§40.21 **09/01**

QUESTION:

Does an employer need a stand-down waiver in order to implement a policy that requires employees to cease performing safety-sensitive functions following a reasonable suspicion or post-accident test?

ANSWER:

- §40.21 requires an employer to obtain a waiver to do one very specific thing: remove employees from performance of safety-sensitive functions on the basis of the report of confirmed laboratory test results that have not yet been verified by the MRO.

- An employer does not need a §40.21 waiver to take other actions involving the performance of safety-sensitive functions.

- For example, an employer could (if it is not prohibited by DOT agency regulations and it is consistent with applicable labor-management agreements) have a company policy saying that, on the basis of an event (e.g., the occurrence of an accident that requires a DOT post-accident test, the finding of reasonable suspicion that leads to a DOT reasonable suspicion test), the employee would immediately stop performing safety-sensitive functions. Such a policy, which is not triggered by the MRO's receipt of a confirmed laboratory test result, would not require a §40.21 waiver.

- It would not be appropriate for an employer to remove employees from performance of safety-sensitive functions pending the result of a random or follow-up test, since there is no triggering event to which the action could rationally be tied.

§40.21 **09/01**

QUESTION:

Can union hiring halls, driver-leasing companies, and other entities have a stand-down policy, or is the ability to obtain a waiver for this purpose limited to actual employers?

ANSWER:

- The rule permits "employers" to apply for a stand-down waiver. It does not permit any other entity to do so.

- Only entities that are viewed as "employers" for purposes of DOT agency drug and alcohol testing regulations can apply for stand-down waivers. If a DOT agency rule provides that hiring halls, leasing agencies, etc. are treated as employers, such organizations could apply for a stand-down waiver.