

Drug Testing

DOT Issues Final Rule Revising Drug, Alcohol Testing Requirements

A revised drug and alcohol testing rule for transportation workers in safety-sensitive positions was issued Dec. 19, 2000, by the Department of Transportation (65 FR 79462).

The revised rule will further enhance transportation safety by making the testing process easier to carry out and by providing additional safeguards for employees, the department said.

The rule **amends** DOT regulations, first **issued** in 1988, that require drug testing of employees in **safety-sensitive** positions in the aviation, motor carrier, rail, transit, maritime, and pipeline industries. Alcohol testing was added to the requirement in 1994.

The rules require affected employees to submit to random drug tests as well as tests when applying for jobs, during routine physical examinations, upon reasonable suspicion of use, and after an accident.

In December 1999, DOT issued an advance notice of proposed **rulemaking** seeking input on planned revisions to the rule in light of changing testing technology, changes in the drug and alcohol testing business, and the functioning of the department's own testing programs.

Significant Alterations. The department received more than 400 comments on the proposal. Further comment was received during three public "listening sessions" and on an Internet forum. The final rule "responds to all the comments and makes significant alterations to the existing rule governing the department's drug and alcohol testing program," DOT said.

Among the changes from current requirements are:

- To ensure fairness to employees, the revised rule requires a medical review officer to examine test results when a laboratory determines that an employee's specimen might have been adulterated or substituted. Any employee will be able to obtain, at a different certified laboratory, a test of his or her "split" specimen to ensure the original laboratory did not make an error. Specimens are divided into separate containers to allow for such retesting. The provision goes into effect 30 days after the rule's publication

- Validity testing, which is designed to deter and detect attempts to adulterate or substitute specimens, will continue to be voluntary on the part of the employer utilizing current procedures. However, when the Department of Health and Human Services, which regulates drug-testing laboratories, finalizes its **mandatory procedures** for validity testing, DOT said it would publish a notice in the Federal Register making validity testing mandatory in the transportation industry.

- The revised rule allows employers to apply to the appropriate DOT operating administration for a waiver allowing them to temporarily remove employees from performing safety-related tasks while the medical review officer is deciding whether there may be a legitimate medical explanation for a positive test result from a laboratory. The procedure **for** obtaining a waiver includes provisions to protect employee confidentiality and to allow an employee to be paid during this period, DOT said.

- The rule continues an existing requirement for six tests to be conducted over the first 12 months following an employee's return to duty following a suspension. However, in response to comments, the rule clarified that the follow-up testing requirements follow the employee from one job to another and persist through a break in service.

- The revised rule gives contracted drug testing service providers **greater** authority to transmit information such as drug test results to employers.

- Included in the revised rule are new "public interest exclusion" provisions that allow DOT to protect the public from the action of service providers that violate the department's rules. This provision includes significant: due process protections to ensure the **process** is fair.

- Enhanced training requirements for drug and alcohol testing personnel are included in the revised rule.

Transition Period. Most of the revised rule will take effect Aug. 1. In the preceding months, the department expects to develop and issue **guidance**, including a revised medical review officer manual, and make presentations at a significant number of conferences and training sessions. The provision requiring medical review officer and split specimen testing following adulteration and substitution findings will go into effect **30 days** after publication of the rule.

The revised rule **is** posted on DOT's docket **management** system at <http://dms.dot.gov>, docket OST-99-6578 **on the World Wide Web. A copy of the rule can be obtained by** calling **the department's fax-on-demand** telephone line, 800-225-3784, **and requesting document 151; or by writing** the DOT Office of Drug and Alcohol Policy and Compliance, 400 Seventh St. S.W., Room 10403, Washington, D.C. 20590, (202) 366-3784

Documents published in the Federal Register can be accessed at http://www.access.gpo.gov/su_docs/aces/aces140.html **on the Web.**