

**FEDERAL REGISTER NOTICE:
DOT ADVANCE NOTICE OF PROPOSED RULEMAKING
DRUG AND ALCOHOL TESTING REQUIREMENTS
ELECTRONIC SIGNATURES, FORMS AND STORAGE**

DETAILS

Link to FR Notice: <https://www.govinfo.gov/content/pkg/FR-2022-08-05/pdf/2022-16862.pdf>

COMMENTS DUE: October 4, 2022

HIGHLIGHTS OF NOTICE

Summary

This advance notice of proposed rulemaking seeks comments on DOT’s regulation for conducting workplace drug and alcohol testing to allow electronic signatures on documents, to use electronic versions of forms, and to electronically store forms. The proposal has the potential to increase flexibility and reduce costs for the transportation industry.

Background

DOT is required to “issue a final rule revising part 40 of title 49, Code of Federal Regulations, to authorize, to the extent practicable, the use of electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms.” (49 U.S.C. 322 note). DOT’s deadline for this action is not later than 18 months after Health and Human Services Department (HHS) establishes a deadline for a certified laboratory to request approval for fully electronic forms. On April 7, 2022, HHS set that deadline as August 31, 2023. The deadline for DOT’s regulatory amendments will be February 28, 2025.

DOT states that it is taking this action in response to a petition for rulemaking submitted by DISA Global Solutions, Inc. requesting that part 40 be amended to allow the use of an electronic version of the alcohol testing form (ATF) for DOT-authorized alcohol testing.

Specific Questions

DOT asks fourteen questions to gather information about how to move the industry toward electronic reporting:

- 1) What are the practical impacts of authorizing a fully or partially electronic system?
- 2) What are the economic impacts of authorizing a fully or partially electronic system?
- 3) How would confidentiality and system security be maintained to prevent against data breach and data loss?
- 4) How many levels of authentication should be utilized to ensure the reliability and security of the signatures of program participants?
- 5) How is the non-repudiation of a system ensured?
- 6) Are there any lessons learned or shared best practices available related to paperless non-DOT regulated testing?
- 7) Are there any limitations in either a paperless or electronic environment that impact program efficiency?
- 8) Would moving to a paperless system involve the creation of more labels and bar codes and use of additional packaging, etc., not required in a paper-based system. If so, are there any cost and/or efficiency impacts as a result?
- 9) What additional definitions would need to be added to part 40 to accommodate any electronic capabilities or a fully electronic system?
- 10) What measures need to be established to ensure that, when documents are transmitted to multiple parties, each party is able to properly access and use the electronic system?
- 11) Part 40 requires urine collectors and breath alcohol technicians (BAT) to prepare a memorandum for the record (MFR) when certain problems are encountered during the conduct of a drug or alcohol test under part 40. How would the MFR be created and transmitted to MROs, laboratories, and employers electronically?
- 12) Part 40 requires communication between MROs and the employee's physician regarding shy bladder situations, certain safety concerns, and opioids evaluations. Could these communications be handled electronically? If so, how? In a general information security context, non-repudiation is assurance that the sender of information is provided with proof of delivery, and the recipient is provided with proof of the sender's identity, so neither can later deny having processed the information.
- 13) Should third parties (i.e., IT and security consultants, data management firms, etc.) play a role in maintaining electronic systems and transmitting data for employers? If so, to what degree?
- 14) If records are kept electronically, and the business relationship ends, how would employers ensure that they have access to their electronic records if switching recordkeeping services, or if the service agent maintaining their electronic records goes out of business? Relatedly, how can employers ensure that records are not deleted, potentially leaving the DOT program participant without the records they are required to maintain under part 40.

