

DOT Final Rule June 25, 2008 effective August 25, 2008
Department of Transportation (DOT)

49 Code of Federal Regulations, Part 40
Procedures for Transportation Workplace Drug and
Alcohol Testing Programs



AMPLIFIED™ 49 CFR PART 40
Consolidated Reference Version ©
Includes New Guidance on
***** SPECIMEN VALIDITY TESTING (SVT) *****

This version is based on the final rule published June 25, 2008, effective August 25, 2008. It incorporates all the changes and technical amendments made between August 9, 2001 and June 13, 2008. It also includes the DOT interpretations (Part 40 Questions and Answers) Dated September 2001, January 2002, November 2003, June 2004, and July 2006.

Distributed by

Alpha Pro Solutions, Inc.
735 Arlington Ave. North, Suite 102
St. Petersburg, FL 33701
Phone 800-277-1997 Fax 775-871-8538
www.alphapro solutions.com trainer@alphapro solutions.com

Compiled by

Don Shatinsky
Drug Testing Policy Consultants
St. Augustine, Florida
drugpolicyconsultants@yahoo.com

INTRODUCTION

Amplified™ 49 CFR Part 40 Consolidated Reference Version©

(Please read before using as a reference document.)

On June 25, 2008, the Department of Transportation (DOT) published a Final Rule amending certain provisions of its drug and alcohol testing procedures, specifically those dealing with specimen validity testing (SVT). Previously, SVT was authorized by the Federal rule, but was not mandatory. This final rule makes SVT mandatory and changes some of the procedures related to drug testing. These changes are significant in some cases and require employers, collectors, medical review officers (MRO), and laboratories to change or modify current procedures.

The published version in the Federal Register only indicates the actual added text and not the complete rule text. Users have to use this added text together with the previous rule text document to determine what and where the changes were made. DOT will also publish a new version of the total rule text and will include all of these changes. However, there will be no way to easily determine which portions of the rule have been changed without reference to the June 25 publication

This makes it difficult for employers, collectors, MROs, and laboratories to easily determine where and what changes need to be made in the implementation of the drug testing program. The **Amplified™ 49 CFR Part 40 Consolidated Reference Version©** document shows what rule text was deleted and what changes and new procedures were added to the rule. The deleted text has strikethroughs (~~strikethroughs~~) and added or new text is in blue with double underlines (double underlines). This makes it extremely easy to find where the changes were made and prevents potential problems of improper interpretation of the regulatory requirements by employers, collectors, MROs, and laboratories. This will also make it much easier to train collectors in what changes were made, for laboratories to identify needed procedural/reporting changes, and for MROs to determine where their verification process needs to be changed.

Major changes to the rule text involve making SVT mandatory; adding to the observed collection process the requirement for the employee to raise and lower clothing to ensure that no prosthetic devices are present and will be required for all follow-up and return-to-duty tests; removal of tables and charts indicating cutoff levels for SVT; adding and changing definitions to harmonize with those in the HHS Mandatory Guidelines; admission of adulteration or substitution during an invalid test verification process now results in a refusal to test; changes in verification of invalid results and procedures when a negative result is needed; clarification and streamlining of laboratory reporting procedures, especially for multiple results; and the requirement for laboratories to provide a semi-annual report to DOT. This Final Rule is effective August 25, 2008.

To make the **Amplified™ 49 CFR Part 40 Consolidated Reference Version©** document even more useful, all of the DOT Questions & Answers since 2001 are included following the specific section or paragraph to which each question is directed. Again, this will save the user time and effort in searching for interpretations or guidance in several other documents; all relevant information is consolidated and contained in this one document.

The history and dates of the various Interim Final Rules and Final Rules are in the preamble published with the SVT Final Rule and, therefore, are not repeated here. In this document, the preamble has been moved to the end of the document, since most users will be referring to the actual rule text rather than the preamble.

Important Note: **Amplified™ 49 CFR Part 40 Consolidated Reference Version©** should be used primarily as a reference document when it is critical to determine when and how a particular aspect of the Part 40 rule changed, especially in the area of validity testing. Any final action or legal procedures should be based on the actual Federal Register text itself.

For every day operational use, the most current rule text should be used. An updated copy of 49 CFR, Part 40 (January 28, 2005) can be downloaded from the DOT web site at: http://www.dot.gov/ost/dapc/NEW_DOCS/part40.html?proc. However, although this copy will include all of these changes, it will not provide any specific indication which portions of the rule have been changed, deleted, or added.

Disclaimer: All attempts have been made to accurately represent the various changes made by DOT. However, there may be typographical errors or problems when this document is reproduced. This document should be used as a reference for identifying changes in the rule text. In legal challenges or litigation, it is recommended that the actual Federal Register documents be reviewed to ensure correct rule text is identified and interpreted.

© **Copyright 2008 by Drug Testing Policy Consultants.** Although the contents of this document are in the public domain and are available from the Department of Transportation, the format and manner of consolidation and amplification are copy protected and may not be reproduced in writing or electronically without written permission from Alpha Pro Solutions, Inc. or Drug Testing Policy Consultants. The original purchaser may print a copy of the electronic version for personal use only. To purchase your copy please go to www.alphapro solutions.com or send an email to trainer@alphapro solutions.com.

Brought to you by Drug Testing Policy Consultants and
Alpha Pro Solutions, Inc.

Internationally Recognized Drug Free Workplace Training and Consulting

Alpha Pro Solutions, Inc. www.alphapro solutions.com Email: trainer@alphapro solutions.com
735 Arlington Ave. North, Suite 102, St. Petersburg, FL 33701 Phone (800) 277-1997 Fax (775) 871-8538



NEW!!!!

Amplified™ DOT 49 CFR Part 40 Consolidated Reference Version©

Includes new guidance on

***** SPECIMEN VALIDITY TESTING (SVT) *****

by Don Shatinsky, former US DOT ODAPC Senior Policy Advisor

49 CFR Part 40 Amplified™ Consolidated Reference Version©

	<u>Quantity</u>	<u>Price Each</u>	<u>Extended Price</u>
49 CFR Part 40 Amplified™ Consolidated Reference Version© Price includes (1) Password-protected PDF File with the entire document including recent Q&A's published by DOT. <small>Includes Final Rules published in Fed Register 062508. The buyer may print the document and/or download it to single computer. Future versions may be purchased at a discount rate using an APS Discount Coupon. Amplified™ 49 CFR Part 40 Consolidated Reference Version© is copyright protected and may not be reproduced or edited without the express written permission of the Drug Test Policy Consultants and Alpha Pro Solutions, Inc.</small>		\$99.00	\$
Amplified™ 49 CFR Part 40 (v. 1.1.2 - 01/16/07) <small>Does not include 6/25/08 Final Rule. Price includes (1) Password-protected PDF File with the entire document including recent Q&A's published by DOT.</small>		\$99.00	
APS Computer Based Training Courses (Ask about quantity discounts)			
Supervisor International - Signs & Symptoms Drugs & Alcohol		\$99.00	\$
Supervisor (DOT & Non) - Signs & Symptoms Drugs & Alcohol		\$99.00	\$
Collector Web Training Password		\$119.00	\$
BAT Web Training Password (New ___ or Refresher ___ BAT)		\$119.00	\$
STT Web Alcohol Test Training Password (New ___ or Refr ___)		\$89.00	\$
Employee Awareness Web Training Drugs & Alcohol Password		\$25.00	\$
<small>Note: One password is needed for each individual. Price includes Password to complete Course, Final On-Line Exam, Printed Certificate and Continuing Ed Hours.</small>			
Method of Payment Mailing check MC Visa AMX <small>Prices 071008 subject to change without notice. See APS website for current pricing.</small>	◀Specify	TOTAL	\$
**ALL SALES ARE FINAL. NO REFUNDS OR RETURNS.			

NAME ON CREDIT CARD _____ SIGNATURE _____
 CREDIT CARD NUMBER _____ EXPIRATION DATE ____ / ____
 BILL TO EMAIL: _____ PHONE: _____ FAX: _____
 BILL TO COMPANY _____
 BILL TO STREET _____
 BILL TO CITY _____ ST _____ ZIP _____
 SHIP TO NAME _____ Email: _____ (Required)
 SHIP TO COMPANY _____
 SHIP TO ADDRESS _____
 SHIP TO CITY _____ STATE _____ ZIP _____
 SHIP TO PHONE _____ FAX _____

These courses are brought to you by Alpha Pro Solutions, Inc.
Internationally Recognized Drug Free Workplace Training and Consulting

Alpha Pro Solutions, Inc. www.alphaprosolutions.com Email: Trainer@alphaprosolutions.com
 735 Arlington Ave. North, Suite 102, St. Petersburg FL 33701 Phone (800) 277-1997 Fax (775) 871-8538



NEW!!!!

Amplified™ DOT 49 CFR Part 40 Consolidated Reference Version©

Includes new guidance on

***** SPECIMEN VALIDITY TESTING (SVT) *****

by Don Shatinsky, former US DOT ODAPC Senior Policy Advisor

What is it? *Amplified™ 49 CFR Part 40 Consolidated Reference Version©* consolidates all of the changes (deletions and additions) that have been made to Part 40 as of the 06/25/08 Final Rule and identifies each of the changes. It provides a clear record of the changes, all in one document, eliminating the need for extensive research of Federal regulations.

Why use it? 49 CFR Part 40 published in the Federal Register contains current regulations only. It does not indicate what historical changes were made. Significant changes, especially in specimen validity testing (SVT) and observed drug test collections were made on 06/25/08. These changes may affect the outcome of adulterated or substituted test results. It is difficult to decipher regulations in place at any given time. In the event of a lawsuit, the regulations as they were on the date of the test are the only regulations that will matter. The *Amplified™ 49 CFR Part 40 Consolidated Reference Version©* is the only single source that can be used to solve the problem of deciphering new versus old regulations.

Do I also need Amplified™ DOT 49 CFR Part 40 dated 1/16/07? *Amplified™ 49 CFR Part 40 (v.1.1.2 01/16/07)* consolidates the changes (deletions and additions) that had been made to Part 40 by Interim Final Rule and Final Rule changes since 2001, but before 06/25/08, and identifies when each of the changes was made. The *Amplified™ 49 CFR Part 40* eliminates the need to extensive research five different Federal regulations and is great for use with court challenges prior to 6/25/08.

Background. *Amplified™ 49 CFR Part 40 Consolidated Reference Version©* was developed and compiled by Don Shatinsky, former Senior Drug and Alcohol Policy Advisor at US DOT's Washington DC Office of Drug and Alcohol Policy and Compliance (ODAPC). He is one of the original authors of 49 CFR Part 40, and currently President of Drug Testing Policy Consultants. After leaving DOT and subsequently providing consulting services to third party administrators, MROs, and employers, Mr. Shatinsky realized that even with his extensive knowledge and experience with the regulations, it was exceedingly difficult to track all the text changes that were made over the years. As a result, he developed the *Amplified™ Reference Version* of 49 CFR Part 40 making it easier for DERs, MROs, Collectors, HR Managers, Safety Personnel, and others to identify and interpret these changes.

Who should use it? This document is ideal for DERs, MROs, Attorneys, Corporate Human Resource, Compliance and Safety personnel, Third Party Administrators, Insurance Managers, or anyone else dealing with general challenges or litigation related to past drug testing results, including adulteration or substitution, or any other issues arising from past regulatory changes.

How to order? Alpha Pro Solutions, Inc. is the exclusive distributor of *49 CFR Part 40 Amplified™ Reference Version*. For only \$99.00, you receive a password-protected PDF file with the entire *49 CFR Part 40 Amplified™ Reference Version* up to and including recent DOT Q&A's. With your initial purchase you receive a 25% OFF Coupon for your next purchase.

COUPON* 25% OFF *COUPON

Amplified™ DOT 49 CFR Part 40 Consolidated Reference Version©

Fax this page with your 2nd Order within 12 Months to receive a 25% Discount

These courses are brought to you by Alpha Pro Solutions, Inc.

Internationally Recognized Drug Free Workplace Training and Consulting

Alpha Pro Solutions, Inc. www.alphaprosolutions.com Email: Trainer@alphaprosolutions.com
735 Arlington Ave. North, Suite 102, St. Petersburg FL 33701 Phone (800) 277-1997 Fax (775) 871-8538