



Preferred Alliance ALERT!

Please note the following notice that DOT has amended the drug testing rules for Observed Collections beginning effective on August 25, 2008.

If you would like these type of transmissions sent to you via email address, then please sent us your request at: supportdesk@preferredalliance.com

If you have any questions please feel free to contact our office at: 877-272-5227.

New DOT Urine Specimen Collection Guidelines – Effective August 25, 2008

As you know, the DOT revised 49 CFR Part 40 in a Federal Register published June 25, 2008. The part 40 amendments are effective August 25, 2008.

Some urine collection procedures were changed make it more difficult to beat the DOT drug tests. The DOT Urine Specimen Collection Guidelines have been updated to reflect changes to the collection process. The new Guidelines – which are also effective August 25, 2008 – are now available on our website at: www.dot.gov/ost/dapc/udsc.html.

The Department changed the observed collection procedures because there is ample evidence suggesting that more and more devices are available in the market place designed to tamper with specimens (for example, devices expressly designed to bring "clean" urine into collections so specimens would test negative). Many of these were designed to be undetected even if specimens were observed using the old procedures.

There are three basic types of devices. [Of course, there could be other devices, but these are currently the basic three devices]:

1. One device has a long plastic tube connected to a bottle containing heated urine.
2. Another device consists of a short plastic tube attached to a battery-heated plastic bag.
3. One device goes a step further by replacing the tube with very realistic prosthetic genitalia designed to match the employee's skin tone.

The new direct observation procedures require the observer to check for these devices when an employee is subject to an observed collection. These new procedures are for those employees and situations for which observed collections are already required, or in the case of #5 below, was an employer's option.

1. Employees with dilute specimens with creatinine in the 2-5 range.
2. Employees with invalid test results with no valid medical explanation.
3. Employees who tested positive, adulterated, or substituted & their split specimens were not available for testing [splits not collected; missing or destroyed in transit].
4. Employees who submit cut-of-temperature range specimens or tampered-with specimens at collection sites.
5. Employees with prior positives and refusals. Return-to Duty & Follow-Up drug testing under direct observation goes from employer option under the old rules to required under the new amendment.

The Guidelines state that employees having observed collections must be instructed to raise clothing, just above the navel; lower clothing, to mid-thigh; then turn around to show the same gender observers they do not have prosthetic

devices for beating the tests. If no device is detected, the employee is permitted to return clothing to its proper observed-collection position. Then the observed collection will take place.

The following refusals to test are also noted in the Guidelines:

1. An employee admits to the collector that he or she adulterated or substituted their specimen.
2. The employee behaves in a confrontational way that disrupts the collection process.
3. The employee fails to follow the observer's instructions to raise and lower their clothing and to turn around to permit the observer to determine if the employee has a prosthetic or other device that could be used to interfere with the collection process.
4. The employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
5. The employee refuses to wash his or her hands – after being directed to do so.

Part 40 and the observed collection procedures, as always, apply to DOT-regulated testing.

Amendment to the Final Rule from the DOT as of August 22, 2008:

On June 25, 2008, the Department issued new rules improving protections against cheating on drug tests, including the mandatory use of specimen validity testing for all DOT specimens. Recently, the Department has received petitions from some transportation labor and management organizations asking that the August 25, 2008, effective date be postponed for two provisions of the rule concerning the direct observation of urine collections.

Provision 1: The first of the two provisions would make direct observation mandatory in all follow-up and return-to-duty collections. Direct observation is currently authorized, but not required, in these circumstances.

Because the notice of proposed rulemaking for the June 25, 2008, final rule had not specifically asked for comment on this provision, the Department has decided to hold a 30-day comment period on this provision. To allow for the comment period and the Department's response, the effective date of mandatory direct observation for follow-up and return-to-duty testing provision has been changed to November 1, 2008.

Provision 2: The second provision would require observers in all direct observation collections to check employees for the presence of prosthetic and other devices used to cheat on tests, by having employees raise and lower their clothing. The effective date of this provision will remain August 25, 2008.

The Department emphasizes that the new direct observation procedure will apply only to direct observation tests authorized or required by the current 49 CFR Part 40, and the rules going into effect on August 25 will not result in any increase in the situations in which direct observation is used. Direct observation occurs in only a very small percentage of DOT test situations, where there is a heightened risk of an attempt to cheat.

The Department's Notice will be published in the Federal Register on Tuesday, August 26, 2008, and is currently on public display at the Federal Register at:

http://federalregister.gov/OFRUpload/OFRData/2008-19816_PI.pdf

We want all interested parties to realize that the single change in the effective date affects **ONLY 40.67(b)** – mandatory direct observation for follow-up and return-to-duty testing. The rest of the June 25, 2008, final rule goes into effect on August 25, 2008, as scheduled.

Thank you.

Jim L. Swart
Director
Office of Drug and Alcohol Policy and Compliance
U.S. Department of Transportation