

## § 40.189

## 49 CFR Subtitle A (10–1–07 Edition)

mailed, scanned, couriered) of Copy 1 of the CCF.

(iv) If the test of the primary specimen reconfirms the adulteration finding of the split specimen, as the MRO you must report the test result as a refusal as provided in § 40.187(a)(2).

(v) If the test of the primary specimen fails to reconfirm the adulteration finding of the split specimen, as the MRO you cancel the test. Follow the procedures of paragraph (e) of this section in this situation.

(g) Enter your name, sign and date (Step 7) of Copy 2 of the CCF.

(h) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see § 40.163 ) to the employer and keep a copy for your records. Transmit the document as provided in § 40.167.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 68 FR 31626, May 28, 2003]

### § 40.189 Where is other information concerning split specimens found in this regulation?

You can find more information concerning split specimens in several sections of this part:

§ 40.3—Definition.

§ 40.65—Quantity of split specimen.

§ 40.67—Directly observed test when split specimen is unavailable.

§§ 40.71–40.73—Collection process for split specimens.

§ 40.83—Laboratory accessioning of split specimens.

§ 40.99—Laboratory retention of split specimens.

§ 40.103—Blind split specimens.

§ 40.153—MRO notice to employees on tests of split specimen.

§§ 40.193 and 40.201—MRO actions on insufficient or unavailable split specimens.

APPENDIX D TO PART 40—REPORT FORMAT FOR SPLIT SPECIMEN FAILURE TO RECONFIRM.

### Subpart I—Problems in Drug Tests

#### § 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

(a) As an employee, you have refused to take a drug test if you:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being di-

rected to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a));

(2) *Fail to remain at the testing site until the testing process is complete; Provided,* That an employee who leaves the testing site before the testing process commences (see § 40.63 (c)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; *Provided,* That an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see § 40.63 (c)) for a pre-employment test is not deemed to have refused to test;

(4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§ 40.67(1) and 40.69(g));

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.193(d)(2));

(6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, § 40.197(b));

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under § 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or

(8) Fail to cooperate with any part of the testing process (*e.g.*, refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).

(b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.