



**State of Montana  
Department of Natural Resources and Conservation**

**Changes in Federal Drug and Alcohol Testing  
Regulations, 1996**

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<b>Approval Signature: /s/ Randy Mosley for Bud Clinch, Director</b>		<b>Last Revised: 11/1/96</b>

**Section 40.3-Definitions:** Substance abuse professional. Insert definition from Part 382. After "Counselors Certification Commission" add "or by the International Certification Reciprocity Consortium (Alcohol & Other Drug Abuse)".

**Section 40.25-Specimen collection procedures** is amended by removing the word "oral" from paragraphs (e)(2)(i)(A) and (B) and adding after the word "temperature," in paragraph (e)(2)(i)(A): "(taken by a means other than use of a rectal thermometer.

**Section 40.25(f)(9)(iv)**

(A)(1) In either collection methodology, upon receiving the specimen from the individual, the collection site person shall determine if the specimen has at least 30 milliliters of urine of a single specimen collection or 45 milliliters of urine for a split specimen collection.

(2) If the individual has not provided the required quantity of urine, the specimen shall be discarded. The collection site person shall direct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a new urine specimen whichever occurs first. If the employee refuses to drink fluids as directed or to provide a new urine specimen, the collection site person shall terminate the collections and notify the employer that the employee has refused to submit to testing.

(3) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection site person shall discontinue the collection and notify the employer.

(B) The employer shall direct any employee who does not provide a sufficient urine specimen (see paragraph (f)(10)(iv)(3) of this section to obtain, as soon as possible after the attempted provision of urine, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's ability to provide an adequate amount of urine.

(1) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of urine, the employee's failure to provide an adequate amount of urine shall not be deemed a refusal to take a test. For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a documented pre-existing psychological disorder, but does not include unsupported ascertains of "situational anxiety" or dehydration. The physician shall provide to the MRO a brief written statement setting forth his or her conclusion and the basis for it, which shall not include detailed information on the medical condition of the employee. Upon receipt of this statement, the MRO shall report his or her conclusions to the employer in writing.

(2) If the physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (f)(10)(iv)(B)(1) of this section, the employee's failure to provide an adequate amount of urine shall be regarded as a refusal to take a test. The physician shall provide to the MRO a brief written statement setting forth his or her conclusion and the basis for it, which shall not include detailed information on the medical condition of the employee. Upon receipt of this statement, the MRO shall report his or her conclusions to the employer in writing.

**Section 40.33-Reporting and Review of Results** (b)(2) Reserved.

(c)(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

(1) The employee expressly declines the opportunity to discuss the test; (2) Neither the MRO nor the designated employer representative, after making all reasonable efforts, has been able to contact the employee within 14 days of the date on which the MRO receives the confirmed positive test result from the laboratory; (3) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see paragraphs (c)(3) and (c)(4) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated employer representative.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5)(2) or (3) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from being contacted by the MRO (paragraph (c)(5)(2) of this section) or from contacting the MRO (paragraph (c)(5)(3) of this section) within the times provided. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

(f)(2) If the analysis of the split specimen is reconfirmed by the second laboratory for the presence of drug(s) or drug metabolite(s), the MRO shall notify the employer and the employee of the results of the test.

**Section 382.107-Definitions** - The definition of "Substance Abuse Professional" is removed (moved to part 40).

**History:** NEW: 11/196 (originally #3-0013 Addendum #2).