

## Drug and Alcohol Frequently Asked Questions

### Part 219/Part 40 - EMPTYING POCKETS

**QUESTION:** "I just took a random (Federal) drug test and the collector made me empty my pockets. I thought they couldn't do that?"

**FRA ANSWER:** Effective August 1, 2001, the regulation changed and 40.61 (f) (4) now requires the collector to direct you to empty your pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen.

If nothing is there that can be used to adulterate a specimen, you can place the items back into your pockets. You must allow the collector to make this observation (and decision).

Of course you are still required to remove outer clothing such as coveralls, jacket, coat, and hat, and leave these garments and any briefcase, purse, or other personal belongings in a mutually agreeable location. If you ask for a receipt for any belongings left with the collector, the collector must provide one. You are allowed to keep your wallet.

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### Part 219/Part 40 -EMPLOYEE NOTIFICATION OF LABORATORY TEST RESULTS

**QUESTION:** "About a month ago, I was required to take a random (Federal) drug test, but I still haven't received the test result from the railroad. Isn't the railroad required to send me a letter letting me know whether the test was negative or positive?"

**FRA ANSWER:** As of August 1, 2001, FRA regulations no longer require the Medical Review Officer (MRO) to notify you when your Federal test result is negative. However, FRA encourages railroads to continue to do so as a best practice.

Following a non-negative result (that is, any result that is not negative, such as a positive, adulterated, substituted, or invalid test result) the MRO must directly contact you, on a confidential basis, to discuss with you whether there is a legitimate reason for your result.

If, after talking to you, the MRO finds that there was no legitimate reason for your non-negative result, the MRO will notify the railroad to remove you from covered service.

If, however, the MRO decides after talking to you that there was a legitimate reason for your non-negative result, the MRO will report to the railroad that your result was negative. The railroad will not know that your result had originally been non-negative, and will treat your result in the way that it treats other negative results. As explained above, the MRO is not required to send you your result, since it was negative.

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### SHY BLADDER

**QUESTION:** AI was notified that I had been selected for a random (Federal) test after I=d just used the restroom. I know I have 3 hours to provide a specimen, but when does that 3-hour clock start?@

**FRA ANSWER:** You must make an attempt to provide a urine specimen even if you believe that you cannot provide the minimum amount of urine required for a Federal test (45 milliliters). Most individuals are able to provide 45 milliliters of urine even when they think they cannot urinate. The collector will direct you to enter the restroom and attempt to provide a specimen even if you notify him or her that you are unable to provide one.

The 3-hour clock does not begin to run unless and until you notify the collector that your first attempt to provide a urine specimen was unsuccessful. The Ashy bladder@ collection process begins when you return from the restroom with either an insufficient quantity of urine or an empty collection container. This requirement is addressed in section 40.193 of DOT=s testing procedures. For more information, go to the Office of Drug and Alcohol Policy and Compliance section of the Department of Transportation=s website, [www.dot.gov](http://www.dot.gov).

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## CONSULTANT AUDITOR

**QUESTION:** "As a railroad's program administrator, can I contract with an outside consultant to audit our FRA alcohol and drug program?"

**FRA ANSWER:** Yes. In general, Parts 219 and 40 allow a railroad to contract with consultants or independent contractors (see also service agents as defined in section 40.3) for services to help it meet FRA and DOT alcohol and drug program requirements. Keep in mind, though, that use of a service agent does not relieve the railroad of the ultimate responsibility for ensuring its own compliance.

In Subpart B on Employer Responsibilities, DOT states in section 40.15(c) that " your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct." Additionally, if responsibility for compliance is not spelled out in the contract, section 219.9(c) allows FRA to hold a railroad and an independent contractor performing covered service for the railroad jointly and severally liable for any noncompliance. (DOT may also separately sanction the service agent for serious instances of noncompliance by issuing a Public Interest Exclusion against it (see Subpart P).)

Currently, each operating administration decides on its own whether to allow its regulated employers to use independent auditing services to inspect for program compliance. FRA allows such auditing in the railroad industry. You must check with the alcohol and drug program manager for the relevant operating administration(s) if you plan to have the consultant audit other than FRA program records.

Remember, too that an independent auditor must comply with all Part 219 and Part 40 confidentiality requirements (e.g., an auditor may not report to the railroad that an employee's test result had been downgraded).

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## REASONABLE SUSPICION TEST

**QUESTION:** "I am a railroad signal foreman who is in the random alcohol and drug testing pool because I perform service covered under the Hours of Service Laws about twice a month. Recently, while performing non-covered duties as a foreman, my supervisor gave me a Federal reasonable suspicion alcohol test because he said he smelled alcohol on my breath. I thought I was only subject to a reasonable suspicion test while performing covered service. Can he do this?"

**FRA ANSWER:** : Yes. A railroad employee who performs covered service frequently enough to be placed in the random testing pool (at least once per quarter) is subject to all the provisions of Part 219. This includes reasonable suspicion testing, even if the employee is not performing covered service at the time of the test.

A Federal reasonable suspicion alcohol and/or drug test is required whenever a supervisor has a reasonable belief that a covered employee is impaired on the job. This belief must be based on specific observations made at the time about the appearance, behavior, speech or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

Of course, the determination to test must be made by a supervisor who has been trained in the signs and symptoms of substance abuse. For alcohol, the testing determination must be made by at least one trained supervisor; for drugs, the testing determination must be made by two supervisors, at least one of whom is trained and on-site to make the observation.

An employee may be placed on duty for the purpose of conducting a reasonable suspicion test whenever he or she is on railroad property and subject to duty.

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## **BREATH ALCOHOL TEST RESULT**

**QUESTION:** "My test result on a Federal random alcohol test was 0.03 and the railroad pulled me out of service for 3 months. Do I have to go through a treatment program and be subject to Federal follow-up testing before I can return to my job as a conductor?"

**FRA ANSWER:** A 0.03 test result indicates that you had alcohol in your system at the time of the test. For breath test results between 0.02 and 0.039, Federal regulations require only that you be removed from covered service for at least 8 hours after your test. A Federal violation (of section 219.101 of FRA's alcohol and drug regulations) occurs only when your alcohol test result is 0.04 or higher. Since you did not violate Federal regulations, you are not subject to the Federal return-to-service and follow-up testing requirements.

However, your railroad may consider this a violation of Rule G since your test result was positive for alcohol. The railroad may take any action according to its negotiated agreements, up to and including dismissal, so long as it is not inconsistent with Federal regulations. Discipline under company policy may include removing you from covered service for more than 8 hours, requiring you to undergo company return-to-service and follow-up testing, and requiring treatment.

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