

PART 40 QUESTIONS AND ANSWERS

The Office of General Counsel and Office of Drug and Alcohol Policy and Compliance of the Department of Transportation are providing these questions and answers. They constitute official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5).

These Questions and Answers are dated 06/04.

QUESTION:

Will FMCSA- and FAA-regulated employers complying with the drug and alcohol information records check requirements contained in the Federal Motor Carrier Safety Administration (FMCSA) regulation 49 CFR Part 391 and the Federal Aviation Administration (FAA) Pilot Record Improvement Act be considered compliant with 40.25?

ANSWER:

- Yes. Employers who are required by and who comply with the FMCSA's three-year requirement for obtaining and providing employee drug and alcohol testing information are considered to have satisfied the two-year requirement contained in 40.25.
- Likewise, employers who are required by and who comply with the FAA's five-year requirement for obtaining and providing employee drug and alcohol testing information are considered to have satisfied the two-year requirement contained in 40.25.
- These employers do not need to seek separately the 40.25 information if the employer adheres to the FMCSA and FAA regulations, as appropriate, for obtaining an employee's prior drug and alcohol testing information.

QUESTION:

What must an MRO do when he or she determines that there is no split laboratory capable of testing the adulterant identified by the primary laboratory after the employee has asked for the split to be tested?

ANSWER:

- The Department views this situation as closely paralleling the MRO reporting requirement, at 40.187(d), when the split specimen is not available for testing after the request to test the split is made by the employee. Therefore, the MRO needs to follow similar steps.
 - * The MRO must report to the employer that the specimen, “Failed to Reconfirm: Split Laboratory not Available for Testing.”
 - * The MRO must also report to the DER and the employee that the test result must be cancelled and the reason for the cancellation.
 - * The MRO must direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice give to the employee of this collection requirement until immediately before the collection.
 - * Finally, the MRO must notify ODAPC of the failure to reconfirm.
- The result of the collection under direct observation will be the result of record for this testing event.