

[Code of Federal Regulations]
[Title 49, Volume 4]
[Revised as of October 1, 2002]
From the U.S. Government Printing Office via GPO Access
[CITE: 49CFR219.201]

[Page 208-210]

TITLE 49--TRANSPORTATION

CHAPTER II--FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF
TRANSPORTATION

PART 219--CONTROL OF ALCOHOL AND DRUG USE--Table of Contents

Subpart C--Post-Accident Toxicological Testing

Sec. 219.201 Events for which testing is required.

(a) List of events. Except as provided in paragraph (b) of this section, post-accident toxicological tests must be conducted after any event that involves one or more of the circumstances described in paragraphs (a)(1) through (4) of this section:

(1) Major train accident. Any train accident (i.e., a rail equipment accident

[[Page 209]]

involving damage in excess of the current reporting threshold) that involves one or more of the following:

(i) A fatality;

(ii) A release of hazardous material lading from railroad equipment accompanied by--

(A) An evacuation; or

(B) A reportable injury resulting from the hazardous material release (e.g., from fire, explosion, inhalation, or skin contact with the material); or

(iii) Damage to railroad property of \$1,000,000 or more.

(2) Impact accident. An impact accident (i.e., a rail equipment accident defined as an "impact accident" in Sec. 219.5) that involves damage in excess of the current reporting threshold, resulting in--

(i) A reportable injury; or

(ii) Damage to railroad property of \$150,000 or more.

(3) Fatal train incident. Any train incident that involves a fatality to any on-duty railroad employee.

(4) Passenger train accident. Reportable injury to any person in a train accident (i.e., a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.

(b) Exceptions. No test may be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test may be required in the case of an accident/incident the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado, or other natural disaster) or to vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

(c) Good faith determinations. (1)(i) The railroad representative responding to the scene of the accident/incident must determine whether the accident/incident falls within the requirements of paragraph (a) of this section or is within the exception described in paragraph (b) of

this section. It is the duty of the railroad representative to make reasonable inquiry into the facts as necessary to make such determinations. In making such inquiry, the railroad representative must consider the need to obtain specimens as soon as practical in order to determine the presence or absence of impairing substances reasonably contemporaneous with the accident/incident. The railroad representative satisfies the requirement of this section if, after making reasonable inquiry, the representative exercises good faith judgement in making the required determinations.

(ii) The railroad representative making the determinations required by this section may not be a person directly involved in the accident/incident. This section does not prohibit consultation 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

[[Page 210]]

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.