

PART 40 QUESTIONS AND ANSWERS

The Office of General Counsel and Office of Drug and Alcohol Policy and Compliance of the Department of Transportation are providing these questions and answers. They constitute official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5).

These Questions and Answers are dated **11/03**.

§40.25

QUESTION:

May the previous employer delay sending an employee's drug and alcohol testing information to the gaining employer pending payment for the cost of the information?

Answer:

- No. Part 40 specifically requires that previous employers immediately provide the gaining employer with the appropriate drug and alcohol testing information.
- No one (i.e., previous employer, service agent [to include C/TPA], employer information / data broker) may withhold this information from the requesting employer pending payment for it.

§40.159

QUESTION:

What does an MRO do when a drug test result is invalid due to “color discrepancy?”

ANSWER:

- If “Invalid – Color difference” is the only result reported to you, you must follow the guidance of §40.159 by contacting the laboratory to obtain more specific information about the color difference between the specimens, and contacting the donor to obtain a legitimate explanation for the color difference. While there is no legitimate medical reason for anyone being able to provide a specimen that separates into two different colors when placed in two different bottles, the interview is necessary to determine appropriate follow-on action.
- You must determine whether the donor has provided you with a legitimate explanation for the color difference (e.g., the collector used two separate voids for the collection), or not (e.g., no clue as to how the colors changed by the time the specimens reached the laboratory).
- You must follow §40.159 for canceling the result, reporting the result to the employer, determining whether a recollection is necessary and, if so, should it be under direct observation.
- If the laboratory has also reported to you that the specimen is positive, adulterated, or substituted, then you must process the results in accordance with §40.129-131. If you determine (i.e., verify) the final result to be positive, adulterated, or substituted, then no additional action is required by you due to the color difference. You must not direct the employee to take another test.
- Notify the employer that the collector must receive “error correction training” as required by §40.33(f). The area of Part 40 in which the collector needs to be retrained is §40.65(a).