



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-09

Subject: Certification Signature Requirements on the Chain of Custody
Drug Testing Forms, 49 CFR 219

Original Signed By:

From: Edward W. Pritchard
Director, Office of Safety Assurance and Compliance

To: Regional Administrators

The attached letter to Mr. E.N. Johnson, Vice Local Chairman, United Transportation Union, deals with the issue of whether a certifying signature is required on the chain of custody drug testing forms and the conditions under which an employee is or is not required to sign this form. It is provided as interpretive guidance to Operating Practices Specialists and Inspectors in the discharge of their drug and alcohol enforcement duties.

Attachment

Attachment to OP-04-09

Mr. E. N. Johnson
Vice Local Chairman
United Transportation Union
3527 11th Street
San Pablo, California 94806

September 13, 1998

Dear Mr. Johnson:

Please refer to your June 22 letter requesting clarification regarding Federal regulatory requirements for a certification statement signature on the chain of custody drug testing forms.

Title 49, Code of Federal Regulations (CFR) Part 40, Section 40.23 (a) (4) states that the employee, via the signature, affirms the following: "I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct." In other words, the employee is certifying that the specimen is his/hers, that the bottle was sealed in his/her presence and that the information on the form is correct. The use of the signature was not intended to certify that all collection procedures followed Federal requirements.

The employee always has the option of refusing to sign the certification statement on the chain of custody form. Under those conditions, the collector must annotate on the form that the employee refused to sign it. However, the absence of the signature does not invalidate the collection process and the specimen can be tested.

Under Federal regulations, the employer is responsible for ensuring that specimens are collected in accordance with 49 CFR Part 40. If an employee believes that a Federally mandated drug collection procedure is not conducted as prescribed in 49 CFR Part 40, the employee should inform the employer. If the employer does not respond to the complaint or does not take appropriate corrective action, the employee may seek resolution through the Federal Railroad Administration. The fact that an employee signed the certification statement does not preclude that employee from subsequently seeking corrective actions for improper drug testing collection procedures.

Before an employee refuses to sign the certification statement, he/she should distinguish between certain procedures in the collection process which were established for the protection of the employee (donor) and those which were

established to protect the employer. For example, the fact that the collector did not make the employee wash his/her hands does not invalidate the collection process even though the failure to wash his/her hands could allow an employee to adulterate the specimen and could leave the employer open to a violation of the Federal regulations.

The certification statement is wholly independent and differing in purpose from any release or consent form. Although Section 40.25 (f) (22) (ii) allows a laboratory or non-employer collection site to require such forms, these forms seek to protect private entities from potential liability. In contrast, the certification statement is a Federal requirement that protects both the employee and the employer by ensuring the integrity of specimens collected and tested under Federal authority.

If you have a specific incident or complaint please provide the FRA the date of the incident, names of involved individuals, place of the incident and what specific allegation is made. We can then respond more directly to your concerns.

Signed by Edward R. English, Director, Office of Safety Enforcement