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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 secure chain of custody of the kit from release by the medical facility to delivery for transportation, as described in Appendix C to this part.

§219.206 FRA access to breath test results.

Documentation of breath test results must be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

§219.207 Fatality.

(a) In the case of an employee fatality in an accident or incident described in §219.201, body fluid and/or tissue specimens must be obtained from the remains of the employee for toxicological testing. To ensure that specimens are timely collected, the railroad must immediately notify the appropriate local authority (such as a cor-

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oner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue specimens. The railroad must also seek the assistance of the custodian of the remains, if a person other than the local authority.

(b) If the local authority or custodian of the remains declines to cooperate in obtaining the necessary specimens, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8801 or (800) 424-8802 by providing the following information:

(1) Date and location of the accident or incident;

(2) Railroad;

(3) Name of the deceased;

(4) Name and telephone number of custodian of the remains; and

(5) Name and telephone number of local authority contacted.

(c) A coroner, medical examiner, pathologist, Aviation Medical Examiner, or other qualified professional is authorized to remove the required body fluid and/or tissue specimens from the remains on request of the railroad or FRA pursuant to this part; and, in so acting, such person is the delegate of the FRA Administrator under sections 20107 and 20108 of title 49, United States Code (but not the agent of the Secretary for purposes of the Federal Tort Claims Act (chapter 171 of title 28, United States Code)). Such qualified professional may rely upon the representations of the railroad or FRA representative with respect to the occurrence of the event requiring that toxicological tests be conducted and the coverage of the deceased employee under this part.

(d) Appendix C to this part specifies body fluid and tissue specimens required for toxicological analysis in the case of a fatality.

§219.209 Reports of tests and refusals.

(a)(1) A railroad that has experienced one or more events for which specimens were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center

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(NRC) at (800) 424-8802 and to the Office of Safety, FRA, at (202) 493-6313.

(2) Each telephonic report must contain:

- (i) Name of railroad;
- (ii) Name, title and telephone number of person making the report;
- (iii) Time, date and location of the accident/incident;
- (iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and
- (v) Number, names and occupations of employees tested.

(b) If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a specimen and cause it to be provided to FRA as required by this subpart, the railroad must make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under Part 225 of this chapter.

(c) If a test required by this section is not administered within four hours following the accident or incident, the railroad must prepare and maintain on file a record stating the reasons the test was not promptly administered. Records must be submitted to FRA upon request of the FRA Associate Administrator for Safety.

§219.211 Analysis and follow-up.

(a) The laboratory designated in Appendix B to this part undertakes prompt analysis of specimens provided under this subpart, consistent with the need to develop all relevant information and produce a complete report. Specimens are analyzed for alcohol and controlled substances specified by FRA under protocols specified by FRA, summarized in Appendix C to this part, which have been submitted to Health and Human Services for acceptance. Specimens may be analyzed for other impairing substances specified by FRA as necessary to the particular accident investigation.

(b) Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer and the employee. The MRO and the railroad must treat the

test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with §219.103) that could account for the laboratory findings. The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, DC 20590. Such report must be in writing and must reference the employing railroad, accident/incident date, and location, and the envelope must be marked "ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER." The report must state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer may not disclose to FRA the underlying physical condition for which any medication was authorized or administered. The FRA is not bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

(d) To the extent permitted by law, FRA treats test results indicating medical use of controlled substances consistent with §219.103 (and other information concerning medically authorized drug use or administration provided incident to such testing) as administratively confidential and withholds public disclosure, except where it