

ODAPC DISPATCHES

Office of Drug & Alcohol Policy & Compliance

Office of the Secretary · US Department of Transportation · 202.366.DRUG (3784)



Specimen Validity Testing: Notice of Proposed Rulemaking

ODAPC has published a notice of proposed rulemaking (NPRM) in today's Federal Register.

The NPRM focuses on proposals for drug testing specifically, specimen validity testing (SVT) (the testing for adulterants and substitutions in urine specimens). There are also a number of recommended changes for the laboratory and medical review officer (MRO) responsibilities with regard to SVT.

Here are some of the NPRM's most notable recommendations:

1. Making SVT (the testing for adulterants and substitutions) mandatory.
2. Utilization of Department of Health and Human Services (HHS) SVT instructions to laboratories for establishing and directing laboratory actions for SVT, including appropriate cutoffs.
3. Adoption of HHS procedures both for laboratories and MROs regarding the numerous actions for split specimens.
4. Continue requiring that some negative dilute specimens be recollected under direct observation.
5. Having MROs obtain a negative result if one is needed for pre-employment, return-to-duty and follow-up testing if the employee presents two invalid results for the same reason or when the employee has a long-term medical condition that causes an invalid result.

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6. Clarifying MRO duties with reviewing and reporting multiple test results for the same specimen and multiple specimens collected during the same testing event.

The proposed changes are intended to create consistency with SVT requirements established by HHS and to modify some measures taken in two of DOT's past interim final rules concerning SVT. The NPRM can be accessed from the ODAPC website at: www.dot.gov/ost/dapc/frpubs.html.

How to Comment

Comments for the NPRM may be submitted within the next 60 days by any of the following methods:

- **Web Site:** <http://dms.dot.gov>.
- **Fax:** 1.202.493.2251
- **Mail:** Docket Management Facility, US DOT, 400 Seventh Street, SW, Nassif Bldg, Rm PL-401, Washington, D.C. 20590-0001
- **Hand Delivery:** 9am-5pm (M-F). RM PL-401 on the plaza level of the Nassif Bldg, 400 Seventh Street, SW., Washington, DC.
- **Fed. eRulemaking Portal:** <http://www.regulations.gov>.

Please see the NPRM for additional detailed requirements on how to comment.

Marriage & Family Therapists to Act as SAPs

In August, President George W. Bush signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Part of that act directed the Secretary of Transportation to complete a rulemaking allowing state licensed or certified marriage and family therapists (MFTs) to be included as counselors eligible to act as Substance Abuse Professionals (SAPs) under DOT drug and alcohol testing regulations (49 CFR Part 40).

DOT welcomes their addition, long believing that MFTs have the counseling skills and abilities to serve transportation employees. The American Association for Marriage and Family Therapy worked to overcome their last hurdle of eligibility – specifically the lack of licensure or certification in two states. DOT regulations require that you are licensed or certified in all 50 states. And thanks to SAFETEA-LU, state licensed or certified MFTs will not have to wait for the remaining two states.

After Part 40 is amended, MFTs with state licensure or certification will be included as one of the credentialed professionals eligible to become SAPs.

Please remember: until the amended regulation appears in the Federal Register, state licensed or certified MFTs will not be able to perform as SAPs.

But, MFTs can get ready to be SAPs. State licensed or certified MFTs who already meet the “knowledge and experience” requirement of [49 CFR Part 40.281\(b\)](#) can begin receiving the required SAP training and take the examination. Visit our website for a [list of exam and training resources](#) and for the [SAP guidelines](#). For more information, contact ODAPC or the American Association for Marriage and Family Therapy at 703.838.9808.

NHTSA Publishes Revised Conforming Product List

In September, the National Highway Safety Traffic Safety Administration (NHTSA) published a revised Conforming Product List (CPL) of Alcohol Screening Devices (ASD) that can be used in support of State Laws that target youthful offenders and DOT’s Workplace Alcohol Testing program.

For employer to use ASDs in conjunction with DOT regulated alcohol testing, the device must appear on NHTSA’s CPL. See [49 CFR Part 40.229](#).

“Be aware that NHTSA’s new CPL adds new devices and removes existing devices from the list.”

In March 2005, ODAPC released a Safety/Consumer Alert regarding the “Alcohol √” disposable breath alcohol screening device manufactured by Akers Laboratories, Inc. of Thorofare, N.J. The device failed to meet requirements. See [ODAPC Dispatches 3.11.05](#).

Since March, the device has undergone additional testing by NHTSA and found not to be in compliance with its requirements. The device was not included on the list by NHTSA in the September release of conforming products.

Be aware that NHTSA’s new CPL adds new devices and removes existing devices from the list. Employers covered by DOT alcohol testing regulations should review their programs to be sure that they are only using those devices listed.

The revised CPL can be found on ODAPC’s web site at <http://www.dot.gov/ost/dapc>.

Mock Collection Basics

The Department's regulations require error-free mock collections as part of the qualification training for collectors, breath alcohol technicians (BATs) and Screen Test Technicians (STTs).

Why? So students can show their knowledge and demonstrate their ability to administer testing according to DOT regulations. This is especially helpful for students to demonstrate proficiency in alcohol testing, because they are often administering the device in the field with little to no support.

A mock collection must reflect a real-life situation for the trainee, e.g. using DOT required documents and materials.

Mock Collections must be:

- Conducted start to finish.
- An actual collection –not just a description of how a collection is done.
- Performed start to finish.
- Monitored face-to-face or in real-time observation and interaction.

An instructor may be an observer or participant in the mock collections –but never a coach. Be sure to read the specific regulation at and [49 CFR 40.33\(C\)\(2\)](#) and [49 CFR Part 40.213\(c\)\(1\)](#).



What Employees Need to Know About DOT Drug & Alcohol Testing is available on our website. You may also order small quantities (less than 50) at 202.366.DRUG (3784).

Follow-up on Hurricane Katrina Lab Impact on Kroll

Kroll Laboratory Services (KLS) is hopeful that they will be able to resume sample processing on a limited basis by early mid-November, according to Kroll Client Services.

Until the New Orleans area based laboratory re-opens, Quest Diagnostics – Schaumburg, IL will continue to analyze their specimens. If you have any questions, send an e-mail to klssupport@krollworldwide.com or fax requests to 866-350-6011.

Check with Kroll to see if they found the split, MROs may be able to re-open the cancelled test result.

Advice for Medical Review Officers (MROs) on Kroll

Missing CCFs:

MROs can re-open a case if the test was originally cancelled because the MRO did not receive the laboratory CCF or MRO copy of the CCF, but has been subsequently received by the MRO.

Missing Split Specimens:

MROs may have cancelled a “positive” or “refusal to test” after the employee requested a split test because the split specimen was not available for testing. Please check with Kroll to see if they have found the split specimen and forwarded it for testing at another laboratory. If they have and the laboratory re-confirmed the primary specimen, you may re-open the cancelled test result and report the confirmed result.

Got a question on Kroll Issues:

Call ODAPC at 202.366.DRUG (3784) or email at ODAPC@dot.gov.

Best Practice: The Diplomacy of Testing Notification

No one likes to ask someone to go pee in a cup, but how a person's asked can significantly impact any drug & alcohol testing program. Make too big a joke out of it, and the employee knows the company doesn't take the program seriously. Act too much like the Secret Police, and the employee believes the company is trying to find positives no matter what.

So, how does a DER or testing supervisor strike the balance?

Cindy Grosso, founder of the Charleston School of Protocol & Etiquette in Charleston, SC believes the key is diplomacy. "The Skill of diplomacy is saying what you want in a way that's not offensive or accusatory of a person," Ms. Grosso says. "No one should be offended if you say it right."

She also suggests using a card to read citing the federal regulation. "This shows employee's that you are not picking on them, but asking them to do something required by law."

Treating employees with respect and honesty is vital, according to Margaret Ann Pritchard of Manners & Protocol in Brentwood, TN. "Treat the employee with respect, but be honest that the test is an important condition of employment," she says. "And, don't sugar-coat the request to give employees the impression that the test is less important than it really is and not a critical part of their position."

But, that doesn't mean the situation still can't be handled with some humor.

Jacqueline Whitmore, President of EtiquetteExpert.Com in Palm Beach, FL says "If everyone knows this is a possibility, handle it with humor. *This is your lucky Day! You've been chosen!*"

Is there an article you would like to see in ODAPC Dispatches, let us know at ODAPC@dot.gov.

A few things for DERs & testing supervisors to keep in mind:

- Never notify the employee by intercom, radio or in front of the group.
- If working with others, take the employee aside to inform him that he has been chosen for testing.
- Have a written list of who is scheduled for testing and what type of test (alcohol or drugs, or both).
- Notify the employee face-to-face, so you can answer any questions and be certain they were actually notified.

"The skill of empathy also needs to be used," Ms. Grosso says, who recommends acknowledging to employees that the request, while necessary, is in itself unpleasant. In the end, social awkwardness should never keep a DER & testing supervisor from professionally executing their duties in a manner that affects the testing program.

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