**Mandatory Guidelines for Federal Workplace Drug Testing Programs**

**SUPPORTING STATEMENT**

**A. Justification**

 1. Circumstances of Information Collection

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting Office of Management and Budget (OMB) approval of the recordkeeping and reporting requirements in the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) dated January 23, 2017 (82 FR 7920), which include the Federal Drug Testing Custody and Control Form (Federal CCF), the National Laboratory Certification Program (NLCP) application forms for laboratories and Instrumented Initial Test Facilities (IITFs), and the NLCP information checklists for laboratories and IITFs. These requirements and forms are currently approved under OMB No. 0930-0158, which expires on May 31, 2017.

The Federal Workplace Drug Testing Programs were established by Executive Order 12564 on September 15, 1986 and legislatively mandated in Section 503 of Public Law 100-71 dated July 11, 1987 (Attachment A). The Department of Health and Human Services (HHS) provides comprehensive scientific and technical standards to satisfy this mandate in the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published on April 11, 1988, (53 FR 11979), with the latest revision, the UrMG, published on January 23, 2017 (82 FR 7920) (Attachment B).

The UrMG require chain of custody procedures to document the integrity and security of a urine specimen from the time it is collected until disposal by the test facility (i.e., laboratory or IITF). To ensure uniformity among all federally-regulated workplace drug testing programs, the UrMG require using an OMB-approved Federal CCF (Federal CCF - Attachment C).

The Federal CCF is the tool by which agencies and participants in the testing process are assured that the specimen collected is actually that of the tested employee. In addition to the Federal Workplace Drug Testing Programs, other federal agencies, such as the U.S. Department of Transportation and the Nuclear Regulatory Commission, also use the Federal CCF in drug testing programs required of their regulated industries and federal contractors. The Federal CCF may be used as a paper or electronic form.

The UrMG also establish the standards for the NLCP, including requirements for a laboratory or IITF to become HHS-certified and to maintain certification. Prior to the initial certification process, each interested laboratory or IITF is required to submit an application (Attachment D or F) to the NLCP contractor for review and evaluation. If the NLCP application form submitted by the laboratory or IITF is complete and indicates that the test facility is prepared to test specimens using forensically and scientifically supportable procedures, the applicant test facility begins the initial certification process which consists of testing three sets of performance testing samples and undergoing an inspection. After successfully completing this initial certification process, the laboratory or IITF is certified by HHS and enters the NLCP. Through this request, HHS seeks authorization to continue using the NLCP application form in the certification process.

Once certified, laboratories and IITFs must undergo NLCP inspections every six months to maintain their certification. Prior to each inspection, the laboratory or IITF is required to update Sections B and C of the NLCP information checklist (Attachment E or G). The submitted information allows the members of the inspection team to become familiar with the laboratory’s or IITF’s procedures before arriving at the test facility to conduct the inspection, thereby facilitating the timely completion of the inspection. HHS seeks continued approval to collect the information on the information checklist in support of the NLCP inspection program.

In addition to these three areas, HHS seeks approval to continue requiring the recording and reporting requirements specified in the UrMG that are summarized below:

 Section 4.6(c) - Recordkeeping

 Collector is given name and phone of federal agency point of contact

 Section 8.3, 8.4, 8.5, 8.6, and 8.8 - Recordkeeping

 Collector completes Federal CCF for specimen collected

Section 9.2(a)(1) - Reporting

 Laboratory or IITF required to submit an application for certification

Section 9.12(a)(3) - Recordkeeping

Materials to submit to become an HHS inspector

Section 11.4(c) - Recordkeeping

Laboratory submits qualifications of new responsible persons (RP) and alternate RPs to HHS

 Section 11.8 and 11.19(a) and (o) - Reporting

Laboratory completes Federal CCF upon receipt of specimen and before reporting result

 Section 11.22(a) - Recordkeeping

 Specifications for laboratory semi-annual statistical report of test results to each federal agency

Section 11.23(b) - Recordkeeping

 Information on drug test that laboratory must provide to donor through the Medical Review Officer (MRO)

Section 12.4(c) - Reporting

IITF submits qualifications of new responsible technicians (RT) and alternate RTs to HHS

 Section 12.8(a) and 12.15(a) and (f) - Reporting

 IITF completes Federal CCF upon receipt of specimen and before reporting result

Section 12.19(a) - Recordkeeping

Specifies contents of IITF semi-annual statistical report to federal agencies served

Section 12.20(b) - Reporting

 Drug test information that IITF must provide to donor through MRO

Section 13.4(d)(4) - Reporting

 MRO completes the Federal CCF before reporting result

Section 13.8(b) - Reporting

MRO must inform donor of right to request split specimen test when a positive, adulterated, or substituted result is reported

Section 14.1(b) - Recordkeeping

 MRO documents donor’s request to have split specimen tested

Section 14.7 - Recordkeeping

 Specifies that MRO must report verified split specimen test results to the federal agency

2. Purpose and Use of Information

**a. Federal CCF** (current 2014 Federal CCF - Attachment C)-paper and electronic

The Federal CCF is used to identify a specimen and to document its handling at the collection site. The current paper Federal CCF is a carbonless form consisting of 5 copies as follows:

Copy 1 Test Facility Copy

Copy 2 Medical Review Officer Copy

Copy 3 Collector Copy

Copy 4 Employer Copy

Copy 5 Donor Copy

The electronic Federal CCF (ECCF) has the same format as the paper form. Because Copies 2-5 are identical, the ECCF consists of Copy 1 (Test Facility Copy) and Copy 2-5 (which is distributed to the MRO, collector, employer, and donor). The same information is provided and noted on the paper Federal CCF and the ECCF; only the mechanism for collecting and transmitting that information differs.

With the allowance of the revised Federal CCF, HHS is not requiring collection of any new information. HHS has made minor content revisions to the current form as follows:

* Remove the checkbox, the letters “DOT”, and hash line in front of Specify DOT Agency in Step 1: Completed by collector or employer Representative; Line D: Specify Testing Authority.
* Addition of four new analytes (oxycodone, oxymorphone, hydrocodone, and hydromorphone) in Step 5A: Primary Specimen Report - Completed by Test Facility.
* Removal of the analyte methylenedioxyethylamphetamine (MDEA) in Step 5A: Primary Specimen Report - Completed by Test Facility.

The Federal CCF is used by the following:

(1). **Federal Agencies**

Department of Agriculture

Department of Commerce

Defense Intelligence Agency

Department of Defense Dependent Schools

Defense Information Systems Agency

Defense Contract Audit Agency

Defense Security Service

Defense Logistics Agency

National Security Agency

National Imagery and Mapping Agency

Defense Special Weapons Agency

Office of Inspector General

Office of Sec. of Defense/Washington Headquarters Services

Department of the Navy

Uniform Services University of Health Science

Department of the Air Force

Department of Education

Department of Energy

Department of Health and Human Services

Department of Housing and Urban Development

Department of the Interior

Department of Justice

United States Marshals Service

Department of Labor

Department of State

Comptroller of the Currency, Treasury

Bureau of Engraving & Printing

Internal Revenue Service

Federal Law Enforcement Training Center

United States Mint

Bureau of the Public Debt

Financial Management Service

Environmental Protection Agency

Executive Office of the President

General Services Administration

National Aeronautics and Space Administration

Small Business Administration

Department of Veterans Affairs

Army Center for Substance Abuse Programs

Bureau of Prisons

Federal Bureau of Investigation

Immigration and Naturalization Service

Drug Enforcement Administration

Department of Transportation

Bureau of Alcohol, Tobacco, and Firearms

U.S. Secret Service

U.S. Customs Service

Corporation for National Service

Advisory Council on Historic Preservation

American Battle Monuments Commission

USAID

Architectural and Transportation Board

Barry Goldwater Scholarship Foundation

U.S. Commission on Civil Rights

Commission of Fine Arts

Committee for Purchase from Blind/Disabled

Commodity Futures Trading Commission

Consumer Product Safety Board

Defense Nuclear Facilities Safety Board

Export-Import Bank of the United States

Farm Credit Administration

Federal Communication Commission

Federal Deposit Insurance Corporation

Federal Election Commission

Federal Emergency Management Agency

Federal Labor Relations Authority

Federal Energy Regulatory Commission

Federal Mediation and Conciliation Service

Federal Maritime Commission

Federal Mine Safety and Health Review Commission

Federal Reserve Board

Federal Retirement Thrift Investment Board

Federal Trade Commission

Foreign Claims Settlement Commission

Harry S. Truman Scholarship Foundation

Indian Arts and Crafts Board

Institute of Museum and Library Services

Inter-American Foundation

International Boundary Commission, U.S. and Canada

U.S. International Boundary and Water Commission, U.S. and Mexico

International Joint Commission

U.S. International Trade Commission

Surface Transportation Board

Japan-U.S. Friendship Commission

Marine Mammal Commission

U.S. Merit Systems Protection Board

National Archives and Records Administration

National Capital Planning Commission

National Commission on Libraries and Information Science

National Council on Disability

National Credit Union Administration

National Endowment for the Arts

National Endowment for the Humanities

National Labor Relations Board

National Mediation Board

National Science Foundation

National Transportation Safety Board

Office of Navajo and Hopi Indian Relocation

U.S. Nuclear Regulatory Commission

U.S. Office of Special Counsel

Office of Thrift Supervision

Occupational Safety and Health Review Commission

Overseas Private Investment Corporation

Peace Corps

Pension Benefit Guaranty Corporation

U.S. Railroad Retirement Board

Selective Service System

U.S. Soldiers’ and Airmen’s Home

Tennessee Valley Authority

Securities and Exchange Commission

U.S. Office of Government Ethics

Arctic Research Commission

Army and Air Force Exchange Service

(2). **Employers** regulated by the Department of Transportation under its drug and alcohol regulations and amendments (49 CFR Part 40) for the following:

Federal Aviation Administration

Federal Motor Carrier Administration

Federal Railroad Administration

Federal Transit Administration

Pipeline and Hazardous Materials Safety Administration

United States Coast Guard

(3) **Licensees and other entities** regulated by the Nuclear Regulatory Commission under its fitness-for-duty regulations (10 CFR Part 26).

**b. NLCP Application Form** (Attachment D or F)

A laboratory or IITF interested in participating in the National Laboratory Certification Program must submit an NLCP application form. The form contains the minimum information needed for a determination of the laboratory’s or IITF’s preparedness to begin the initial certification process.

**c. Sections B and C of the NLCP Information Checklist** (Attachment E or G)

A laboratory or IITF must submit Sections B and C of the NLCP information checklist before each semi-annual maintenance inspection. The information submitted is used by the inspectors to become familiar with the laboratory or IITF operations before arriving at the test facility for the onsite inspection.

**d. Recordkeeping and Reporting Requirements in the UrMG**

The recordkeeping and reporting requirements ensure that the information and records collected and maintained by a certified laboratory or IITF will be forensically and scientifically supportable.

3. Use of Information Technology

In accordance with the Government Paperwork Elimination Act (GPEA), the NLCP facilitates the use of automated, electronic submissions of any type of documentation required by the UrMG. All applications and NLCP information checklists may be submitted electronically to the NLCP. Drug testing service providers including collectors, test facilities, MROs, and third party administrators are allowed to transmit copies of the Federal CCF by secure electronic means. In addition, the Federal CCF may be used in either paper or electronic form.

4. Efforts to Identify Duplication

The information on the Federal CCF is unique and is collected to satisfy forensic requirements and to facilitate reporting of drug test results.

The information provided by an applicant laboratory or IITF on the NLCP application form is not available from any other source because the procedures used by each laboratory or IITF are unique.

The information provided by each laboratory or IITF in Sections B and C of the NLCP inspection checklist is unique, is necessary for inspectors conducting an inspection, and is not available elsewhere.

The recordkeeping and reporting requirements in the UrMG are also unique.

To avoid duplication, employers regulated by the DOT are required by law to use the Federal CCF and HHS-certified laboratories for their workplace drug testing programs rather than using different custody and control forms or establishing alternative laboratory certification programs. The NRC also requires their regulated entities to use HHS-certified laboratories and to use the Federal CCF pursuant to §26.153(g).

5. Involvement of Small Entities

The Federal CCF is used only by federal agencies, employers regulated by DOT, and entities regulated by NRC. The requirement to use the Federal CCF has no special impact on small businesses. That is, some type of custody and control form must be used when a specimen is collected and submitted to a laboratory for a drug test.

The information provided on the NLCP application form or in Sections B and C of the NLCP inspection checklist is information that any laboratory must have to show that it is capable of testing specimens and reporting results that are forensically and scientifically supportable.

The recordkeeping and reporting requirements in the UrMG describe procedures paralleling those employed in any laboratory that conducts forensic drug testing. In the normal course of business, a laboratory collects and maintains this same information to support the reported test results. The standards and certifying procedures represent the minimum burden consistent with the legislative intent of Executive Order 12564 and Public Law 100-71.

6. Consequences if Information Collected Less Frequently

A separate Federal CCF is used for each urine specimen that is collected. A urine specimen may be collected for one of the following reasons: pre-employment, random, reasonable suspicion/cause, post-accident, return to duty, or follow-up. Each federal agency and employer regulated by DOT establishes the frequency at which employees are randomly selected for drug testing, while the frequency for testing for the other reasons depends on the circumstances. The deterrence effect of a workplace drug testing program is related to the frequency that employees are tested.

The NLCP application form must be submitted only once as part of the process to become an HHS-certified laboratory or IITF. Without this information, it is impossible to assess whether a laboratory is capable of maintaining chain of custody and using reliable analytical procedures to test specimens and thus complete the certification process. The requirement for each laboratory or IITF to update Sections B and C of the NLCP inspection checklist before each inspection ensures that the inspectors have the information on changes since the last inspection and on current staffing and procedures. Collecting the information less frequently would require the inspectors to spend a great deal of time determining the current practices and what changes were instituted since the last inspection rather than spending the time allocated for reviewing all aspects of the laboratories operations.

The recordkeeping and reporting requirements are continuous for all aspects of a laboratory’s or IITF’s program. The collection of data and recordkeeping cannot be accomplished less frequently and still maintain the appropriate forensically acceptable minimum standards to ensure that all drug test results are supportable in a judicial or administrative proceeding.

7. Consistency with the Guidelines in 5 CFR 1320.5(d)(2)

The information collected on the Federal CCF, NLCP application form, Sections B and C of the NLCP inspection checklist, and the recordkeeping and reporting requirements in the UrMG comply with 5 CFR 1320.5(d)(2).

8. Consultation outside the Agency

A notice soliciting public comment on the collection of this information was published in the Federal Register on February 17, 2017 (82 FR 11051).

HHS received no responses on the Agency Information Collection Activities: Proposed Collection Comment Request. The public accepted the burden hour projection.

9. Payment to Respondents

There is no payment made or gift given to an individual who provides the required information on a Federal CCF or to any test facility that completes an NLCP application form or Sections B and C of the NLCP inspection checklist, or meets the other recordkeeping and reporting requirements in the UrMG.

10. Assurance of Confidentiality

The information on the Federal CCF is collected under the authority in Executive Order 12564, 5 U.S.C. 3301 (2), 5 U.S.C. 7301, and Section 503 of Public Law 100-71, 5 U.S.C. 7301 note. Test results may only be disclosed to an MRO, the federal agency administrator of the Employee Assistance Program, and a supervisor with authority to take adverse personnel action. The Federal CCF was developed to collect minimal personal identifying information of the individual being tested and to limit access only to the extent necessary to link the specimen and test results to the individual. The individual tested may object to the inclusion of his/her Social Security Number (SSN) on the CCF. Refusal to provide the SSN does not invalidate the drug test. Another identifier (e.g., employee identification number) may be used in place of the SSN. For more information about the confidentiality and security of the information collected on this form, please review HHS privacy impact assessment at [www.hhs.gov/pia](http://www.hhs.gov/pia) , and the DOT privacy impact assessment at www.dot.gov/privacy.

Completed NLCP application forms and Sections B and C of the NLCP inspection checklists are kept secure and private at the NLCP contractor facility.

All records maintained by the certified laboratories and IITFs are kept secure and private in accordance with the UrMG.

11. Questions of a Sensitive Nature

The certification standards and scientific and technical guidelines do not solicit information of a sensitive nature. The privacy inherent in the drug testing procedure itself requires adherence to applicable privacy and protection provisions. Upon notification by the testing laboratory that a specimen has tested positive, substituted, or adulterated, the MRO must contact the individual to determine if there is a valid medical explanation for the test results. Any medical information given to the MRO must be kept private to the extent of the law.

12. Estimates of Annualized Hour Burden

**a. Federal CCF**

| Form/Respondent | Number of Respondents | Responses per Respondent | Total Number of Responses | Burden per Response (hours) | Annual Burden (hours) | HourlyWage Rate ($) | Total Cost ($)3 |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Custody and Control Form1: |  |  |  |  |  |  |  |
|  Donor | 5,400,000 | 1 | 5,400,000 | 0.08  | 432,000 | 25 | 10,800,000 |
|  Collector | 5,400,000 | 1 | 5,400,000 | 0.07  | 378,000 | 15 | 5,670,000 |
|  Laboratory | 5,400,000 | 1 | 5,400,000 | 0.05 | 270,000 | 35 | 9,450,000 |
|  IITF | 0 | 0 | 0 | 0.05 | 0 | 35 | 0 |
|  Medical Review Officer | 5,400,000 | 1 | 5,400,000 | 0.05 | 270,000 | 150 | 40,500,000 |
| NLCP Application Form2: |  |  |  |  |  |  |  |
|  Laboratory | 1 | 1 | 1 | 3 | 3 | 35 | 105 |
|  IITF | 0 | 0 | 0 | 3 | 0 | 35 | 0 |
| Sections B and C - NLCP Inspection Checklist: |  |  |  |  |  |  |  |
|  Laboratory | 30 | 1 | 30 | 1 | 30 | 35 | 1,050 |
|  IITF | 0 | 0 | 0 | 1 | 0 | 35 | 0 |
| Record Keeping: |  |  |  |  |  |  |  |
|  Laboratory | 30 | 1 | 30 | 250 | 7,500 | 35 | 262,500 |
|  IITF | 0 | 0 | 0 | 250 | 0 | 35 | 0 |
| Total | 5,400,061 |  | 21,600,061 |  | 1,357,533 |  | 66,683,655 |

*1Note: The time it takes each respondent (i.e., donor, collector, laboratory, and MRO) to complete the Federal CCF is based on an average estimated number of minutes it would take each respondent to complete their designated section of the form or regulated entities (e.g. HHS, DOT, and NRC).*

*1Note: The above number of responses is an estimate of the total number of specimens collected annually (150,000 federal agency specimens; and approximately 6,000,000 DOT regulated specimens).*

*2Note: The estimate of three applications per year is based on receiving only 3 applications for a laboratory application in the past year (i.e., at the time of these calculations) and only 1 IITF application submitted after October 1, 2010.*

*2Note: The estimate of three burden hours to complete the application has not changed even though additional information is requested. The original burden hours were generous to begin with and are still appropriate.*

*3Note: At the time of these calculations, there were 30 certified laboratories undergoing 2 maintenance inspections each year and one certified IITF.*

*3Note: The wage rates listed for each respondent are based on estimated average hourly wages for the individuals performing these tasks.*

13. Estimates of Annualized Cost Burden to Respondents

**1. Donors**

There is no direct cost burden to a donor (i.e., employee/job applicant). Each federal agency, DOT-regulated employer, or NRC-regulated entity pays for collecting and testing specimens and for the MRO review of results as part of its workplace drug testing program.

**2. Test Facility (Laboratory or IITF)**

There are no capital and start-up costs over and above the normal laboratory equipment required for maintaining a drug testing laboratory. However, there is a cost associated with a laboratory or IITF becoming a HHS-certified test facility and maintaining that certification.

The cost for an applicant laboratory or IITF to achieve certification is as follows:

|  |  |
| --- | --- |
| **Event** | **Fee ($)** |
| Application  | 2,000 |
| Performance Testing: |  |
|  3 Initial Sets | 9,000 |
| Inspections: |  |
|  Initial | 11,200 |

**Total Applicant Cost = $22,200**

The annual cost for a laboratory or IITF to maintain certification is as follows:

|  |  |
| --- | --- |
| **Event** | **Fee ($)** |
| Performance Testing: |  |
|  4 Maintenance Sets | 12,000 |
| Inspections: |  |
|  2 Maintenance Inspections\* |  |
|  IITF | 22,400 |
|  Laboratory\*\*: |  |
|  Category 0 | 18,000 |
|  Category 1 | 22,400 |
|  Category 2 | 32,600 |
|  Category 3 | 49,600 |
|  Category 4 | 76,000 |
|  Category 5 – Inspection | 76,000 |
|  Category 5 – Audit | 49,600 |

\* Inspection Fee depends on the size of the laboratory.

2 Maintenance Inspections/year = $45,900 (\*)

(\*)Using a $22,950 average fee for all current categorized labs

 **Total Average Annual Cost = $57,900**

**Total Annual Cost to Laboratories or IITFs to participate in the NLCP (30 labs x $57,900) = $1,737,000**

14. Estimates of Annualized Cost to the Government

 (a) **Cost to Federal Agencies**

(1) Estimated Direct Testing Costs (i.e., collection, testing, and MRO costs):

150,000 specimens/yr x $60/specimen = $9,000,000

(2) Estimated Administrative Costs:

150,000 specimens/yr x $60/specimen = $9,000,000

*Note: The above figures are estimates for the total number of specimens that were collected by the federal agencies (listed above) and for the direct testing and administrative costs, respectively, associated with each specimen.*

 (b) **Management Oversight of NLCP Contract (Contracting Officer Representative (COR))**

2 FTEs + Travel Costs to NLCP contractor site = $400,000

**Total Annual Government Cost (a(1)+a(2))+b) =** $**18,400,000**

15. Changes in Hourly Burden

The number of respondents has been reduced from 6.1 million to 5.4 million which reduces the total burden hours by 196,046.

16. Time Schedule, Publication, and Analysis Plans

A typical process to become an HHS-certified laboratory is as follows:

Activity Time (Elapsed Weeks)

NLCP Application Received 0

Application Reviewed 2

Application Accepted 4

First Set of PT Samples 6

Second Set of PT Samples 10

Inspection and Third Set of PT Samples 14

Evaluation of Laboratory’s Performance 18

Certification 20

The Division of Workplace Programs publishes the list of HHS-certified laboratories in the Federal Register on a monthly basis.

17. Display of Expiration Date

Approval is requested to not display the expiration date on the Federal CCF. A similar approval was granted three years ago. This avoids the possibility that millions of perfectly acceptable copies would be discarded or that a specimen would be rejected for testing by a laboratory or IITF because it was submitted using a form past a stated expiration date. HHS will notify users that they may continue using the current form until the new expiration date established by this approval request.

18. Exceptions to Certification Statement

This collection of information involves no exceptions to the Certification for Paperwork Reduction Act Submissions.

**B. Collections of Information Employing Statistical Methods**

This collection of information does not employ statistical methods.

**LIST OF ATTACHMENTS**

Attachment

A. Authorizing Legislation and Executive Order 12564

B. UrMG (January 23, 2017)

C. Federal CCF

D. NLCP Urine Laboratory Application Form

E. NLCP Urine Laboratory Information Checklist Form

F. NLCP Urine IITF Application Form

G. NLCP Urine IITF Information Checklist Form