

### §219.203

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between the responding railroad representative and higher level railroad officials; however, the responding railroad representative must make the factual determinations required by this section.

(iii) Upon specific request made to the railroad by the Associate Administrator for Safety, FRA (or the Associate Administrator's delegate), the railroad must provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker and must be provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

(iv) Any estimates of railroad property damage made by persons not at the scene must be based on descriptions of specific physical damage provided by the on-scene railroad representative.

(v) In the case of an accident involving passenger equipment, a host railroad may rely upon the damage estimates provided by the passenger railroad (whether present on scene or not) in making the decision whether testing is required, subject to the same requirement that visible physical damage be specifically described.

(2) A railroad must not require an employee to provide blood or urine specimens under the authority or procedures of this subject unless the railroad has made the determinations required by this section, based upon reasonable inquiry and good faith judgment. A railroad does not act in excess of its authority under this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment, but it is later determined, after investigation, that one or more of the conditions thought to have required testing were not, in fact, present. However, this section does not excuse the railroad for any error arising from a mistake of law (e.g., application of testing criteria other than those contained in this part).

(3) A railroad is not in violation of this subpart if its representative has made such reasonable inquiry and exercised such good faith judgment but nevertheless errs in determining that post-accident testing is not required.

(4) An accident/incident with respect to which the railroad has made reasonable inquiry and exercised good faith judgment in determining the facts necessary to apply the criteria contained in paragraph (a) of this section is deemed a qualifying event for purposes of specimen analysis, reporting, and other purposes.

(5) In the event specimens are collected following an event determined by FRA not to be a qualifying event within the meaning of this section, FRA directs its designated laboratory to destroy any specimen material submitted and to refrain from disclosing to any person the results of any analysis conducted.

#### §219.203 Responsibilities of railroads and employees.

(a) *Employees tested.* (1)(i) Following each accident and incident described in §219.201, the railroad (or railroads) must take all practicable steps to assure that all covered employees of the railroad directly involved in the accident or incident provide blood and urine specimens for toxicological testing by FRA. Such employees must cooperate in the provision of specimens as described in this part and Appendix C to this part.

(ii) If the conditions for mandatory toxicological testing exist, the railroad may also require employees to provide breath for testing in accordance with the procedures set forth in part 40 of this title and in this part, if such testing does not interfere with timely collection of required specimens.

(2) Such employees must specifically include each and every operating employee assigned as a crew member of any train involved in the accident or incident. In any case where an operator, dispatcher, signal maintainer or other covered employee is directly and contemporaneously involved in the circumstances of the accident/incident, those employees must also be required to provide specimens.

(3) An employee must be excluded from testing under the following circumstances: In any case of an accident/incident for which testing is mandated only under § 219.201(a)(2) (an “impact accident”), § 219.201(a)(3) (“fatal train incident”), or § 219.201(a)(4) (a “passenger train accident with injury”) if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause(s) or severity of the accident/incident. The railroad representative must consider any such information immediately available at the time the qualifying event determination is made under § 219.201.

(4) The following provisions govern accidents/incidents involving non-covered employees:

(i) Surviving non-covered employees are not subject to testing under this subpart.

(ii) Testing of the remains of non-covered employees who are fatally injured in train accidents and incidents is required.

(b) *Timely specimen collection.* (1) The railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident.

(2) This paragraph (b) must not be construed to inhibit the employees required to be tested from performing, in the immediate aftermath of the accident or incident, any duties that may be necessary for the preservation of life or property. However, where practical, the railroad must utilize other employees to perform such duties.

(3) In the case of a passenger train which is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew is immediately available for testing. A relief crew must be called to relieve the train crew as soon as possible.

(4) Covered employees who may be subject to testing under this subpart must be retained in duty status for the period necessary to make the determinations required by § 219.201 and this section and (as appropriate) to complete the specimen collection procedure. An employee may not be recalled

for testing under this subpart if that employee has been released from duty under the normal procedures of the railroad, except that an employee may be immediately recalled for testing if—

(i) The employee could not be retained in duty status because the employee went off duty under normal carrier procedures prior to being contacted by a railroad supervisor and instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time the employee went off duty);

(ii) The railroad’s preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a major role in the cause or severity of the accident/incident; and

(iii) The accident/incident actually occurred during the employee’s duty tour. An employee who has been transported to receive medical care is not released from duty for purposes of this section. Nothing in this section prohibits the subsequent testing of an employee who has failed to remain available for testing as required (i.e., who is absent without leave); but subsequent testing does not excuse such refusal by the employee timely to provide the required specimens.

(c) *Place of specimen collection.* (1) Employees must be transported to an independent medical facility where the specimens must be obtained. The railroad must pre-designate for such testing one or more such facilities in reasonable proximity to any location where the railroad conducts operations. Designation must be made on the basis of the willingness of the facility to conduct specimen collection and the ability of the facility to complete specimen collection promptly, professionally, and in accordance with pertinent requirements of this part. In all cases blood may be drawn only by a qualified medical professional or by a qualified technician subject to the supervision of a qualified medical professional.

(2) In the case of an injured employee, the railroad must request the

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treating medical facility to obtain the specimens.

(d) *Obtaining cooperation of facility.* (1) In seeking the cooperation of a medical facility in obtaining a specimen under this subpart, the railroad shall, as necessary, make specific reference to the requirements of this subpart.

(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood specimens after having been acquainted with the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8801 or (800) 424-8802, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required specimen.

(e) *Discretion of physician.* Nothing in this subpart may be construed to limit the discretion of a physician to determine whether drawing a blood specimen is consistent with the health of an injured employee or an employee afflicted by any other condition that may preclude drawing the specified quantity of blood.

### §219.205 Specimen collection and handling.

(a) *General.* Urine and blood specimens must be obtained, marked, preserved, handled, and made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

(b) *Information requirements.* In order to process specimens, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the specimens. Each employee subject to testing must cooperate in completion of the required

information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form 6180.74. One Form 6180.73 must be forwarded in the shipping kit with each group of specimens. One Form 6180.74 must be forwarded in the shipping kit for each employee who provides specimens. Forms 6180.73 and 6180.74 may be ordered from the laboratory specified in Appendix B to this part; the forms are also provided to railroads free of charge in the shipping kit. (See paragraph (c) of this section.)

(c) *Shipping kit.* (1) FRA and the laboratory designated in Appendix B to this part make available for purchase a limited number of standard shipping kits for the purpose of routine handling of toxicological specimens under this subpart. Whenever possible, specimens must be placed in the shipping kit prepared for shipment according to the instructions provided in the kit and Appendix C to this part.

(2) Kits may be ordered directly from the laboratory designated in Appendix B to this part.

(3) FRA maintains a limited number of kits at its field offices. A Class III railroad may utilize kits in FRA's possession, rather than maintaining such kits on its property.

(d) *Shipment.* Specimens must be shipped as soon as possible by pre-paid air express or air freight (or other means adequate to ensure delivery within twenty-four (24) hours from time of shipment) to the laboratory designated in Appendix B to this part. Where express courier pickup is available, the railroad must request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the specimens are collected or for any other reason prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the specimens to the most expeditious point of shipment via air express, air freight or equivalent means. The railroad must maintain and document