

## §219.300

## 49 CFR Ch. II (10–1–04 Edition)

to submit, under authority of this subpart, by a representative of the railroad. In determining whether a disqualification is required, the hearing official shall, as appropriate, also consider the following:

(1) Whether the railroad made a good faith determination, based on reasonable inquiry, that the accident or incident was within the mandatory testing requirements of this subpart; and

(2) In a case where a blood test was refused on the ground it would be inconsistent with the employee's health, whether such refusal was made in good faith and based on medical advice.

### Subpart D—Testing for Cause

#### §219.300 **Mandatory reasonable suspicion testing.**

(a) *Requirements.* (1) A railroad must require a covered employee to submit to an alcohol test when the railroad has reasonable suspicion to believe that the employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

(2) A railroad must require a covered employee to submit to a drug test when the railroad has reasonable suspicion to believe that the employee has violated the prohibitions of subpart B of this part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with §219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.

(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with §219.11(g).

(c) Nothing in this section may be construed to require the conduct of alcohol testing or drug testing when the employee is apparently in need of immediate medical attention.

(d)(1) If a test required by this section is not administered within two hours following the determination under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not properly administered. If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Records must be submitted to FRA upon request of the FRA Administrator.

(2) [Reserved]

#### §219.301 **Testing for reasonable cause.**

(a) *Authorization.* A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or body fluid testing, or both, to determine compliance with §§219.101 and 219.102 or a railroad rule implementing the requirements of §§219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid specimen under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee.

(b) *For cause breath testing.* In addition to reasonable suspicion as described in §219.300, the following circumstances constitute cause for the

administration of alcohol tests under this section:

(1) [Reserved]

(2) *Accident/incident.* The employee has been involved in an accident or incident reportable under Part 225 of this chapter, and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or

(3) *Rule violation.* The employee has been directly involved in one of the following operating rule violations or errors:

(i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves—

(A) Occupancy of a block or other segment of track to which entry was not authorized;

(B) Failure to clear a track to permit opposing or following movement to pass;

(C) Moving across a railroad crossing at grade without authorization; or

(D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);

(ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules);

(iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less;

(iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;

(v) Failure to apply or stop short of derail as required;

(vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;

(vii) Entering a crossover before both switches are lined for movement; or

(viii) In the case of a person performing a dispatching function or

block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

(c) *For cause drug testing.* In addition to reasonable suspicion as described in § 219.300, each of the conditions set forth in paragraphs (b)(2) ("accident/incident") and (b)(3) ("rule violation") of this section as constituting cause for alcohol testing also constitutes cause with respect to drug testing.

(d) [Reserved]

(e) *Limitation for subpart C events.* The compulsory drug testing authority conferred by this section does not apply with respect to any event subject to post-accident toxicological testing as required by § 219.201. However, use of compulsory breath test authority is authorized in any case where breath test results can be obtained in a timely manner at the scene of the accident and conduct of such tests does not materially impede the collection of specimens under Subpart C of this part.

**§ 219.302 Prompt specimen collection; time limitation.**

(a) Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

(b) No employee may be required to participate in alcohol or drug testing under this section after the expiration of an eight-hour period from—

(1) The time of the observations or other events described in this section; or

(2) In the case of an accident/incident, the time a responsible railroad supervisor receives notice of the event providing reasonable cause for conduct of the test.

(c) An employee may not be tested under this subpart if that employee has been released from duty under the normal procedures of the railroad. 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).