

# **Federal Drug Testing Overview**

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**August 12, 2008**

## **Drug Testing Laws - Generally**

- Federal Testing - the federal government regulates two main types of drug testing:
  - Testing of federal employees
  - Testing of public and private sector employees in the transportation and pipeline industries
- State Testing
  - All drug testing, other than federal testing, is regulated by the states
  - Approximately 1/2 have enacted drug testing statutes. In the remaining states, the drug testing laws are determined by judges on a case by case basis

## Testing of Federal Employees

- Regulated by the United States Department of Health and Human Services (HHS)
- HHS established *Mandatory Guidelines for Federal Workplace Drug Testing Programs*
- HHS also
  - Certifies laboratories
  - Identifies drugs, drug analytes and cutoffs
  - Establishes laboratory urine testing procedures through the Substance Abuse & Mental Health Services Administration (SAMHSA)

## Transportation Industry Testing

- Regulated by the Department of Transportation (DOT)
- DOT established *Procedures for Transportation Workplace Drug and Alcohol Testing Programs* (49 CFR Part 40)
- DOT regulations are similar to HHS regulations but more detailed
- DOT regulations establish:
  - *Who* conducts tests
  - *How* tests are to be conducted
  - *What* return to work procedures apply (after drug/alcohol violation)

## Transportation Industry Testing

- The DOT oversees 6 "modal" agencies:
  - Federal Aviation Administration (14 CFR Part 121 (Appendix I))
  - Federal Motor Carrier Safety Administration (49 CFR Part 382)
  - Federal Railroad Administration (49 CFR Part 219)
  - Federal Transit Administration (49 CFR Part 655)
  - Pipeline and Hazardous Materials Safety Administration (49 CFR Part 199)
  - United States Coast Guard (46 CFR Part 16)
- Each agency has its own set of regulations, which supplement 49 CFR Part 40
- The agency-specific regulations establish:
  - *Who* is tested
  - *When* they are tested

## Comparison of HHS and DOT Regs

	HHS	DOT
<i>MRO Certification</i>	Not required	Required
<i>Split Specimens</i>	Not required	Required
<i>Drugs Panels</i>	5 Panel + more if reasonable suspicion, post-accident, or waiver from HHS	5 panel only
<i>Specimen Validity Testing</i>	Required	Required as of 8/25/08
<i>Split Specimen Retesting</i>	Donor may request; <b>agency</b> may request to defend a legal proceeding	Only donor may request
<i>MRO Contact with Donor</i>	MRO must attempt to contact within 24 hours	MRO must make 3 attempts in 24 hours
<i>No Contact Positives</i>	Report after 14 days; if DER contacted donor, report after 5 days	Report after 10 days; if DER contacted donor, report after 72 hours
<i>Shy Bladder</i>	Medical evaluation must take place as soon as practical after the attempted collection	Employee has 5 days to obtain a medical evaluation
<i>Temperature Out of Range</i>	Observed collection; donor may volunteer to have temp taken	Observed collection

## Comparison of HHS and DOT Regs

	HHS	DOT
<i>Negative</i>	Report as negative	Same
<i>Positive</i>	Downgrade to negative if donor has a legitimate medical explanation; otherwise, report as positive.	Same. <b>If also invalid, do not report the invalid result unless the split fails to reconfirm. (New!)</b>
<i>Adulterated (SVT indicates specimen has been altered)</i>	Report as negative if donor has a legitimate medical explanation (there is none); otherwise, report as refusal.	Same. <b>If also invalid, do not report the invalid result unless the split fails to reconfirm. (New!)</b>
<i>Substituted (creatinine &lt; 2mg/dL)</i>	Report as negative if donor has a legitimate medical explanation; otherwise, report as refusal.	Same. <b>If also invalid, do not report the invalid result unless the split fails to reconfirm. (New!)</b>
<i>Rejected</i>	Test is cancelled. May recollect if a negative test is required (e.g., in the case of a pre-employment, return-to-duty, or follow-up test).	Same

## Comparison of HHS and DOT Regs

	HHS	DOT
<i>Negative and Dilute</i>	MRO reports as negative and tells agency that it may require an observed collection the next time the donor is selected for a drug test	<p>If moderately dilute (creatinine <math>\geq 5</math> mg/dL), MRO will tell the employer that it may, but is not required to, direct the employee to take another test immediately.</p> <p>If very dilute (creatinine <math>\geq 2</math>mg/dL, <math>\leq 5</math> mg/dL), the MRO will tell the employer that an immediate recollection under direct observation is required.</p>
<i>Positive and Dilute</i>	<p>If positive is downgraded to negative, MRO reports as negative <b>and</b> dilute and tells agency that it may require an observed collection the next time the donor is selected for a drug test.</p> <p>If positive is verified as positive, MRO will report the positive result but will <b>not</b> report that the specimen was also dilute.</p>	<p>If positive is downgraded to negative, MRO will report as negative <b>and</b> dilute.</p> <p>If positive is verified as positive, MRO will report that the specimen is positive <b>and</b> dilute.</p>

## Comparison of HHS and DOT Regs

INVALID TEST RESULTS (Unidentified Interfering Substance)		
	HHS	DOT
Legitimate explanation	Cancel	Cancel. <b>If a negative result is required, the employee will undergo a medical exam for signs and symptoms of drug use. (New!)</b>
NO legitimate explanation	Do recollection under direct observation.	Same
If second specimen is invalid for a <b>different</b> reason than the first	Report the result for recollected specimen as a refusal.	<b>Do an observed collection without prior notification to the employee. The MRO is NOT required to first contact the employee to discuss the result. (New!)</b>
If second specimen is invalid for the <b>same</b> reason as the first	Report the recollected specimen as canceled and recommend to the agency that no further action be taken.	MRO will cancel the test. <b>If a negative result is required, the employee will undergo a medical exam for signs and symptoms of drug use. (New!)</b>

## Other Changes to DOT Regulations

- All **return to duty** and **follow up** drug tests must now be observed
- Observer in observed collections must check for prosthetic devices
- An employee will be deemed to have refused a drug test if he or she:
  - Fails to allow the observer to check for prosthetic devices
  - *Possesses* or wears a prosthetic or other device that could be used to interfere with the collection process

## Other Changes to DOT Regulations

- Laboratories must provide semi-annual statistical summaries of their DOT testing to the Department of Transportation
- There is no split specimen testing for an invalid result
- MROs may now verify an invalid test result as cancelled (with instructions to recollect immediately under direct observation) if MRO is unable to make contact with the employee
- If an employee with an invalid test result admits to using a drug, the MRO must report that admission to the DER, and report the test as **cancelled** with the reason noted

## Multiple Verified Results for the Same Testing Event

1ST SPECIMEN	2ND SPECIMEN	REPORT
Multiple non-neg results	--	All non-negative results
Neg	Neg or Non-neg	2 <sup>nd</sup> . Hold (do not report) the 1 <sup>st</sup> .
Non-neg	Neg	1 <sup>st</sup> . Hold (do not report) the 2 <sup>nd</sup> .
Non-neg	Non-neg	1st <b>and</b> 2nd

# Questions?

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