

DOT & Non-DOT Testing Parameters & Requirements

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Federal Transit Administration

Disclaimer

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Questions

1. How many of you directly handle ALL aspects of your agency's FTA program?
2. How many of you also conduct non-federal drug & alcohol testing?
3. How many of you believe you are 100% compliant with your program(s)?



Let's Compare

What constitutes a federal test?

- A federal test is a test required or authorized by federal authority
 - Federal paperwork does not make a federal test automatically valid
- Stated authority is the initial component of federal testing
- Stated applicability (who, when, why) is next
 - Must be clear and articulable
- The protocols for the test
 - How the testing is conducted, analyzed, forms used, etc.

What constitutes a non-federal test?

- A non-federal test is any test authorized or required outside of federal regulations
 - State, city, local, employer-specific, insurance, etc.
- Authority for non-federal testing should be clearly stated
- Stated applicability (who, when, why) is common
- The protocols for the test
 - How the testing is conducted, analyzed, forms used, etc.

Do You Know?

Scenario:

An employer performs an FTA pre-employment urine test along with a company-authorized 10-panel non-DOT urine test for all new hires.

After the collector fills the split specimen bottles for the FTA collection, they use the excess urine to fill the single specimen container for the non-DOT test.

Is this acceptable?

NO

49 CFR 40.13

- (a) DOT tests must be completely separate from non-DOT tests in all respects.
- (b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. When conducting a urine DOT drug test, you must discard any excess urine left over from a DOT test and collect a separate urine void for the subsequent non-DOT test.

Scenario:

A long-time employee fails a random drug test and requests that the split specimen be tested.

While waiting for the result of the split specimen, the employee presents you with results of a test he has coordinated on his own. The results are negative. He explains to you that he had eaten treats at a party and was unaware that they were THC edibles. He swears that he doesn't use drugs.

May you use the results of the non-federal test and return the employee back to safety-sensitive duties?

NO

49 CFR 40.13

- (f) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.

Scenario:

An employer sends an employee for a non-federal reasonable suspicion test. The collection site doesn't have any non-federal forms, so they cross out the barcode and write in the employer's non-federal account number, and cross out all the DOT agencies and write "employer" authority to complete the test. The collector also prepares an affidavit stating why they used the form and that they will make sure they maintain more non-federal forms in the future.

Is this acceptable?

NO

49 CFR 40.13

- (g) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

Refusal to take a non-federal test

- No bearing on federal test requirements of violations
- May have company violations
 - Should be stated in your policy
 - No Substance Abuse Professional (SAP) referral

When Is Each Type Conducted



Federal (FTA) tests are conducted...

- Federal testing is **required** in all cases listed in 49 CFR Part 655
 - Pre-Employment
 - Random
 - Post-Accident
 - Reasonable Suspicion
 - Return-to-Duty & Follow-Up
- Federal regulations describe when these tests must occur

Non-federal tests are conducted...

- Non-federal testing may be conducted as permitted by other policies or statutes
 - It must not interfere with federal testing
 - It may not supersede required federal testing
 - It must be clearly designated as non-federal testing
 - Policies
 - Testing forms
 - Notifications

Non-Federal Testing

- Non-federal testing **MUST** use non-federal testing forms
- Protocols and equipment **MAY** be the same
 - EBT, Lab, Drug panel, etc.

Scenario:

An employer sends an employee, who is on the quarter 3 selection list, to take a random drug test for compliance with DOT/FTA regulations. The employee was also selected for a random test under the employer's random program. Both tests are completed; however, the MRO cancels the FTA test due to a fatal flaw made at the collection site.

Since both tests were random and completed on the same day, you count the non-federal test towards compliance for the FTA test.

Do the regulations allow for this?

NO

No Interference

- Non-federal testing may not serve to replace a cancelled federal test
49 CFR 40.207(c) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (*i.e.*, a test under company authority).

Additionally:

- Non-federal testing must not delay federal tests
- Federal tests must precede non-federal

In Addition

What else needs to be done in a situation like this?

The employer sends an employee, who is on the quarter 3 selection list, to take a random DOT/FTA drug test. The MRO cancels the test due to a fatal flaw made at the collection site. Since it was a random test you send the employee back in to take a non-federal random test.

1. If needed, make sure an additional DOT/FTA test is conducted in Q4 to ensure that you meet your random testing requirements.
2. Ensure the collector who made the fatal flaw completes Error Correction Training (ECT).

49 CFR 40.23(g): As an employer who receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen immediately.

Differentiated Authority

- The requirements can not be substituted
- Two fully separate events are required
 - Federal tests come first
 - Non-federal tests may not involve anything from the federal test
 - All federal tests must be completed as required by Part 40



Common Uses of Non-Federal Testing



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Pre-Employment

- Expanded panel tests or alternate specimen testing
- After absence that does not meet DOT requirements (30 days, etc.)
- As pre-test screening before training

Random

- Expanded panel
- Different testing rates
- Testing of non-safety-sensitive employees



Post-Accident

- Post-accident vs. post-incident
- Thresholds not met
 - Citation only
 - Slip-and-fall

Reasonable Suspicion

- Expanded panel
- Simultaneous criteria must be documented



Return-to-Duty & Follow-Up

40.307(d)(4)

As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.

Simultaneous non-federal testing is **PROHIBITED**.

Substance Abuse Professional (SAP)

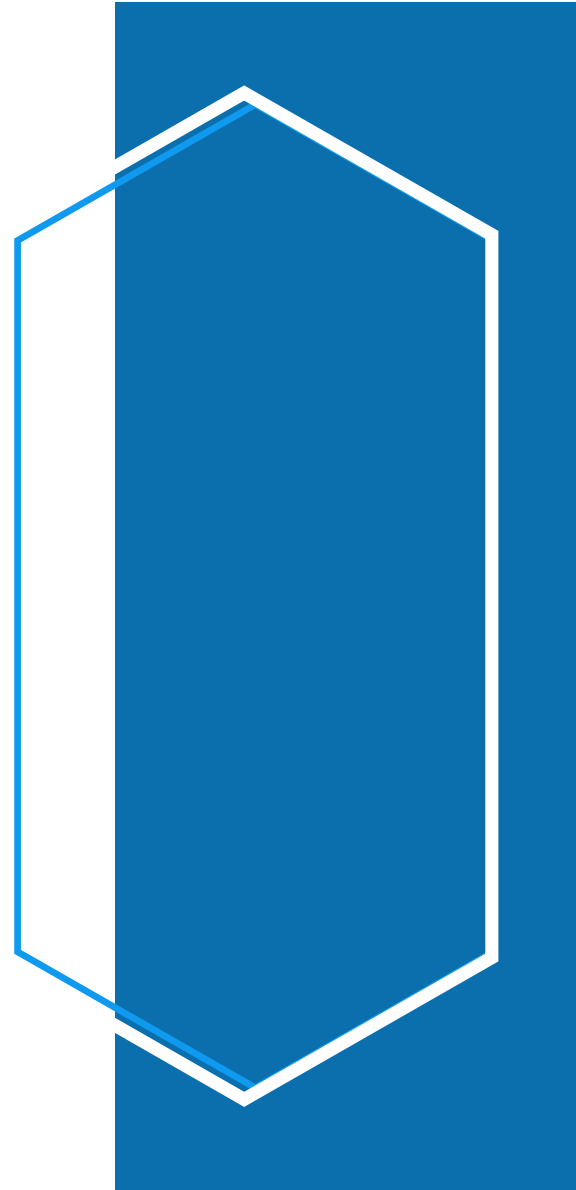
- The SAP is restricted to DOT post-violations
- Employees who self-refer are sent to a substance abuse counselor/expert, or EAP
 - Employer-specific violations must be dealt with by the employer
 - The counselor or expert may also be the SAP, but the role is not the DOT role
 - Non-federal “violations” are not reported in MIS, Clearinghouse, 40.25 inquiries

Alcohol Testing

- EBT must indicate that test is non-DOT on printable result
 - Most devices allow designating tests before they begin
- The same device can be used



Testing Forms



Question

May employers use the CCF for non-Federal collections, an expired CCF for DOT collections, or non-Federal forms for DOT collections?

NO



49 CFR 40.40

- (b) You must not use a non-Federal form or an expired CCF to conduct a DOT collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.

49 CFR 40.41

- (a) No, as an employer, you are prohibited from using the CCF for non-Federal collections. You are also prohibited from using non-Federal forms for DOT collections. Doing either subjects you to enforcement action under DOT agency regulations.





EXCEPTION
to the
Rule!

49 CFR 40.41

- (b)(1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.
- (2) The use of the non-Federal form is a “correctable flaw.” As an MRO, to correct the problem you must follow the procedures of § 40.205(b)(2).

49 CFR 40.203

- (d)(3) The collector uses a non-Federal form or an expired CCF 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 in this part in an HHS-certified laboratory.



49 CFR 40.205(b)(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.

Question

May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

NO



49 CFR 40.227

(a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.



EXCEPTION
to the
Rule!

49 CFR 40.227

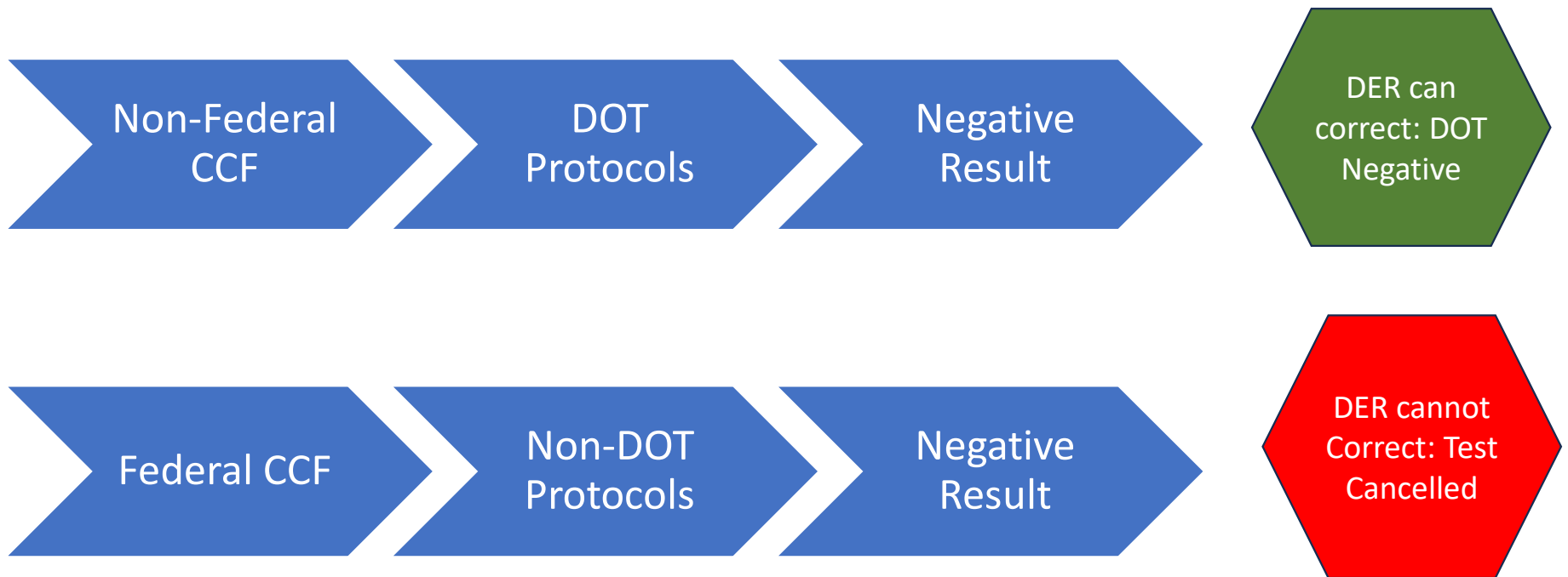
(b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with § 40.271(b)

49 CFR 40.271(b)(2)

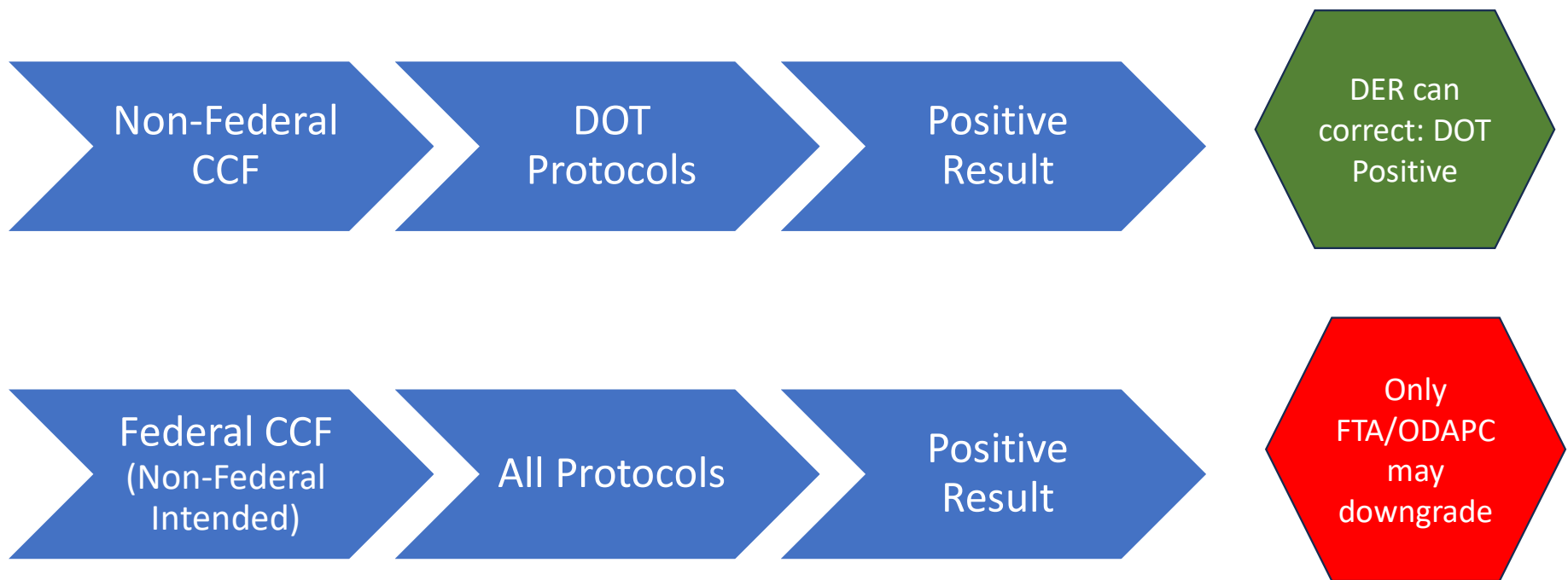
(b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a “correctable flaw” (see [§ 40.269](#)) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.

- (2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

Corrections and CCFs



Corrections and CCFs



Final Lessons

- Mistakes occur
- Corrections are normal
- Ask for assistance from FTA
- Make obvious corrections
- Document



Thank you!

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