

**49 CFR Part 40****[DOT-OST-2026-3664]****Petition For Rulemaking; Notification of Petition for Rulemaking; Invalid Specimen Determinations**

AGENCY: Office of the Secretary, U.S. Department of Transportation (Department or DOT).

ACTION: Notification of petition for rulemaking; request for comments.

SUMMARY: This document announces receipt of a petition for rulemaking received by DOT on February 27, 2026, to initiate a rulemaking to amend 49 CFR part 40. The petitioner's proposed amendments seek to incorporate structured medical verification standards when an employee asserts a plausible medical explanation for abnormal specimen validity findings, including abnormal pH values. Specifically, the petitioner proposes: a defined and finite documentation submission window; required written Medical Review Officer determinations addressing submitted documentation; defined evaluation standards for abnormal urinary chemistry findings; consideration of specialist consultation when diagnosed voiding disorders are asserted; and (5) documented review of medically supported functional voiding disorders prior to verifying refusal determinations based on inability to provide a specimen under direct observation. Through this notification, DOT seeks comment on the petition, as well as any information that could be used in DOT's determination whether to grant the petition.

DATES: DOT will accept comments, data, and information with respect to the Darcy Kern Petition until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Ave. S.E., West Building, W58-213, Washington, D.C. 20590–0001;

- Hand Delivery: West Building, W58-213, 1200 New Jersey Ave. S.E., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9826;

- Instructions: You must include the agency name and docket number DOT– OST–2026–3664 at the beginning of your comments. All comments received will be posted without change to [http:// www.regulations.gov](http://www.regulations.gov), including any personal information provided. **FOR FURTHER INFORMATION CONTACT:** Ms. Alison Stockdale, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue S.E., Washington, D.C. 20590; 202-366-3784, ODAPCwebmail@dot.gov.

SUPPLEMENTARY INFORMATION:

Submission of Comments

DOT invites all interested parties to submit, by the date listed under the DATES heading, written comments and information regarding this petition via www.regulations.gov. All submissions must include the agency name, “Department of Transportation” and docket number, **DOT-OST-2026-3664**, for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided. Do not include personal information you would not want publicly shared, including social security information, home addresses, or any other personal identifying information not to be publicly shared. DOT will not take responsibility for information you share. Do not submit to www.regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through www.regulations.gov cannot be claimed as CBI. Comments received through

the website will waive any CBI claims for the information submitted. DOT considers public participation to be a very important part of its process for considering rulemaking petitions. DOT actively encourages public participation and interaction during the comment period. Interactions with and between members of the public provide a balanced discussion of the issues and help DOT determine how to proceed with a petition.

Signed in Washington, D.C., on September 29, 2026.

Douglas Simon

Director

Office of Drug & Alcohol Policy & Compliance

Petition for Rulemaking as submitted by the Petitioner

EXECUTIVE SUMMARY

This petition respectfully requests that the U.S. Department of Transportation initiate rulemaking to amend 49 CFR part 40, specifically §40.193¹ and related provisions governing invalid specimen determinations and directly observed recollection procedures.

The proposed amendments seek to incorporate structured medical verification standards when an employee asserts a plausible medical explanation for abnormal specimen validity findings, including abnormal pH values. Specifically, the petition proposes: (1) a defined and finite documentation submission window; (2) required written Medical Review Officer determinations addressing submitted documentation; (3) defined evaluation standards for abnormal urinary chemistry findings; (4) consideration of specialist consultation when diagnosed voiding disorders are asserted; and (5) documented review of medically supported functional voiding disorders

¹ Petitioner cites section 40.193 that covers *What happens when an employee does not provide a sufficient amount of specimen for a drug test?* Section 40.159, which covers *What does the MRO do when a drug test result is invalid?*, seems to be the appropriate provision to be considered for amendment.

prior to verifying refusal determinations based on inability to provide a specimen under direct observation.

The requested amendments do not weaken anti-adulteration safeguards, eliminate observed testing, or create indefinite delays. Instead, they aim to enhance procedural clarity, consistency, and transparency while preserving enforcement authority and public safety protections.

STATEMENT OF THE ISSUE

49 CFR part 40 requires that certain invalid drug test results, including those involving abnormal pH values outside established physiological parameters, result in cancellation of the test and mandatory directly observed recollection.

While this framework appropriately prioritizes specimen integrity and anti-tampering safeguards, the regulation does not require a structured medical verification opportunity when an employee asserts a plausible medical explanation for abnormal specimen validity findings.

Currently, the regulation does not mandate:

A defined documentation submission window when a medical cause is asserted;

Structured evaluation standards for abnormal urinary chemistry potentially associated with diagnosed medical conditions;

Written determination requirements addressing asserted medical explanations prior to escalation;

Integration of documented functional voiding disorders prior to refusal determinations following observed collection.

The absence of defined medical integration standards may result in inconsistent determinations and unnecessary escalation to observed testing.

SCOPE AND IMPACT

Paruresis (psychogenic urinary retention) and other anxiety-based voiding disorders are medically recognized conditions within psychiatric and urological literature. Published prevalence estimates suggest that a measurable percentage of the general U.S. population experiences clinically significant symptoms.

While only a subset of affected individuals are employed in safety-sensitive transportation roles subject to Part 40 testing requirements, the size of the regulated workforce indicates that even a small percentage represents a meaningful number of potentially impacted employees.

Given the significant professional consequences associated with refusal determinations—including potential commercial driver’s license disqualification, Clearinghouse reporting implications, and mandatory return-to-duty processes—clear and standardized medical verification procedures would enhance consistency and transparency without diminishing enforcement safeguards.

PROPOSED REGULATORY AMENDMENTS

The petitioner respectfully proposes the following additions to §40.193:

Proposed §40.193(f) – Medical Verification Window

When an employee asserts a plausible medical explanation for abnormal specimen validity findings, including abnormal pH values outside established physiological parameters, the Medical Review Officer (MRO) shall provide the employee a defined period not to exceed 72 hours to submit documentation from a licensed medical provider supporting the asserted condition.

The MRO shall issue a written determination addressing the submitted documentation prior to directing a directly observed recollection under §40.67.

If documentation is not submitted within the defined period, or is determined insufficient to support medical plausibility, observed recollection shall proceed in accordance with existing requirements.

Proposed §40.193(g) – Specialist Consultation Consideration

When the asserted medical explanation involves a diagnosed urological condition or functional voiding disorder, including psychogenic urinary retention (paruresis), the MRO shall consider consultation with a licensed urologist or licensed mental health professional familiar with such conditions prior to issuing a final determination.

Pre-Refusal Documentation Review

Prior to verifying a refusal to test based on failure to provide a sufficient specimen under direct observation, the MRO shall document consideration of any previously submitted medical documentation indicating a functional voiding disorder that may materially impair the employee's ability to void under observation.

SAFETY AND PROGRAM INTEGRITY JUSTIFICATION

The proposed amendments do not eliminate or weaken anti-adulteration safeguards.

The documentation window is finite and does not create open-ended delay. Observed recollection remains mandatory if documentation is insufficient. Refusal determinations remain available when appropriate. Laboratory validity thresholds remain unchanged.

These amendments strengthen procedural clarity, increase consistency in medical determinations, and improve confidence in the fairness and integrity of the testing framework while preserving enforcement authority.

REQUEST FOR ACTION

The petitioner respectfully requests that the Department initiate rulemaking proceedings to evaluate and adopt the proposed amendments to 49 CFR part 40.

The requested amendments are narrowly tailored to enhance procedural clarity and medical integration while preserving the core safety objectives of the DOT drug testing program. The requested amendments do not weaken anti-adulteration safeguards, eliminate observed testing, or create indefinite delays. Instead, they aim to exchange procedural clarity, consistency, and transparency while preserving enforcement authority and publishing safety protections.

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