

DOT Publishes Part 40 Final Rule

On November 13, 2017, DOT published amendments to 49 CFR Part 40: Procedures for Transportation Workplace Drug and Alcohol Testing Programs. This final rule is effective as of January 1, 2018.

Among other changes, four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone) were added to the DOT drug testing panel. The final rule also clarifies certain existing drug testing program provisions and definitions, makes technical

amendments, and removes the requirement for employers and C/TPAs to submit blind specimens.

The final rule can be viewed on ODAPC's website at www.transportation.gov/odapc/frpubs.

Changes to the MRO Verification Process



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MROs are required to verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e., hydrocodone, hydromorphone, oxycodone, and oxymorphone), and/

or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in their system. MROs will continue to follow §40.141 when obtaining information for the

verification process to determine if an employee has a legally valid prescription consistent with the Controlled Substance Act.

MROs still have a responsibility to report, despite the valid prescription, if the employee is medically unqualified or would pose a significant safety risk. With the addition of the semi-synthetic opioids, there could potentially be an increase in verified negative results reported with a safety concern.

§40.135(e) was amended to give the employee the opportunity to work with the MRO and their prescribing physician to change medication prior to the MRO reporting the employee poses a significant safety risk. With this change, employees have five days to have their prescribing physician contact the MRO to discuss an alternative medication.

DOT Drug Tests Are Still Five-Panel

The DOT testing at HHS-certified laboratories continues to be a 5-panel drug test regimen. As of January 1, 2018, the DOT testing panel is:

- ◆ Marijuana metabolites
- ◆ Cocaine metabolites
- ◆ Amphetamines
- ◆ **Opioids***
- ◆ Phencyclidine (PCP)

Four semi-synthetic opioids were added to the DOT testing panel (i.e., hydrocodone, hydromorphone,

oxycodone, and oxymorphone). Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.

*To cover these substances, as well as those previously in the opiates category (i.e., codeine, morphine, 6-AM), the category was renamed from “opiates” to “opioids”.

In addition, under the amphetamines drug category, DOT has removed methylenedioxyethylamphetamine (MDEA) as a confirmatory test analyte from the existing drug-testing panel, and added methylenedioxyamphetamine (MDA) as an initial test analyte.

Required Policy Revisions

Employers must ensure their Drug and Alcohol Policies are updated to reflect the amendments to Part 40. Although these modifications do not require the policy to be re-approved by the employer’s local governing board (or other responsible individual with appropriate authority), FTA recommends employers provide their covered employees written notice that the policy has been revised and is available.

Modifications to the Testing Panel

The policy must continue to state employees are always prohibited from using the five listed drugs in §655.21. Although Part 655 has not been amended to rename the category “opiates” to “opioids”, Part 40 has, and as such, policies must now describe this drug category as “opioids”. In addition, if the policy describes the specific drugs covered by the five drug categories and/or

includes the laboratory test cutoff levels, this must be updated to reflect §40.87 amendments.

Requirements Applicable to Service Agents

Many of the Part 40 changes apply to service agents, so employers with policies describing the details of laboratory testing, MRO verification, etc. should ensure such details are technically accurate. This includes, but is not limited to:

- ◆ Updating service agent qualifications to state collectors, alcohol testing technicians, medical review officers, and substance abuse professionals are required to subscribe to ODAPC’s list-serve
- ◆ Adding three more fatal flaws to the list of reasons when a laboratory would report a ‘rejected for testing’ specimen

- ◆ Removing any mention of blind specimens

The policy builder on FTA’s website <http://transit-safety.fta.dot.gov> has been updated to include required revisions.

Company Name
Drug and Alcohol Policy
Effective as of [mm/dd/yyyy]
Adopted by: _____
Date Adopted: [dd/mm/yyyy] Last Revised: [dd/mm/yyyy]

Revised Federal Drug Testing CCF

On August 8, 2017, the Office of Management and Budget approved a revised Federal Drug Testing Custody and Control Form (CCF).

The 'new' CCF is authorized for use by FTA/DOT-regulated employers and their service agents on January 1, 2018.

FTA/DOT-regulated employers may continue to use the 'old' CCF up to and including June 30, 2018, however beginning on July 1, 2018, the 'new' Federal CCF must be used.

The 'new' CCF is different from the 'old' form as follows:

♦ **In Step 1D:**

- Removal of the checkbox, the letters "DOT" and hash line in front of the text "Specify DOT Agency"

♦ **In Step 5A:**

- Addition of four new analytes (oxycodone, oxymorphone, hydrocodone, and hydromorphone)
- Removal of the analyte methylenedioxyethylamphetamine (MDEA).

After June 30, 2018, the 'old' CCF is an expired federal form. If the 'old'

CCF is used after June 30, 2018, a signed statement (memorandum for the record) must be completed per 40.205(b)(2).

To view a copy of the revised CCF go to: <http://www.reginfo.gov/public/do/DownloadDocument?objectID=73335901>

For additional information, visit the Office of Drug & Alcohol Policy & Compliance (ODAPC) website:

<https://www.transportation.gov/odapc/>

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Removal of Blind Specimens

Since the inception of the DOT drug testing program, certain employers have been required to submit blind specimens to HHS-certified laboratories to ensure the accuracy of the laboratory testing process. In the more than 25 years of the DOT drug testing program, there have not been any false positives found through the testing of the blind specimens. As

such, in an effort to reduce cost and administrative burdens associated with the blind specimen process, DOT has removed the blind specimen requirement and all references to blind specimens from the updated Part 40 regulation.