

meet the qualifications set forth in applicable sections of this part. Service agents are not employers for purposes of this part.

Shipping container. A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.

Split specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

Split specimen collection. A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Stand-down. The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted specimen. A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 73 FR 35969, June 25, 2008; 75 FR 49861, Aug. 16, 2010]

§ 40.5 Who issues authoritative interpretations of this regulation?

ODAPC and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters. Only Part 40 interpretations issued after August 1, 2001, are considered valid.

§ 40.7 How can you get an exemption from a requirement in this regulation?

(a) If you want an exemption from any provision of this part, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR part 5. You must send requests for an exemption to the following address: Department of Transportation, Deputy Assistant General Counsel for Regulation and Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Under the standards of 49 CFR part 5, we will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rule-making that established this part, that make your compliance with a specific provision of this part impracticable.

(c) If we grant you an exemption, you must agree to take steps we specify to comply with the intent of the provision from which an exemption is granted.

(d) We will issue written responses to all exemption requests.

Subpart B—Employer Responsibilities

§ 40.11 What are the general responsibilities of employers under this regulation?

(a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part.

(b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in

§ 40.13

carrying out the requirements of the DOT agency regulations.

(c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

§ 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?

(a) DOT tests must be completely separate from non-DOT tests in all respects.

(b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.

(c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT urine or breath specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.

(d) The single exception to paragraph (c) of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (*e.g.*, for glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.

(e) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test

49 CFR Subtitle A (10–1–10 Edition)

result purporting to question the identity of the DOT specimen.

(f) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

§ 40.14 What collection information must employers provide to collectors?

As an employer, or an employer's service agent—for example a C/TPA, you must ensure the collector has the following information when conducting a urine specimen collection for you:

(a) Full name of the employee being tested.

(b) Employee SSN or ID number.

(c) Laboratory name and address (can be pre-printed on the CCF).

(d) Employer name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-A).

(e) DER information required at § 40.35 of this part.

(f) MRO name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-B).

(g) The DOT Agency which regulates the employee's safety-sensitive duties (the checkmark can pre-printed in the appropriate box on the CCF at Step 1-D).

(h) Test reason, as appropriate: Pre-employment; Random; Reasonable Suspicion/Reasonable Cause; Post-Accident; Return-to-Duty; and Follow-up.

(i) Whether the test is to be observed or not (see § 40.67 of this part).

(j) (Optional) C/TPA name, address, phone, and fax number (can be pre-printed on the CCF).

[75 FR 59107, Sept. 27, 2010]

§ 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?

(a) As an employer, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of this part.