

ODAPC Announcement

On June 25, 2008, the Department issued new rules improving protections against cheating on drug tests, including the mandatory use of specimen validity testing for all DOT specimens. Recently, the Department has received petitions from some transportation labor and management organizations asking that the August 25, 2008, effective date be postponed for two provisions of the rule concerning the direct observation of urine collections.

Provision 1: The first of the two provisions would make direct observation mandatory in all follow-up and return-to-duty collections. Direct observation is currently authorized, but not required, in these circumstances.

Because the notice of proposed rulemaking for the June 25, 2008, final rule had not specifically asked for comment on this provision, the Department has decided to hold a 30-day comment period on this provision. To allow for the comment period and the Department's response, the effective date of mandatory direct observation for follow-up and return-to-duty testing provision has been changed to November 1, 2008.

Provision 2: The second provision would require observers in all direct observation collections to check employees for the presence of prosthetic and other devices used to cheat on tests, by having employees raise and lower their clothing. The effective date of this provision will remain August 25, 2008.

The Department emphasizes that the new direct observation procedure will apply only to direct observation tests authorized or required by the current 49 CFR Part 40, and the rules going into effect on August 25 will not result in any increase in the situations in which direct observation is used. Direct observation occurs in only a very small percentage of DOT test situations, where there is a heightened risk of an attempt to cheat.

The Department's Notice was published in the Federal Register today, August 26, 2008, and is on the ODAPC Website at:

<http://www.dot.gov/ost/dapc/frpubs.html>

We want all interested parties to realize that the single change in the effective date affects ONLY 40.67(b) – mandatory direct observation for follow-up and return-to-duty testing. The rest of the June 25, 2008, final rule goes into effect on August 25, 2008, as scheduled.

Thank you.

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