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Docket Clerk
333 Constitution Ave NW
Washington DC 20001

Subject: Request to amend 49 CFR Part 40, §40. 225

The purpose of this document is to formally request the amendment of Title 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs, to allow for the use of an electronic version of the Alcohol Testing Form (ATF) for Department of Transportation (DOT) mandated alcohol testing. A similar amendment was made to 49 CFR Part 40, effective April 23, 2015, to allow for the use of an electronic version of the federal drug testing custody and control form (CCF) for DOT-mandated drug testing. The requested amendment to 49 CFR Part 40 will enable a parallel process for the documentation of DOT-mandated alcohol tests aligned with the similarly situated amendment previously approved for drug testing.

The petitioner, DISA Global Solutions Inc., is a provider of workplace safety and compliance services with more than 30 years of experience in the administration and management of workplace drug and alcohol testing programs. As a Third Party Administrator (TPA) for thousands of DOT-regulated employers' drug and alcohol testing programs, DISA is committed to sustaining and improving the efficiency and efficacy of those programs. Recognizing that the introduction of the use of an electronic version of the federal custody and control form (ECCF) in 2015 has improved both the efficiency and efficacy of DOT-mandated drug testing, DISA seeks similar regulatory authorization for DOT-regulated employers in meeting the requirements for alcohol testing. DISA has worked collaboratively with software companies and evidential breath testing device manufacturers over the past five years in developing and deploying the use of an electronic alcohol testing form for documentation of alcohol testing conducted under employers' policy authority and believes that its benefits are applicable and appropriate to DOT-mandated alcohol testing of safety-sensitive employees.

Background information: Alcohol testing of safety-sensitive employees in the transportation industry is mandated by the Omnibus Transportation Employee Testing Act of 1991. The DOT issued regulations and procedures for the required alcohol testing in 1994. 49 CFR Part 40 was extensively revised to include the procedures for alcohol testing and the use of an OMB approved alcohol testing form (ATF). The ATF has been essentially unchanged since its original version. The document is a three-ply paper form completed and signed by the alcohol technician conducting the test and by the individual (employee) being tested (donor). The result of the alcohol test is recorded on the ATF by the alcohol test technician or, a printed result from an evidential breath testing (EBT) device is attached/affixed to each ply/copy of the ATF. The ATF must conform to the image of the OMB approved form which is included as Appendix G to 49



CFR Part 40. The ATFs are printed and made available to employers and alcohol testing technicians by manufactures and distributors of EBTs, alcohol testing service agents, and third party administrators (TPAs) of employers' DOT drug and alcohol testing programs. The cost of the ATFs varies, however current information is that the average cost to the employer is \$0.70--\$1.00 per form. A copy of the ATF documenting each alcohol test must be provided to the employer, the technician, and the test subject (employee). Employers and alcohol technicians must retain their copies of the ATF for all tests conducted for periods of time specified in Part 40 or the DOT agency drug and alcohol testing regulations.

DOT Alcohol Testing Data: The best available source of data on DOT alcohol testing is the DOT agencies' compilation of MIS report data provided by employers. The 2018 MIS report data on DOT alcohol tests conducted shows the following: 378, 838 DOT alcohol tests conducted of which 374,998 yielded an alcohol test result of <0.02 on the initial test. Thus, 98.99% of the DOT alcohol tests conducted were negative and did not require a confirmation test. The 2018 MIS alcohol testing data represents testing of over 2, 147,000 safety-sensitive employees. The Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), the Federal Transit Administration (FTA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) require virtually all regulated employers subject to their drug and alcohol testing regulations to submit annual MIS reports. The Federal Motor Carrier Safety Administration (FMCSA) requires only a stratified sample of FMCSA-regulated employers to submit MIS reports, thus the FMCSA alcohol testing data represents tests conducted on approximately 30% of employees (CDL drivers) subject to testing under 49 CFR Part 382.

An analysis of prior years MIS alcohol testing data consistently demonstrates that 99% of DOT alcohol tests conducted yield negative (<0.02) results on the initial or screening test. This greatly simplifies the documentation process for the ATF. The current Part 40 procedures allow for screening test results to be entered on the ATF by the alcohol technician and do not require any interface with the EBT or alcohol screening device (ASD) for recording or retaining the negative test result.

Existing software applications for electronic alcohol testing documentation: Information collected from several large Third Party Administrators (TPAs), evidential breath testing device manufacturers, and employers indicates that workplace breath alcohol testing conducted under employer policy authority has been successfully employing the use electronic versions of an alcohol testing form that mirrors the image of the DOT ATF for over five years. The software applications available have been developed and deployed by the same companies that developed and deployed the electronic versions of the federal drug testing CCF. The software applications easily interface with EBT devices used in DOT alcohol testing. Estimates of the number of workplace alcohol tests conducted under employer independent authority range from 300,000-350,000 tests annually. Currently approximately 50-60% of these alcohol tests are conducted using an electronic version of an alcohol testing form. Workplace alcohol testing typically follows the DOT alcohol testing procedures outlined in 49 CFR Part 40, using similar breath alcohol concentrations for determining a negative or a positive test result, and using a screening and confirmation testing processes to validate a positive result. In non-DOT alcohol testing available data demonstrates that, similar to DOT alcohol testing, over 98% of workplace alcohol test results



are <0.02 on the initial or screening test. Use of the electronic alcohol testing form in workplace alcohol testing typically includes the alcohol test technician and the employee (test subject) signing an electronic signature pad and the capability to print out an image of the alcohol testing form at the completion of the testing process. Test results are entered by the technician into the software application and are printed on the image of the form along with the signatures. The data is stored in the application and electronic images of the completed alcohol testing form can be securely and confidentially reported to the employer.

Rationale for use of an electronic version of the ATF in DOT-mandated alcohol testing includes: increased efficiency, security and accuracy in documentation of DOT alcohol tests; paperwork reduction; improved process for conducting a DOT alcohol test in conjunction with a DOT drug test when an electronic version of the federal CCF is used for the drug test; reduction of errors and omissions in the completion of the ATF; and improved efficiency and efficacy in the transmission and record retention of alcohol test results.

Efficiency and accuracy of documentation on the alcohol testing form are improved using a software application so that employer and employee (test subject) information can be entered via computer and thus not dependent on reading and deciphering hand-written entries. Date time stamps of the testing are automated and not subject to fluctuation or error. Transmission of documentation on completed tests is more secure using databases accessed only via protected password and pin to authorized employers or their designated agents. Transmission of test result information is faster and more secure than existing transmission options of scanning and emailing attachments or facsimile.

Use of an electronic version of the DOT ATF will substantially reduce cost, by eliminating the requirement for the printing and distribution of carbonless three-ply paper ATFs. The proposed EATF option would still provide for printed paper images to be made available to the employee, the employer, and the alcohol technician, however, eliminates the requirement for the more expensive carbonless 3 ply paper ATF.

As the use of an electronic CCF for DOT drug testing is increasing (estimated use for one-third of all DOT drug tests), the option for an EATF for DOT alcohol testing becomes more critical. When employees are required to submit to both a DOT drug test and a DOT alcohol test, as is frequently the case with post-accident and reasonable suspicion testing, it is far more efficient to conduct both tests using electronic forms. Unfortunately when an employee arrives where a drug test has been ordered using an ECCF and there is a notation that an alcohol test is to be conducted first using a paper ATF, the alcohol test notation is overlooked and only the drug test is conducted.

Because the software applications for electronic alcohol testing forms contain step by step instructions for the alcohol test technician and require that all required fields on the form have an entry made, the errors and omissions on alcohol test documentation are fewer than when using a paper ATF. As with the ECCF, electronic ATF software enables the employer and alcohol technician information to be contained in the database and thus can be entered for each test far more efficiently and accurately than when it must be hand-written on each ATF.



Recommended text of amended 49 CFR Part 40, §40. 225

Retain the existing text of §40.225 (a)-(c)

(a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in Appendix G to this part. You may view this form on the ODAPC web site (<http://www.transportation.gov/odapc>).

(b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:

(1) You may include other information needed for billing purposes, outside the boundaries of the form.

(2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.

(3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

(4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.

(5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.

(6) As a BAT or STT, you may use an ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

(c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

Add the following text to §40. 225

(d) As an employer, you may use an electronic DOT Alcohol Testing Form (EATF) that meets the following requirements:

(1) The EATF must be capable of producing a printed image of the DOT ATF as displayed in Appendix G

(2) The EATF must be capable of capturing the digitized electronic signature of the employee and the BAT/STT



(3) If the result of the screening test is 0.02 or greater alcohol concentration, a confirmation test is required and the printed EBT result must be affixed to a printed image of the EATF. The image of the EATF with the EBT result affixed must be scanned and entered into the EATF software database

(e) As a BAT or STT using an electronic DOT alcohol testing form (EATF), you must follow all the requirements related to use of the DOT ATF as specified in §40.241, §40.243, §40.245, §40.247, §40.251, §40.253, and §40.255.

(f) As an employer, BAT or STT using an electronic DOT alcohol testing form (EATF), you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.

Sincerely,

A handwritten signature in black ink, appearing to read "Brendon Brown". The signature is stylized and cursive.

Brendon Brown
VP - Client Relations

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