



71577

DEPT. OF TRANSPORTATION
DOCKETS
00 FED - 3 AM 7: 57

January 20, 2000

Docket Clerk

Attn: Docket No. OST-99-6578 - 10

Department of Transportation
400 7th Street, SW., Room PL401
Washington, DC 20590

Re: Comments on New Proposed Rules

Collector Training: The need for collector training should be addressed. The majority of problems in drug testing do not occur at the laboratory, the laboratory simply detects the problems. The problems **often** occur during the collection process and often as a result of inadequately trained collectors. We have training for BAT's but no specific training for urine collection, other than read and understand the procedures under Part 40. There should be classes developed for collector training and collectors should be tested for proficiency and **re-checked** periodically for understanding and proficiency. The collection process is, without a doubt, one of the more critical areas in drug testing. Proper training would reduce the number of fatal flaws on the CCF's. Increase awareness of what to look for and observe while performing a urine collection. This would result in fewer canceled tests and a greater number of reliable specimens being shipped to the lab that would in turn increase the possibility of further identifying individuals with substance abuse problems more accurately.

Collection Process: An employee should always be allowed the time (3 hours) to produce a sufficient amount of urine. The procedures and possible consequences of not producing a sufficient sample and the advantages to drinking some liquids should be explained during that waiting period. The decision then would rest with the donor. The donor should not be forced to drink fluids. The drinking of fluids should be advised by the collector but the donor should not be forced to drink fluids any more than the donor would be forced to take the test. To take or refuse the test is the donors' right, but consequences of a refusal or an inability to produce a **sufficient** amount (without a valid **medical** explanation) should be explained to the donor. The donor will then be fully aware of the consequences and be able to make a decision for himself or herself

Directly Observed and Monitored Collections:

1. Immediate collection under direct observation or monitored collection should be in order whenever the collector is presented with a sample that is not suitable. A specimen that has been collected, sealed and tested by the laboratory and confirmed by the laboratory and the MRO to be dilute should be **re-collected** as soon as possible. Most of the information that is available to individuals on “How to pass a drug test” is about drinking large quantities of fluids to flush the individuals system. The validity of the testing process, at this time, is hampered by individuals who produce samples that are diluted. There is no recourse, at this time, with the exception of direct observation or monitored collection the next time the individual is chosen for a random test. You say this could be months before the individual is tested again. I say this could be years. An individual with a serious problem could go undetected for quite some time. Even if the individual is chosen again very soon, what prevents the individual from repeating the same process as before and producing another diluted sample? Could this go on and on without being detected?

Solution: If an individual required by DOT regulations produces a dilute specimen, confirmed by the laboratory and the MRO, the donor and/or the employer should be notified of the dilute specimen and the necessity for a recollection in order to obtain a suitable specimen for compliance with DOT regulations. The donor should be informed that the initial specimen that was collected was confirmed dilute and that the possibilities of ingesting too much water or fluids could be the reason the specimen was confirmed dilute. The employer should then direct the employee to a collection site in the same manner as if the employer was just notified of a random test. The individual should be instructed not to consume large quantities of fluids before the second collection to reduce the possibility of the second test being confirmed as a dilute specimen. The individual should also be informed that if the second specimen is confirmed dilute that he or she will have to visit with a SAP and be subject to follow-up testing in the same manner as would be directed under a refusal to test. The employee should also be informed that if the second specimen is confirmed dilute that he or she will be removed from a safety sensitive position until he or she is released by the SAP for return to duty.

Comment: This would put some teeth into the collection and testing process and help to identify potential substance abuse problems that might otherwise go unnoticed. Having an individual refrain from drinking large quantities of fluid for one collection would not be harmful to the individual. Would this eliminate all problems and identify all substance abuse problems? No. However this would certainly be an asset to the collection process and give more reliable

credence to the validity of the testing process and help in identifying substance abusers.

Item of Interest: Most of the products for sale over the internet, in one fashion or another, instruct individuals on how to drink large quantities of fluid to pass a drug test. One sight in particular might be of interest to you. <http://bbs/b/4284/index.cig> This is a message board that people e-mail to find out how they can pass a drug test. Most of the responses to these individuals seem to be from one individual that directs them to a site for ordering products to pass a drug test.

Laboratories: The products available over the internet and in specialty stores make it absolutely necessary for the laboratories to check automatically for nitrites, pH, creatinine and specific gravity levels. Some of the laboratories we use at this time automatically check for these because they know how important it is. Not automatically checking for these compromises the validity of the testing process and reduces the possibility of identifying potential substance abuse problems.

Reducing Paperwork: The catalyst for drug and alcohol testing is to remove individuals with potential substance abuse or alcohol misuse problems from safety sensitive positions. Expediting the process in any way possible, that doesn't compromise the rights of the individual, will help in removing an individual that may have a substance abuse or alcohol misuse problem from a safety sensitive position where he might present a potential hazard to himself, fellow employees or the public at large.

Rejected Specimens: A rejected specimen, unless adulterated or substituted, should be useless. Adulteration or substitution would indicate that a donor was attempting to undermine the drug testing process and as a result could be considered a refusal to test. This would result in action being taken upon the employee up to and including termination. Any test that might be challenged through a court of law should have the specimen retained for a period of 1 (one) year for any re-testing that might be necessary. Otherwise, a specimen that may be rejected due to leakage, dilution, seal not intact, or collector error should have no bearing on the donor. Another test would be in order and no employee consequences other than another collection would take place. Those rejected specimens should be discarded.

MRO Reviews of Test Results: I cannot see any reason a DER could not gather useful information, such as prescription medication, doctor's name and number and pharmacy name and number for the MRO. Then the MRO would only have to make a phone call to verify the prescription and a phone call to the individual. The MRO would be making the determination of positive or negative based upon his knowledge of substances being tested for and the prescriptions. The only role

the DER would play would be to gather the information. I fail to see how this would compromise the individual in any way.

Testing: of Split Specimens: Employees should pay for any re-testing of samples. If there is enough evidence to show that re-testing often shows contrary to the original testing of the sample then we have a problem with the laboratories. When the cost comes out of the employees pocket, he will think very carefully before asking for a re-test, especially if he knows the sample will likely come back positive again. When the employee is aware that the cost may be absorbed by the employer this will allow the employee to call for a re-test simply out of spite. How is the employer going to recover money for the re-test if the employee is no longer working for the company? The fact that the company must pay for the re-test if the split sample re-tests as negative should be enough. The company has already paid for the initial test that was confirmed by the lab and the MRO as positive. They shouldn't have to pay for a re-test.

It would seem logical that if there are adulterants available that would deteriorate in a matter of hours that another test of the initial specimen be performed immediately to validate the initial confirmation of an adulterant. Otherwise all specimens with that adulterant would always confirm out negative and we would again allow individuals with potential problems to go undetected.

Stand down issue: There are five drugs that are being tested at this time under the DOT rules and regulations. Marijuana, Amphetamines, Phencyclidine, Cocaine and Opiates. Phencyclidine (PCP) has no explanation for use. Marijuana and Cocaine have, in general, very limited explanation for use. Amphetamines and Opiates could be under a prescription medication. Would it be possible to introduce a stand-down issue on Marijuana, Cocaine and Phencyclidine and allow Amphetamines and Opiates to be positively identified as confirmed positive before invoking a stand-down?

Split Specimens: I was under the impression that all samples, regardless of whether or not they were actually split at the time of collection, were split at the laboratory. If this is not the case, then I believe that all specimens should be split allowing one sample to be frozen and tested at a later time if requested. It would be much simpler if all the DOT agency collection methodologies were the same. Clinics and collection facilities have a real problem keeping up with collection kits for FHWA as opposed to RSPA and which are singles and which are splits. Having a standard for DOT testing, i.e. all split samples will greatly reduce the confusion for collectors.

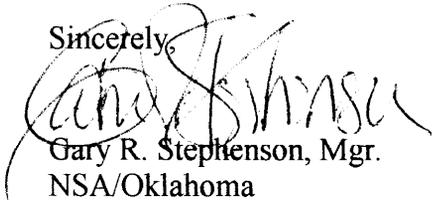
Alcohol Test Administration: The QAP should be in place for all EBT's. This should be approved by the DOT and training for use should still be in place for all BAT's. After the OAP is approved by the DOT and the BAT is trained and demonstrated proficiency on the EBT, the BAT should maintain as required a log for calibration and positives. There should be no reason for a BAT to show or develop a QAP as that should already have been developed and approved. The

BAT should however continue to maintain monthly calibrations and post-positive calibrations to insure that the EBT stays in proper working order and maintain records for proof.

Public Interest Exclusions (PIE's): All Service Agents should be required to sign a certificate of compliance with Part 40. Service Agents should be investigated and decertified if it is determined that they cannot comply with the regulations of Part 40 for the employer. The employer has the burden of ultimately complying with Part 40, but the Service Agent plays an important part in insuring that compliance. There are costs involved with maintaining compliance with Part 40 for Service Agents and if the procedures are not followed correctly then some costs can be lessened if not eliminated. This allows for discounted pricing through unethical practices. Certifying and monitoring Service Agents and decertifying those who do not follow the guidelines of Part 40 will instill confidence for employers in the Service Agents they use.

Please address any comments to the self addressed stamped envelope enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary R. Stephenson". The signature is written in a cursive style with some loops and flourishes.

Gary R. Stephenson, Mgr.
NSA/Oklahoma
2244 NW 39th
Oklahoma City, OK 73112