

Revisions to Drug and Alcohol Testing Requirements

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The DOT has revised some of the rules and provisions of the Drug and Alcohol Testing requirements contained in 49 CFR Part 40. This article will touch on the most noticeable changes that affect us as pilots. This article is intended neither to list every change nor fully explain the covered subject matter, but is mainly an overview. Additionally, this article will address only changes to the Federal regulations. Company-specific programs and/or policies will be addressed in a later article. The DOT's new regulations became effective on August 1, 2001, with some provisions already in effect as of January 18, 2001.

The following are some of the key provisions of the new rule:

Validity testing

Medical Review Officer (MRO) review of Substitution and Adulteration test results, and Split Sample Testing for these results, is required as of January 18, 2001. Validity testing will become mandatory on the date U.S. Department of Health and Human Services (HHS) issues their regulations governing procedures for validity testing. Those standards have not been published as of the date this article was written. HHS has published proposed regulations for which comments are due on October 22, 2001. Final HHS regulations will likely be issued some time after this date.

The term Validity Testing can fall into the abyss of semantics. Under this heading, there

are three key definitions of which you should be aware:

1. **Dilution or Diluted Specimen.** A diluted specimen is one that does not meet HHS standards for a standard urine specimen. I will not go into the technical criteria for this determination. This specimen will be tested, and reported to the MRO as either Diluted-Positive or Diluted-Negative. In the case of a Diluted-Positive result, this test will be treated as a positive drug test, with all the consequences appurtenant thereto. At one time, a Diluted-Negative result allowed an "observed" test be conducted at the time of the employee's next test.

Under the new rules, the employer may require an immediate retest of the employee, with the result of the second test being definitive. If the employer does not require a retest, the result of the first test will stand as a negative test. Any retest required under this section will not be an "observed" test. A diluted test result may result from an individual hydrating his/her system prior to going to the collection site. The DOT conducted its own study of 500 specimens from subjects who were instructed to drink a minimum of 80 ounces of fluid over a period of six hours. Of the 500 specimens tested, 113 specimens met the criteria for diluted samples. Here we are in a classic "Catch-22." We, especially long-haul and international crews, are told to drink plenty of water. Yet we are now

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subject to possible additional testing because of it.

2. **Adulterated Specimen.** This is a sample that the laboratory has determined contains a substance that either does not occur naturally in human urine, or occurs naturally, but not in such concentrations. A finding of an “adulterated” specimen is treated as a “refusal to test.”
3. **Substituted Specimen.** This is a specimen with creatinine and specific gravity values below certain thresholds such that the DOT considers the sample as not consistent with human urine. A finding of a “substituted” specimen is treated as a “refusal to test.”

Collection procedures

Some major changes that have taken place in collection procedures are highlighted below:

1. Collectors will be required to have employees display the contents of their pockets. Anything found that may be used to adulterate a specimen will be held outside the collection area, e.g., eye drops. Outer clothing, purses, briefcases, etc., will not be allowed in the collection area. Employees are not required to remove clothing items, e.g., shirts, pants, dresses, shoes, boots. A wallet must be given to the employee. Any other pocket items not deemed to be compromising to the testing protocol may be carried. Employees have an absolute right to be given a receipt for any items held by the collector.

2. A collection under “observed” conditions will be required:

- When a test is canceled because the split sample was not available.
 - When the lab reports a specimen as invalid, and the MRO determines there is no legitimate medical explanation.
 - When the collector finds materials that could be used to alter the specimen. This does not pertain to items innocently brought into the testing area, such as the eye drops mentioned above.
 - When the collector detects conduct that indicates an attempt to alter the specimen.
3. New, easier-to-use drug and alcohol testing forms, as well as standard urine collection kits, will be used.

Training

New rules require enhanced training requirements for collectors, breath alcohol technicians (BATs), MROs, and substance abuse professionals (SAPs). This training will include initial training, refresher training every five years (for collectors and breath alcohol technicians), continuing education (for MROs and SAPs), and “error correction training” (for collectors and BATs) following a mistake that results in a test being canceled.

MRO reporting

Section 40.327 provides that, under certain circumstances, MROs must provide certain otherwise confidential information to employers and certain other parties. It is now mandatory that the MRO report information if the information is likely to result in the employee being medically unqualified for the performance of safety-sensitive duties under a DOT regulation, or if the information indicates that continued performance by the employee of his/her safety-sensitive function is likely to pose a significant safety risk. This means that if the MRO finds out about another drug (legally prescribed) that would otherwise be disqualifying, he must report it.

These are the major items that you will see out on the line. If you have specific questions, I will try to answer them individually.

Fly safe.

