

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****49 CFR Part 40**

[Docket 49713]

RIN 2105-AB95

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: On August 19, 1994, the Office of the Secretary of Transportation issued a final rule requiring transportation employers to begin using a new Federal Drug Testing Custody and Control Form for all DOT-required drug tests on February 16, 1995. This final rule extends the date by which transportation employers must comply with the use of the new form to June 1, 1995.

EFFECTIVE DATE: This rule is effective April 19, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth Edgell, Office of Drug Enforcement and Program Compliance, Department of Transportation, 400 7th Street SW., room 9404, Washington, DC 20590 (202) 366-3784.

SUPPLEMENTARY INFORMATION: In February 1994, the Department of Transportation published a final rule which, in part, revised drug testing procedures for employers in the aviation, maritime, railroad, mass transit, pipeline, and motor carrier industries. In August 1994, the DOT issued minor or technical amendments to the rule. One such amendment was the mandatory use "without exception and without modification" of the Federal Drug Testing Custody and Control Form for all DOT urine specimen collections. The form was designed through a lengthy and corroborative effort among DOT, the Department of Health and Human Services, and other interested parties. This form is authorized for use only in Federal employee testing programs and for testing conducted under DOT operating administration rules, and is not authorized for use in any other type of drug testing program. This form will accommodate both split and single specimen collections; instructions for proper use are printed on the back of the last page of the form. All seven pages of the form were printed on August 19, 1994, (59 FR 43005-43012); only the front page is reproduced in Appendix A to this rule. This form may be produced by transportation employers, DHHS

laboratories, collection sites, etc., but must be an exact duplication without modification. OMB has approved the form under the Paperwork Reduction Act, having assigned the OMB No. 9999-0023, with the expiration date of June 30, 1997.

Employers are required to record information specific to the collection of a urine specimen to be used for a DOT drug test. The information that is required is identified on the new Federal Drug Testing Custody and Control Form, and information may not be gathered that is inconsistent with that required by the new form.

Mandatory use of the new form had been set to begin on February 16, 1995. Recent information from laboratories, the primary suppliers of the form, and collectors and employers, the main users of the form, indicated that the form is not universally available. A variety of reasons contributing to the unavailability includes DHHS laboratories failure to print the new forms in a timely manner, as well as their mistaken belief that inventories of existing forms could be used up prior to the phase-in of the new form. Assertions were also made that the colored paper for the seven-part form is available only on a limited basis, and that the form is not yet available for sale at the Government Printing Office. After careful consideration of the validity of this situation, the Department has extended the compliance date for mandatory use of the form to June 1, 1995. Collections made with out-of-date forms after that date should not be rejected (by DHHS laboratories) solely because of the usage of the form. Procedures for corrective action were provided the DHHS laboratories via a memorandum on January 23, 1995 from DOT (Office of Drug Enforcement and Program Compliance). These procedures will continue to be in effect after June 1, 1995. DOT compliance agencies will be reviewing the use of the new form and may assess penalties against transportation employers who are not in compliance after June 1, 1995.

Federal Drug Testing Custody and Control Form

The following provides printing and use instructions for the new form.

All entities conducting urine specimen collections and drug testing under 49 CFR part 40 shall exclusively use the standard Federal Drug Testing Custody and Control Form. The form, a seven-part carbonless manifold, shall be 8½ by 11 inches in detached size. Part 1 (white) is the original and must accompany the specimen to the laboratory. Part 2 (white) is the second

original and must accompany the specimen to the laboratory. Part 3 (white) is the split specimen original and must accompany the split specimen to the laboratory. Part 4 (pink) must be sent directly to the Medical Review Officer. Part 5 (green) must be given to the donor. Part 6 (yellow) is retained by the collector. Part 7 (blue) is forwarded to the employer.

Print part numbers and designations in red ink at the bottom left on all parts. Print all other information in black ink. Chemical transfer image must be black.

Parts 1 through 7 must have a preprinted specimen identification number. This number, ⅙" to ⅜" high (*size recommended*), reading parallel to the 8½" dimension, in a space 1¼" x ⅜" (*size recommended*) in the top center of all parts (to correspond with "SPECIMEN ID NO." and appear to the left of the "A" delimiter (or "B (SPLIT)" on Part 3) on all parts). The identical specimen identification number ⅙" to ⅜" high (*size recommended*), in a space 1¼" x ⅜" (*size recommended*), shall appear on Part 1 on each unitary label/seal (to correspond with "SPECIMEN ID NO." and appear to the left of the "A" and "B (SPLIT)" delimiters). Note: The specimen identification number on the form (all seven parts) must be identical to the specimen identification number on the labels. Specimen identification numbers may be printed individually to each part prior to assembly, or "crash numbered" on all parts simultaneously after assembly. All numbers must be clear and legible on all parts. These numbers need to be unique *only* for the particular collection. However, the DOT favors numbering systems (e.g., 6 or more digits) that are unique to, and controlled by, the printer of the form.

The unitary labels/seals are to be of tamper-evident quality, and shall be on a perforated stub on the right-hand side of Part 1. The actual size of the labels may be modified to properly fit the specimen bottles to which they will be affixed. A shipping container seal is required for DOT specimens, however, making the shipping container seal part of the form is optional; this seal may be supplied as a separate item in a laboratory's specimen collection kit. If the shipping container seal is part of the form, it must be placed in the label area on Part 1. Part 7 may have a corresponding perforated stub (as backing) to match Part 1 (i.e., to aid in form production and stability).

The top portion, reading parallel to the 8½" dimension, (above SPECIMEN ID NO.) on Parts 1 through 7 may be customized to contain the laboratory's logo and/or bar coding necessary for

accounting and identifying information. No other areas on the form are subject to modification, other than under the provisions of section 40.23(a) which must be approved by the DOT. If bar coding is used in the top portion of Part 1, a corresponding bar code may appear on each of the unitary labels/seals (and shipping container seal, if applicable).

OMB No. 9999-0023 and Expiration Date: 6/30/97 must appear on the Federal Drug Testing Custody and Control Form. (Note the number and date in the lower left-hand corner of the form in Appendix A.) The form will be placed in stock in the Superintendent of Documents, Government Printing Office for sale to the general public by the compliance date.

Regulatory Analysis and Notices

This is not a significant rule under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. It does not impose costs on regulated parties and may, to a limited extent, reduce regulatory burdens. Consequently, a regulatory evaluation has not been prepared. The Department finds, for purposes of the Administrative Procedure Act, that issuance of a notice of proposed rulemaking on these subjects is unnecessary, impracticable, or contrary to the public interest. This amendment simply extends the compliance date for use of the form. The use of the form

conforms to previous, joint DOT/DHHS actions, and the rapid issuance of this notification is in the interest of the public. The immediate effective date for this amendment is established because of the necessity of immediately correcting a situation that may be beyond the practical control of many transportation employers, yet still cause them to incur penalties.

List of Subjects in 49 CFR Part 40

Drug testing, Alcohol testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 4th day of April 1995, at Washington, DC.

Federico Peña,
Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends title 49, Code of Federal Regulations, part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for 49 CFR part 40 continues to read as follows:

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

2. Section 40.23(a) is amended to read as follows:

§ 40.23 Preparation for testing.

* * * * *

(a)(1) Except as provided in paragraph (a)(2) of this section, use of the drug testing form prescribed under this part.

(i) This form is found in Appendix A to this part.

(ii) Employers and other participants in the DOT drug testing program may not modify or revise this form, except that the drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory.

(iii) Donor medical information may appear only on the copy provided the donor.

(2) Notwithstanding the requirement of paragraph (a)(1)(ii) of this section, employers and other participants may use existing forms that were in use in the DOT drug testing program prior to February 16, 1995, until June 1, 1995.

(3) Appendix A to part 40 is amended by revising the Federal Drug Testing Custody and Control Form, Copy 1, to read as follows:

Appendix A to Part 40—Federal Drug Testing Custody and Control Form

BILLING CODE 4910-62-P

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO **0000000 A** LABORATORY ACCESSION NO

SPECIMEN BOTTLE SEALS

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A Employer Name, Address and I.D. No _____ B MRO Name and Address _____

C Donor SSN or Employee I.D. No _____

D Reason for Test Pre-employment Random Reasonable Suspicion/Cause Post Accident
 Return to Duty Follow-up Other (specify) _____

E Tests to be Performed THC Cocaine PCP Opiates and Amphetamines
 Only THC and Cocaine OTHER (specify) _____

0000000 A
 SPECIMEN ID NO
 0000000 B (SPLIT)
 SPECIMEN ID NO

STEP 2: TO BE COMPLETED BY COLLECTOR Specimen temperature must be read within 4 minutes of collection

Specimen temperature within range Yes 90° - 100°F/32° - 38°C No Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR Collector affixes bottle seal(s) to bottle(s) Collector dates seal(s) Donor initials seal(s)

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page) STEP 4

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION

Collection Facility _____ Collector's Business Phone No _____

Address _____ City _____ State _____ Zip _____

REMARKS _____

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 4 of this form that it bears the same specimen identification number as that set forth above and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

PRINT Collector's Name (First, MI, Last) _____ Signature of Collector _____ Date (Mo, Day, Yr) _____ Time _____

PLACE OVER CAP
 PLACE OVER CAP

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE TIME	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
	DONOR NO SIGNATURE	Signature _____ Name _____	PROVIDE SPECIMEN FOR TESTING
	Signature _____ Name _____	Signature _____ Name _____	
	Signature _____ Name _____	Signature _____ Name _____	
	Signature _____ Name _____	Signature _____ Name _____	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: YES NO Explain in Remarks Below

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE INITIAL TEST AND CONFIRMATORY TEST CUTOFF LEVELS ESTABLISHED BY THE MHS MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

NEGATIVE POSITIVE for the following CANNABINOIDS as Carboxy-THC COCAINE METABOLITES as Benzoylcegonine PHENCYCLIDINE

TEST NOT PERFORMED OPIATES AMPHETAMINES OTHER _____
 codeine amphetamine methamphetamine
 morphine

REMARKS _____

TEST LAB (different from above) _____ NAME _____ ADDRESS _____ PHONE NO _____

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above that the specimen has been examined, labeled, packed and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

PRINT Certifying Scientist's Name (First, MI, Last) _____ Signature of Certifying Scientist _____ Date (Mo, Day, Yr) _____

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

Negative Positive Test Not Performed Test Cancelled

REMARKS _____

PRINT Medical Review Officer's Name (First, MI, Last) _____ Signature of Medical Review Officer _____ Date (Mo, Day, Yr) _____

SHIPPING CONTAINER SEAL

COPY 1 ORIGINAL MUST ACCOMPANY SPECIMEN TO LABORATORY