

Subpart I—Problems in Drug Tests

§ 40.209 What procedural problems do not result in the cancellation of a test and do not require corrective action?

(a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:

- (1) A minor administrative mistake (e.g., the omission of the employee's middle initial, a transposition of numbers in the employee's social security number);
- (2) An error that does not affect employee protections under this part (e.g., the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);
- (3) The collection of a specimen by a collector who is required to have been trained (see §40.33), but who has not met this requirement;
- (4) A delay in the collection process (see §40.61(a));
- (5) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see §40.121(a) through (b)) but who has not met training and/or documentation requirements (see §40.121(c) through (e));
- (6) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
- (7) The fact that a test was conducted in a facility that does not meet the requirements of §40.41;
- (8) If the specific name of the courier on the CCF is omitted or erroneous;
- (9) Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on the laboratory copy); or
- (10) Claims that the employee was improperly selected for testing.

(c) As an employer or service agent, these types of errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or action under Subpart R of this part.

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