

SISBRO, INC.

**DRUG & ALCOHOL
ABUSE POLICY**

**Effective
August 2005**

SISBRO, INC.
DRUG & ALCOHOL ABUSE POLICY

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SISBRO, INC.
DRUG ABUSE POLICY

STATEMENT OF PURPOSE AND POLICY

Employees are a most valued part of SISBRO, INC. (the "Employer"). Their health and safety are serious Employer concerns. Drug use and alcohol misuse may pose a serious threat to employee health and safety. It is, therefore, the goal of the Employer to prevent substance use or abuse from having an adverse effect on our employees. The Employer maintains that the work environment is safer and more productive without the presence of illicit or inappropriate drugs or alcohol (herein referred to as "prohibited substances") in the body or on company property. Furthermore, all employees have a right to work in a drug-free environment and to work with individuals free from the effects of prohibited substances. Employees who use or abuse prohibited substances are a danger to themselves, their co-workers, the public and the Employer's assets.

The federal government and many states have recognized the adverse impact of substance abuse by employees. The Employer will follow federal guidelines when possible and all state's laws where required in its commitment to maintain a drug-free workplace. *All employees are advised that remaining drug-free and medically qualified to perform assigned duties safely are conditions of continued employment or service with the Employer.*

Specifically, it is the policy of the Employer that the use, sale, purchase, transfer, possession or presence in one's system of any prohibited substance (except medications prescribed by a licensed physician), including alcohol, by any employee while on company premises, while engaged in company business, while operating company equipment, or while under the authority of the Employer is strictly prohibited. The Employer will notify and cooperate with law enforcement agencies in the investigation of any Employee suspected of trafficking in illicit or inappropriate drugs. Any Employee arrested for on-the-job possession of or trafficking in illicit or inappropriate drugs will be terminated.

As permitted by law, the Employer will conduct pre-employment testing of all applicants ("Employee-Applicants"). All Employees may be subject to testing where circumstances establish that reasonable suspicion of prohibited substance use exists, following on-the-job accidents or injuries and for safety-sensitive workers, on a random basis.

Any Employee who tests positive will be subject to discipline up to and including termination. Any Employee who refuses to comply with a proper request to submit to testing or who fails to cooperate in the test process *will be terminated*. These procedures are designed not only to detect violations of this policy but also to ensure fairness to each Employee. Every effort will be made to maintain the dignity of Employees or Employee-Applicants involved. Disciplinary action will, however, be taken as necessary.

Neither this policy nor any of its terms are intended to create a contract of employment, or to alter the existing employment or contractual relationship in any way. Unless otherwise limited, the Employer retains the sole right to change, amend or modify any term or provision of this policy without notice. This policy is effective August 1, 2005 and supersedes all prior policies and statements relating to prohibited substances.

SISBRO, INC.
PROGRAM SUMMARY
Substance Abuse Testing

***Employer
Contact:***

All questions or concerns should be directed to THE DESIGNATED EMPLOYER REPRESENTATIVE (DER) at 217-228-2644

Applies to:

All employees are subject to testing under this policy and procedures.

***When Compliance
is required:***

All those subject to this policy are expected to refrain from prohibited conduct prior to performing assigned tasks, while performing such tasks and in post accident cases for eight hours after the accident.

***Prohibited
Conduct:***

The following conduct is prohibited:

1. controlled substance use at any time unless prescribed by a licensed physician;
2. having a breath test result that equals or exceeds applicable cut-off levels;
3. consuming alcohol within (4) hours prior to reporting for a safety sensitive task;
4. using alcohol on the job;
5. using alcohol within the (8) hours following an accident or until tested;
6. while behavior or ability to perform due to alcohol use are in question;
7. refusing to test;
8. failure to cooperate in the testing process;

Test Events:

Employees may be tested on four (4) occasions: (1) pre-hire/pre-access to work; (2) where there is reasonable suspicion of prohibited use; (3) following an accident or injury, and (4) on a random basis (safety-sensitive only).

***Test Procedures:
Condition of
Employment:***

The test procedures for alcohol testing can be found in Office of the Director of Safety.

Submitting to testing as required by this policy is a condition of employment and continued employment with the Employer.

Refusal:

Any employee who refuses to submit to a request to test will be terminated. Refusal includes failure to timely report to a designated testing site (collection site) and the failure to execute all required test documents.

***Consequences of
violation:***

Any employee who is found to have violated this policy will be subject to discipline, up-to and including termination. For alcohol test purposes, any test result in excess of 0.02 will result in discipline.

***Impact of
drug/alcohol use:***

Information regarding the impact of drug or alcohol use on employee health and the workplace will be provided to employees.

SISBRO, INC.
Administration Guide To
Drug/Alcohol Testing Procedures

I. PURPOSE

The purpose of this administrative guide is to set forth the procedures for the implementation of alcohol and drug testing (herein referred to as "testing") of Employees and Employee-Applicants for the presence of prohibited substances pursuant to SISBRO, INC. Drug and Alcohol Abuse Policy (the "Policy"). These procedures are intended as a supervisory guide only and are in no way intended to alter any existing relationship between SISBRO, INC. (the "Employer") and any Employee. Where applicable, differing state laws will be followed.

These procedures may be amended, modified or changed at any time without prior notice.

II. DEFINITIONS¹

When interpreting or implementing these procedures, the following definitions apply:

"Actual knowledge" applies only to federally regulated workers and means actual knowledge by an employer that an employee has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substance use, except as provided elsewhere in this policy. Direct observation as used in this definition means observation of alcohol or controlled substance use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under this policy.

"Adulterated specimen" means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

"Air blank" means, in evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

"Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

"Alcohol concentration" (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this policy.

"Alcohol confirmation test" means a subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

¹ Differing state laws or customer contract requirements will be followed.

"Alcohol screening device (ASD)" means a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

"Alcohol screening test" means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen

"Alcohol testing site" means a place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

"Alcohol use" means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

"Blind specimen or blind performance test specimen" means a specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

"Breath Alcohol Technician (BAT)" means a person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

"Cancelled test" means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this policy otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

"Chain of custody" means the procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

"Collection container" means a container into which the employee urinates to provide the specimen for a drug test. Collection site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

"Collector". A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

"Commerce" means: (1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and (2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

"Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle-- (1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or (2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or (3) Is designed to transport 16 or more passengers, including the driver; or (4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

"Confirmation (or confirmatory) drug test" means a second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

"Confirmation (or confirmatory) validity test" means a second test performed on a urine specimen to further support a validity test result.

"Confirmed drug test" means a confirmation test result received by an MRO from a laboratory.

"Consortium/Third party administrator (C/TPA)" means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this policy.

"Controlled substances" mean those substances to be tested including the following: (a) Marijuana metabolites. (b) Cocaine metabolites. (c) Amphetamines. (d) Opiate metabolites. (e) Phencyclidine (PCP).

"Designated employer representative (DER)" shall be the Director of Safety who shall receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes.

"Dilute specimen" means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

"Disabling damage" means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. (1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven. (2) Exclusions. (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts. (ii) Tire disablement without other damage even if no spare tire is available. (iii) Headlight or taillight damage. (iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

"DOT Agency" means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

"Driver" means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

"Drugs" mean the substances for which tests are required under this policy and include marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

"Evidential Breath Testing Device" (EBT). A device approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

"HHS" means the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

"Initial drug test" means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

"Initial validity test" means the first test used to determine if a specimen is adulterated, diluted, or substituted.

"Invalid drug test" means the result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Laboratory. means any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs

"Licensed medical practitioner" means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

"Medical Review Officer (MRO)" means a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results

"Performing (a safety-sensitive function) means" a driver of any vehicle or operator of any equipment and applies to any employee considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

"Positive rate" applies only to federally regulated workers and means the number of positive results for random controlled substances tests conducted under this policy plus the number of refusals of random controlled substances tests required by this policy, divided by the total of random controlled substances tests conducted under this policy plus the number of refusals of random tests required by this policy.

Primary specimen in drug testing, means the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

"Refuse to submit" (to an alcohol or controlled substances test) means that an employee:

(1) Fails(ed) 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 directed 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;

(2) Fails(ed) 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 Sec. 40.63(c) of this title) a pre-employment test is not deemed to have refused to test;

(3) Fails(ed) to provide a urine specimen for any drug test required by this policy 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 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, fails to permit the observation or monitoring of the employee's provision of a specimen;

(5) Fails(ed) 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;

(6) Fails(ed) or declines to take a second test the employer or collector has directed the employee to take;

(7) Fails(ed) to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER. 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;

(8) Fails(ed) 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, or failing to complete all documents); or

(9) Is reported by the MRO as having a verified adulterated or substituted test result.

"Safety-sensitive function" means all time from the time an employee begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

(1) All time at an employer plant, terminal, facility, or other property, or on any public property, unless the employee has been relieved from duty by the employer;

(2) All time inspecting equipment as required by company procedure or federal rule or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the controls of any vehicle/equipment in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Screening test (or initial test) means: (1) In drug testing, a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs. (2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

"Screening Test Technician" (STT). A person who instructs and assists employees in the alcohol testing process and operates an ASD.

"Secretary" means the Secretary of Transportation or the Secretary's designee.

"Service agent" means any person or entity, other than an employee of the employer, who provides services specified under this. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable law. Service agents are not employers for purposes of this policy.

"Shipping container" means a container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

"Specimen bottle" means the bottle that, after being sealed and labeled according to the procedures in this policy, is used to hold the urine specimen during transportation to the laboratory.

"Split specimen", in drug testing, means a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

"Stand-down" means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

"Substance Abuse Professional (SAP)". A person who evaluates employees who have violated this policy and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

"Substituted specimen" A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

"Violation rate" applies only to federally regulated workers and means the number of drivers found during random tests given under this policy to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this policy, divided by the total reported number of drivers in the industry given random alcohol tests under this policy plus the total reported number of drivers in the industry who refuse a random test required by this policy.

III. PROHIBITED SUBSTANCES / PRESCRIPTION MEDICATIONS

1. Prohibited Substances: In accordance with this policy, testing will be conducted for the presence of the following substances or their metabolites:

ALCOHOL
AMPHETAMINES
COCAINE
MARIJUANA
OPIATE METABOLITES
PHENCYCLIDINE (PCP)

Non-federally regulated employees and employees in states where permitted may be tested for barbiturates and/or benzodiazepine ("Valium", "Xanax", "Librium").

Detection levels requiring a determination of a positive result shall, where applicable, be in accordance with the guidelines adopted by the DOT (49 CFR part 40) in accordance with the recommendations established by the Substance Abuse and Mental Health Services Administration (DHHS; formerly "NIDA") or as the laboratory may determine. All other substances shall be tested in accordance with appropriate scientific standards.

Alcohol: Those Employees suspected of consuming alcohol at any time prohibited under this policy, or found to be in possession of alcohol while on Employer premises or while operating Employer equipment, will be required to submit to alcohol testing conducted in accordance with the rules adopted (or amended) by this policy.

A positive alcohol test is any result reported at, or above 0.02. Anyone found positive for alcohol will not be allowed to perform any assigned task and will be subject to discipline, up to and including termination.

2. Prescription Medications: Employees in safety-sensitive positions taking medications which are legally prescribed by a licensed physician familiar with the Employee's work-related responsibilities must report such use to the direct supervisor or to the Director of Safety and may be required to present written evidence from the physician which describes the effects such medications may have on the Employee's ability to perform his/her tasks.

The Supervisor will contact the Director of Safety, who will when possible confer with the medical review officer, and in the sole discretion of the Director of Safety in consultation with the medical review officer, should the effect of these medications adversely affect an employee in a safety-sensitive position, that Employee may be temporarily removed or reassigned from the safety-sensitive position if deemed appropriate.

IV. EMPLOYEE-APPLICANT AND EMPLOYEE TESTING

Applicants

1. Employee-Applicant Testing (EMPLOYEE APPLICANTS): All Applicants for employment will be required to submit to and pass a test for the presence of a controlled substance (not alcohol) as a condition of employment. All applicants shall be provided both written and verbal notice of the test requirement and a copy of any positive test results. All test results shall be maintained confidentially.

Offers of employment are made contingent upon passing the Employer's medical review, including the drug tests. Employee-Applicants who have received firm employment offers are to be cautioned against giving notice at their current place of employment or incurring any costs related to accepting employment with the Employer until after medical clearance has been received.

Employee-Applicants will be specifically notified of the test results provided he/she submits a written request for such results within 60 days of being notified of the disposition of his/her application. Employee-applicant testing shall follow the collection, chain-of-custody and reporting procedures as set forth in federal guidelines or applicable state law.

2. Employees:

As required by state law, costs associated with required tests and/or the time required for performing a test, including the reasonable cost of transportation to a test site other than the employee's normal work site, shall be borne by the Employer. Cost associated with non-required tests (e.g. independent confirmation - split sample test) shall be the responsibility of the employee.

Reasonable suspicion:

a. Suspicion-Based Testing:

- i. REASONABLE SUSPICION: If an Employee is having work performance problems or displaying behavior that may be related to the use of prohibited substances, or is otherwise demonstrating conduct that may be in violation of this Policy where immediate management action is necessary, the Supervisor, with the concurrence of the Safety Director, will require that Employee to submit to testing. Reasonable suspicion tests will be based upon the conclusions made by a supervisor who has been trained to recognize the behavioral signs of use.
- ii. A Supervisor must take action if he/she recognizes current, articulable facts that indicate there is more than a hunch to believe that this policy has been violated. A Supervisor observing such facts will take the following actions immediately:
 - (1) Secure the Safety Director's concurrence to his/her observations; and
 - (2) After discussing the circumstances with the Supervisor, and if the Safety Director believes that the conduct or performance problem could be due to prohibited substance use, the Employee will immediately be required to submit to testing. If the Employee refuses to submit to testing for any reason, he/she will be informed that continued refusal will result in immediate termination.
 - (3) The Supervisor must confidentially notify the Safety Director of the date, time, employee name and social security number for all drug tests.
- iii. The Supervisor will, within 24 hours, document the particular facts related to the behavior or performance problems, and present such documentation to the Safety Director.
- iv. If the observed conduct could endanger the Employee, co-workers or others and, where otherwise appropriate, the Safety Director will remove or cause the removal of the Employee from the workplace and ensure that the Employee is transported to an appropriate collection site and thereafter to the Employee's residence or, where appropriate, to a place of lodging. Under no circumstances, when the capacity of the Employee's ability to perform is in question, will that Employee be allowed to continue to work until otherwise safe to do so.
- v. All Supervisors will receive training to assist them in identifying behavioral characteristics of the use of prohibited substances. Customers will be encouraged to provide their management with similar training.
- vi. A reasonable suspicion test must be based on facts made during, just preceding, or just after the period of the workday when the employee is to be in compliance with this policy.
- vii. Any employee represented by a collective bargaining agent who is suspected of violating this policy is entitled to contact and confer with a representative. Such contact may be by telephone. The employee shall have no more than 30 minutes to confer with his/her representative.
- viii. An employee may be tested based on reasonable suspicion only just before, during or just after the performance of a safety-sensitive task.
- ix. All reasonable suspicion tests must be conducted within eight hours of the decision to test. If not completed within that time, a record of the delay will be maintained; Once the

determination that reasonable suspicion exists, under no circumstances will an employee be allowed back to work until s/he has a negative drug and/or alcohol test.

Employee Post-accident

b. Employee/Operator Post-Accident Testing All Employee vehicle/equipment operators who are involved in the following accidents will be subject to alcohol and drug testing as soon after the accident as is safely possible:

- i. A death occurs, or is likely to result, from the accident;
- ii. Where the employee has been ticketed for a moving violation or while operating equipment is involved in an incident including the following:
 - (1) an injury is sustained by any one involved in the accident requiring medical attention away from the scene; or
 - (2) any vehicle involved in the accident is towed from the scene.

Post-injury

c. Post-injury Testing: Any employee injured on duty may be requested to submit to alcohol and/or drug testing where the injury requires medical attention away from the scene of the injury, the incident may be reported to any governmental body or there has been damage to property in excess of an estimated \$500.00 or more.

Post-accident/injury **drug** testing will occur not later than 32 hours after the occurrence of an incident meeting the above criteria. **Alcohol** testing must occur as soon after the incident as is practical, but no later than eight (8) hours after the accident/injury has occurred. Employees are prohibited from using alcohol for at least eight hours after the accident/injury or until tested.

Any Employee suspected of unnecessarily delaying the test process will be considered to have refused to submit to testing.

Random

d. Random Testing: Where permitted or required by law, all safety-sensitive positions will be subject to random (unannounced or suspicionless) alcohol and/or drug tests. All selections will be at the annual rates of 50% drug and 10% alcohol of those subject to testing.

Random Alcohol testing may only occur just before, during or just after the performance of a safety sensitive task for the Company.

An employee must report for testing immediately after receiving notice that he/she has been selected for random testing and the testing must be completed within the time provided by federal guidelines.

Return from Leave

Return to Duty Following Leave: Any individual who has performed services for the Company within the past 12 months but who, for whatever reason, has not worked during the past 30 days must be tested under the pre-employment provisions of this policy or meet the exception to pre-employment testing.

V. COLLECTION OF SPECIMENS AND LABORATORY ANALYSIS; DRUG TESTING

1. Specimen Collection: Specimen collection will be conducted in accordance with applicable state or federal law. The collection procedures will be designed to ensure the security and integrity of the

specimen provided by each Employee, and those procedures will strictly follow federal chain-of-custody guidelines. Moreover, every reasonable effort will be made to maintain the dignity of each Employee submitting a specimen for analysis in accordance with these procedures.

2. Laboratory Analysis: As required by DOT regulations, only a laboratory certified by DHHS/NIDA to perform tests for the detection of the presence of prohibited substances will be retained by the Employer. The laboratory will be required to maintain strict compliance with federally approved chain-of-custody procedures, quality control, maintenance and scientific analytical methodologies.

VI. ALCOHOL TESTING PROCEDURES

All alcohol tests will be conducted in strict compliance with the rules adopted by federal or state guidelines. Copies of the procedures may be obtained from the Director of Safety.

VII. DISCIPLINE/ APPEAL OF TEST RESULTS

ANY EMPLOYEE WITH A CONFIRMED POSITIVE DRUG OR ALCOHOL TEST RESULT WILL BE NOTIFIED IN WRITING

1. Drugs: Any Employee testing positive for the presence of a prohibited controlled substance will be considered to have voluntarily terminated his/her employment.

Any Employee testing positive for the presence of a prohibited substance will be contacted by the Employer's Medical Review Officer. The Employee will be allowed to present medical documentation to explain any permissible use of a drug. All such discussions between the Employee and the MRO will be confidential. The Employer will not be a party to or have access to matters discussed between the Employee and the MRO. Until the employee contacts the MRO or 5 days have lapsed after the employee was asked to contact the MRO the Employer will not be advised of the test result. If legitimate, medically supportable reasons exist to explain the positive result, the MRO will report the test result to the Employer as a negative. If there is no legitimate medically supportable reason for the positive test result, the MRO will report the test result as positive. The Employer will then notify the Employee of the positive result of a periodic, random, post-accident or suspicion-based test and the substances detected.

If, during the course of an interview with an employee who has tested positive, the MRO learns of a medical condition which could, in the MRO's reasonable medical judgment, pose a risk to safety, the MRO may report that information to the Department of Transportation or to the employer.

2. If an Employee believes the test results were caused by some legitimate medical explanation, that individual must notify the Company of the claim with supporting medical documentation within three (3) working days. The Drug Testing Coordinator will refer to the Employee's medical disclosure statement. In consultation with the MRO, the Drug Testing Coordinator will determine if a legitimate medical explanation for the results exist. If the Employee's claim is substantiated, no adverse action will be taken. If the claim is not substantiated, the individual's services will be terminated.
3. Any employee testing positive for a controlled substance (not alcohol) has a right to request that the MRO direct the "B" or split sample be sent to another DHHS-certified laboratory of the Employee's choosing. The Employee is responsible for the costs of such testing. The Employee is required to make the request of the MRO within 72 hours of being notified that the initial specimen is positive.

If the split specimen is reported as "not found" (meaning the drug detected by the initial lab is not detected) then both are canceled. Depending on the purpose for the initial test, (i.e. pre-access), the Employee may be required to submit to testing as soon as possible but before continuing to perform a safety sensitive function for the Company or a Company customer.

4. Alcohol: Anyone with a confirmed alcohol test result of 0.02 or above will be terminated

No medical review of an alcohol positive or split specimen procedure will occur.

NO MEDICAL EXPLANATION FOR ALCOHOL IN YOUR SYSTEM WILL BE ACCEPTED

Refusal: Any refusal to submit to testing, failure to cooperate with the test process or any attempt to adulterate a sample will be treated the same as if the requested test was positive.

Appendices

Appendix A

SUMMARY OF PROCEDURES

Testing under this policy will be conducted by independent, trained healthcare providers in accordance with rules established by the Substance Abuse and Mental Health Services Administration and adopted by the Federal Motor Carrier Safety Administration.

Testing procedures are designed to protect both the employee and the integrity of the testing process. These protections are threefold:

- (1) collection or evidential breath test procedures,
- (2) laboratory procedures, and
- (3) medical review of drug test results.

The following pages contain a summary of the procedures adopted by the Employer to protect you and the integrity of the process. If you have any questions please contact Director of Safety, at 217-228-6555.

APPENDIX A

DRUG TESTING

PROCEDURE FOR THE COLLECTION OF SPECIMENS,
CHAIN-OF-CUSTODY AND REPORTING LABORATORY RESULTS

[Excerpt from 40 CFR part 40. effective August 1, 2001]

Subpart C--Urine Collection Personnel

Sec. 40.31 Who may collect urine specimens for DOT drug testing?

- (a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
- (b) A collector must meet training requirements of Sec. 40.33.
- (c) As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.
- (d) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

Sec. 40.33 What training requirements must a collector meet?

To be permitted to act as a collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) Basic information. You must be knowledgeable about this part (the phrase "this part" refers to 49 CFR part 40) the current ``DOT Urine Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom you perform collections, and you must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site.

(b) Qualification training. You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:

- (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
- (2) ``Problem" collections (e.g., situations like ``shy bladder" and attempts to tamper with a specimen);
- (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
- (4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;

(c) Initial Proficiency Demonstration. Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.

(1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who has demonstrated necessary knowledge, skills, and abilities by--

(i) Regularly conducting DOT drug test collections for a period of at least a year;

(ii) Conducting collector training under this part for a year; or

(iii) Successfully completing a "train the trainer" course.

(d) Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a collector before August 1, 2001, and you have already met the requirements of paragraphs (b) and (c) of this section, you do not have to meet them again.

(2) If you became a collector before August 1, 2001, and have yet to meet the requirements of paragraphs (b) and (c) of this section, you must do so no later than January 31, 2003.

(3) If you become a collector on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.

(e) Refresher training. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) Error Correction Training. If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining. (i) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

(ii) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(iii) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were "error-free."

(g) Documentation. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

Sec. 40.35. What information about the DER must employers provide to collectors?

As an employer, you must provide to collectors the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

* * *

Subpart D--Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

Sec. 40.41 Where does a urine collection for a DOT drug test take place?

- (a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- (b) If you are operating a collection site, you must ensure that it meets the security requirements of Sec. 40.43.
- (c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.
- (d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.
- (e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.
 - (1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.
 - (2) You must have a source of water for washing hands that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and providing moist towelettes outside the closed room.
- (f) The second type of facility for urination that a collection site may include is a multistall restroom.
 - (1) Such a site must provide substantial visual privacy (e.g., a toilet stall with a partial-length door) and meet all other applicable requirements of this section.
 - (2) If you use a multi-stall restroom, you must either-- (i) Secure all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or (ii) Conduct all collections in the facility as monitored collections (see

Sec. 40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.

(3) No one but the employee may be present in the multistall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.

(g) A collection site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

Sec. 40.43 What steps must operators of collection sites take to protect the security and integrity of urine collections?

(a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.

(b) As a collector, you must do the following before each collection to deter tampering with specimens:

(1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);

(2) Ensure that the water in the toilet is blue;

(3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;

(4) Inspect the site to ensure that no foreign or unauthorized substances are present;

(5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;

(6) Ensure that undetected access (e.g., through a door not in your view) is not possible;

(7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and

(8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.

(c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:

(1) Access to collection materials and specimens is effectively restricted; and

(2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.

(d) As a collector, you must take the following additional steps to ensure security during the collection process:

(1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy bladder" situation (see Sec. 40.193(b)), you may conduct a collection for another employee.

(2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.

(3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.

- (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
- (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.
- (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).
- (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
- (3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
- (4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (f) If you are operating a collection site, you must minimize the number of persons handling specimens.

Sec. 40.45 What form is used to document a DOT urine collection?

- (a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug testing program. The CCF must be a five-part carbonless manifold form. You may view this form on the Department's web site or the HHS web site.
- (b) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:
 - (1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.
 - (2) The CCF must include the names, addresses, telephone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for an employer, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required.
 - (3) As an employer, you may add the name of the DOT agency under whose authority the test occurred as part of the employer information.
 - (4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.
- (c) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.

(d) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.

Sec. 40.47 May employers use the CCF for non-DOT collections or non- Federal forms for DOT collections?

(a) No, as an employer, you are prohibited from using the CCF for non-DOT urine collections. You are also prohibited from using non- Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.

(b) (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result. (2) The use of the non-DOT form is a ``correctable flaw." As an MRO, to correct the problem you must follow the procedures of Sec. 40.205(b)(2).

Sec. 40.49 What materials are used to collect urine specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part. (copies available for review from Human Resources Dept.).

Sec. 40.51 What materials are used to send urine specimens to the laboratory?

(a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.

(b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

Subpart E--Urine Specimen Collections

Sec. 40.61 What are the preliminary steps in the collection process?

As the collector, you must take the following steps before actually beginning a collection:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or

other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test (see policy).

(b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT alcohol test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins. Example to Paragraph (b)(1): An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

(2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

(3) You must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.

(4) If, as an employee, you normally void through self-catheterization, and decline to do so, this constitutes a refusal to test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.

(e) Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.

(f) Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.

- (1) If the employee asks for a receipt for any belongings left with you, you must provide one.
- (2) You must allow the employee to keep his or her wallet.
- (3) You must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).
- (4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. As the employee, you must allow the collector to make this observation.
- (5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:
 - (i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, conduct a directly observed collection using direct observation procedures (see Sec. 40.67); or
 - (ii) Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.
- (g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

Sec. 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

As the collector, you must take the following steps before the employee provides the urine specimen:

- (a) Complete Step 1 of the CCF.
- (b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.
- (c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.
- (d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.
- (1) Except in the case of an observed or a monitored collection (see Secs. 40.67 and 40.69), neither you nor anyone else may go into the room with the employee.

- (2) As the collector, you may set a reasonable time limit for voiding.
- (e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you must require that a collection take place immediately under direct observation (see Sec. 40.67) and note the conduct and the fact that the collection was observed in the "Remarks" line of the CCF (Step 2). You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

Sec. 40.65 What does the collector check for when the employee presents a specimen?

As a collector, you must check the following when the employee gives the collection container to you:

- (a) Sufficiency of specimen. You must check to ensure that the specimen contains at least 45 mL of urine.
- (1) If it does not, you must follow "shy bladder" procedures (see Sec. 40.193(b)).
- (2) When you follow "shy bladder" procedures, you must discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.
- (3) You are never permitted to combine urine collected from separate voids to create a specimen.
- (4) You must discard any excess urine.
- (b) Temperature. You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.
- (1) The acceptable temperature range is 32-38 deg.C/90-100 deg.F.
- (2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.
- (3) If the specimen temperature is within the acceptable range, you must mark the "Yes" box on the CCF (Step 2).
- (4) If the specimen temperature is outside the acceptable range, you must mark the "No" box and enter in the "Remarks" line (Step 2) your findings about the temperature.
- (5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new collection using direct observation procedures (see Sec. 40.67).
- (6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.
- (7) In a case where the employee refuses to provide another specimen (see Sec. 40.191(a)(3)) or refuses to provide another specimen under direct observation (see Sec. 40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must

discard any specimen the employee has provided previously during the collection procedure.

(c) Signs of tampering. You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has tampered with the specimen (e.g., blue dye in the specimen, excessive foaming when shaken, smell of bleach), you must immediately conduct a new collection using direct observation procedures (see Sec. 40.67).

(2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(3) In a case where the employee refuses to provide another specimen (see Sec. 40.191(a)(3)) or refuses to provide a specimen under direct observation (see Sec. 40.193(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

Sec. 40.67 When and how is a directly observed collection conducted?

(a) As an employer you must direct an immediate collection under direct observation with no advance notice to the employee, if:

- (1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result; or
- (2) The MRO reported to you that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.

(b) As an employer, you may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(c) As a collector, you must immediately conduct a collection under direct observation if:

- (1) You are directed by the DER to do so (see paragraphs (a) and (c) of this section); or
 - (2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see Secs. 40.61(f)(5)(i) and 40.63(e)); or
 - (3) The temperature on the original specimen was out of range (see Sec. 40.65(b)(5)); or
 - (4) The original specimen appeared to have been tampered with (see Sec. 40.65(c)(1)).
- (d)(1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.

(2) As the collector, you must explain to the employee the reason under this part for a directly observed collection under paragraphs (c)(2) through (4) of this section.

(e) As the collector, you must complete a new CCF for the directly observed collection.

- (1) You must mark the "reason for test" block (Step 1) the same as for the first collection.
- (2) You must check the "Observed, (Enter Remark)" box and enter the reason (see Sec. 40.67(b)) in the "Remarks" line (Step 2).
- (f) In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (e.g., collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.
- (g) As the collector, you must ensure that the observer is the same gender as the employee. You must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.
- (h) As the collector, if someone else is to observe the collection (e.g., in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.
- (i) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.
- (j) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.
- (k) As the collector, when someone else has acted as the observer, you must include the observer's name in the "Remarks" line of the CCF (Step 2).
- (l) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

Sec. 40.69 How is a monitored collection conducted?

- (a) As the collector, you must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.
- (b) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant). The monitor can be a different person from the collector and need not be a qualified collector.
- (c) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same gender monitor), you must verbally instruct that person to follow procedures at paragraphs (d) and (e) of this section. If you, the collector, are the observer, you too must follow these procedures.
- (d) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation (see Secs. 40.63(e), 40.65(c), and 40.67(b)).
- (e) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.

- (f) As the collector, when someone else has acted as the monitor, you must note that person's name in the ``Remarks" line of the CCF (Step 2).
- (g) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

Sec. 40.71 How does the collector prepare the specimens?

- (a) All collections under DOT agency drug testing regulations must be split specimen collections.
- (b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.
 - (1) Check the box on the CCF (Step 2) indicating that this was a split specimen collection.
 - (2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.
 - (3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.
 - (4) You, not the employee, must place and secure (i.e., tighten or snap) the lids/caps on the bottles.
 - (5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.
 - (6) You, not the employee, must then write the date on the tamper-evident bottle seals.
 - (7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the ``Remarks" line of the CCF (Step 2) and complete the collection process.

Sec. 40.73 How is the collection process completed?

- (a) As the collector, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (a)(7) of this section in the employee's presence.
 - (1) Direct the employee to read and sign the certification statement on Copy 2 (Step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, you must note this in the ``Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.
 - (2) Complete the chain of custody on the CCF (Step 5) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,
 - (3) Ensure that all copies of the CCF are legible and complete.
 - (4) Remove Copy 5 of the CCF and give it to the employee.

- (5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag. (6) Secure both pouches of the plastic bag.
- (7) Advise the employee that he or she may leave the collection site.
- (8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:
- (i) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)
 - (ii) Seal the container as appropriate.
 - (iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.
- (9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.
- (b) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case within 24 hours or during the next business day.

Subpart F--Drug Testing Laboratories

Sec. 40.81 What laboratories may be used for DOT drug testing?

- (a) As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for all testing required under this part.
- (b) As a drug testing laboratory located in Canada or Mexico which is not certified by HHS under the NLCP, you are permitted to participate in DOT drug testing only if:
- (1) The DOT, based on a written recommendation from HHS, has approved your laboratory as meeting HHS laboratory certification standards or deemed your laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards for all testing required under this part; or
 - (2) The DOT, based on a written recommendation from HHS, has recognized a Canadian or Mexican certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the Canadian or Mexican certifying organization has certified your laboratory under those equivalent standards and procedures.
- (c) As a laboratory participating in the DOT drug testing program, you must comply with the requirements of this part. You must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.
- (d) If DOT determines that you are in noncompliance with this part, you could be subject to PIE proceedings under Subpart R of this part. If the Department issues a PIE with respect to you, you are ineligible to participate in the DOT drug testing program even if you continue to meet the requirements of paragraph (a) or (b) of this section.

Sec. 40.83 How do laboratories process incoming specimens?

As the laboratory, you must do the following when you receive a DOT specimen:

(a) You are authorized to receive only the laboratory copy of the CCF. You are not authorized to receive other copies of the CCF nor any copies of the alcohol testing form.

(b) You must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens.

(c) You must inspect each specimen and CCF for the following "fatal flaws":

(1) The specimen ID numbers on the specimen bottle and the CCF do not match;

(2) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated (see paragraph (g) of this section);

(3) The collector's printed name and signature are omitted from the CCF; and

(4) There is an insufficient amount of urine in the primary bottle for analysis, unless the specimens can be redesignated (see paragraph (g) of this section).

(d) When you find a specimen meeting the criteria of paragraph (c) of this section, you must document your findings and stop the testing process. Report the result in accordance with Sec. 40.97(a)(3). (e) You must inspect each specimen and CCF for the following "correctable flaws":

(1) The specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range; and

(2) The collector's signature is omitted on the certification statement on the CCF.

(f) Upon finding that a specimen meets the criteria of paragraph

(e) of this section, document the flaw and continue the testing process.

(1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the flaw.

(2) You must then attempt to correct the flaw by following the procedures of Sec. 40.205(b).

(3) If the flaw is not corrected, report the result in accordance with Sec. 40.97(a)(3).

(g) If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, you must still test the primary specimen and follow appropriate procedures outlined in Sec. 40.175(b) regarding the unavailability of the split specimen for testing.

(1) The primary specimen and the split specimen can be redesignated (i.e., Bottle B is redesignated as Bottle A, and vice-versa) if:

(i) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or

(ii) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or

(iii) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing;

or

(iv) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing.

(2) In situations outlined in paragraph (g)(1) of this section, the laboratory shall mark through the "A" and write "B," then initial and date the change. A corresponding change shall be made to the other bottle by marking through the "B" and writing "A," and initialing and dating the change.

(h) A notation shall be made on Copy 1 of the CCF (Step 5a) and on any laboratory internal chain of custody documents, as appropriate, for any fatal or correctable flaw.

Sec. 40.85 What drugs do laboratories test for?

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test "DOT specimens" for any other drugs.

- (a) Marijuana metabolites.
- (b) Cocaine metabolites.
- (c) Amphetamines.
- (d) Opiate metabolites.
- (e) Phencyclidine (PCP).

Sec. 40.87 What are the cutoff concentrations for initial and confirmation tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmation drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Type of drug or metabolite	Initial test	Confirmation test
(1) Marijuana metabolites.....	50	15
(i) Delta-9-tetrahydrocannabinol-9-carboxylic acid (THC).		
(2) Cocaine metabolites	300	150
(Benzoyllecgonine).		
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	1000	
(i) Amphetamine		500
(ii) Methamphetamine		500
(Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.)		
(5) Opiate metabolites	2000	
(i) Codeine		2000
(ii) Morphine		2000
(iii) 6-acetylmorphine (6-AM)		10
(Test for 6-AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.)		

- (b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.
- (c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.
- (d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

Sec. 40.89 What is validity testing, and are laboratories required to conduct it?

- (a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (b) As a laboratory, you must conduct validity testing.

Sec. 40.91 What validity tests must laboratories conduct on primary specimens?

As a laboratory, when you conduct validity testing under Sec. 40.89, you must conduct it in accordance with the requirements of this section.

- (a) You must test each primary specimen for creatinine. You must also determine its specific gravity if you find that the creatinine concentration is less than 20 mg/dL.
- (b) You must measure the pH of each primary specimen.
- (c) You must test each primary specimen to determine if it contains substances that may be used to adulterate the specimen. Your tests must have the capability of determining whether any substance identified in current HHS requirements or specimen validity guidance is present in the specimen.
- (d) If you suspect the presence of an interfering substance/ adulterant that could make a test result invalid, but you are unable to identify it (e.g., a new adulterant), you must, as the first laboratory, send the specimen to another HHS certified laboratory that has the capability of doing so.
- (e) If you identify a substance in a specimen that appears to be an adulterant, but which is not listed in current HHS requirements or guidance, you must report the finding in writing to ODAPC and the Division of Workplace Programs, HHS, within three business days. You must also complete testing of the specimen for drugs, to the extent technically feasible.
- (f) You must conserve as much as possible of the specimen for possible future testing.

Sec. 40.93 What criteria do laboratories use to establish that a specimen is dilute or substituted?

- (a) As a laboratory you must consider the primary specimen to be dilute if the creatinine concentration is less than 20 mg/dL and the specific gravity is less than 1.003, unless the criteria for a substituted specimen are met.

(b) As a laboratory you must consider the primary specimen to be substituted if the creatinine concentration is less than or equal to 5 mg/dL and the specific gravity is less than or equal to 1.001 or greater than or equal to 1.020.

Sec. 40.95 What criteria do laboratories use to establish that a specimen is adulterated? (

a) As a laboratory, you must consider the primary specimen to be adulterated if you determine that-- (1) A substance that is not expected to be present in human urine is identified in the specimen; (2) A substance that is expected to be present in human urine is identified at a concentration so high that it is not consistent with human urine; or (3) The physical characteristics of the specimen are outside the normal expected range for human urine.

(b) In making your determination under paragraph (a) of this section, you must apply the criteria in current HHS requirements or specimen validity guidance.

Sec. 40.97 What do laboratories report and how do they report it?

(a) As a laboratory, you must report the results for each primary specimen tested as one of the following:

- (1) Negative;
- (2) Negative--dilute;
- (3) Rejected for testing, with remark(s);
- (4) Positive, with drug(s)/metabolite(s) noted;
- (5) Positive, with drug(s)/metabolite(s) noted--dilute;
- (6) Adulterated, with remark(s);
- (7) Substituted, with remark(s); or
- (8) Invalid result, with remark(s).

(b) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (e.g., C/TPA). (1) Negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory results report electronically (i.e., computer data file).

(i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format: (A) Laboratory name; (B) Employer's name (you may include I.D. or account number; (C) Specimen I.D. number; (D) Donor's SSN or employee I.D. number, if provided; (E) Reason for test, if provided; (F) Date of the collection; (G) Date received at the laboratory; (H) Date certifying scientist released the results; (I) Results (e.g., positive, adulterated) as listed in paragraph (a) of this section; and (J) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.

(ii) The laboratory results report may be released only after review and approval by the certifying scientist and must reflect the same test result information as contained on the CCF signed by the certifying scientist.

(iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. You, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage.

(2) Non-negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (b)(1)(i) and (ii) of this section.

(c) In transmitting laboratory results to the MRO, you, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax, the fax connection must have a fixed telephone number accessible only to authorized individuals.

(d) You must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.

(e) You must provide quantitative values for confirmed positive drug, adulterated, and substituted test results to the MRO when the MRO requests you to do so in writing. The MRO's request may either be a general request covering all such results you send to the MRO or a specific case-by-case request.

(f) You must provide quantitative values for confirmed opiate results for morphine or codeine at 15,000 ng/mL or above, even if the MRO has not requested quantitative values for the test result.

Sec. 40.99 How long does the laboratory retain specimens after testing?

(a) As a laboratory testing the primary specimen, you must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.

(b) You must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.

(c) Within the one-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain a specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the specimen at the end of the year.

(d) If you have not sent the split specimen to another laboratory for testing, you must retain the split specimen for an employee's test for the same period of time that you retain the primary specimen and under the same storage conditions.

(e) As the laboratory testing the split specimen, you must meet the requirements of paragraphs (a) through (d) of this section with respect to the split specimen.

Sec. 40.101 What relationship may a laboratory have with an MRO?

(a) As a laboratory, you may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's

responsibilities for the employer. You may not derive any financial benefit by having an employer use a specific MRO.

(b) The following are examples of relationships between laboratories and MROs that the Department regards as creating conflicts of interest, or the appearance of such conflicts. This following list of examples is not intended to be exclusive or exhaustive:

- (1) The laboratory employs an MRO who reviews test results produced by the laboratory;
- (2) The laboratory has a contract or retainer with the MRO for the review of test results produced by the laboratory;
- (3) The laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or recommends certain MROs;
- (4) The laboratory gives the employer a discount or other incentive to use a particular MRO;
- (5) The laboratory has its place of business co-located with that of an MRO or MRO staff who review test results produced by the laboratory; or
- (6) The laboratory permits an MRO, or an MRO's organization, to have a financial interest in the laboratory.

* * *

Sec. 40.109 What documentation must the laboratory keep, and for how long?

(a) As a laboratory, you must retain all records pertaining to each employee urine specimen for a minimum of two years.

(b) As a laboratory, you must also keep for two years employer- specific data required in Sec. 40.111.

(c) Within the two-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain the records for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the records at the end of the two-year period.

Sec. 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

(a) As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data required by rule to the employer on a semi-annual basis.

(1) The summary must not reveal the identity of any employee.

(2) In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.

(3) The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.

(4) The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.

(b) When the employer requests a summary in response to an inspection, audit, or review by a DOT agency, you must provide it unless the employer had fewer than five aggregate test results. In that case, you must send the employer a report indicating that not enough testing was conducted to warrant a summary. You may transmit the summary or report by hard copy, fax, or other electronic means.

(c) You must also release information to appropriate parties as provided by rule.

Appendix B

APPENDIX B

ALCOHOL TESTING PROCEDURES

[Excerpts from 49 CFR part 40; effective August 1, 2001]

Subpart J--Alcohol Testing Personnel

Sec. 40.211 Who conducts DOT alcohol tests?

- (a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.
- (b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
- (c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

Sec. 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

- (a) Basic information. You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. These documents and information are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site).
- (b) Qualification training. You must receive qualification training meeting the requirements of this paragraph (b).
 - (1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site.). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.
 - (2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (i.e., the ASD(s) or EBT(s)) you will be using.
 - (3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a "train the trainer" course.

(c) Initial Proficiency Demonstration. Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing three consecutive error-free mock tests.

(1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who meets the requirements of paragraph (b)(4) of this section.

(2) These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.

(3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.

(d) Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a BAT or STT before August 1, 2001, you were required to have met the requirements set forth in paragraphs (b) and (c) of this section, and you do not have to meet them again.

(2) If you become a BAT or STT on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform BAT or STT functions.

(e) Refresher training. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) Error Correction Training. If you make a mistake in the alcohol testing process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.

(g) Documentation. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request

to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services. (h) Other persons who may serve as BATs or STTs.

(1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.

(2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

Sec. 40.215 What information about the DER do employers have to provide to BATs and STTs?

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

* * *

Subpart K--Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

Sec. 40.221 Where does an alcohol test take place?

(a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.

(b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of Sec. 40.223.

(c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

(d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

(e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.

(f) An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

Sec. 40.223 What steps must be taken to protect the security of alcohol testing sites?

- (a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.
- (1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (e.g., on the basis of employer policy or labor-management agreement), and DOT agency representatives.
- (2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
- (3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
- (b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (see Secs. 40.241-40.255).
- (c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.
- (d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.
- (e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.
- (1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.
- (2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.
- (3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

Sec. 40.225 What form is used for an alcohol test?

- (a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in Appendix G to this part. You may view this form on the ODAPC web site
- (b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:
 - (1) You may include other information needed for billing purposes, outside the boundaries of the form.
 - (2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.
 - (3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

(4) You may use an ATF in which all pages are printed on white paper. The white pages must have either clearly discernible borders in the specified color for each page or designation statements for each copy in the specified color.

(5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.

(6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

(c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

Sec. 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

(a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.

(b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with Sec. 40.271(b) .

Sec. 40.229 What devices are used to conduct alcohol screening tests?

EBTs and ASDs on the NHTSA conforming products lists (CPL) for evidential and non-evidential devices are the only devices you are allowed to use to conduct alcohol screening tests under this part. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

Sec. 40.231 What devices are used to conduct alcohol confirmation tests?

(a) EBTs on the NHTSA CPL for evidential devices that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part. Note that, among devices on the CPL for EBTs, only those devices listed without an asterisk (*) are authorized for use in confirmation testing in the DOT alcohol testing program.

(b) To conduct a confirmation test, you must use an EBT that has the following capabilities:

(1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;

(2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;

- (3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
- (4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
- (5) Tests an air blank; and
- (6) Performs an external calibration check.

Sec. 40.233 What are the requirements for proper use and care of EBTs?

(a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before NHTSA places the EBT on the CPL.

(1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).

(2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.

(b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.

(c) As the user of the EBT (e.g., employer, service agent), you must do the following

(1) You must follow the manufacturer's instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.

(2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for ``Calibrating Units for Breath Alcohol Tests."

(3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.

(4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in Sec. 40.333(a)(2) .

(5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

Sec. 40.235 What are the requirements for proper use and care of ASDs?

(a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA places the ASD on the CPL. Your QAP must [[Page 79557]] specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., temperature, altitude, humidity) that may affect the ASD's performance.

(b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.

- (c) As the user of the ADS (e.g., employer, STT), you must follow the QAP instructions.
- (d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.
- (e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of Sec. 40.233.

Subpart L--Alcohol Screening Tests

Sec. 40.241 What are the first steps in any alcohol screening test?

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.
- (b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.
 - (1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.
 - (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
- (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.
- (e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.
- (f) Complete Step 1 of the ATF.
- (g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

Sec. 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:

- (a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.
- (b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (d) Show the employee the displayed test result.
- (e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.
- (f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.
- (g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

Sec. 40.245 What is the procedure for an alcohol screening test using a saliva ASD?

As the STT, you must take the following steps:

- (a) Check the expiration date on the device and show it to the employee. You may not use the device after its expiration date.
- (b) Open an individually wrapped or sealed package containing the device in the presence of the employee.
- (c) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.
- (d) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (g) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.
- (e) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.
- (f)(1) If you were unable to successfully follow the procedures of paragraphs (c) through (e) of this section (e.g., the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.
- (2) The new device you use must be one that has been under your control or that of the employer before the test.

- (3) You must note on the ``Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)
- (4) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (e.g., the employee dropped the device) for the new test needing to be conducted.
- (5) If you are unable to successfully follow the procedures of paragraphs (c) through (e) of this section on the new test, you must end the collection and put an explanation on the ``Remarks" line of the ATF.
- (6) You must then direct the employee to take a new test immediately, using an EBT for the screening test.
- (g) If you are able to successfully follow the procedures of paragraphs (c)-(e) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (f) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.
- (h) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.
- (i) You must never re-use devices, swabs, gloves or other materials used in saliva testing.
- (j) You must note the fact that you used a saliva ASD in Step 3 of the ATF.

Sec. 40.247 What procedures does the BAT or STT follow after a screening test result?

- (a) If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following:
 - (1) Sign and date Step 3 of the ATF; and
 - (2) Transmit the result to the DER in a confidential manner, as provided in Sec. 40.255.
- (b) If the test result is an alcohol concentration of 0.02 or higher, as the BAT or STT, you must direct the employee to take a confirmation test.
 - (1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures beginning at Sec. 40.251.
 - (2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.
 - (3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:
 - (i) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
 - (ii) Tell the employee the reason for the waiting period required by Sec. 40.251(a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
 - (iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;
 - (iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;

- (v) Note on the ``Remarks" line of the ATF that the waiting period instructions were provided;
 - (vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
 - (vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
- (c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the ``Remarks" line of the ATF. If practicable, repeat the testing process (see Sec. 40. 271).

Subpart M--Alcohol Confirmation Tests

Sec. 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

- (a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
 - (1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
 - (i) If the confirmation test is taking place at a different location from the screening test (see Sec. 40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.
 - (ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.
 - (iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.
 - (2) Concerning the waiting period, you must tell the employee:
 - (i) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
 - (ii) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
 - (iii) That following your instructions concerning the waiting period is to the employee's benefit; and
 - (iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
 - (3) If you become aware that the employee has not followed the instructions, you must note this on the ``Remarks" line of the ATF.
- (b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the ``Remarks" line of the ATF that a different BAT or STT conducted the screening test.

- (c) Complete Step 1 of the ATF.
- (d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.
- (e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in Sec. 40.253, not another screening test.
- (f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.
- (g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

Sec. 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

- (a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.
 - (1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.
 - (2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.
 - (3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.
 - (4) You must proceed with the test of the employee using another EBT, if one is available.
- (b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) You must ensure that you and the employee read the sequential test number displayed on the EBT.
- (d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (e) You must show the employee the result displayed on the EBT.
- (f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
- (g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

Sec. 40.255 What happens next after the alcohol confirmation test result?

(a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:

(1) Sign and date Step 3 of the ATF.

(2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.

(3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.

(4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (see Sec. 40.271).

(5) Immediately transmit the result directly to the DER in a confidential manner.

(i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.

(ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.

(b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:

(1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.

(2) You must store all test result information in a way that protects confidentiality.

Subpart N--Problems in Alcohol Testing

Sec. 40.261 What is a refusal to take an alcohol test, and what are the consequences?

(a) As an employee, you are considered to have refused to take an alcohol test if you:

(1) Fail to appear for any test within a reasonable time, as determined by the employer, after being directed 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 C/TPA (see Sec. 40.241(b)(1));

(2) Fail to remain at the testing site until the testing process is complete;

(3) Fail to attempt to provide a saliva or breath specimen, as applicable, for any test required by this part or DOT agency regulations;

(4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see Sec. 40.265(c));

(5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at Sec. 40.265(c);

(6) Fail to sign the certification at Step 2 of the ATF (see Sec. 40.241(b)(7)); or

(7) Fail to cooperate with any part of the testing process.

(b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(c) As a BAT or an STT, or as the physician evaluating a "shy lung" situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

(d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

Sec. 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

(a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device).

(1) You must conduct a new screening test using a new screening device.

(2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.

(3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.

(b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

Sec. 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

(a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.

(b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.

(1) If the employee refuses to make the attempt, you must discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.

(2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.

(3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the ``Remarks" line of the ATF and immediately notify the DER.

(4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.

(5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.

(c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

(1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:

(i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;

(iii) That the physician must provide you with a signed statement of his or her conclusions; and

(iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:

(A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.

(B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.

(C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of ``situational anxiety" or hyperventilation.

(2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.

(3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

Sec. 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

(a) In the case of a screening test conducted on a saliva ASD:

(1) The STT reads the result either sooner than or later than the time allotted by the manufacturer (see Sec. 40.245(h));

(2) The device does not activate (see Sec. 40.245(g)); or (3) The device is used for a test after the expiration date printed on its package (see Sec. 40.245(a)).

(b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see Sec. 40.253(c), (e) and (f)).

(c) In the case of a confirmation test:

(1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see Sec. 40.251(a)(1));

(2) The BAT does not conduct an air blank before the confirmation test (see Sec. 40.253(a));

(3) There is not a 0.00 result on the air blank conducted before the confirmation test (see Sec. 40.253(a)(1) and (2));

(4) The EBT does not print the result (see Sec. 40.253(f)); or

(5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see Sec. 40.233(a)(1) and (d)).

Sec. 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:

(a) The BAT or STT does not sign the ATF (see Sec. 40.247(a)(1) and 40.255(a)(1)).

(b) The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (see Sec. 40.255(a)(2)).

(c) The BAT or STT uses a non-DOT form for the test (see Sec. 40.225(a)).

Sec. 40.271 How are alcohol testing problems corrected?

(a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.

(1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see Sec. 40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.

(2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the

EBT (e.g., manual operation) if you have been trained to do so in accordance with Sec. 40.213(c) .

(3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.

(4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.

(b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a ``correctable flaw" (see Sec. 40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the ``Remarks" line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.

(2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(c) If you cannot correct the problem, you must cancel the test.

Sec. 40.273 What is the effect of a cancelled alcohol test?

(a) A cancelled alcohol test is neither positive nor negative.

(1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).

(2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).

(3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.

(b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.

(c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.

(d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).

Sec. 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

(a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not "fatal flaws" or "correctable flaws" listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.

(c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations. Sec. 40.277 Are alcohol tests other than saliva or breath permitted under these regulations? No, other types of alcohol tests (e.g., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.