

Federal Regulations on Drug and Alcohol and Validity Testing

As an organization of air safety professionals, AFA strongly supports a drug-free workplace. We urge our members to abide by the federal mandates as well as the policies at their carriers in order to avoid discipline, termination or being permanently barred from our profession.

Introduction and Background

When federally mandated drug testing was first proposed in 1987, AFA – and all other AFL-CIO transportation unions – vigorously opposed it. We took our case to the Federal Aviation Administration, the U.S. Congress and the court system, but later lost our court battle on the issue. In 1991, Congress passed the Omnibus Transportation Employee Testing Act, which required drug and alcohol testing. As part of the legislation, organized labor won a critical employee protection against potential lab error: split samples of drug test specimens.

Overview of Important Testing Standards

Airlines are required to conduct pre-employment, post-accident, return-to-duty, reasonable cause/reasonable suspicion and random testing on their safety-sensitive employees. Random alcohol testing can only be done just before, during or just after a duty period.

The drug and alcohol testing programs have an initial test and a confirmation test, which is the test that counts. For alcohol, an employee must have a blood alcohol content (BAC) below .04 on the confirmation test, but many airlines require a result below .02. The drug testing program looks for specific levels of marijuana, cocaine, opiates, PCP and amphetamines. The confirmation test used must be the most accurate test available; the test used is the GC/MS test (gas chromatography/mass spectrometry). The employee has the right to a GC/MS test of the split sample, which only looks for presence of the drug, rather than a specific amount.

Obey Now, Grieve Later

AFA advises its members to comply with company requests and to contact a union representative immediately about a positive test or problems during the testing process.

What is a refusal to be tested? A refusal to participate in the testing process has always counted as a positive test.

Drug testing: A refusal to test includes: Failure to appear at the test site within a reasonable time, failure to remain there until the process is complete, failure to cooperate in any part of the testing process, failure to provide a urine specimen, failure to permit a direct observation test where required, failure to take a second test where required, failure to undergo a

required medical examination, and failure to provide a sufficient amount of urine when a subsequent medical evaluation determines there is no adequate medical explanation.

Alcohol Testing: A refusal to test includes: Failure to appear within a reasonable time, failure to remain at the test site until the test is complete, failure to attempt to provide a breath or saliva specimen, failure to provide a sufficient breath specimen when a subsequent medical exam does not provide an adequate medical explanation of the insufficient breath, failure to undergo a required medical examination, failure to sign the alcohol testing form at the beginning of the testing process, and failure to cooperate in any part of the testing process.

Validity Testing: Failing a test for substitution or adulteration is considered a refusal to test as well.

What is a ‘permanent bar’? Four circumstances trigger a permanent bar, which prohibits a flight attendant from working as a flight attendant at any US airline in the future. They are:

1. Having two verified positive DOT drug tests or two confirmed positive DOT alcohol tests
2. Using drugs or alcohol while on duty
3. Refusing to participate in required education and/or rehabilitation, and/or
4. Failing to complete required education and/or rehabilitation.

What triggers a reasonable suspicion or a reasonable cause test?

Reasonable suspicion is the term used in alcohol testing; reasonable cause is the term in drug testing. The standards for these tests are virtually identical. For a reasonable cause drug test, the decision to test must be based “on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific contemporaneous physical, behavioral, or performance indicators of probable drug use. For a reasonable cause alcohol test, the employer’s decision must be based on “specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.”

The differences concern standards for supervisors. A single supervisor can order a reasonable suspicion test for alcohol; two supervisors must concur before a reasonable cause drug test is performed. One of the two must have undergone a 60-minute training on how to detect drug use. The supervisor who makes the decision cannot also conduct the test.

What should I do if I am subject to a reasonable cause or reasonable suspicion test? AFA has specific guidelines if you are subject to one of these tests:

1. If a union representative is not available, ask a flying partner or someone else who is available to act as a witness for you.



Remember, refusing to be tested will be treated the same as failing a test.

2. Be sure to ask what evidence is being used to require the test. Ask your supervisor to repeat the reasons slowly so you can write them down correctly.
3. Get your witness to sign what you have written and get your supervisor's signature, if possible. Get the name of the supervisor

who asked you to be tested.

4. Contact a grievance representative immediately after having submitted to a reasonable cause test.

Q & A: Drug and Validity Testing Standards

Why are these two types of tests treated together? Both tests depend on laboratory review of a single urine specimen you provide. In each case you have the right to a test of your split sample and a review of the test results by the MRO.

What are my rights and responsibilities during the collection process?

You must empty your pockets before the testing process begins. You must store bags and outer garments, but may keep your wallet. You have a right to be tested in the privacy of an enclosed stall unless specific provisions of the regulations are triggered. If you cannot produce a specimen of at least 45 milliliters, you have the right to consume up to 40 ounces of liquid over a period of up to three hours in order to provide a new sample.

What is direct observation testing? An observer is required to watch the urine go from the employee's body into the collection container. It was incorporated into the regulations to deter and prevent tampering with the drug testing specimen. AFA strongly opposed such testing as a violation of privacy.

When is direct observation testing required at the test site?

1. When employees are instructed to empty their pockets before the test and the collector identifies a material that could be used to tamper, and determines it was brought in with an intent to alter the specimen;
2. If the collector notes conduct that clearly indicates an attempt to tamper with the specimen, such as an attempt to substitute urine in plain view or an attempt to bring an adulterant or urine substitute to the site;
3. If the specimen temperature is outside the 90-100 degree Fahrenheit standard;
4. If it is apparent from an inspection of the sample that the employee has tampered with the specimen. (The sample must be checked for unusual color, presence of foreign objects and materials or other signs of tampering such as unusual odor. Specific examples cited are blue dye in the specimen, excessive foaming when shaken and smell of bleach.)

When is a Medical Review Officer required to order a directly observed test?

1. When a lab reports a specimen is invalid, because it contains a substance which prevents the lab from obtaining a valid test, and there is no adequate medical explanation,
2. When a lab reports the original positive, adulterated or substituted test result had to be canceled because the test of the split could not be performed, and,
3. When a lab reports a creatinine level between 2.0 and 5.0 mg/dL.

How does the laboratory process work for drug tests? The labs perform screening tests, which may produce inaccurate results. If you test positive on a screening test, your specimen is automatically tested by the best test available, the GC/MS test. The cutoff levels for positive test results are expressed in nanograms per milliliter (ng/mL).

GC/MS Confirmed Positive Drug Test Result Levels (in ng/mL):	
Marijuana	15
Cocaine	150
Phencyclidine (PCP)	25
Amphetamines	
Amphetamine	500
Methamphetamine	500*
Opiates	
Codeine	2000 **
Morphine	2000 **

**A methamphetamine specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.*

***If heroin is not present, the MRO must consider a cutoff level of 15,000 ng/mL for codeine or morphine.*


What are validity tests? The laboratory is looking to see if foreign substances have been added to the specimen to mask the presence of drugs (in which case the specimen is considered adulterated) or if the specimen has been substituted, which means the sample contains too much water to be consistent with normal human urine. Either result is considered a refusal to be tested. Specifically, the lab is trying to determine if the specimen is consistent with normal human urine. Currently, carriers must follow standards established by the Department of Transportation (DOT).

What criteria do MROS use to determine a sample is substituted? The MRO reports a specimen is substituted if the creatinine concentration is less than 2mg/dL and the specific gravity is less than or equal to 1.001 or greater than or equal to 1.020. (The labs use a different standard.)

What criteria do MROs use to determine a sample is adulterated? The lab looks for a substance that is not expected to be present in human urine, a substance normally present in human urine but at a concentration so high that it is not consistent with human urine, or physical characteristics outside the normal expected range for human urine.

What happens if the lab reports your test positive for one of these five drugs, or substituted or adulterated? The lab report is forwarded to the

MRO for your carrier; the MRO will determine if there is a legitimate medical explanation for your test result. The MRO cannot report the result until he has conducted an interview with you. If the MRO is unable to reach you within a 24 hour period, he must ask the Designated Employer Representative (DER) to contact you. The DER must inform you to contact the MRO within 72 hours and advise you that your test result may be verified positive, or a refusal to test, if you fail to do so.

 ***Under the 2003 revisions to the regulations, the labs must report quantitative values for creatinine and specific gravity, and the MRO must report all test results with creatinine levels between 2 mg/dL and 5 mg/dL to the employer as dilute, rather than substituted, and require an immediate test under direct observation following such test results.***

As previously noted, if your creatinine level is 2.0 mg/dL or above, the MRO must report your test result to the company as dilute and require you to undertake another test under direct observation.

Can the MRO's staff call you? Yes. The staff can call to arrange a time for your conversation with the MRO and to explain that if you refuse to talk with him, your test will be verified as a positive. Staff may advise you to have medical information ready for the discussion with the MRO but may not obtain medical information from you.

What are the MRO's responsibilities during the interview with you? The MRO must tell you the drug(s) for which you tested positive, that your test was invalid, or the basis for the finding of substitution or adulteration. The MRO must make clear that her or his decision will be based on information you provide and, if further medical evaluation is required, you must comply with this request or have your test result verified as positive.

The MRO must warn you — before obtaining any medical information from you — that drug test result information and medical information he believes could affect the performance of safety-sensitive duties must be reported to third parties without your permission. He must also explain that if you decline to discuss your test results, he will verify your test as a positive or a refusal to test.

If the MRO finds you have a valid prescription that he believes is inconsistent with your safety-sensitive responsibilities, he must give you five days to have your personal physician contact him to see if alternative medication can be prescribed. If your medication is changed to a prescription acceptable to the MRO, your employer must be notified. Unfortunately, this exchange of information is not protected by confidentiality.

What should I do if I test positive, substituted or adulterated?

1. Cooperate with the instructions from your employer.
2. Call a union representative as soon as possible.
3. Check the list of fatal flaws that cause a positive result to be cancelled.


What are my rights and responsibilities if I test positive for substitution?

Under the revised 2003 regulations, the lab must give the MRO the quantitative values for creatinine and specific gravity. Make sure the MRO has this information and shares it with you. If your test result is within the new acceptable creatinine range for dilute — from 2mg/dL to 5mg/dL — you must still submit to another test under direct observation. If your test result falls below the new standard the MRO must use in submitting reports to your employer, you still have the right to demonstrate that you can reproduce test results at this level. If you are convinced the test result is inaccurate, ask for a test of the split sample.

What legal prescription drugs cause positive test results?

Most prescription medicine does not cause a positive test result. For example, use of AZT, lithium, anti-depressants, antibiotics, tranquilizers/sleeping pills, medicine with caffeine and medication for diabetes and epilepsy will not show up. But some drugs, such as Tolectin (Tolmetin), Flagyl (metronidazole) and Cipro (ciprofloxacin) interfere with some screening tests. If the MRO determines use of such medication

adversely affected your test result, he will report your test as canceled (which is neither positive nor negative). To date, no prescription medicine has been identified as causing an adulterated or substituted test.



AFA strongly encourages its members to permit the MRO to talk to their personal physicians to discuss possible alternative medications. AFA members should also talk with their doctors about the anticipated effectiveness of the alternatives. If use of medication acceptable to the MRO is not effective or produces adverse consequences, AFA members should ask their doctors to review the situation with the MRO.

If your medical information is not considered at odds with your safety-sensitive duties, a legal prescription consistent with your positive test result will be considered a legitimate medical explanation and your test will be reported as negative.



If you believe you have been unfairly accused of failing a substitution test, contact the International Office immediately. Make sure the MRO gives you the specific creatinine and specific gravity levels of your test result. If you need to prove your innocence by having your personal physician conduct a series of retests under direct observation, you will be responsible for the cost.

What about other drugs?

Marijuana: Some states permit legal prescriptions for marijuana. Such a prescription cannot be counted as a reasonable medical explanation under the DOT testing program. Passive inhalation of marijuana or consumption of marijuana in food will not be accepted as a reasonable explanation for a positive test result either.

Cocaine: No prescription medicine contains cocaine. However, it is useful as an anesthetic in certain types of surgery involving the nose, throat, larynx and lower respiratory passages. Only dosages administered by doctors or dentists are acceptable. Medical use must have occurred within 2 to 3 days prior to when the specimen was collected. Proof of such usage will result in a negative test result. Use of “Inca Tea” or passive inhalation of crack cocaine will not be accepted explanations.

Amphetamines: Amphetamines can be used to treat narcolepsy, attention-deficit disorder, depression that has not responded to other treatments and obesity but their use is controversial because of the risk of abuse. The MRO may want to consult with your doctor about such prescriptions.

Opiates: Many prescription drugs contain codeine or morphine and will produce a “true” positive test result. If the lab detects heroin (6-acetylmorphine or 6-AM), the test is automatically reported as positive. If the test level for either codeine or morphine is at 15,000 ng/mL or above, the MRO must report your result as a positive unless you have a legitimate medical explanation. For test results below this level, the MRO must have clinical evidence of unauthorized opiate use — in addition to your test results — to report your test as positive. Food products, like poppy seeds, no longer constitute a legitimate explanation because the cutoff level has been changed significantly.

Phencyclidine (PCP): There is no legitimate medical explanation for a positive test.

When can the MRO report a positive test without talking to me? There are three circumstances when the MRO can report a positive test result without talking with you: if you decline to talk to the MRO about the test result, if you do not follow the DER’s instructions to contact the MRO within 72 hours, and if neither the DER nor the MRO has reached you within ten days. You have a window of 60 days to reopen the verification process if you can document that serious illness, injury, or other circum-

stances unavoidably prevented you from contacting the MRO or the DER within the times provided.

What about medicine I purchased in a foreign country? New regulatory standards are established for medicines purchased in a foreign country. The MRO is instructed to use his professional judgment consistent with these basic principles: 1. Only a substance legally obtained in a particular country could contribute to a legitimate medical explanation; 2. The drug must have a legitimate medical use; and, 3. The medicine must have been used properly and consistently for its intended medical purpose. But even if these conditions are met, the MRO must still consider whether the drug potentially poses a significant risk to safety.

What if I use medicine of a friend or flying partner? The regulations do not address this issue. There are differing opinions within the medical community. Use of another person's prescription is not legally permitted but many physicians feel the practice is so widespread that harsh penalties, such as loss of one's job, are not warranted. If you are confronted with this situation, review the standards above as well as other appropriate reasons (e.g. inability to secure personal medicine at layover, inability to go to a 24-hour drug store because of young children at home, no open drug store, etc.)

When should I request a test of my split sample? When the MRO notifies you of a verified positive test result, he must also inform you that you have 72 hours to request a test of your split sample. If you believe this result to be an error, it is important to request a test of the split. Your employer may require you to pay for this test eventually but must ensure the test takes place in a timely manner. A different laboratory will conduct the test and will only look for presence of the drug(s) in question. In other words, the cutoff levels that applied to the original test do not apply to the testing of the split sample.

Sometimes drug test results are cancelled. Why?

1. The collector's printed name and signature are omitted from the Custody and Control Form (CCF).
2. The specimen ID numbers on the specimen bottle and the CCF do not match.
3. The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be redesignated as the primary sample).
4. Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be redesignated.

Q & A: Alcohol Testing Standards

What are my rights and responsibilities during the collection process?

Your employer must provide a test site with sufficient visual and aural privacy so that unauthorized persons cannot see or hear the test results. Use of a site that only partially meets these requirements is permitted only

for post-accident and reasonable suspicion tests if a site meeting all these requirements is not readily available. If you cannot produce sufficient breath, after repeated attempts, your employer must direct you to obtain an evaluation within five days from a licensed physician, acceptable to the employer, with expertise in the medical issues raised by your inability to provide sufficient breath. If you cannot provide enough saliva, a breath test must be administered. Only one test can be conducted at a time.

How does the testing process work? The first step is a screening test using either saliva or breath. If your test result has an alcohol concentration of less than .02, you have tested negative. If you tested above this level, a confirmation test is administered after a waiting period of at least 15 minutes. You will be advised not to eat, drink, belch, or put anything into your mouth (such as cigarettes or gum) during this period. The breath testing machine used in the confirmation test must be able to print in triplicate, produce a unique number for each test, be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level, produce an air blank test and perform an external calibration test. The air blank must be performed before testing to demonstrate no alcohol remains in the machine. The machine cannot be used unless it produces an air blank of 0.00 before the test.

What constitutes a failed alcohol test? Under the Federal regulations, testing at or above .04 blood alcohol content constitutes a failed test. Many airlines set a stricter standard of .02 BAC.

Are there reasonable medical explanations for positive alcohol tests? No. The test cannot distinguish between alcohol in medicines and alcohol in beverages so it is important to read the labels on over-the-counter medications and talk with your doctor or pharmacist about prescription medication.

How much can I drink and stay safe and out of trouble? The only way to be alert on the job and free from concerns about alcohol testing is to follow your airline's rule prohibiting drinking before flying. If you drink, do so only in moderation.

What should I do if I test positive?

1. Cooperate with the instructions from your employer.
2. Call a union representative as soon as possible.
3. Check the list of fatal flaws that cause a positive result to be cancelled.

What if I am concerned that a flying partner has a drinking problem?

AFA's Employee Assistance Program (EAP) was established to provide assistance to AFA members who may have problems with substance abuse and now provides a variety of additional services. A call to EAP is always confidential. You can call EAP to figure out how best to help your flying partner or you can simply offer her or him EAP's contact information. The numbers of local EAP representatives are available through your locally

elected leaders or you can call the International Office at 1-800-424-2406. This service is provided 24 hours a day, seven days a week. The names and phone numbers of local EAP representatives can be found at www.afanet.org under the EAP section.

Returning to Duty

What is the return-to-duty process? If you have failed a drug or alcohol test, and your employer gives you a second chance to return to your safety-sensitive position, you must first be evaluated by a Substance Abuse Professional (SAP). Then you must comply with the SAP's evaluation requirements for education and/or treatment.

How does the process work? The SAP must make a face-to-face clinical assessment before developing the SAP recommendations and before determining whether you have successfully completed the requirements. If you disagree with the initial SAP evaluation, you are not permitted to seek a second SAP evaluation; if you do so, your employer is not permitted to consider the results of it. Another person, such as the MRO, the employer or a managed-care provider, is not allowed to alter the initial SAP evaluation. Only the designated SAP can modify the initial evaluation and recommendations based on new or additional information from an education or treatment program. You will be subject to at least six unannounced tests after you return to the line. The SAP is the only person who determines whether you are subject to tests for drugs or alcohol or both and the frequency of the follow-up testing. The SAP may also recommend additional treatment, aftercare or support group services be undertaken after you return to your safety-sensitive position. You must have a negative drug test result and/or an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.

Confidentiality and Rights to Personal Information

What are my rights to confidentiality? The general rule is that individual test results or medical information cannot be released to others (third parties) without your specific written consent. But the regulations include a specific exception to this standard that permits the MRO to report medical information you "voluntarily provide" during your interview with her or him following a positive, substituted or adulterated drug test result. The exception is triggered when the MRO believes a medical condition or medication is inconsistent with the performance of safety-sensitive duties.

What are my rights to information about my lab results? Within ten days of receiving a written request from an employee through the MRO, the lab must provide the laboratory report and data package pertaining to your test result. The lab may not charge more than the cost of preparation and reproduction of copies.