



DOT Drug Testing: Employer DOT Policies – the Part 40 Changes

The DOT Agencies & United States Coast Guard (USCG) have provided guidance about what their regulated-employer DOT policies will need to contain about the changes to 49 CFR Part 40, which are effective October 1, 2010.

1. The Federal Transit Administration, Federal Motor Carrier Safety Administration, Federal Aviation Administration, Pipeline and Hazardous Materials Safety Administration, and USCG take this position:

There is no need for employers to make any changes if their current DOT policies refer to adhering to "... Part 40, as amended." However, there are some exceptions when an employer's DOT policy lists some of the following optional information:

- If sub-categories of drugs tested under the 5-panel are listed – for example, if a policy lists "Opiates (codeine, heroin, & morphine)" and/or "Amphetamines (amphetamine & methamphetamine), then "(MDMA, MDA, MDEA)" will need to be added to the list under Amphetamines. If however, employers would like to delete the sub-categories of drugs, doing so will also be acceptable.
- Likewise, if cut-off levels are listed in current policies, employers must update those cut-off levels. Again, employers may simply delete the cut-off levels completely and be in compliance if the DOT policy refers to adhering to "... Part 40, as amended."
- While these DOT Agencies and USCG suggest that companies provide written notice be provided to employees, doing so is a company's prerogative.

2. The Federal Railroad Administration (FRA) takes this position:

- FRA policy is to require employers to identify each drug and cutoff level in their DOT program policies and training materials. FRA expects changes reflecting the MDMA testing and the new cutoffs for Cocaine and Amphetamines to be posted in their next DOT policy re-write.
- Additionally, FRA has communicated with the industry about these changes, and has requested them to communicate these changes to labor and their employees before the October 1st change date.

For additional clarification, please contact Mark Snider at 202 366 3784 or mark.snider@dot.gov.