

**Office of Drug Enforcement and Program Compliance**  
**49 CFR Part 40 Interpretation**

**Question:** Is there any obligation for the employee's company to pay for the processing of a split sample when the primary is positive?

**Answer:** The split sample procedure is a statutory requirement of the Omnibus Transportation Employee Testing Act of 1991 for employers in the aviation, highway, rail, and transit industries, as well as the DOT rules. Section 40.33(f) states, in part: *"If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis."* In other words, if the employee makes the request within this time period, the split specimen must be tested. The employer is responsible for ensuring that the test occurs, including taking responsibility for paying for it, in the first instance. The employer may arrange with the employee for reimbursement, but the refusal of the employee to contribute to the cost of the test does not excuse the employer from ensuring that the test takes place. Naturally, a previous agreement signed by the employee, or a labor-management agreement that specifies payment arrangements could dictate the payment source. However, the split specimen testing process, initiated by the MRO's written request, should not be delayed while awaiting payment to come from the employee. If there is a dispute, the fall-back position would be for the employer to be billed (by either the primary laboratory for sending the split specimen, or the receiving laboratory for testing the split specimen) and then for the employer to settle the matter after-the-fact with the employee.

