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TITLE 49--TRANSPORTATION

CHAPTER II--FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF  
TRANSPORTATION

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

Subpart D--Testing for Cause

Sec. 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 Secs. 219.101 and 219.102 or a railroad rule implementing the requirements of Secs. 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 Sec. 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 Sec. 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

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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 Sec. 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 Sec. 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.