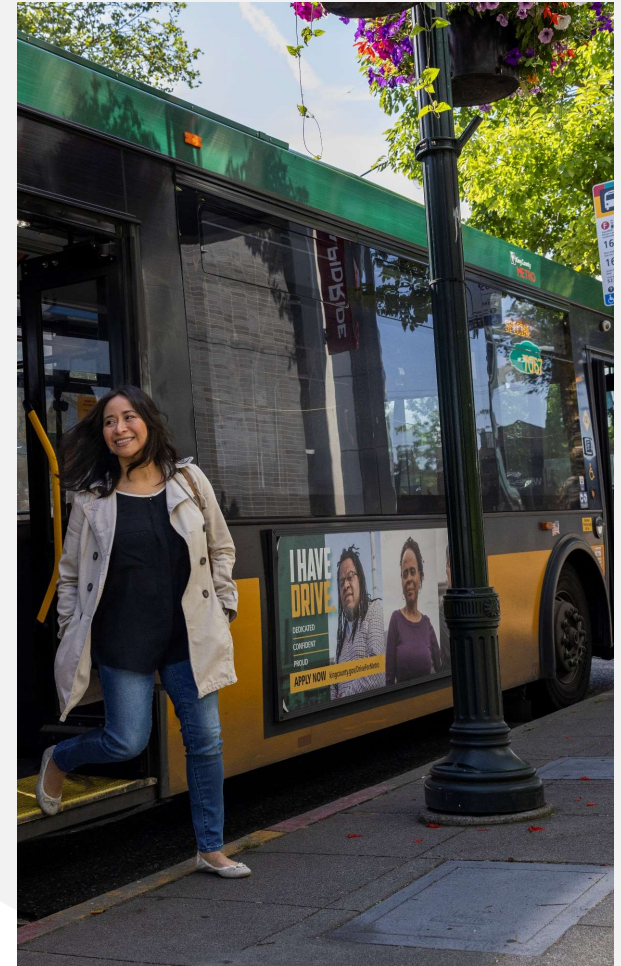


Non-Negative Results

Joseph Lofgren, Cahill Swift, LLC

FTA Drug and Alcohol Program National Conference
April 14-16, 2026



Disclaimer

This guidance document is not legally binding in its own right and the Federal Transit Administration will not rely upon it as a separate basis for affirmative enforcement actions or other administrative penalty. Conformity with this document (as distinct from existing statutes and regulations) is voluntary only, and nonconformity will not affect rights and obligations under existing statutes and regulations.

Topics

1. The Regulations
2. The Flow of a Test
3. Refusals
4. How to Respond
5. Consequences



The Regulations

- Modal Regulations
 - *Who to test, and when*
 - 49 CFR Part 655 – Transit
 - 49 CFR Part 219 – Railroad
 - 14 CFR Part 120 – Aviation
 - 49 CFR Part 382 – Motor Carriers
 - 49 CFR Part 199 – Pipeline/Hazmat
 - 46 CFR Parts 16 and 4 – Coast Guard
- Umbrella Testing Regulation
 - *How to test*
 - 49 CFR Part 40

Test Flow Overview

The lifecycle of a DOT test



U.S. Department of Transportation
Federal Transit Administration



Each Test a Narrative

Test Trigger

Specimen
Collection/Screening

Adjudication &
Disposition

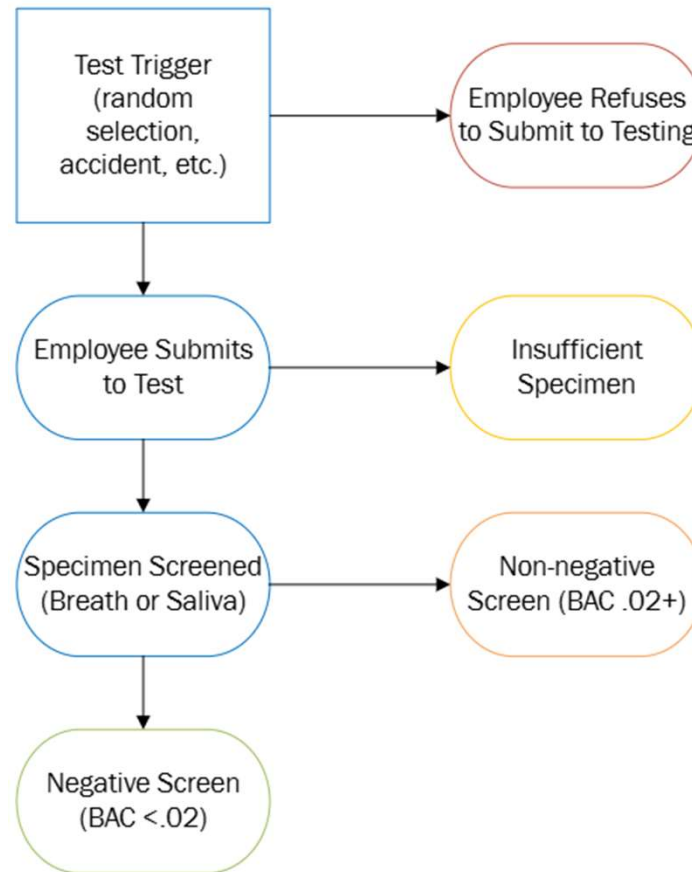


Test Triggers (Types of Testing)

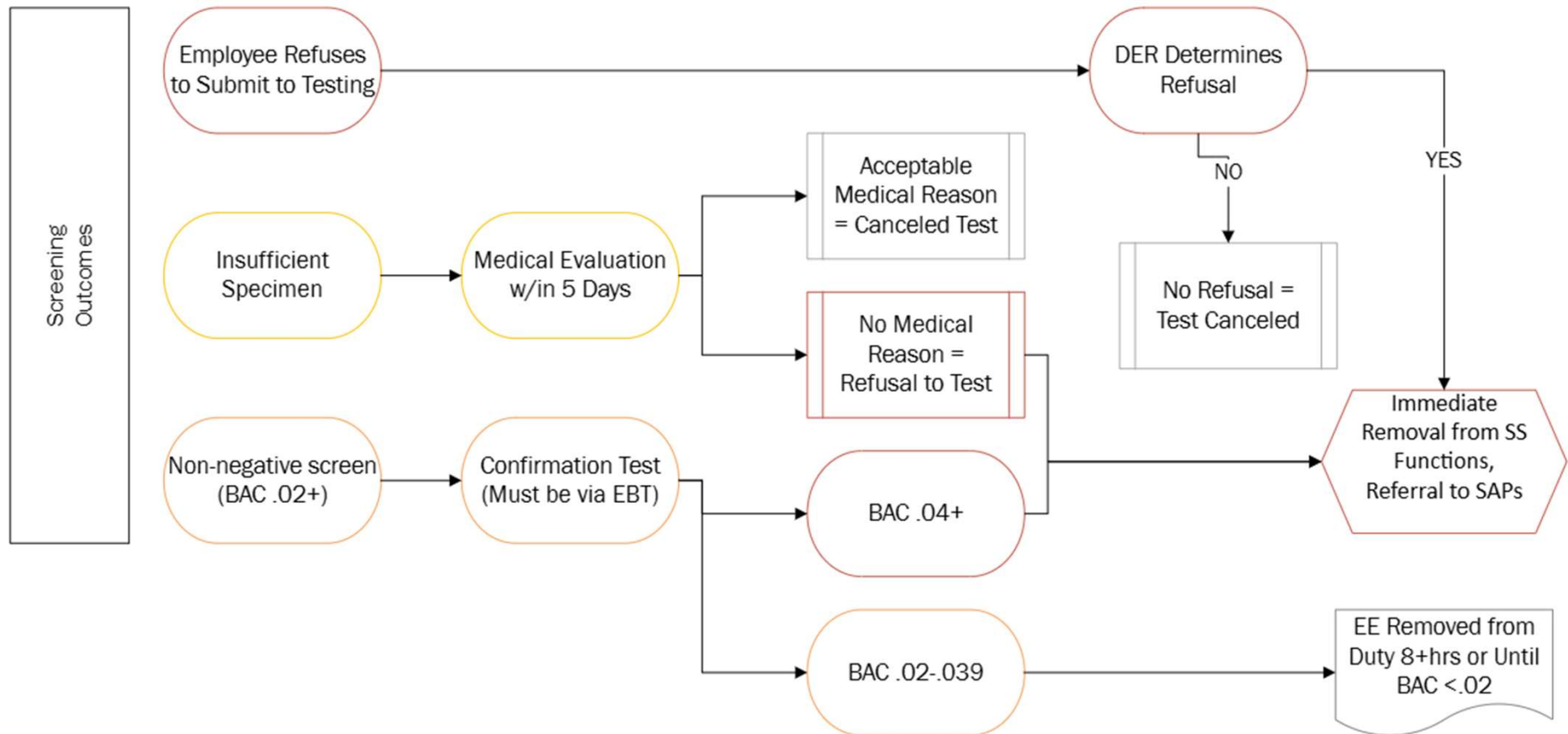
- Per Modal Regulation
- § 655...
 - 41 – Pre-employment drug testing
 - 42 – Pre-employment alcohol testing (optional)
 - 43 – Reasonable suspicion testing
 - 44 – Post-accident testing
 - 45 – Random testing
 - 46 – Return-to-duty testing
 - 47 – Follow-up testing



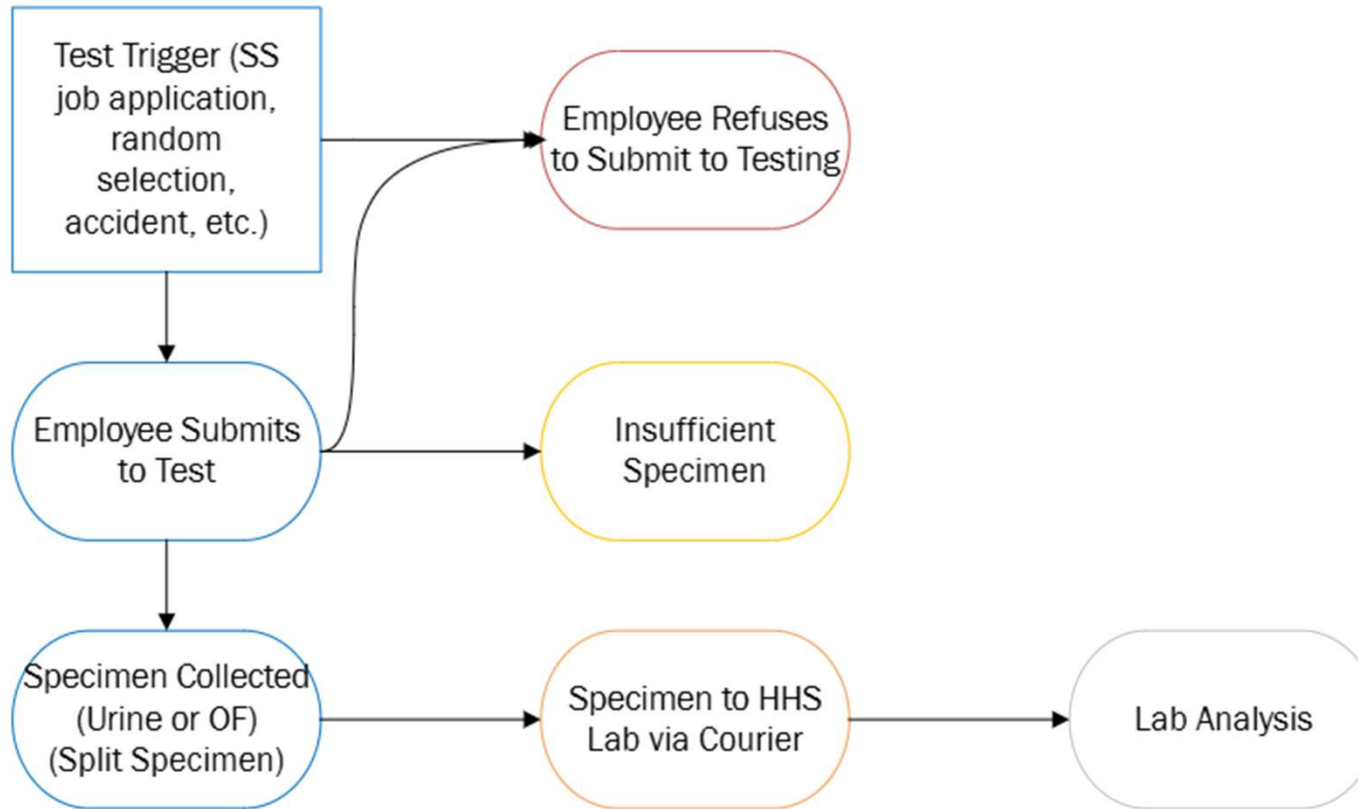
Specimen Screening – Alcohol Test



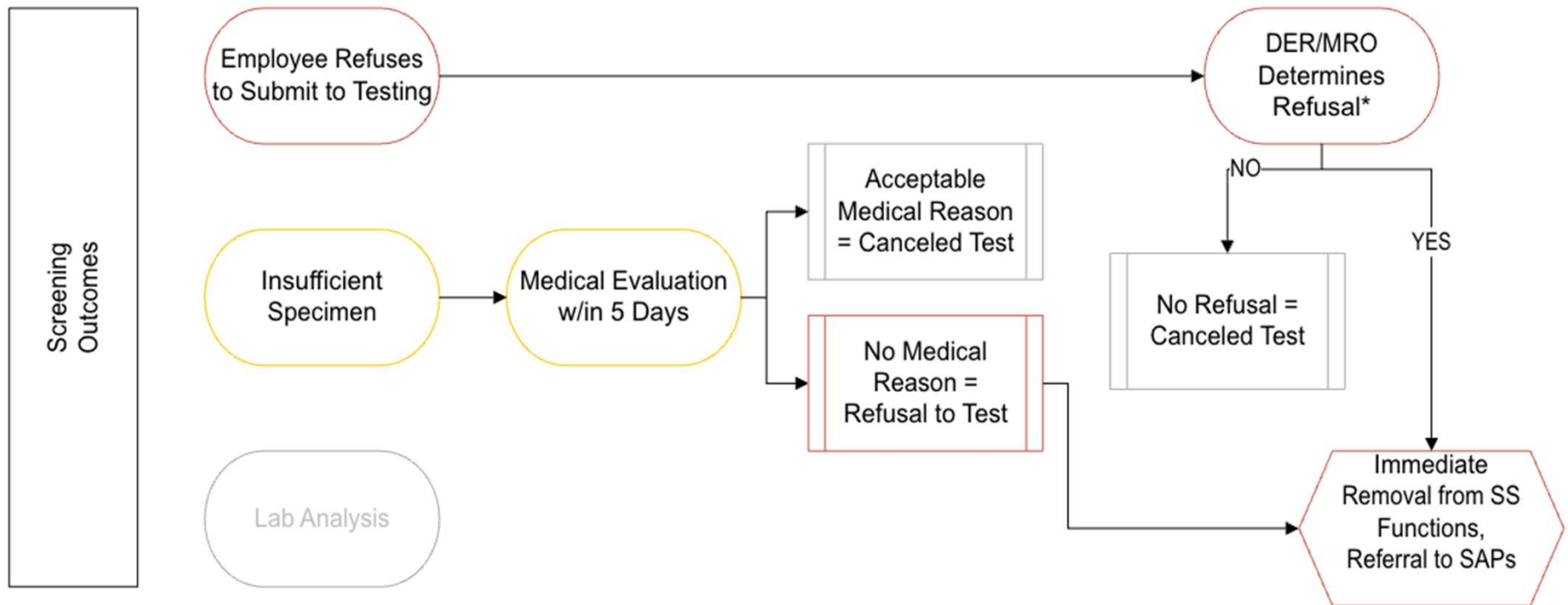
Adjudication & Disposition – Alcohol Test



Specimen Collection – Drug Test

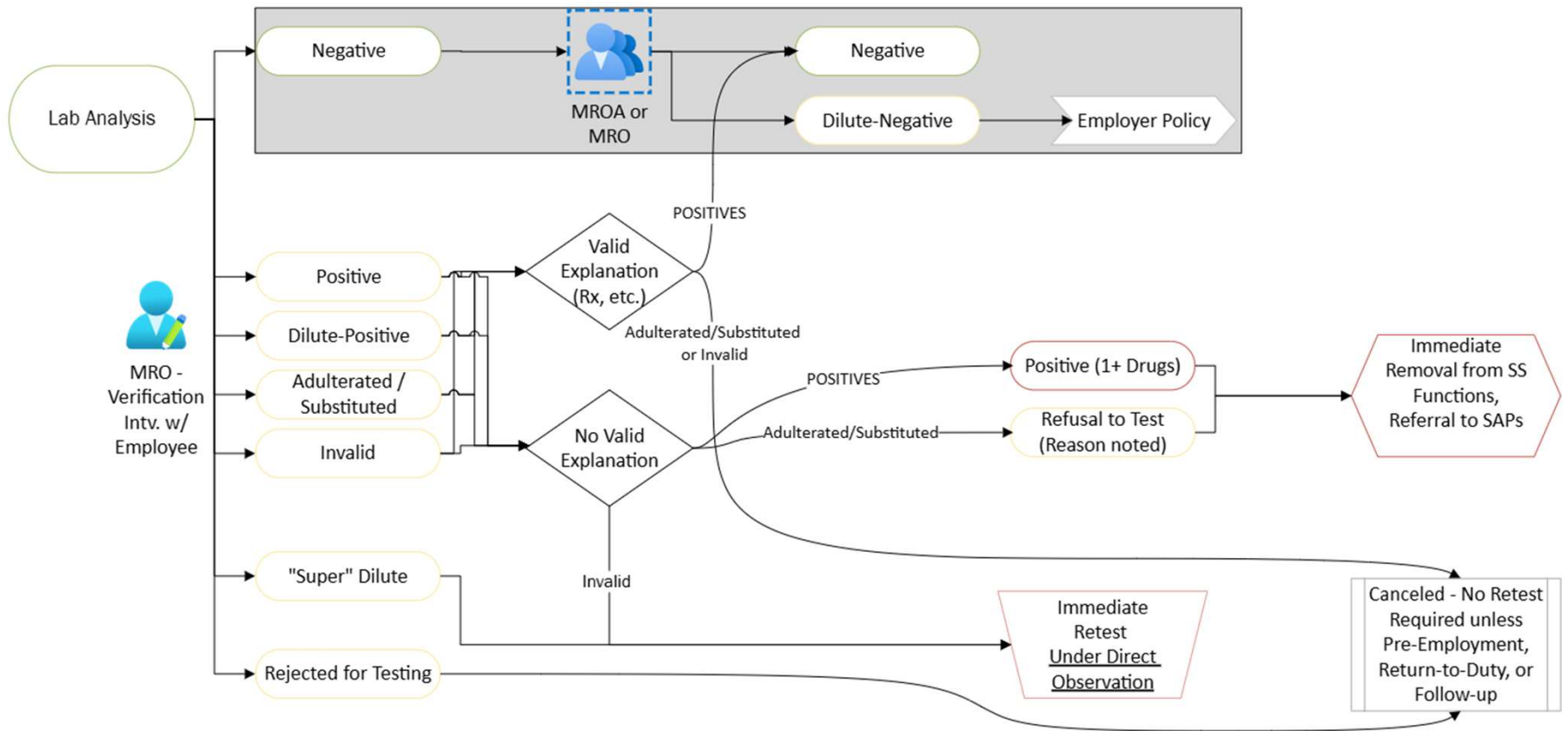


Adjudication & Disposition – Drug Test (Refusal and Insufficient Specimen)



*Depending on refusal type

Adjudication & Disposition – Drug Test (Specimen Provided)



Refusals

What constitutes a refusal, and who decides?



Drug Testing Refusals (§ 40.191)

Failure to...

- ... appear for a test within a reasonable time.*
- ... remain at the testing site until the process is complete.*
- ... provide a ~~urine~~ specimen when required.*
- ... permit direct observation or monitoring.
- ... provide a sufficient ~~urine~~ specimen without an adequate medical explanation.
- ... undergo a medical evaluation.
- ... cooperate with any part of the testing process.
- Possessing or wearing a prosthetic or other interfering device.
- Admitting to the collector or MRO that you adulterated or substituted the specimen.
- Verified adulterated/substituted test.

*Pre-employment testing excepted.



Alcohol Testing Refusals (§ 40.261)

Failure to...

- ... appear for a test within a reasonable time.*
- ... remain at the testing site until the process is complete.*
- ... provide an adequate amount of specimen.*
- ... provide a sufficient breath specimen without an adequate medical explanation.
- ... undergo a medical evaluation.
- ... sign the certification at Step 2 of the ATF.
- ... cooperate with any part of the testing process.



*Pre-employment testing excepted

Refusals: Who Decides?

Employer (DER)

- Fail to appear on time
- Fail to remain at site
- Fail to provide a specimen
- Fail to permit monitoring/observation
- Decline a 2nd test
- Fail to cooperate
- Fail to follow observation instructions
- Possess/wear prosthetic
- Admit adulteration/substitution to collector
- Fail to undergo medical (breath)
- Fail to sign Step 2 of the ATF

MRO

- Failure to provide an adequate amount of urine/oral fluid w/o medical reason
- Failure to undergo a medical examination (drug testing)
- Admit adulteration/substitution to MRO

Physician

- Failure to provide an adequate breath specimen w/o medical reason

Employer Actions

What to do when you receive a...



Employer Response to Non-negatives - Refusals

- When you receive...
 - Notice of refusal from your own staff or the collection site/TPA
 - Review staff or collector/technician remarks and notes
 - Make your own determination about refusal
 - Consult w/ MRO if appropriate (but you are the decider)
 - If you determine no refusal... keep detailed documentation!
 - If you determine a refusal... employee must be pulled from SS functions and referred to SAPs
 - Notice of refusal from MRO or evaluating physician (“Shy Lung”)
 - You may not overturn these...
 - Employee must be pulled and referred to SAPs

Employer Response to Non-negatives - Positive Drug Test or Alcohol Result of 0.04+

- Immediate removal from safety-sensitive functions
- Referral to DOT-qualified Substance Abuse Professionals
- Employee may not perform safety-sensitive functions for you (*or any DOT-covered employer*) until they have completed the Return-to-Duty process established in Subpart O of 49 CFR Part 40.

Employer Response to Non-negatives - Cancelled Test

- If MRO requires immediate recollection under direct observation, you must ensure the employee submits to that immediately, with minimal notice*.
- In other cases, retesting is not required unless the cancelled test was:
 - Pre-employment
 - Return-to-duty (must be observed)
 - Follow-up (must be observed)

*If recollection is done without direct observation, *another* recollection must be done, until it is actually collected under direct observation.

Employer Response to Non-negatives - Dilutes

- If MRO requires recollection under direct observation (i.e., creatinine between 2-5 mg/dL), you must direct the employee to submit to that immediately, with minimal notice.*
- Dilute results that are also positive are just that: Positive.
- For dilute-negative results above 5 mg/dL (“regular” dilute-negatives), the employer *must* have a policy in place to either:
 - Accept as negative, or
 - Require *one* additional retest, unobserved (if that is also dilute-negative, must be accepted as negative).
 - Employer may have different policies for different test types, but must treat all employees the same.

*If recollection is done without direct observation, *another* recollection must be done, until it is actually collected under direct observation.



Employer Response to Non-negatives - All

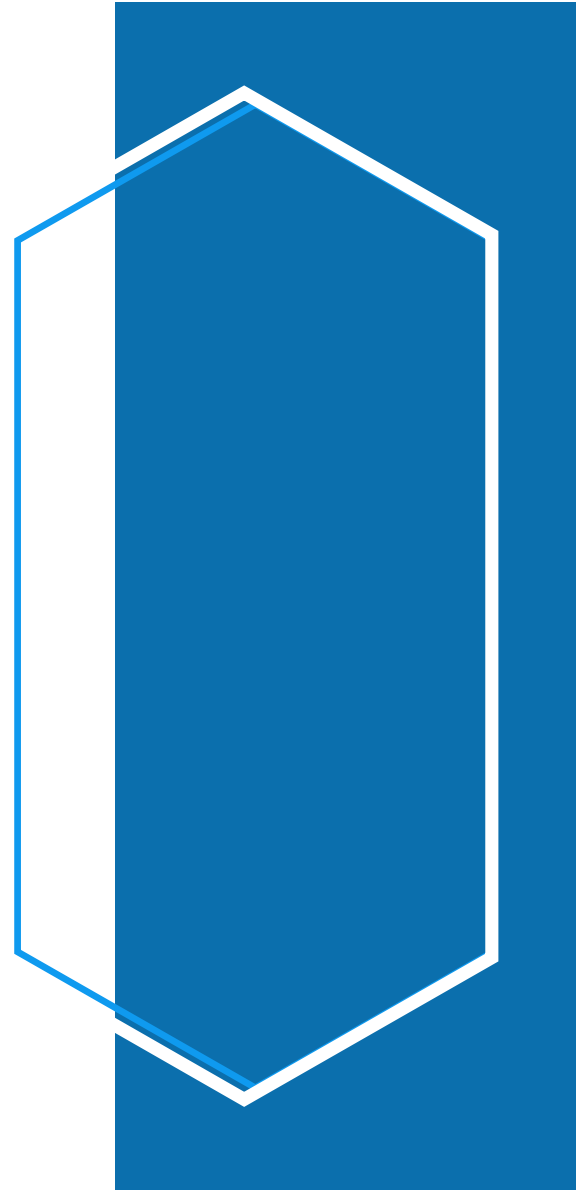
- Regardless of result type, as the employer, review
 - Drug testing CCF
 - Alcohol testing ATF
 - MRO-verified result (if applicable)
- Review the testing documents for completeness and for *Fatal or Uncorrected Flaws*.
- CCF:
 - Collector name and signature missing
 - Collector name or signature missing, with no memorandum of correction
 - Donor signature missing, with no documentation of the reason
- ATF:
 - Confirmation test missing
 - Confirmation test done < 15min after screening
 - Test ID numbers not sequential
 - Missing BAT signature

Consequences

What happens next?



U.S. Department of Transportation
Federal Transit Administration



Consequences for Non-negatives

- DOT's consequences for...
 - Refusal-to-test
 - Positive drug test
 - Alcohol result of 0.04 or greater
 - Immediate removal from safety-sensitive functions
 - Referral to DOT-qualified Substance Abuse Professionals
- All other consequences...
 - Suspension
 - Termination
 - "2nd Chance"
 - Etc.
 - Established under the sole authority of the Employer



Thank you!

Joseph Lofgren

Cahill Swift, LLC

617-314-9208

jlofgren@cahillswift.com



U.S. Department of Transportation
Federal Transit Administration