§40.21 **09/01**

QUESTION:

Does an employer need a stand-down waiver in order to implement a policy that requires employees to cease performing safety-sensitive functions following a reasonable suspicion or post-accident test?

ANSWER:

• §40.21 requires an employer to obtain a waiver to do one very specific thing: remove employees from performance of safety-sensitive functions on the basis of the report of confirmed laboratory test results that have not yet been verified by the MRO.

• An employer does not need a §40.21 waiver to take other actions involving the performance of safety-sensitive functions.

• For example, an employer could (if it is not prohibited by DOT agency regulations and it is consistent with applicable labor-management agreements) have a company policy saying that, on the basis of an event (e.g., the occurrence of an accident that requires a DOT post-accident test, the finding of reasonable suspicion that leads to a DOT reasonable suspicion test), the employee would immediately stop performing safety-sensitive functions. Such a policy, which is not triggered by the MRO's receipt of a confirmed laboratory test result, would not require a §40.21 waiver.

• It would not be appropriate for an employer to remove employees from performance of safety-sensitive functions pending the result of a random or follow-up test, since there is no triggering event to which the action could rationally be tied.

§40.21 **09/01**

QUESTION:

Can union hiring halls, driver-leasing companies, and other entities have a stand-down policy, or is the ability to obtain a waiver for this purpose limited to actual employers?

ANSWER:

• The rule permits "employers" to apply for a stand-down waiver. It does not permit any other entity to do so.

• Only entities that are viewed as "employers" for purposes of DOT agency drug and alcohol testing regulations can apply for stand-down waivers. If a DOT agency rule provides that hiring halls, leasing agencies, etc. are treated as employers, such organizations could apply for a stand-down waiver.

§40.21 **07/06**

QUESTION:

If an employee fails to provide a sufficient amount of urine during an observed collection, can an employer remove the employee from performing safety-sensitive functions pending receipt of the verified result from the Medical Review Officer (MRO)?

ANSWER:

• The Department believes an employee's failing to provide a sufficient amount of urine during a directly observed collection is very similar to a laboratory's reporting a positive, adulterated, or substituted test result to MRO.

• While we do not believe it is appropriate for an employer to remove the employee from safety-sensitive duties until receiving the MRO's verified result, we think stand-down waiver provisions could be relevant.

• Therefore, employers can apply for a stand-down waiver that would permit the employee to be removed from safety-sensitive duties when he or she does not provide an adequate amount of urine during an observed collection.

• The waiver request would need to meet all criteria outlined at 40.21 and should reference the fact that it is for standing an employee down who fails to provide an adequate amount of urine during an observed collection.

• The 40.21 waiver request for laboratory positive, adulterated, and substituted results will continue to be evaluated separately.