



# **Customs (Drug and Alcohol Testing) Regulation 2013**

**Select Legislative Instrument No. 2, 2013**

made under the

*Customs Administration Act 1985*

## **Compilation No. 2**

<b>Compilation date:</b>	2 December 2014
<b>Includes amendments up to:</b>	SLI No. 181, 2014
<b>Registered:</b>	4 December 2014

Prepared by the Office of Parliamentary Counsel, Canberra

---

## About this compilation

### This compilation

This is a compilation of the *Customs (Drug and Alcohol Testing) Regulation 2013* that shows the text of the law as amended and in force on 2 December 2014 (the **compilation date**).

This compilation was prepared on 4 December 2014.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

---

# Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Name of regulation .....	1
3 Authority .....	1
4 Definitions .....	1
<b>Part 2—Drug testing</b>	<b>2</b>
<b>Division 1—General provisions</b>	<b>2</b>
5 Persons authorised to conduct tests .....	2
6 Devices approved for tests .....	4
7 Conduct of tests—general .....	4
7A Collection of information from body sample .....	5
8 Security and destruction of body samples and other records .....	5
9 Disclosure of information .....	6
<b>Division 2—Alcohol breath tests</b>	<b>7</b>
10 Procedures to be followed .....	7
11 Approval of courses .....	8
<b>Division 3—Blood tests and prohibited drug tests of body samples other than urine</b>	<b>9</b>
12 Application of Division 3 .....	9
13 Definitions for Division 3 .....	9
14 Taking of body samples .....	9
15 Analysis of body samples .....	10
16 Certificates .....	10
17 Disputed results .....	11
<b>Division 4—Prohibited drug tests using urine samples</b>	<b>12</b>
18 Procedures to be followed .....	12
19 Approval of courses .....	12
<b>Part 4—Application and transitional provisions</b>	<b>13</b>
30 Amendments made by the <i>Customs (Drug and Alcohol Testing) Amendment Regulation 2013 (No. 1)</i> .....	13
31 Amendments made by the <i>Customs (Drug and Alcohol Testing) Amendment Regulation 2014 (No. 1)</i> .....	13

---

<b>Endnotes</b>	14
<b>Endnote 1—About the endnotes</b>	14
<b>Endnote 2—Abbreviation key</b>	15
<b>Endnote 3—Legislation history</b>	16
<b>Endnote 4—Amendment history</b>	17

## Part 1—Preliminary

### 1 Name of regulation

This regulation is the *Customs (Drug and Alcohol Testing) Regulation 2013*.

### 3 Authority

This Regulation is made under the *Customs Administration Act 1985*.

### 4 Definitions

In this regulation:

***Act*** means the *Customs Administration Act 1985*.

***approved device*** means a device approved under section 6.

***authorised person*** means a person authorised under subsection 5(1).

***medical practitioner*** has the same meaning as in subsection 3(1) of the *Health Insurance Act 1973*.

***registered nurse*** has the same meaning as in subsection 3(1) of the *Health Insurance Act 1973*.

Section 5

---

## **Part 2—Drug testing**

### **Division 1—General provisions**

#### **5 Persons authorised to conduct tests**

- (1) For paragraph 16F(a) of the Act, the CEO may, in writing, authorise a person referred to in an item of the table for the purpose referred to in the item.

<b>Person authorised to conduct tests</b>		
<b>Item</b>	<b>Purpose</b>	<b>Person</b>
1	Conducting an alcohol screening test	Any of the following: (a) an officer of Customs who has successfully completed a training course in conducting alcohol screening tests approved under section 11; (b) a police officer of a State or Territory; (c) a company authorised by the CEO for the purposes of this item
2	Conducting an alcohol breath test	Any of the following: (a) an officer of Customs who has successfully completed a training course in conducting alcohol screening tests approved under section 11; (b) a police officer of a State or Territory; (c) a company authorised by the CEO for the purposes of this item
3	Collecting a sample of blood for purposes relating to the conduct of an alcohol blood test	Any of the following: (a) a medical practitioner; (b) a registered nurse; (c) an enrolled nurse; (d) a company authorised by the CEO for the purposes of this item

Section 5

<b>Person authorised to conduct tests</b>		
<b>Item</b>	<b>Purpose</b>	<b>Person</b>
3A	Analysing a sample of blood for purposes relating to the conduct of an alcohol blood test	A company authorised by the CEO for the purposes of this item
4	Collecting a sample of blood for purposes relating to the conduct of a prohibited drug test	Any of the following: (a) a medical practitioner; (b) a registered nurse; (c) an enrolled nurse; (d) a company authorised by the CEO for the purposes of this item
4A	Analysing a sample of blood for purposes relating to the conduct of a prohibited drugs test	A company authorised by the CEO for this purpose
5	Collecting a sample, other than blood, for purposes relating to the conduct of a prohibited drug test	Any of the following: (a) a medical practitioner; (b) a registered nurse; (c) an enrolled nurse; (d) an officer of Customs who has successfully completed a training course in supervising the provision of urine samples approved under section 19; (e) a police officer of a State or Territory; (f) a company authorised by the CEO for the purposes of this item
5A	Analysing a sample, other than blood, for purposes relating to the conduct of a prohibited drug test	A company authorised by the CEO for this purpose

- (2) If the CEO authorises an officer of Customs under subsection (1):  
 (a) the CEO must give the officer a certificate stating that he or she is an authorised person; and

**Section 6**

---

- (b) the officer must, if requested to do so, show his or her certificate to a Customs worker who is directed by the officer to undergo a test for section 16B, 16C or 16D of the Act.
- (3) If the CEO authorises a company under subsection (1):
  - (a) the CEO must give the company a certificate stating that it is an authorised person; and
  - (b) an officer of the company acting as an authorised person must, if requested to do so, show the certificate to a Customs worker who is directed by the officer to undergo a test for section 16B, 16C or 16D of the Act.

**6 Devices approved for tests**

For paragraph 16F(e) of the Act, the CEO may, in writing, approve a device as a device permitted to be used for a test for section 16B, 16C or 16D of the Act.

**7 Conduct of tests—general**

- (1) A breath test, blood test or prohibited drug test conducted for section 16B, 16C or 16D of the Act must be conducted:
  - (a) in a respectful manner; and
  - (b) in circumstances affording reasonable privacy to the Customs worker directed to undergo the test.
- (2) The test must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the test and must not involve:
  - (a) removal of more clothing than is necessary for the conduct of the test; and
  - (b) more visual inspection than is necessary for the conduct of the test.
- (3) If practicable, the test must be conducted by a person of the same sex as the Customs worker directed to undergo the test.
- (4) If a prohibited drug test requires a Customs worker to provide a sample of hair, the authorised person collecting the sample:
  - (a) must use the least painful technique known and available to the authorised person to collect the sample; and



Section 7A

---

- (b) must only collect the amount of hair necessary for the conduct of the test; and
- (c) may collect the sample from any part of the Customs worker's body, other than:
  - (i) the genital or anal area; or
  - (ii) the buttocks.

**7A Collection of information from body sample**

The only information which may be collected from a breath test, blood test or prohibited drug test conducted for section 16B, 16C or 16D of the Act is information relating to the detection of alcohol or prohibited drugs.

**8 Security and destruction of body samples and other records**

- (1) A body sample or other record that is relevant to a breath test, blood test or prohibited drug test conducted for section 16B, 16C or 16D of the Act must be kept in a secure location unless it is destroyed in accordance with this section.
- (2) A body sample mentioned in subsection (1) must be destroyed:
  - (a) if the sample indicates the presence of alcohol or prohibited drugs—no later than 2 years from the day the test was conducted; and
  - (b) otherwise—no later than 28 days after the day the test was conducted.
- (3) Any other record mentioned in subsection (1) must be destroyed as soon as practicable after the Customs worker to whom the record relates ceases, for any reason, to be a Customs worker.
- (4) Despite subsections (2) and (3), information obtained from the analysis of a sample may be retained if the information:
  - (a) relates to any of the following:
    - (i) the detection of alcohol or prohibited drugs;
    - (ii) the name of any prohibited drugs detected;
    - (iii) the quantity of any alcohol or prohibited drugs detected;
    - (iv) how a urine sample was provided or analysed;

Section 9

---

- (v) whether a urine sample was provided, or analysed, in accordance with the standard mentioned in section 18; and
  - (b) is used for compiling a statistical database; and
  - (c) does not include information that may be used to identify the Customs worker who provided the sample.
- (5) Despite subsections (2) and (3), information obtained from the analysis of a sample may be retained if:
  - (a) the information relates to the detection of alcohol or prohibited drugs; and
  - (b) the purpose of retaining the information is so that it can be provided to an Agency as part of security vetting of the Customs worker to whom the record relates.

**9 Disclosure of information**

A person other than the Customs worker who provided a body sample may disclose information revealed by a breath test, blood test or prohibited drug test only:

- (a) if the information is already lawfully publicly known; or
- (b) in accordance with this Part; or
- (c) for the investigation of any offence or offences generally; or
- (d) to enable a conduct issue to be dealt with under the *Public Service Act 1999* and to enable any action to be taken by the CEO in relation to the issue; or
- (e) for a decision whether to institute proceedings for an offence; or
- (f) for proceedings for an offence; or
- (g) if:
  - (i) the disclosure is for the Customs worker's medical treatment; and
  - (ii) the Customs worker does not have capacity to consent in writing to the disclosure; or
- (h) if the Customs worker consents in writing to the disclosure.

## **Division 2—Alcohol breath tests**

### **10 Procedures to be followed**

- (1) An alcohol breath test for section 16C or 16D of the Act must be conducted using an approved device for the test.
- (2) A Customs worker who is directed to undergo an alcohol breath test may ask the authorised person conducting the test to arrange for the Customs worker to also undergo an alcohol blood test.
- (3) However, neither a request for an alcohol blood test to be conducted nor the conduct of an alcohol blood test absolves the Customs worker from the obligation to undergo an alcohol breath test.
- (4) If the Customs worker asks that an alcohol blood test be conducted, the authorised person conducting the alcohol breath test must take all reasonable steps to contact a person authorised to conduct an alcohol blood test.
- (5) A certificate that makes statements about a matter specified in subsection (6), and that is expressed to be given for this section, must be signed by the authorised person who conducted the test.
- (6) The following matters are specified:
  - (a) the type and serial number of the approved device used to conduct the alcohol breath test;
  - (b) the sample number of the test;
  - (c) the full name and date of birth of the Customs worker tested;
  - (d) the full name of the authorised person who conducted the test;
  - (e) whether the authorised person conducted a self-test on the approved device before and after the analysis;
  - (f) if the authorised person conducted a self-test:
    - (i) the time and result of the self-test; and
    - (ii) whether the self-test was conducted on override mode;
  - (g) the date on which, and the time at which, the alcohol breath test was conducted;

**Part 2** Drug testing

**Division 2** Alcohol breath tests

**Section 11**

---

- (h) the result of the alcohol breath test as shown by the approved device.

**11 Approval of courses**

The CEO may, in writing, approve a training course in conducting alcohol screening tests and alcohol breath tests.

## **Division 3—Blood tests and prohibited drug tests of body samples other than urine**

### **12 Application of Division 3**

This Division applies to:

- (a) alcohol blood tests; and
- (b) prohibited drug tests of body samples other than urine.

### **13 Definitions for Division 3**

In this Division:

**analyst** means a person at an accredited pathology laboratory who performs the quantification of a body sample taken by an authorised person.

**unanalysed sample** means a body sample submitted to an accredited pathology laboratory under paragraph 14(2)(a) for the purpose of making a sample available for independent testing.

### **14 Taking of body samples**

- (1) An authorised person taking a body sample for the purposes of an alcohol blood test or prohibited drug test must:
  - (a) place approximately equal quantities of the sample into 2 containers; and
  - (b) label each container for future identification; and
  - (c) ensure that each container is sealed.
- (2) If the authorised person is satisfied that the Customs worker from whom the sample was taken is incapable of understanding the procedures that have been applied to him or her, the authorised person must arrange for both sealed containers to be sent to an accredited pathology laboratory.
- (3) If the authorised person is satisfied that the Customs worker from whom the sample was taken is capable of understanding the

**Part 2** Drug testing

**Division 3** Blood tests and prohibited drug tests of body samples other than urine

**Section 15**

---

procedures that have been applied to him or her, the authorised person must:

- (a) give one sealed container to the Customs worker; and
- (b) arrange for the other sealed container to be sent to an accredited pathology laboratory.

**15 Analysis of body samples**

- (1) An analyst at an accredited pathology laboratory must conduct an analysis of a portion of the body sample to determine:
  - (a) the concentration of alcohol in the blood; or
  - (b) whether the body sample contains a prohibited drug.
- (2) If the first analysis of a portion of the sample indicates the presence of alcohol or a prohibited drug in the sample, an analysis of another portion of the sample must be conducted.
- (3) If 2 containers were submitted to the accredited pathology laboratory under subsection 14(2), the sample for the second analysis must be taken from the same container from which the earlier sample was taken.

**16 Certificates**

- (1) As soon as practicable after an analysis is conducted, the analyst who conducted the analysis of the body sample for an alcohol blood test or prohibited drug test must give a certificate to:
  - (a) the Customs worker who provided the sample; and
  - (b) the authorised person who directed that the Customs worker undergo the test.
- (2) The certificate must state the following information:
  - (a) a unique identifying number relating to the Customs worker;
  - (b) the date when the sample was taken;
  - (c) the date when the sample was received in the accredited pathology laboratory for analysis;
  - (d) the accredited pathology laboratory identification number of the sample;
  - (e) the date when the analysis was conducted;

- (f) the results of the analysis;
  - (g) the name of the analyst who conducted the analysis;
  - (h) any observations made during the course of the analysis which may have affected test results.
- (3) If 2 containers were submitted to the accredited pathology laboratory under subsection 14(2), the certificate must also inform the Customs worker that he or she may:
- (a) collect the unanalysed sample from the laboratory within 6 months after the sample was taken; and
  - (b) have the sample independently tested by another accredited pathology laboratory.
- (4) The certificate must be signed by the analyst who conducted the analysis.

### **17 Disputed results**

- (1) If the results of an analysis are disputed by the Customs worker who provided the sample, and 2 containers were submitted to the accredited pathology laboratory under subsection 14(2):
- (a) the unanalysed sample must be made available for independent testing; and
  - (b) all records of the original test must be made available for re-examination.
- (2) Because of possible degradation of the body sample over time, re-testing need only detect the presence of alcohol or a prohibited drug.

## **Division 4—Prohibited drug tests using urine samples**

### **18 Procedures to be followed**

The provision, and the analysis, of a urine sample for the purposes of a prohibited drug test must be in accordance with the Australian/New Zealand Standard AS/NZS 4308:2008 “Procedures for specimen collection and the detection and quantification of drugs of abuse in urine.

### **19 Approval of courses**

The CEO may, in writing, approve a training course in supervising the provision of urine samples.



## **Part 4—Application and transitional provisions**

### **30 Amendments made by the *Customs (Drug and Alcohol Testing) Amendment Regulation 2013 (No. 1)***

- (1) This section applies if:
  - (a) a person was authorised under subsection 5(1), as in force before the day the *Customs (Drug and Alcohol Testing) Amendment Regulation 2013 (No. 1)* commences (the **commencement day**); and
  - (b) the person's authorisation was in force immediately before the commencement day; and
  - (c) the person was given a certificate under subsection 5(2) before the commencement day.
- (2) On and after the commencement day:
  - (a) the person's authorisation continues in force as if it had been given under subsection 5(1) on the commencement day; and
  - (b) the person is not required to show the certificate to a Customs worker unless the person is required to do so under section 5 of this regulation as in force on and after the commencement day.

### **31 Amendments made by the *Customs (Drug and Alcohol Testing) Amendment Regulation 2014 (No. 1)***

Section 8, as in force on and after the day the *Customs (Drug and Alcohol Testing) Amendment Regulation 2014 (No. 1)* commences, applies in relation to body samples and other records, whether the relevant breath test, blood test, or prohibited drug test was conducted before, on or after that day.

## Endnotes

### Endnote 1—About the endnotes

---

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the amendment is set out in the endnotes.

## Endnote 2—Abbreviation key

## Endnote 2—Abbreviation key

A = Act	orig = original
ad = added or inserted	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
am = amended	pres = present
amdt = amendment	prev = previous
c = clause(s)	(prev...) = previously
C[x] = Compilation No. x	Pt = Part(s)
Ch = Chapter(s)	r = regulation(s)/rule(s)
def = definition(s)	Reg = Regulation/Regulations
Dict = Dictionary	reloc = relocated
disallowed = disallowed by Parliament	renum = renumbered
Div = Division(s)	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislative Instruments	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LI = Legislative Instrument	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
o = order(s)	<u>underlining</u> = whole or part not commenced or to be commenced
Ord = Ordinance	

## Endnotes

### Endnote 3—Legislation history

---

#### Endnote 3—Legislation history

Number and year	FRLI registration	Commencement	Application, saving and transitional provisions
2, 2013	14 Feb 2013 (F2013L00191)	15 Feb 2013 (s 2)	
180, 2013	29 July 2013 (F2013L01451)	30 July 2013 (s 2)	—
181, 2014	1 Dec 2014 (F2014L01616)	2 Dec 2014 (s 2)	—

## Endnote 4—Amendment history

## Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1 heading</b>	
s 2 .....	rep LIA s 48D
<b>Part 2 heading</b>	
<b>Division 1 heading</b>	
s 5 .....	am No 180, 2013
s 7 .....	am No 181, 2014
s 7A.....	ad No 180, 2013
s 8 .....	am No 180, 2013; No 181, 2014
s 9 .....	am No 180, 2013
<b>Division 3 heading</b>	
s 16 .....	am No 180, 2013
<b>Division 4 heading</b>	
s 18 .....	am No 180, 2013
<b>Part 4 heading</b> .....	
	ad No 180, 2013
	rs No 181, 2014
s 30 .....	ad No 180, 2013
s 31 .....	ad No 181, 2014