

section written consent for the release of the information cited in paragraph (a) of this section.

(g) The release of information under this section must be in any written form (*e.g.*, fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.

(h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?

As an employer, when you are required to report MIS data to a DOT agency, you must use the form and instructions at appendix H to part 40. You must submit the MIS report in accordance with rule requirements (*e.g.*, dates for submission; selection of com-

panies required to submit, and method of reporting) established by the DOT agency regulating your operation.

[68 FR 43952, July 25, 2003]

§ 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?

No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

[66 FR 41950, Aug. 9, 2001]

§ 40.29 Where is other information on employer responsibilities found in this regulation?

You can find other information on the responsibilities of employers in the following sections of this part:

- § 40.3—Definition.
- § 40.35—Information about DERs that employers must provide collectors.
- § 40.45—Modifying CCFs, Use of foreign-language CCFs.
- § 40.47—Use of non-Federal forms for DOT tests or Federal CCFs for non-DOT tests.
- § 40.67—Requirements for direct observation.
- §§ 40.103–40.105—Blind specimen requirements.
- § 40.173—Responsibility to ensure test of split specimen.
- § 40.193—Action in “shy bladder” situations.
- § 40.197—Actions following report of a dilute specimen.
- § 40.207—Actions following a report of a cancelled drug test.
- § 40.209—Actions following and consequences of non-fatal flaws in drug tests.
- § 40.215—Information about DERs that employers must provide BATs and STTs.
- § 40.225—Modifying ATFs; use of foreign-language ATFs.
- § 40.227—Use of non-DOT forms for DOT tests or DOT ATFs for non-DOT tests.
- § 40.235 (c) and (d)—responsibility to follow instructions for ASDs.
- § 40.255 (b)—receipt and storage of alcohol test information.
- § 40.265 (c)–(e)—actions in “shy lung” situations.
- § 40.267—Cancellation of alcohol tests.
- § 40.271—Actions in “correctable flaw” situations in alcohol tests.
- § 40.273—Actions following cancelled tests in alcohol tests.
- § 40.275—Actions in “non-fatal flaw” situations in alcohol tests.