



From
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NOTICE OF DEPARTMENT OF TRANSPORTATION CHANGES TO WORKPLACE DRUG TESTING

On June 25th, 2008, the Department of Transportation (DOT) issued changes to CFR 49 Part 40. THIS IS A FINAL RULE CHANGE AND BECOMES EFFECTIVE AUGUST 25TH, 2008. There are several technical changes which will not directly impact flight attendants. However, there is one change that may result in significant comments/concerns from the membership. **Specifically**, should a member be offered continuing employment following a positive drug test, **the return-to-duty drug test and the follow-up tests they must provide** as a condition of continued employment **will now have to be observed.**

A direct observation drug test was not previously required for return-to-duty and follow-up tests. This is a significant expansion of the conditions under which an observed test is mandatory.

ADDITIONALLY, this direct observation test will now be experienced by the flight attendant in a very different way. Specifically, just before the direct observation takes place, the urine collector must check the donor for prosthetic devices which could be used to transport clean urine. (There is a product on the market called a "whizzinator" which is a prosthetic penis - clearly for use by males). **All male and all female employees** who must have a directly observed test, including return-to-duty and follow-up testing, **will have to "raise their shirts, blouses or dresses/skirts as appropriate above the waist, and lower their pants and underpants to show the observer, by turning around, that they do not have such a prosthetic device on their person."** After this is done, they may return their clothing to its proper position, but must contribute a specimen in such manner that the observer can see the urine exiting directly from the individual into the collection container as is required under current regulations.

Your EAP would like to alert flight attendants to these changes, and we urge members to be prepared for them. Keep in mind that:

- 1) More AFA members will now experience direct observation collection (whenever an employer brings back an employee following a positive drug test).

2) The enhanced observation process may be experienced by our members as invasive. **WARNING!!** Should an employee refuse to allow the observer to check for devices prior to undergoing the observed collection, it will be considered a "refusal" to test, and as such is grounds for termination.

Please take a moment to understand these DOT-mandated changes, and spread the word among your co-workers as to what they mean. It is only a very small percentage of us who will ever experience these changes, but it's important to be prepared for them just in case.

**NOTICE OF SUPPLEMENTARY CHANGE TO DIRECT OBSERVATION DRUG TESTING REVISIONS
BY THE DEPARTMENT OF TRANSPORTATION**

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. The August 25, 2008, effective date has been extended for one aspect of the new rule concerning the direct observation of urine collections.

The extension 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.

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 will be published in the Federal Register on Tuesday, August 26, 2008, and is currently on public display at the Federal Register at:

http://federalregister.gov/OFRUpload/OFRData/2008-19816_PI.pdf

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.