

SAPAA Worldwide  
1014 Whispering Oak Drive  
Bardstown, KY 40004  
800/672-7229 – FAX 281-664-3152 <http://www.sapaa.com/>

January 15, 2010

Robert L. Stephenson II, MPH  
Division of Workplace Programs, CSAP  
1 Choke Cherry Road  
Room 2-1035  
Rockville, MD 20857

Dear Mr. Stephenson;

The Substance Abuse Program Administrators' Association (SAPAA) submits the comments contained in this letter in response to the Proposed Revisions to Federal Drug Testing Custody and Control Form, published in the Federal Register / Vol. 74, No. 220 / Tuesday, November 17, 2009. The comments are based on input from SAPAA's general membership, Governmental Affairs Committee, and Board of Directors.

SAPAA is a non-profit professional association representing over 320 private and public sector DOT-regulated employers and service agents who administer and manage workplace drug and alcohol testing programs mandated by the Omnibus Transportation Employee Testing Act (OTETA) and DOT agency regulations, as well as non-Federal/non-mandated drug free workplace programs. SAPAA's membership includes employers' substance abuse program administrators, as well as Third Party Administrators (TPA), specimen collection facilities, laboratories, medical review officers (MRO) and substance abuse professionals (SAP) who support employers in their Drug-Free Workplace Program initiatives. SAPAA was founded in 1992 and has provided education, training and consultation expertise in the drug free workplace arena through the SAPAA Training Institute courses, the SAPAAC certification programs, biannual conferences, and SAPAA Advisories and publications.

The following are SAPAA's comments on the Proposed Revisions to the Federal Custody and Control Form.

Step 1 C—Most employers and employees are moving away from using the donor's Social Security Number (SSN) as a personal ID for the CCF as a result of concerns of identity theft and restrictions on the use of an individual's SSN. In the specimen collection process there is generally no way the collector can verify or validate the accuracy of the SSN provided because the photo identification presented by the donor at the time of collection, rarely, if ever has the individual's SSN. It is therefore recommended that 1C be changed to "Donor Photo ID No.". The Donor Photo ID No. would be entered by the collector from the photo ID the donor presents. 1C could also include "check boxes" for the collector to note the type of photo ID presented (e.g. driver's license, employee ID, passport, CDL, State ID card, other). This change would have the additional value of providing documentation that the collector did view and note the photo ID presented by the donor.

Step 1D—Although the reason for obtaining information related to the "Testing Authority" for federally-mandated drug tests is understood, it is unrealistic to think that the collector, particularly in the case of DOT agency testing, will know the correct DOT agency rule under which the donor's test is being conducted. For example donors who hold a CDL may present

for a test being conducted under PHMSA, FTA, FRA or FMCSA authority. Donors usually do not know the DOT agency rule that governs their test; they simply know it is a DOT test. If a DOT agency designation is required on the CCF, it is strongly recommended that the DOT ensure through its rulemaking process that errors or omissions in the DOT agency designation do NOT constitute a fatal or correctable flaw; and, furthermore, do NOT require a memorandum or statement of correction by the collector, employer or TPA. We are particularly concerned that even if errors in completing this information on the CCF is not considered a fatal or correctable flaw, it is extremely probable that DOT agency auditors (especially FAA and FTA) will require memos of correction and other remediation actions when the information is incorrect or incomplete. For this reason, SAPAA believes that the inclusion of DOT Agencies designations on the CCF should be re-considered. If the federal agencies (DHHS, NRC and DOT) are committed to capturing testing authority data from the CCF, it is recommended that the requirement be limited to a designation of DHHS, NRC or DOT, only. We respectfully suggest that since the regulatory text addressing the use of the federal CCF for DOT-mandated drug testing is contained in 49 CFR Part 40, the use of "DOT" rather than each DOT agency is sufficient.

Step 2—The collector remarks area needs to be larger on the CCF. Complete and legible documentation by the collector of atypical specimen collections is essential to the final resolution of the testing event. The space provided, especially since entries must be handwritten, is inadequate.

Steps 4 and 5—One of the more frequent omissions collectors make in completing the federal CCF is "forgetting" to have the donor complete Step 5. In part, this error is contributed to by the instructions that the collector is to "do" Step 5 before completing Step 4. This is further confusing for some collectors because Step 5 is not on Copy 1 of the CCF, but Steps 5a and 5b are on Copy 1. All other Steps on the CCF are numbered in accordance with their chronological order. The following changes are recommended:

Step 3—Remove statement "Donor completes Step 5 on Copy 2 (MRO copy)"

Step 4—Change to "Donor completes Step 4 on Copy 2 (MRO Copy)"

Step 5—Chain of Custody-Initiated by collector and completed by Test Facility

General comment—SAPAA recommends that DHHS consider options for printing and completing the federal CCF that allow the use of software applications for printing and entering data on the form at the collection facility or site. There are currently drug testing laboratories, collection sites, TPAs, and other service providers that are using technology to produce forensically viable carbonless drug testing custody and control forms for non-Federal testing. Experience with these applications has demonstrated that data entry on the forms is more accurate, legible and complete, and that electronically imaged transmission of copies of the CCF to the MRO and employer is more efficient.

Also, a number of years ago, DHHS and DOT collaborated in convening a Federal Advisory Committee to explore the use of electronic custody and control forms in the federal drug testing process. The Committee's charter expired without any consensus or recommendations being achieved. SAPAA supports the Federal government convening a task force, work group, or other venue to again explore the issue. SAPAA, as always, would welcome the opportunity to participate in such an activity and believes that through the expertise and experience of its members in this arena, that it would provide significant insight and recommendations.

Thank you for the opportunity to comment on the Proposed Revisions to the Federal Drug Testing Custody and Control Form. SAPAA continues to support DHHS's commitment to putting these matters before the public by soliciting and thoughtfully considering the comments

received. Please feel free to contact me if you have questions or need clarification on any of the comments presented above.

Mary Hines  
SAPAA President