



Australian Border Force (Alcohol and Drug Tests) Rule 2015

I, Peter Dutton, Minister for Immigration and Border Protection, make the following rule.

Dated 23 June 2015

Peter Dutton
Minister for Immigration and Border Protection

Contents

Part 1—Preliminary	1
Division 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
Division 2—Simplified outline of this instrument	2
4 Simplified outline of this instrument.....	2
Division 3—Definitions	3
5 Definitions	3
Part 2—Authorisation of alcohol or drug testing and analysis	4
6 Authorised testers—alcohol or drug tests	4
7 Authorised laboratories and accredited analysts—analysis of body samples	6
8 Devices approved for tests	6
Part 3—Conduct of alcohol or drug tests	7
9 Alcohol or drug tests—procedures.....	7
10 Alcohol or drug tests—collection of information from body sample.....	7
11 Alcohol or drug tests—Security and destruction of body samples and other records	7
12 Alcohol or drug tests—disclosure of information	8
13 Alcohol breath tests—procedures	9
14 Alcohol screening tests and alcohol breath tests—training courses.....	9
Part 4—Analysis of body samples from some tests	10
15 Part 4—scope.....	10
16 Transmission of body samples to authorised laboratories.....	10
17 Accredited analysts—analysis of body samples.....	10
18 Accredited analysts—certificates	10
19 Analysis—disputed results.....	11
Part 5—Prohibited drug tests using urine or saliva samples	12
20 Taking urine samples—procedures.....	12
21 Taking urine samples—training courses	12
22 Taking saliva samples—procedures.....	12
Part 6—Application and transitional provisions	13
23 Continuation of authorisations and approvals of training courses and devices	13

Part 1—Preliminary

Division 1—Preliminary

1 Name

This is the *Australian Border Force (Alcohol and Drug Tests) Rule 2015*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The later of: (a) the day after this instrument is registered; and (b) the day the <i>Australian Border Force Act 2015</i> commences.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Australian Border Force Act 2015*.

Division 2—Simplified outline of this instrument

4 Simplified outline of this instrument

This instrument deals with the conduct and analysis of alcohol or drug tests of Immigration and Border Protection workers, for the purposes of the *Australian Border Force Act 2015* (the Act).

Part 5 of the Act provides that Immigration and Border Protection workers may be required to undergo alcohol screening tests, alcohol breath tests, alcohol blood tests or prohibited drug tests (alcohol or drug tests). Section 38 of the Act provides that alcohol or drug tests are to be conducted in accordance with rules made under the Act (see also sections 39 and 58 of the Act).

Accordingly, this instrument provides for the authorisation of persons to conduct alcohol or drug tests and to analyse the results of those tests. This instrument also provides for the approval of devices to conduct tests and the approval of training courses related to alcohol tests and the taking of urine samples.

Procedures are set out for the conduct of alcohol or drug tests, the handling of body samples and the keeping of records of body samples and other information. This instrument also deals with the transmission of body samples for analysis, and the treatment of those samples by analysts. Urine samples and saliva samples are required to be collected and analysed in accordance with the relevant Australian and New Zealand standards.

This instrument is made under the *Australian Border Force Act 2015*. The instrument replaces the *Customs (Drug and Alcohol Testing) Regulation 2013*, which was made under the repealed *Customs Administration Act 1985*. However, authorisations and approvals made for the purposes of that regulation continue in force under this instrument.

Division 3—Definitions

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) alcohol blood test;
- (b) alcohol breath test;
- (c) alcohol screening test;
- (d) authorised person;
- (e) body sample;
- (f) prohibited drug test.

In this instrument:

accredited analyst: see section 7.

Act means the *Australian Border Force Act 2015*.

alcohol or drug test means any of the following:

- (a) an alcohol screening test;
- (b) an alcohol breath test;
- (c) an alcohol blood test;
- (d) a prohibited drug test.

approved device means a device approved under section 8.

authorised laboratory: see section 7.

authorised tester: see section 6.

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 6

Part 2—Authorisation of alcohol or drug testing and analysis

6 Authorised testers—alcohol or drug tests

- (1) This section is made for paragraph 39(a) of the Act.
- (2) For this instrument, **authorised tester**, for a purpose mentioned in column 1 of the following table, means an individual specified in column 2 of the table for that purpose.

Authorised testers		
Item	Column 1 Purpose	Column 2 Authorised tester
1	Conducting an alcohol screening test	The following individuals: (a) an individual authorised for that purpose under subsection (3) who is: (i) an officer of Customs who has successfully completed a training course in conducting alcohol screening tests approved under section 14; or (ii) a police officer of a State or Territory; (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).
2	Conducting an alcohol breath test	The following individuals: (a) an individual authorised for that purpose under subsection (3) who is: (i) an officer of Customs who has successfully completed a training course in conducting alcohol breath tests approved under section 14; or (ii) a police officer of a State or Territory; (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).
3	Collecting a sample of blood for purposes relating to the conduct of an alcohol blood test	The following individuals: (a) an individual authorised for that purpose under subsection (3) who is: (i) a medical practitioner; or (ii) a registered nurse; or (iii) an enrolled nurse; (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).
4	Collecting a sample of blood for purposes relating to the conduct of a prohibited drug test	The following individuals: (a) an individual authorised for that purpose under subsection (3) who is:

Section 6

Authorised testers		
Item	Column 1 Purpose	Column 2 Authorised tester
		(i) a medical practitioner; or (ii) a registered nurse; or (iii) an enrolled nurse; (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).
5	Collecting a body sample, other than blood or human breath, for purposes relating to the conduct of a prohibited drug test	The following individuals: (a) an individual authorised for that purpose under subsection (3) who is: (i) a medical practitioner; or (ii) a registered nurse; or (iii) an enrolled nurse; or (iv) an officer of Customs who has successfully completed a training course in supervising the provision of urine samples approved under section 21; or (v) a police officer of a State or Territory; (b) an individual employed or engaged for that purpose by a company which is authorised for that purpose under subsection (3).

Authorisation

- (3) The Secretary may, in writing, for a purpose specified in column 1 of an item in the table in subsection (2), authorise:
- (a) an individual mentioned in paragraph (a) of column 2 of that item; or
 - (b) a company mentioned in paragraph (b) of column 2 of that item.

Certificates of authorisation

- (4) If the Secretary authorises an officer of Customs as an authorised tester under subsection (3) for a purpose:
- (a) the Secretary must give the officer a certificate stating that he or she is an authorised tester for that purpose; and
 - (b) the officer must, if requested to do so, show his or her certificate to an Immigration and Border Protection worker who is directed or required to undergo a test for section 34, 35 or 36 of the Act.
- (5) If the Secretary authorises a company under subsection (3) for a purpose:
- (a) the Secretary must give the company a certificate stating that the company is authorised for that purpose; and
 - (b) an individual employed or engaged by the company who is an authorised tester for that purpose under subsection (2) must, if requested to do so, show the certificate to an Immigration and Border Protection worker who is directed or required to undergo a test for section 34, 35 or 36 of the Act.

Section 7

7 Authorised laboratories and accredited analysts—analysis of body samples

- (1) This section is made for paragraph 39(f) of the Act.
- (2) For this instrument, an ***authorised laboratory***, for a particular purpose, is a laboratory authorised for that purpose under subsection (4).
- (3) For this instrument, an ***accredited analyst***, for a particular purpose, is an individual employed or engaged by an authorised laboratory for that purpose.
- (4) The Secretary may, in writing, authorise a company that is a laboratory accredited by the National Association of Testing Authorities, Australia for either or both of the following purposes:
 - (a) analysing a sample of blood for purposes relating to the conduct of an alcohol blood test;
 - (b) analysing a body sample for purposes relating to the conduct of a prohibited drug test.
- (5) If the Secretary authorises a company under subsection (4) for a purpose, the Secretary must give the company a certificate stating that the company is authorised for that purpose.

8 Devices approved for tests

For paragraph 39(e) of the Act, the Secretary may, in writing, approve a device for use in conducting an alcohol or drug test under section 34, 35 or 36 of the Act.

Part 3—Conduct of alcohol or drug tests

9 Alcohol or drug tests—procedures

- (1) An alcohol or drug test conducted for section 34, 35 or 36 of the Act must be conducted:
 - (a) in a respectful manner; and
 - (b) in circumstances affording reasonable privacy to the Immigration and Border Protection 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 Immigration and Border Protection worker directed to undergo the test.
- (4) If a prohibited drug test requires an Immigration and Border Protection worker to provide a sample of hair, the authorised tester collecting the sample:
 - (a) must use the least painful technique known and available to the authorised tester to collect the sample; and
 - (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 Immigration and Border Protection worker's body, other than:
 - (i) the genital or anal area; or
 - (ii) the buttocks.

10 Alcohol or drug tests—collection of information from body sample

The only information which may be collected from an alcohol or drug test conducted for section 34, 35 or 36 of the Act is information relating to the detection of alcohol or prohibited drugs.

11 Alcohol or drug tests—Security and destruction of body samples and other records

- (1) A body sample or other record that is relevant to an alcohol or drug test conducted for section 34, 35 or 36 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; or
 - (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 Immigration and Border Protection worker to whom the

Section 12

record relates ceases, for any reason, to be an Immigration and Border Protection worker.

- (4) Despite subsection (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;
 - (v) whether a urine sample was provided, or analysed, in accordance with the standard mentioned in section 20; and
 - (b) is used for compiling a statistical database; and
 - (c) does not include information that may be used to identify the Immigration and Border Protection worker who provided the sample.
- (5) Despite subsection (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 used for the purpose of security vetting of the Immigration and Border Protection worker to whom the record relates (including for any organisational suitability assessments conducted by the Department).

12 Alcohol or drug tests—disclosure of information

A person, other than the Immigration and Border Protection worker who provides a body sample for an alcohol or drug test, may disclose information revealed by the 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 Secretary 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 Immigration and Border Protection worker's medical treatment; and
 - (ii) the Immigration and Border Protection worker does not have capacity to consent in writing to the disclosure; or
- (h) if the Immigration and Border Protection worker consents in writing to the disclosure; or
- (i) for the purpose of security vetting of the Immigration and Border Protection worker (including for any organisational suitability assessments conducted by the Department).

13 Alcohol breath tests—procedures

- (1) An alcohol breath test for section 35 or 36 of the Act must be conducted using an approved device for the test.
- (2) If an Immigration and Border Protection worker undergoes an alcohol breath test as directed under subsection 35(1) of the Act, and the test indicates the presence of alcohol, the worker may ask the authorised tester who conducted the test to arrange for the worker also to 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 Immigration and Border Protection worker from the obligation to undergo an alcohol breath test.
- (4) If the Immigration and Border Protection worker asks that an alcohol blood test be conducted, the authorised tester conducting the alcohol breath test must take all reasonable steps to contact a person authorised to conduct an alcohol blood test.
- (5) As soon as practicable after an alcohol breath test is conducted, the authorised tester conducting the test must give a certificate to:
 - (a) the Immigration and Border Protection worker who provided the breath sample; and
 - (b) the authorised person who directed that the worker undergo the test.
- (6) The certificate must state the following information:
 - (a) the type and serial number of the approved device used to conduct the test;
 - (b) the sample number of the test;
 - (c) the unique identifying number relating to the Immigration and Border Protection worker tested;
 - (d) the full name of the authorised tester who conducted the test (and, if the authorised tester is employed or engaged to conduct the test by a company which is authorised under subsection 6(3), the full name and address of the company);
 - (e) whether the authorised tester conducted a self-test on the approved device before and after the analysis;
 - (f) if the authorised tester 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 test was conducted;
 - (h) the result of the test as shown by the approved device.

14 Alcohol screening tests and alcohol breath tests—training courses

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

Part 4—Analysis of body samples from some tests

15 Part 4—scope

This Part applies to:

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

16 Transmission of body samples to authorised laboratories

An authorised tester collecting a body sample for the purpose of an alcohol blood test, or a prohibited drug test of a body sample other than urine or saliva, 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; and
- (d) arrange for both sealed containers to be sent to an authorised laboratory.

17 Accredited analysts—analysis of body samples

- (1) An accredited analyst employed or engaged by the authorised laboratory for the purpose must conduct an analysis of a portion of the body sample from one of the containers (the *first container*) 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 from the first container must be conducted.
- (3) The accredited analyst must ensure that the second container of the body sample sent to the authorised laboratory under section 16 remains sealed.

Note: The second container of the body sample may be made available for independent testing under section 19.

18 Accredited analysts—certificates

- (1) As soon as practicable after the analysis is conducted, the accredited analyst must give a certificate to:
 - (a) the Immigration and Border Protection worker who provided the sample; and
 - (b) the authorised person who directed that the worker undergo the test.
- (2) The certificate must state the following information:
 - (a) a unique identifying number relating to the worker;
 - (b) the date when the sample was collected;
 - (c) the date when the sample was received by the laboratory for analysis;
 - (d) the laboratory identification number of the sample;
 - (e) the date when the analysis was conducted;

Section 19

- (f) the results of the analysis;
 - (g) the name of the accredited analyst;
 - (h) any observations made during the course of the analysis which may have affected test results.
- (3) The certificate must also inform the Immigration and Border Protection worker that the worker may:
- (a) collect the second container of the sample, mentioned in subsection 17(3), from the laboratory within 6 months after it was collected; and
 - (b) have the portion of the sample in that container independently tested.
- (4) The certificate must be signed by the accredited analyst who conducted the analysis.

19 Analysis—disputed results

If the results of the analysis of a body sample are disputed by the Immigration and Border Protection worker who provided the sample:

- (a) the second container of the sample, mentioned in subsection 17(3), must be made available for independent testing; and
- (b) all records of the original test must be made available for re-examination.

Note 1: In practice, the independent testing or re-examination may be for the purpose only of detecting the presence of alcohol or a prohibited drug, because of possible degradation of the body sample over time.

Note 2: Subsection 17(3) requires the accredited analyst who initially analysed the body sample to keep the second container sealed.

Part 5—Prohibited drug tests using urine or saliva samples

20 Taking urine samples—procedures

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 quantitation of drugs of abuse in urine*, as in force on the day this section commences.

21 Taking urine samples—training courses

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

22 Taking saliva samples—procedures

The provision, and the analysis, of a saliva sample for the purposes of a prohibited drug test must be in accordance with the Australian Standard AS 4760:2006 *Procedures for specimen collection and the detection and quantitation of drugs of abuse in oral fluid*, as in force on the day this section commences.

Part 6—Application and transitional provisions

23 Continuation of authorisations and approvals of training courses and devices

Definitions

- (1) In this section:

commencement day means the day this instrument commences.

old regulation means the *Customs (Prohibited Drug and Alcohol Testing) Regulation 2013*.

Authorisation of individuals and companies

- (2) An authorisation of an individual or a company under subsection 5(1) of the old regulation for a purpose mentioned in item 1, 2, 3, 4 or 5 of the table in that subsection that was in force immediately before the commencement day continues in force, on and after that day, as if the authorisation were made under subsection 6(3) of this instrument for the corresponding purpose.
- (3) An authorisation of a company that is a laboratory accredited by the National Association of Testing Authorities, Australia under subsection 5(1) of the old regulation, for a purpose mentioned in item 3A, 4A or 5A of the table in that subsection, that was in force immediately before the commencement day continues in force, on and after that day, as if the authorisation were made under subsection 7(4) of this instrument for the corresponding purpose.

Approval of devices

- (4) An approval of a device under section 6 of the old regulation that was in force immediately before the commencement day continues in force, on and after that day, as if it were an approval given under section 8 of this instrument.

Approval of training courses—alcohol screening and alcohol breath tests

- (5) An approval of a training course under section 11 of the old regulation that was in force immediately before the commencement day continues in force, on and after that day, as if it were an approval given under section 14 of this instrument.