



August 4, 2008

190-40
CC: 190-35

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Gentlemen:

In an effort to educate our agreement employees about federally mandated changes in the procedures for direct observation of urine testing that will become effective on August 25, 2008, Union Pacific intends to publish the attached information to our employees next week. The information includes a UP Online article and a Frequently Asked Questions document. In addition, the UP Online article will link to a complete copy of the new regulations that will be available on the Union Pacific website.

I understand some of you have been in communication with the FRA about these developments and have already communicated with your members about the changes. I also understand it is possible the FRA may give an extension of time for implementing these regulations. Regardless, I feel it is important to get this information to our employees in advance of August 25, 2008. If you have any questions feel free to contact me or your Labor Relations contact. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert M. ...". The signature is fluid and cursive, with a long horizontal stroke at the end.

The Department of Transportation (DOT) and the Federal Railroad Administration recently issued new regulations relating to drug-and-alcohol testing that will include more stringent direct-observation guidelines. The new regulations will become effective Aug. 25, 2008.

The DOT said the more rigorous direct-observation procedures were adopted to reduce incidents of adulterated and substituted test results. Under the new procedures, a detailed description of the observation process will be provided to both the donor and the observer at the time of the test. The Department of Transportation's detailed instructions are available on the Employees site, by going to Safety's "Drug and Alcohol Program" page.

Drug testing requiring direct observation will be conducted in compliance with Federal Regulation 49 CFR part 40.67.

Frequently Asked Questions by Employees regarding New Direct Observation Requirements under Part 40

Question No. 1:

When do the new direct observation requirements become effective?

They are effective August 25, 2008. The railroads have requested an extension of time to manage implementation procedures, and so it is possible that the date may change.

For any federal follow-up tests that are required but have not yet been completed, they must be direct observe tests if performed after August 24, 2008.

Question No. 2:

Which types of tests will require direct observations?

- a. All FRA and FMCSA follow-ups and return to duty tests.
- b. All UP Return to Duty tests as ordered by EAP.
- c. One or more UP follow-ups per year as ordered by DER.
- d. Any collection as deemed by the collector or manager as suspicions in nature could result in a direct observation.

Question No. 3:

What exactly does the new regulation require that the direct observer do?

Part 40.67(i) states:

As the observer, you must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show you, by turning around, that they do not have a prosthetic device. After you have determined that the employee does not have such a device, you may permit the employee to return clothing to its proper position for observed urination.

Question No. 4:

Will all direct observations be done in the same way - using the new part 40 regulations?

Yes.

Question No. 5:

Who will perform the direct observation?

In all cases, the person who performs the direct observation must be the same sex as the employee who is providing the specimen.

UP's preference is that direct observation be performed by the collector or collector-appointed "Direct Observer." If the collector is of a different sex than the person giving the specimen, and there is no collector-appointed Direct Observer available, then a UP manager of the same sex as the donor will be required to conduct the direct observation. Reasonable efforts will be made to ensure that the manager who acts as the direct observer will not be in the employee's direct chain of command, though this accommodation may not be possible in every situation.

Question No. 6:

What if the employee refuses to be directly observed as required by the federal regulations?

If the employee has been notified that the test will take place, then the test must be completed. If a direct observation is refused, then it will be considered a refusal to test.

The test will be completed, and the results submitted with documentation stating why a direct observation was not performed.

The following note is included as part of the "Urine Specimen Collection Guidelines," issued by the United States Department of Transportation, through its Office of Drug and Alcohol Policy and Compliance:

Note: With respect to direct observation collections, the following situations are considered refusals to test:

- The employee declines to allow a directly observed collection required or permitted by Part 40 to occur.
- The employee fails to follow the observer's instructions to raise and lower their clothing and to turn around to permit the observer to determine if the employee has a prosthetic or other device that could be used to interfere with the collection process.
- The employee possesses or wears a prosthetic or other device that could be used to interfere with the collection process.

In any of these situations, the collector discards any specimen the employee provided previously and notifies the DER as soon as possible.

Question No. 7:

After the employee is visually inspected and no prosthetic device is found, then what happens?

As was the case under the prior regulations, the direct observer must see the urine leave the body and flow into the collection container. Then the employee and direct observer leave the enclosed toilet stall/restroom. The employee hands the collection container directly to the collector, if that person is different from the direct observer, and the test is complete.