



## **Medical Review Officer Reminder 49 CFR Part 40 Changes Effective October 1, 2010**

We want to remind MROs to study the new rule and to pay special attention to sections in the preamble and rule text related to new MRO responsibilities regarding drug test results review and record keeping, in addition to the new MRO requalification training requirements.

About MRO requalification training, the preamble states:

“This regulation text lays out the requirements for when this new requalification training is to take place. MROs must maintain documentation about their qualification training and any subsequent continuing education. MROs would simply be required to complete the new requalification training and examination no later than five years from the date of having last met either their qualification training or continuing education requirements. Following the completion of the new requalification requirements, MROs will be required to complete requalification training and examination every five years thereafter.”

### Three Examples for Current MROs:

1. If an MRO completed qualification training & passed an examination March 4, 2009, under the old rule, that MRO would need to complete the requalification training and pass an examination by March 4, 2014, under the new rule.
2. If an MRO completed qualification training & passed an examination August 16, 2007, and completed the required 12 hours of Continuing Education and assessment during the subsequent three years (by August 16, 2010) under the old rule, that MRO would need to complete the requalification training and pass an examination by August 16, 2015, under the new rule.
3. If an MRO completed qualification training & passed an examination November 3, 2007, and has not yet completed Continuing Education and assessment under the old rule, that MRO would need to complete the requalification training and pass an examination by November 3, 2012, under the new rule.

### One Example for New MROs:

1. You must complete qualification training & pass an examination before you begin serving as an MRO, and 5 years afterward you will need to complete requalification training & pass an examination. Therefore, if a new MRO would complete qualification training & pass an examination on October 19, 2010, that MRO would need to complete the requalification training and pass an examination by October 19, 2015.

The new rule can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-20095.pdf>.

For additional clarification, please contact Mark Snider at 202-366-3784 or [mark.snider@dot.gov](mailto:mark.snider@dot.gov).



### DOT Drug Testing: On and After October 1, 2010 – Still a 5-Panel

The DOT testing at HHS-certified laboratories will continue to be a 5-panel drug test regimen, on and after October 1, 2010. The 5-panel regimen will remain:

- Marijuana (THC)
- Cocaine
- Amphetamines
- Opiates
- Phencyclidine (PCP)

Under Opiates, DOT testing has always included confirmatory testing, when appropriate, for Codeine, Morphine, and 6-AM (heroin). Under Amphetamines, DOT testing has always included confirmatory testing, when appropriate, for Amphetamine and Methamphetamine. To this Amphetamines group, we are adding initial testing for MDMA and confirmatory testing for MDMA, MDA, & MDEA.

Broken out, here's what drug testing will look like effective October 1st, with the confirmatory testing in **bold** being new. [NOTE: Laboratories have always conducted confirmatory testing for 6-AM, when appropriate.]

- Marijuana (THC)
- Cocaine
- Amphetamines
  1. Amphetamine
  2. Methamphetamine
  - 3. MDMA**
  - 4. MDA**
  - 5. MDEA**
- Opiates
  1. Codeine
  2. Morphine
  3. 6-AM (heroin)
- Phencyclidine (PCP)

What does this mean for collectors, laboratories, MROs, and employers on and after October 1st for DOT testing?

- Collectors will continue to check the 5-panel box in Step 1 of the CCF: That is, the box specified for "THC, COC, PCP, OPI, AMP."
- Laboratories will continue to report to MROs the specific drugs/drug metabolites they confirm as positive; and laboratories will be adding MDMA, MDA, and MDEA confirmed positives, as appropriate.
- Laboratories will add – on their semi-annual reports to DOT and their semi-annual reports to employers – MDMA, MDA, and MDEA confirmed positive totals, as appropriate, under Amphetamines.
- MROs will continue to report to employers the specific drugs/drug metabolite they verify as positive; and MROs will be adding MDMA, MDA, and MDEA verified positives, as appropriate.
- Employers will continue to provide – on their annual MIS reports – the number of verified positive drug test results in each testing category (i.e., Marijuana, Cocaine, Amphetamines, Opiates, and PCP).

For additional clarification, please contact Mark Snider at 202-366-3784 or [mark.snider@dot.gov](mailto:mark.snider@dot.gov).



## DOT Drug Testing: Employer DOT Policies – The Part 40 Changes

The DOT Agencies & United States Coast Guard (USCG) have provided guidance about what their regulated-employer DOT policies will need to contain about the changes to 49 CFR Part 40, which are effective October 1, 2010.

1. The Federal Transit Administration, Federal Motor Carrier Safety Administration, Federal Aviation Administration, Pipeline and Hazardous Materials Safety Administration, and USCG take this position:

There is no need for employers to make any changes if their current DOT policies refer to adhering to "... Part 40, as amended." However, there are some exceptions when an employer's DOT policy lists some of the following optional information:

- If sub-categories of drugs tested under the 5-panel are listed – for example, if a policy lists "Opiates (codeine, heroin, & morphine)" and/or "Amphetamines (amphetamine & methamphetamine), then "(MDMA, MDA, MDEA)" will need to be added to the list under Amphetamines. If however, employers would like to delete the sub-categories of drugs, doing so will also be acceptable.
- Likewise, if cut-off levels are listed in current policies, employers must update those cut-off levels. Again, employers may simply delete the cut-off levels completely and be in compliance if the DOT policy refers to adhering to "... Part 40, as amended."
- While these DOT Agencies and USCG suggest that companies provide written notice be provided to employees, doing so is a company's prerogative.

2. The Federal Railroad Administration (FRA) takes this position:

- FRA policy is to require employers to identify each drug and cutoff level in their DOT program policies and training materials. FRA expects changes reflecting the MDMA testing and the new cutoffs for Cocaine and Amphetamines to be posted in their next DOT policy re-write.
- Additionally, FRA has communicated with the industry about these changes, and has requested them to communicate these changes to labor and their employees before the October 1st change date.

For additional clarification, please contact Mark Snider at 202-366-3784 or [mark.snider@dot.gov](mailto:mark.snider@dot.gov).

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### Part 40 Modifications for New CCF

On September 27, 2010, the U.S. Department of Transportation (DOT) issued an Interim Final Rule that amends Part 40 with instructions for using the new Federal Custody and Control Form (CCF). The new CCF was developed by the Substance Abuse and Mental Health Services Administration. It is being phased into use during the 12 months starting October 1, 2010, thus allowing time for the old CCFs to be used up as laboratories print new CCFs. The new CCF's features, and DOT's instructions for using them, include the following:

1. Step 1D Federal Testing Authority. The employer must tell the collector which DOT agency is the governing authority for the test. The collector then checks the corresponding checkbox in Step 1D. (Technically, USCG is not a "DOT agency" because it is part of the Department of Homeland Security.)
2. Step 5A on Copy 1 of the new CCF lists MDMA, MDA, and MDEA, as well as the specific metabolites for marijuana ( $\Delta^9$ -THC) and cocaine (BZE). The laboratory certifying scientist checks the corresponding checkbox for each identified analyte.
3. Step 6 on Copy 2 of the new CCF now prompts the MRO to write in the drug(s) a test is verified positive for. The "Refusal to Test" checkbox previously had two sub-boxes, adulterated and substituted. The new CCF includes a third sub-box, "other," which can be used for refusals that do not involve adulteration or substituted, e.g., refusals involving shy bladders or employees leaving in the middle of the specimen collections.
4. Step 7 on Copy 2 of the new CCF has a box for the MRO to check if a split specimen result is "cancelled."

DOT now also states laboratories must routinely report drug/metabolite concentrations. (Laboratories have already been doing this per SAMHSA.) However, the MRO is still prohibited from reporting concentrations to employers on a routine basis.

DOT also added a new section §40.14 spelling out, in one place, the information employers and their C/TPAs must routinely provide to collectors, as follows:

- a. Name of employee (or applicant) being tested
- b. Employee SSN or other ID number
- c. SAMHSA laboratory name and address
- d. Employer name, address, phone number, fax number
- e. DER name and telephone number
- f. MRO name, address, phone number, and fax number
- g. The DOT agency under which the specimen is collected
- h. Test reason (e.g., pre-employment, random, etc.)
- i. Whether the test is to be conducted under direct observation or not.

Part 40 previously required this (except for item g). Items c, d, e, f, and g can be pre-printed on the CCF.

Public comments about these changes are due by October 27, 2010. The regulation and public comments can be viewed at [www.regulations.gov](http://www.regulations.gov) by searching docket DOT-OST-2010-0161.