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BRANDYWINE MEDCENTER

Urgent Care & Occupational Health Services

DEPT. OF TRANSPORTATION
DOCKETS

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Docket Clerk

Attn: Docket No. OST-99-6578 • u 23

Department of Transportation

400 7th St, SW, Room PL401

Washington, DC, 20590

RE: Notice of Proposed Rulemaking, 49 CFR Part 40

§40.33 With regard to whether self-instruction is adequate for collectors, or more formal training is required: This isn't rocket science, but it's still a source of frequent error. Could "more formalized training" simply be a specified selection of items to be reviewed, and problems to be solved. I'd hate to see a new Training Industry grow up just for collections, but I believe this could best be avoided - while maintaining some standardization of training - if the DOT were to draw up a "course syllabus" which lab directors, MROs, etc., could use to "certify" their employees. **Re-testing** could then easily be accomplished every two or three years, as the DOT deems appropriate.

§§40.67 and 40.69 With regard to requiring immediate recollection for dilute specimens: My experience as an MRO has suggested that water loading is a popular and reasonably effective method of beating many drug screens. Also, this isn't medically benign. Currently, there are essentially no consequences for this. As an interim measure, I would recommend that this be cause for "immediate" recollection. I've placed immediate in parentheses, because we don't find out that the urine is dilute until the lab report is returned. The extra 24 to 48 hours thus provided may be the window of time a drug user needs for his next specimen to be "clean" (dipsticks could be included in test kits to measure urine specific gravity, but they aren't terribly accurate, and are susceptible to user error).

I believe the best long-term solution is to tie the cut-off value to urine **creatinine** level (i.e. a dilute specimen requires a lower cut-off concentration than a typical specimen). This would minimize the missed positives, minimize the retesting required, and reduce the incentive to engage in the unsafe practice of water loading. Could the DOT encourage research to substantiate this approach?

§404.81 With regard to requiring laboratories to use an “adulteration panel”: Commercially available and “amateur” additives to block testing have become common. Having a standard “adulteration panel” would combat this method of beating the tests, and enforce a uniform level of quality among labs, since one couldn’t underbid the other by simply providing less testing. Keep this panel’s composition flexible for later change; ways of beating the test will inevitably **outpace** the testing requirements.

§40.123 With regard to “**MROs** would have to take a training course every two years or certify that they have reviewed and understand Part 40 and applicable DOT agency regulations and guidance”: From my own perspective, that of an Occupational Physician for whom drug testing is not the dominant part of my practice, I see problems with each approach:

- 1) Taking a formal course every two years would be excessively burdensome. And the material isn’t so complex as to require this level of continued training.
- 2) Just “certifying” that you’ve read and understand the regulations may be inadequate quality control; I also do many DOT driver’s physicals. Individuals I’ve been asked to **recertify**, who have had insulin dependent diabetes, poor vision, etc., demonstrate that a significant number of physicians are doing these physicals without an adequate understanding of DOT regulations. This level of understanding would NOT be acceptable for **MROs** (not to suggest that it is acceptable for doing DOT physicals).

Therefore, I would suggest some middle ground, perhaps a written test that could be mailed in or done on-line, administered by the **MRO** certifying organizations (trust me; they’ll love doing that). They should be required about every two years, AND when new regulations such as these are promulgated.

§40.133(a)(2) With regard to the appropriate time period for verifying a positive result on an unreachable employee: Fourteen days seems excessive. I’d recommend FIVE BUSINESS DAYS. If the employee will be unreachable, he should be given responsibility for initiating contact with the **MRO**. To balance this, I recommend specific directions for reversing this decision when unforeseen circumstances make contact impossible, and a legitimate medical explanation is found.

§40.135 With regard to warnings an **MRO** would need to provide an employee as he begins the verification process: Anything which clarifies the duties of the **MRO** seems like a good idea. However, it will be nearly impossible to ascertain after-the-fact whether the appropriate notification was given, and it I would recommend caution with regard to introducing any element whose chief function will be to provide the litigious employee another opportunity for challenging a positive test.

§§40.137 and 40.139 With regard to the necessity for verifying a positive **PCP** test: There is no point in even contacting an employee to request a legitimate medical explanation for **PCP**, as one does not exist.

With regard to shifting the burden of proof for employees when verifying a test positive for HIGH LEVELS of opiates: It would be very appropriate.

§§40.145 and 40.173 With regard to clarifying the employer's obligation to assure payment for split-specimen testing: That an employee must pay for the retest isn't a "misunderstanding," it's simply the employers declining to be burdened with yet another **\$100** charge for a drug user. As the **re-writing** is now planned, there would be **NO** incentive for the employee not to request a retest, even though he knew he had been using the drug. In my opinion, this is an unfair additional burden on the employer, and a severe one on some small employers. At **MINIMUM**, the employee who can afford it should be required to pay half the laboratory charge, and those who feel they can't afford to pay be required to complete some appropriate documentation (whose nuisance value would somewhat deter spurious challenges). Perhaps the employer could garnishee the final paycheck of the employee whose split specimen is also found to be positive.

It would be an unfortunate and expensive consequence to the employers (and perhaps undermine their support of DOT drug testing programs) if disgruntled, drug-using employees could routinely request a retest of specimens as a final protest against the drug testing program.

§40.93 With regard to approaching an adulterated specimen: Adulteration of specimens is a serious issue. Choosing one of the three options for **re-testing** an adulterated specimen is a question whose most important issues are technical. I would encourage the DOT to defer to the laboratory experts, and choose the approach based on the chemical stability of **adulterants** (possible problems with a delayed retest), and the actual likelihood of a false positive test for **adulterants**. Split specimen testing as an option should only be available as an option if it's not going to open the door for further abuse.

§40.191 With regard to the medical qualifications for a physician evaluating a supposed inability to provide urine, or complete the BAT: “Shy Bladder” is not a medical condition, so specifying appropriate qualifications for the evaluating physician is frivolous. To make the regulations more palatable, consider permitting an employee who finds it **difficult** to urinate within the allotted time frame elect to have a blood test instead. In actual cases of **anuria** (NO urine production), the employee must be on dialysis. The presence of **anuria** can easily be confirmed by the employee’s treating physician. I have never seen a dialysis patient need to pass a drug test.

However, pulmonary conditions precluding successful completion of a BAT are well recognized. If the **MRO** feels he/she needs further information, this would normally be available from the employee’s treating physician, and if such is not available, the **MRO**, a **pulmonologist**, an internist, or a family practitioner should be able to confirm a medical problem. In my own practice, this issue is typically an individual with emphysema, whose diagnosis is fairly evident.

§40.329 With regard to balancing privacy with appropriate dissemination of positive tests and refusals to test: Perhaps the most effective yet protective method of disseminating positive test results to appropriate individuals (e.g. employers) would be for the DOT to form and control the data base (sorry..).

Public Interest Exclusions

- Point (1): **60** days seems an excessive amount of time for a Service Agent in error to clean up their act.
- Point (2): Simply publishing the errant Service Agent’s name in the Federal Register would be quite ineffective; who reads it?

Thanks for attending to my opinions. Feel free to call with any questions.

Sincerely,



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