

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA),
Department of Health and Human Services

ACTION: Final Rule: Change in Effective Date

SUMMARY: The Department of Health and Human Services (HHS) is changing the effective date of the Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) from May 1, 2010, to October 1, 2010. The purpose of this notice is to notify participants in Federal and federally-regulated workplace drug testing programs as soon as possible that they will not be expected to implement the revisions to the Mandatory Guidelines on May 1, 2010, so that they do not unnecessarily expend resources to comply on May 1, or risk compliance problems by prematurely implementing new provisions.

DATES: The revisions to the Mandatory Guidelines will now become effective October 1, 2010. This change in the effective date becomes effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Robert L. Stephenson, II, M.P.H.,
Director, Division of Workplace Programs (DWP), Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), 1 Choke Cherry Road, Room 2-1035, Rockville, MD 20857; Telephone: 240-276-2600; Email: Bob.Stephenson@samhsa.hhs.gov.

SUPPLEMENTARY INFORMATION: On November 25, 2008, HHS published a Final Notice of Revisions to the Mandatory Guidelines for Federal Workplace Drug Testing Programs in the **Federal Register** (73 FR 71858). A correction providing the effective date of May 1,

2010, was published in the **Federal Register** on December 10, 2008 (73 FR 75122). The Mandatory Guidelines establish the scientific and technical guidelines for Federal workplace drug testing programs and establish standards for certification of laboratories engaged in drug testing for Federal agencies under authority of section 503 of Public Law 100-71, 5 U.S.C. Section 7301 note and Executive Order (E.O.) 12564. The revisions to the Mandatory Guidelines address the collection and testing of urine specimens, the requirements for certification of Instrumented Initial Test Facilities (IITF), and the role of and standards for collectors and Medical Review Officers (MRO).

The Department of Transportation (DOT) publishes the Procedures for Transportation Workplace Drug and Alcohol Testing Programs at 49 Code of Federal Regulations (CFR) Part 40. This DOT regulation requires the drug and alcohol testing of safety-sensitive employees in certain DOT-regulated industries. Consistent with the Omnibus Transportation Employee Testing Act of 1991, the DOT utilizes the HHS laboratory procedures set forth in the Mandatory Guidelines in its regulations.

On February 4, 2010, DOT published a notice of proposed rulemaking (NPRM) in the **Federal Register** (75 FR 5722) announcing revised procedures for transportation workplace drug and alcohol testing programs. DOT's final rule based on this NPRM will not be completed by May 1, 2010. It is anticipated that DOT's rule will be issued in time to go into effect by October 1, 2010.

Without this change of effective date for the Mandatory Guidelines, laboratories certified under the Mandatory Guidelines would be required to maintain a dual system for testing using the revised Mandatory Guidelines, and testing for DOT-regulated entities covered by the current Mandatory Guidelines, until DOT rules are issued. Further, the National Laboratory

Certification Program would be required to certify laboratories utilizing different sets of requirements. The new effective date of October 1, 2010 will allow time for related training in Federal and federally-regulated workplace drug testing programs and will be consistent with the beginning of the new Fiscal Year for Federal agencies.

The Department's implementation of this rule without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exemptions in 5 U.S.C. section 553(b)(3)(B) and 553(d)(3), to the extent that 5 U.S.C. title 5 applies. This delay in the effective date is temporary, and necessary to avoid requiring DOT-regulated industries to comply with a different set of rules than federal workplace drug testing programs, which would create a confusing and unfair situation in which similarly situated employees would be treated inconsistently.

The new implementation date will also avoid the unnecessary expenditure of scarce resources on compliance with different standards; allow time for related training in Federal and federally-regulated workplace drug testing programs, including HHS coordination with testing laboratories on implementing new procedures to be used in the federal workplace testing programs; and be consistent with the beginning of the new fiscal year for Federal agencies. Given the imminence of the current effective date, seeking prior public comment on this temporary delay would be impractical. Further, given the risk of inconsistency and confusion from the imposition of divergent requirements across federal agencies, it has been determined that seeking prior comment on this temporary delay would be contrary to the public interest. The imminence of the effective date is also good cause for making this rule effective immediately upon publication.

DOT's rule is expected to issue in time to go into effect by October 1, 2010; however, should it later appear that DOT regulations may not issue in time for an October 1, 2010 implementation, SAMHSA will undertake notice and comment rulemaking to delay the effective date further.

No other changes to the Mandatory Guidelines have been made. The new effective date for the revisions to the HHS Mandatory Guidelines is October 1, 2010.

Dated: April 26, 2010_____

Pamela S. Hyde,
Administrator,
Substance Abuse and Mental Health Services
Administration.

Kathleen Sebelius,
Secretary.

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