

These Regulations come into operation on 2 December 2019.

4 Definition

In these Regulations, *the Act* means the **Rail Safety National Law Application Act 2013**.

5 Revocation

The Rail Safety National Law (Limited Accreditation Exemptions) Regulations 2014¹ are **revoked**.

Part 2—Drug and alcohol controls

6 Preliminary breath test devices

For the purposes of section 48L(2) of the Act, the prescribed devices are the breath testing devices known as—

- (a) the lion alcolmeter SD-400 Touch; and
- (b) the Lion Alcolmeter also known as the lion alcolmeter S-D2; and
- (c) the lion alcolmeter SD-400PA; and
- (d) the Alcolizer LE; and
- (e) AlcoQuant 6020.

7 Procedure for breath analysis

It is a requirement for the proper operation of a breath analysing instrument that a person authorised under section 48M(7) of the Act to operate a breath analysing instrument—

- (a) does not require a rail safety worker to provide a breath sample for analysis until the person authorised under section 48M(7) is satisfied that the worker has not consumed any alcohol for a period of at least 15 minutes before the analysis; and
- (b) provides a fresh mouthpiece for use by each worker required to provide a breath sample; and
- (c) uses only a mouthpiece which, until required for taking the breath sample, has been kept in a sealed container.

8 Certificate under section 48M(8)

For the purposes of section 48M(8) of the Act, the prescribed particulars are the following—

- (a) the serial number of the breath analysing instrument;
- (b) the sample number;
- (c) the location of the test;
- (d) the name and date of birth of the rail safety worker whose breath is analysed;
- (e) the surname of the operator;
- (f) the results of the self-tests conducted by the breath analysing instrument before and after the worker's breath is analysed;
- (g) the results of zero tests conducted by the breath analysing instrument before and after the worker's breath is analysed;
- (h) the date and time the worker's breath was analysed.

9 Procedure for taking blood sample

If a blood sample is taken by a registered medical practitioner or an approved health professional for the purposes of the Rail Safety National Law (Victoria) and the Act, the site of the puncture must be cleansed with a swab taken from a container which—

- (a) appears to be sealed against contamination;
and
- (b) does not contain ethanol.

10 Procedure after taking blood sample

- (1) A registered medical practitioner or an approved health professional who takes a blood sample must ensure that—

- (a) the sample of blood is placed in 2 dry containers, each containing approximately the same amount of blood; and
 - (b) each container is vacuum sealed or sealed with a septum seal; and
 - (c) each container in which the sample is placed bears a label stating—
 - (i) the specific anticoagulant and the specific preservative that the container holds; and
 - (ii) the name of the chemist, laboratory or pharmaceutical organisation that prepared the container; and
 - (d) each container has attached to it a label bearing—
 - (i) the signature of the registered medical practitioner or approved health professional; and
 - (ii) the date and time the blood sample was taken; and
 - (iii) the name of the rail safety worker from whom the sample was taken or, if the name of the worker is not known, sufficient information to enable the sample to be identified with the worker from whom it was taken.
- (2) If a blood sample is taken under section 127 of the Rail Safety National Law (Victoria) or section 48M, 48U, 48V, 48X or 48Y of the Act, the registered medical practitioner or approved health professional must give the sample containers to an authorised person.
- (3) If a blood sample is taken under section 48ZA of the Act, the registered medical practitioner or approved health professional must ensure that—
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- (a) both sample containers are placed and sealed in one plastic sample bag; and
- (b) the plastic sample bag is placed in a locked receptacle provided for that purpose at the place where the sample was taken.

11 Certificate under section 48ZB(5)

For the purposes of section 48ZB(5) of the Act, the prescribed particulars are the following—

- (a) a statement by the registered medical practitioner or approved health professional that the requirements of these Regulations for the taking of blood samples have been complied with;
- (b) the name of the rail safety worker from whom the blood sample was taken;
- (c) the date and time the blood sample was taken;
- (d) the name and signature of the registered medical practitioner or approved health professional who took the blood sample.

12 Certificate under section 48ZB(6)

For the purposes of section 48ZB(6) of the Act, the prescribed particulars are the following—

- (a) a statement as to the concentration of alcohol, expressed in grams per 100 millilitres of blood, found in the sample of blood;
- (b) a statement by the approved analyst that the analyst is an approved analyst within the meaning of section 48ZB(1) of the Act;
- (c) a statement as to the method of analysis used;

- (d) the name and signature of the approved analyst;
- (e) the date on which the analysis was conducted;
- (f) the information set out in the identification label referred to in regulation 10(1)(d).

13 Certificate under section 48ZB(7)

For the purposes of section 48ZB(7) of the Act, the prescribed particulars are the following—

- (a) a statement by the approved analyst that the analyst is an approved analyst within the meaning of section 48ZB(1) of the Act;
- (b) a statement as to the method of analysis used;
- (c) a statement that a substance that is, or is capable of being, a prescribed drug for the purposes of the Act was present in the sample of blood analysed;
- (d) the name of the substance found to be present in the sample of blood analysed;
- (e) the name and signature of the approved analyst;
- (f) the date on which the analysis was conducted;
- (g) the information set out in the identification label referred to in regulation 10(1)(d).

14 Certificate under section 48ZB(8)

For the purposes of section 48ZB(8) of the Act, the prescribed particulars are the following—

- (a) a statement by the approved expert that the expert is an approved expert within the meaning of section 48ZB(1) of the Act;

- (b) a statement as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly);
- (c) the name and signature of the approved expert.

15 Devices prescribed for the purposes of oral fluid analysis and drug screening tests

For the purposes of the definitions of *drug screening test* and *oral fluid analysis* in section 48A of the Act, the following devices are prescribed—

- (a) the oral fluid testing device known as the SECURETEC DRUGWIPE TWIN or the SECURETEC DRUGWIPE II TWIN;
- (b) the oral fluid testing device known as the SECURETEC DRUGWIPE II TWIN COMBO;
- (c) the oral fluid testing device known as the Cozart RapiScan;
- (d) the oral fluid screening device known as the Medvet Oral7;
- (e) the oral fluid screening device known as the Ultrasal-2 Saliva Collection Device;
- (f) the oral fluid analysis device known as the Thermo TSQ Quantum Ultra;
- (g) the oral fluid analysis device known as the Thermo TSQ Quantum Access;
- (h) the oral fluid analysis device known as the Thermo LTQ Orbitrap Discovery;
- (i) the oral fluid analysis device known as the Sciex QTrap 4500 or 5500.

16 Procedure for carrying out drug screening tests or oral fluid analyses

For the purposes of a drug screening test or oral fluid analysis under section 48R of the Act or section 127 of the Rail Safety National Law (Victoria), an authorised person who conducts the test or analysis must—

- (a) provide a fresh oral fluid collection unit for use by a rail safety worker required to submit to the drug screening test or oral fluid analysis; and
- (b) use only an oral fluid collection unit that has been kept in a sealed container until it is given to that worker; and
- (c) test or analyse any oral fluid sample produced by that worker by using the device, or the oral fluid testing unit that is part of the device through which the sample was provided.

17 Procedure for taking oral fluid sample for analysis by a properly qualified analyst

For the purposes of an oral fluid analysis under section 48R of the Act or section 127 of the Rail Safety National Law (Victoria) by a properly qualified analyst, the authorised person who required the rail safety worker to provide a sample of oral fluid must—

- (a) provide a fresh oral fluid collection unit for use by the worker; and
- (b) use only an oral fluid collection unit that has been kept in a sealed container until it is given to that worker.

18 Procedure after taking oral fluid sample

An authorised person who is provided a sample of oral fluid by a rail safety worker under a requirement under section 48R of the Act or section 127 of the Rail Safety National Law (Victoria) for oral fluid analysis must ensure that the sample or, if the sample is broken into parts, each part of the sample has attached to it a label bearing—

- (a) the name and signature of the authorised person to whom the oral fluid sample was provided; and
- (b) the date and time the sample was provided; and
- (c) the name of the worker who provided the sample or, if the name of the worker is not known, sufficient information to enable the sample to be identified with the worker who provided the sample.

19 Certificate under section 48ZC(5)

For the purposes of section 48ZC(5) of the Act, the prescribed particulars are the following—

- (a) a statement by the person who carried out the procedure in the course of which the sample was provided that the requirements of these Regulations for the taking of oral fluid samples have been complied with;
- (b) the name of the rail safety worker from whom the oral fluid sample was taken;
- (c) the date and time the oral fluid sample was taken;
- (d) the name and signature of the person who carried out the procedure in the course of which the sample was provided.

20 Certificate under section 48ZC(6)

For the purposes of section 48ZC(6) of the Act, the prescribed particulars are the following—

- (a) a statement that a substance that is, or is capable of being, a prescribed drug for the purposes of the Act was present in the sample of oral fluid analysed;
- (b) a statement by the approved analyst that the analyst is an approved analyst within the meaning of section 48ZC(1) of the Act;
- (c) a statement as to the method of analysis used;
- (d) the name and signature of the approved analyst;
- (e) the date on which the analysis was conducted;
- (f) the information set out in the identification label referred to in regulation 18 that was attached to the part of the sample received for analysis.

21 Certificate under section 48ZC(7)

For the purposes of section 48ZC(7) of the Act, the prescribed particulars are the following—

- (a) a statement by the approved expert that the expert is an approved expert within the meaning of section 48ZC(1) of the Act;
- (b) a statement as to the usual effect of a specified substance or substances on behaviour when consumed or used (including its effect on a rail safety worker's ability to carry out rail safety work properly);
- (c) the name and signature of the approved expert.

22 Procedure for collecting urine samples

A registered medical practitioner, approved health professional or person appointed under section 124 of the Rail Safety National Law (Victoria) who is furnished with a urine sample for the purposes of the Act or the Rail Safety National Law (Victoria) must ensure that the sample is collected in a container which is clean and dry and which has not previously been used.

23 Procedures after collecting urine samples

A registered medical practitioner, approved health professional or person appointed under section 124 of the Rail Safety National Law (Victoria) who is furnished with a urine sample for the purposes of the Act or the Rail Safety National Law (Victoria) must ensure that—

- (a) the urine sample is placed in 2 dry containers, each containing approximately the same amount of urine; and
- (b) each container is fitted with a tamper-proof locking seal; and
- (c) each container has attached to it a label bearing—
 - (i) the signature of the registered medical practitioner, approved health professional or person appointed under section 124 of the Rail Safety National Law (Victoria) who collected the urine sample; and
 - (ii) the date and time the sample was collected; and
 - (iii) the name of the rail safety worker from whom the sample was collected or, if the name of the worker is not known, sufficient information to enable the

sample to be identified with the worker from whom it was collected.

24 Particulars of report of assessment of drug impairment

For the purposes of section 48X(7) of the Act, the prescribed particulars are the following—

- (a) particulars of the identity of the rail safety worker on whom the assessment was carried out, including, if known, the worker's name, address, date of birth and gender;
- (b) the date and time at which the worker underwent the assessment;
- (c) the place at which the worker underwent the assessment;
- (d) the time (if any) reported to the police officer carrying out the assessment as the latest time the worker carried out rail safety work;
- (e) whether the worker underwent a preliminary breath test in accordance with section 126 of the Rail Safety National Law (Victoria) or furnished a sample of breath for analysis by a breath analysing instrument, and, if so, the result of the test or analysis, if known;
- (f) the record of interview of the worker carried out by the police officer carrying out the assessment;
- (g) particulars of any medical treatment sought by or for the worker;
- (h) any statements made by the worker concerning a drug or drugs;
- (i) any observations made by the police officer carrying out the assessment of the worker in relation to the following—

- (i) any apparent injury or illness of the worker;
 - (ii) whether the worker smelt of intoxicating liquor;
 - (iii) the worker's speech;
 - (iv) the worker's eyes;
 - (v) the worker's breathing;
 - (vi) the worker's skin;
 - (vii) the worker's movement;
 - (viii) the worker's balance;
 - (ix) the state of the worker's clothing;
 - (x) the worker's actions;
 - (xi) the worker's demeanour;
 - (xii) any physical signs of drug use by the worker;
 - (xiii) the worker's ability to comprehend instructions;
 - (xiv) the worker's ability to divide attention;
 - (xv) whether the worker, during the assessment, exhibited signs that indicated that the worker was impaired by a drug or drugs;
 - (j) whether the assessment, in the opinion of the police officer carrying it out, indicates that the worker may be impaired by a drug or drugs;
 - (k) the name, rank, station and signature of the police officer carrying out the assessment.
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Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

The Rail Safety National Law (Victoria) (Drug and Alcohol Controls) Regulations 2019, S.R. No. 117/2019 were made on 26 November 2019 by the Governor in Council under section 51 of the **Rail Safety National Law Application Act 2013**, No. 22/2013 and came into operation on 2 December 2019: regulation 3.

The Rail Safety National Law (Victoria) (Drug and Alcohol Controls) Regulations 2019 will sunset 10 years after the day of making on 26 November 2029 (see section 5 of the **Subordinate Legislation Act 1994**).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided regulation, rule or clause of a Schedule is amended by the insertion of one or more subregulations, subrules or subclauses the original regulation, rule or clause becomes subregulation, subrule or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original regulation, rule or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any heading inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. This includes headings to Parts, Divisions or Subdivisions in a Schedule; Orders; Parts into which an Order is divided; clauses; regulations; rules; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A)(2B).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in a Statutory Rule which is made on or after 1 January 2001 form part of that Statutory Rule. Any examples,

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diagrams or notes inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, form part of that Statutory Rule. See section 36(3A).

- **Punctuation**

All punctuation included in a Statutory Rule which is made on or after 1 January 2001 forms part of that Statutory Rule. Any punctuation inserted in a Statutory Rule which was made before 1 January 2001, by a Statutory Rule made on or after 1 January 2001, forms part of that Statutory Rule. See section 36(3B).

- **Provision numbers**

All provision numbers included in a Statutory Rule form part of that Statutory Rule, whether inserted in the Statutory Rule before, on or after 1 January 2001. Provision numbers include regulation numbers, rule numbers, subregulation numbers, subrule numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of a Statutory Rule is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of a Statutory Rule. See section 36(3)(3D)(3E).

2 Table of Amendments

There are no amendments made to the Rail Safety National Law (Victoria) (Drug and Alcohol Controls) Regulations 2019 by statutory rules, subordinate instruments and Acts.

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ Reg. 5: S.R. No. 31/2014.