

Please provide widest dissemination possible for the following ODAPC message & attached Court document regarding the implementation of mandatory direct observation for return-to-duty and follow-up testing:

The U.S. Court of Appeals for the D.C. Circuit has again [November 12, 2008] delayed the mandatory Direct Observation (DO) requirement for DOT return-to-duty and follow-up tests. This is a "stay" that will remain in effect until the court issues a decision on the merits of the petitioners' challenge to the provisions of 40.67(b).

Therefore, DO for return-to-duty and follow-up testing will continue to be an employer option, rather than mandatory.

All other requirements of 49 CFR Part 40 that went into effect on August 25, 2008 – to include the DO provision at 40.67(i) [checking for prosthetic and other devices used to carry “clean” urine & urine substitutes] – remain in effect.

[CLICK HERE FOR THE UNITED STATES COURT OF APPEAL ORDER STAY](#)