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July 30, 2001

Mr. Moe Biller  
President  
American Postal Workers Union,  
AFL-CIO  
1300 L Street NW  
Washington, DC 20005-4128

Dear Moe:

As a matter of general information, enclosed is an overview of the Department of Transportation (DOT) revised rule governing drug and alcohol testing procedures (49 CFR Part 40). Some of these changes may affect the authorized collectors in regards to their interface with employees during the drug and alcohol collection process.

The rule was published in the Federal Register on Tuesday, December 19, 2000. Most provisions of the rule go into effect August 1, 2001. However, provisions such as additional safeguards for employees in validity testing and a service agent accountability mechanism went into effect January 18, 2001.

Postal Medical Management has been trained regarding the revisions and will train the Occupational Health Nurses who are collectors for the DOT program.

If you have any questions concerning the foregoing, please contact Rodney J. Lambson of my staff at (202) 268-3827.

Sincerely,

A handwritten signature in black ink, appearing to read "P. Sgro".

Peter A. Sgro  
Manager  
Contract Administration

Enclosure

- **Refusal to Submit to Testing-** Expanded definition includes:
  - Failure to appear within a reasonable time for a test after being directed to provide specimen.
  - Failure to remain at the testing site until testing is completed.
  - Failure to provide an adequate specimen/breath without a medical explanation.
  - Failure to undergo a medical evaluation or examination as directed by the MRO.
  - Failure to comply with a direction to undergo an observed collection.
  - Failure to provide a second specimen or breath when needed.
  - Submission of an adulterated or substituted specimen.
  - Failure to cooperate with "any part" of the testing process.

#### **Training.**

A well-trained work force is vital to an accurate and fair drug- and alcohol-testing program. Part 40 includes enhanced training requirements for collectors, breath alcohol technicians (BATs), screening test technicians (STTs), medical review officers (MROs), and substance abuse professionals (SAPs). This includes initial ("qualification") training, refresher training every five years (for collectors, BATs, and STTs). Continuing education (for MROs and SAPs), and "error correction training" (for collectors, STTs, and BATs) following a mistake that causes a test to be cancelled.

#### **Laboratory Process.**

All laboratories will be required to initiate validity testing on all specimens starting August 1, 2001. The new rule also permits transmission of laboratory results to the MRO electronically eliminating the need for transmission of paper documents for negative results. The number of blind specimens that an employer has to submit to laboratories has been reduced substantially and laboratory statistical reports have been reduced from four to two per year.

**Medical Review Officer (MRO).** MROs are required to personally conduct a verification interview with the employee not only for drug positive results, but also when the specimen is reported as adulterated or substituted. For opiate verification, if either morphine or codeine is reported at or above 15,000 ng/mL, the burden for explaining its presence shifts to the employee.

- In specific cases when a result is invalid or rejected for testing, the MRO may require a recollection under direct observation.
- The MRO is required to release certain medical information to third parties if that information indicates a safety issue related to the employee's continued performance of safety-sensitive functions.
- The MRO is prohibited from reviewing allegations of procedural errors that might have occurred during the collection process.
- The MRO is prohibited from considering any defense to the presence of PCP or 6-AM (the metabolite of heroin) in a donor's specimen.
- The MRO must report drug test results and/or other medical information obtained during a verification interview if the donor would be medically unqualified or poses a serious safety risk.

**Alcohol Testing.** There are few procedural changes in the alcohol testing requirements. A new Breath Testing Form with minor changes is required as of August 1, 2001. The rule spells out procedures to correct problems in the testing process, identifies fatal flaws, describes what constitutes a refusal, and addresses "shy lung" procedures.

**Substance Abuse Professional (SAP) and the Return-to-Duty Process.** All positive tests and refusals to test now have a consequence.. The return-to-duty process is mandatory following any violation of the rules. The number of follow-up tests remains a minimum of 6 tests in the first 12 months following return to duty. Return-to-duty process and follow-up testing requirements continue to apply even if workers change jobs or have a break in service.

**Other Issues.** Employers will be required to obtain, from an applicant's previous employers over the past two years, drug and alcohol testing information.

## REVISED RULE GOVERNING DRUG AND ALCOHOL TESTING PROCEDURES (49 CFR PART 40)

The following are some of the key provisions of the new rule:

### DRUG SCREEN COLLECTION

- **Collection Process.** There are several new procedures, including:
  - A new, shorter version of the Federal Drug Testing Custody and Control Form was developed and must be used starting August 1, 2001, together with a standard urine collection kit. The COC will be provided by the Laboratory that holds the contract with the USPS.
  - Collectors will not require employees to remove boots, but must require employees to display the contents of their pockets to show that they have not brought materials with which to adulterate the specimen and employees must comply with this direction.
  - Multi-stall restrooms and \* monitored collections may now be used. (\* the collector hears, but does not view, urination) The bluing in the commode, removal of any materials in the restroom area, and having the water shut off will continue.
- **Observed collections - Donors will be required to undergo observed collections (same gender) for the following:**
  - The laboratory reported a prior specimen as "invalid" and the donor has no medical explanation for the result following the MRO interview.
  - The laboratory reported a prior specimen as positive, adulterated, or substituted, but the test had to be canceled because the split specimen analysis could not be performed.

\* There will be no observed collections following a negative drug test which is dilute.

  - The current test is a return to duty or follow-up test which has been directed by the MRO as an observed collection.
  - The urine specimen is outside of the acceptable temperature range. (no body temperature comparison will be authorized)
  - The collector observes material from a donor's pockets that appears to be brought to the collection site with the intent to alter the specimen.
  - The collector observes conduct clearly indicating an attempt to tamper with the specimen.

Note: An employee's decision not to drink fluids in a "shy bladder" situation will not be regarded as a refusal to test

There is no second level review by management of a collector's decision to direct an observed collection in the circumstances above. The collector's decision is final.

### Validity Testing- Adulterated and Substituted Specimens

- **Procedures for testing, reporting, and reviewing these specimens.**
  - DOT will follow the DHHS standards for determining whether a specimen has been adulterated or substituted.
  - An adulterated or substituted specimen constitutes a refusal to submit to testing.
  - MRO review is required, January 18, 2001, prior to reporting a specimen as adulterated or substituted; the basis for review follows –
    - The only permissible evidence is something that shows that the result was obtained through physiological means.
    - The evidence must be based on a medical evaluation and scientific study.
    - **NO** defense is allowed in cases of soap, glutaraldehyde, bleach, or zero creatinine.

Note: Donors may obtain a test of the split specimen. If it fails to reconfirm the adulteration or substitution, the test is canceled.