

## § 40.199

(3) If the result of the test you directed the employee to take under paragraph (b) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.

(4) If the employee declines to take a test you directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

[68 FR 31626, May 28, 2003, as amended at 69 FR 64867, Nov. 9, 2004]

### § 40.199 What problems always cause a drug test to be cancelled?

(a) As the MRO, when the laboratory discovers a “fatal flaw” during its processing of incoming specimens (see § 40.83), the laboratory will report to you that the specimen has been “Rejected for Testing” (with the reason stated). You must always cancel such a test.

(b) The following are “fatal flaws”:

(1) There is no printed collector’s name *and* no collector’s signature;

(2) The specimen ID numbers on the specimen bottle and the CCF do not match;

(3) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be redesignated, see § 40.83(g)); and

(4) Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be redesignated (see § 40.83(g)).

(c) You must report the result as provided in § 40.161 .

### § 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

As the MRO, you must cancel a drug test when a laboratory reports that any of the following problems have occurred. You must inform the DER that the test was cancelled. You must also direct the DER to ensure that an additional collection occurs immediately,

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if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

(a) The laboratory reports an “Invalid Result.” You must follow applicable procedures in § 40.159 (recollection under direct observation may be required).

(b) The laboratory reports the result as “Rejected for Testing.” You must follow applicable procedures in § 40.161 (a recollection may be required).

(c) The laboratory’s test of the primary specimen is positive and the split specimen is reported by the laboratory as “Failure to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected.” You must follow applicable procedures in § 40.187(b) (no recollection is required in this case).

(d) The laboratory’s test result for the primary specimen is adulterated or substituted and the split specimen is reported by the laboratory as “Adulterant not found within criteria,” or “specimen not consistent with substitution criteria, as applicable. You must follow applicable procedures in § 40.187(c) (no recollection is required in this case).

(e) The laboratory’s test of the primary specimen is positive, adulterated, or substituted and the split specimen is unavailable for testing. You must follow applicable procedures in § 40.187(d) (recollection under direct observation is required in this case).

(f) The examining physician has determined that there is an acceptable medical explanation of the employee’s failure to provide a sufficient amount of urine. You must follow applicable procedures in § 40.193(d)(1) (no recollection is required in this case).

### § 40.203 What problems cause a drug test to be cancelled unless they are corrected?

(a) As the MRO, when a laboratory discovers a “correctable flaw” during its processing of incoming specimens (see § 40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been “Rejected for Testing” (with the reason stated).

(b) The following is a “correctable flaw” that laboratories must attempt

to correct: The collector's signature is omitted on the certification statement on the CCF.

(c) As the MRO, when you discover a "correctable flaw" during your review of the CCF, you must cancel the test unless the flaw is corrected.

(d) The following are correctable flaws that you must attempt to correct:

(1) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the "Remarks" line of the CCF.

(2) The certifying scientist's signature is omitted on the laboratory copy of the CCF for a positive, adulterated, substituted, or invalid test result.

(3) The collector uses a non-Federal form or an expired Federal form for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures of this part in an HHS-certified laboratory. During the period August 1–October 31, 2001, you are not required to cancel a test because of the use of an expired Federal form. Beginning November 1, 2001, if the problem is not corrected, you must cancel the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

#### § 40.205 How are drug test problems corrected?

(a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.

(1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (*e.g.*, a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.

(2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.

(b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem

that can be corrected (see § 40.203 ), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the "Remarks" line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (*i.e.*, a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(3) You must maintain the written documentation of a correction with the CCF.

(4) You must mark the CCF in such a way (*e.g.*, stamp noting correction) as to make it obvious on the face of the CCF that you corrected the flaw.