

U.S. Department Of Transportation
Federal Motor Carrier Safety Administration
49 CFR Part 382 and 40, as amended

**Anti-Drug Plan
and
Alcohol Misuse Prevention Plan**

Panama-Buena Vista Union School District

**Effective: November 14, 2023
Revised: Not Applicable**

Developed by:
ZEE Consulting & Associates

Anti-Drug Plan

- DOT/FMCSA

Alcohol Misuse Prevention Plan

- DOT/FMCSA

Appendix: A, B, C

- Drug/Alcohol Company Personnel
- Drug/Alcohol Service Providers
- Covered Position Employee List
- Supervisors of Covered Employees

Appendix: D, E, F, G

- Urine Specimen Collection Personnel & Procedures
- DOT Clearinghouse Responsibilities
- Medical Review Officer (MRO)
- Drug Testing Laboratory Procedures

Appendix: H, I, J, K, L, M, N, O

- Contractor Monitoring
- Drug Test Problems
- BAT Personnel and Procedures
- Alcohol Test Problems
- Service Agent Roles/Responsibilities
- SAP Procedures/Return To Work
- Public Interest Exclusions
- Alcohol Supplement Information

Appendix: P

- Forms with Instructions

Appendix: Q

- Supervisor/Manager Reasonable Suspicion Training Manual
- Employee Education/Awareness Manual
- DOT Employer and Employee Manuals
- DOT Clearinghouse Information

Appendix: R

- Code of Federal Regulations 49 CFR Part 382 and Part 40, as amended

Panama-Buena Vista Union School District ANTI-DRUG PLAN

SECTION I. INTRODUCTION

A. Prohibited Drug Policy.

1. **Panama-Buena Vista Union School District** (here after referred to as “the **District**”) has a long-standing commitment to maintain the highest standards for employee safety and health and the use of controlled substances is contrary to these high standards.
2. This policy is also to bring the District into compliance with federal law. The purpose of the anti-drug plan is to reduce accidents that result from the use of controlled substances, thereby reducing fatalities, injuries, and property damage.
3. The presence in the body of prohibited substances is not condoned.
4. *Those areas of the plan that appear in italic/underline print reflect this District's independent authority to require additional provisions with regard to the drug testing procedures.*
5. *The use or possession of alcoholic beverages while on District property, or in any District vehicle, or on District time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.*
6. *Contact the District's Designated Employer Representatives for any questions regarding the ANTI-DRUG PLAN.*

B. Implementation of Anti-Drug Plan.

1. The District has implemented the Federal Motor Carrier Safety Administration (FMCSA) Drug Testing Regulations as set forth in 49 CFR Part 382 and the Department of Transportation, Procedures for Transportation Workplace drug Testing Programs as set forth in 49 CFR Part 40, as amended.
2. The privacy/confidentiality of any covered employee subject to this plan must be maintained at all times.
3. Implementation of the anti-drug plan was effective on November 14, 2023.

C. Background.

1. The catalyst for the anti-drug plan is Title 49 Code of Federal Regulations (CFR) Part 382 which requires the motor carriers subject to 49 CFR Parts 382, 391, 392, and 395, and their contractors to test their employees for prohibited drugs under the following work-related conditions:
 - a. Pre-Employment
 - b. Post-Accident
 - c. Random
 - d. Reasonable Suspicion
 - e. Return-to-Duty and Follow-up
2. Title 49 CFR Part 40, as amended, specifies the procedures that must be followed by the District when conducting drug testing pursuant to regulations issued by agencies of the Department of Transportation (DOT).

D. Preemption Provisions.

1. Except as provided in paragraph 2 of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:
 - a. Compliance with both the State or local requirement in this part is not possible; or
 - b. Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.
2. This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

E. Definitions.

For purposes of this anti-drug plan the following definitions apply:

1. Accident – An incident requiring testing as defined under Part 382.303 involving a commercial motor vehicle. Each surviving driver will be tested as soon as practicable.

'382.303 - An accident involving a commercial motor vehicle has defined an "incident/accident," as follows:
 - a. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
 - b. Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (2) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle
2. Adulterated specimen – A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.
3. Affiliate – Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a Public Interest Exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a Public Interest Exclusion is in effect, is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.
4. Blind specimen or blind performance test specimen – 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.
5. Cancelled test – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
6. Chain of custody – 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).

7. Clearinghouse – The FMCSA Commercial Drivers' License Drug and Alcohol Clearinghouse is a web-based system (found at <https://clearinghouse.fmcsa.dot.gov>), which provides FMCSA and employers of commercial motor vehicle (CMV) drivers with the necessary tools to identify drivers who are prohibited from operating CMVs due to DOT drug and alcohol program violations.
8. Clearinghouse Query – A request submitted to the Clearinghouse to obtain information about DOT CDL drivers and any violation of DOT drug/alcohol testing requirements. Employers must retain for three (3) years a record of each query and all information received in response to each query made under this section.
 - a. Pre-employment Query – All employers must conduct a full query of the Clearinghouse prior to employing an individual to perform any DOT safety-sensitive function. Driver authorization is required electronically within the Clearinghouse to conduct a full query.
 - b. Annual Query – All DOT employers must conduct a query at least once per calendar year for all employees subject to controlled substance and alcohol testing under this part. The Annual Query may be initially conducted as a Limited Query to determine if any information exists in the Clearinghouse regarding the individual employee. No information about the driver will be released to an employer during a limited query. If information exists in the Clearinghouse for the individual employee, a full query is required.
 - c. Full Query – Specific consent is required from the employee to conduct a full query of their Clearinghouse record. Once consent is provided, the Clearinghouse will release information to the employer regarding any violations of DOT drug/alcohol testing regulations for that employee.
9. Collection container – A container into which the employee urinates to provide the specimen for a drug test.
10. Collection site – A place selected by the District where employees present themselves for the purpose of providing a urine specimen for a drug test.
11. 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.
12. Confirmation (or confirmatory) drug test – A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.
13. Confirmation (or confirmatory) validity test – A second test performed on a urine specimen to further support a validity test result.
14. Confirmed drug test – A confirmation test result received by an MRO from a laboratory.
15. Consortium/Third-party administrator (C/TPA) – A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the District's drug and alcohol testing programs. This term includes, but is not limited to, groups of District's who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "Companies" for purposes of this part.
16. Continuing education – Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.
17. Designated employer representative (DER) – An employee authorized by the District to take immediate action(s) to remove employees from safety-sensitive duties or cause employees to be removed from these covered duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the District, consistent with the requirements of this part. Service agents cannot act as DERs.

18. Dilute specimen – A specimen with creatinine and specific gravity values that is lower than expected for human urine.
19. DOT, The Department, DOT agency – These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.
20. Drugs – The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, and hydromorphone).
21. Employee – Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.
22. Employer – A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.
23. Error Correction Training – Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.
24. HHS – The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.
25. Initial drug test (also known as a "Screening drug test") – The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
26. Initial specimen validity test – The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.
27. Invalid drug test – The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.
28. Laboratory – 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; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.
29. Limit of Detection (LOD) – The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.
30. Limit of Quantitation – For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.
31. Medical Review Officer (MRO) – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by a District's drug testing program and evaluating medical explanations for certain drug test results.
32. Negative result – The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class is a valid specimen.

33. Office of Drug and Alcohol Policy and Compliance (ODAPC) – The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
34. Positive result – The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.
35. Primary specimen – In drug testing, 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.
36. Qualification Training – The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
37. Reconfirmed – The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.
38. Refresher Training – The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
39. Rejected for testing – The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.
40. Secretary – The Secretary of Transportation or the Secretary's designee.
41. Service agent – Any person or entity, other than an employee of the District, who provides services to Companies and/or employees in connection with DOT drug and alcohol testing requirements. 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 DOT qualifications, if applicable. Service agents are not employers for purposes of this part.
42. Shipping container – A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.
43. Specimen bottle – The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.
44. Split specimen – In drug testing, 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.
45. Split specimen collection – A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).
46. Stand-down – 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.
47. Substance Abuse Professional (SAP) – A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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

F. District Responsibilities.

The District is responsible for meeting all applicable requirements and procedures of parts 392 and 40, as amended. You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations. All agreements and arrangements, written or unwritten, between and among District and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

1. Drug Program Manager (DPM): Appendix A contains the name, address, and phone number of the responsible individual(s). The DPM or other District designated individual shall be responsible for the preparation of a drug testing anti-drug plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR Parts 382 and 40, as amended. The DPM shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling random drug testing and return-to-duty testing; maintaining a locked file system on drug testing results; and overseeing the employee assistance program (EAP) as it is defined in 49 CFR Part 382. The District shall ensure that all covered employees are aware of the provisions and coverage of the District's anti-drug plan.
2. Supervisors: District individuals responsible for observing the performance and behavior of employees; observation/documentation of events suggestive of Reasonable Suspicion; responsible for requests of second supervisor for substantiation and concurrence for Reasonable Suspicion testing, if applicable.
3. Employees: Each employee has the responsibility to be knowledgeable of the requirements of the District's anti-drug plan and to fully comply with the provisions of the plan.

G. DOT Tests versus Non-DOT Tests.

1. DOT tests must be completely separate from non-DOT tests in all respects.
2. DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. For example, you must discard any excess urine left over from a DOT test and collect a separate void for the subsequent non-DOT test.
3. Except as provided, the District will not perform any tests on DOT urine or breathe specimens other than those specifically authorized by this part or DOT agency regulations. For example, you may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.
4. The single exception is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (e.g., for glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.
5. No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as a District you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
6. You must not use the DOT CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies

crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.

H. Using a service agent to meet DOT drug and alcohol requirements.

1. A service agent may be used to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of Part 40, as amended.
2. The District hiring a service agent is responsible for ensuring that the service agents you use meet the qualifications set forth in this part (e.g., §40.121, as amended, for MROs). You may require service agents to show you documentation that they meet the requirements of this part (e.g., documentation of MRO qualifications required by §40.121(e), as amended).
3. The District remains responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which you're alleged noncompliance with Part 40, as amended, or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
4. The District must not permit a service agent to act as their DER.
5. The District is responsible for obtaining information required by this part from their service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations.

I. District responsibilities after receiving verified positive test results.

1. After receiving a verified positive drug test result, the District must immediately remove the employee involved from performing safety-sensitive functions. The District must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test.
2. When the District receives a verified adulterated or substituted drug test result, they must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. The District must take this action on receiving the initial report of the verified adulterated or substituted test result. Do not wait to receive the written report or the result of a split specimen test.
3. If the District receives an alcohol test result of 0.04 or higher, they must immediately remove the employee involved from performing safety-sensitive functions. If the District receives an alcohol test result of 0.02-0.39, they must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.
4. When an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, the District must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process under Subpart O of Part 40, as amended.
5. If the District receives a drug test result (MRO issued) indicating that the employee's specimen was a negative-dilute, the District will take the following action per §40.197, as amended:

*The District has determined, for all employees with a negative-dilute test result the employee is to be directed to **take another test immediately.*** Such recollections **must not** be collected under direct observation, unless there is another basis for use of direct observation (see §40.67(b) and

(c), as amended). This re-test requirement will be required for all forms of testing and applies to applicants and current employees alike.

The result of the second test – not that of the original test – becomes the test of record on which the District relies for purposes of this part.

If the second test is also negative-dilute, no further testing will take place. The District will record the final result as a “negative” test.

Employees directed to take another test, and decline to do so, will be listed as a **refusal** to test per DOT rules and regulations §40.197(g), as amended.

6. When the District receives a drug test result indicating that the employee's specimen was invalid and that a second collection must take place under direct observation, they must
 - a. Immediately direct the employee to provide a new specimen under direct observation.
 - b. Not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.
 - c. Not give any advance notice of this test requirement to the employee.
 - d. Instruct the collector to note on the CCF the same reason (e.g. random test, post-accident test) as for the original collection.
7. If the District receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), they must direct the employee to provide another specimen immediately.
8. The District may also be required to take additional actions required by DOT agency regulations.
9. The District must not alter a drug or alcohol test result transmitted to them by an MRO, BAT, or C/TPA.

J. Confirming drug and alcohol testing records of employees intended to perform safety-sensitive duties.

1. An employer must, after obtaining an employee's consent, request information about the employee listed in paragraph 2. of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for an employer for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this consent, the employer must not permit the employee to perform safety-sensitive functions.
2. The employer must request the information listed in this paragraph 2. from the DOT-FMCSA Clearinghouse:
 - a. Alcohol tests with a result of 0.04 or higher alcohol concentration;
 - b. Verified positive drug tests;
 - c. Refusals to be tested (including verified adulterated or substituted drug test results);
 - d. Other violations of DOT agency drug and alcohol testing regulations; and
 - e. With respect to any employee who violated a DOT drug and alcohol regulation, the new employer must get documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.
3. The information obtained from the Clearinghouse includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

4. The new employer must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.
5. If information is obtained that the employee has violated a DOT agency drug and alcohol regulation, the District must not use the employee to perform safety-sensitive functions unless information is obtained in the Clearinghouse that the employee has subsequently complied with the return-to-duty requirements of Subpart O of part 40, as amended, and DOT agency drug and alcohol regulations.
6. The District must provide, to each of the employers from whom information was requested under paragraph (2) of this section, written consent for the release of the information cited in paragraph (1) of this section.
7. The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. The previous employer must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.
8. If you are an employer from whom information is requested under paragraph (2) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.
9. As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.
10. As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (2)(e) and (5) of this section).

K. Consent or release forms in connection with the DOT drug and alcohol testing program.

An employer may not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug and alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

L. Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse (SOURCE: 81 FR 87725, Dec. 5, 2016, unless otherwise noted).

1. Drug and Alcohol Clearinghouse Queries (§382.701).

- (a) Pre-employment query required.
 - (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.

- (2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.
- (b) Annual query required.
 - (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.
 - (2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 1-2, for the instructions and 'Driver Consent for Annual Limited Query' form.
 - (3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.
- (c) Employer notification. If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.
- (d) Prohibition. No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:
 - (1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.
- (e) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 of this title and specified in the SAP report required by §40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.
 - (1) Recordkeeping required. Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

2. Driver consent to permit access to information in the Clearinghouse (§382.703).

- (a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.
- (b) Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:
 - (1) A verified positive, adulterated, or substituted controlled substances test result;
 - (2) An alcohol confirmation test with a concentration of 0.04 or higher;
 - (3) A refusal to submit to a test in violation of §382.211;
 - (4) An employer's report of actual knowledge, as defined at §382.107, of:
 - (i) On duty alcohol use pursuant to §382.205;
 - (ii) Pre-duty alcohol use pursuant to §382.207;
 - (iii) Alcohol use following an accident pursuant to §382.209; and
 - (iv) Controlled substance use pursuant to §382.213;
 - (5) A SAP report of the successful completion of the return-to-duty process;
 - (6) A negative return-to-duty test; and
 - (7) An employer's report of completion of follow-up testing.
- (c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.
- (d) A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).
- (e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with §382.701(c).

3. Reporting to the Clearinghouse (§382.705).

- (a) MROs.
 - (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:
 - (i) Verified positive, adulterated, or substituted controlled substances test results;
 - (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).
 - (2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:
 - (i) Reason for the test;

- (ii) Federal Drug Testing Custody and Control Form specimen ID number;
 - (iii) Driver's name, date of birth, and CDL number and State of issuance;
 - (iv) Employer's name, address, and USDOT number, if applicable;
 - (v) Date of the test;
 - (vi) Date of the verified result; and
 - (vii) Test result. The test result must be one of the following:
 - (A) Positive (including the controlled substance(s) identified);
 - (B) Refusal to test: Adulterated;
 - (C) Refusal to test: Substituted; or
 - (D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with §40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.
- (3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.
- (b) Employers.
- (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:
 - (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
 - (ii) A negative return-to-duty test result;
 - (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
 - (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
 - (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title.
 - (2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:
 - (i) Reason for the test;
 - (ii) Driver's name, date of birth, and CDL number and State of issuance;
 - (iii) Employer name, address, and USDOT number;
 - (iv) Date of the test;

- (v) Date the result was reported; and
 - (vi) Test result. The test result must be one of the following:
 - (A) Negative (only required for return-to-duty tests administered in accordance with §382.309);
 - (B) Positive; or
 - (C) Refusal to take a test.
- (3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:
- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
 - (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
 - (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
 - (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.
- (4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:
- (i) On-duty alcohol use pursuant to §382.205;
 - (ii) Pre-duty alcohol use pursuant to §382.207;
 - (iii) Alcohol use following an accident pursuant to §382.209; and
 - (iv) Controlled substance use pursuant to §382.213.
- (5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:
- (i) Driver's name, date of birth, CDL number and State of issuance;
 - (ii) Employer name, address, and USDOT number, if applicable;
 - (iii) Date the employer obtained actual knowledge of the violation;
 - (iv) Witnesses to the violation, if any, including contact information;
 - (v) Description of the violation;
 - (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee

- statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and
- (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.
- (6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.
- (c) C/TPAs. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of this section.
- (d) SAPs.
- (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:
 - (i) SAPs name, address, and telephone number;
 - (ii) Driver's name, date of birth, and CDL number and State of issuance;
 - (iii) Date of the initial substance-abuse-professional assessment; and
 - (iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.
 - (2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.
- (e) Reporting truthfully and accurately. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

REPORTING ENTITIES AND CIRCUMSTANCES

Reporting entity	When information will be reported to clearinghouse
Prospective/Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
MRO	—Verified positive, adulterated, or substituted drug test result. —Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	—Identification of driver and date the initial assessment was initiated. —Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

4. Notice to drivers of entry, revision, removal, or release of information (§382.707).

- (a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.
- (b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.
- (c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

5. Drivers' access to information in the Clearinghouse (§382.709).

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

6. Clearinghouse registration (§382.711).

- (a) Clearinghouse registration required. Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.
- (b) Employers.
 - (1) Employer Clearinghouse registration must include:
 - (i) Name, address, and telephone number;
 - (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
 - (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.
 - (2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.
 - (3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.
- (c) MROs and SAPs. Each MRO or SAP must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
 - (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
 - (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.
- (d) C/TPAs and other service agents. Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
 - (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
 - (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

7. Duration, cancellation, and revocation of access (§382.713).

- (a) Term. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.
- (b) Cancellation. FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.
- (c) Revocation. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the

Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

8. Authorization to enter information into the Clearinghouse (§382.715).

- (a) C/TPAs. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.
- (b) SAPs. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

9. Procedures for correcting information in the database (§382.717).

- (a) Petitions limited to inaccurately reported information.
 - (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.
 - (2) Exceptions.
 - (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.
 - (ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in §382.705(b)(5).
 - (iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).
- (b) Petition. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:
 - (1) The petitioner's name, address, telephone number, and CDL number and State of issuance;
 - (2) Detailed description of the basis for the allegation that the information is not accurate; and
 - (3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.
- (c) Submission of petition. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE, Washington, DC 20590.
- (d) Notice of decision. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.
- (e) Request for expedited treatment.

- (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.
 - (2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.
- (f) Administrative review.
- (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.
 - (2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590.
 - (3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.
 - (4) FMCSA will complete its administrative review no later than 30 days after receiving the drivers' request for review. The Associate Administrator's decision will constitute the final Agency action.
- (g) Subsequent notification to employers. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

9. Availability and removal of information (§382.719).

- (a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:
- (1) The SAP reports to the Clearinghouse the information required in §382.705(d);
 - (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
 - (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title; and
 - (4) Five years have passed since the date of the violation determination.
- (b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.
- (c) Exceptions.
- (1) Within 2 business days of granting a request for removal pursuant to §382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.

(2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) Driver information remains available. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

10. Fees (382.721).

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

11. Unauthorized access or use prohibited (§382.723).

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at §382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

12. Access by State licensing authorities (§382.725).

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

13. Penalties (§382.727).

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

SECTION II. DRUG TESTING REQUIREMENTS

A. Applicability.

1. Individuals Subject to Drug Testing: Any applicant/employee who would perform on a pipeline, an operating, maintenance, or emergency response function regulated by Part 382, 391, or 395, would be subject to drug testing under this program. The person may be employed by the motor carrier, be a contractor engaged by the motor carrier, or be employed by such a contractor. Refer to Appendix C for specific employee titles subject to testing under this program. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 5-6, for the instructions 'FMCSA Drug & Alcohol Testing Procedures for Covered Employees' form.
2. Procedure for Notifying Employees: This anti-drug testing plan shall be included in the appropriate District manual. Upon receipt of the District's anti-drug plan, each manager shall post the plan in a prominent location that is readily accessible to all covered employees. All covered employees will be provided a condensed/summarized version of the plan. This document must indicate where an employee may obtain the entire plan for review. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 7-8, for the instructions and 'Employee Training, Orientation & Education' form.
3. Substances for Which Testing Must Be Conducted: The District shall test each employee who performs a function listed in Appendix C for evidence of the following substances:

Marijuana, Cocaine, Opioids (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, and hydromorphone), Phencyclidine (PCP), and Amphetamines (including MDMA/MDA, aka Ecstasy).

B. Drug Tests Required.

1. Pre-Employment/Pre-Assignment Testing: A pre-employment drug test must be conducted before an individual is hired or contracted and when an individual is transferred/promoted from a non-covered to a covered position. This includes when an individual switches back and forth from a covered position to a non-covered position and back again (i.e., going in and out of the random testing program). This also applies to employees returning from a leave of absence who have not been participating in the anti-drug plan and subject to the random selection process. A negative test result is required prior to performing covered functions.
 - a. Pre-Employment/Pre-Assignment Alcohol testing – DOT supports and allows employers (except under USCG and RSPA rules) to require breath alcohol testing for post-offer final candidates/applicants. Under this policy, the District has determined:

Pre-employment (post-offer) breath alcohol testing will be conducted under this policy and such testing will be conducted for all DOT-applicants.

Any final candidate who has refused to submit to pre-employment breath alcohol or drug testing or one who is disqualified for employment due to a confirmed positive test will not be employed. There will be no exceptions even for otherwise well-qualified applicants or hard-to-fill positions. Disqualified applicants may reapply six months from date of disqualification.
 - b. Pre-assignment breath alcohol testing is required for any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing and is transferred in or returning to a DOT-regulated position within the District, including any employee who will operate a commercial vehicle regulated by Part 382, 391, or 395. This does not include clerical, accounting, or other functions not subject to Part 382, 391 or 395.

This testing and its consequences must comply with requirements of 49 CFR Part 40, as amended.

2. Post-Accident Testing:

- a. The District shall promptly determine if the employee's performance contributed to the "accident" or cannot be completely discounted as a contributing factor to the accident. Each of these employees shall be drug tested as soon as possible but no later than 32 hours after the accident. If a DOT drug test is not administered within 32 hours following the accident, the District shall cease all attempts to conduct a drug test and shall prepare and maintain on file written documentation indicating why the drug test was not conducted. The District must take all reasonable steps to obtain a urine specimen from an employee after an accident, as defined above, but any injury should be treated first.
- b. The following steps will be used to guide the supervisor to a satisfactory outcome in a post-accident situation. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 9-10, for the instructions and 'Post-Accident Drug & Alcohol' form.
 - (1) Verify the post-accident decision. Does the definition of accident in Section I apply to the current situation. Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident? Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? Before proceeding further, obtain approval from the division manager/department head or designee to proceed with post-accident testing.
 - (2) Isolate and inform the employee. Remove the employee from the covered position or work place. Explain that you have reason to believe their performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident.
 - (3) Transport the employee. The potentially affected employee will not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, acDistricting the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test result or to acquire "clean" urine from another person.
 - (4) Document the events. Record the activity performed that supports the determination to conduct a post-accident test. This documentation of the employee's activity should be prepared and signed by the supervisor within 24 hours of the accident or before the results of the tests are released, whichever is earlier, if possible.
- c. A District official must take all reasonable steps to obtain a urine sample from an employee following an accident.
 - (1) In the case of a conscious, but hospitalized employee, the District should request that the hospital or medical facility obtain the sample from the employee.
 - (2) If an employee is injured, unconscious (employee is unable to communicate), or otherwise unable to evidence consent (employee is unable to sign custody and control form) to the drug test, all reasonable steps must be taken to obtain a urine sample from the employee.
 - (3) If an employee is conscious (employee can communicate) and he/she is able to evidence consent (employee able to sign custody and control form) to the drug test and is able to void normally (without aid of catheters) the specimen shall be collected.
 - (4) If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional), and refuses to be tested, the employee must be removed from duty in accordance with 49 CFR Part 382.

- (5) The District shall develop written procedures/guidelines for employees and supervisors who are involved in accident situations that require post-accident testing.
- (6) The District may decide not to test under the post-accident provisions, but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use.

3. Random Testing:

- a. The primary purposes of random testing are to deter prohibited drug use and to ensure a drug free workforce. DOT regulations require that covered employees shall be subject to drug testing on an unannounced and random basis. The District shall conduct a number of tests equal to at least **the current annual DOT minimum percentage requirement** of all covered employees each calendar year, spread reasonably over a 12-month period. The District will conduct random selection and testing on at least a quarterly schedule basis.
- b. The following is a discussion of the key aspects of the random testing selection process.
 - (1) Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
 - (2) Employees shall be selected for testing by using a computer-based random number generator or equivalent random selection method that is matched with an employee's social security number or employee ID number.
 - (3) The process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of collection.
 - (4) Employees will be selected for random testing based on the number of covered employees at the time and the necessary testing rate.
 - (5) Specimen collection will be conducted on different days of the week throughout the annual cycle to prevent employees from matching their drug use patterns to the schedule for collection.
- c. Steps for random testing:
 - (1) The DPM (or designee), on a pre-determined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
 - (2) The DPM (or designee) shall ensure that the list of social security numbers or employee identification numbers will identify the correct employees who are to be randomly tested during the testing cycle.
 - (3) It is the intent of this plan to notify employees of their selection for random testing after they have reported for duty.
 - (a) The list of employees to be tested will be provided to the appropriate division manager, department head, or supervisor.
 - (b) The list of employees selected will be retained by the DPM (or designee) in a secure location.

- d. Notification of employees:
 - (1) The appropriate manager/supervisor will notify the employee to be tested to report to the manager/supervisor's office at a specified time.
 - (2) The employee will not be notified of the test until after reporting for duty.
 - (3) Employees shall report immediately to the collection site within the allowable time determined by the District official, once notified by the appropriate District official.

4. Reasonable Suspicion Testing:

- a. Reasonable Suspicion testing is designed to provide management with a tool (in conjunction with supervisor training on the signs and symptoms of drug use) to identify drug affected employees who may pose a danger to themselves and others in their job performance. Employees may be at work in a condition that raises concern regarding their safety or productivity. Supervisors must then make a decision as to whether there is Reasonable Suspicion to believe an employee is using or has used a prohibited drug.
- b. The decision to test must be based on a reasonable and articulate belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence by both supervisors can be accomplished by phone, by discussions a few hours later, or by having another supervisor travel to the job site, if only one supervisor is available at that particular job site. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 7-8, for the instructions and 'Reasonable Suspicion Drug/Alcohol Testing' form.

NOTE: For small companies with 50 or fewer employees subject to testing only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test.

- c. In making a determination of Reasonable Suspicion, the factors to be considered include, but are not limited to the following:
 - (1) Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment-related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of drug related behavior on or off the work site.
 - (2) Physical signs and symptoms consistent with substance abuse.
 - (3) Evidence of illegal substance use, possession, sale, or delivery while on duty.
 - (4) Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.
- d. The following steps will be used to guide the supervisor to a satisfactory outcome in a Reasonable Suspicion situation.
 - (1) Verify the Reasonable Suspicion decision. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for Reasonable Suspicion referral. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was substance abuse related? On what basis did they reach their conclusion? Before proceeding further, obtain approval from the division manager/department head or designee to proceed with Reasonable Suspicion testing.

- (2) Isolate and inform the employee. Remove the employee from the work location. Explain that there is Reasonable Suspicion to believe the employee's performance is being affected by some substance. Ask the employee to explain the suspected behavior and to describe the events that took place from their perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may or may not deter you from asking for a urine sample. If there is still a reasonable belief that drugs are a factor in the situation/incident, a request for testing should be made; if no reasonable belief is determined then no request for testing should not be made. If the decision to test is made, inform the employee that they are being requested to acDistrict the appropriate official to the specimen collection site to provide a urine specimen. Inform the employee of the consequences of refusal to submit to testing.
- (3) Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In all cases, a Reasonable Suspicion decision must be made by two of the employee's supervisors. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the Reasonable Suspicion determination.
- (4) Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, acDistricting the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test result or to acquire "clean" urine from another person.
- (5) Document the events. Record the behavioral signs and symptoms that support the determination to conduct a Reasonable Suspicion test. This documentation of the employee's conduct should be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.
- (6) Denial should be an expected reaction. If a person knows they will test positive, they may give many explanations and protestations, wanting to avoid drug testing. If they are not under the influence or affected by a prohibited drug, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to provide a urine specimen is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.
- (7) Following collection. After returning from the collection site, the employee shall not perform duties pending the receipt of the drug test results. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the Reasonable Suspicion belief that they may be under the influence of a drug. If the employee insists on driving, the proper local enforcement authority should be notified that an employee who we believe may be under the influence of a drug is leaving the District premises driving a motor vehicle.

5. Return-to-Duty Testing:

- a. A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has had a face-to-face evaluation conducted by a substance abuse professional (SAP), and has properly followed any prescribed assistance. The employer will advise an employee who engages in prohibited activities of all available resources for evaluation and treatment including the names, addresses, and telephone numbers of qualified SAPs. An employee demonstrating successful compliance of the SAP's prescribed treatment plan is not a guarantee of employment; these requirements are preconditions an employee must meet in order to be considered for hiring or reinstatement to a DOT covered function by an employer.

6. Follow-up testing:

- a. A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. These tests shall be conducted using the directly observed collection method. The number and frequency of such follow-up testing shall be determined by a substance abuse professional (SAP), but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional (SAP), to be performed in accordance with 49 CFR Part 40, as amended. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional (SAP) may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional (SAP) determines that such testing is no longer necessary.

SECTION III. USE OF EMPLOYEE WHO FAILS OR REFUSES A DRUG TEST

A. **General.**

Compliance with this drug-testing plan is a condition of employment. Refusal to take a required drug test or failure of a drug test shall result in removal from performing covered functions may be subject to disciplinary action up to and including termination, pursuant to District policy.

B. **Prohibitions on Use.**

The District shall not use, in a function covered by Part 382, anyone who:

1. Fails a drug test as verified by the MRO, or
2. Refuses to take a drug test required by this plan.

C. **Options for Return-to-Duty.**

An employee may be given an opportunity, in lieu of termination, to retain his or her employment, provided they first:

1. Have been evaluated face-to-face by a SAP, followed any recommendations for drug misuse assistance, if needed,
2. Pass a DOT drug test, and
3. Not fail a drug test required by Part 382 after returning to duty.

SECTION IV. URINE COLLECTION PERSONNEL

A. **Who may collect urine specimens for DOT drug testing? (§40.31, as amended)**

1. Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
2. A collector must meet training requirements of §40.33, as amended.
3. 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.

4. 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.

B. Collector Training Requirements.

1. Basic information.

You must be knowledgeable about this Part 40, as amended, 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.

2. Qualification training.

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

- (a) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
- (b) "Problem" collections (e.g., situations like "shy bladder" and attempts to tamper with a specimen);
- (c) Fatal flaws, correctable flaws, and how to correct problems in collections; and
- (d) 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.

3. 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.

- (a) 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.
- (b) 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 a qualified collector 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.

4. Refresher training.

No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (2) and (3) of this section, you must complete refresher training that meets all the requirements of paragraphs (2) and (3) of this section.

5. 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.

- (a) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (3)(a) of this section.
- (b) 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.
- (c) 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."

6. 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.

C. Information about the DER employers must provide to collectors.

The employer 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.

SECTION V. COLLECTION SITES, FORMS, AND EQUIPMENT

A. Collection Sites.

- 1. A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- 2. If you are operating a collection site, you must ensure that it meets the security requirements of §40.43, as amended.
- 3. 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.
- 4. Your collection site must include a facility for urination described in either paragraph (5) or paragraph (6) of this section.
- 5. 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.
 - (a) 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.
 - (b) 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.
- 6. The second type of facility for urination that a collection site may include is a multi-stall restroom.
 - (a) 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.
 - (b) 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 §40.69, as amended, for procedures). This is the only circumstance in which you may conduct a monitored collection.
 - (c) No one but the employee may be present in the multi-stall 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.
7. 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.

B. Collection Site Security.

1. 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.
2. As a collector, you must do the following before each collection to deter tampering with specimens:
 - (a) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);
 - (b) Ensure that the water in the toilet is blue;
 - (c) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
 - (d) Inspect the site to ensure that no foreign or unauthorized substances are present;
 - (e) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;
 - (f) Ensure that undetected access (e.g., through a door not in your view) is not possible;
 - (g) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
 - (h) Recheck items in paragraphs (a) through (g) of this section following each collection to ensure the site's continued integrity.
3. 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:
 - (a) Access to collection materials and specimens is effectively restricted; and
 - (b) 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.
4. As a collector, you must take the following additional steps to ensure security during the collection process:
 - (a) 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 §40.193(b), as amended), you may conduct a collection for another employee.
 - (b) 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.

- (c) 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.
 - (d) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
 - (e) Maintain personal control over each specimen and CCF throughout the collection process.
5. 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.
- (a) 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 (5).
 - (b) 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.
 - (c) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
 - (d) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
6. If you are operating a collection site, you must minimize the number of persons handling specimens.

C. Drug Collection Forms

1. 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. (www.workplace.samhsa.gov)
2. You must not use a non-Federal form or an expired Federal form to conduct a DOT urine collection. A laboratory, C/TPA or other party that provides CCFs to employers, collections sites, or other customers must not provide copies of an expired Federal form to these participants. You must affirmatively notify these participants that they must not use an expired Federal form.
3. A participant in the DOT drug-testing program is not permitted to modify or revise the CCF except as follows:
 - (a) 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.
 - (b) 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 District 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. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.
 - (c) An employer may add the name of the DOT agency under whose authority the test occurred as part of the employer information.
 - (d) A collector 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.

4. 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.
5. An employer 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.

D. Using the DOT form for non-Federal collections.

1. You are prohibited from using the CCF for non-Federal 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.
2. Form Use Errors
 - a. 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.
 - b. The use of the non-Federal form is a "correctable flaw." As an MRO, to correct the problem you must follow the procedures of §40.205(b)(2), as amended.

E. Materials for urine collection.

For each DOT drug test, a collection kit meeting the following requirements must be used.

1. Collection Container
 - a. Single-use containers made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
 - b. Must have graduated volume markings clearly noting levels of 45 mL and above.
 - c. Must have a temperature strip providing graduated temperature readings 32-38° C/90-100° F, that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.
 - d. Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peel able, sealed lid or other easily visible tamper-evident system.
 - e. May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.
2. Plastic Specimen Bottles
 - a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
 - b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.
 - c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.

- d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
 - e. Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container; or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peel able, sealed lid or other easily visible tamper-evident system.
 - f. Plastic material must be leach resistant.
3. Leak-Resistant Plastic Bag
- a. Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
 - b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.
4. Absorbent material
- Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.
5. Shipping Container
- a. Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
 - b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.
 - c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

SECTION VI. DRUG TESTING LABORATORY

A. Drug Testing Laboratory

- 1. Each operator shall use for the drug testing required by this part only drug testing laboratories certified by the Department of Health and Human Services under the DOT Procedures.
- 2. The drug testing laboratory must permit:
 - a. Inspections by the operator before the laboratory is awarded a testing contract; and
 - b. Unannounced inspections, including examination of records, at any time, by the operator, the Administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency.
- 3. The laboratory shall provide services in accordance with Part 40, as amended and Part 382. The name and address of each NIDA laboratory used by the District is contained in [Appendix B](#).

B. Laboratory Procedures. These procedures are addressed in [Appendix G](#).

SECTION VII. BLIND PERFORMANCE TEST PROCEDURES

A. General.

1. An employer or C/TPA with an aggregate of 2000 or more DOT-covered employees must send blind specimens to the laboratories used. If the District has an aggregate of fewer than 2000 DOT-covered employees, they are not required to provide blind specimens. **The District is exempt from blind performance testing requirements.**

SECTION VIII. MEDICAL REVIEW OFFICER

A. To be qualified to act as an MRO in the DOT drug-testing program, the individual must meet each of the requirements of this section:

1. Credentials.

The MRO must be a licensed physician (Doctor of Medicine or Osteopathy). If s/he is a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meets the other requirements of this section, s/he is authorized to perform MRO services with respect to all covered employees, where ever they are located. For example, if you are licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, you are not limited to performing MRO functions in that state or province, and you may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.

2. Basic knowledge.

The MRO must be knowledgeable in the following areas:

- (a) S/He must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
- (b) S/He must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.
- (c) S/He must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to employers for whom s/he evaluates drug test results, and s/he must keep current on any changes to these materials. The DOT MRO Guidelines document is available from ODAPC

3. Qualification training.

The MRO must receive qualification training meeting the requirements of this paragraph.

- (a) Qualification training must provide instruction on the following subjects:

- (i) Collection procedures for urine specimens;
- (ii) Chain of custody, reporting, and recordkeeping;
- (iii) Interpretation of drug and validity tests results;
- (iv) The role and responsibilities of the MRO in the DOT drug testing program;
- (v) The interaction with other participants in the program (e.g., DERs, SAPs); and
- (vi) Provisions of this part and DOT agency rules applying to employers for whom test results are reviewed, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO

functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.

- (b) Following completion of qualification training under paragraph (3)(a) of this section, s/he must satisfactorily complete an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (3)(a) of this section.
- (c) During each five-year period from the date the MRO satisfactorily completed the examination under paragraph (3)(b) of this section or has satisfactorily completed the required continuing education requirements which were mandatory prior to October 1, 2010, the MRO must complete requalification training which meets the requirements under paragraph (3)(a) of this section and satisfactorily complete an examination which meets the requirements under paragraph (3)(b) of this section.
- (d) An MRO is not required to be trained by an HHS-approved MRO training organization as long as the MRO meets DOT qualification and requalification training requirements.

4. 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.

NOTE: For complete MRO procedures see [Appendix F](#).

SECTION IX. SUBSTANCE ABUSE PROFESSIONAL (SAP)

A. SAP Qualifications.

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

1. Credentials.

The SAP must have one of the following credentials:

- (a) Be a licensed physician (Doctor of Medicine or Osteopathy);
- (b) Be a licensed or certified social worker;
- (c) Be a licensed or certified psychologist;
- (d) Be a licensed or certified employee assistance professional; or
- (e) Be a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

2. Basic knowledge.

The SAP must be knowledgeable in the following areas:

- (a) Knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
- (b) Knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.

- (c) Knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines, and must keep current on any changes to these materials. These documents 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 (<http://www.dot.gov/ost/dapc>).

3. Qualification training.

A SAP must receive qualification training meeting the requirements of this paragraph.

- (a) Qualification training must provide instruction on the following subjects:
 - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
 - (ii) 49 CFR Part 40, as amended and DOT agency drug and alcohol testing rules;
 - (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
 - (v) SAP qualifications and prohibitions;
 - (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
 - (viii) Reporting and recordkeeping requirements;
 - (ix) Issues that SAPs confront in carrying out their duties under the program.
- (b) Following the completion of qualification training under paragraph (c)(1) of this section, he must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (c) The following is the schedule for qualification training which must be met:
 - (i) If you became a SAP before August 1, 2001, you must meet the qualification training requirement no later than December 31, 2003.
 - (ii) If you become a SAP between August 1, 2001, and December 31, 2003, you must meet the qualification training requirement no later than December 31, 2003.
 - (iii) If you become a SAP on or after January 1, 2004, you must meet the qualification training requirement before you begin to perform SAP functions.

4. Continuing education.

During each three-year period from the date on which the SAP satisfactorily completes the examination under paragraph (c)(2) of this section, he must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.

- (a) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments

in SAP practice, pertaining to the DOT program, since the time they met the qualification training requirements of this section.

- (b) The continuing education activities must include document able assessment tools to assist the SAP in determining whether you have adequately learned the material.

5. Documentation.

Documentation must be maintained showing that the SAP currently meets all requirements of this section. He must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

B. SAP Reporting to the Clearinghouse.

The SAP reports information on a driver who has entered the SAP program. The information reported includes the date of completion of the initial assessment and the date the SAP determines that the driver is eligible for Return-to-Duty testing.

NOTE: For complete responsibilities of the Substance Abuse Professional see [Appendix M](#).

SECTION X. SPLIT SPECIMEN TESTS

A. Request by an employee to conduct a test of a split specimen.

1. When the MRO has notified the employee that he/she has a verified positive drug test or refusal to test because of adulteration or substitution, the employee has 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If the employee makes this request to the MRO within 72 hours, he triggers the requirements of this section for a test of the split specimen.
2. If the employee does not request a test of the split specimen within 72 hours, he may present to the MRO
 - (a) Information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented him from making a timely request.
 - (b) If the MRO concludes from the employee's information that there was a legitimate reason for the employee's failure to contact him within 72 hours, he must direct that the test of the split specimen take place, just as you would when there is a timely request.
3. When the employee makes a timely request for a test of the split specimen under paragraphs 1 and 2 of this section, the MRO must immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. The MRO must also document the date and time of the employee's request.

B. Responsibility for paying for the test of a split specimen.

1. The employer is responsible for making sure (e.g., by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §§40.175-40.185, as amended, in a timely manner, once the employee has made a timely request for a test of the split specimen.
2. The employer must not condition his compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse the employer for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must ensure that the test takes place in a timely manner, even though this means that you pay for it.

3. The employer may seek payment or reimbursement of all or part of the cost of the split specimen from the employee (e.g., through your written District policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

C. Steps the first laboratory takes with a split specimen.

1. The laboratory at which the primary and split specimen first arrives, must check to see whether the split specimen is available for testing.
2. If the split specimen is unavailable or appears insufficient, the lab must then do the following:
 - (a) Continue the testing process for the primary specimen as you would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.
 - (b) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information as you can about the cause of the unavailability.
3. The laboratory that tested the primary specimen is not authorized to open the split specimen under any circumstances (except when the split specimen is re-designated as provided in §40.83, as amended).
4. After receiving written notice from the MRO instructing the lab to send the split specimen to another HHS-certified laboratory, the following items must be forwarded to the second laboratory:
 - (a) The split specimen in its original specimen bottle, with the seal intact;
 - (b) A copy of the MRO's written request; and
 - (c) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.
5. No information about the employee's identity is to be sent to the second laboratory. Inadvertent disclosure does not, however, cause a fatal flaw.
6. This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split specimen. That decision is left to the parties involved.

D. The second laboratories responsibilities with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite.

1. The laboratory testing the split specimen must test the split specimen for the drug(s)/drug metabolite(s) detected in the primary specimen.
2. This test must be done without regard to the cutoff concentrations of §40.87, as amended.
3. If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported positive in the primary specimen, the lab must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). The lab should conduct the same validity tests as you would conduct on a primary specimen set forth in §40.91, as amended.
4. In addition, if the test fails to reconfirm the presence of the drugs/drugs metabolites or validity criteria that were reported in the primary specimen, the lab may transmit the specimen or an aliquot of it to another HHS-certified laboratory that will conduct another reconfirmation test.

E. The second laboratories responsibilities with the split specimen when it is tested to reconfirm an adulterated test result.

The laboratory testing the split specimen must test for the adulterant detected in the primary specimen, using the criteria of §40.95, as amended, just as would be done for a primary specimen. The result of the primary specimen is reconfirmed if the split specimen meets these criteria.

F. The second laboratories responsibilities with the split specimen when it is tested to reconfirm a substituted test result.

The laboratory testing the split specimen must test the split specimen using the criteria of §40.93(b), as amended, just as would be done for a primary specimen. The result of the primary specimen is reconfirmed if the split specimen meets these criteria.

G. Laboratories reporting requirements to MROs regarding split specimen results.

1. The laboratory responsible for testing the split specimen must report split specimen test results by checking the "Reconfirmed" box or the "Failed to Reconfirm" box (Step 5(b)) on Copy 1 of the CCF.
2. If the lab checked the "Failed to Reconfirm" box, one of the following statements must be included (as appropriate) on the "Reason" line (Step 5(b)):
 - (a) "Drug(s)/Drug Metabolite(s) Not Detected."
 - (b) "Adulterant not found within criteria."
 - (c) "Specimen not consistent with substitution criteria [specify creatinine, specific gravity, or both]"
 - (d) "Specimen not available for testing."
3. The laboratory certifying scientist must enter their name, sign, and date the CCF.

H. Laboratory reporting of split specimen results.

1. The laboratory testing the split specimen must report the results directly, and only, to the MRO at his or her place of business. They must not report results to or through the DER or another service agent (e.g., a C/TPA).
2. The lab 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.
3. The lab must transmit the result to the MRO immediately, preferably on the same day or next business day as the result is signed and released.

I. MRO's responsibility with split specimen laboratory results.

The MRO must take the following actions when a laboratory reports the following results of split specimen tests:

1. Reconfirmed.
 - (a) In the case of a reconfirmed positive test for a drug or drug metabolite, report the reconfirmation to the DER and the employee.
 - (b) In the case of a reconfirmed adulterated or substituted result, report to the DER and the employee that the specimen was adulterated or substituted, either of which constitutes a refusal to test. Therefore, "refusal to test" is the final result.
2. Failed to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected.
 - (a) Report to the DER and the employee that both tests must be cancelled.

- (b) Using the format in Appendix D to this part, inform ODAPC of the failure to reconfirm.
- 3. Failed to Reconfirm: Adulteration or Substitution (as appropriate) Criteria Not Met.
 - (a) Report to the DER and the employee that both tests must be cancelled.
 - (b) Using the format in Appendix D to this part, inform ODAPC of the failure to reconfirm.
- 4. Failed to Reconfirm: Specimen not Available for Testing.
 - (a) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.
 - (b) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
 - (c) Using the format in Appendix D to this part, notify ODAPC of the failure to reconfirm.
- 5. Failed to Reconfirm: Specimen Results Invalid.
 - (a) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.
 - (b) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
 - (c) Using the format in Appendix D to Part 40, as amended, notify ODAPC of the failure to reconfirm.
- 6. Failed to Reconfirm: Split Specimen Adulterated.
 - (a) Contact of employee and inform the employee that the laboratory has determined that his split specimen is adulterated.
 - (b) Follow the procedures of §40.145, as amended, to determine if there is a legitimate medical explanation for the laboratory finding of adulteration.
 - (c) If you determine that there is a legitimate medical explanation for the adulterated test result, report to the DER and the employee that the test is cancelled. Using the format in Appendix D to Part 40, as amended, notify ODAPC of the result.
 - (d) If you determine that there is not a legitimate medical explanation for the adulterated test result, take the following steps:
 - (i) Report the test to the DER and the employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen also is present in the primary specimen.
 - (ii) Except that the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §§40.153, 40.171, 40.179, and 40.185, as amended.
 - (iii) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen, report your result to the MRO on a photocopy of Copy 1 of the CCF.
 - (iv) If the test of the specimen reconfirms the adulterant finding of the split specimen, the MRO must report the test result as a refusal as provided in §40.187(a)(2), as amended.

- (v) If the test of the primary specimen fails to reconfirm the adulteration finding of the split specimen, the MRO must cancel the test. Follow the procedures of paragraph 5 of this section in this situation.
- 7. The MRO must include his name, sign and date (Step 7) Copy 2 of the CCF.
- 8. Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see §40.163, as amended) to the employer and keep a copy for your records. Transmit the document as provided in §40.167, as amended.
- 9. For positive drug test results and MRO-determined refusals to test, the MRO will report information as follows to the Clearinghouse:
 - a. Reason for the test;
 - b. Federal Drug Testing Chain of Custody Form (CCF) specimen ID number;
 - c. Driver's name, date of birth, and CDL number and State of issuance;
 - d. Employer's name, address, and USDOT Number, if applicable;
 - e. Date of the test and date of the verified result;
 - f. Test result;
 - g. In the case of an adulterated specimen, the adulterant/reason must also be provided.
- 10. If an MRO changes a verified drug test, the MRO will submit that change to the Clearinghouse within one business day of making the change in the reported results.

SECTION XI. RETENTION OF SAMPLES

A. General.

Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days.

B. Retention Period.

- 1. Within this 365 day period, the employee or designated representative, FMCSA or other state agencies with jurisdiction, or the District may request in writing that the sample be retained for an additional period.
- 2. If the laboratory does not receive the request to retain the sample within the 365-day period, the sample may be discarded.

SECTION XII. RETESTING OF SAMPLES

A. General.

An employee/applicant may request in writing to the MRO a retest of the sample within 60 days of notification of a positive test result from the MRO.

B. Retest Provisions.

The employee may specify that the specimen be retested by the original laboratory or sent to another certified laboratory. The employee may be required to pay in advance for the cost of the shipment and reanalysis of the sample. The employee will be reimbursed for the costs incurred in the reanalysis if the

retest of the specimen is negative. If the employee requests a retest at a second laboratory, then the original laboratory must follow the approved custody and control procedures in transferring a portion of the specimen.

C. Detection Levels.

Because some analysis may deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

SECTION XIII. EMPLOYEE ASSISTANCE PROGRAM (EAP)

A. Scope of Program.

The EAP will provide education and training on drug use to all employees. The education shall include:

1. Informational material displayed on bulletin boards, employee break rooms, locker rooms, etc., and distributed to employees.
2. A community service hot-line telephone number for employee assistance displayed on bulletin boards and distributed to employees, and
3. Distribution of the District's policy regarding the use of prohibited drugs to all new employees. The policy shall be displayed in prominent places throughout the District (i.e., employee bulletin board, break room, locker rooms).

B. Supervisor Training.

1. Supervisory personnel responsible for those employees covered under Part 382 will receive training under the anti-drug plan. The training shall include at least one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. This training shall be for supervisors who may determine whether an employee must be drug tested for Reasonable Suspicion.

SECTION XIV. RECORDKEEPING PROCEDURES

A. General.

1. The DPM (or designee) shall maintain a locked file system that will contain drug test results. This file shall be maintained as Confidential. Employee files shall be handled on strict "need to know" basis.
2. Drug tests results shall not be included in personnel files. Information regarding an individual's drug testing result or rehabilitation may be released only upon written consent of the individual, except:
 - a. Such information must be released regardless of consent to FMCSA or other government agency as a part of an accident investigation;
 - b. Such information may be disclosed regardless of consent in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a verified positive drug test.

B. Statistical Data.

Statistical data related to drug testing and rehabilitation that is non name-specified and training records may be released to RSPA or other governmental agency upon request.

C. Record Retention.

The records that must be maintained are:

1. Records that demonstrate the collection process conforms to §40.25, as amended, shall be retained for a 3-year period.
2. Employee drug test results that show positive and test type (pre-employment test, random test, post-accident test, or post-rehabilitation test), and records that demonstrate rehabilitation (including the MRO's and SAP's determination). These records shall be retained for a 5-year period and must include the following information:
 - a. Job classification and functions of employee.
 - b. Prohibited drug(s) used.
 - c. Disposition of employee (i.e., rehab, suspension, termination, etc.)
3. Employee drug tests that demonstrate negative results shall be retained for a period of 1 year.
4. A record indicating the total number of employees tested and the results of tests separated into categories shall be retained for a 5-year period.
5. Training records confirming that supervisors and employees have been trained as required under §382.603, and copies of training material used shall be retained for a 3-year period.

SECTION XV. CONTRACTOR MONITORING

A. General.

The District shall include a clause in contracts that drug testing, education and training shall be addressed by the contractor in accordance with 49 CFR Part, as amended, for covered functions.

B. Records and Access.

Contractors shall retain copies of appropriate records required by Part 382 and Part 40, as amended. The records and access to the contractor's property shall be readily accessible for inspection by the District, FMCSA, and representatives of those state agencies under which jurisdiction the District operates.

C. Monitoring Procedures.

Confirmation of contractor compliance - see Appendix H for Contractor Monitoring Procedures.

D. Contractor Coverage.

The District can, as an alternative to the above guidance, provide coverage for the contractor's employees by including them in the District's drug testing program and random pool for the duration of the contract.

Panama-Buena Vista Union School District Alcohol Misuse Prevention Plan (AMPP)

SECTION I. INTRODUCTION

A. Alcohol Misuse Prevention Policy.

1. **Panama-Buena Vista Union School District** has a long standing commitment to maintain the highest standards for employee safety and health and to help prevent accidents/injuries resulting from the misuse of alcohol by employees who perform covered functions.
2. In addition, the District must comply with all DOT regulations and other regulations that require affirmative actions to eliminate the impact of the misuse of alcohol in the workplace. The purpose of the alcohol misuse prevention plan is to reduce accidents that result from the misuse of alcohol, thereby reducing fatalities, injuries, and property damage.
3. The Alcohol Misuse Prevention Plan contained herein sets forth the requirements of 49 CFR Part 382 and 40, as amended.
4. *Those areas of the plan that appear in italic print reflect this District's independent authority to require additional provisions with regard to the alcohol testing procedures.*
5. *The use or possession of alcoholic beverages while on District property, or in any District vehicle, or on District time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.*
6. *Contact the District's Designated Employer Representatives for any questions regarding the Alcohol Misuse Prevention Plan.*

B. Implementation of Alcohol Misuse Prevention Plan (AMPP).

1. The District has implemented the Federal Motor Carrier Safety Administration, Alcohol Regulations as set forth in 49 CFR Part 382, and the Department of Transportation, Procedures for Transportation Workplace Alcohol Testing Programs as set forth in 49 CFR Part 40, as amended.
2. The privacy/confidentiality of any covered employee subject to this plan must be maintained at all times.
3. Implementation of the alcohol misuse prevention plan was effective on November 14, 2023.

C. Background.

1. The catalyst for the alcohol misuse plan is Title 49 Code of Federal Regulations (CFR) Part 382 which requires motor carriers subject to 49 CFR Parts 382, 392, and 395, and their contractors to test their employees for misuse of alcohol under the following work-related conditions:
 - a. Post-Accident
 - b. Reasonable Suspicion
 - c. Random
 - d. Return-to-duty
 - d. Follow-up
2. Title 49 CFR Part 40, as amended, specifies procedures that must be followed by the District when conducting alcohol misuse testing pursuant to regulations issued by agencies of the Department of Transportation.

D. Preemption Provisions.

1. Except as provided in paragraph 2 of this section, Part 382 preempts any state or local law, rule, regulation, or order to the extent that:
 - a. Compliance with both the state or local requirement and this regulation is not possible;
 - b. Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement as set forth in 49 CFR Part 382, or
 - c. The state or local requirement is a motor carrier safety standard applicable to commercial driver's who operate commercial vehicles, as defined.
2. This provision shall not be construed to preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

E. Definitions. For purposes of this AMPP the following definitions apply:

1. Accident. An incident requiring testing as defined under Part 382.303 involving a commercial motor vehicle. Each surviving driver will be tested as soon as practicable.

'382.303 - An accident involving a commercial motor vehicle has defined an "incident/accident," as follows:
 - a. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
 - b. Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
 - (1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (2) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle
2. Air blank. 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.
3. Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.
4. Alcohol concentration 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 conducted under this part.
5. Alcohol confirmation test. 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.
6. Alcohol screening device (ASD). 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.
7. Alcohol screening test. An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.
8. Alcohol testing site. A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.
9. Alcohol Use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

10. Breath Alcohol Technician (BAT). A person who instructs and assists individuals in the alcohol testing process and operates an EBT.
11. Canceled or invalid test means a test that is deemed to be invalid as listed in Appendix K of the AMPP.
12. Clearinghouse – The FMCSA Commercial Drivers' License Drug and Alcohol Clearinghouse is a web-based system (found at <https://clearinghouse.fmcsa.dot.gov>), which provides FMCSA and employers of commercial motor vehicle (CMV) drivers with the necessary tools to identify drivers who are prohibited from operating CMVs due to DOT drug and alcohol program violations.
13. Clearinghouse Query – A request submitted to the Clearinghouse to obtain information about DOT CDL drivers and any violation of DOT drug/alcohol testing requirements. Employers must retain for three (3) years a record of each query and all information received in response to each query made under this section.
 - a. Pre-employment Query – All employers must conduct a full query of the Clearinghouse prior to employing an individual to perform any DOT safety-sensitive function. Driver authorization is required electronically within the Clearinghouse to conduct a full query.
 - b. Annual Query – All DOT employers must conduct a query at least once per calendar year for all employees subject to controlled substance and alcohol testing under this part. The Annual Query may be initially conducted as a Limited Query to determine if any information exists in the Clearinghouse regarding the individual employee. No information about the driver will be released to an employer during a limited query. If information exists in the Clearinghouse for the individual employee, a full query is required.
 - c. Full Query – Specific consent is required from the employee to conduct a full query of their Clearinghouse record. Once consent is provided, the Clearinghouse will release information to the employer regarding any violations of DOT drug/alcohol testing regulations for that employee.
14. Commercial Motor Vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle;
 - a. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle rating of more than 10,000 pounds; or
 - b. Has a gross combination weight rating of 26,001 or more pounds; or
 - c. Is designed to transport 16 or more passengers, including the driver; or
 - d. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the HMR, 49 CFR Part 172, Subpart F.
15. Confirmation Test means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.
16. Consortium/Third-party administrator (C/TPA). A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically 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. C/TPAs are not "employers" for purposes of this part.
17. Continuing education. Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.

18. Covered employee means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors. (A list of covered positions is attached.)
19. Covered Function (safety-sensitive function) means a work function that operates a commercial motor vehicle regulated by Parts 382, 392, and/or 395.
20. Designated employer representative (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.
21. DOT means The Department of Transportation.
22. DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in Part 40, as amended, of this title.
23. 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-motor carrier contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer. For the purpose of Pre-employment/Pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial vehicle.
24. EBT (or evidential breath testing device) means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) of evidential breath measurement devices.
25. Employee. Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.
26. Employer. A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.
27. Error Correction Training. Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.
28. HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.
29. Office of Drug and Alcohol Policy and Compliance (ODAPC). The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
30. Qualification Training. The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
31. Refresher Training. The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can

- be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
32. Refuse to submit, refuse, or refuse to take means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.
 34. Screening Test Technician (STT). A person who instructs and assists employees in the alcohol testing process and operates an ASD.
 35. Secretary. The Secretary of Transportation or the Secretary's designee.
 36. Service agent. Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. 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 DOT qualifications, if applicable. Service agents are not employers for purposes of this part.
 37. Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

F. District Responsibilities.

1. Alcohol Program Manager (APM): Appendix A contains the name, address, and phone number of the responsible individual(s). The APM or other District designated individual shall be responsible for the preparation of an alcohol misuse plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR Parts 382 and 49 CFR Part 40, as amended, Subpart C. The APM shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (return-to-duty, or follow-up, etc.); maintaining a locked file system on all alcohol test results; and overseeing the referral of employees for evaluation and treatment as it is defined in 49 CFR Part 382. The District shall not falsely represent that an alcohol test is being conducted under the provisions of 49 CFR Part 382.
2. Supervisor(s): District individuals responsible for observing the performance and behavior of employees; observation/documentation of events suggestive of reasonable suspicion; and post-accident testing if determined that it is applicable.
3. Employees: The District shall ensure that each employee is notified and aware of the provisions of the District AMPP and is knowledgeable of the requirements of the District's AMPP. Each employee must fully comply with the provisions of the plan.

SECTION II. EMPLOYEE/SUPERVISOR ALCOHOL TESTING PROVISIONS AND APPLICABILITY

- A. Individuals Subject to Alcohol Testing** – Any applicant/employee, who will operate a commercial vehicle regulated by Part 382, 391, or 395, is subject to alcohol testing under this program. This does not include clerical, accounting, or other functions not subject to Part 382, 391 or 395. The person may be employed by the motor carrier, be a contractor engaged by the motor carrier, or be employed by such a contractor. Refer to Appendix C for specific employee titles/job classifications subject to testing under this program. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 3-4, for the instructions 'FMCSA Drug & Alcohol Testing Procedures for Covered Employees' form.
- B. Procedures for Notifying Covered Employees** – This AMPP shall be included in the appropriate District manual. Upon receipt of the District's AMPP, each manager shall post the plan in a prominent location or indicate where a copy is readily accessible to all covered employees. All covered employees will be provided a condensed/summarized version of the plan. The condensed document must indicate where the entire plan may be obtained.

C. Criteria for Employee Notification –

1. General Criteria. The District shall provide written educational materials explaining the alcohol misuse requirements and the District's policies and procedures on how they will comply with those requirements.
 - a. The District will distribute to each covered employee a copy of the plan prior to the start of alcohol testing and to each person subsequently hired/transferred to perform covered functions.
 - b. The District shall provide written notice to representatives of employee organizations on the availability of this written educational information.

NOTE: The District has all covered employees sign an "Acknowledge/Receipt Form" attesting to the fact they have received a copy of the below listed information. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 5-6, for the instructions and 'Employee Training, Orientation & Education' form. This process will provide documentation that the requirements for notification to all covered employees prior to the implementation of the District's alcohol misuse prevention plan and alcohol testing have been met.

2. Required Information. The District shall provide written materials to all covered employees who shall include detailed information and discussion of the following elements:
 - a. Name of District representative designated to answer questions for covered employees about the alcohol regulations. See Appendix A.
 - b. List of categories of covered employees who are subject to the alcohol regulations. See Appendix C for listing of employee/supervisor job classifications/titles.
 - c. Information about covered functions which provides sufficient guidance on which portions of the work day the covered employee is required to be in compliance with the AMPP.
 - d. Information concerning covered employee conduct which specifies what is prohibited by the AMPP.
 - e. Circumstances under which a covered employee will be tested for alcohol under the AMPP.
 - f. Procedures that cover:
 - (1) testing for presence of alcohol;
 - (2) protection of employee rights;
 - (3) integrity of breath testing process;
 - (4) safeguarding validity of test results; and,
 - (5) assignment of test results to proper employee.
 - g. Information concerning requirement for covered employee to submit to various types of alcohol tests.
 - h. Information detailing what constitutes a refusal and consequences of such refusal.
 - i. Information detailing consequences of covered employees who violate the prohibitions as set forth in the AMPP. It must address removal from performing covered functions and guidance on referral for evaluation and/or treatment.
 - j. Information detailing consequences of covered employees who test at an alcohol concentration of 0.02 or greater but less than 0.04.
 - k. Information detailing alcohol misuse and:

- (1) how it impacts on an individual's health, work and personal life;
- (2) detecting signs and symptoms of an alcohol problem; and,
- (3) intervening, evaluating and resolving problems associated with alcohol misuse (suspicions, confrontation, referral to EAP and referral to management official).

D. Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse (SOURCE: 81 FR 87725, Dec. 5, 2016, unless otherwise noted).

1. Drug and Alcohol Clearinghouse (§382.701).

- a. Pre-employment query required.
 - (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.
 - (2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.
- b. Annual query required.
 - (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.
 - (2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 1-2, for the instructions and 'Driver Consent for Annual Limited Query' form.
 - (3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.
- c. Employer notification. If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

- d. Prohibition. No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:
 - (1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.
 - (2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 of this title and specified in the SAP report required by §40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.
- e. Recordkeeping required. Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

2. Driver consent to permit access to information in the Clearinghouse (§382.703).

- a. No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.
- b. Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:
 - (1) A verified positive, adulterated, or substituted controlled substances test result;
 - (2) An alcohol confirmation test with a concentration of 0.04 or higher;
 - (3) A refusal to submit to a test in violation of §382.211;
 - (4) An employer's report of actual knowledge, as defined at §382.107, of:
 - (i) On duty alcohol use pursuant to §382.205;
 - (ii) Pre-duty alcohol use pursuant to §382.207;
 - (iii) Alcohol use following an accident pursuant to §382.209; and
 - (iv) Controlled substance use pursuant to §382.213;
 - (5) A SAP report of the successful completion of the return-to-duty process;
 - (6) A negative return-to-duty test; and
 - (7) An employer's report of completion of follow-up testing.
- c. No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.

- d. A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).
- e. A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with §382.701(c).

3. Reporting to the Clearinghouse (§382.705).

- a. Employers.
 - (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:
 - (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
 - (ii) A negative return-to-duty test result;
 - (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
 - (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
 - (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title.
 - (2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:
 - (i) Reason for the test;
 - (ii) Driver's name, date of birth, and CDL number and State of issuance;
 - (iii) Employer name, address, and USDOT number;
 - (iv) Date of the test;
 - (v) Date the result was reported; and
 - (vi) Test result. The test result must be one of the following:
 - (A) Negative (only required for return-to-duty tests administered in accordance with §382.309);
 - (B) Positive; or
 - (C) Refusal to take a test.
 - (3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:
 - (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;

- (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
 - (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
 - (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.
- (4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:
- (i) On-duty alcohol use pursuant to §382.205;
 - (ii) Pre-duty alcohol use pursuant to §382.207;
 - (iii) Alcohol use following an accident pursuant to §382.209; and
 - (iv) Controlled substance use pursuant to §382.213.
- (5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:
- (i) Driver's name, date of birth, CDL number and State of issuance;
 - (ii) Employer name, address, and USDOT number, if applicable;
 - (iii) Date the employer obtained actual knowledge of the violation;
 - (iv) Witnesses to the violation, if any, including contact information;
 - (v) Description of the violation;
 - (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and
 - (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.
- (6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.
- b. C/TPAs. Any employer may designate a C/TPA to perform the employer requirements in paragraph (a) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (a)(6) of this section.

- c. SAPs.
- (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:
 - (i) SAPs name, address, and telephone number;
 - (ii) Driver's name, date of birth, and CDL number and State of issuance;
 - (iii) Date of the initial substance-abuse-professional assessment; and
 - (iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.
 - (2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.
- d. Reporting truthfully and accurately. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

REPORTING ENTITIES AND CIRCUMSTANCES

Reporting entity	When information will be reported to clearinghouse
Prospective/Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver	—An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.

SAP	<ul style="list-style-type: none"> —Identification of driver and date the initial assessment was initiated. —Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.
-----	---

4. Notice to drivers of entry, revision, removal, or release of information (§382.707).

- (a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.
- (b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.
- (c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

5. Drivers' access to information in the Clearinghouse (§382.709).

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

6. Clearinghouse registration (§382.711).

- a. Clearinghouse registration required. Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.
- b. Employers.
 - (1) Employer Clearinghouse registration must include:
 - (i) Name, address, and telephone number;
 - (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
 - (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.
 - (2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.
 - (3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.
- c. MROs and SAPs. Each MRO or SAP must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
 - (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

- (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.
 - d. C/TPAs and other service agents. Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
 - (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
 - (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.
- 7. Duration, cancellation, and revocation of access (§382.713).**
 - a. Term. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.
 - b. Cancellation. FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.
 - c. Revocation. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.
- 8. Authorization to enter information into the Clearinghouse (§382.715).**
 - a. C/TPAs. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.
 - b. SAPs. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.
- 9. Procedures for correcting information in the database (§382.717).**
 - a. Petitions limited to inaccurately reported information.
 - (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.
 - (2) Exceptions.
 - (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.
 - (ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in §382.705(b)(5).
 - (iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or

40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).

- b. Petition. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:
 - (1) The petitioner's name, address, telephone number, and CDL number and State of issuance;
 - (2) Detailed description of the basis for the allegation that the information is not accurate; and
 - (3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.
- c. Submission of petition. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.
- d. Notice of decision. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.
- e. Request for expedited treatment.
 - (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.
 - (2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.
- f. Administrative review.
 - (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.
 - (2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590.
 - (3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.
 - (4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.
- g. Subsequent notification to employers. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

10. Availability and removal of information (§382.719).

- a. Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:
 - (1) The SAP reports to the Clearinghouse the information required in §382.705(d);
 - (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
 - (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title; and
 - (4) Five years have passed since the date of the violation determination.
- b. Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.
- c. Exceptions.
 - (1) Within 2 business days of granting a request for removal pursuant to §382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.
 - (2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.
- d. Driver information remains available. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

11. Fees (§382.721).

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

12. Unauthorized access or use prohibited (§382.723).

- a. Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.
- b. An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.
- c. Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at §382.507.
- d. Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

13. Access by State licensing authorities (§382.725).

- a. In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record

from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

- b. By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.
- c. The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.
- d. A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

14. Penalties (§382.727).

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

SECTION III. ALCOHOL TESTS REQUIRED

A. Pre-Employment/Pre-Assignment Breath Alcohol Testing

- 1. Pre-employment breath alcohol testing is an allowed and supported option available to DOT-regulated employers (except under USCG and FMCSA rules) who may conduct pre-employment breath alcohol testing if the following conditions are met:
 - a. The testing must be accomplished for all applicants,
 - b. The testing must be conducted as a post-offer requirement (i.e., the employer needs to inform the applicant that he or she has the job if he/she passes a DOT breath alcohol test), and
 - c. The testing and its consequences must comply with requirements of 49 CFR Part 40, as amended.

Pre-employment (post-offer) breath alcohol testing will be conducted under this policy and such testing will be conducted for all DOT-applicants.

Any final candidate who has refused to submit to pre-employment breath alcohol or drug testing or one who is disqualified for employment due to a confirmed positive test will not be employed. There will be no exceptions even for otherwise well-qualified applicants or hard-to-fill positions. Disqualified applicants may reapply six months from date of disqualification.

- 2. Pre-assignment breath alcohol testing is required for any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing and is transferred in or returning to a DOT-regulated position within the District, including any employee who will operate a commercial vehicle regulated by Part 382, 391, or 395. This does not include clerical, accounting, or other functions not subject to Part 382, 391 or 395.
 - a. The testing and its consequences must comply with requirements of 49 CFR Part 40, as amended.

B. Post-Accident Testing.

- 1. The District shall promptly determine and test each surviving covered employee for alcohol if that employee's performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test under this section shall be based on the District's determination, using the best available information at the

time of the determination, that the employee's performance could have not have contributed to the accident.

2. Each employee shall be required to submit to an alcohol test within 2 hours of the accident. If a test is not administered within 2 hours, the District will prepare and maintain on file a record stating why the test was not administered. If a test is not administered within 8 hours following the accident the District shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted.
3. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the District or District representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the District to have refused to submit to testing.
4. The employee must remain available for alcohol testing and may not consume any alcohol for 8 hours following the accident or until the alcohol test has been conducted. Notwithstanding the previous statement, employees should seek and obtain emergency medical care whenever necessary or a covered employee should not be prohibited from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident.
5. The following steps will be used to guide supervisor to a satisfactory outcome in a post-accident situation. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 9-10, for the instructions and 'Post-Accident Drug & Alcohol' form.
 - a. Verify the post-accident decision. Does the definition of accident in Section I apply to the current situation? Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a factor which contributed to the accident? Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? Before proceeding further, individual may need to obtain approval from the division manager/department head or designee to proceed with post-accident testing.
 - b. Isolate and inform the employee. Remove the employee from the work area. Explain that you have reason to believe his/her performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident and therefore, they will be required to submit to an alcohol test.
 - c. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site (the collection site may be at the accident scene). In addition to the safety concerns for the employee, acDistricting the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the outcome of the alcohol test.
 - d. Document the events. Record the activity performed that supports the determination to conduct a post-accident alcohol test. This documentation of the employee's activity should be prepared and signed by the supervisor and remain on file.

C. Reasonable Suspicion Testing. Reasonable suspicion testing is designed to provide management with a tool (in conjunction with supervisor training on the signs and symptoms of alcohol misuse) to identify alcohol affected employees who may pose a danger to themselves and others in their job performance. Employees may be at work in a condition that raises concern regarding their safety or productivity. Supervisors must then make a decision as to whether there is reasonable suspicion to believe an employee is using or has used alcohol.

1. Supervisor Reasonable Suspicion Determinations:
 - a. The District's determination that reasonable suspicion exists to require a covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who has received at least 60 minutes of training in detecting the symptoms of alcohol misuse.

- b. The supervisor's observation must be made just before, during, or just after the employee is performing a covered function.
 - c. The supervisor who makes such a determination that reasonable suspicion exists shall not be authorized to conduct the breath alcohol test on that employee.
 2. In making a determination of reasonable suspicion, the factors to be considered include, but are not limited to the following:
 - a. Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment-related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of alcohol related behavior on or off the work site.
 - b. Physical signs and symptoms consistent with alcohol abuse.
 - c. Evidence of prohibited alcohol use, possession, sale, or delivery while on duty.
 - d. Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.
 3. The following steps will be used to guide the supervisor to a satisfactory outcome in a reasonable suspicion situation. Refer to Appendix P, DOT/FMCSA Forms and Instructions Pages 7-8, for the instructions and 'Reasonable Suspicion Drug/Alcohol Testing' form.
 - a. Verify the reasonable suspicion decision. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable suspicion referral. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was alcohol related? On what basis did they reach their conclusion? Before proceeding further, obtain concurrence or approval from the manager/department head or designee to proceed with reasonable suspicion alcohol testing.
 - b. Isolate and inform the employee. Remove the employee from the work location. Explain that there is reasonable suspicion to believe the employee's performance is being affected by alcohol. Ask the employee to explain the suspected behavior and to describe the events that took place from his/her perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may or may not deter you from asking for the employee to submit to an alcohol test. If there is still a reasonable suspicion that alcohol is a factor in the situation, a request for testing should be made; if no reasonable belief is determined then a request for testing should not be made. If the decision to test is made, inform the employee that they are being requested to acDistrict the appropriate District official or representative to the specimen collection site to conduct an alcohol test. Inform the employee of the consequences of refusal to submit to alcohol testing.
 - c. Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In all cases, a reasonable suspicion decision must be made by a supervisor who has received the required training. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable suspicion determination.
 - d. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, acDistricting the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the alcohol test result.
 - e. Document the events. Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion alcohol test. This documentation of the

employee's conduct should be prepared and maintained on file to document the request for reasonable suspicion alcohol testing.

- f. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid alcohol testing. If he/she is not under the influence or affected by alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to submit to an alcohol test is not an accusation; it is merely a request for additional objective data.
- g. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions if their alcohol test result is positive. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable suspicion belief that he/she may be under the influence of alcohol.

If the employee insists on driving themselves, the proper local enforcement authority may be notified that an employee who the District believes may be under the influence of alcohol is leaving the District premises driving a motor vehicle.

- 4. The District shall conduct an alcohol test within two hours of a determination to test under reasonable suspicion. If the test is not conducted within two hours of the reasonable suspicion determination the District shall prepare and maintain a written document explaining why the test was not conducted. The District shall continue all efforts to conduct the alcohol test. If the test is not conducted within eight hours the District shall cease all attempts to conduct the test and shall prepare and maintain written documentation as to why the test was not conducted. Upon request such records shall be made available to the Federal Motor Carrier Safety Administration.
- 5. The District shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:
 - a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
 - b. The start of the employee's next regularly scheduled duty period, but not less than 24 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP.
- 6. Except as provided above, the District shall not take any action under 49 CFR Part 382 against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. However, this does not prohibit the District from taking any disciplinary action otherwise consistent with local and/or state laws.

D. Random Testing

The primary purposes of random testing are to deter the alcohol misuse and to ensure an alcohol free workforce. DOT regulations require that covered employees shall be subject to alcohol testing on a random basis. The District shall conduct the number of tests equal to at least **the current annual DOT minimum percentage requirement** of all covered employees each calendar year, spread reasonably over a 12-month period. The District will conduct random selection and testing on at least a quarterly schedule.

- 1. The following is a discussion of the key aspects of the random testing selection process.
 - a. Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
 - b. Employees shall be selected for testing by using a computer-based random number generator or equivalent random selection method that is matched with an employee's social security number or employee ID number.

- c. The process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of collection.
 - d. Employees will be selected for random testing based on the number of covered employees at the time and the necessary testing rate.
 - e. Alcohol breath testing will be conducted on different days of the week throughout the annual cycle to prevent employees from matching their alcohol misuse patterns to the schedule for testing.
2. Steps for random testing:
- a. The DPM (or designee), on a pre-determined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
 1. The DPM (or designee) shall ensure that the list of social security numbers or employee identification numbers will identify the correct employees who are to be randomly tested during the testing cycle.
 2. It is the intent of this plan to notify employees of their selection for random testing after they have reported for duty.
 - a. The list of employees to be tested will be provided to the appropriate manager or supervisor.
 - b. The list of employees selected will be retained by the DPM (or designee) in a secure location.
 3. Notification of employees:
 - a. The appropriate manager/supervisor will notify the employee to be tested to report to the manager/supervisor's office at a specified time.
 - b. The employee will not be notified of the test until after reporting for duty.
 - c. Employees shall report immediately to the breath alcohol testing site within the allowable time determined by the District official, once notified by the appropriate District official.

E. Return-to-Duty Testing.

1. If the substance abuse professional makes a determination that some form of evaluation and/or treatment is required then the employee must comply with the recommended provisions in order to be considered eligible to return-to-duty.
2. The District shall ensure that before an employee may return to duty to perform covered functions after engaging in prohibited conduct, as set forth in section IV of the plan, that the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
3. An employee who refuses to take or fails an alcohol test (at 0.04 or higher) may be subject to disciplinary action up to and including termination, pursuant to District policy.

However, any individual with an alcohol or drug abuse problem who voluntarily comes forward before a disciplinary problem occurs or a test is required, and who thereafter cooperates with the District for treatment and rehabilitation **will not** be subject to disciplinary action for doing so.

However, creating a threat to safety by failure to satisfactorily or successfully participate in treatment, or withdrawal from treatment before completion, may result in disciplinary action up to and including termination.

An employee may not return to duty until the employee passes an alcohol test and the Medical Review Officer (MRO) and/or Substance Abuse Professional (SAP), and the District has determined that the employee may return to duty. Successful compliance of the SAP's treatment and passing the Return-to-Duty test does not guarantee continued employment; these requirements are preconditions an employee must meet in order to be considered to enter back into a DOT covered function. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing, without prior notice, for up to 60 months after his or her return to duty, as determined by the SAP.

Any subsequent positive test result will be considered an aggravated offense and may result in disciplinary action, up to and including termination.

F. Follow-up Testing.

1. Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee will be subject to unannounced follow-up alcohol testing as directed by a substance abuse professional. An employee who returns to duty shall be subject to a reasonable program of follow-up alcohol testing, without prior notice, for up to 60 months after his/her return to duty, as determined by the SAP.
2. The employee shall be subject to at least six, unannounced alcohol follow-up tests during the first 12 months following his/her return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first year of testing has been completed, if the substance abuse professional makes the determination that such testing is no longer warranted.
3. The District may require a covered employee to submit to drug follow-up testing when the substance abuse professional has reason to suspect drug involvement. The drug testing must comply with the requirements contained in 49 CFR Part 40, as amended, Subpart A.
4. Follow-up testing shall be conducted just before the employee is to perform, while an employee is performing or just after the employee has ceased performing a covered function.

G. Provisions Governing Retesting of Covered Employees.

1. A covered employee tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform or continue to perform covered functions until:
 - a. The start of the employee's next regularly scheduled duty period, but not less than 24 hours following administration of the alcohol test.
 - b. Employees will not be compensated for the time off, even if the time-off falls on regular working hours or shift.
2. Except as provided above, the District shall not take any action under 49 CFR Part 382 against a covered employee based solely on test results showing an alcohol concentration less than 0.04. However, this does not prohibit the District from taking any disciplinary action otherwise consistent with local and/or state law.

SECTION IV. ALCOHOL PROHIBITED CONDUCT

- A. General.** The District shall provide guidance to all covered employees regarding the various types of alcohol prohibited conducts. A covered employee who engages in prohibited conduct shall be advised of available resources to evaluate and resolve problems associated with alcohol misuse.
- B. Alcohol Concentration.** A covered employee shall be prohibited from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. If a District representative has actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater, the employee shall not be permitted to perform or continue to perform covered functions.

- C. **Pre-Duty Use.** The District shall prohibit a covered employee from using alcohol within 4 hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. If the District has actual knowledge that a covered employee has used alcohol within 4 hours prior to performing covered functions or within the time period after the employee has been notified to report for duty, the employee shall not be permitted to perform or continue to perform covered functions.
- D. **On-Duty Use.** The District shall prohibit a covered employee from using alcohol while performing covered functions. If a District representative has actual knowledge that a covered employee is using alcohol while performing covered functions, the employee shall not be permitted to perform or continue to perform covered functions.

SECTION V. USE OF EMPLOYEE WHO REFUSES ALCOHOL TEST

- A. **General.** Refusal to submit to a post-accident, reasonable suspicion or follow-up alcohol test shall result in the covered employee not being allowed to perform or to continue to perform any covered functions.
- B. **Additional Requirements.** The District will impose such additional disciplinary actions as it deems appropriate. This may include removal from performing covered functions, suspension (with or without pay), and even termination.

SECTION VI. DISCIPLINARY ACTIONS

- A. **General.** A covered employee who has engaged in prohibited conduct as described in § 382.215 through 382.223 (alcohol concentration, on-duty use, pre-duty use, use following an accident and refusal to submit to an alcohol test) shall not be permitted to perform covered functions or continue to perform covered functions.
- B. **Required Referrals and Evaluations.**
 - 1. No covered employee who has violated the rules on alcohol misuse or refuses to submit to testing can perform any covered function unless and until that employee has:
 - a. Been evaluated by a SAP to determine whether the employee is in need of assistance in resolving problems related to alcohol use.
 - b. Completed any treatment recommended by the SAP.
 - c. Been evaluated by a SAP to ensure that the employee has properly followed the treatment program.
 - e. Undergone a return-to-duty alcohol test with resulting alcohol concentration of less than 0.02.
- C. **Evaluation, treatment and rehabilitation** may be provided by the operator, SAP under contract, or SAP not affiliated with the operator.
 - 1. A SAP cannot refer an employee to that SAP's private practice, to a person or organization from which the SAP receives remuneration or in which the SAP has financial interests.
 - 2. The District may provide for the evaluation and rehabilitation (if applicable) under their policy, a SAP under contract, or a SAP not affiliated with the District. The District shall ensure that a SAP who determines that covered employee who requires assistance in resolving problems associated with alcohol misuse does not refer the employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or has a financial interest. This does not prohibit a SAP from referring an employee for assistance to a public agency (State, County, or Municipality); a person under contract with the District to provide treatment for alcohol on behalf of the District; the sole source of therapeutically appropriate treatment under the employee's health

insurance policy; or sole source of therapeutically appropriate treatment reasonably accessible to the employee.

- D. Levels of Disciplinary Actions.** *The District has carefully selected the appropriate levels of disciplinary action(s) that the District intends to take against employees who fail to comply with the applicable alcohol testing regulations.* The FMCSA regulations do not mandate that an employee be terminated for failure to comply with the alcohol testing regulations. Disciplinary action as set forth below will be taken under each of the described circumstances.
1. **Refusal to report for assessment with a substance abuse professional.** *If an employee refuses to report for assessment, evaluation, and/or referral for treatment with a substance abuse professional, he/she may be subject to disciplinary action up to and including termination, pursuant to District policy.*
 2. **Refusal to enter or successfully complete a rehabilitation program.** *If an employee, after assessment, is referred for rehabilitation and the employee refuses to enter or successfully complete such a rehabilitation assessment program, he/she may be subject to disciplinary action up to and including termination, pursuant to District policy.*
 3. **Repeat usage.** *In all cases of an employee having an alcohol concentration of 0.02 or greater, and who has tested a second time, at alcohol concentrations 0.04 or greater, may be subject to disciplinary action up to and including termination, pursuant to District policy.*
 4. **Refusal to submit to an alcohol test.** *An employee who refuses to provide an adequate breath for alcohol testing without a valid medical explanation after he/she has received notice of the requirement to be tested in accordance with the requirements of the AMPP, or who engages in conduct that clearly obstructs the testing procedure, may be subject to disciplinary action up to and including termination, pursuant to District policy.*
 5. **On-duty use of alcohol.** *On-duty use or possession of alcohol on District time or on District premises may be subject to disciplinary action up to and including termination, pursuant to District policy.*
 6. **Results of an alcohol (confirmation) test indicating an alcohol concentration of 0.04 or greater.** *An employee, who tested for alcohol in a concentration of 0.04 or greater, may result in disciplinary action up to and including termination, pursuant to District policy.*
 7. **Results of an alcohol (confirmation) test indicate an alcohol concentration of 0.02 or greater, but less than 0.04.** *When an employee has tested for alcohol in a concentration of 0.02 or greater, but less than 0.04, that employee will be removed from performing a covered function and disciplined, pursuant to District policy.* The employee will not be allowed to perform covered functions until an alcohol test is administered and the employee's alcohol concentration measures less than 0.02 or the start of the employee's next regularly scheduled duty period, but not less than 24 hours following the administration of the alcohol test.

SECTION VII. ALCOHOL TESTING SITES

A. Where an alcohol test takes place

1. A DOT alcohol test must take place at an alcohol-testing site meeting the requirements of this section.
2. If you are operating an alcohol-testing site, you must ensure that it meets the security requirements of §40.223, as amended.
3. 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.

4. 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.
5. If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph 3 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.
6. 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.

B. Steps that must be taken to protect the security of alcohol testing sites.

1. If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.
 - a. 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.
 - b. You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
 - c. You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
2. 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 §40.241-§40.255, as amended).
3. 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.
4. 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.
5. 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.
 - a. 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.
 - b. 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.
 - c. 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.

SECTION VIII. ALCOHOL TESTING EQUIPMENT, FORMS AND SUPPLIES

A. Alcohol screening devices

1. 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 that is on the NHTSA CPL for DOT alcohol tests may be used only if there are

instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

B. Confirmation Devices.

1. EBTs on the NHTSA CPL for evidential devices that meet the requirements of paragraph 2 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.
2. To conduct a confirmation test, you must use an EBT that has the following capabilities:
 - a. Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;
 - b. 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;
 - c. Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
 - d. Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
 - e. Tests an air blank; and
 - f. Performs an external calibration check.

C. Quality Assurance Plans for Evidential Breath Testing Devices.

1. Each EBT used shall have an approved quality assurance plan (QAP) to include the following:
 - a. The 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).
 - b. Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
2. The manufacturer must include, with each EBT, instructions for its use and care consistent with the QAP.
3. As the user of the EBT (e.g., employer, service agent), you must do the following:
 - a. You must follow the manufacturer's instructions (see paragraph 2 of this section), including performance of external calibration checks at the intervals the instructions specify.
 - b. In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."
 - c. 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.
 - d. You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a)(2), as amended.
 - e. 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.

D. Quality Assurance Plans for Non-Evidential Screening Devices.

1. Each Non-Evidential Screening Device used shall have an approved quality assurance plan (QAP) to including the following:
 - 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 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 §40.233, as amended.

E. Alcohol Testing Forms

1. The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test beginning February 1, 2002. The ATF must be a three-part carbonless manifold form. The ATF is found in the forms section of this plan. You may view this form on the ODAPC web site (<http://www.dot.gov/ost/dapc>).
2. As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:
 - a. You may include other information needed for billing purposes, outside the boundaries of the form.
 - b. You may use an 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.
 - c. 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.
 - d. You may use an ATF in which all pages are printed on white paper. The ATF may be modified by using colored paper, or have clearly discernible borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green color Copy 2 and blue for Copy 3.
 - e. 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.
 - f. 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.
3. 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.
4. Using the ATF for non-DOT tests, or non-DOT forms for DOT tests.
 - a. 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 §40.271(b), as amended.

SECTION IX. ALCOHOL TESTING PERSONNEL

A. Personnel that conduct DOT alcohol tests.

1. 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.
2. An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
3. 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.

B. Training requirements for STTs and BATs

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:

1. 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, <http://www.dot.gov/ost/dapc>).
2. Qualification training. You must receive qualification training meeting the requirements of this paragraph.
 - a. 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, <http://www.dot.gov/ost/dapc>). 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.
 - b. 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.
 - c. 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.
 - d. 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.
3. Initial Proficiency Demonstration. Following the completion of qualification training under paragraph 2 of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).
 - a. 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 (2)(d) of this section.
- b. These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.
 - c. 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.
4. Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:
- a. If you became a BAT or STT before August 1, 2001, you were required to have met the requirements set forth in paragraphs (2) and (3) of this section, and you do not have to meet them again.
 - b. If you become a BAT or STT on or after August 1, 2001, you must meet the requirements of paragraphs (2) and (3) of this section before you begin to perform BAT or STT functions.
5. Refresher training. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs 2 and 3 of this section, you must complete refresher training that meets all the requirements of paragraphs 2 and 3 of this section. A BAT or STT that completed qualification training before January 1, 1998 is not required to complete refresher training until January 1, 2003.
6. 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.
- a. Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph 2(d) of this section.
 - b. 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.
 - c. 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.
7. 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.
8. Other persons who may serve as BATs or STTs.
- (a) 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 (3) of this section.
 - (b) 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.

C. Required information the employer shall provide about the DER.

1. The employer must provide to the SSTs 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.

SECTION X. SUBSTANCE ABUSE PROFESSIONALS

A. SAP qualifications

1. To be permitted to act as a SAP in the DOT drug and alcohol testing program, each of the following requirements must be met:
 - (a) Credentials. One of the following credentials is required:
 - (1) A licensed physician (Doctor of Medicine or Osteopathy)
 - (2) A licensed or certified social worker
 - (3) A licensed or certified psychologist
 - (4) A licensed or certified employee assistance professional; or
 - (5) A drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).
 - (b) Basic knowledge. A SAP must be knowledgeable in the following areas:
 - (1) A SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
 - (2) A SAP must be knowledgeable about the function as it relates to employer interests in safety-sensitive duties.
 - (3) A SAP must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines, and you keep current on any changes to these materials. These documents 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 (<http://www.dot.gov/ost/dapc>).
 - (c) Qualification training. He must receive qualification training meeting the requirements of this paragraph (c).
 - (1) Qualification training must provide instruction on the following subjects:
 - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
 - (ii) 49 CFR Part 40, as amended and DOT agency drug and alcohol testing rules;
 - (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
 - (v) SAP qualifications and prohibitions;

- (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
 - (viii) Reporting and recordkeeping requirements;
 - (ix) Issues that SAPs confront in carrying out their duties under the program.
- (2) Following a SAP's completion of qualification training under paragraph (c)(1) of this section, he must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (3) The following is the schedule for qualification training a SAP must meet:
- (i) If you became a SAP before August 1, 2001, you must meet the qualification training requirement no later than December 31, 2003.
 - (ii) If you become a SAP between August 1, 2001, and December 31, 2003, you must meet the qualification training requirement no later than December 31, 2003.
 - (iii) If you become a SAP on or after January 1, 2004, you must meet the qualification training requirement before you begin to perform SAP functions.
- (d) Continuing education. During each three-year period from the date on which the SAP satisfactorily completes the examination under paragraph (c)(2) of this section, he must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time he met the qualification training requirements of this section.
 - (2) A SAP's continuing education activities must include documentable assessment tools to assist you in determining whether you have adequately learned the material.
- (e) Documentation. A SAP 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 contemplating using your services.

B. Certification organizations and recognition for its members as SAPs.

- (a) If the SAP represents a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281(a)(5), as amended, he may submit a written petition to DOT requesting a review of his petition for inclusion.
- (b) He must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on your petition.
- (c) He must also meet the minimum requirements of Appendix M to this part before DOT will act on your petition.

NOTE: For complete information on SAP's responsibilities, see Appendix M.

SECTION XI. CONFIDENTIALITY AND RELEASE OF INFORMATION

A. General

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

- (a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
- (b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

B. Release of drug or alcohol test information for legal proceedings.

- (a) An employer may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
 - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
 - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.
- (b) In such a proceeding, you may release the information to the decision maker in the proceeding (e.g., the court in a lawsuit). You may release the information only with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding.
- (c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (e.g., the laboratory's data package), you must provide the requested information to the employer.
- (d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

C. Reporting medical information from the verification process by the MRO.

- (a) The MRO must, except as provided in paragraph (c) of this section, report drug test results and medical information he learned as part of the verification process to third

parties without the employee's consent if he determines, in his reasonable medical judgment, that:

- (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
 - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.
- (b) The third parties to whom the MRO is authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see §40.293(g), as amended), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
- (c) If the law of a foreign country (e.g., Canada) prohibits the MRO from providing medical information to the employer, he may comply with that prohibition.

D. Information labs, MROs and other service agents must release to employees.

- (a) An MRO or service agent must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. They may charge no more than the cost of preparation and reproduction for copies of these records.
- (b) A laboratory must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (*i.e.*, laboratory report and data package). They may charge no more than the cost of preparation and reproduction for copies of these records.
- (c) A SAP must make available to an employee, on request, a copy of all SAP reports (see §40.311, as amended). However the SAP must redact follow-up testing information from the report before providing it to the employee.

E. Additional parties to which employers and service agents must release information.

An employer or service agent must release information under the following circumstances:

- (a) If they receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, they must provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.
- (b) An employer must, upon request of DOT agency representatives, provide the following:
 - (1) Access to their facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. They must provide this information at your principal place of business in the time required by the DOT agency.
 - (3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. Electronic records do not meet these standards they must be converted to printed documentation that meets these standards.

- (c) A service agent must, upon request of DOT agency representatives, provide the following:
 - (1) Access to their facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
 - (3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. Electronic records do not meet these standards they must be converted to printed documentation that meets these standards.
- (d) If requested by the National Transportation Safety Board as part of an accident investigation, they must provide information concerning post-accident tests administered after the accident.
- (e) If requested by a Federal, state or local safety agency with regulatory authority over them or the employee, they must provide drug and alcohol test records concerning the employee.
- (f) Except as otherwise provided in this part, a laboratory must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. If a party seeks a court order directing you to release a specimen or part of a specimen contrary to any provision of this part, you must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of §40.13, as amended). This part does not require you to disobey a court order, however.

F. Records employers must keep.

- (a) An employer must keep the following records for the following periods of time:
 - (1) They must keep the following records for five years:
 - (i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - (ii) Records of verified positive drug test results;
 - (iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - (iv) SAP reports; and
 - (v) All follow-up tests and schedules for follow-up tests.
 - (2) They must keep records for three years of information obtained from previous employers under §40.25, as amended, concerning drug and alcohol test results of employees.
 - (3) They must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
 - (4) They must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

- (b) They do not have to keep records related to a program requirement that does not apply to them (e.g., a maritime employer who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
- (c) They must maintain the records in a location with controlled access.
- (d) A service agent may maintain these records for employers. However, the employer must ensure that they can produce these records at their principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must ensure that you can provide them within two business days.
- (e) If you store records electronically, where permitted by this part, you must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

SECTION XII. EMPLOYEE ASSISTANCE PROGRAM (EAP)

A. Scope of Program.

The EAP will provide education and training on alcohol misuse to all employees. The education shall include:

1. Any employee who comes forward (on a voluntary basis) before disciplinary problems occur or a drug test is required, will receive reasonable accommodation (including but not limited to unpaid leave) for treatment of a drug and/or alcohol related problem.
2. The District will maintain a "Post Treatment" testing program to protect the recovering employee, fellow employee, the public and our customers. These types of follow-up treatment programs have proven successful for increasing recovery.
3. Informational material displayed on bulletin boards, employee break rooms, locker rooms, etc., and distributed to employees. A community service hot-line telephone number for employee assistance displayed on bulletin boards and distributed to employees.
4. Distribution of District's policy regarding the alcohol misuse to all employees.
5. The District also reserves the right to modify the EAP program as it deems necessary.
6. Financial responsibility for participation in treatment programs is the employee's. Insurance benefits may be available.

B. Supervisor Training.

1. Supervisory personnel responsible for those employees covered under Part 382 will receive training under the alcohol misuse prevention plan. The training shall include at least one 60-minute period of training on the specific, contemporaneous physical, behavioral, speech, and performance indicators of probable alcohol misuse. This training shall be for supervisors who may determine whether an employee must be alcohol tested for reasonable suspicion.

SECTION XIII. RECORDKEEPING PROCEDURES

- ### A. General.
- The District APM or designee shall maintain the alcohol testing records in accordance with the provisions set out in the AMPP. These records will be maintained in a secure location with controlled access. Records shall be maintained for the specified periods of time as required in 49 CFR Parts 382 and 40, as amended.

B. Record Retention Provisions.

1. The following types of records shall be maintained for a minimum period of 5 years.
 - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater.
 - b. Documentation of refusals to take required alcohol tests.
 - c. Calibration documentation of each EBT used in alcohol testing, including records of the results of external calibration checks.
 - d. Employee referrals and evaluations.
 - e. Management Information System (MIS) annual alcohol misuse report data.
 - f. Documents pertaining to “missed tests.”
2. The following types of records shall be maintained for a minimum period of 2 years.
 - a. Records related to the collection process (except calibration of EBT devices).
 - b. Records related to training.
 - c. Records of the inspection and maintenance of each EBT used in employee testing.
 - d. Documentation of the District's compliance with the Quality Assurance Plan (QAP) for each EBT it uses for alcohol testing under the AMPP.
 - e. Records of the training and proficiency testing of each BAT/STT used in employee testing.
3. The following types of records shall be maintained for a minimum period of 1 year.
 - a. Records of all test results below 0.02.

C. Maintenance of Specific Types of Records.

1. The following types of records related to the collection process shall be maintained:
 - a. Calibration documentation for EBT devices.
 - b. Documentation of BAT/STT training.
 - c. Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
 - d. Documents generated in connection with decisions to administer post-accident alcohol tests.
 - e. Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.
2. The following types of records related to test results shall be maintained:
 - a. District's copy of the alcohol test form, including the results of the test.
 - b. Documents related to the refusal of any covered employee to submit to a required alcohol test.
 - c. Documents presented by a covered employee to dispute the result of an alcohol test administered under the AMPP.

3. Records related to other violations outlined in the AMPP.
4. The following types of records related to referrals and evaluations:
 - a. Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
 - b. Records concerning a covered employee's compliance with the recommendations of the SAP.
5. Records related to the District's MIS annual alcohol misuse testing data and "missed test" information.
 - a. The District shall submit the required alcohol misuse MIS testing data and "missed test" information to FMCSA as prescribed by the regulations.

The report shall contain the following MIS informational elements:

 - Number of covered employees.
 - Number of covered employees subject to testing under the alcohol misuse rule of another DOT agency.
 - Number of screening tests.
 - Number of confirmation tests.
 - Number of confirmation tests indicating an alcohol concentration of 0.02 or greater, but less than 0.04, by type of test.
 - Number of alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test.
 - Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in a covered position.
 - Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.
 - Number of covered employees who were found to have violated other provisions of §382.201 – 382.211, and any action taken in response to the violation.
 - Number of covered employees who refuse to submit to an alcohol test required by Part 382 and any action taken in response to the refusal.
 - Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.
6. The following types of records related to education and training of employees and supervisors:
 - a. Materials on alcohol misuse awareness, including a copy of the District's policy on alcohol misuse.
 - b. Documentation of compliance with the requirements of §382.601.
 - c. Documentation of training provided to supervisors for the purposes of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
 - d. Certification that any training conducted under the AMPP complies with the requirements of 40 CFR Part 382 and 40, as amended.

SECTION XIV. CONTRACTOR MONITORING

- A. The District may (1) cover contractor employees under operator's plan or (2) may provide in contract that contractor must establish and implement alcohol breath testing, education, and training in accordance with Part 382 and Part 40, as amended for covered functions.
- B. Contractors shall retain copies of appropriate alcohol testing records as required by 49 CFR Part 382 and Part 40, as amended. The records and access to the contractor's property shall be readily accessible for inspection by the District, FMCSA, and representatives of those state agencies under which jurisdiction the District operates.
- C. Confirmation of contractor compliance/monitoring - Refer to Appendix H for specific guidance in how to develop an effective contractor compliance and monitoring program.
- D. The District can, as an alternative to the above guidance provide coverage for the contractors employees by including them in the District's alcohol testing program for the duration of the contract or work project. When contractor employees are covered under the District's AMPP, the contractor shall ensure that their employees comply with all the provisions contained in the District's AMPP.

APPENDIX: A, B, & C

TABLE OF CONTENTS

APPENDIX A	1
Drug and Alcohol Company Personnel	
APPENDIX B	3
Drug and Alcohol Providers	
APPENDIX C	5
Employee & Supervisory Positions Subject to Drug & Alcohol Testing	

APPENDIX A

DRUG AND ALCOHOL DISTRICT PERSONNEL

DRUG AND ALCOHOL PROGRAM MANAGERS (DPM)

Darryl Johnson, Assistant Superintendent of Human Resources
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6353
Fax: (661) 398-2141
E-mail: dj@pbvusd.k12.ca.us

Melissa Brown, Director of Human Resources
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6355
Fax: (661) 398-2141
E-mail: mebrown@pbvusd.k12.ca.us

DESIGNATED EMPLOYER REPRESENTATIVES (DER)

Darryl Johnson
Assistant Superintendent of Human Resources
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6353
Fax: (661) 398-2141
E-mail: dj@pbvusd.k12.ca.us

Tiffany Brasier
Director of Talent Management (Certificated)
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6353
Fax: (661) 398-2141
E-mail: tbrasier@pbvusd.k12.ca.us

Melissa Brown
Director of Human Resources
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6355
Fax: (661) 398-2141
E-mail: mebrown@pbvusd.k12.ca.us

Neftali Perez Lopez
Director of Transportation
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6160
Fax: (661) 398-2141
E-mail: nperezlopez@pbvusd.k12.ca.us

EMPLOYEE ASSISTANCE PROGRAM MANAGERS (EAPM)

Darryl Johnson, Assistant Superintendent of Human Resources
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6353
Fax: (661) 398-2141
E-mail: dj@pbvusd.k12.ca.us

Melissa Brown, Director of Human Resources
4200 Ashe Road
Bakersfield, CA 93313
Office: (661) 831-8331 ext. 6355
Fax: (661) 398-2141
E-mail: mebrown@pbvusd.k12.ca.us

This Page Intentionally Blank

APPENDIX B

DRUG AND ALCOHOL PROVIDERS

DRUG PROGRAM SERVICE PROVIDERS

MEDICAL REVIEW OFFICER (MRO)

Dr. Jeff Freeseemann
ABC Occupational Medical Center
8501 Brimhall Rd 300, Suite A
Bakersfield, CA 93312
Office: (661) 861-1880
Fax: (661) 912-0444

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (SAMHSA) CERTIFIED LABORATORY

Phamatech, Inc.
15175 Innovation Drive
San Diego, CA 92128
Office: (858) 643-5555
Fax: (858) 635-5843

SUBSTANCE ABUSE PROFESSIONAL (SAP)

- 1) First Step Counseling
1522 18th St. Suite 218
Bakersfield, CA 93301
Contact: Melinda Rangel, CADC II, ICADC, SAP, IS
Office: (661) 404-4770
Fax: (661) 843-7080
E-mail: mgrangel.sap@gmail.com
Area of service: Bakersfield

Contact CCS for additional providers in other areas.

COLLECTION PROVIDER

- 1) CCS,
- 2) Phamatech Laboratories & Diagnostics, and
- 3) ABC Occupational Medical Center

THIRD PARTY ADMINISTRATOR (TPA)

Contraband Control Specialists, Inc. (CCS)
1927 21st St
Bakersfield, CA 93301
Phone (661) 336-0617

EMPLOYEE ASSISTANCE PROGRAM PROVIDER

Resource List (See Program Administrators Darryl Johnson and Melissa Brown)

ALCOHOL PROGRAM SERVICE PROVIDERS

BREATH ALCOHOL TECHNICIAN (BAT)

- 1) CCS,
- 2) Phamatech Laboratories & Diagnostics, and
- 3) ABC Occupational Medical Center

SUBSTANCE ABUSE PROFESSIONAL (SAP)

- 1) First Step Counseling

Contact CCS for additional providers in other areas.

THIRD PARTY ADMINISTRATOR (TPA)

Contraband Control Specialists, Inc. (CCS)
1927 21st St
Bakersfield, CA 93301
Phone (661) 336-0617

EMPLOYEE ASSISTANCE PROGRAM PROVIDER

Resource List (See Program Administrators Darryl Johnson and Melissa Brown)

APPENDIX C

EMPLOYEE / SUPERVISORY POSITIONS SUBJECT TO DRUG AND ALCOHOL TESTING (JOB CLASSIFICATIONS/TITLES)

Covered Positions

- 1) Driver with Commercial Drivers License

Supervisors and Managers Subject to Required Training

See Attached List:
List Title/Position and Full Names

This Page Intentionally Blank

APPENDIX: D, E, F, & G

TABLE OF CONTENTS

APPENDIX D.....	7
Urine Collection Personnel and Specimen Collection Procedures	
APPENDIX E.....	17
Drug and Alcohol Clearinghouse	
APPENDIX F.....	30
Medical Review Officer Responsibilities	
APPENDIX G.....	48
Laboratory Procedures	

APPENDIX D

URINE COLLECTION PERSONNEL AND SPECIMEN COLLECTION PROCEDURES

Urine collection personnel

A. Urine collection personnel for DOT drug testing.

1. Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
2. A collector must meet training requirements of §40.33, as amended.
3. The immediate supervisor of an employee being tested may not act as the collector when that employee is tested, unless no other collector is available and the Supervisor is permitted to do so under DOT agency drug and alcohol regulations.
4. An individual must not act as the collector for the employee being tested if that individual works 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.

B. Collector Training Requirements:

1. Basic information. A Collector must be knowledgeable about this Part 40, as amended, the current "DOT Urine Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom collections are being performed and must keep current on any changes to these materials.
2. Qualification training. A Collector must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
 - (a) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
 - (b) "Problem" collections (e.g., situations like "shy bladder" and attempts to tamper with a specimen);
 - (c) Fatal flaws, correctable flaws, and how to correct problems in collections; and
 - (d) 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.
3. Initial Proficiency Demonstration. Following completion of qualification training under paragraph (b) of this section, a Collector must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.
 - (a) 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.
 - (b) Another person must monitor and evaluate the 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 a qualified collector 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.
- 4. Refresher training. No less frequently than every five years from the date of satisfactory completion of the requirements of paragraphs (2) and (3) of this section, a Collector must complete refresher training that meets all the requirements of paragraphs (2) and (3) of this section.
- 5. Error Correction Training. If a mistake is made in the collection process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), the Collector must undergo error correction training. This training must occur within 30 days of the date the Collector is notified of the error that led to the need for retraining.
 - (a) Error correction training must be provided and proficiency documented in writing by a person who meets the requirements of paragraph (3)(a) of this section.
 - (b) 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.
 - (c) As part of the error correction training, the Collector must demonstrate 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 the error(s) occurred. The person providing the training must monitor and evaluate the performance and attest in writing that the mock collections were "error-free."
- 6. Documentation. Documentation must be maintained showing that the Collector currently meets all requirements of this section. The Collector must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use services provided by the Collector.

The collection process

- 1. Preliminary steps in the collection process. The collector must take the following steps before 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, 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 §40.191(a)(1)).
 - B. Ensure that, when the employee enters the collection site, the testing process begins without undue delay. For example, the Collector 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, ensure to the greatest extent practicable, 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 collect a specimen.

- (3) The collector must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may the collector catheterize a conscious employee. However, the collector must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.
 - (4) If the employee, who normally voids through self-catheterization, declines to do so, this constitutes a refusal to test.
- C. Require the employee to provide positive identification. The collector 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). The Collector 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, contact a DER to verify the identity of the employee.
- D. If the employee asks, the collector must supply identification to the employee. The identification must include the collector's name and employer's name, but does not have to include a 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. The Collector must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with the Collector or in a mutually agreeable location. The Collector must advise the employee that failure to comply with these directions constitutes a refusal to test.
- (1) If the employee asks for a receipt for any belongings left with the collector, one must be provided.
 - (2) The collector must allow the employee to keep his or her wallet.
 - (3) The collector 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) The collector 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. The employee must allow the collector to make this observation.
 - (5) If, in the collector's duties under paragraph (f)(4) of this section, material is found that could be used to tamper with a specimen, the collector 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 §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. The collector 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.)
-

2. Steps the collector takes in the collection process before the employee provides a urine specimen.
 - A. Complete Step 1 of the CCF.
 - B. Instruct the employee to wash and dry his or her hands at this time. Tell the employee not to wash his or her hands again until after delivering the specimen. Do 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 the collector or the employee, with both present, must unwrap or break the seal of the collection container. The Collector must not unwrap or break the seal on any specimen bottle at this time. The Collector 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 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 §§40.67 and 40.69), neither the Collector nor anyone else may go into the room with the employee.
 - (2) The collector is responsible for setting a reasonable time limit for voiding.
 - E. The collector 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 such conduct is detected, the collector must require that a collection take place immediately under direct observation (see §40.67) and note the conduct and the fact that the collection was observed in the "Remarks" line of the CCF (Step 2). The collector 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. Collector check, when employee presents a specimen.
 - A. Sufficiency of specimen. The Collector must check to ensure that the specimen contains at least 45 mL of urine.
 - (1) If it does not, follow "shy bladder" procedures (see §40.193(b)).
 - (2) When "shy bladder" procedures are followed, discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.
 - (3) The Collector is never permitted to combine urine collected from separate voids to create a specimen.
 - (4) The Collector must discard any excess urine.
 - B. Temperature. The Collector must check the temperature of the specimen no later than four minutes after the employee has given the specimen to the Collector.
 - (1) The acceptable temperature range is 32-38 °C/90-100 °F.
 - (2) The collector 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, mark the "Yes" box on the CCF (Step 2).
-

- (4) If the specimen temperature is outside the acceptable range, the collector must mark the "No" box and enter in the "Remarks" line (Step 2) the findings about the temperature.
- (5) If the specimen temperature is outside the acceptable range, a new collection must be conducted immediately using direct observation procedures (see §40.67).
- (6) In a case where a specimen is collected under direct observation because of the temperature being out of range, both the original specimen and the specimen collected using direct observation must be processed and sent 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. The DER and collection site supervisor must be notified as soon as possible 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 §40.191(a)(3)) or refuses to provide another specimen under direct observation (see §40.191(a)(4)), the Collector must notify the DER. As soon as the DER is notified, the Collector must discard any specimen the employee has provided previously during the collection procedure.

C. Signs of tampering. The collector must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if any unusual odor is noticed).

- (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), immediately conduct a new collection using direct observation procedures (see §40.67).
- (2) In a case where a specimen is collected under direct observation because of showing signs of tampering, 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. 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 under direct observation (see §40.191(a)(4)), discard any specimen the employee provided previously during the collection procedure. Notify the DER as soon as practicable.

4. Direct Observation Collection

A. The employer must direct an immediate collection under direct observation, including a request of the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show, by turning around, they do not have a prosthetic device to adulterate or contaminate the sample, 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 the Collector that there was not an adequate medical explanation for the result; or
- (2) The MRO reported to the Collector that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed.
- (3) The drug test is a return to duty test or a post treatment follow-up test.

B. The employer may direct a collection under direct observation of an employee if the employee has a previous rule violation.

- C. The collector must immediately conduct a collection under direct observation if:
 - (1) Directed by the DER to do so (see paragraphs (a) and (c) of this section); or
 - (2) Materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see §§40.61(f)(5)(i) and 40.63(e)); or
 - (3) The temperature on the original specimen was out of range (see §40.65(b)(5)); or
 - (4) The original specimen appeared to have been tampered with (see §40.65(c)(1)).
- D. The employee must be informed of the reason for the collection under direct observation.
 - (1) The employer must explain to the employee the reason for a directly observed collection under paragraph "A" or "B" of this section.
 - (2) The collector must explain to the employee the reason, if known, under this part for a directly observed collection under paragraphs "C(1)" through (3) of this section.
- E. The collector must complete a new CCF for the directly observed collection.
 - (1) He must mark the "reason for test" block (Step 1) the same as for the first collection.
 - (2) He must check the "Observed, (Enter Remark)" box and enter the reason (see §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. The collector must ensure that the observer is the same gender as the employee. He 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. If someone else is to observe the collection (e.g., in order to ensure a same gender observer), the collector must verbally instruct that person to follow procedures at paragraphs "I" and "J" of this section. If the collector is the observer, he too must follow these procedures.
- I. The observer must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show, by turning around, they do not have a prosthetic device to adulterate or contaminate the sample. After determining that the employee does not have such a device, the employee is permitted to return their clothing to its proper position for observed urination.
- J. The observer must watch the employee urinate into the collection container. Specifically, he is to watch the urine go from the employee's body into the collection container.
- K. As the observer but not the collector, the observer must not take the collection container from the employee, but must observe the specimen as the employee takes it to the collector.
- L. As the collector, when someone else has acted as the observer, the Collector must include the observer's name in the "Remarks" line of the CCF (Step 2).
- M. If the employee declines to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

- N. If the collector learns that a directly observed collection should have been collected but was not, the Collector must inform the employer that it must direct the employee to have an immediate recollection under direct observation.
5. Monitored Collections
- A. The collector 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. The collector 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, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor can be a different person from the collector and need not be a qualified collector.
 - C. If someone else is to monitor the collection (*e.g.*, in order to ensure a same gender monitor), the collector must verbally instruct that person to follow procedures at paragraphs "D" and "E" of this section. If the collector is the monitor, they too must follow these procedures.
 - D. The monitor must not watch the employee urinate into the collection container. If sounds are heard or make other observations indicating an attempt to tamper with a specimen an additional collection under direct observation must be made (see §§40.63(e), 40.65(c), and 40.67(b)).
 - E. The monitor must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.
 - F. When someone else has acted as the monitor, note that person's name in the "Remarks" line of the CCF (Step 2).
 - G. If the employee being tested declines to permit a collection authorized under this section to be monitored, it is a refusal to test.
6. Preparation of Specimens
- A. All collections under DOT agency drug testing regulations must be split specimen collections.
 - B. The collector must take the following steps, in order, after the employee brings the urine specimen to him. He 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) The collector 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) The collector 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) The collector must place and secure (*i.e.*, tighten or snap) the lids/caps on the bottles.
 - (5) The collector must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.
 - (6) The collector must then write the date on the tamper-evident bottle seals.
 - (7) The collector 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, this must noted in the "Remarks" line of the CCF (Step 2) and complete the collection process.
-

- (8) The collector must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: The Collector may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither the collector nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

7. Completing the Collection Process

- A. The collector must do the following things to complete the collection process. 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, note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, at a minimum, print the employee's name in the appropriate place.
 - (2) Complete the chain of custody on the CCF (Step 5) by printing the Collector's name (note: name may be pre-printed), 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 the Collector 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 multiple collections are being done.)
 - (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. The Collector 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. The collector or collection site must ensure that each specimen collected is shipped to a laboratory as quickly as possible, but in any case within 24 hours or during the next business day.

8. Shy Bladder

- A. The collector will determine if sufficient urine is present (45m/l). If the individual is unable to provide such a quantity of urine, the specimen shall be discarded. The collection site person shall instruct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a new urine specimen, whichever occurs first. If the employee refuses to drink fluids as directed or to provide a new urine specimen, the collection site person shall terminate the collection and notify the employer that the employee has refused to submit to testing.

If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt, the collection site person shall discontinue the collection and notify the employer.

The employer shall direct the employee who does not provide a sufficient urine specimen to obtain, as soon as possible, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's ability to provide an adequate amount of urine.

If the physician determines, in his/her medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate urine specimen, the employee's failure to provide the specimen shall not be deemed a refusal to test.

Section 49 CFR Part 40.25(f)(10)(iv)(B)(1), as amended, defines what types of medical conditions would result in an employee being unable to provide an adequate specimen for testing.

If the physician, in his/her medical judgment, is unable to determine why the employee is unable to provide an adequate urine specimen, it will be deemed as a refusal to test. The physician shall provide to the MRO a brief written statement stating his/her conclusions and the basis for it, which shall include detailed information on the medical condition of the employee. Upon receipt of this statement the MRO shall report his/her conclusions to the employer in writing.

- B. In pre-employment testing, if the District does not wish to hire the individual, the MRO is not required to make such a referral. Upon completion of the examination, the MRO shall report his/her conclusion to the District in writing.

This Page Intentionally Blank

APPENDIX E

DOT Drug and Alcohol Clearinghouse

- A. **Commercial Driver's License Drug and Alcohol Clearinghouse** (SOURCE: 81 FR 87725, Dec. 5, 2016, unless otherwise noted)

The Federal Motor Carrier Administration (FMCSA) established the Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse, effective January 6, 2020, containing information pertaining to violations of the US Department of Transportation (DOT) controlled substances (drug) and alcohol testing program for holders of CDLs. The Clearinghouse provides the necessary tools to identify drivers who are prohibited from operating a commercial motor vehicle (CMV) on public roads and to ensure that such drivers receive the required evaluation and treatment before operating a CMV on public roads.

Specifically, information in the Clearinghouse enables employers to identify drivers who commit a drug or alcohol program violation while working for one employer, but who fail to subsequently inform another employer (as required by current regulations).

All queries and reporting of violations will be for information as of the effective date and not any information prior to the effective date of January 6, 2020.

Records of drug and alcohol program violations will remain in the Clearinghouse for five years, or until the driver has completed the return-to-duty process, whichever is later.

- B. **Requirements and Procedures for Implementation.**

1. Drug and Alcohol Clearinghouse Requirements (§382.701).

- (a) Pre-employment query required.

(1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.

(2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

- (b) Annual query required.

(1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.

- (2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.
 - (3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.
- (c) **Employer notification.** If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.
 - (d) **Prohibition.** No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:
 - (1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.
 - (2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 of this title and specified in the SAP report required by §40.311 of this title, the driver has completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.
 - (e) **Recordkeeping required.** Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

2. Driver consent to permit access to information in the Clearinghouse (§382.703).

- (a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

- (b) Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:
 - (1) A verified positive, adulterated, or substituted controlled substances test result;
 - (2) An alcohol confirmation test with a concentration of 0.04 or higher;
 - (3) A refusal to submit to a test in violation of §382.211;
 - (4) An employer's report of actual knowledge, as defined at §382.107, of:
 - (i) On duty alcohol use pursuant to §382.205;
 - (ii) Pre-duty alcohol use pursuant to §382.207;
 - (iii) Alcohol use following an accident pursuant to §382.209; and
 - (iv) Controlled substance use pursuant to §382.213;
 - (5) A SAP report of the successful completion of the return-to-duty process;
 - (6) A negative return-to-duty test; and
 - (7) An employer's report of completion of follow-up testing.
- (c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.
- (d) A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).
- (e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with §382.701(c).

3. Reporting to the Clearinghouse (§382.705).

- (a) MROs.
 - (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:
 - (i) Verified positive, adulterated, or substituted controlled substances test results;
 - (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).
 - (2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

- (i) Reason for the test;
- (ii) Federal Drug Testing Custody and Control Form specimen ID number;
- (iii) Driver's name, date of birth, and CDL number and State of issuance;
- (iv) Employer's name, address, and USDOT number, if applicable;
- (v) Date of the test;
- (vi) Date of the verified result; and
- (vii) Test result. The test result must be one of the following:
 - (A) Positive (including the controlled substance(s) identified);
 - (B) Refusal to test: Adulterated;
 - (C) Refusal to test: Substituted; or
 - (D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with §40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) Employers.

- (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:
 - (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
 - (ii) A negative return-to-duty test result;
 - (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
 - (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and

- (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title.
- (2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:
- (i) Reason for the test;
 - (ii) Driver's name, date of birth, and CDL number and State of issuance;
 - (iii) Employer name, address, and USDOT number;
 - (iv) Date of the test;
 - (v) Date the result was reported; and
 - (vi) Test result. The test result must be one of the following:
 - (A) Negative (only required for return-to-duty tests administered in accordance with §382.309);
 - (B) Positive; or
 - (C) Refusal to take a test.
- (3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:
- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;
 - (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
 - (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
 - (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.
- (4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:

- (i) On-duty alcohol use pursuant to §382.205;
 - (ii) Pre-duty alcohol use pursuant to §382.207;
 - (iii) Alcohol use following an accident pursuant to §382.209; and
 - (iv) Controlled substance use pursuant to §382.213.
- (5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:
- (i) Driver's name, date of birth, CDL number and State of issuance;
 - (ii) Employer name, address, and USDOT number, if applicable;
 - (iii) Date the employer obtained actual knowledge of the violation;
 - (iv) Witnesses to the violation, if any, including contact information;
 - (v) Description of the violation;
 - (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and
 - (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.
- (6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.
- (c) C/TPAs. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of this section.
- (d) SAPs.
- (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:
- (i) SAPs name, address, and telephone number;
 - (ii) Driver's name, date of birth, and CDL number and State of issuance;

- (iii) Date of the initial substance-abuse-professional assessment; and
 - (iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.
- (2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.
- (e) Reporting truthfully and accurately. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

REPORTING ENTITIES AND CIRCUMSTANCES

Reporting entity	When information will be reported to clearinghouse
Prospective/Current Employer of CDL Driver	<ul style="list-style-type: none"> —An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
Service Agent acting on behalf of Current Employer of CDL Driver	<ul style="list-style-type: none"> —An alcohol confirmation test with a concentration of 0.04 or higher. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance. —Negative return-to-duty test results (drug and alcohol testing, as applicable) —Completion of follow-up testing.
MRO	<ul style="list-style-type: none"> —Verified positive, adulterated, or substituted drug test result. —Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	<ul style="list-style-type: none"> —Identification of driver and date the initial assessment was initiated. —Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

4. Notice to drivers of entry, revision, removal, or release of information (§382.707).

- (a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.
- (b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.
- (c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

5. Drivers' access to information in the Clearinghouse (§382.709).

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

6. Clearinghouse registration (§382.711).

- (a) Clearinghouse registration required. Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.
- (b) Employers.
 - (1) Employer Clearinghouse registration must include:
 - (i) Name, address, and telephone number;
 - (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
 - (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.
 - (2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.
 - (3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.
- (c) MROs and SAPs. Each MRO or SAP must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
 - (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

- (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.
- (d) C/TPAs and other service agents. Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
 - (2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
 - (3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

7. Duration, cancellation, and revocation of access (§382.713).

- (a) Term. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.
- (b) Cancellation. FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.
- (c) Revocation. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

8. Authorization to enter information into the Clearinghouse (§382.715).

- (a) C/TPAs. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.
- (b) SAPs. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

9. Procedures for correcting information in the database (§382.717).

- (a) Petitions limited to inaccurately reported information.
 - (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.
 - (2) Exceptions.
 - (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

- (ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in §382.705(b)(5).
 - (iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).
- (b) Petition. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:
 - (1) The petitioner's name, address, telephone number, and CDL number and State of issuance;
 - (2) Detailed description of the basis for the allegation that the information is not accurate; and
 - (3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.
- (c) Submission of petition. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.
- (d) Notice of decision. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.
- (e) Request for expedited treatment.
 - (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.
 - (2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.
- (f) Administrative review.
 - (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.
 - (2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for

Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590.

- (3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.
- (4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.
- (g) Subsequent notification to employers. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

9. Availability and removal of information (§382.719).

- (a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:
 - (1) The SAP reports to the Clearinghouse the information required in §382.705(d);
 - (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
 - (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title; and
 - (4) Five years have passed since the date of the violation determination.
- (b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.
- (c) Exceptions.
 - (1) Within 2 business days of granting a request for removal pursuant to §382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.
 - (2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.
- (d) Driver information remains available. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

10. Fees (§382.721).

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

11. Unauthorized access or use prohibited (§382.723).

- (a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.
- (b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.
- (c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at §382.507.
- (d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

12. Access by State licensing authorities (§382.725).

- (a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.
- (b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.
- (c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.
- (d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

13. Penalties (§382.727).

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

This Page Intentionally Blank

APPENDIX F

Medical Review Officer Responsibilities

A. To be qualified to act as an MRO in the DOT drug-testing program, the individual must meet each of the requirements of this section:

1. Credentials. The MRO must be a licensed physician (Doctor of Medicine or Osteopathy). If he is a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, he is authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if the individual is licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, they are not limited to performing MRO functions in that state or province, and they may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.
2. Basic knowledge. The MRO must be knowledgeable in the following areas:
 - (a) He must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
 - (b) He must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.
 - (c) He must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom he evaluates drug test results, and he must keep current on any changes to these materials. The DOT MRO Guidelines document is available from ODAPC
3. Qualification training. The MRO must receive qualification training meeting the requirements of this paragraph.
 - (a) Qualification training must provide instruction on the following subjects:
 - (i) Collection procedures for urine specimens;
 - (ii) Chain of custody, reporting, and recordkeeping;
 - (iii) Interpretation of drug and validity tests results;
 - (iv) The role and responsibilities of the MRO in the DOT drug testing program;
 - (v) The interaction with other participants in the program (e.g., DERs, SAPs); and
 - (vi) Provisions of this part and DOT agency rules applying to employers for whom the MRO reviews test results, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.
 - (b) Following the completion of qualification training under paragraph (3)(a) of this section, the MRO must satisfactorily complete an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (3)(a) of this section.

- (c) **Requalification Training.** During each five-year period from the date on which an individual satisfactorily completed the examination under paragraph (3)(b) of this section or have successfully completed the required continuing education requirements which were mandatory prior to October 1, 2010, requalification training must be completed.
 - (i) This requalification training must meet the requirements of the qualification training under paragraph (3)(a) of this section.
 - (ii) Following completion of requalification training, the MRO must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (3)(a) of this section.
- 4. **Documentation.** Documentation showing that the MRO currently meets all requirements of this section must be maintained. This documentation must be provided, on request, to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use services of the MRO.

B. MRO's Responsibilities in DOT Drug Testing.

The MRO has the following basic responsibilities:

- 1. Acting as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.
- 2. Providing a quality assurance review of the drug testing process for the specimens under their purview. This includes, but is not limited to:
 - (a) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled (see §§40.199-40.203). An MRO is not required to review laboratory internal chain of custody documentation. No one is permitted to cancel a test because the MRO has not reviewed this documentation;
 - (b) Providing feedback to employers, collection sites and laboratories regarding performance issues where necessary; and
 - (c) Reporting to and consulting with the ODAPC or a relevant DOT agency when the MRO wish DOT assistance in resolving any program issue. An employer or service agent is prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug testing issues with DOT.
- 3. The MRO must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug tests results from the laboratory.
- 4. While providing medical review of employees' test results, this part does not deem that the MRO has established a doctor-patient relationship with the employees whose tests are being reviewed.
- 5. The MRO must act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed, (e.g., cancelled or problematic tests, incorrect results, problems with blind specimens).
- 6. The MRO must ensure the timely flow of test results and other information to employers.
- 7. The MRO must protect the confidentiality of the drug testing information.

8. The MRO must perform all MRO functions in compliance with this part and other DOT agency regulations.

C. MRO / laboratory relationship.

An MRO may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with their responsibilities to that employer. The MRO may not derive any financial benefit by having an employer use a specific laboratory. For examples of relationships between laboratories and MROs that the Department views as creating a conflict of interest or the appearance of such a conflict, see §40.101(b).

D. MRO's functions in reviewing negative test results.

The MRO must do the following with respect to negative drug test results he receives from a laboratory, prior to verifying the result and releasing it to the DER:

1. Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require him to initiate corrective action or to cancel the test (see §§40.199 and 40.203).
 2. Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.
 3. Before he reports a negative test result, he must have in his possession the following documents:
 - (a) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
 - (b) A legible copy (fax, photocopy, image) of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.
 4. If the copy of the documentation provided to him by the collector or laboratory appears unclear, he must request that the collector or laboratory send him a legible copy.
 5. On Copy 2 of the CCF, place a check mark in the "Negative" box (Step 6), provide his name, and sign, initial, or stamp and date the verification statement.
 6. Report the result in a confidential manner (see §§40.163-40.167).
 7. Staff under direct, personal supervision of the MRO may perform the administrative functions of this section, but only the MRO can cancel a test. If the MRO cancels a laboratory-confirmed negative result, check the "Test Cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, provide the MRO name, and sign, initial or stamp and date the verification statement.
 - (a) On specimen results that are reviewed by staff, the MRO is responsible for assuring the quality of their work.
 - (b) The MRO is required to personally review at least 5 percent of all CCFs reviewed by their staff on a quarterly basis, including all results that required a corrective action. However, the MRO need not review more than 500 negative results in any quarter.
 - (c) The MRO review must, at a minimum, include the CCF, negative laboratory test result, any acDistricting corrective documents, and the report sent to the employer. The MRO must correct any errors discovered. The MRO must take action, as necessary, to ensure compliance by their staff with this part and document the corrective action. The MRO must attest to the quality assurance review by initialing the CCFs reviewed.
 - (d) The MRO must make these CCFs easily identifiable and retrievable for review by DOT agencies.
-

E. The MRO's functions in reviewing laboratory confirmed positive, adulterated, substituted, or invalid drug test results.

1. The MRO must do the following with respect to confirmed positive, adulterated, substituted, or invalid drug tests received from a laboratory, before verifying the results and releasing it to the DER:
 - (a) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require the test to be cancelled (see §§40.199 and 40.203). Staff under direct, personal supervision of the MRO may conduct this administrative review, but only the MRO may verify or cancel a test.
 - (b) Review Copy 1 of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form. The MRO is not required to review any other documentation generated by the laboratory during their analysis or handling of the specimen (e.g., the laboratory internal chain of custody).
 - (c) If the copy of the documentation provided to the MRO by the collector or laboratory appears unclear, the MRO must request that the collector or laboratory send a legible copy.
 - (d) If the MRO cancels a laboratory confirmed positive, adulterated, substituted, or invalid drug test report, check the "test cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, sign, provide MRO name, and date the verification statement.
 - (e) Except in the circumstances spelled out in §40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between the MRO and the employee. The MRO may initiate the verification process based on the laboratory results report.
 - (f) Verify the test result as either negative, positive, test cancelled, or refusal to test because of adulteration or substitution, consistent with the requirements of §§40.135-40.145 and 40.159.
2. Before reporting a verified negative, positive, test cancelled, refusal to test because of adulteration or substitution, the MRO must have in their possession the following documents:
 - (a) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
 - (b) A legible copy (fax, photocopy, image) of Copy 1 of the CCF, containing the certifying scientist's signature.
3. With respect to verified positive test results, place a check mark in the "Positive" box (Step 6) on Copy 2 of the CCF, indicate the drug(s)/ metabolite(s) detected on the "Remarks" line, sign and date the verification statement.
4. Report the result in a confidential manner (see §§40.163-40.167).
5. With respect to adulteration or substitution test results, check the "refusal to test because:" box (Step 6) on Copy 2 of the CCF, check the "Adulterated" or "Substituted" box, as appropriate, make appropriate annotation in the "Remarks" line, sign and date the verification statement.
6. The MROs actions concerning reporting confirmed positive, adulterated, or substituted results to the employer before completing the verification process are also governed by the stand-down provisions of §40.21.
 - (a) If an employer has a stand-down policy that meets the requirements of §40.21, the MRO may report to the DER that the MRO received an employee's laboratory confirmed positive, adulterated, or substituted test result, consistent with the

terms of the waiver the employer received. The MRO must not provide any further details about the test result (e.g., the name of the drug involved).

- (b) If the employer does not have a stand-down policy that meets the requirements of §40.21, the MRO must not inform the employer that they received an employee's laboratory confirmed positive, adulterated, or substituted test result until the test result is verified. For example, as an MRO employed directly by a District, the MRO must not tell anyone on the District's staff or management that they have received an employee's laboratory confirmed test result.

F. Notification to an employee of the verification process after a confirmed positive, adulterated, substituted, or invalid test result?

1. When the MRO receives a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, he must contact the employee directly (*i.e.*, actually talk to the employee), on a confidential basis, to determine whether the employee wants to discuss the test result. In making this contact, he must explain to the employee that, if he or she declines to discuss the result, he will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.
2. The staff under the MRO's personal supervision may conduct this initial contact.
 - (a) This staff contact must be limited to scheduling the discussion between the MRO and the employee and explaining the consequences of the employee's declining to speak with the MRO (*i.e.*, that the MRO will verify the test without input from the employee). If the employee declines to speak with the MRO, the staff person must document the employee's decision, including the date and time.
 - (b) A staff person must not gather any medical information or information concerning possible explanations for the test result.
 - (c) A staff person may advise an employee to have medical information (e.g., prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.
 - (d) Since the MRO is required to speak personally with the employee, face-to-face or on the phone, the staff must not inquire if the employee wishes to speak with the MRO.
3. The MRO or his staff must make reasonable efforts to reach the employee at the day and evening telephone numbers listed on the CCF. Reasonable efforts include, at a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If the MRO or his staff cannot reach the employee directly after making these efforts, The MRO or his staff must take the following steps:
 - (a) Document the efforts made to contact the employee, including dates and times. If both phone numbers are incorrect (e.g., disconnected, wrong number), take the actions listed in paragraph (b)(ii) of this section without waiting the full 24-hour period.
 - (b) Contact the DER, instructing the DER to contact the employee.
 - (i) The MRO must simply direct the DER to inform the employee to contact the MRO.
 - (ii) The MRO must not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.
 - (iii) The MRO must document the dates and times of the attempts to contact the DER, and must document the name of the DER contacted and the date and time of the contact.

4. The DER must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If the DER successfully contacts the employee (*i.e.*, actually talks to the employee), he must document the date and time of the contact, and inform the MRO. The DER must inform the employee that he or she must contact the MRO immediately. The DER must also inform the employee the consequences of failing to contact the MRO within the next 72 hours. ((see §40.133(a)(2)).
 - (a) The DER must not inform anyone else working for the employer that they are seeking to contact the employee on behalf of the MRO.
 - (b) The DER must have made all reasonable efforts to contact the employee but failed to do so, and may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, at a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.
 - (i) The DER must document the dates and times of these efforts.
 - (ii) If the DER is unable to contact the employee within this 24-hour period, the DER must leave a message for the employee by any practicable means (*e.g.*, voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

G. Verifying a test as positive, or as a refusal to test because of adulteration or substitution, without interviewing the employee.

1. The MRO normally may verify a confirmed positive test (for any drug or drug metabolite, including opioids such as morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, or hydromorphone), or as a refusal to test because of adulteration or substitution, only after interviewing the employee as provided in §§40.135-40.145. However, there are three circumstances in which he may verify such a result without an interview:
 - (a) The MRO may verify a test result as a positive or refusal to test, as applicable, if the employee expressly declines the opportunity to discuss the test with the MRO. The MRO must maintain complete documentation of this occurrence, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the MRO.
 - (b) The MRO may verify a test result as a positive or refusal to test, as applicable, if the DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO and more than 72 hours have passed since the time the DER contacted the employee.
 - (c) The MRO may verify a test result as a positive or refusal to test, as applicable, if neither he nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory.
2. When the MRO verifies a test result as a positive or refusal to test under this section, he must document the date, time and reason, following the instructions in §40.163.
3. After the MRO has verified a test result as a positive or refusal to test under this section and reported the result to the DER, he must allow the employee to present information to him within 60 days of the verification documenting that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided.

On the basis of such information, the MRO may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation for the confirmed test result.

H. Employee verification interview.

1. The MRO must tell the employee that the laboratory has determined that the employee's test result was positive, adulterated, substituted, or invalid, as applicable. The MRO must also tell the employee of the drugs for which his or her specimen tested positive, or the basis for the finding of adulteration or substitution.
2. The MRO must explain the verification interview process to the employee and inform the employee that his decision will be based on information the employee provides in the interview.
3. The MRO must explain that, if further medical evaluation is needed for the verification process, the employee must comply with his request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.
4. The MRO must warn an employee who has a confirmed positive, adulterated, substituted or invalid test that the MRO is required to provide, without the employee's consent, to third parties, drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives the MRO in the verification process (see §40.327).
 - (a) The MRO must give this warning to the employee before obtaining any medical information as part of the verification process.
 - (b) For purposes of this paragraph, medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.
 - (c) For purposes of this paragraph, the persons to whom this information may be provided include the employer, a SAP evaluating the employee as part of the return to duty process (see §40.293(g)), DOT, another Federal safety agency (e.g., the NTSB), or any state safety agency as required by state law.
5. The MRO must also advise the employee that, before informing any third party about any medication the employee is using pursuant to a legally valid prescription under the Controlled Substances Act, the MRO will allow 5 days for the employee to have the prescribing physician contact the MRO to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If such information is received from the prescribing physician, the MRO must transmit this information to any third party to whom the MRO previously provided information about the safety risks of the employee's other medication.

I. MRO verification of test results, involving marijuana, cocaine, amphetamines, or PCP.

1. The MRO must verify a confirmed positive test result for marijuana, cocaine, amphetamines, and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system.
2. The MRO must offer the employee an opportunity to present a legitimate medical explanation in all cases.
 - (a) The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. The MRO has the discretion to extend the time available to the employee for this purpose for up to five days before verifying the test result. If the MRO determines that there is a reasonable basis to believe that the employee will be able to produce relevant evidence concerning a legitimate medical explanation within that time. If the MRO determines that there is a legitimate medical explanation, he must verify the test result as negative. Otherwise, the MRO must verify the test result as positive.

- (b) In determining whether a legitimate medical explanation exists, the MRO may consider the employee's use of a medication from a foreign country. The MRO must exercise his professional judgment consistently with the following principles:
 - (i) There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.
 - (ii) There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use. Use of a drug of abuse (e.g., heroin, PCP, marijuana, 6-AM, MDMA, MDA, or MDEA) or any other substance (see §40.151(f) and (g)) that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the substance is obtained legally in a foreign country.
 - (iii) Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.
 - (iv) Even if the MRO finds that there is a legitimate medical explanation under this paragraph and verify a test negative, he may have a responsibility to raise fitness-for-duty considerations with the employer (see §40.327).

J. MRO verification of test results, involving opioids (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, and hydromorphone).

The MRO must proceed as follows when he receives a laboratory confirmed positive opiod result:

1. If the laboratory detects the presence of 6-acetylmorphine (6-AM) in the specimen, the MRO must verify the test result positive.
 2. In the absence of 6-AM, if the laboratory detects the presence of either morphine or codeine at 15,000 ng/mL or above, the MRO must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see §40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.
 3. For all other opiod positive results, the MRO must verify a confirmed positive test result for opioids only if he determines that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiod, or opium derivative (i.e., morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, or hydromorphone),
 - (a) It is the MRO's responsibility to use his best professional and ethical judgment and discretion to determine whether there is clinical evidence of unauthorized use of opioids (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, or hydromorphone). Examples of information that the MRO may consider in making this judgment include, but are not limited to, the following:
 - (i) Recent needle tracks,
 - (ii) Behavioral and psychological signs of acute opiod intoxication or withdrawal;
 - (iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result, and
 - (iv) Use of a medication from a foreign country. See §40.137(e) for guidance on how to make this determination.
 - (b) In order to establish the clinical evidence referenced in paragraphs (3)(a)(i) and (ii) of this section, personal observation of the employee is essential.
-

- (i) Therefore, the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.
- (ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (3)(a)(iii) or (iv) of this section.
- (c) To be the basis of a verified positive result for opioids (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, or hydromorphone), the clinical evidence the MRO finds must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, the MRO does not have grounds for verifying the test positive. The admission must be for the substance that was found).
- (d) The MRO has the burden of establishing that there is clinical evidence of unauthorized use of opioids (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, or hydromorphone) referenced in this paragraph (c). If the MRO cannot make this determination (e.g., there is not sufficient clinical evidence or history), the MRO must verify the test as negative. The employee does not need to show the MRO that a legitimate medical explanation exists if no clinical evidence is established.

K. Obtaining information for the verification decision.

The MRO must do the following as he makes the determinations needed for a verification decision:

1. The MRO must conduct a medical interview. He must review the employee's medical history and any other relevant biomedical factors presented to him by the employee. He may direct the employee to undergo further medical evaluation by himself or another physician.
2. If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication, the MRO must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides. The MRO may contact the employee's physician or other relevant medical personnel for further information.

L. MRO verification of test results, involving adulteration or substitution.

1. When the MRO receives a laboratory report that a specimen is adulterated or substituted, he must treat that report in the same way he treats the laboratory's report of a confirmed positive test for a drug or drug metabolite.
 2. The MRO must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite (see §§40.129-40.135, 40.141, 40.151), except as otherwise provided in this section.
 3. In the verification interview, the MRO must explain the laboratory findings to the employee and address technical questions or issues the employee may raise.
 4. The MRO must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the creatinine and specific gravity findings for, the specimen.
 5. The employee has the burden of proof that there is a legitimate medical explanation.
 - (a) To meet this burden in the case of an adulterated specimen, the employee must demonstrate that the adulterant found by the laboratory entered the specimen through physiological means.
 - (b) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine, through physiological means, meeting the creatinine and specific gravity criteria of §40.93(b).
-

- (c) The employee must present information meeting this burden at the time of the verification interview. The MRO has discretion to extend the time available to the employee for this purpose for up to five days before verifying the specimen, if it is determined that there is a reasonable basis to believe that the employee will be able to produce relevant evidence supporting a legitimate medical explanation within that time.
6. The MRO or the employer are not responsible for arranging, conducting, or paying for any studies, examinations or analyses to determine whether a legitimate medical explanation exists.
7. The MRO must exercise his best professional judgment in deciding whether the employee has established a legitimate medical explanation.
- (a) If the MRO determines that the employee's explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, he must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.
- (b) If the MRO believes that the employee's explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, he must direct the employee to obtain, within the five-day period set forth in paragraph (5)(c) of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to the MRO, with expertise in the medical issues raised by the employee's explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
- (i) The MRO or employer are not responsible for finding or paying a referral physician. However, on request of the employee, the MRO must provide reasonable assistance to the employee's efforts to find such a physician. The final choice of the referral physician is the employee's, as long as the physician is acceptable to the MRO.
- (ii) The MRO must consult with the referral physician, providing guidance to him or her concerning his or her responsibilities under this section. As part of this consultation, the MRO must provide the following information to the referral physician:
- The employee was required to take a DOT drug test, but the laboratory reported that the specimen was adulterated or substituted, which is treated as a refusal to test.
 - The consequences of the appropriate DOT agency regulation for refusing to take the required drug test.
 - That the referral physician must agree to follow the requirements of paragraphs (7)(c) through (7)(d) of this section; and
 - That the referral physician must provide the MRO with a signed statement of his or her recommendations.
- (c) The referral physician (RP) must evaluate the employee and consider any evidence the employee presents concerning the employee's medical explanation. The RP may conduct additional tests to determine whether there is a legitimate medical explanation. Any additional urine tests must be performed in a HHS-certified laboratory.
- (d) The referral physician must then make a written recommendation to the MRO about whether the MRO should determine that there is a legitimate medical explanation. The MRO must seriously consider and assess the referral physician's recommendation in deciding whether there is a legitimate medical explanation.
- (e) If the MRO determines that there is a legitimate medical explanation, he must cancel the test and inform ODAPC in writing of the determination and the basis for it (e.g., referral physician's findings, evidence produced by the employee).
-

- (f) If the MRO determines that there is not a legitimate medical explanation, he must report the test to the DER as a verified refusal to test because of adulteration or substitution.
- 8. The following are examples of types of evidence an employee could present to support an assertion of a legitimate medical explanation for a substituted result.
 - (a) Medically valid evidence demonstrating that the employee is capable of physiologically producing urine meeting the creatinine and specific gravity criteria of §40.93(b).
 - (i) To be regarded as medically valid, the evidence must have been gathered using appropriate methodology and controls to ensure its accuracy and reliability.
 - (ii) Assertion by the employee that his or her personal characteristics (*e.g.*, with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).
 - (b) Information from a medical evaluation under paragraph (7) of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of §40.93(b).
 - (i) A finding or diagnosis by the physician that an employee has a medical condition, in itself does not constitute a legitimate medical explanation.
 - (ii) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).

M. Changing a verified positive drug test result or refusal to test.

- 1. The MRO may change a verified positive or refusal to test drug test result only in the following situations:
 - (a) When the MRO reopens a verification that was done without an interview with an employee.
 - (b) If the MRO receives information, not available to him at the time of the original verification, demonstrating that the laboratory made an error in identifying (*e.g.*, a paperwork mistake) or testing (*e.g.*, a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. The MRO verified the test results as reported. Then the laboratory notifies the MRO that it mixed up the two test results, and X was really negative and Y was really positive. The MRO would change X's test result from positive to negative and contact Y to conduct a verification interview.
 - (c) If, within 60 days of the original verification decision:
 - (i) The MRO receives information that could not reasonably have been provided at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/metabolite(s) in the employee's specimen; or
 - (ii) The MRO receives credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists.

- (d) If the MRO receives the information in paragraph (1)(c) of this section after the 60-day period, they must consult with ODAPC prior to changing the result.
 - (e) When the MRO has made an administrative error and reported an incorrect result. If the MRO changes the result, he must immediately notify the DER in writing, as provided in §§40.163-40.165.
2. The MRO is the only person permitted to change a verified test result, such as a verified positive test result of a determination that an individual has refused to test because of adulteration of substitution. This is because the MRO has the sole authority under this part to make medical determinations leading to a verified test. For example, an arbitrator is not permitted to overturn a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

N. Prohibited actions of the MRO as part of the verification process.

The MRO is prohibited from doing the following as part of the verification process:

1. The MRO must not consider any evidence from tests of urine samples or other body fluids or tissues (e.g., blood or hair samples) that are not collected or tested in accordance with this part. For example, if an employee tells the MRO he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result or a DNA test result questioning the identity of his DOT specimen, the MRO is required to ignore this test result.
2. It is not the MRO's function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open urine containers where other people could access them).
3. It is not the MRO's function to determine whether the employer should have directed that a test occur. For example, if an employee indicates that the employer misidentified her as the subject of a random test, or directed her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, the MRO must inform the employee that the MRO cannot play a role in deciding these issues.
4. It is not the MRO's function to consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may indicate that someone slipped amphetamines into her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, the MRO must not declare a test as negative based on an explanation of this kind.
5. The MRO must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted).
6. The MRO must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. The MRO also must not accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.
7. The MRO must not accept an assertion that there is a legitimate medical explanation for the presence of PCP or 6-AM in a specimen. There are no legitimate medical explanations for the presence of these substances.
8. The MRO must not accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.

9. The MRO must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce urine with no detectable creatinine. There are no physiological means through which a person can produce a urine specimen having this characteristic.

O. Notification by the MRO to employees of their right to a test of the split specimen.

1. When the MRO has verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, he must notify the employee of his or her right to have the split specimen tested. The MRO must also notify the employee of the procedures for requesting a test of the split specimen.
2. The MRO must inform the employee that he or she has 72 hours from the time this notification was provided to him or her to request a test of the split specimen.
3. The MRO must tell the employee how to contact him to make this request. The MRO must provide telephone numbers or other information that will allow the employee to make this request. The MRO must have the ability to receive the employee's calls at all times during the 72 hour period (e.g., by use of an answering machine with a "time stamp" feature when there is no one in the MRO's office to answer the phone).
4. The MRO must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place and that the employee is not required to pay for the test from his or her own funds before the test takes place. The MRO must also tell the employee that the employer may seek reimbursement for the cost of the test (see §40.173).
5. The MRO must tell the employee that additional tests of the specimen (e.g., DNA tests) are not authorized.

P. The MRO's responsibilities when a negative or positive test result is also dilute.

1. When the laboratory reports that a specimen is dilute, the MRO must report to the DER that the specimen, in addition to being negative or positive, is dilute.
2. The MRO must check the "dilute" box (Step 6) on Copy 2 of the CCF.
3. When the MRO reports a dilute specimen to the DER, he must explain to the DER the employer's obligations and choices under §40.197.

Q. MRO's actions when a drug test result is invalid.

1. When the laboratory reports to the MRO that the test result is an invalid result, he must do the following:
 - (a) Discuss the laboratory results with a certifying scientist to obtain more specific information.
 - (b) Contact the employee and inform the employee that the specimen was invalid or contained an unexplained interfering substance. In contacting the employee, use the procedures set forth in §40.131.
 - (c) After explaining the limits of disclosure (see §§40.135(d) and 40.327), the MRO should inquire as to medications the employee may have taken that may interfere with some immunoassay tests.
 - (d) If the employee gives an explanation that is acceptable, the MRO must:
 - (i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line.

- (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (*i.e.*, pre-employment, return-to-duty, or follow-up tests).
- (e) If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, the MRO must:
 - (i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection required" on the "Remarks" line.
 - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation.
 - (iii) Instruct the employer to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.
- (f) When the test result is invalid because pH is greater than or equal to 9.0 but less than or equal to 9.5 and the employee has no other medical explanation for the pH, the MRO should consider whether these is evidence of elapsed time and increased temperature that could account for the pH value.
 - (i) The MRO is authorized to consider the temperature conditions that were likely to have existed between the time of collection and transportation of the specimen to the laboratory, and the length of time between the specimen collection and arrival at the laboratory.
 - (ii) The MRO may talk with the collection site and laboratory to discuss time and temperature issues, including any pertinent information regarding specimen storage.
 - (iii) If the MRO determines that time and temperature account for the pH value, the MRO must cancel the test and take no further action, as provided at paragraph (a)(4) of this section.
 - (iv) If the MRO determines that time and temperature fail to account for the pH value, the MRO must cancel the test and direct another collection under direct observation, as provided at paragraph (a)(5) of this section.
- 2. The MRO may only report an invalid test result when he is in possession of a legible copy of Copy 1 of the CCF. In addition, the MRO must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.
- 3. If the employee admits to having adulterated or substituted the specimen, the MRO must, on the same day, write and sign his own statement of what the employee told him. The MRO must then report a refusal to test in accordance with §40.163.

R. MRO actions when a drug test specimen is rejected for testing.

When the laboratory reports that the specimen is rejected for testing (*e.g.*, because of a fatal or uncorrected flaw), the MRO must do the following:

- 1. Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter the reason on the "Remarks" line.
- 2. Report to the DER that the test is cancelled and the reason for cancellation, and that no further action is required unless a negative test is required (*e.g.*, in the case of a pre-employment, return-to-duty, or follow-up test).
- 3. The MRO may only report a test cancelled because of a rejected for testing test result when they are in possession of a legible copy of Copy 1 of the CCF. In addition, the MRO

must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.

S. Reporting of drug test results.

1. It is the responsibility of the MRO to report the drug test results to the employer.
 - (a) The MRO or a staff member may rubber stamp a report of negative results. If the MRO uses a rubber stamp, he or his staff must also initial the stamp to identify who affixed the stamp to the report.
 - (b) The MRO must sign reports of all other results.
 2. The MRO may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.
 3. If the MRO does not report test results using Copy 2 of the CCF for this purpose, he must provide a written report (e.g., a letter) for each test result. This report must, at a minimum, include the following information:
 - (a) Full name, as indicated on the CCF, of the employee tested;
 - (b) Specimen ID number from the CCF and the donor SSN or employee ID number
 - (c) Reason for the test as indicated on the CCF (e.g., random, post-accident);
 - (d) Date of the collection;
 - (e) Date Copy 2 of the CCF was received;
 - (f) Result of the test (i.e., positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;
 - (g) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;
 - (h) For cancelled tests, the reason for cancellation;
 - (i) For refusals to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).
 4. As an exception to the reporting requirements of paragraph 2 and 3 of this section, the MRO may report negative results using an electronic data file.
 - (a) If the MRO reports negatives using an electronic data file, the report must contain, at a minimum, the information specified in paragraph 3 of this section, as applicable for negative results.
 - (b) In addition, the report must contain the MRO's name, address, and phone number, the name of any person other than the MRO reporting the results, and the date the electronic report is released.
 5. The MRO must retain a signed or stamped and dated copy of Copy 2 of the CCF in his records. If he does not use Copy 2 for reporting results, he must maintain a copy of the signed or stamped and dated letter in addition to the signed or stamped and dated Copy 2. If he uses the electronic data file to report negatives, he must maintain a retrievable copy of that report in a format suitable for inspection and auditing by a DOT representative.
 6. The MRO must not use Copy 1 of the CCF to report drug test results.
 7. The MRO must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, he must provide the test information in his possession to a SAP who consults with him (see §40.293(g)).
-

8. The MRO must maintain reports and records related to:
 - a. Negatives and cancelled results for one year, and
 - b. Positives and refusals for five years, unless otherwise specified by applicable DOT regulations.

T. Transmitting reports by the MRO of drug test results.

1. The MRO must report all drug test results to the DER, except in the circumstances provided for in §40.345.
2. If the employer elects to receive reports of results through a C/TPA, acting as an intermediary as provided in §40.345, the MRO must report the results through the designated C/TPA.

U. MRO reports of drug results to the employer.

The MRO or C/TPA who transmits drug test results to the employer must comply with the following requirements:

1. They must report the results in a confidential manner.
2. They must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.
 - (a) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up the phone call with appropriate documentation (see §40.163).
 - (b) They are responsible for identifying themselves to the DER, and the DER must have a means to confirm their identification.
 - (c) The MRO's report to the employer must contain all of the information required by §40.163.
3. They must transmit the MRO's written report of verified test to the DER so that the DER receives them within two days of verification by the MRO.
 - (a) They must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see §40.163(b) and (c)).
 - (b) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.
4. In transmitting test results, the MRO or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.
5. MRO reports are not subject to modification or change by anyone other than the MRO, as provided in §40.149(c).

V. MRO report of drug results to the Clearinghouse (§382.705).

1. Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:
 - (a) Verified positive, adulterated, or substituted controlled substances test results;

- (b) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).
2. MROs must provide the following information for each controlled substances test result specified in paragraph 1. (a) of this section:
- (a) Reason for the test;
 - (b) Federal Drug Testing Custody and Control Form specimen ID number;
 - (c) Driver's name, date of birth, and CDL number and State of issuance;
 - (d) Employer's name, address, and USDOT number, if applicable;
 - (e) Date of the test;
 - (f) Date of the verified result; and
 - (g) Test result. The test result must be one of the following:
 - (1.) Positive (including the controlled substance(s) identified);
 - (2.) Refusal to test: Adulterated;
 - (3.) Refusal to test: Substituted; or
 - (4.) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with §40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.
3. Within 1 business day of making any change to the results report in accordance with paragraph 1. (a) of this section, a MRO must report that changed result to the Clearinghouse.

W. Applying for Clearinghouse registration as an MRO.

Each MRO must provide the following to apply for Clearinghouse registration:

- 1. Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
- 2. A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
- 3. Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

X. Violations of Clearinghouse requirements.

An MRO who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

This Page Intentionally Blank

APPENDIX G

LABORATORY PROCEDURES

1. Processing Incoming Specimens

- A. The laboratory is authorized to receive only the laboratory copy of the CCF. They are not authorized to receive other copies of the CCF nor any copies of the alcohol testing form.
- B. They must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens.
- C. They 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 re-designated (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 re-designated (see paragraph (g) of this section).
- D. When the lab finds a specimen meeting the criteria of paragraph (c) of this section, the lab employee must document their findings and stop the testing process. Report the result in accordance with §40.97(a)(3).
- E. The lab employee must inspect each specimen and CCF for the collector's signature on the certification statement in Step 4 of the CCF. Upon finding that the signature is omitted, document the flaw and continue the testing process.
 - (1) In such a case, they must retain the specimen for a minimum of 5 business days from the date action to correct the flaw was initiated.
 - (2) They must then attempt to correct the flaw by following the procedures of §40.205(b)(1).
 - (3) If the flaw is not corrected, report the result as rejected for testing in accordance with §40.97(a)(3).
- F. If the lab determines that the specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range, they must then attempt to correct the problem by following the procedures of §40.208.
 - (1) In such a case, they must continue their efforts to correct the problem for five business days, before reporting the result.
 - (2) When they have obtained the correction, or five business days have elapsed, report the result in accordance with §40.97(a).
- G. If the lab determines that a CCF fails to meet the requirements of §40.45(a) (e.g., a non-Federal form or an expired Federal form was used for the collection), they must attempt to correct the use of the improper form by following the procedures of §40.205(b)(2).
 - (1) The Laboratory must retain the specimen for a minimum of 5 business days from the date on which they initiated action to correct the problem.
 - (2) During the period August 1 – October 31, 2001, the lab is not required to reject a test conducted on an expired Federal CCF because this problem is not corrected. Beginning November 1, 2001, if the problem(s) is not corrected, the test must be rejected and report the result in accordance with §40.97(a)(3).

- H. If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not acDistrict the primary, has leaked, or is otherwise unavailable for testing, the lab must still test the primary specimen and follow appropriate procedures outlined in §40.175(b) regarding the unavailability of the split specimen for testing.
- (1) The primary specimen and the split specimen can be re-designated (*i.e.*, Bottle B is re-designated 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 (H)(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.
- I. 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.

2. Required Drugs

The laboratory must test for the following five drugs or classes of drugs in a DOT drug test. They must not test "DOT specimens" for any other drugs.

- A. Marijuana metabolites.
- B. Cocaine metabolites.
- C. Amphetamines.
- D. Opioid metabolites (including morphine, heroin, 6-acetylmorphine, codeine, oxycodone, oxymorphone, hydrocodone, or hydromorphone).
- E. Phencyclidine (PCP).

3. Cutoff concentrations for initial and confirmatory tests.

- A. The laboratory must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

<i>Initial Test Analyte</i>	<i>Initial test cutoff concentration</i>	<i>Confirmatory test analyte</i>	<i>Confirmatory test cutoff concentration</i>
Marijuana metabolites	50 ng/mL	THCA ¹	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL
Opioid metabolites			
Codeine/Morphine ²	2000 ng/mL	Codeine Morphine	2000 ng/mL 2000 ng/mL
6-Acetylmorphine (Heroin)	10 ng/mL	6-Acetylmorphine	10 ng/mL
Oxycodone	100 ng/mL		100 ng/mL
Oxymorphone	100 ng/mL		100 ng/mL
Hydrocodone	300 ng/mL		300 ng/mL
Hydromorphone	300 ng/mL		100 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines³			
AMP/MAMP ⁴	500 ng/mL	Amphetamine Methamphetamine ⁵	250 ng/mL 250 ng/mL
MDMA ⁶	500 ng/mL	MDMA/MDA ⁷	250 ng/mL

¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

² Morphine is the target analyte for codeine/morphine testing.

³ Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

⁴ Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

⁵ To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

⁶ Methylendioxyamphetamine (MDMA).

⁷ Methylendioxyamphetamine (MDA).

- B. On an initial drug test a result below the cutoff concentration must be reported as negative. If the result is at or above the cutoff concentration, a confirmation test must be conducted.
- C. On a confirmation drug test a result below the cutoff concentration must be reported as negative and a result at or above the cutoff concentration as confirmed positive.
- D. Quantitative values for morphine or codeine at 15,000 ng/mL or above must be reported.
- E. On a 6-AM confirmed positive result:
- 1) When a 6-AM confirmed positive result is reported and morphine for that specimen is not reported at or above the 2000 per ng/mL confirmed positive cutoff, confer with the MRO to determine if there was confirmed morphine below 2000 ng/mL.
 - 2) If morphine was not confirmed below 2000 ng/mL, the laboratory and the MRO must determine whether further testing is needed to quantify the amount of morphine concentration present.
 - 3) If no detectable morphine is found at LOD upon further testing, that fact must be reported to ODAPC immediately.

4. Validity Testing

- 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. The laboratory is authorized to conduct validity testing.

5. Validity tests laboratories must conduct on primary specimens.

When the laboratory conducts validity testing under §40.89, they must conduct it in accordance with the requirements of this section.

- A. The lab must test each primary specimen for creatinine. They must also determine its specific gravity if it is found that the creatinine concentration is less than 20 mg/dL.
- B. They must measure the pH of each primary specimen.
- C. The lab must test each primary specimen to determine if it contains substances that may be used to adulterate the specimen. The 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 the presence of an interfering substance/adulterant that could make a test result invalid is suspected, but are unable to identify it (e.g., a new adulterant), the first laboratory must send the specimen to another HHS certified laboratory that has the capability of doing so.
- E. If a substance in a specimen that appears to be an adulterant is identified, but which is not listed in current HHS requirements or guidance, the lab must report the finding in writing to ODAPC and the Division of Workplace Programs, HHS, within three business days. The lab must also complete testing of the specimen for drugs, to the extent technically feasible.
- F. The lab must conserve as much as possible of the specimen for possible future testing.

6. Criteria used to establish that a specimen is dilute or substituted.

- A. The laboratory 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. The laboratory 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.

7. Criteria used to establish that a specimen is adulterated.

- A. The laboratory must consider the primary specimen to be adulterated if it determines 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 a determination under paragraph (a) of this section, the lab must apply the criteria in current HHS requirements or specimen validity guidance.

8. Laboratory reporting requirements.

- A. The laboratory 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. The laboratory must report laboratory results directly, and only, to the MRO at his or her place of business. Results must not be reported to or through the DER or a service agent (e.g., C/TPA).
- (1) Negative results: The lab 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 they may provide the laboratory results report electronically (i.e., computer data file).
- (i) If the lab elects to provide the laboratory results report, the following elements, at a minimum, must be included in the report format:
- (A) Laboratory name and address;
 - (B) Employer's name (I.D. or account number may be included);
 - (C) Medical review officer's name;
 - (D) Specimen I.D. number;
 - (E) Donor's SSN or employee I.D. number, if provided;
 - (F) Reason for test, if provided;
 - (G) Collector's name and telephone number;
 - (H) Date of the collection;
 - (I) Date received at the laboratory;
 - (J) Date certifying scientist released the results;
 - (K) Certifying scientist's name;
 - (L) Results (e.g., positive, adulterated) as listed in paragraph (a) of this section; and
 - (M) 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. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report may not contain information that does not appear on the CCF.
- (iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. 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: The lab 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, they 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 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. The lab must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.
- E. The lab must provide quantitative values for confirmed positive drug, adulterated, and substituted test results to the MRO when the MRO requests such in writing. The MRO's request may either be a general request covering all such results be sent to the MRO or a specific case-by-case request.
- F. The lab must provide quantitative values for confirmed opioid 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.
- G. If 6-AM is confirmed and no detectable morphine is found at LOD upon further testing, that fact must be reported to ODAPC immediately.
-

9. Retaining specimens after testing.

- A. The laboratory testing the primary specimen must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.
- B. The lab 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 the lab retains a specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If the lab receives such a request, they must comply with it. If the lab does not receive such a request, they may discard the specimen at the end of the year.
- D. If the lab has not sent the split specimen to another laboratory for testing, they must retain the split specimen for an employee's test for the same period of time that they retain the primary specimen and under the same storage conditions.
- E. The laboratory testing the split specimen must meet the requirements of paragraphs "A" through "D" of this section with respect to the split specimen.

10. Relationship of the laboratory with an MRO.

- A. The laboratory 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. The lab 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.

11. Laboratory Inspections.

The laboratory must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT-regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program, or the designee of such an employer.

12. Retention of Documentation by the Laboratory.

- A. The laboratory must retain all records pertaining to each employee urine specimen for a minimum of two years.
- B. The laboratory must also keep for two years employer-specific data required in §40.111.

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

13. Disclosure of statistical summaries and other information retained by the Laboratory.

- A. The laboratory must transmit an aggregate statistical summary, by employer, of the data listed below 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, the lab 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, the lab must provide it unless the employer had fewer than five aggregate test results. In that case, they must send the employer a report indicating that not enough testing was conducted to warrant a summary. The lab may transmit the summary or report by hard copy, fax, or other electronic means.
- C. The lab must also release information to appropriate parties as provided in §§40.329 and 40.331.

14. Part 40-DOT Drug Testing Semi-Annual Laboratory Report to Employers

The following items are required on each report:

- A. Reporting Period: (inclusive dates)
- B. Laboratory Identification: (name and address)
- C. Employer Identification: (name; may include billing code or ID code)
- D. C/TPA Identification: (where applicable; name and address)
 - 1. Number of specimen results reported: (total number)
By test type:
 - (a) Pre-employment testing: (number)
 - (b) Post-accident testing: (number)
 - (c) Random testing: (number)
 - (d) Reasonable suspicion/cause testing: (number)
 - (e) Return-to-duty testing: (number)
 - (f) Follow-up testing: (number)
 - (g) Type not noted on CCF: (number)
 - 2. Number of specimens reported as
 - (a) Negative: (total number)
 - (b) Negative-dilute: (number)
 - 3. Number of specimens reported as Rejected for Testing: (total number)
By reason:
 - (a) Fatal flaw: (number)
 - (b) Uncorrected flaw: (number)

4. Number of specimens reported as Positive: (total number)
By drug:
 - (a) Marijuana Metabolite: (number)
 - (b) Cocaine Metabolite: (number)
 - (c) Opioids:
 - (1) Codeine: (number)
 - (2) Morphine: (number)
 - (3) 6-AM (Heroin): (number)
 - (4) Oxycodone (number)
 - (5) Oxymorphone (number)
 - (6) Hydrocodone (number)
 - (7) Hydromorphone (number)
 - (d) Phencyclidine: (number)
 - (e) Amphetamines: (number)
 - (1) Amphetamine: (number)
 - (2) Methamphetamine: (number)
 - (3) MDMA: (number)
 - (4) MDA: (number)
5. Adulterated: (number)
6. Substituted: (number)
7. Invalid results: (number)

15. Part 40-DOT Drug Testing Semi-Annual Laboratory Report to DOT

Mail, fax, or e-mail the report to:

U.S. Department of Transportation
Office of Drug and Alcohol Policy and Compliance, W62-300
1200 New Jersey Avenue, SE
Washington, DC 20590.
Fax: (202) 366-3897
E-mail: ODAPCWebMail@dot.gov

The following items are required on each report:

- A. Reporting Period: (inclusive dates)
- B. Laboratory Identification: (name and address)
- C. DOT Specimen Results Reported: (total number)
 1. Number of specimens reported as Negative: (total number)
 - (a) Negative: (total number)
 - (b) Negative-dilute: (number)
 2. Number of specimens reported as Rejected for Testing: (total number)
By reason:
 - (a) Fatal flaw: (number)
 - (b) Uncorrected flaw: (number)
 3. Number of specimens reported as Positive: (total number)
By drug:
 - (a) Marijuana Metabolite: (number)
 - (b) Cocaine Metabolite: (number)
 - (c) Opioids:
 - (1) Codeine: (number)
 - (2) Morphine: (number)
 - (3) 6-AM (Heroin): (number)
 - (4) Oxycodone (number)
 - (5) Oxymorphone (number)

- (6) Hydrocodone (number)
- (7) Hydromorphone (number)
- (d) Phencyclidine: (number)
- (e) Amphetamines: (number)
 - (1) Amphetamine: (number)
 - (2) Methamphetamine: (number)
 - (3) MDMA: (number)
 - (4) MDA: (number)
- 4. Number of specimens reported as Adulterated: (number)
- 5. Number of specimens reported as Substituted: (number)
- 6. Number of specimens reported as Invalid results: (total number)
By Reason: (number)

This Page Intentionally Blank

APPENDIX: H, I, J, K, L, M, N, & O

TABLE OF CONTENTS

APPENDIX H	58
Contractor Monitoring Procedures	
APPENDIX I	61
Problems in Drug Testing	
APPENDIX J	70
Alcohol Testing Personnel and Breath Testing Collection Procedures	
APPENDIX K	79
Problems in Alcohol Testing	
APPENDIX L	85
Roles and Responsibilities of Service Agents	
APPENDIX M	92
Substance Abuse Professional and the Return-to-Duty Process	
APPENDIX N	103
Public Interest Exclusions	
APPENDIX O	115
Alcohol Supplemental Information	

APPENDIX H

CONTRACTOR DRUG MONITORING PROCEDURES

A. Objective.

In order to assure a contractor's compliance with DOT's regulations, the following procedures are to be followed in determining compliance with the drug testing regulations as set forth in 49 CFR Part 382 and Part 40, as amended.

B. Procedures for Determining Compliance.

1. Qualifying Potential Contractor: Qualifications of the potential contractor as it pertains to drug testing policies/procedures is assured by requesting the potential contractor to submit a copy of its anti-drug plan for review and compliance with FMCSA/DOT regulations. After review of the anti-drug plan is completed, written correspondence to the contractor will advise it whether or not the plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor plan shall be completed utilizing the criteria established in the FMCSA Headquarters Drug Inspection form and the DOT Part 40, as amended, Drug Inspection forms. Addenda made to the contractor's plan shall be attached to the previously submitted plan. Upon approval of the addendums, a letter of acceptance is then sent to the contractor. The contractor is now eligible to bid on District contract work that would be covered under Part 382 and Part 40, as amended.
2. Monitoring Contractor's Compliance: The contractor may be required to provide information on his/her employees who will perform covered functions for the operator. This information may include the name and job title of the employees who will perform any work or functions covered by Part 382 under that contract. A list of each contractor's covered employees may be distributed to appropriate District field management.
3. All contractors will be required to submit drug testing statistical information on a periodical basis, which may be based on the duration of the contract. Typically, this requirement will be on a monthly or quarterly basis. The District may require a more frequent schedule for submission of drug testing data should they determine a need for such statistics.
4. The District shall maintain a complete file on each contractor's statistical drug testing reports. The District shall make available these reports when requested by the FMCSA Administrator, agency designated representative, or representatives of those state agencies under which jurisdiction the District operates.

CONTRACTOR ALCOHOL MONITORING PROCEDURES

A. Objective.

In order to assure a contractor's compliance with DOT's regulations, the following procedures are to be followed in determining compliance with the alcohol misuse testing regulations as set forth in 49 CFR Part 382 and 49 CFR Part 40, as amended, Subpart C.

B. Procedures for Determining Compliance.

1. Qualifying Potential Contractors(s). Qualifications of the potential contractor as it pertains to alcohol testing policies/procedures is assured by requesting the potential contractor to submit a copy of its AMPP for review and compliance with FMCSA/DOT regulations. After review of the AMPP is completed, written correspondence to the contractor will advise whether or not the AMPP plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor plan shall be completed utilizing the criteria established in the FMCSA Alcohol Misuse Inspection form. Addenda made to the contractor's plan shall be attached to the

previously submitted AMPP. Upon approval of the addendum, a letter of acceptance is then sent to the contractor. The contractor is now eligible to bid on District contract work that would be covered under Parts 382 and 40, as amended.

2. Monitoring Contractor's Compliance. The contractor may be required to provide information on their employees who will perform covered functions for the operator. This information may include the name and job title of its employees who will perform any work or functions covered by Part 382 under that contract. A list of each contractor's covered employees may be distributed to appropriate District field management personnel and job sites.
3. Statistical Submission. All contractors will be required to submit AMPP testing statistical information on a periodical basis which may be based on the duration of the contract. Typically this requirement will be conducted on a monthly or quarterly basis. The District may require a more frequent schedule for submission of data should they determine a need for such statistics.
4. Statistical Record Retention. The District shall maintain a complete file on each contractor's statistical drug testing data reports. The District shall make available these reports when requested by the FMCSA Administrator, designated representative, or representatives of those state agencies under which jurisdiction the District operates.

This Page Intentionally Blank

APPENDIX I

PROBLEMS IN DRUG TESTING

A. Refusal to take a DOT drug test and the consequences.

1. An employee has refused to take a drug test if he:
 - (a) Fails to appear for any test (except for pre-employment) 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 C/TPA (see §40.61(a));
 - (b) Fails to remain at the testing site until the testing process is complete, provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
 - (c) Fails to provide a urine specimen for any drug test required by this part or DOT agency regulations, provided that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c)) for a pre-employment test is not deemed to have refused to test;
 - (d) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the provision of a specimen (see §§40.67(l) and 40.69(g));
 - (e) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));
 - (f) Fails or declines to take a second test the employer or collector has directed him to take;
 - (g) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused the test on the basis only if the pre-employment test is conducted following a contingent offer of employment; or;
 - (h) Fails 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).
 - (i) Fails to follow the instructions to raise and lower clothing and turn around, for an observed collection.
 - (j) Possesses or wears a prosthetic or other device that could be used to interfere with the collection.
 - (k) Admits to the collector to having adulterated or substituted the specimen.
 - (l) Admits to the MRO to having adulterated or substituted the specimen.
 2. If the MRO reports that an employee has a verified adulterated or substituted test result, he has refused to take a drug test.
 3. If an employee refuses to take a drug test, he incurs the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.
-

4. When an employee refuses to participate in the part of the testing process in which a collector or MRO are involved, the collector or MRO must terminate the portion of the testing process in which they are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. A referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), must notify the MRO, who in turn will notify the DER.
 - (a) The collector must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF.
 - (b) The MRO must note the refusal by checking the "refused to test because" box (Step 6) on Copy 2 of the CCF, and add the reason on the "Remarks" line. The MRO must then sign and date the CCF.
5. When an employee refuses to take a non-DOT test or to sign a non-DOT form, he has not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

B. Insufficient amount of urine for a drug test.

1. This section prescribes procedures for situations in which an employee does not provide a sufficient amount of urine to permit a drug test (i.e., 45 mL of urine).
2. The collector must do the following:
 - (a) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (see §40.65(b) and (c)).
 - (b) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCG (Step 2), and inform the employee of, the time at which the three-hour period begins and ends.
 - (c) If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, the collector must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. This is a refusal to test.
 - (d) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collector must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER.
 - (e) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. The collector must send or fax these copies to the MRO and DER within 24 hours or the next business day.
3. When the collector informs the DER that the employee has not provided a sufficient amount of urine (see paragraph (b)(4) of this section), he must, after consulting with the MRO, direct the employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
 - (a) If another physician will perform the evaluation for the MRO, he must provide the other physician with the following information and instructions:

- (i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of urine to complete the test;
 - (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
 - (iii) That the referral physician must agree to follow the requirements of paragraphs 4 through 7 of this section.
- 4. The referral physician conducting this evaluation must recommend that the MRO make 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 urine. The MRO, if this recommendation is accepted, must:
 - (i) Check "Test Cancelled" (Step 6) on the CCF; and
 - (ii) Sign and date the CCF.
 - (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 urine. The MRO, if this recommendation is accepted, must:
 - (i) Check "Refusal to test because" (Step 6) on the CCF and enter reason in the remarks line; and
 - (ii) Sign and date the CCF.
- 5. For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.
- 6. The referral physician, after completing his evaluation, must provide a written statement of his recommendations and the basis for those recommendations to the MRO. He must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain their conclusion.
- 7. The referral physician making this evaluation in the case of a pre-employment test determines that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, must set forth his determination and the reasons for it in his written statement to the MRO. The MRO receiving such a report must follow the requirements of §40.195, where applicable.
- 8. The MRO must seriously consider and assess the referral physician's recommendations in making their determination about whether the employee has a medical condition that has or, with a high degree of probability, could have precluded the employee from providing a sufficient amount of urine. The MRO must report his determination to the DER in writing as soon as he makes it.
 - (i) When the employer receives a report from the MRO indicating that a test is cancelled as provided in paragraph 4(a) of this section, he takes no further action with respect to the employee. The employee remains in the random testing pool.

C. When an individual is unable to provide a sufficient amount of urine for a pre-employment, follow-up or return-to-duty test because of a permanent or long-term medical condition.

- 1. This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment, follow-up or return-to-duty test and the condition involves a permanent or long-term disability. The MRO in this situation must do the following:
-

- (a) The MRO must determine if there is clinical evidence that the individual is an illicit drug user. He must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under §40.193(d).
 - (b) If the MRO does not personally conduct the medical evaluation, he must ensure that one is conducted by a licensed physician acceptable to him.
 - (c) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
2. If the medical evaluation reveals no clinical evidence of drug use the MRO must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under §40.193(d) and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.
 - (a) Check "Negative" (Step 6) on the CCF.
 - (b) Sign and date the CCF.
3. If the medical evaluation reveals clinical evidence of drug use the MRO, must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under §40.193(d) and any further medical examination. This report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (*i.e.*, the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).
4. For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.
 - (a) Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; un-repaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters.
 - (b) Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (d)(1) of this section.

D. When the employer receives a report of a dilute specimen.

1. If the MRO informs the employer that a positive drug test was dilute, he simply treats the test as a verified positive test. The employer must not direct the employee to take another test based on the fact that the specimen was dilute.
 2. If the MRO informs the employer that a negative drug test was dilute, he may, but are not required to, direct the employee to take another test immediately. Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see §40.67(b) and (c)).
 3. The employer must treat all employees the same for this purpose. For example, the employer must not retest some employees and not others. The employer may, however, establish different policies for different types of tests (e.g., conduct retests in pre-
-

employment test situations, but not in random test situations). The employer must inform their employees in advance of the decisions on these matters.

4. If an employer directs the employee to take another test, he must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site.
5. If an employer directs the employee to take another test, the result of the second test-not that of the original test-becomes the test of record, which is relied on for purposes of this part.
6. If an employer requires employees to take another test, and the second test is also negative and dilute, they are not permitted to make the employee take a third test because the second test was dilute.
7. If an employer directs the employee to take another test and the employee declines to do so, the employee has refused the test for purpose of this part and DOT agency regulations.

E. Cancelled Drug Tests

1. When the laboratory discovers a "fatal flaw" during its processing of incoming specimens (see §40.83), the laboratory will report to the MRO that the specimen has been "Rejected for Testing" (with the reason stated). The MRO must always cancel such a test.
2. The following are "fatal flaws":
 - (a) There is no printed collector's name and no collector's signature;
 - (b) The specimen ID numbers on the specimen bottle and the CCF do not match;
 - (c) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, see §40.83(g)); and
 - (d) Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be re-designated (see §40.83(g)).
3. The MRO must report the result as provided in §40.161.

F. Problems that always cause a drug test to be cancelled and may result in a requirement for another collection.

The MRO must cancel a drug test when a laboratory reports that any of the following problems have occurred. He must inform the DER that the test was cancelled. He must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs A through E of this section.

1. The laboratory reports an "Invalid Result." The MRO must follow applicable procedures in §40.159 (recollection under direct observation may be required).
2. The laboratory reports the result as "Rejected for Testing." The MRO must follow applicable procedures in §40.161 (a recollection may be required).
3. The laboratory's test of the primary specimen is positive and the split specimen is reported by the laboratory as "Failure to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected." The MRO must follow applicable procedures in §40.187(b) (no recollection is required in this case).
4. The laboratory's test result for the primary specimen is adulterated or substituted and the split specimen is reported by the laboratory as "Adulterant not found within criteria," or "specimen not consistent with substitution criteria, as applicable. The MRO must follow applicable procedures in §40.187(c) (no recollection is required in this case).

5. The laboratory's test of the primary specimen is positive, adulterated, or substituted and the split specimen is unavailable for testing. The MRO must follow applicable procedures in §40.187(d) (recollection under direct observation is required in this case).
6. The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of urine. The MRO must follow applicable procedures in §40.193(d)(1) (no recollection is required in this case).

G. Problems that cause a drug test to be cancelled unless they are corrected.

1. When a laboratory discovers a "correctable flaw" during its processing of incoming specimens (see §40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to the MRO that the specimen has been "Rejected for Testing" (with the reason stated).
2. The following are "correctable flaws" that laboratories must attempt to correct:
 - (a) The collector's signature is omitted on the certification statement on the CCF.
 - (b) The specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range.
3. When the MRO discovers a "correctable flaw" during his review of the CCF, he must cancel the test unless the flaw is corrected.
4. The following are correctable flaws that the MRO must attempt to correct:
 - (a) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the "Remarks" line of the CCF.
 - (b) The certifying scientist's signature is omitted on the laboratory copy of the CCF for a positive, adulterated, substituted, or invalid test result.
 - (c) The collector uses a non-Federal form or an expired Federal form for the test. This flaw may be corrected through the procedure set forth in §40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures of this part in an HHS-certified laboratory.

H. Correcting drug test problems.

1. The collector has the responsibility of trying to successfully complete a collection procedure for each employee.
 - (a) If, during or shortly after the collection process, he becomes aware of any event that prevents the completion of a valid test or collection (e.g., a procedural or paperwork error), he must try to correct the problem promptly, if doing so is practicable. He may conduct another collection as part of this effort.
 - (b) If another collection is necessary, he must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.
2. If a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations becomes aware of a problem that can be corrected (see §40.203), but which has not already been corrected under paragraph (a) of this section, they must take all practicable action to correct the problem so that the test is not cancelled.
 - (a) If the problem resulted from the omission of required information, the person responsible for providing that information must supply, in writing, the missing information and a statement that it is true and accurate. For example, suppose a collector forgot to make a notation on the "Remarks" line of the CCF that the employee did not sign the certification. When the problem is called to their attention, a signed statement that the employee failed or refused to sign the certification would be supplied and that the statement is true and accurate. This

information must be supplied on the same business day on which they are notified of the problem, transmitting it by fax or courier.

- (b) If the problem is the use of a non-Federal form or an expired Federal form, a signed statement (i.e., a memorandum for the record) must be provided. It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond their control. The statement must also list the steps taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. This information must be supplied on the same business day on which they are notified of the problem, transmitting it by fax or courier.
 - (c) Written documentation of a correction with the CCF must be maintained.
 - (d) Mark the CCF in such a way (e.g., stamp noting correction) as to make it obvious on the face of the CCF that the flaw was corrected.
3. If the correction does not take place, the MRO must cancel the test.

I. The effect of a cancelled drug test.

- 1. A cancelled drug test is neither positive nor negative.
 - (a) An employer must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position).
 - (b) An employer must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or follow-up test).
 - (c) However, an employer must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph 1(b) of this section or other provisions of this part that require another test to be conducted (e.g., §§40.159(a)(5) and 40.187(b)).
- 2. A cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the employer's minimum random testing rate).

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

J. Problems that require corrective action but do not result in the cancellation of a test.

- 1. If a laboratory, collector, employer, or other person implementing the DOT drug testing program becomes aware that the specimen temperature on the CCF was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range, they must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure that the problem does not recur.
- 2. This error does not result in the cancellation of the test.
- 3. This error, even though not sufficient to cancel a drug test result, may subject an employer or service agent to enforcement action under DOT agency regulations of Subpart R of Part 40, as amended.

K. Procedural problems that do not result in the cancellation of a test and do not require correction.

1. A collector, laboratory, MRO, employer or other person administering the drug testing process must document any errors in the testing process of which they become aware, even if the errors are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph 2 of this section.
2. No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:
 - (a) A minor administrative mistake (e.g., the omission of the employee's middle initial, a transposition of numbers in the employee's social security number);
 - (b) An error that does not affect employee protections under this part (e.g., the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);
 - (c) The collection of a specimen by a collector who is required to have been trained (see §40.33), but who has not met this requirement;
 - (d) A delay in the collection process (see §40.61(a));
 - (e) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see §40.121(a) through (b)) but who has not met training and/or documentation requirements (see §40.121(c) through (e));
 - (f) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
 - (g) The fact that a test was conducted in a facility that does not meet the requirements of §40.41;
 - (h) If the specific name of the courier on the CCF is omitted or erroneous;
 - (i) Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on the laboratory copy); or
 - (j) Claims that the employee was improperly selected for testing.
3. These types of errors, even though not sufficient to cancel a drug test result, may subject an employer or service agent to enforcement action under DOT agency regulations or action under Subpart R of Part 40, as amended.

This Page Intentionally Blank

APPENDIX J

ALCOHOL TESTING PERSONNEL AND BREATH TESTING COLLECTION PROCEDURES

ALCOHOL TESTING PERSONNEL

A. Personnel permitted to conduct DOT alcohol tests.

1. 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.
2. A STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
3. A BAT- or STT-qualified immediate supervisor of a particular employee 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 the individual from doing so.

B. Training requirements for STTs and BATs

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

1. Basic information. 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, <http://www.dot.gov/ost/dapc>)).
 2. Qualification training. Receive qualification training meeting the requirements of this paragraph.
 - (a) 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, <http://www.dot.gov/ost/dapc>). 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.
 - (b) 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)) the individual will be using.
 - (c) The training must emphasize the responsibility of the STT or BAT 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.
 - (d) 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.
 3. Initial Proficiency Demonstration. Following the completion of qualification training under paragraph 2 of this section, the individual must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (SSTs).
-

- (a) Another person must monitor and evaluate the individual's 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 (2)(d) of this section.
 - (b) These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) the individual will use as a BAT or STT.
 - (c) If the STT will be using an ASD that indicates readings by changes, contrasts, or other readings in color, the STT must demonstrate, as part of the mock test, they are able to discern changes, contrasts, or readings correctly.
4. Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and initial proficiency demonstration which must be met:
- (a) If an individual became a BAT or STT before August 1, 2001, they were required to have met the requirements set forth in paragraphs (2) and (3) of this section and do not have to meet them again.
 - (b) If an individual become a BAT or STT on or after August 1, 2001, they must meet the requirements of paragraphs (2) and (3) of this section before beginning to perform BAT or STT functions.
5. Refresher training. No less frequently than every five years from the date of satisfactory completion of the requirements of paragraphs 2 and 3 of this section, the BAT or STT must complete refresher training which meets all the requirements of paragraphs 2 and 3 of this section. A BAT or STT that completed qualification training before January 1, 1998, is not required to complete refresher training until January 1, 2003.
6. Error Correction Training. If a mistake is made in the alcohol testing process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), the individual must undergo error correction training. This training must occur within 30 days of the date notified of the error that led to the need for retraining.
- (a) Error correction training must be provided and proficiency documented, in writing, by a person who meets the requirements of paragraph 2(d) of this section.
 - (b) 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.
 - (c) As part of the error correction training, the individual must demonstrate 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 the error(s) occurred. The person providing the training must monitor and evaluate the performance and attest in writing that the mock tests were error-free.
7. Documentation. Documentation must be maintained showing that the individual currently meets all requirements of this section. This documentation must be provided on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use the BATs or STTs services.
8. Other persons who may serve as BATs or STTs.
- (a) 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 (3) of this section.
 - (b) 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.

ALCOHOL TESTING PROCEDURES

A. Scope.

1. The evidential and non-evidential testing procedures set forth in this appendix address all the requirements as set forth in 49 CFR Part 40, as amended, and specifies the required form and disposition of such testing forms.

B. The first steps in any alcohol screening test.

1. A BAT or STT will take the following steps to begin all alcohol screening tests, regardless of the type of testing device being used:
 - (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, the BAT or STT 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, the alcohol testing process is begun without undue delay. For example, do 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, 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. The BAT or STT 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). The BAT or STT 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, contact a DER to verify the identity of the employee.
 - (d) If the employee asks, the BAT or STT must provide their identification to the employee. The BAT or STT identification must include name and employer's name but is not required to include a 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, document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

C. Procedure for an alcohol screening test using an EBT or non-evidential breath ASD

1. A BAT or STT 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, the BAT or STT 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, the BAT or STT 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, the BAT or STT must record this information in Step 3 of the ATF.

D. Procedure for an alcohol-screening test using a saliva ASD.

1. A STT must take the following steps:
 - (a) Check the expiration date on the device and show it to the employee. The STT 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, the STT 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), the STT must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. The STT 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, the STT must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.
 - (f) If the STT was unable to successfully follow the procedures of paragraphs (c) through (e) of this section (e.g., the device breaks, the device is dropped on the floor), the STT must discard the device and conduct a new test using a new device.
 - (i) The new device must be one that has been under control of the STT or that of the employer before the test.

- (ii) The STT must note on the "Remarks" line of the ATF the reason for the new test. (Note: The STT may continue using the same ATF with which the test was begun.)
- (iii) The STT must offer the employee the choice of using the device or having the STT 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.
- (iv) If the STT is unable to successfully follow the procedures of paragraphs (c) through (e) of this section on the new test, the STT must end the collection and put an explanation on the "Remarks" line of the ATF.
- (v) The STT must then direct the employee to take a new test immediately, using an EBT for the screening test.
- (vi) If the STT is able to successfully follow the procedures of paragraphs (c)-(e) of this section, but the device does not activate, the STT must discard the device and conduct a new test, in the same manner as provided in paragraph (f) of this section. In this case, the STT must place the device into the employee's mouth to collect saliva for the new test.
- (vii) The STT 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. The STT must then show the device and its reading to the employee and enter the result on the ATF.
- (viii) The STT must never re-use devices, swabs, gloves or other materials used in saliva testing.
- (ix) The STT must note the fact that a saliva ASD was used in Step 3 of the ATF.

E. Procedures to follow after a screening test result.

- 1. If the test result is an alcohol concentration of less than 0.02, the BAT or STT must do the following:
 - (a) Sign and date Step 3 of the ATF; and
 - (b) Transmit the result to the DER in a confidential manner, as provided in §40.255.
- 2. If the test result is an alcohol concentration of 0.02 or higher, the BAT or STT must direct the employee to take a confirmation test.
 - (a) The BAT who will conduct the confirmation test must conduct the test using the procedures beginning at §40.251.
 - (b) If an individual is 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.
 - (c) If the confirmation test will be performed at a different site from the screening test, the following additional steps must be taken:
 - (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 §40.251(a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

- (iii) Explain that following the 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 acDistricting the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
 - (vii) Ensure that a BAT, STT or employer representative observes the employee as he or she is transported to the confirmation testing site. The BAT or STT must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
- (d) If the screening test is invalid, the BAT or STT must 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 §40. 271).

F. Alcohol Confirmation Tests

1. The first steps in an alcohol confirmation test.

The BAT for an alcohol confirmation test must follow these steps to begin the test process:

- (a) Carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
 - (1) Ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, 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 §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 the BAT or STT cannot verify, through review of the ATF, that waiting period instructions were provided, then the BAT or STT must carry out the waiting period requirement.
 - (iii) The BAT or STT, or an employer representative, must observe the employee during the waiting period.
 - (2) Concerning the waiting period, the BAT or STT 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 the 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 the BAT or STT becomes aware that the employee has not followed the instructions, the BAT or STT must note this on the "Remarks" line of the ATF.
- (b) Positive identification of the employee must be required by the BAT or STT if they did not conduct the screening test for the employee. The BAT or STT must explain the confirmation procedures and use a new ATF. The BAT or STT 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, 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, the BAT or STT must begin the confirmation test procedures in §40.253, not another screening test.
- (f) The BAT or SAT 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.

2. Procedures for conducting an alcohol confirmation breath test.

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

- (a) In the presence of the employee, conduct an air blank on the EBT being used 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, another air blank test must be conducted.
 - (2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, the EBT must be taken out of service.
 - (3) If the EBT is taken 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) Proceed with the test of the employee using another EBT, if one is available.
 - (b) 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) Ensure that the BAT or STT and the employee read the unique test number displayed on the EBT.
 - (d) 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) Show the employee the result displayed on the EBT.
 - (f) 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, attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

3. After the alcohol confirmation breath test result.

- (a) After the EBT has printed the result of an alcohol confirmation breath test, as the BAT, take the following additional steps:
 - (1) Sign and date Step 3 of the ATF.
 - (2) If the alcohol confirmation breath test result is lower than 0.02, nothing further is required of the employee. As the BAT, sign and date Step 3 of the ATF.
 - (3) If the alcohol confirmation breath 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, 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 §40.271).
 - (5) Immediately transmit the result directly to the DER in a confidential manner.
 - (i) Transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, 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. These results may not be transmitted through C/TPAs or other service agents.
 - (ii) If the initial transmission is not made in writing, the BAT must follow up the initial transmission with Copy 1 of the ATF.
- (b) The employer must take the following steps with respect to the receipt and storage of alcohol test result information:
 - (1) If any test results are received that are not in writing (e.g., by telephone or electronic means), the employer must establish a mechanism to establish the identity of the BAT sending the results.
 - (2) All test result information must be stored in a way that protects confidentiality.

This Page Intentionally Blank

APPENDIX K

PROBLEMS IN ALCOHOL TESTING

A. Refusal to take an alcohol test and the consequences.

1. An employee is considered to have refused to take an alcohol test if they:
 - (a) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being 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 §40.241(a));
 - (b) Fail to remain at the testing site until the testing process is complete; provided, that an employee who leaves the testing site before that testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;
 - (c) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; provided, that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;
 - (d) 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 §40.265(c));
 - (e) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c);
 - (f) Fail to sign the certification at Step 2 of the ATF (see §40.241(b)(7)); or
 - (g) Fail to cooperate with any part of the testing process.
2. An employee that refuses to take an alcohol test, will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.
3. 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, they must terminate the portion of the testing process in which they are involved, document the refusal on the ATF (or in a separate document which they 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. They must make this notification directly to the DER (not using a C/TPA as an intermediary).
4. An employee that refuses to take a non-DOT test or to sign a non-DOT form, has not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

B. Employee is unable to provide a sufficient amount of saliva for an alcohol screening test.

1. The STT 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).
 - (a) The STT must conduct a new screening test using a new screening device.
 - (b) If the employee refuses to make the attempt to complete the new test, they must discontinue testing, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.

- (c) If the employee has not provided a sufficient amount of saliva to complete the new test, this must be noted on the "Remarks" line of the ATF and immediately notify the DER.
- 2. When the STT informs the DER that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), the DER must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

C. Employee is unable to provide a sufficient amount of breath for an alcohol test.

- 1. If an employee does not provide a sufficient amount of breath to permit a valid breath test, take the steps listed in this section.
- 2. The BAT or STT must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
 - (a) If the employee refuses to make the attempt, discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - (b) If the employee again attempts and fails to provide a sufficient amount of breath, provide another opportunity to the employee to do so if the BAT or STT believes there is a strong likelihood that it could result in providing a sufficient amount of breath.
 - (c) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, the BAT or SST must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
 - (d) If the EBT has the capability of operating manually, an attempt may be made to conduct the test in manual mode.
 - (e) If the BAT or SST is qualified to use a saliva ASD and are in the screening test stage, the BAT or STT may change to a saliva ASD only to complete the screening test.
- 3. When the BAT or STT informs an employer that the employee has not provided a sufficient amount of breath, the employer must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to the employer and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
 - (a) The employer must 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 the employer 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.
- (b) As the physician making the evaluation, after making the determination, the physician must provide a written statement of the conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). The physician must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain the conclusion.
 - (c) Upon receipt of the report from the examining physician, the DER must immediately inform the employee and take appropriate action based upon the applicable DOT agency regulations.

D. Problems that always cause an alcohol test to be cancelled.

An employer, a BAT or a STT must cancel an alcohol test if any of the following problems occur. These are considered "fatal flaws." The employer, BAT or STT 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 §40.245(h));
 - (2) The device does not activate (see §40.245(g)); or
 - (3) The device is used for a test after the expiration date printed on its package (see §.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 §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 §40.251(a)(1));
 - (2) The BAT does not conduct an air blank before the confirmation test (see §40.253(a));
 - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (see §40.253(a)(1) and (2));
 - (4) The EBT does not print the result (see §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 §40.233(a)(1) and (d)).

E. Problems that cause an alcohol test to be cancelled unless they are corrected.

A BAT or STT, or employer 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 §§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 §40.255(a)(2)).
- (c) The BAT or STT uses a non-DOT form for the test (see §40.225(a)).

F. Correcting alcohol-testing problems.

1. A BAT or STT has the responsibility of trying to complete successfully an alcohol test for each employee.
 - (a) If, during or shortly after the testing process, the BAT or STT becomes aware of any event that will cause the test to be cancelled (see §40.267), they must try to correct the problem promptly, if practicable. Repeating the testing process may be part of this effort.
 - (b) If repeating the testing process is necessary, the BAT or STT must begin a new test as soon as possible, using 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 the BAT or STT has been trained to do so in accordance with §40.213(c).
 - (c) If repeating the testing process is necessary, the BAT or STT is 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.
 - (d) If another testing device is not available for the new test at the testing site, the BAT or STT must immediately notify the DER and advise the DER that the test could not be completed. The DER who receives this information must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
2. A STT, BAT, employer or other service agent administering the testing process who becomes aware of a "correctable flaw" (see §40.269) that has not already been corrected, must take all practicable action to correct the problem so that the test is not cancelled.
 - (a) If the problem resulted from the omission of required information, the person responsible for providing that information must supply, in writing, the missing information and a signed statement that it is true and accurate. For example, suppose a BAT forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. The BAT would, when the problem is called to their attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that the BAT's signed statement is true and accurate.
 - (b) If the problem is the use of a non-DOT form, the person responsible for the use of the incorrect form must certify, in writing, that the incorrect form contains all the information needed for a valid DOT alcohol test. A signed statement must also be provided that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond their control, and the steps which were taken to prevent future use of non-DOT forms for DOT tests. This information must be supplied on the same business day on which the BAT, STT, employer or other service agent administering the testing process was notified of the problem, transmitting it by fax or courier.
3. If the problem cannot be corrected, the test must be cancelled.

G. A cancelled alcohol test.

1. A cancelled alcohol test is neither positive nor negative.
 - (a) An employer 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).
 - (b) An employer 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).
 - (c) An employer 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.
2. A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.
3. When a test must be cancelled by a BAT, STT, or other person who determines that the cancellation is necessary, the affected DER must be informed within 48 hours of the cancellation.
4. A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under District authority).

H. Procedural problems that are not sufficient to cancel an alcohol test.

1. A STT, BAT, employer, or a service agent administering the testing process, must document any errors in the testing process of which they become aware, even if the errors 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.
2. 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.
3. These errors, even though not sufficient to cancel an alcohol test result, may subject an employer to enforcement action under DOT agency regulations.

I. What alcohol tests other than saliva or breath are permitted under these regulations?

None; 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.

This Page Intentionally Blank

APPENDIX L

ROLES AND RESPONSIBILITIES OF SERVICE AGENTS

A. Compliance of service agents with DOT drug and alcohol testing requirements

- (a) The services a service agent provides to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.
- (b) If a service agent does not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

B. Tasks a service agent may perform for an employer

A service agent may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.

C. C/TPA acting as intermediaries in the transmission of drug and alcohol testing information to employers.

- (a) A C/TPA or other service agent may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have them do so. Each employer makes the decision about whether to receive some or all of this information from the C/TPA, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).
- (b) The specific provisions of this part concerning which C/TPA may act as an intermediary are listed in paragraph "I" of this section. These are the only situations in which they may act as an intermediary. They are prohibited from doing so in all other situations.
- (c) In every case, the C/TPA must ensure that, in transmitting information to employers, the C/TPA meets all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if they transmit drug testing results from MROs to DERs, they must transmit each drug test result to the DER in compliance with the MRO requirements set forth in §40.167.

D. Functions C/TPAs can perform in administering testing.

A C/TPA, except as otherwise specified in this part, may perform the following functions for employers concerning random selection and other selections for testing.

- (a) They may operate random testing programs for employers and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
- (b) They may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
 - (1) If they combine employees from more than one transportation industry, they must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
 - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
- (c) A C/TPA may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither the C/TPA nor the

employer is permitted to randomly select employees from a "follow-up pool" for follow-up testing.

E. Records a service agent may receive and maintain.

- (a) Except where otherwise specified in this part, a service agent may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. They do not need the employee's consent to receive and maintain these records.
- (b) A C/TPA may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.
- (c) If a service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to a C/TPA or other service agent who maintains this information for the employer.
- (d) If C/TPA is serving as an intermediary in transmitting information, that is required to be provided to the employer, they must ensure that it reaches the employer in the same time periods required elsewhere in this part.
- (e) They must ensure that they can make available to the employer within two business days any information the employer is asked to produce by a DOT agency representative.
- (f) On request of an employer, a C/TPA must, at any time on the request of an employer, transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. They must carry out this transfer as soon as the employer requests it. They are not required to obtain employee consent for this transfer. They must not charge more than their reasonable administrative costs for conducting this transfer. They may not charge a fee for the release of these records.
- (g) If a C/TPA is planning to go out of business or their organization will be bought by or merged with another organization, they must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. They must carry out this transfer as soon as the employer requests it. They are not required to obtain employee consent for this transfer. They must not charge more than their reasonable administrative costs for conducting this transfer. They may not charge a fee for the release of these records.

F. Confidentiality requirements that apply to service agents.

Except where otherwise specified in this part, as a service agent the following confidentiality requirements apply to:

- (a) When a C/TPA receives or maintains confidential information about employees (e.g., individual test results), they must follow the same confidentiality regulations as the employer with respect to the use and release of this information.
- (b) The C/TPA must follow all confidentiality and records retention requirements applicable to employers.
- (c) The C/TPA may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose a C/TPA has employers X and Y as clients. Employee Jones works for X, and the C/TPA maintains Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. The C/TPA may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, the C/TPA may not provide this information to employer Z, who is not a C/TPA member, without this consent.
- (d) The C/TPA must not use blanket consent forms authorizing the release of employee testing information.

- (e) The C/TPA must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic databases.

G. Interaction between MROs and other service agents

As a service agent other than an MRO (e.g., a C/TPA), the following principles govern interaction with MROs:

- (a) A C/TPA may provide MRO services to employers, directly or through contract, if they meet all applicable provisions of this part.
- (b) If a C/TPA employs or contracts for an MRO, the MRO must perform duties independently and confidentially. When they have a relationship with an MRO, they must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
- (c) Only MRO staff that are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. The service agent must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- (d) Like other MROs, an MRO employed by a C/TPA or contract must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, MRO staff cannot perform these functions.

H. Limitations to the activities of service agents.

A C/TPA is subject to the following limitations concerning their activities in the DOT drug and alcohol testing program.

- (a) He must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
- (b) He must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to a C/TPA, in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to the C/TPA computer system, and the C/TPA then assigns the results to a particular MRO is not permitted.
- (c) A C/TPA must not transmit drug test results directly from the laboratory to the employer (by electronic or other means) or to a service agent who forwards them to the employer. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
- (d) A C/TPA must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
- (e) Except as provided in paragraph (f) of this section, the C/TPA must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to C/TPA, in turn sending them to the actual employer. However, they may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to the C/TPA simultaneously with sending them to the DER.

- (f) As an exception to paragraph (e) of this section, a C/TPA may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.
- (g) Except as provided in paragraph (h) of this section, a C/TPA must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a C/TPA. They may, however, provide advice and information to employers regarding these testing issues and how the employer should schedule required testing.
- (h) As an exception to paragraph (g) of this section, they may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- (i) Except as provided in paragraph (j) of this section, the C/TPA must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. The C/TPA may, however, provide advice and information to employers regarding refusal-to-test issues.
- (j) As an exception to paragraph (i) of this section, the C/TPA may make a determination that an employee has refused a drug or alcohol test, if:
 - (1) A required test for an owner-operator or other self-employed individual is scheduled and the individual fails to appear for the test without a legitimate reason; or
 - (2) An MRO determines that an individual has refused to test on the basis of adulteration or substitution.
- (k) They must not act as a DER. For example, while they may be responsible for transmitting information to the employer about test results, they must not act on behalf of the employer in actions to remove employees from safety-sensitive duties.
- (l) In transmitting documents to laboratories, they must ensure that they send to the laboratory that conducts testing only the laboratory copy of the CCF. They must not transmit other copies of the CCF or any ATFs to the laboratory.
- (m) The C/TPA must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a C/TPA serving employers in the motor carrier industry, they must not require employers to have provisions in their DOT plans that FMCSA regulations do not require.
- (n) They must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions performed because of a payment dispute or other reasons.
- (o) While they must follow the DOT agency regulations, the actual employer remains accountable to DOT for compliance, and the failure of the C/TPA to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the employer subject to enforcement action by the Department.

I. Drug and alcohol testing information that C/TPAs may transmit to employers

- (a) A C/TPA acting as an intermediary may transmit the information in the following sections of this part to the DER for an employer, if the employer chooses to have them do so. These are the only items that they are permitted to transmit to the employer as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to employers, the transmission of SAP reports to employers, the transmission of positive alcohol test results, and the transmission of medical information from MROs to employers.
- (b) In every case, the C/TPA must ensure that, in transmitting the information, they meet all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the

employer. For example, if the C/TPA transmits MROs' drug testing results to DERs, they must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in §40.167.

Drug Testing Information

- §40.25: Previous two years' test results
- §40.35: Notice to collectors of contact information for DER
- §40.61(a): Notification to DER that an employee is a "no show" for a drug test
- §40.63(e): Notification to DER of a collection under direct observation
- §40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen
- §40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)
- §40.111(a): Transmission of laboratory statistical report to employer
- §40.129 (d): Report of test results to DER
- §40.129(f)(1): Report to DER of confirmed positive test in stand-down situation
- §40.149(b): Report to DER of changed test result
- §40.155(a): Report to DER of dilute specimen
- §§40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled
- §40.167(b) and (c): Reports of test results to DER
- §40.187(a), (b)(1), (c)(1), (d)(1) and (2): Reports to DER concerning the reconfirmation of tests
- §40.191(d): Notice to DER concerning refusals to test
- §40.193(b)(3): Notification to DER of refusal in shy bladder situation
- §40.193(b)(4): Notification to DER of insufficient specimen
- §40.193(b)(5): Transmission of CCF copies to DER (not to MRO)
- §40.199: Report to DER of cancelled test and direction to DER for additional collection
- §40.201: Report to DER of cancelled test

Alcohol Testing Information

- §40.215: Notice to BATs and STTs of contact information for DER
- §40.241(b)(1): Notification to DER that an employee is a "no show" for an alcohol test
- §40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02
- §40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02
- §40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

J. C/TPAs Drug and Alcohol Clearinghouse Responsibilities

Any employer may designate a C/TPA to perform the employer requirements for reporting of information to the Clearinghouse. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with the Clearinghouse regulations. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements.

The Employer must verify the name and identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and provide authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.

K. Authorization to enter information into the Clearinghouse (§382.715).

No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.

L. C/TPA Registration for use of Clearinghouse

Each consortium/third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

1. Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and
2. Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.
3. Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (2) of this section annually.

This Page Intentionally Blank

APPENDIX M

SUBSTANCE ABUSE PROFESSIONALS AND THE RETURN-TO-DUTY PROCESS

SUBSTANCE ABUSE PROFESSIONALS

A. SAP qualifications

To be permitted to act as a SAP in the DOT drug and alcohol testing program, each of the following requirements must be met:

- (a) Credentials. One of the following credentials is required:
 - (1) A licensed physician (Doctor of Medicine or Osteopathy)
 - (2) A licensed or certified social worker
 - (3) A licensed or certified psychologist
 - (4) A licensed or certified employee assistance professional; or
 - (5) A drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).

- (b) Basic knowledge. A SAP must be knowledgeable in the following areas:
 - (1) A SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
 - (2) A SAP must be knowledgeable about the function as it relates to employer interests in safety-sensitive duties.
 - (3) A SAP must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom they evaluate employees, and the DOT SAP Guidelines, and remain current on any changes to these materials. These documents 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 (<http://www.dot.gov/ost/dapc>).

- (c) Qualification training. He must receive qualification training meeting the requirements of this paragraph (c).
 - (1) Qualification training must provide instruction on the following subjects:
 - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
 - (ii) 49 CFR Part 40, as amended, and DOT agency drug and alcohol testing rules;
 - (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
 - (v) SAP qualifications and prohibitions;

- (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
 - (viii) Reporting and recordkeeping requirements;
 - (ix) Issues that SAPs confront in carrying out their duties under the program.
- (2) Following a SAP's completion of qualification training under paragraph (c)(1) of this section, he must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (3) The following is the schedule for qualification training a SAP must meet:
- (i) If the individual became a SAP before August 1, 2001, they must meet the qualification training requirement no later than December 31, 2003.
 - (ii) If the individual become a SAP between August 1, 2001, and December 31, 2003, they must meet the qualification training requirement no later than December 31, 2003.
 - (iii) If the individual become a SAP on or after January 1, 2004, they must meet the qualification training requirement before beginning to perform SAP functions.
- (d) Continuing education. During each three-year period from the date on which the SAP satisfactorily completes the examination under paragraph (c)(2) of this section, he must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time he met the qualification training requirements of this section.
 - (2) A SAP's continuing education activities must include documental assessment tools to assist in determining whether the SAP has adequately learned the material.
- (e) Documentation. A SAP must maintain documentation showing they currently meet all requirements of this section. The SAP must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using the SAPs services.

B. Certification organizations and recognition for its members as SAPs.

- (a) If the SAP represents a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281(a)(5), he may submit a written petition to DOT requesting a review of his petition for inclusion.
- (b) He must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on the petition.
- (c) He must also meet the minimum requirements of Appendix E to this part before DOT will act on the petition.

THE RETURN TO DUTY PROCESS

A. SAP evaluation requirements

- (a) When an employee has violated DOT drug and alcohol regulations, he cannot again perform any DOT safety-sensitive duties for any employer until and unless he has completed a SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
- (b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

B. Information required concerning SAP services to an employee.

An employer must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to the employer, with names, addresses, and telephone numbers. The employer cannot charge the employee any fee for compiling or providing this list. The employer may provide this list or have it provided through a C/TPA or other service agent.

C. SAP and treatment services to employees.

- (a) An employer is not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
- (b) However, if an employer offers that employee an opportunity to return to a DOT safety-sensitive duty following a violation, they must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of §40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
- (c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

D. The role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations.

- (a) The SAP is charged with:
 - (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
 - (2) Referring the employee to an appropriate education and/or treatment program;
 - (3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
 - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
 - (5) Providing the employee and employer with recommendations for continuing education and/or treatment.

- (b) The SAP is not an advocate for the employer or employee. His function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

E. The SAP's function in conducting the initial evaluation of an employee.

The SAP must accomplish the following for every employee who comes to him following a DOT drug and alcohol regulation violation:

- (a) Provide a comprehensive face-to-face assessment and clinical evaluation.
- (b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
 - (1) The SAP must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
 - (2) He must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
- (c) Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
- (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.
- (e) The SAP must provide a written report directly to the DER highlighting his specific recommendations for assistance (see §40.311(c)).
- (f) For purposes of the SAP's role in the evaluation process, he must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. The SAP must not take into consideration, in any way, as a factor in determining what their recommendation will be, any of the following:
 - (1) A claim by the employee that the test was unjustified or inaccurate;
 - (2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or
 - (3) Personal opinions the SAP may have about the justification or rationale for drug and alcohol testing.
- (g) In the course of gathering information for purposes of the SAP's evaluation in the case of a drug-related violation, He may consult with the MRO. The MRO is required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

F. Requesting a second SAP evaluation.

- (a) An employee with a DOT drug and alcohol regulation violation, when after he has been evaluated by a SAP, he must not seek a second SAP's evaluation in order to obtain another recommendation.
- (b) An employer must not seek a second SAP's evaluation if the employee has been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, the employer may not rely on it for any purpose under this part.

G. Authority to change a SAP's initial evaluation.

- (a) Except as provided in paragraph (b) of this section, no one (*e.g.*, an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.
- (b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (*e.g.*, from an education or treatment program).

H. The SAP's role and limits in referring employees for education and treatment.

- (a) The SAP, upon his determination of the best recommendation for assistance, he will serve as a referral source to assist the employee's entry into a education and/or treatment program.
- (b) To prevent the appearance of a conflict of interest, the SAP must not refer an employee requiring assistance to the SAP's private practice or to a person or organization from which the SAP receives payment or to a person or organization in which the SAP has a financial interest. The SAP is precluded from making referrals to entities with which he is financially associated.
- (c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. The SAP may refer an employee to any of the following providers of assistance, regardless of the SAP's relationship with them:
 - (1) A public agency (*e.g.*, treatment facility) operated by a state, county, or municipality;
 - (2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment and/or education services (*e.g.*, the employer's contracted treatment provider);
 - (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (*e.g.*, the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
 - (4) The sole source of therapeutically appropriate treatment reasonably available to the employee (*e.g.*, the only treatment facility or education program reasonably located within the general commuting area).

I. The SAP's function in the follow-up evaluation of an employee.

- (a) After the SAP has prescribed assistance under §40.293, he must re-evaluate the employee to determine if the employee has successfully carried out the SAP's education and/or treatment recommendations.
 - (1) This is the SAP's way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
 - (2) The SAP's evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.
- (b) The SAP making the follow-up evaluation determination must:
 - (1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
 - (2) Conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with the initial evaluation recommendations.

- (c) (1) If the employee has demonstrated successful compliance, the SAP must provide a written report directly to the DER highlighting his clinical determination that the employee has done so with his initial evaluation recommendation (see §40.311(d)).
- (2) The SAP may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program the SAP prescribed, he may make a "successful compliance" determination even though he concluded that the employee has not yet completed the out-patient counseling recommended or should continue in an aftercare program.
- (d) (1) If the SAP believes as a result of the follow-up evaluation, that the employee has not demonstrated successful compliance with his recommendations, the SAP must provide written notice directly to the DER (see §40.311(e)).
- (2) An employer who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations must not return the employee to the performance of safety-sensitive duties.
- (3) The SAP may conduct additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as the SAP has reported it and with the employer's policy and/or labor-management agreements.
- (4) After the employer receives a SAP report that the employee has not demonstrated successful compliance, the employer may take personnel action consistent with their policy and/or labor-management agreements.

J. Additional treatment for the employee after returning to safety-sensitive duties.

- (a) If the SAP believes that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, the SAP must provide recommendations for these services in their follow-up evaluation report (see §40.311(d)(10)).
- (b) When an employer receives a recommendation for these services from a SAP, he may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. He may monitor and document the employee's participation in the recommended services. He may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations. Nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (see §40.309).
- (c) The employee is obligated to comply with the SAP's recommendations for these services. If he fails or refuses to do so, he may be subject to disciplinary action by his employer.

K. Conclusion of the return-to-duty process.

- (a) If the employer decides that he wants to permit the employee to return to the performance of safety-sensitive functions, he must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
- (b) The employer must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. The employer is not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision which the employer has the discretion to make, subject to collective bargaining agreements or other legal requirements.

- (c) The SAP or MRO must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than the SAP, who must decide whether to put the employee back to work in a safety-sensitive position.

L. The SAP's function in prescribing the employee's follow-up tests.

- (a) For each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, the SAP must establish a written follow-up testing plan. The SAP does not establish this plan until after he determines that the employee has successfully complied with his recommendations for education and/or treatment.
- (b) The SAP must present a copy of this plan directly to the DER (see §40.311(d)(9)).
- (c) The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but the Sap's evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, he should require that the employee have follow-up tests for both drugs and alcohol.
- (d) However, the SAP must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
 - (1) The SAP may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g., one test a month during the 12-month period; two tests per month during the first 6-month period and one test per month during the final 6-month period).
 - (2) The SAP may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
 - (3) The SAP is not to establish the actual dates for the follow-up tests he prescribes. The decision on specific dates to test is the employer's.
 - (4) The employer must not impose additional testing requirements (e.g., under District authority) on the employee that go beyond the SAP's follow-up testing plan.
- (e) The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.
- (f) The SAP may modify the determinations he has made concerning follow-up tests. For example, even if he recommended follow-up testing beyond the first 12-months, he can terminate the testing requirement at any time after the first year of testing. He must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.

M. The employer's responsibilities to the SAP's directions for follow-up tests.

- (a) The employer must carry out the SAP's follow-up testing requirements. He may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- (b) The employer should schedule follow-up tests on dates of their own choosing, but they must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
- (c) The employer cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.

- (d) The employer cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

N. The SAPs reporting requirements.

- (a) The SAP conducting the required evaluations must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in §40.355(e)). He may, however, forward the document simultaneously to the DER and to a C/TPA.
- (b) An employer must ensure that he receives SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
- (c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
 - (1) Employee's name and SSN;
 - (2) Employer's name and address;
 - (3) Reason for the assessment (specific violation of DOT regulations and violation date);
 - (4) Date(s) of the assessment;
 - (5) SAP's education and/or treatment recommendation; and
 - (6) SAP's telephone number.
- (e) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
 - (1) Employee's name and SSN;
 - (2) Employer's name and address;
 - (3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
 - (4) Date(s) of the initial assessment and synopsis of the treatment plan;
 - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - (6) Inclusive dates of employee's program participation;
 - (7) Clinical characterization of employee's program participation;
 - (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;
 - (9) Follow-up testing plan;
 - (10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
 - (11) SAP's telephone number.

- (f) The SAP's written report concerning a follow-up evaluation that determines the employee not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
 - (1) Employee's name and SSN;
 - (2) Employer's name and address;
 - (3) Reason for the initial assessment (specific DOT violation and date);
 - (4) Date(s) of initial assessment and synopsis of treatment plan;
 - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - (6) Inclusive dates of employee's program participation;
 - (7) Clinical characterization of employee's program participation;
 - (8) Date(s) of the first follow-up evaluation;
 - (9) Date(s) of any further follow-up evaluation the SAP has scheduled;
 - (10) SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
 - (11) SAP's telephone number.
- (g) The SAP must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
- (h) The SAP is to maintain copies of his reports to employers for 5 years, and his employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. The SAP must make these records available, on request, to DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.
- (i) The employer must maintain his reports from SAPs for 5 years from the date he received them.

O. SAPs Registration for Clearinghouse.

- (a) Each SAP must provide the following to apply for Clearinghouse registration:
 - (1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;
 - (2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and
 - (3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.
- (b) A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

P. SAPs Reporting Requirements to the Clearinghouse

- (a) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:
 - (1) SAPs name, address, and telephone number;
 - (2) Driver's name, date of birth, and CDL number and State of issuance;
 - (3) Date of the initial substance-abuse-professional assessment; and
 - (4) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.
- (b) SAP must report the information by the close of the business day following the date of the initial substance abuse assessment, and must report the information by the close of the business day following the determination that the driver has completed the return-to-duty process.

This Page Intentionally Blank

APPENDIX N

PUBLIC INTEREST EXCLUSIONS

A. Purpose

1. To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.
2. The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.
3. A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.
4. Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

B. Issuance of a PIE

1. The Department may issue a PIE concerning a service agent if it is determined that the service agent failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation.
2. The Department also may issue a PIE if the service agent failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, compliance and enforcement reviews, or requests for documents and other information about compliance with this part or DOT agency drug and alcohol regulations.

C. Policy for starting a PIE proceeding

1. It is the Department's policy to start a PIE proceeding only in cases of serious, uncorrected noncompliance with the provisions of this part, affecting such matters as safety, the outcomes of test results, privacy and confidentiality, due process and fairness for employees, the honesty and integrity of the testing program, and cooperation with or provision of information to DOT agency representatives.
2. The following are examples of the kinds of serious noncompliance that, as a matter of policy, the Department views as appropriate grounds for starting a PIE proceeding. These examples are not intended to be an exhaustive or exclusive list of the grounds for starting a PIE proceeding. We intend them to illustrate the level of seriousness that the Department believes supports starting a PIE proceeding. The examples follow:
 - (a) For an MRO, verifying tests positive without interviewing the employees as required by this part or providing MRO services without meeting the qualifications for an MRO required by this part;
 - (b) For a laboratory, refusing to provide information to the Department, an employer, or an employee as required by this part; failing or refusing to conduct a validity testing program when required by this part; or a pattern or practice of testing errors that result in the cancellation of tests. (As a general matter of policy, the Department does not intend to initiate a PIE proceeding concerning a laboratory with respect to matters on which HHS initiates certification actions under its laboratory guidelines.);

- (c) For a collector, a pattern or practice of directly observing collections when doing so is unauthorized, or failing or refusing to directly observe collections when doing so is mandatory;
- (d) For collectors, BATs, or STTs, a pattern or practice of using forms, testing equipment, or collection kits that do not meet the standards in this part;
- (e) For a collector, BAT, or STT, a pattern or practice of "fatal flaws" or other significant uncorrected errors in the collection process;
- (f) For a laboratory, MRO or C/TPA, failing or refusing to report tests results as required by this part or DOT agency regulations;
- (g) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a "litigation package";
- (h) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without face-to-face interviews;
- (i) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (e.g., a laboratory that derives a financial benefit from having an employer use a specific MRO);
- (j) For any service agent, representing falsely that the service agent or its activities is approved or certified by the Department or a DOT agency;
- (k) For any service agent, disclosing an employee's test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a "blanket" consent from employees or by creating a data base from which employers or others can retrieve an employee's DOT test results without the specific consent of the employee;
- (l) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;
- (m) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or
- (n) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (e.g., failure to properly conduct the selection process for random testing).

D. Who initiates a PIE proceeding

The following DOT officials may initiate a PIE proceeding:

1. The drug and alcohol program manager of a DOT agency;
2. An official of ODAPC, other than the Director; or
3. The designee of any of these officials.

E. Discretion of an initiating official when starting a PIE proceeding

1. Initiating officials have broad discretion in deciding whether to start a PIE proceeding.
2. In exercising this discretion, the initiating official must consider the Department's policy regarding the seriousness of the service agent's conduct (see §40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.

3. A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of noncompliance.

F. Information used by an initiating official whether to start a PIE proceeding

1. An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.
2. Before sending a correction notice (see §40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official's determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

G. Correcting problems before PIE proceeding are started

1. The initiating official must send a correction notice to the service agent before starting a PIE proceeding.
2. The correction notice identifies the specific areas in which the service agent must come into compliance in order to avoid being subject to a PIE proceeding.
3. If the service agent makes and documents the changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date the notice was received, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that the service agent has made and maintained satisfactory corrections. When he or she is satisfied that the service agent is in compliance, the initiating official sends a notice to the service agent that the matter is concluded.

H. Start of PIE proceedings by the initiating official

1. If a compliance matter is not correctable (see §40.373(a)), or the service agent has not resolved compliance matters as provided in §40.373(c), the initiating official starts a PIE proceeding by sending a notice of proposed exclusion (NOPE) to the service agent. The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.
2. The NOPE includes the following information:
 - (a) A statement that the initiating official is recommending that the Department issue a PIE concerning the service agent;
 - (b) The factual basis for the initiating official's belief that the service agent is not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;
 - (c) The factual basis for the initiating official's belief that the noncompliance has not been or cannot be corrected;
 - (d) The initiating official's recommendation for the scope of the PIE;
 - (e) The initiating official's recommendation for the duration of the PIE; and
 - (f) A statement that the service agent may contest the issuance of the proposed PIE, as provided in §40.379.
3. The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to the service agent.

I. Decision responsibility to issue a PIE

1. The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decision maker, all references in this subpart to the Director refer to the designee.
2. To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.
3. There is a "firewall" between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

J. Contesting the issuance of a PIE

1. If a service agent receives a NOPE, they may contest the issuance of the PIE.
2. If the service agent wants to contest the proposed PIE, they must provide the Director information and argument in opposition to the proposed PIE in writing, in person, and/or through a representative. To contest the proposed PIE, the service agent must take one or more of the steps listed in this paragraph (b) within 30 days after receiving the NOPE.
 - (a) Request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in §40.365.
 - (b) Present written information and arguments, consistent with the provisions of §40.381, contesting the proposed PIE.
 - (c) Arrange with the Director for an informal meeting to present information and arguments.
3. If the service agent does not take any of the actions listed in paragraph (b) of this section within 30 days after receiving the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (*i.e.*, the NOPE and any supporting information or testimony) and any additional information the Director obtains.

K. Information necessary when contesting the proposed issuance of a PIE

1. A service agent who wants to contest a proposed PIE must present at least the following information to the Director:
 - (a) Specific facts that contradict the statements contained in the NOPE. A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;
 - (b) Identification of any existing, proposed or prior PIE; and
 - (c) Identification of the service agent's affiliates, if any.
2. The service agent may provide any information and arguments concerning the proposed issuance, scope and duration of the PIE (see §40.375(b)(4) and (5)).
3. The service agent may provide any additional relevant information or arguments concerning any of the issues in the matter.

L. Procedures that apply when contesting the issuance of a PIE

1. DOT conducts PIE proceedings in a fair and informal manner. The Director may use flexible procedures to allow the service agent to present matters in opposition. The

Director is not required to follow formal rules of evidence or procedure in creating the record of the proceeding.

2. The Director will consider any information or argument he or she determines to be relevant to the decision on the matter.
3. The service agent may submit any documentary evidence to be considered by the Director. In addition, if the service agent has arranged an informal meeting with the Director, they may present witnesses and confront any person the initiating official presents as a witness against them.
4. In cases where there are material factual issues in dispute, the Director or his or her designee may conduct additional fact-finding.
5. If the service agent has arranged a meeting with the Director, the Director will make a transcribed record of the meeting available on request. The service agent must pay the cost of transcribing and copying the meeting record.

M. The burden of proof in a PIE proceeding

1. As the proponent of issuing a PIE, the initiating official bears the burden of proof.
2. This burden is to demonstrate, by a preponderance of the evidence that the service agent was in serious noncompliance with the requirements of this part for drug and/or alcohol testing-related services or with the requirements of another DOT agency drug and alcohol testing regulation.

N. Director's decision concerning a proposed PIE

1. Following the service agent's response (see §40.379(b)) or, if no response is received, after 30 days have passed from the date on which the service agent received the NOPE, the Director may take one of the following steps:
 - (a) In response to a request from the service agent (see §40.379(b)(1)) or on his or her own motion, the Director may dismiss a PIE proceeding if he or she determines that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in §40.365.
 - (i) If the Director dismisses a proposed PIE under this paragraph (a), the action is closed with respect to the noncompliance alleged in the NOPE.
 - (ii) The Department may initiate a new PIE proceeding against a service agent on the basis of different or subsequent conduct that is in noncompliance with this part or other DOT drug and alcohol testing rules.
 - (b) If the Director determines that the initiating official's submission does not have complete information needed for a decision, the Director may remand the matter to the initiating official. The initiating official may resubmit the matter to the Director when the needed information is complete. If the basis for the proposed PIE has changed, the initiating official must send an amended NOPE to the service agent.
2. The Director makes determinations concerning the following matters in any PIE proceeding that he or she decides on the merits:
 - (a) Any material facts that are in dispute;
 - (b) Whether the facts support issuing a PIE;
 - (c) The scope of any PIE that is issued; and
 - (d) The duration of any PIE that is issued.

O. Factors the Director may consider

This section lists examples of the kind of mitigating and aggravating factors that the Director may consider in determining whether to issue a PIE concerning a service agent, as well as the scope and duration of a PIE. This list is not exhaustive or exclusive. The Director may consider other factors if appropriate in the circumstances of a particular case. The list of examples follows:

1. The actual or potential harm that results or may result from the service agent's noncompliance;
2. The frequency of incidents and/or duration of the noncompliance;
3. Whether there is a pattern or prior history of noncompliance;
4. Whether the noncompliance was pervasive within the service agent's organization, including such factors as the following:
 - (a) Whether and to what extent the organization planned, initiated, or carried out the noncompliance;
 - (b) The positions held by individuals involved in the noncompliance, and whether the principals tolerated their noncompliance; and
 - (c) Whether there were effective standards of conduct and control systems (both with respect to the service agent's own organization and any contractors or affiliates) at the time the noncompliance occurred;
5. Whether the service agent demonstrated an appropriate compliance disposition, including such factors as the following:
 - (a) Whether the service agent has accepted responsibility for the noncompliance and recognizes the seriousness of the conduct that led to the cause for issuance of the PIE;
 - (b) Whether the service agent cooperated fully with the Department during the investigation. The Director may consider when the cooperation began and whether the service agent disclosed all pertinent information known to the service agent;
 - (c) Whether the service agent fully investigated the circumstances of the noncompliance forming the basis for the PIE and, if so, has made the result of the investigation available to the Director;
 - (d) Whether the service agent has taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the grounds for issuance of the PIE; and
 - (e) Whether the service agent's organization has taken appropriate corrective actions or remedial measures, including implementing actions to prevent recurrence;
6. With respect to noncompliance with a DOT agency regulation, the degree to which the noncompliance affects matters common to the DOT drug and alcohol testing program;
7. Other factors appropriate to the circumstances of the case.

P. Scope of a PIE.

1. The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.

2. If the Department issues a PIE concerning a service agent, the PIE applies to all divisions, organizational elements, and types of services of the service agent that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.
3. In the NOPE (see §40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (see §40.381(b)) and about which the Director makes a decision (see §40.387(b)(3)).
4. In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.
5. The pervasiveness of the noncompliance within a service agent's organization (see §40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.
6. The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.
7. A PIE applies to the service agent's affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.
8. A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with the service agent's organization in the following circumstances:
 - (a) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of the service agent's organization; or
 - (b) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.
9. If a contractor to the service agent's organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.
10. PIEs do not apply to drug and alcohol testing that DOT does not regulate.
11. The following examples illustrate how the Department intends the provisions of this section to work:
 - Example 1 - Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40, as amended. However, P's other services fully comply with this part, and P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.
 - Example 2 - Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.
 - Example 3 - Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas-collections, MROs, SAPs, protecting the confidentiality of information-are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious

noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.

Example 4 - Service Agent W provides only one kind of service (e.g., laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.

Example 5 - Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous "fatal flaws" in tests. Alternatively, X received a correction notice pointing out these problems in its contractor's collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.

Example 6 - Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.

Example 7 - The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z's services.

Q. How long does a PIE stay in effect?

1. In the NOPE (see §40.375(b)(5)), the initiating official proposes the duration of the PIE. The duration of the PIE is one of the elements of the proceeding that the service agent may contest (see §40.381(b)) and about which the Director makes a decision (see §40.387(b)(4)).
2. In deciding upon the duration of the PIE, the Director considers the seriousness of the conduct on which the PIE is based and the continued need to protect employers and employees from the service agent's noncompliance. The Director considers factors such as those listed in §40.389 in making this decision.
3. The duration of a PIE will be between one and five years, unless the Director reduces its duration under §40.407.

R. Settling a PIE proceeding

At any time before the Director's decision, the service agent and the initiating official can, with the Director's concurrence, settle a PIE proceeding.

S. When does the Director make a PIE decision?

The Director makes his or her decision within 60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days.

T. Notifying the service agents of its decision.

A service agent involved in a PIE proceeding will receive a written notice from the Director as soon as he or she makes a PIE decision. The notice includes the following elements:

1. If the decision is not to issue a PIE, a statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute.

2. If the decision is to issue a PIE-
 - (a) A reference to the NOPE;
 - (b) A statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute;
 - (c) A statement of the scope of the PIE; and
 - (d) A statement of the duration of the PIE.

U. Notifications to employers and the public about a PIE.

1. The Department maintains a document called the "List of Excluded Drug and Alcohol Service Agents." This document may be found on the Department's web site (<http://www.dot.gov/ost/dapc>). A service agent may also request a copy of the document from ODAPC.
2. When the Director issues a PIE, he or she adds to the List the name and address of the service agent, and any other persons or organizations, to whom the PIE applies and information about the scope and duration of the PIE.
3. When a service agent ceases to be subject to a PIE, the Director removes this information from the List.
4. The Department also publishes a **Federal Register** notice to inform the public on any occasion on which a service agent is added to or taken off the List.

V. Must a service agent notify its clients when the Department issues a PIE.

1. If the Department issues a PIE concerning a service agent, the service agent must notify each of their DOT-regulated employer clients, in writing, about the issuance, scope, duration, and effect of the PIE. The service agent may meet this requirement by sending a copy of the Director's PIE decision or by a separate notice. This notice must be sent to each client within three working days of receiving from the Department the notice provided for in §40.399(b).
2. As part of the notice sent under paragraph (1) of this section, the service agent must offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. The service agent must carry out this transfer as soon as the employer requests it.

W. Review of PIE decisions in Federal courts.

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 *et. seq.*).

X. Request by a service agent to have a PIE reduced or terminated.

1. As a service agent concerning whom the Department has issued a PIE, the service agent may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.
2. The request must be in writing and supported with documentation.
3. The service agent must wait at least nine months from the date on which the Director issued the PIE to make this request.
4. The initiating official who was the proponent of the PIE may provide information and arguments concerning the service agent's request to the Director.

5. If the Director verifies that the sources of the noncompliance have been eliminated and that all drug or alcohol testing-related services to be provided to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.

Y. The issuance of a PIE means to transportation employers.

1. An employer is deemed to have notice of the issuance of a PIE when it appears on the List mentioned in §40.401(a) or the notice of the PIE appears in the **Federal Register** as provided in §40.401(d). An employer should check this List to ensure that any service agents being used or planning to be used are not subject to a PIE.
2. An employer who is using a service agent concerning whom a PIE is issued must stop using the services of the service agent no later than 90 days after the Department has published the decision in the **Federal Register** or posted it on its web site. The employer may apply to the ODAPC Director for an extension of 30 days if they can demonstrate inability to find a substitute service agent within 90 days.
3. Except during the period provided in paragraph (b) of this section, an employer must not use the services of a service agent that are covered by a PIE that the Director has issued under this subpart. If the employer does so, the employer is in violation of the Department's regulations and subject to applicable DOT agency sanctions (e.g., civil penalties, withholding of Federal financial assistance).
4. The employer also must not obtain drug or alcohol testing services through a contractor or affiliate of the service agent to whom the PIE applies.

Example to Paragraph 4: Service Agent R was subject to a PIE with respect to SAP services. An employer must not use R's own SAP services, but also must not use SAP services arranged through R, such as services provided by a subcontractor or affiliate of R or a person or organization that receives financial gain from its relationship with R.

5. This section's prohibition on using the services of a service agent concerning which the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations.

Example to Paragraph 5: The initiating official for a PIE was the FAA drug and alcohol program manager, and the conduct forming the basis of the PIE pertained to the aviation industry. A motor carrier, transit authority, pipeline, railroad, or maritime employer is also prohibited from using the services of the service agent involved in connection with the DOT drug and alcohol testing program.

6. The issuance of a PIE does not result in the cancellation of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the **Federal Register** or posting on the Department's web site, unless otherwise specified in the Director's PIE decision or the Director grants an extension as provided in Part 40, as amended.

Example to Paragraph 6: The Department issues a PIE concerning Service Agent N on September 1. All tests conducted using N's services before September 1, and through November 30, are valid for all purposes under DOT drug and alcohol testing regulations, assuming they meet all other regulatory requirements.

Z. Role of the DOT Inspector General's office.

1. Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of the DOT Office of Inspector General.
2. In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.
3. The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.

AA. How notices are sent to service agents.

1. DOT sends notices to service agents including correction notices, notices of proposed exclusion, decision notices, and other notices, in any of the ways mentioned in paragraph (b) or (c) of this section.
2. DOT may send a notice to the service agent, the service agent's identified counsel or agent for service of process, or any of the partners, officers, directors, owners, or joint ventures of the service agent to the last known street address, fax number, or e-mail address. DOT deems the notice to have been received by the service agent if sent to any of these persons.
3. DOT considers notices to be received by the service agent -
 - (a) When delivered, if DOT mails the notice to the last known street address, or five days after we send it if the letter is undeliverable;
 - (b) When sent, if DOT sends the notice by fax or five days after we send it if the fax is undeliverable; or
 - (c) When delivered, if DOT sends the notice by e-mail or five days after DOT sends it if the e-mail is undeliverable.

This Page Intentionally Blank

APPENDIX O

ALCOHOL SUPPLEMENTAL INFORMATION

I. Why an employee should get involved:

- A. Although our District has no history of alcohol misuse problems, we recognize that alcoholism and alcohol misuse are problems throughout America.
- B. There are three good reasons why an employee should be concerned if any co-workers are using alcohol on the job:
 - 1. Everyone's health and safety may be at risk.
 - 2. Alcohol misuse costs the District and its employees money.
 - 3. Alcohol creates a negative work environment.
- C. According to the National Institute on Alcohol Abuse and Alcoholism, drug and alcohol use on the job costs society an estimated \$102 billion a year. Since most of this cost is passed on to the employees in the form of higher health insurance rates or in consumer prices, drug and alcohol use on the job costs everyone a significant amount of money.
- D. Absenteeism among problem drinkers or alcoholics is 3.8 to 8.3 times greater than normal. If fellow workers don't come to work, an employee may have to do their fellow workers jobs in addition to their own.
- E. Workers who misuse alcohol don't function at their full potential. Not only is absenteeism a problem, when they are at work these employees may have reduced capabilities and productivity. Since our product is the safe transportation of hazardous liquid (or natural gas), alcohol misuse is an especially serious issue.
- F. No matter what the employee's position is in the organization, there is something that can be done to ensure that alcohol use on the job never becomes a problem at the District. Acceptance of any misuse puts the employee's, the District and the public at risk.

II. Effects of alcohol misuse on an individual's health, work and personal life:

- A. Alcohol is a central nervous system depressant. Taken in large quantities it causes not only the euphoria associated with being drunk but also adversely affects judgment, ability to think, and motor functions.
- B. Long term overuse of alcohol can cause liver damage, heart problems, sexual dysfunction and other serious medical problems.
- C. In some cases alcohol use can lead to physical and psychological dependence on alcohol. Alcoholism is a serious chronic disease. Left untreated it will inevitably get worse.
- G. Workers who use alcohol affect everyone. Studies show that compared to alcohol-free workers, alcohol miss-users are far less productive, miss more workdays, are more likely to injure themselves or someone else, and file more worker's compensation claims.
- H. The measurable dollar costs of workplace substance abuse from absenteeism, overtime pay, tardiness, sick leave, insurance claims and worker's compensation can be substantial. However, the hidden costs resulting from diverted supervisory and managerial time, friction among workers, damage to equipment, and damage to the District's public image mean that workplace substance abuse can further cut profits and competitiveness.
- I. Alcohol can also destroy relationships, lead to serious problems with the law (e.g., drunk driving), and even cause harm to loved ones.
- J. If drinking affects an employee's work life, it could lead to job loss and all the financial problems that would follow.

III. Signs and symptoms of alcohol misuse - any one or more of the following signs may indicate a drinking problem:

- A. Family or social problems caused by drinking
- B. Job or financial difficulties related to drinking
- C. Loss of a consistent ability to control drinking
- D. "Blackouts" or the inability to remember what happened while drinking
- E. Distressing physical and/or psychological reactions why trying to stop drinking
- F. A need to drink increasing amounts of alcohol to get the desired effect
- G. Marked changes in behavior or personality when drinking
- H. Getting drunk frequently
- I. Injuring self or someone else while intoxicated
- J. Breaking the law while intoxicated
- K. Starting the day with a drink

IV. Available methods of evaluating and resolving problems associated with the misuse of alcohol:

- A. Outpatient programs exist in a variety of settings:
- B. Community mental health centers
- C. Full service agencies
- D. Private physicians' and therapists' offices
- E. Occupational settings
- F. Specialized alcoholism treatment facilities
- G. Inpatient services, designed for those with more serious alcohol problems, can be found in hospitals, residential care facilities, community halfway houses and some alcoholism clinics.
- H. The local phone directory will list helpful referral organizations such as:
 - (1.) Local council on alcoholism
 - (2.) Alcoholics Anonymous
 - (3.) Community alcoholism or mental health clinic
 - (4.) Social services or human resources departments
 - (5.) County medical society
- I. The SAP will perform an initial evaluation, recommend any additional treatment if necessary, and refer employees needing assistance for treatment.

This Page Intentionally Blank

APPENDIX: P

TABLE OF CONTENTS

APPENDIX P	118
Forms	

APPENDIX P

FORMS

Instruction Sheet

To: DOT/FMCSA Program Manager, Panama-Buena Vista Union School District

From: Gary Zvirblis, ZEE Consulting & Associates

Subject: **Clearinghouse Annual Limited Query Authorization Form**

- 1) Employers are required to conduct an annual limited query in the DOT Clearinghouse database on each DOT/FMCSA driver they employ. This query is limited in scope to indicate to the employer if any DOT drug/alcohol testing information may be present for the applicable CDL holder. The employee may grant their employer ongoing authorization to conduct limited queries for up to five years during their employment with each employer. This ongoing authorization must be provided in writing. The form below may be utilized to obtain such authorization from current CDL employees.
- 2) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions.
- 3) The driver needs to register in the Clearinghouse and provide consent in the Clearinghouse for the full query to be fulfilled.
 - a) If the driver fails to register and consent to the full query, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer is able to conduct the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions.
- 4) Give employee a copy of the completed form below for their records.
- 5) Place copy in employee's personnel file.
- 6) Place original in the "master file" system under the DOT/FMCSA section. Place in a folder titled, "Clearinghouse Limited Annual Query Authorizations."
- 7) Ensure authorizations for limited annual query are reviewed and updated regularly (at least every five years) on all current CDL employees to allow the District to conduct the necessary limited query of the Clearinghouse each year.

Driver Consent for Annual Limited Query

District Name: **Panama-Buena Vista Union School District**

As stipulated in FMCSA rule §382.701 Drug and Alcohol Clearinghouse, in lieu of a full query, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query requirement. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.

If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions. The driver needs to register in the Clearinghouse and provide consent in the Clearinghouse for the full query to be fulfilled. If the driver fails to register and consent for the full query, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer is able to conduct the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions.

Drivers that do not intend to apply for employment with any other District in another safety-sensitive function and also have no drug or alcohol violations do not need to register in the Clearinghouse.

I hereby consent to the employer listed above to perform limited queries to the FMCSA Drug and Alcohol Clearinghouse for a period of **five years from the effective date noted below** or until my employment with the District is terminated.

Print Driver Name: _____

CDL # with State of Issue: _____

Driver Signature: _____

Authorization Effective Date: _____

Instruction Sheet

To: DOT/FMCSA Program Manager, Panama-Buena Vista Union School District

From: Gary Zvirblis, ZEE Consulting & Associates

Subject: **New Hire and/or Pre-Assignment Employee
DOT/FMCSA Drug/Alcohol Program Summary**

- 1) This summary is to be used with: new hire employees with Commercial Drivers' License (CDL) who will use the CDL in a covered position,

OR

Current employee with CDL being assigned to a covered position.

- 2) Have employee and/or new hire read and sign this form before performing safety sensitive work covered by CDL.
- 3) Give employee copy for their records.
- 4) Place copy in employee's personnel file.
- 5) Place original in the "master file" system under the DOT/FMCSA section. Place in a folder titled, "Orientation/Training-New Hire & Pre-Assignment."

Panama-Buena Vista Union School District

**Department of Transportation-Federal Motor Carrier Safety Administration
Drug & Alcohol Testing Procedures For Covered Employees**

Drivers and mechanics are subject to drug and alcohol testing in accordance with the Federal Administration Controlled Substance Testing Regulations (D.O.T. regulations). These regulations require testing on a pre-employment, reasonable cause, random, post-accident return-to-duty and follow-up basis. All drivers and mechanics covered by the D.O.T. regulations are subject to testing, including supervisors and others who are expected to drive regularly or on special occasions.

In situations where testing is appropriate under both Panama-Buena Vista Union School District "Alcohol and Drug Policy" as well as the D.O.T. regulations, separate samples may be taken with one sample tested according to the D.O.T. requirements and the other sample tested according to the District "Alcohol and Drug Policy" where one is in effect. The employee or applicant will be informed when a test is a D.O.T. test and when it is a District test. District testing will only be performed in locations where there is an Alcohol & Drug Policy in place.

With respect to drug testing, Panama-Buena Vista Union School District will designate collection sites where urine specimen samples will be collected. If a driver is not near the facility at the time when a specimen sample should be collected, a sample may be taken at a hospital emergency room or physician's office certified to collect samples. The specimen sample will be forwarded to a government-certified laboratory for testing. A licensed physician will act as a Medical Review Officer (MRO) to review test results. The MRO will provide the District with the final test results.

With respect to alcohol testing, two breath tests (utilizing breathalysers) will determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second or confirmation test will be conducted.

Possession or consumption of drugs or alcohol while performing work for Panama-Buena Vista Union School District is prohibited. Drivers should refrain from alcohol use 4 hours prior to the start of their shift and the start of any "call window." Drivers who have consumed alcohol within the prior 4 hours and who are asked to report to work should tell the dispatcher that they have consumed alcohol and should decline the work.

Any employee who fails to cooperate during the testing process, tests positive as a result of a D.O.T. drug or alcohol test or who otherwise violates D.O.T. drug and alcohol use rules or violates Panama-Buena Vista Union School District "Alcohol and Drug Policy" (where one exists) is subject to immediate termination.

In addition, D.O.T. disqualifies drivers or mechanics who operate a vehicle under the influence of drugs or alcohol from driving for one year (unless s/he is transporting hazardous material, then s/he is disqualified for three years). A second violation results in a lifetime driving disqualification. Also, drivers are subject to five years' imprisonment and fines up to \$10,000 for *driving under the influence*.

To help ensure a safe transportation workforce, prior to a new-hire driver's first trip, s/he will receive one hour of education on drug and alcohol abuse and its consequences.

Panama-Buena Vista Union School District will comply with all D.O.T. testing regulations. For a more detailed explanation of the procedures and regulations, review the Anti-Drug Plan and Alcohol Misuse Prevention Plan.

By my signature below, I acknowledge that I have read the materials provided to me regarding Panama-Buena Vista Union School District D.O.T. Drug and Alcohol Compliance Program. I understand that this Program is being implemented to comply with federal law and D.O.T. regulations. I also understand that Panama-Buena Vista Union School District reserves the right to change this Program at any time to maintain compliance with federal law. I also understand that nothing contained herein is to be construed as a limitation or alteration of Panama-Buena Vista Union School District right to discipline and discharge employees under District policy.

Employee Print Entire Name: _____ Employee Signature: _____

Employee Social Security Number: _____ Date: _____

Employer/Representative Print Name: _____ Employer Signature: _____

Instruction Sheet

To: DOT/FMCSA Program Manager, Panama-Buena Vista Union School District

From: Gary Zvirblis, ZEE Consulting & Associates

Subject: **Employee: Training, Orientation & Education Form**

- 1) Each new hire and/or current employee, prior to assignment to a CDL “safety-sensitive” position, must complete the following steps. This form is used to document the process and to ensure compliance with DOT/FMCSA requirements.
- 2) **Step One** - Provide employee with a copy of or access to the “Anti-Drug Plan” (policy section one). Give the employee adequate and reasonable amount of time to read it. Once they have read the plan, have them sign the form confirming their receipt or access to and understanding of the Plan.
- 3) **Step Two** - Provide employee with a copy of or access to the “Alcohol Misuse Plan” (policy section two). Give the employee adequate and reasonable amount of time to read it. Once they have read the plan, have them sign the form confirming their receipt or access to and understanding of the Plan.
- 4) **Step Three** - Provide employee with a copy of or access to the education/awareness handout (Appendix, Section Q). Once they have received the material, have them sign-off on this last step.
- 5) Place copy in employees personnel file and original in the “master file” system under the DOT/FMCSA section. Place in a folder titled, “New Hire Training & Orientation” file.

D.O.T. FEDERAL HIGHWAY ADMINISTRATION
ALCOHOL & DRUG RULES

Panama-Buena Vista Union School District

Employee: Training, Orientation and Education

Employee Name: _____ **Title:** _____
(Please Print) (Please Print)

I have read and understand Panama-Buena Vista Union School District “Anti-Drug Plan” and I agree to be bound by the policy.

Date: _____ Employee Signature: _____

District Witness: _____

I have read and understand Panama-Buena Vista Union School District “Alcohol Misuse Prevention Plan” and I agree to be bound by the policy.

Date: _____ Employee Signature: _____

District Witness: _____

I have received education and awareness training materials, Panama-Buena Vista Union School District “Drug-Free Workplace - Employee Version.”

Date: _____ Employee Signature: _____

District Witness: _____

Please contact Panama-Buena Vista Union School District’s Designated Employer Representatives, should you have any questions regarding the Anti-Drug Plan, Alcohol Misuse Prevention Plan or the Employee Education material.

Instruction Sheet

To: DOT/FMCSA Program Manager, Panama-Buena Vista Union School District

From: Gary Zvirblis, ZEE Consulting & Associates

Subject: **Reasonable Suspicion Drug/Alcohol Testing Form**

- 1) Confirm that the employee and situation meets DOT/FMCSA definition of “reasonable suspicion.”
- 2) Utilize the Panama-Buena Vista Union School District drug/alcohol program 1) consent to collect and test form, and 2) release of test result form.

Note: *Remember to mark the DOT test box (on the consent to collect/test form) to ensure collection staff will perform a DOT collection.*

- 3) This form must be completed by a **trained** supervisor.

Note: *Supervisor trained on DOT regulations and drug/alcohol recognition.*

- 4) Place copy in employees personnel file and original in the “master file” system under the DOT/FMCSA section. Place in a folder titled, “Reasonable Suspicion Tests.”

**DOT/FMCSA -
Reasonable Suspicion Drug/Alcohol Testing Form**

This form must be completed by the supervisor or District official making the reasonable suspicion determination that a DOT alcohol or drug test is indicated. For reasonable suspicion drug tests, the form must be completed within 24 hours of the determination or prior to receipt of drug test results, whichever is earlier.

To Be Completed by Employer

Social Security Number: _____ Name of Covered Employee (print full): _____ Date of Birth: _____
 Date of Observation: _____ Time: _____ Employee Performing "Safety Sensitive" duties? Yes No
 Location: _____

Reasonable suspicion of current use or impairment by: Alcohol: Yes No Drugs: Yes No

Specific observations made (consider appearance, behavior, speech, motor skills, balance, gait, other):

Utilize Panama-Buena Vista Union School District District-wide Drug/Alcohol Recognition Form : Yes No Attached: Yes No

Check if the following conditions are met:

- Observations are specific, contemporaneous, and articulable on the appearance, behavior, speech or body odors of the individual.
- Observations for alcohol and/or drug reasonable suspicion testing made by a supervisor trained in accordance with DOT requirements for supervisory personnel with required minimum training for alcohol or drugs, as applicable.
- (For Alcohol Testing) Observations are made during, just preceding, or just after the individual is required to be in compliance with DOT regulations.
- (For Alcohol Testing) The breath alcohol technician (BAT) was not the supervisor making the reasonable suspicion determination.

Test only if all the above conditions are met.

Alcohol (breath) Test Completed: Within 2 hours Yes No If no, why? _____
 Within 8 hours Yes No If no, why? _____

Time of Alcohol Test: _____ Where: _____ By Whom: _____

Note: *If unable to test within 8 hours of reasonable suspicion determination, state reasons, cease attempts to test, and state reasons*

Drug (urine) Test Completed: Within 2 hours Yes No If no, why? _____
 Within 8 hours Within 32 hours Yes No If no why? _____

Time of Drug Test: _____ Where: _____ By Whom: _____

Supervisor/District Official: _____ Title: _____ Date: _____

Comments and/or corroboration by a **second supervisor** or District official:

Supervisor/District Official: _____ Title: _____ Date: _____

Test Determination: Reasonable Suspicion Alcohol Breath Test No Test Conducted
 Reasonable Suspicion Drug Urine Test 32 Hours Elapsed
 No Test Required No Collection Available
 Employee Refused Test Other (explain) _____

Employee Transported To Collection Site By: _____ Title: _____

Time Transported: _____ Collection Site: _____

Employee Transported Home: Yes No If no explain: _____

Instruction Sheet

To: DOT/FMCSA Program Manager, Panama-Buena Vista Union School District

From: Gary Zvirblis, ZEE Consulting & Associates

Subject: **Post-Accident Drug/Alcohol Testing Form**

- 1) Confirm that the employee and situation meets DOT/FMCSA definition of “post-accident.”
- 2) Utilize the Panama-Buena Vista Union School District general drug/alcohol program 1) consent to collect and test form, and 2) release of test result form.

Note: *Remember to mark the DOT test box (on the consent to collect/test form) to ensure collection staff will perform a DOT collection.*

- 3) This form must be completed by a **trained** supervisor.

Note: *Supervisor trained on DOT regulations and drug/alcohol recognition.*

- 4) Place copy in employees personnel file and original in the “master file” system under the DOT/FMCSA section. Place in a folder titled, “Post-Accident Tests.”

DOT/FMCSA - Post-Accident Drug & Alcohol

To be Completed by Employer

Name of Covered Employee (print full): _____ Date of Birth: _____ Social Security Number: _____

Date of Accident: _____ Accident Location: _____

Name(s) of any other involved individuals/pedestrians/police and other identifying information(addresses, etc.)

Did the accident meet specific criteria for Post-Accident Testing per DOT/FMCSA and was the covered employee(s) performing "safety sensitive" duties at the time of the accident?

- Reason for Test: Citation Issued Yes No
- Any Medical Treatment Away From Scene? Yes No
- Any Vehicle Towed? Yes No
- Fatality? Yes No
- District Policy Violation? Yes No

Briefly Describe Accident:

Was covered employee informed of the "post-accident" testing requirement? Yes No Supervisor/Manager Initial: _____

If the answer is yes, a DOT alcohol test is required as soon as possible, but always within 8 hours of the accident; a DOT drug test is required as soon as possible, but always within 32 hours of the accident. If the DOT alcohol test is not performed within 2 hours or the DOT drug test within 8 hours, documentation as to why this does not occur should be made. If the DOT alcohol test is not performed within 8 hours or the DOT drug test within 32 hours, attempts to administer the test(s) should cease and documentation as to why the test(s) could not be performed should be made.

Alcohol (breath) Test Completed: Within 2 hours Yes No If no, why? _____
 Within 8 hours Yes No If no, why? _____

Time of Alcohol Test: _____ Where: _____ By Whom: _____

Drug (urine) Test Completed: Within 8 hours Yes No If no, why? _____
 Within 32 hours Yes No If no, why? _____

Time of Drug Test: _____ Where: _____ By Whom: _____

Other information or comments:

Supervisory/District Official: _____ Title: _____

Supervisory/District Official Signature: _____ Date: _____

Instruction Sheet

To: DOT/FMCSA Program Manager, Panama-Buena Vista Union School District

From: Gary Zvirblis, ZEE Consulting & Associates

Subject: **Year End Program Overview & Testing Summary**

- 1) This summary is to be completed by the “Program Manager” by January 31 each year.
- 2) You will need the following records/information to complete this form:
 - A) Mid-year and end-of-year testing reports from your testing laboratory.
 - B) Quarterly reports from your:
 - 1) MRO, and
 - 2) Third-Party-Administrator or Collection Site.
 - C) Your internal records regarding training and previous employer checks.
- 3) Utilizing the above information/reports, complete your “Year End Summary.”
- 4) Place original in the “master file” system under the DOT/FMCSA section. Place in a folder titled, “Year End Summary.”

Employers subject to DOT or USCG drug and alcohol testing regulations must submit their annual drug and alcohol testing data as required by their respective DOT Agency or the USCG. The annual drug and alcohol testing data being submitted for a specific calendar year is to be submitted by March 15th of the following calendar year.

- **Example:** If you are required to submit drug and alcohol testing data for the calendar year of 2017, then you must submit your data by March 15, 2018.

When submitting their drug and alcohol testing data, employers are to use the following Drug and Alcohol Testing MIS Data Collection Form and instructions.

- [MIS Data Collection Form](#)
- [MIS Instruction Sheet](#)

Most DOT Agencies and the USCG now permit (and prefer) you to submit the required drug and alcohol testing data via the internet. If you submit the data via the internet, you are not required to submit a hardcopy. It is recommended employers have a copy of their data available (either hard copy or in electronic format) in the event an auditor or inspector requests a copy.

The following table contains links to DOT Agency and USCG specific web pages that contain instructions on and links to submitting the drug and alcohol testing data via the internet.

Links to DOT Agency and USCG specific web pages		
Agency	When Employers are required to submit Drug and Alcohol Testing MIS Data	Links to Instructions and to Internet Reporting
FAA	See Note 1 (14 CFR Part 120.119 and 120.219(b))	Link to FAA Instructions
FMCSA	Upon Request from FMCSA (49 CFR Part 382.403)	Link to FMCSA Instructions
FRA	Each Calendar Year (49 CFR Part 219.800)	Link to FRA Instructions
FTA	Upon Request from FTA (49 CFR Part 655.72)	Link to FTA Instructions
PHMSA	See Note 2 (49 CFR Part 199.119 & 229)	Link to PHMSA Instructions
USCG	Each Calendar Year (46 CFR Part 16.500)	Link to USCG Instructions

Note 1

- **Each part 121 certificate holder:** each calendar year
- **Entity with 50 or more employees performing safety-sensitive functions that conducts alcohol and drug misuse prevention programs:** each calendar year
- **All aviation employers not included above:** upon request from FAA

Note 2

- **More than 50 covered employees:** each calendar year
- **50 or fewer covered employees:** upon request from PHMSA

Employers who have additional questions regarding the MIS Data Collection form and reporting process are to **contact their respective [DOT Agency or USCG program manager](#)**.



**U.S. Department of Transportation
Office of the Secretary of Transportation
Office of Drug and Alcohol Policy and Compliance**

Drug and Alcohol Testing MIS Data Collection Form Instructions

Revised January, 2018

Table of Contents

Section I. Employer Information	3
Section II. Covered Employees.....	4
Section III. Drug Testing Data.....	6
Section III, Column 1. Total Number of Test Results	7
Section III, Column 2. Verified Negative Results	7
Section III, Column 3. Verified Positive Results ~ For One Or More Drugs	7
Section III, Columns 4 through 8. Positive (for specific drugs) ~.....	8
Section III, Columns 9 through 12. Refusal Results.....	8
Section III, Column 9. Adulterated.....	9
Section III, Column 10. Substituted.....	9
Section III, Column 11. “Shy Bladder” ~ With No Medical Explanation	9
Section III, Column 12. Other Refusals To Submit To Testing	9
Section III, Column 13. Cancelled Tests	10
Section IV. Alcohol Testing Data.....	11
Section IV, Column 1. Total Number of Screening Test Results.....	12
Section IV, Column 2. Screening Tests With Results Below 0.02.....	12
Section IV, Column 3. Screening Tests With Results 0.02 Or Greater.....	12
Section IV, Column 4. Number of Confirmation Test Results.....	12
Section IV, Column 5. Confirmation Tests With Results 0.02 Through 0.039...13	
Section IV, Column 6. Confirmation Tests With Results 0.04 Or Greater	13
Section IV, Columns 7 and 8. Refusal Results	13
Section IV, Column 7. “Shy Lung” ~ With No Medical Explanation.....	14
Section IV, Column 8. Other Refusals To Submit To Testing	14
Section IV, Column 9. Cancelled Tests	14

U.S. DEPARTMENT OF TRANSPORTATION
DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM
INSTRUCTION SHEET

Read the entire document before completing the MIS form.

The [Management Information System \(MIS\) form](#) consists of four sections:

Section I.	Employer Information;
Section II.	Covered Employees (i.e., employees performing DOT regulated safety-sensitive duties) information;
Section III.	Drug Testing Data; and
Section IV.	Alcohol Testing Data.

If you are preparing reports for more than one DOT agency, then you must submit DOT agency-specific forms.

If requested or required by the DOT agency that you submit the MIS form electronically, you can do so by using this link <https://www.transportation.gov/odapc/MISreporting>.

If completing the paper form, type or print entries legibly in black ink.

The following instructions are broken out by sections as identified on the MIS form:

Calendar Year Covered by this Report: Enter the appropriate year.

Section I. Employer Information

The employer information needs only to be provided once per submission. However, you must submit a separate page of data for each employee category for which you report testing data.

1. Enter your company's name, to include when applicable, your "doing business as" name; current address, city, state, and zip code; and an e-mail address, if available.
2. Enter the printed name, signature, and complete telephone number of the company official certifying the accuracy of the report and the date that person certified the report as complete.
3. If someone other than the certifying official completed the MIS form, enter that person's name and phone number on the appropriate lines provided.
4. If a Consortium/Third Party Administrator (C/TPA) performs administrative services for your drug and alcohol program operation, enter its name and phone number on the appropriate lines provided.

5. DOT Agency Information: **Check the box next to the DOT agency for which you are completing this MIS form.** Again, if you are submitting to multiple DOT agencies, you must use separate forms for each DOT agency.
- If you are completing the form for:
 - **FMCSA**: enter your FMCSA DOT Number, as appropriate. In addition, you must indicate whether you are an owner-operator (i.e., an employer who employs only himself or herself as a driver) and whether you are exempt from providing MIS data. Exemptions are noted in the FMCSA regulation at 382.103(d).
 - **FAA**: enter your FAA Certificate Number and FAA Antidrug Plan / Registration Number, when applicable.
 - **PHMSA**: check the additional box(s) indicating your type of operation.
 - **FRA**: enter the number of observed/documentated Part 219 “Rule G” Observations for covered employees.
 - **USCG**: enter the vessel ID number. If there is more than one number, enter the numbers separately.

Section II. Covered Employees

Here is a full listing of covered-employee categories:

FMCSA (one category): Driver

FAA (nine categories): Flight Crewmember; Flight Attendant; Flight Instructor; Aircraft Dispatcher; Aircraft Maintenance and preventive maintenance; Ground Security Screener; Aviation Screener; Air Traffic Controller; Operations Control Specialist

PHMSA (one category): Operation/Maintenance/Emergency Response

FRA (six categories): Engine Service; Train Service; Dispatcher/Operation; Signal Service; Other [Includes yardmasters, hostlers (non-engineer craft), bridge tenders; switch tenders, and other miscellaneous employees performing 49 CFR 228.5 (c) defined covered service.]; Roadway Worker/Maintenance-of-Way [as defined in 49 CFR Part 214.7]

USCG (one category): Crewmember

FTA (five categories): Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel

1. **In Box II-A**, enter the total number of covered employees (i.e., employees performing DOT regulated safety-sensitive duties) who work for your company. Then enter, in Box II-B, the total number of employee categories that number represents.

If you have employees, some of whom perform duties under one DOT agency and others of whom perform duties under another DOT agency, enter only the number of those employees performing duties under the DOT agency for whom you are submitting the form.

If you have covered employees who perform multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency regulating more than 50 percent of the employee's safety sensitive function.

Example: If you are submitting the information for the FRA and you have 2000 covered employees performing duties in all FRA-covered service categories – you would enter “2000” in the first box (II-A) and “6” in the second box (II-B), because FRA has six safety-sensitive employee categories and you have employees in all of these groups. If you have 1000 employees performing safety-sensitive duties in three FRA-covered service categories (e.g., engine service, train service, and dispatcher/operation), you would enter “1000” in the first box (II-A) and “3” in the second box (II-B).]

TIP ~ *To calculate the total number of covered employees, add the total number of covered employees eligible for testing during each random testing selection period for the year and divide that total by the number of random testing periods. (However, no company will need to factor the average number of employees more often than once per month.) For instance, a company conducting random testing quarterly needs to add the total of covered employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees.*

It is extremely important that you place all eligible employees into these random pools.

[As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; $1500 + 2250 + 2750 + 1500 = 8000$; $8000 / 4 = 2000$; the total number of covered employees for the year would be reported as, “2000”.

If you conduct random selections more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. Therefore, employers need not compute the covered employees rate more than 12 times per year.]

2. If you are reporting multiple employee categories, enter the specific employee category in box II-C; and provide the number of employees performing safety-sensitive duties in that specific category.

Example: You are submitting data to the FTA and you have 2000 covered employees. You have 1750 personnel performing revenue vehicle operation and the remaining 250 are performing revenue vehicle and equipment maintenance. When you provide vehicle operation information, you would enter “Revenue Vehicle Operation” in the first II-C box and “1750” in the second II-C box. When you provide data on the maintenance personnel, you would enter “Revenue Vehicle and Equipment Maintenance” in the first II-C box and “250” in the second II-C box.

TIP ~ *A separate form for each employee category must be submitted. You may do this by filling out a single MIS form through Section II-B and then make one copy for each additional employee category you are reporting.*

For instance, if you are submitting the MIS form for the FMCSA, you need only submit one form for all FMCSA covered employees working for you – your only category of employees is “driver.” If you are reporting testing data to the FAA and you employ only flight crewmembers, flight attendants, and aircraft maintenance workers, you need to complete one form each for category – three forms in all. If you are reporting to FAA and have all FAA categories of covered employees, you must submit nine forms.

Section III. Drug Testing Data

This section summarizes the drug testing results for all covered employees (to include applicants). The table in this section requires drug test data by test type and by result.

The categories of test types are:

- Pre-Employment
- Post-Accident
- Return-to-Duty
- Random
- Reasonable Suspicion / Reasonable Cause
- Follow-Up

The categories of type of results are:

- Total Number of Test Results [***excluding cancelled tests***];
- Verified Negative;
- Verified Positive;
- Positive for Marijuana;
- Positive for Cocaine;
- Positive for PCP;
- Positive for Opioids;
- Positive for Amphetamines;
- Refusals due to:
 - Adulterated, Substituted,
 - “Shy Bladder” with No Medical Explanation, and
 - Other Refusals to Submit to Testing; and
- Cancelled Results.

TIP ~ ***Pre-Employment*** - Be sure to enter all testing data regardless of whether an applicant was hired or not.

Reasonable Suspicion and Reasonable Cause - You do not need to separate this drug testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion drug testing (i.e., FMCSA and FTA), enter that data; if you conducted only reasonable cause drug testing (i.e., FAA, PHMSA, and USCG); or if you conducted both under FRA drug testing rules, simply enter the data with no differentiation.]

Post-Accident: For USCG, enter any “Serious Marine Incident” drug test result. For FRA, do not enter post accident data (the FRA does not collect this data on the MIS form).

Cancelled tests are not included in the “total number of test results” column.

Finally, enter “0” (zero) in any row or column in which there were no results.

Section III, Column 1. Total Number of Test Results

This column requires a count of the total number of test results in each testing category during the entire reporting year. Count the number of test results as the number of testing events resulting in negative, positive, and refusal results. Do not count cancelled tests in this total.

Example: A company that conducted fifty pre-employment tests would enter “50” on the Pre-Employment row. If it conducted one hundred random tests, “100” would be entered on the Random row. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, zeros would be entered in those categories.

Section III, Column 2. Verified Negative Results

This column requires a count of the number of tests in each testing category that the Medical Review Officer (MRO) reported as negative. Do not count a negative-dilute result if, subsequently, the employee underwent a second collection; the second test is the test of record.

Example: If forty-seven of the company’s fifty pre-employment tests were reported negative, “47” would be entered in Column 2 on the Pre-Employment row. If ninety of the company’s one hundred random test results were reported negative, “90” would be entered in Column 2 on the Random row. Because the company did no other testing, “0” (zero) would be entered in those other categories.

Section III, Column 3. Verified Positive Results ~ For One Or More Drugs

This column requires a count of the number of tests in each testing category that the MRO reported as positive for one or more drugs. When the MRO reports a test positive for two drugs, it would count as one positive test.

Example: If one of the fifty pre-employment tests was positive for two drugs, “1” would be entered in Column 3 on the Pre-Employment row. If four of the company’s one hundred random test results were reported positive (three for one drug and one for two drugs), “4” would be entered in Column 3 on the Random row.

Section III, Columns 4 through 8. Positive (for specific drugs) ~

These columns require entry of the by-drug data for which specimens were reported positive by the MRO.

Example: The pre-employment positive test reported by the MRO was positive for marijuana, “1” would be entered in Column 4 on the Pre-Employment row. If three of the four positive results for random testing were reported by the MRO to be positive for marijuana, “3” would be entered in Column 4 on the Random row. If one of the four positive results for random testing was reported positive for both PCP and opioids, “1” would be entered in Column 6 on the Random row and “1” would be entered in Column 7 of the Random row.

TIP ~ *Column 1 should equal the sum of Columns 2, 3, 9, 10, 11, and 12. Remember you have not counted specimen results that were ultimately cancelled. So, Column 1 = Column 2 + Column 3 + Column 9 + Column 10 + Column 11 + Column 12. Certainly, double check your records to determine if your actual results count is reflective of all negative, positive, and refusal counts.*

An MRO may report that a specimen is positive for more than one drug. When that happens, to use the company example above (i.e., one random test was positive for both PCP and opioids), the positive results should be recorded in the appropriate columns – PCP and opioids in this case. There is no expectation for Columns 4 through 8 numbers to add up to the numbers in Column 3 when you report multiple positives.

Section III, Columns 9 through 12. Refusal Results

The refusal section is divided into four refusal groups – they are:

- Adulterated and Substituted:

The MRO reports these two types of refusals because of laboratory test findings.

- “Shy Bladder” ~ With No Medical Explanation:

When an individual does not provide enough urine at the collection site, the MRO conducts or causes to have conducted a medical evaluation to determine if there exists a medical reason for the person’s inability to provide the appropriate amount of urine. If there is no medical reason to support the inability, the MRO reports the result to the employer as a refusal to test: Refusals of this type are reported in the “Shy Bladder” ~ With No Medical Explanation category.

- **Other Refusals to Submit to Testing:**

Additional reasons exist for a test to be considered a refusal. Some examples are:

- the employee fails to report to the collection site as directed by the employer;
- the employee leaves the collection site without permission;
- the employee fails to empty his or her pockets at the collection site;
- the employee refuses to have a required shy bladder evaluation.

(Again, these are only four examples: there are more.)

Section III, Column 9. Adulterated

This column requires the count of the number of tests reported by the MRO as refusals because the specimens were adulterated.

Example: If one of the fifty pre-employment tests was adulterated, “1” would be entered in Column 9 of the Pre-Employment row.

Section III, Column 10. Substituted

This column requires the count of the number of tests reported by the MRO as refusals because the specimens were substituted.

Example: If one of the 100 random tests was substituted, “1” would be entered in Column 10 of the Random row.

Section III, Column 11. “Shy Bladder” ~ With No Medical Explanation

This column requires the count of the number of tests reported by the MRO as being a refusal because there was no legitimate medical reason for an insufficient amount of urine.

Example: If one of the 100 random tests was a refusal because of shy bladder, “1” would be entered in Column 11 of the Random row.

Section III, Column 12. Other Refusals To Submit To Testing

This column requires the count of refusals other than those already entered in Columns 9 through 11.

Example: If the company entered “100” as the number of random specimens collected, however it had five employees who refused to be tested without submitting specimens: two did not show up at the collection site as directed; one refused to empty his pockets at the collection site; and two left the collection site rather than submit to a required directly observed collection. Because of these five refusal events, “5” would be entered in Column 12 of the Random row.

TIP ~ *Even though some testing events result in a refusal in which no urine was collected and sent to the laboratory, a “refusal” is still a final test result. Therefore, your overall numbers for test results (in Column 1) will equal the total number of negative tests (Column 2); positives (Column 3); and refusals (Columns 9, 10, 11, and 12). Do not worry that no urine was processed at the laboratory for some refusals; all refusals are counted as a testing event for MIS purposes and for establishing random rates.*

Section III, Column 13. Cancelled Tests

This column requires a count of the number of tests in each testing category that the MRO reported as cancelled. You must not count any cancelled tests in Column 1 or in any other column. For instance, you must not count a positive result (in Column 3) if it had ultimately been cancelled for any reason (e.g., specimen was initially reported positive, but the split failed to reconfirm).

Example: If a pre-employment test was reported cancelled, “1” would be entered in Column 13 on the Pre-Employment row. If three of the company’s random test results were reported cancelled, “3” would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 13

This line requires you to add the numbers in each column and provide the totals.

Section IV. Alcohol Testing Data

This section summarizes the alcohol testing conducted for all covered employees (to include applicants). The table in this section requires alcohol test data by test type and by result.

Do not fill-out Section IV if you are a USCG-regulated employer. USCG-regulated employers do not report alcohol test results on the MIS form.

The categories of test types are:

- Pre-Employment;
- Random;
- Post-Accident;
- Reasonable Suspicion / Reasonable Cause;
- Return-to-Duty, and
- Follow-Up.

The categories of results are:

- Number of Screening Test Results;
- Screening Tests with Results Below 0.02;
- Screening Tests with Results 0.02 Or Greater;
- Number of Confirmation Test Results;
- Confirmation Tests with Results 0.02 through 0.039;
- Confirmation Tests with Results 0.04 Or Greater;
- Refusals due to “Shy Lung” with No Medical Explanation, and Other Refusals to Submit to Testing; and
- Cancelled Results.

TIP ~ ***Pre-Employment*** - *Be sure to enter all testing data regardless of whether an applicant was hired or not. Of course, for most employers pre-employment alcohol testing is optional, so you may not have conducted this type of testing.*

Reasonable Suspicion and Reasonable Cause - *You do not need to separate this alcohol testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion alcohol testing (i.e., FMCSA, FAA, FTA, and PHMSA), enter that data; if you conducted both reasonable suspicion and reasonable cause alcohol testing (i.e., FRA), simply enter the data with no differentiation.]*

PHMSA does not authorize “random” testing for alcohol.

Finally, enter “0” (zero) in any row or column in which there were no results.

Section IV, Column 1. Total Number of Screening Test Results

This column requires a count of the total number of screening test results in each testing category during the entire reporting year. Count the number of screening tests as the number of screening test events with final screening results of below 0.02, of 0.02 through 0.039, of 0.04 or greater, and all refusals. Do not count cancelled tests in this total.

Example: A company that conducted twenty pre-employment tests would enter “20” on the Pre-Employment row. If it conducted fifty random tests, “50” would be entered. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, “0” (zero) would be entered in those categories.

Section IV, Column 2. Screening Tests With Results Below 0.02

This column requires a count of the number of tests in each testing category that the BAT or STT reported as being below 0.02 on the screening test.

Example: If seventeen of the company’s twenty pre-employment screening tests were reported as being below 0.02, “17” would be entered in Column 2 on the Pre-Employment row. If forty-four of the company’s fifty random screening test results were reported as being below 0.02, “44” would be entered in Column 2 on the Random row. Because the company did no other testing, “0” (zero) would be entered in those categories.

Section IV, Column 3. Screening Tests With Results 0.02 Or Greater

This column requires a count of the number of screening tests in each testing category that BAT or STT reported as being 0.02 or greater on the screening test.

Example: If one of the twenty pre-employment tests was reported as being 0.02 or greater, “1” would be entered in Column 3 on the Pre-Employment row. If four of the company’s fifty random test results were reported as being 0.02 or greater, “4” would be entered in Column 3 on the Random row.

Section IV, Column 4. Number of Confirmation Test Results

This column requires entry of the number of confirmation tests that were conducted by a BAT as a result of the screening tests that were found to be 0.02 or greater. In effect, all screening tests of 0.02 or greater should have resulted in confirmation tests. Ideally the number of tests in Column 3 and Column 4 should be the same. However, we know that this required confirmation test sometimes does not occur. In any case, the number of confirmation tests that were actually performed should be entered in Column 4.

Example: If the one pre-employment screening test reported as 0.02 or greater had a subsequent confirmation test performed by a BAT, “1” would be entered in Column 4 on the Pre-Employment row. If three of the four random screening tests that were found to be 0.02 or greater had a subsequent confirmation test performed by a BAT, “3” would be entered in Column 4 on the Random row.

Section IV, Column 5. Confirmation Tests With Results 0.02 Through 0.039

This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.02 through 0.039.

Example: If the one pre-employment confirmation test yielded a result of 0.042, zero would be entered in Column 5 of the Pre-Employment row. If two of the random confirmation tests yielded results of 0.03 and 0.032, “2” would be entered in Column 5 of the Random row.

Section IV, Column 6. Confirmation Tests With Results 0.04 Or Greater

This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.04 or greater.

Example: Because the one pre-employment confirmation test yielded a result of 0.042, “1” would be entered in Column 6 of the Pre-Employment row. If one of the random confirmation tests yielded a result of 0.04, “1” would be entered in Column 6 of the Random row.

TIP ~ *Column 1 should equal the sum of Columns 2, 3, 7, and 8. The number of screening tests results should reflect the number of screening tests you have no matter the result (below 0.02 or at or above 0.02, plus refusals to test), unless of course, the tests were ultimately cancelled. So, Column 1 = Column 2 + Column 3 + Column 7 + Column 8. Certainly, double check your records to determine if your actual screening results count is reflective of all these counts.*

There is no need to record MIS confirmation tests results below 0.02: *That is why we have no column for it on the form. [If the random test that screened 0.02 went to a confirmation test, and that confirmation test yielded a result below 0.02, there is no place for that confirmed result to be entered.] We assume that if a confirmation test was completed but not listed in either Column 5 or Column 6, the result was below 0.02. In addition, if the confirmation test ended up being cancelled, it should not have been included in Columns 1, 3, or 4 in the first place.*

Section IV, Columns 7 and 8. Refusal Results

The refusal section is divided into two refusal groups – they are:

- Shy Lung ~ With No Medical Explanation:
 - o When an individual does not provide enough breath at the test site, the company requires the employee to have a medical evaluation to determine if there exists a medical reason for the person’s inability to provide the appropriate amount of breath. If there is no medical reason to support the inability as reported by the examining physician, the employer calls the result a refusal to test: Refusals of this type are reported in the “Shy Lung ~ With No Medical Explanation” category.

- Other Refusals to Submit to Testing:

Additional reasons exist for a test to be considered a refusal. Some examples are:

- the employee fails to report to the test site as directed by the employer;
- the employee leaves the test site without permission;
- the employee fails to sign the certification at Step 2 of the ATF;
- the employee refuses to have a required shy lung evaluation.

(Again, these are only four examples; there are more.)

Section IV, Column 7. “Shy Lung” ~ With No Medical Explanation

This column requires the count of the number of tests in which there is no medical reason to support the employee’s inability to provide an adequate breath as reported by the examining physician; subsequently, the employer called the result a refusal to test.

Example: If one of the 50 random tests was a refusal because of shy lung, “1” would be entered in Column 7 of the Random row.

Section IV, Column 8. Other Refusals To Submit To Testing

This column requires the count of refusals other than those already entered in Columns 7.

Example: The company entered “50” as the number of random specimens collected, however it had one employee who did not show up at the testing site as directed. Because of this one refusal event, “1” would be entered in Column 8 of the Random row.

TIP ~ *Even though some testing events result in a refusal in which no breath (or saliva) was tested, there is an expectation that your overall numbers for screening tests (in Column 1) will equal the total number of screening tests with results below 0.02 (Column 2); screening tests with results 0.02 or greater (Column 3); and refusals (Columns 7 and 8). Do not worry that no breath (or saliva) was tested for some refusals; all refusals are counted as a screening test event for MIS purposes and for establishing random rates.*

Section IV, Column 9. Cancelled Tests

This column requires a count of the number of tests in each testing category that the BAT or STT reported as cancelled. Do not count any cancelled tests in Column 1 or in any other column other than Column 9. For instance, you must not count a 0.04 screening result or confirmation result in any column, other than Column 9, if the test was ultimately cancelled for some reason (e.g., a required air blank was not performed).

Example: If a pre-employment test was reported cancelled, “1” would be entered in Column 9 on the Pre-Employment row. If three of the company’s random test results were reported cancelled, “3” would be entered in Column 13 on the Random row.

TOTAL Line. Columns 1 through 9

This line requires you to add the numbers in each column and provide the totals.

[THIS PAGE INTENTIONALLY LEFT BLANK]

**U.S. Department of Transportation
Office of the Secretary**



Office of Drug and Alcohol Policy and Compliance

**1200 New Jersey Avenue, S.E.
W62-300
Washington, D.C. 20590**

202.366.3784

202.366.3897 fax

<http://www.transportation.gov/odapc>

ODAPCwebmail@dot.gov

Changes from previous version:

- This version presents the information in a more reader-friendly format,
- 'Table of Contents' was added [pg. 2],
- A web link was provided to submit the MIS form electronically [pg. 3],
- Reference to blind specimens was removed [Section III],
- FRA and FAA employee categories were updated [pg. 4]

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 90 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

This Page Intentionally Blank

APPENDIX: Q

TABLE OF CONTENTS

APPENDIX Q.....	120
Supervisor/Manager Reasonable Suspicion Training Manual	
Employee Education/Awareness Manual	
Department of Transportation:	
What Employers Need to Know About DOT Drug and Alcohol Testing	
What Employees Need to Know About DOT Drug and Alcohol Testing (English)	
What Employees Need to Know About DOT Drug and Alcohol Testing (Spanish)	
Employee Clearinghouse Information	

Appendix Q

Supervisor/Manager Reasonable Suspicion Training Manual

Employee Education/Awareness Manual

Department of Transportation:

What Employers Need to Know About DOT Drug & Alcohol Testing

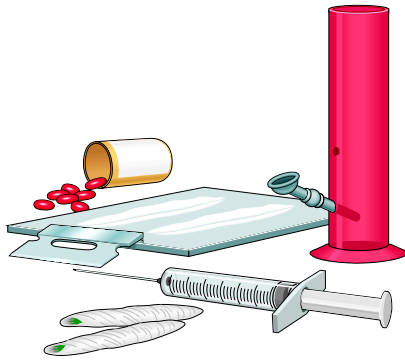
What Employees Need to Know About DOT Drug & Alcohol Testing (English)

What Employees Need to Know About DOT Drug & Alcohol Testing (Spanish)

Employee Clearinghouse Information

Drugs In The Workplace:

“Recognizing The Substance Abusing Employee”



Prepared for
Supervisors and Managers

by
Gary “ZEE” Zvirblis,
ZEE Consulting & ASSOCIATES

Table of Contents

Course Introduction	1
Impact areas	2
Summary of physical/behavioral indicators to suggest drug abuse	2
Behavior and Job Performance Warning Signs	3
ABSENTEEISM	3
MOOD	3
ACCIDENTS	3
ACTIONS	3
RELATIONSHIP TO OTHERS ON THE JOB	3
WORK PATTERNS	3
Reasonable Suspicion	4
DEFINITION - REASONABLE CAUSE DETERMINATION	4
DEFINITION - FITNESS FOR DUTY	4
DEFINITION - PROOF-OF-WELLNESS	4
JOB PERFORMANCE	4
Reasonable Suspicion/Supervisor Action Steps	5
OBSERVE AND DOCUMENT	5
INVESTIGATE/CORROBORATE AND DOCUMENT	5
COMMUNICATE AND CONFIRMATION	5
INTERVENE/CONFRONT	5
INCIDENT REPORT	5
CONSISTENCY AND UNIFORMITY	5
Observation and Documentation	6
DOCUMENTING BEHAVIOR AND PERFORMANCE PROBLEMS	6
PATTERNS OF POOR PERFORMANCE AND WORK HABITS	6
Problems Supervisors Encounter	7
ENABLING	7
AN "IT WILL GET BETTER" ATTITUDE	7
PLAYING FAVORITES	7
REMEMBER: BE FIRM, FAIR AND CONSISTENT	7
Supervisory Intervention	8
Direct Observation/Evaluation of Employee	9
Drug Influence Chart Part I	10
Drug Influence Chart Part II	11
Resume: Gary Zvirblis	13



0

All About The Course

Recognizing The Substance Abusing Employee

On-going supervisory training is a necessary and fundamental part of a Company's drug and alcohol control program.

This course "**Recognizing The Substance Abusing Employee**" is geared for the first line supervisor. However, all members of management would benefit from this training and is required for anyone in the "**decision loop**" for employee testing.

The primary purpose of this course is to train, revisit and improve a supervisor's skill in identifying substance abusers in the workplace. Special attention is paid towards drug symptomatology and employee job, behavior, and performance warning signs.

Supervisors will learn critical and important definitions such as: 1) under the influence, 2) employee fitness-for-duty, 3) proof-of-wellness, 4) reasonable cause criteria (the **legal three-prong** test), and 5) the legal threshold regarding reasonable cause testing of an employee.

Supervisors will be updated on their primary role in controlling drug and alcohol abuse in the workplace. Those areas include: 1) **observation**, 2) **investigation**, 3) **documentation**, 4) **communication**, and 5) **intervention**. Hands-on practical examples will be provided to the supervisors to further refine their skills and prepare them for the most common situations occurring in the workplace today.

Supervisors will view slides of actual users, drugs and paraphernalia commonly found in the workplace.

1

Impact areas

SUMMARY OF PHYSICAL/BEHAVIORAL INDICATIONS TO SUGGEST DRUG ABUSE

- *Pupils dilated or constricted*
- *Talking or walking too fast*
- *Nose may constantly run, appears to or person sniffs frequently*
- *Frequent absence from work or school*
- *Time distortion, including tardiness, unusual meal times and missed appointments*
- *Chronic forgetfulness or broken promises*
- *Frequent auto accidents and/or traffic violations*
- *Falling asleep during the day*
- *Loss of interest and motivation at work or school*
- *Needle marks*
- *Frequent respiratory infections*
- *Unreal self-perception of work, school or athletic performance*
- *Weight loss*
- *Mental confusion or paranoia*
- *Work or school performance deteriorates*
- *Sudden disappearances from work*
- *Discipline and alienation problems*
- *Sudden or new violent tendencies*
- *Presence of bizarre thoughts or ideas*
- *Frequent "reddish" eyes*
- *Skin develops lesions or acne worsens*

Behavior and Job Performance Warning Signs

ABSENTEEISM:

Acceleration of absenteeism and tardiness, especially Mondays, Fridays, and before/after holidays
Frequent unreported absences, later explained as "emergencies"
Unusually high incidence of colds, flu, upset stomach and headaches
Frequent use of unscheduled vacation time
Leaving work area more than necessary, i.e., frequent trips to the restroom
Unexplained disappearance from the job with difficulty in locating employee
Requesting to leave work early for various reasons

MOOD:

Appears to be depressed all the time or extremely anxious all the time
Irritable, Suspicious
Complains about others
Emotional unsteadiness, i.e., outbursts of crying

ACCIDENTS:

Taking of needless risks
Disregard for safety of others
Higher than average accident rate, on and off the job

ACTIONS:

Withdrawn or improperly talkative
Spends excessive amount of time on the phone
Argumentative, displays violent behavior
Has exaggerated sense of self-importance
Avoids talking with supervisor regarding work issues

RELATIONSHIP TO OTHERS ON THE JOB:

Overreaction to real or imagined criticism (paranoia)
Avoiding or withdrawing from peers
Complaints from co-workers
Borrowing money from fellow employees
Complaints of problems at home such as separation, divorce and child discipline problems
Persistent job transfer requests

WORK PATTERNS:

Inconsistency in quality of work
High and low periods of productivity
Poor judgement/more mistakes than usual and general carelessness
Lapses in concentration
Difficulty in recalling instructions and handling complex tasks
Difficulty in remembering own mistakes
Using more time to complete work and missing deadlines

2

Reasonable Suspicion

Definition - “Reasonable Cause” determination

Facts, circumstances, physical evidence, physical signs and symptoms or a pattern of performance and/or behavior that would cause a prudent person to reasonably conclude that an employee may be under the influence or intoxicated by a prohibited material or if there is reason to believe that the use of prohibited material is adversely affecting job performance.

The “Three-Prong Test” for Reasonable cause testing

- ① *The reason the investigation began*
- ② *Supporting Evidence and/or Information*
 - ✎ *Symptoms*
 - ✎ *Behavior*
 - ✎ *Performance*
 - ✎ *Physical Evidence*
- ③ *Laboratory Confirmation Outcome*
 - ✎ *Positive*
 - ✎ *Negative*
 - ✎ *Refused*

Definition - Fitness for duty

As regards this policy, an individual's ability to perform his/her assigned job, free from impairments due to the use of prohibited substances.

Definition - Proof-of-wellness

Statement by a company-approved treatment specialist that the employee is free from conditions that would adversely affect work performance.

Reasonable Suspicion/Supervisor Action Steps

OBSERVE AND DOCUMENT

- Personal observation of employee
- Third-person report of observed employee action
- Rumor or tip

INVESTIGATE/CORROBORATE AND DOCUMENT

- Work record - Absenteeism and Tardiness
- Work-related injuries
- Off-the-job-activities (arrests for DUI or UTI)
- Requests for salary advance
- Wage garnishment actions
- Impact areas, “behavior and job performance warning signs”

Validity/reason for third-party report (good faith belief)

COMMUNICATE AND CONFIRMATION

- Second trained supervisor or administrator
- Inform your superior

INTERVENE/CONFRONT

- Timing is a consideration (health and safety comes first)
- Refrain from conclusions, accusations, or being diagnostic

INCIDENT REPORT

- Timely
- Document facts only
- Treat documents confidentially

CONSISTENCY AND UNIFORMITY

- Know the rules and follow them
- Uniform implementation and enforcement

Job Performance

*As a supervisor, it is your responsibility to be aware of any employees whose job performance (quality or quantity), work habits, or behavior indicates he or she may be under the influence of drugs or alcohol. It **IS NOT** your job to diagnose the cause of the poor performance or poor work habits, but merely to make the judgement that there is sufficient cause for concern.*

OBSERVATION AND DOCUMENTATION

In order to properly supervise job performance/work habits, you must be in a position to observe employees on a regular basis. If you have reasonable cause to believe an employee is abusing alcohol or using drugs or may be under the influence of a drug or alcohol on the job, it is important to be able to observe and document his/her behavior, especially at high risk times such as after lunch or after breaks.

On September 3, 2019, about 2:45 pm, I observed John Doe, second shift driver, heading toward his truck. As he crossed the yard, a distance of about 70 ft., he walked very unsteadily. He was weaving back and forth, stumbled and almost fell three times. When he reached the truck cab he had considerable difficulty getting into the seat.

I walked immediately to his truck to prevent him from driving away. I opened the cab door, got up on the step, reached in, and pulled the keys out of the ignition. As I reached across John to get the keys, I smelled the odor of alcohol (beverage).

I stated that I was taking the keys because it wasn't safe for him to drive the vehicle. John began pushing and swearing at me stating, "you dumb ****" and, "you're the worst **** supervisor here." His speech was slurred and his manner was threatening. I asked him to come to my office immediately and implemented the substance abuse screening procedures.

DOCUMENTING BEHAVIOR AND PERFORMANCE PROBLEMS

It is important to remember that when documenting performance or behavior problems, the observations be directly related to the employee's inability to do his/her work duties satisfactorily. **Do not attempt to diagnose the problem.** It is your job to be aware of the signs and symptoms of drug and alcohol use and abuse, to observe and document those signs and symptoms, and to follow the appropriate drug and alcohol screening test procedures to make sure the employee is not under the influence of drugs or alcohol while on the job.

PATTERNS OF POOR PERFORMANCE AND WORK HABITS

Any single poor performance/work habit behavior (unless extreme) is probably not a cause for drug or alcohol testing, although it still may require attention. But when such performance or habits occur in patterns, especially when recurring, close attention and, perhaps, intervention may be warranted.

For instance: absenteeism, in itself, is a significant supervisory problem but, in the absence of other signs would not indicate an evaluation under this addendum. But absenteeism along with increased mistakes, mood swings, signs of drowsiness, and slurred speech would likely warrant sending the employee for a drug and/or alcohol test.

Watery eyes and sniffles may be the sign of a cold, but when coupled with rapid and wide mood swings, dilated pupils, increased startle reaction and rambling speech may indicate a need to test.

PROBLEMS SUPERVISORS ENCOUNTER

Supervision is a difficult job, especially when dealing with substance abuse issues. Below are some common mistakes supervisors can make:

ENABLING:

You are an enabler when you cover up, ignore, or rationalize an employees behavior so you don't have to confront the situation or discipline someone you like. Remember, if a person has a drug or alcohol use or abuse problem that shows up on the job, the rest of his/her life is probably a mess also. Often, the only time a person will seek help is when his/her job is on the line. You are not helping the person by ignoring the poor performance or behavior and, at the same time, you are jeopardizing other employees, clients and the company.

AN "IT WILL GET BETTER" ATTITUDE:

It won't. If it is a serious drug or alcohol use or abuse problem, it will only get worse if it is not confronted.

PLAYING FAVORITES:

If you see the behavior, so do his/her co-workers. If you don't deal with the situation, you are saying that you are afraid, you condone the behavior, or you favor that employee. This can have serious consequences to an entire work group.

Remember! *In order to make this or any other supervisory program work, you must be:*

FIRM, FAIR AND CONSISTENT

SUPERVISORY INTERVENTION

If you feel that your observations and documentation reasonably indicate that the employee may be under the influence of drugs or alcohol or it appears drugs/alcohol may be affecting the employee's work performance or the employee's fitness for duty status, take the following action:

- Contact your supervisor who will obtain authorization to test the employee, then set up a time and place for the drug and alcohol screening test.
- Then, meet with the employee as soon as possible, structuring the discussion per the following steps:
 - ▶ Review history of work problems and indicate why you are concerned. Focus on performance and behavior **not** drug or alcohol use or abuse!
 - ▶ Tell the employee that the situation must be changed and that per the company policy and standards of enforcement, a drug or alcohol test is required.

NOTE: Do not debate with the employee; merely say that you accept the employee's explanation as their understanding of the situation, but there is sufficient cause for concern to warrant a drug or alcohol testing. Ask the employee for his/her cooperation and, if necessary, remind the employee that failure to take the test will result in disciplinary action, up to and including termination.

- ▶ Ask the employee for comments and listen openly to the response.
- ▶ State that another conversation will be held upon receipt of the test results. Set a specific time and place for this meeting (it should be immediately after test results are received).
- At the second meeting, structure the discussion per the following format:
 - ▶ State the test results.
 - ▶ If the test results are positive, take necessary action per the policy and standard of enforcement.
- If the results are negative:
 - ▶ State that, as discussed earlier, the situation must be changed and there will be consequences if it is not.
 - ▶ Ask the employee what he/she will do to solve the problem. Document the employee's solutions with target dates.
 - ▶ Review the employee's realistic solutions and offer your recommendations.
 - ▶ Decide on and record specific action and a follow-up date.
 - ▶ Remind the employee of the availability and confidentiality of the EAP program.

DIRECT OBSERVATION/EVALUATION OF EMPLOYEE

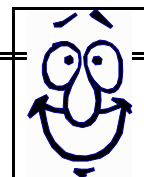
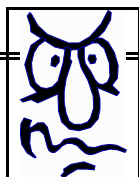
Below is a list of physical evaluation procedures to be used when a person is suspected of drug or alcohol use. It is not necessary to do every procedure to establish "reasonable suspicion" to justify drug or alcohol testing of an employee. Most of these procedures, if not all, can be done by anyone who has been properly trained to recognize drug or alcohol use.

- Listen to the employee's speech
- Observe gait and balance
- Look for sleepy appearance, droopy eyelids, mouth breathing and dry lips
- Smell for odor of alcohol, marijuana or any other abnormal smell consistent with drug use
- Assess responses for attention span, concentration and giddiness
- Assess for depth perception problems through observation of employee's work or ability to estimate distance
- Observe employees eyes: pupil reaction due to light changes, redness, increased moisture, puffy or swollen eyelids, overly alert expression and constricted or dilated pupils
- Look for sweating, tremors, skin lesions, complexion problems, active pores, abnormal skin color and any indication of lowered body temperature
- Assess for suspiciousness, delusion or paranoia and hallucinations
- Assess for time distortion: current time, length of work thus far, next break, estimation as to completion of project or work assignment
- Observe for general physical and behavioral signs of drug or alcohol use

REMEMBER! Supervisors and managers are not drug recognition experts. The Department of Transportation (DOT) nor the courts require "expert" status to conduct "reasonable suspicion" testing. The above observation/evaluation checklist has been provided to you to assess for possible drug or alcohol use while the employee engages in his/her regularly assigned duties or during the course of your investigation.

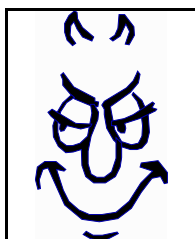
Drug Influence Behavior

Stimulants	<p>Hyperactive Very talkative Nervous Unable to stand or sit still Lowered inhibitions Suspicious, paranoid, excitation Gritting teeth</p>	<p>Poor perception of time Easily confused Poor concentration Nervous habits: ...twitch, grinding teeth, nail biting, and knee bouncing, etc.</p>
Hallucinogens	<p>Extreme panic Reduced attention span Confusion Very talkative Laughing for no reason Poor vision</p>	<p>Hair standing on end and or goose flesh Fine tremors in fingers Poor muscle coordination Synesthesia (sensory confusion) Photo-phobia</p>
Opiates	<p>Appears to asleep but communicates Poor motor coordination Slow breathing and slow thick speech Slow, deliberate movements Possible vomiting (fresh use) Scratching face, nose and body areas Droopy eye-lids (ptosis) Depressed reflexes Weight loss</p>	
Marijuana	<p>Altered perception Euphoria Impaired short-term memory and judgement Impaired physical coordination Body tremors (hands) Craving sweets Releases/lowers inhibitions Emotional extremes</p>	
Alcohol	<p>Reduced social inhibitions Divided/reduced attention Slowed reflexes Impaired judgement Impaired vision Impaired coordination Slurred, mumbled or incoherent speech Emotional effect such as euphoria, depression, suicidal tendencies Laughing or crying for no apparent reason Dizziness</p>	

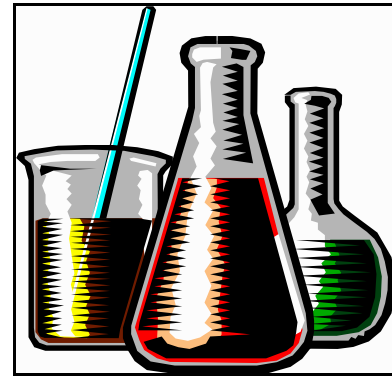


Drug Influence Behavior

Depressants	<p>"Drunken behavior" without odor</p> <ul style="list-style-type: none"> Coordination problems Slurred to incoherent speech Drowsiness Staggering Droopy eyelids Unkempt appearance Sluggishness Eyes tend to roll up into head Disorientation
Inhalants	<ul style="list-style-type: none"> Inebriation similar to alcohol (with unusual odor) Problems standing without falling Euphoria Poor sense of time and distance Excessive salivation and nasal secretion Dizziness, light-headed Sneezing and coughing Poor coordination and sense of spinning Double vision
PCP	<ul style="list-style-type: none"> Slow, slurred speech and/or fragmented speech patterns Disorientation Poor memory Excitement and/or agitation Feels like "Superman" Extreme mood swings Loss of personal identity Violent behavior (use caution) Nakedness Can mimic effects of Stimulants, Hallucinogens, Depressants Blank stare, delusions, amnesia, bizarre behavior Confused intoxication
Steroids	<ul style="list-style-type: none"> Aggressive, combative behavior Mood swings Fluid retention Body-acne Out breaks of rage (roid-rage) Easy to excite



Approximate Duration of Detectability of Selected Drugs in Urine



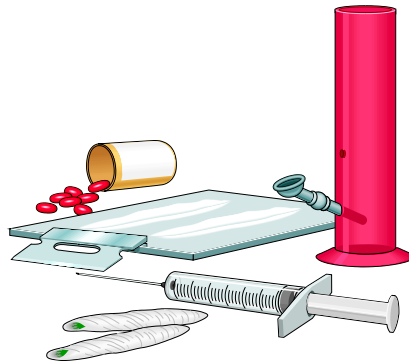
SUBSTANCE	PLASMA LIFE	DETECTABILITY
Amphetamines	4-6 Hrs	48 Hrs
Methamphetamine	4-6 Hrs	48 Hrs
Barbiturates	Short	24 Hrs
	Intermediate	48-72 Hrs
	Long	7 Days or Longer
Benzodiazepines	6-12 Hrs	72 Hrs
Cocaine	3-5 Hrs	48 Hrs
Methadone	24 Hrs	72 Hrs
Codeine/Morphine/Heroin	4-6 Hrs	48-72 Hrs
Cannabinoids (Marijuana) Single Use	1 X's Per Wk	72 Hrs
Moderate Use	4 X's Per Wk	96 Hrs
Heavy Use	Daily	10 Days
Chronic Use	+ Daily	21-27 Days (47)
Methaqualone	8-12 Hrs	7 Days +
Phencyclidine (PCP)	10-36 Hrs	3-10 Days
Alcohol	2-3 Hrs	0 to 10-12 Hrs (see chart)

ZEE CONSULTING & ASSOCIATES
(661) 322-3363

Resume for Gary "ZEE" Zvirblis

- * Sergeant (retired) with the Kern County Sheriff's Department with 23 years experience
- * Founder and creator of the Kern County Sheriff's Department Drug Education Program for Industry
- * Over thirty-years experience in Drug Enforcement and Drug Education/Training and Demand Reduction experience
- * State of California Certified Instructor for Under the Influence of Controlled Substances, Clandestine Drug Manufacturing and Drug Enforcement
- * Court Tested and Accepted Expert in State and Federal Courts:
 - Under the Influence of Controlled Substances
 - Sales, Possession for Sale and Possession of Drugs
 - Clandestine Drug Manufacturing
 - All Aspects of Drugs in the Workplace
- * Performed more than 1200 examinations and evaluations that resulted in arrests and convictions for Under the Influence of Controlled Substances
- * Instructor in the Field of Drug Enforcement:
 - Instructor US DOT Highway Safety Administration National Training Team
 - Federal Executive Board of Los Angeles - Office of the President
 - California Department of Justice
 - U.S. Department of Forestry
 - California Crime Prevention Task Force
 - Numerous other Law Enforcement Agencies
 - University of Southern California
 - U.S. Department of the Navy
- * Published over 34 handbooks and/or papers in the field of Drugs in the Workplace, Drug Enforcement/Investigations, Students and Drug Abuse, Drugs and Our Schools and Under the Influence of Controlled Substances.
- * Owner of ZEE Consulting & Associates, a Professional Company which is recognized as a leading authority on the topic of "Drugs in the Workplace" in the United States today.
- * ZEE Consulting & Associates was one of the original developers of the "Fitness for Duty" exam to determine drug influence in the workplace.
- * ZEE Consulting & Associates has successfully trained over 9500 persons to be able to determine "reasonable suspicion" in the workplace. This has resulted in the reduction of illegal drug use in the workplace and has survived judicial review.

Drug-Free Workplace: Employee Training



Prepared for Employees

by
Gary "Zee" Zvirblis,
Zee Consulting & ASSOCIATES

Table of Contents

All About The “Big 6”	1
Marijuana	1
What is Marijuana?	1
How is it Used?	1
What are the Immediate Effects?	1
What Does the Pot Smoker Feel and/or Effects?	1
What are the Symptoms of Marijuana Use?	2
What are the Recurrent Effects on Brain/Lungs	2
Behavior & Performance Indicators	2
Cocaine	3
What is Cocaine?	3
What are the Immediate Effects?	3
What are the Symptoms of Cocaine Use?	3
Behavior & Performance Indicators	3
Amphetamine-Methamphetamine	4
What Are Amphetamines?	4
What Medical Use Do Stimulants Have?	4
Why Do People Use Amphetamines?	4
Can Users Become Dependent on Amphetamines?	4
What Specific Dangers are Associated with Amphetamine Abuse?	4
What are the Signals Of Chronic Amphetamine Abuse?	5
Is Violence Associated with Heavy Amphetamine Abuse?	5
PCP	5
What is Phencyclidine (PCP)?	5
What are PCP's Effects?	5
What makes PCP So Dangerous?	5
How Do Users Get PCP?	6
Is PCP a Big Problem?	6
Narcotics/Opiates	6
What are Narcotics?	6
Which Narcotics are Abused?	6
Who Becomes Dependent on Heroin?	6
What are The Physical Dangers of Narcotic Dependence?	6
What are the Withdrawal Symptoms of Heroin?	7
Alcohol	7
What is Alcohol?	7
What are the Effects of Alcohol Use?	7
What are the Symptoms of Alcohol Use?	8
What is Alcohol Addiction?	8
How Many is Too Many?	8

1

All About The “Big 6”

Over the past thirty years this county has witnessed, attempted to deal with, and felt the pain of our current drug epidemic. This is our third epidemic and by far the worst. Over the past thirty years hundreds of substances have been tried, used and abused. However, over the past ten years, the users have settled in on five illegal drugs and one legal (if 21 years or older).

Popular illegal substance(s): **marijuana, methamphetamine, cocaine, PCP and heroin.**

Popular legal substance(s): **alcohol.**

Marijuana

What is marijuana?

A crude product from the plant Cannabis Sativa. It contains at least 421 known chemicals. 61 of these are cannabinoids which are psycho-active (affecting mind or behavior) and only found in Marijuana.

How is it Used?

Marijuana is most commonly inhaled from smoking it in the form of a cigarette or from a pipe.

What are the Immediate Effects?

When marijuana is smoked, a feeling of euphoria (high) is experienced within 10 to 30 minutes, and usually lasts for one to three hours.

What Does the Pot Smoker Feel and/or Effects?

- ▶ Release of inhibitions
- ▶ Impairs judgment
- ▶ Creates hallucinations and illusions
- ▶ Alters reality; makes escape from problems (seem) easier

- ▶ Deludes the user into thinking everything is okay, even when faced with danger
- ▶ Frequently causes a lower or decreasing self-achievement level
- ▶ Dangerously distorts the mind's ability to judge timing and distance

What are the Symptoms of Marijuana Use?

- ▶ Red, sleepy looking eyes
- ▶ Slightly dilated pupil with slow reaction to light reflex and/or rebound dilation
- ▶ Runny nose
- ▶ Dry mouth, slow or slurred speech, sore throat
- ▶ Acne
- ▶ Alters depth and time perception
- ▶ Headaches and/or dizziness
- ▶ Slow, staggering and/or deliberate gait
- ▶ Very talkative disposition
- ▶ Craving for sweet foods (munchies) and liquids
- ▶ Emotional extremes: depression - hysteria - paranoia

Odor of marijuana about the person (Marijuana products have a sweet, musty odor which can cling to user's body, clothing and surroundings. Deodorizing sprays, perfume, cologne and incense are used to cover up this unique, strong odor.)

What are the recurrent effects on the brain/lungs

- ▶ Decreased short term memory
- ▶ Decreased attention span
- ▶ Decreased motivation
- ▶ Decreased ability to reason
- ▶ Increased reaction time
- ▶ Decreased talking ability
- ▶ Decreased visual perceptual task performance
- ▶ Arrested development
- ▶ Increased irritation, inflammation and narrowing or partial obstruction of airways
- ▶ Interference with normal tissue growth and the division of cells in the lungs
- ▶ Increased respiratory infections

Behavior & Performance Indicators

- ▶ Decreased job performance and loss of interest regarding work issues
- ▶ Time distortion, tardiness and absenteeism
- ▶ Depression, self-centeredness, manipulative, lying, and secretive
- ▶ Hostility, mood swings and low tolerance for frustration and authority
- ▶ Fatigue, lethargy and recurrence of non-specific illnesses
- ▶ Amotivational syndrome
- ▶ Denial syndrome regarding adverse impact on life and lack of responsibility for one's actions
- ▶ Withdrawal from or recent change in co-workers, friends and family

COCAINE

What is Cocaine?

It is a central nervous system stimulant, the most powerful known to man. It is a white crystalline powder with a bitter taste that produces numbness of the tongue.

What are the Immediate Effects?

When cocaine is "**snorted**," the effects begin within a few minutes, peak within 15 to 20 minutes, and disappear within a few hours.

The user may have a sense of well-being and feel more energetic or alert. The state of excitation and euphoria is followed within 30 to 60 minutes by a physical and psychological let down. Depression and dullness succeed alertness; Irritability and tension follow euphoria.

When free-based (**smoked**), the immediate rush lasts from two to three minutes. Smoking free-base (crack/rock) produces a shorter and more intense "high" than most other ways of using the drug. Smoking (inhalation) is the most direct and rapid way to get the drug to the brain. Because large amounts are getting to the brain more quickly, smoking also increases the risks associated with using the drug. These risks include confusion, slurred speech, anxiety and serious psychological problems.

What are the Symptoms of a Cocaine Use?

- ▶ Dilated pupils
- ▶ Reddish sclera
- ▶ Walks and talks too fast
- ▶ Irritable, anxious, restless
- ▶ Reddish area under nose
- ▶ Powder or debris on nasal hair
- ▶ Time distortion
- ▶ Violent "attitude"
- ▶ Paranoia and aggression
- ▶ Nose may run or person sniffs frequently
- ▶ Elevated: pulse, blood pressure, temperature and respiration

Behavior & Performance Indicators

- ▶ Resorting to illegal activities to support habit, accidents and violence
- ▶ Mood swings, depression, paranoia, irritability and suicidal tendencies
- ▶ Mental confusion and forgetfulness and decreased interest in health and hygiene
- ▶ Severe "crash," causing a strong desire to take more cocaine for relief
- ▶ Chronic sleep problems, fatigue and exhaustion and respiratory illness
- ▶ Cocaine abusers often depend on other drugs, including alcohol, to help them sleep or to combat the jittery feeling that characterizes the cocaine high.
- ▶ Loss of friends, former values, interest in and motivation toward work, sports, etc.
- ▶ Weight loss resulting from loss of appetite
- ▶ Compulsive behavior, i.e.,straightening a tie or licking the lips while under the drugs influence
- ▶ Chronic sore throat and voice problems, headaches, nose bleeds and/or runny nose
- ▶ Nasal ulcers and/or perforation of the nasal septum, seizures.

AMPHETAMINE - METHAMPHETAMINE

What Are Amphetamines?

The stimulants ("uppers," "speed," "crank," "meth," "ice") are a class of drugs which stimulate the central nervous system and produce an increase in alertness and activity. They include cocaine and the amphetamines. Caffeine is a mild, legal stimulant.

What Medical Use Do Stimulants Have?

Current medical use of synthetic amphetamine stimulants is usually restricted to treating narcolepsy (a rare disorder marked by an uncontrollable need for sleep) and minimal brain damage in children. They are also prescribed for short-term appetite control but such medications have caused serious abuse problems.

Why Do People Use Amphetamines?

Some people take these drugs under medical supervision to control their appetite. Others take amphetamines to feel alert and energetic or euphoric to get "high." They often report a euphoric sense of well-being.

Can Users Become Dependent On Amphetamines?

Yes. Users who take small amounts of amphetamines orally every now and then to combat fatigue or get "high" usually do not have trouble. However, people with a history of sustained low dose use quite often become dependent and feel they need the drug to get by. These users frequently keep on taking amphetamines to avoid the "down" in mood they experience when the "high" wears off.

Some people try to relieve the insomnia which follows an extended period of drug taking with sleeping pills or alcohol. These users often begin taking amphetamines again to shake off drowsiness or to regain the "high" and so continue the up/down cycle, which is extremely hard on the body.

What Specific Dangers Associated With Amphetamine Abuse?

Even small, infrequent doses of amphetamines can produce toxic effects in some people.

- Restlessness
- Anxiety, Panic
- Mood swings
- Circulatory and cardiac disturbances
- Paranoid thoughts, hallucinations
- Convulsions and coma have all been reported.

Heavy, frequent doses of amphetamines can produce brain damage which results in speech disturbance and difficulty in turning thoughts into words. Taking more amphetamines increases these risks, which are greatest when the drug is injected. In addition, users who inject amphetamines intravenously can contract serious and life threatening infections from non-sterile equipment. Finally, death can result from injected amphetamine overdose.

What Are The Signals Of Chronic Amphetamine Abuse?

Long-term users often have acne resembling a measles rash, trouble with teeth, gums and nails, and dry lifeless hair.

Is Violence Associated With Heavy Amphetamine Abuse?

As heavy users who inject amphetamines accumulate larger and larger amounts of the drug in their bodies, the resulting toxicity can produce what is known as an amphetamine psychosis. People in this extremely suspicious, paranoid state frequently exhibit bizarre -- sometimes violent -- behavior.

PCP

What is Phencyclidine (PCP)?

Phencyclidine ("angel dust") is a drug which was developed as a surgical anesthetic for humans in the late 1950s. Because of its unusual and unpleasant side effects in human patients, i.e., delirium, extreme excitement and visual disturbance, PCP was soon restricted to legal use as a veterinary anesthetic and tranquilizer.

What Are PCP's Effects?

Effects of the drug vary according to dosage levels. A floating euphoria is described, sometimes associated with a feeling of numbness (part of the drug's anesthetic effects). Increased doses produce an excited, confused intoxication, which may include any of the following: muscle rigidity, loss of concentration and memory, visual disturbances, delirium, feelings of isolation, convulsions, speech impairment, violent behavior, fear of death, and changes in users' perceptions of their bodies.

Research shows that PCP seems to scramble the brain's internal stimuli, altering how users perceive and deal with their environment. Everyday activities like driving and even walking can be a task for PCP users.

What Makes PCP So Dangerous?

One danger of PCP intoxication is that it can produce violent and bizarre behavior even in people not otherwise prone to such behavior. Violent actions may be directed at themselves or others and often account for serious injuries or death. Bizarre behavior can lead to death through drowning, burns, falls from high places, and automobile accidents. More people die from accidents caused by the erratic and unpredictable behavior produced by the drug than from the drug's direct effect on the body.

A temporary, schizophrenic-like psychosis, which can last for days or weeks, has also occurred in users of moderate or higher doses of the drug. During these episodes, users are excited, incoherent and aggressive; or they may be quite the opposite: uncommunicative, depressed and withdrawn. Paranoia, a state in which the user feels persecuted, often accompanies this condition.

How Do Users Get PCP?

PCP, which, until recent years, was legal for veterinary medicine, has been barred from manufacture in the United States because of its abuse potential. Today's PCP is made illicitly. However, it is easily synthesized in bootleg laboratories. Because of its bad reputation on the street, dealers often sell it as mescaline or other drugs more attractive to users. Users can never be sure what they're buying.

Street PCP comes in various forms: as the powdered "angel dust," as tablets, as crystals, and in pills named "hogs" or "PeaCePills." Smoking the dust, usually mixed with marijuana, parsley and mint leaves, has become the preferred method of PCP use. The smoker can control the drug's effects better than the pill taker can.

Is PCP A Big Problem?

Statistics tell us that PCP use is on the rise. In the 1960s and early 1970s, PCP was not very popular with the drug community because of its unpleasant effects, but now it is becoming a drug of choice. More and more hospital emergency rooms and drug crisis centers are seeing cases of PCP-induced panic and overdose.

NARCOTICS/OPIATES

What Are Narcotics?

Narcotics are drugs that relieve pain and often induce sleep. The opiates, which are narcotics, include opium and drugs derived from opium, such as morphine, codeine and heroin. Narcotics also include certain synthetic chemicals that have a morphine-like action, such as methadone.

Which Narcotics Are Abused?

Heroin ("junk," "smack") accounts for 90 percent of the narcotic abuse in the United States. Sometimes medicinal narcotics are also abused, including paregoric containing opium, cough syrups containing codeine, and methadone, meperidine and morphine.

Who Becomes Dependent On Heroin?

Anyone can become heroin dependent if he or she takes the drug regularly. Although environmental stress and problems of coping have often been considered as factors that lead to heroin addiction, physicians or psychologists do not agree that some people just have an "addictive personality" and are prone to dependence. All we know for certain is that continued use of heroin causes dependence.

What Are The Physical Dangers Of Narcotic Dependence?

Physical dangers depend on the specific drug, its source and the way it is used. Most medical problems are caused by the uncertain dosage level, use of unsterile needles and other paraphernalia, contamination of the drug, or combination of a narcotic with other drugs, rather than by the effects of the heroin (or other narcotic) itself.

The life expectancy of a heroin addict who injects the drug intravenously is significantly lower than that of one who does not. An overdose can result in death. If, for example, an addict obtains pure heroin and is not tolerant of the dose, he or she may die minutes after injecting it. Infections from unsterile solutions, syringes and needles cause many diseases. Serum hepatitis is common. Skin abscesses, inflammation of the veins and congestion of the lungs also occur.

What Are The Withdrawal Symptoms Of Heroin?

When a heroin-dependent person stops taking the drug, withdrawal begins within 4-6 hours after the last injection. Full-blown withdrawal symptoms -- which include shaking, sweating, vomiting, a running nose and eyes, muscle aches, chills, abdominal pains and diarrhea -- begin some 12-16 hours after the last injection. The intensity of any of these symptoms depends upon the degree of drug dependence the addict has developed.

ALCOHOL

What is Alcohol?

It is a central nervous system depressant and if taken in great enough quantities can produce minor to moderate pain relief. It slows down brain functions, depresses pulse, blood pressure and respiration. It is the most popular drug of abuse today and causes more accidents, injuries, errors and deaths than all the previous drugs combined. Its legal status has produced a wide spread social acceptance across our country.

There are six million alcoholics employed in American businesses. According to the National Council on Alcoholism, one out of every ten employees is an alcoholic. Alcohol use cost industry six billion dollars per year. There are over one million arrests per year for Driving Under the Influence (DUI). It is the major factor in over 50% of all traffic accidents nationwide.

What are the effects of alcohol use?

- Greatly impaired driving ability
- Reduced coordination and reflex action
- Impaired vision and judgement
- Inability to divide attention
- Lowers inhibitions
- Depressed genital reflex
- Fatigue
- Insomnia
- Weight loss

What are the symptoms of alcohol use?

- Slurred, broken, lowered or slow speech
- Bloodshot and watery eyes
- Flushed complexion
- Poor balance, walk or standing abilities
- Horizontal Gaze Nystagmus (HGN) - involuntary jerking of the eyeballs
- Dizziness
- Odor - alcoholic beverage or cover mint on breath
- Visual problems (depth perception and focus) distance and lights

What is alcohol addiction?

A slow progressive problem which causes the user to become increasingly dependent on the drug. The change one goes through many times is so gradual that the user himself fails to notice the change. The failure to notice is quickly replaced with denial by the user, family, friends and co-workers. It will produce uncontrollable drinking habits in time that then bring the person into an addicted or dependent state.

How many is too many?

.08% blood/alcohol legal limit for California (UTI @ .08% or higher)

One (1) drink = 12 oz Beer, or 4 oz Wine, or 1 1/4 oz of 80 proof liquor

<u>Individual Weight</u>	<u># Drinks in 2 hrs</u>	<u>% Alcohol in System</u>
90-109	3	.09%
150-169	4	.09%
230- up	6	.09%

Your blood/alcohol concentration drops about .015% per hour (if you have **no** more drinks).

2

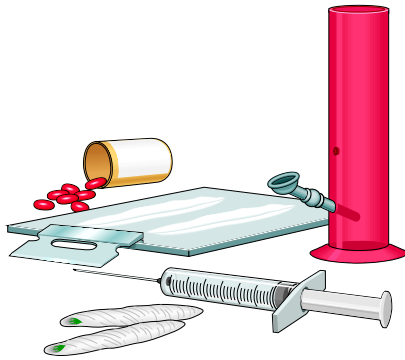
Impact areas

SUMMARY OF PHYSICAL/BEHAVIORAL INDICATIONS TO SUGGEST DRUG ABUSE

- Pupils dilated or constricted
- Talking or walking too fast
- Nose may constantly run, appears to or person sniffs frequently
- Frequent absence from work or school
- Time distortion, including tardiness, unusual meal times and missed appointments
- Chronic forgetfulness or broken promises
- Frequent auto accidents and/or traffic violations
- Falling asleep during the day
- Loss of interest and motivation at work or school
- Needle marks
- Frequent respiratory infections
- Unreal self-perception of work, school or athletic performance
- Weight loss
- Mental confusion or paranoia
- Work or school performance deteriorates
- Sudden disappearances from work
- Discipline and alienation problems
- Sudden or new violent tendencies
- Presence of bizarre thoughts or ideas
- Frequent "reddish" eyes
- Skin develops lesions or acne worsens

Drugs In The Workplace:

“Employee Education Training”



Prepared for **Employees**

by
Gary “Zee” Zvirblis,
Zee Consulting & ASSOCIATES

An Employer's Guide to Dealing With Substance Abuse

If you're in business, you must face some facts:

- ✓ Seventy percent of all illegal drug users are employed either full- or part-time. This suggests over 10 million people are current users of illicit drugs.¹
- ✓ One in twelve full-time employees report current use of illicit drugs.²
- ✓ One in every ten people in this country has an alcohol problem.³
- ✓ "Drug use is one of the most serious problems confronting society today."⁵
- ✓ Sixty-five percent of those persons entering the full-time work force for the first time have experience in illegal drug use; 42 percent in the past year and 19 percent in the past month.⁶
- ✓ One in four narcotics users **sell drugs to co-workers**, friends, and neighbors to support a drug habit.⁶
- ✓ \$60 billion is the cost to the business community for drug abuse; over half of that cost is in **lost productivity**.⁶

The **U.S. Chamber of Commerce** determined substance abusing employees are:

- ✓ 2.2 times more likely to request early **dismissal** or **time off**,
- ✓ 2.5 times more likely to have **absences** of eight days or more,
- ✓ 3.0 times more likely to be **late** for work,
- ✓ 3.6 times more likely to **injure** themselves or another person in a workplace accident,
- ✓ 5.0 times more likely to be involved in an **accident** off the job (which, in turn, affects attendance or performance on the job),
- ✓ 5.0 times more likely to file a **worker's compensation** claim,
- ✓ 7.0 times more likely to have **wage garnishments**,
- ✓ One-third less productive and incur 300 percent higher **medical costs** and **benefits**.

¹National Institute on Drug Abuse

²National Institute on Drug Abuse

³National Institute on Drug Abuse & Alcoholism

⁵ Nat'l Treasury Employees Union v. Von Raab, 102 L Ed 2d 206, 109 S Ct 1384, 1395 (1989)

⁶US Chamber of Commerce

The **U.S. Chamber of Commerce** also reported that a recent survey of drug users who were seeking help for their drug habits revealed that:



- ✓ 75 percent said they **used drugs on the job**,
- ✓ 64 percent admitted drugs had **affected their job performance** adversely,
- ✓ 44 percent said they had **sold drugs to other employees**,
- ✓ 18 percent said they had **stolen from co-workers** to support their habits.

What do those numbers mean to you?

They mean that every day, across this country, in towns large and small, from small businesses to large corporations, the problems of substance abuse are hurting the workplace.

That means a major business problem for you. Because substance abuse affects the bottom line, it costs you money. How? Look how substance abusing workers compare to drug-free workers:

- More:**
- Workdays missed
 - Likely to injure self or others
 - Workers' compensation claims filed

- Less:**
- Productivity

That means **Real Dollar Costs** to you in all these areas:

- Absenteeism**
- Sick Leave**
- Workers' Compensation**
- Thefts, Insurance Claims**
- Tardiness**
- Overtime Pay**

Substance Abuse =
\$\$\$\$ Lost

The **Insurance Institute for Highway Safety** sponsored a study of **317 randomly** selected tractor-trailer drivers who provided blood and urine specimens for drug analysis. The tests were conducted at truck-weighing stations, thus gathering information on drug and alcohol use while driving. The study showed **29 percent** had some drug or mixture of drugs and/or alcohol in their bodies.

How do employees view drug use and testing in the workplace?

Institute for a Drug-Free Workplace survey by the Gallup Organization.

- ✓ **86 percent** said drug testing would be effective in **detering drug use** in the workplace (only 3 percent said it would not).
- ✓ **82 percent** said they **supported** company policies against drug use with only 7 percent opposing such policies.
- ✓ Employees in companies who do not have drug testing, nearly **two-thirds** would **favor** it in their company.

But there are also Hidden Costs that drive up your bill for substance abuse:

- ☞ Diverted supervisory and managerial time
- ☞ Friction among workers
- ☞ Damage to equipment
- ☞ Poor decisions
- ☞ Damage to Company image
- ☞ Personnel turnover

How do you protect your company and your workers from those who, through the abuse of illegal drugs or prescription drugs or alcohol, endanger your workplace and your profits? **Establish a substance abuse program.**

How do you go about setting up a substance abuse program that is suited to the needs of your company? **Developing a comprehensive program involves five basic steps.** This “guide” will explain briefly each step of that program. It will offer some ideas for taking each step and will serve as a “road-map” to assist you through the process. It will also serve as a “check list” to assist you in determining which service provider(s) would best serve your program.

Five Steps to a Workplace Substance Abuse Program

- ① *A written substance abuse policy*
- ② *A supervisory training program*
- ③ *An employee education and awareness program*
- ④ *Access to an employee assistance program (EAP)*
- ⑤ *A drug testing program (enforcement)*

Five
Basic
Steps...
One Step
At A
Time!

Sound a bit overwhelming, especially if you have a small business? Take one step at a time. Read this guide to see what you might be able to start with now. No program is set up all at once. Any effort on your part will begin to send the message that you are concerned about substance abuse and do not want it in your workplace. If you are concerned about the amount of work and time required to put a program in place, locate a **qualified consultant**. They can help put the program together or they can put the program together for you, and assist you with program administration.

Think you don't need a program because you don't have a problem. Remember the statistics covered earlier. Very few clients/companies had any idea as to the number of substance abusers they currently employed. Companies are usually very shocked as to the actual numbers and many times, which employees were involved. This problem is very much like a family problem. It's always somewhere else, and much worse over there. When it comes to substance abuse at work, or at home, the worst thing you can do is: **nothing**.

Think you may not recognize the problem? Don't feel bad, most companies feel the same way. Think of what tomorrow may bring. If your company has a policy about substance abuse, it sends a clear signal to present and future employees about where your company stands.

Measurable Cost - Hidden Cost - Public Liability:

When you add up all the costs involved in ignoring the problem, can you afford not to set up a substance abuse program?

Fact: *The percentage of employers with a formal written policy is growing every year (60 percent growth between 1988 and Labor Statistics).*



*substance abuse
1990 - Bureau of*

Behavior & Job Performance Warning Signs

ABSENTEEISM:

- ▶ Acceleration of absenteeism and tardiness, especially Mondays, Fridays, and before/after holidays
- ▶ Frequent unreported absences, later explained as "emergencies"
- ▶ Unusually high incidence of colds, flu, upset stomach and headaches
- ▶ Frequent use of unscheduled vacation time
- ▶ Leaving work area more than necessary, i.e., frequent trips to the restroom
- ▶ Unexplained disappearance from the job with difficulty in locating employee
- ▶ Requesting to leave work early for various reasons

MOOD:

- ▶ Appears to be depressed all the time or extremely anxious all the time
- ▶ Irritable, Suspicious, Complains about others
- ▶ Emotional unsteadiness, i.e., outbursts of crying

ACCIDENTS:

- ▶ Taking of needless risks, Disregard for safety of others
- ▶ Higher than average accident rate, on and off the job

ACTIONS:

- ▶ Withdrawn or improperly talkative
- ▶ Spends excessive amount of time on the phone
- ▶ Argumentative, displays violent behavior
- ▶ Has exaggerated sense of self-importance
- ▶ Avoids talking with supervisor regarding work issues

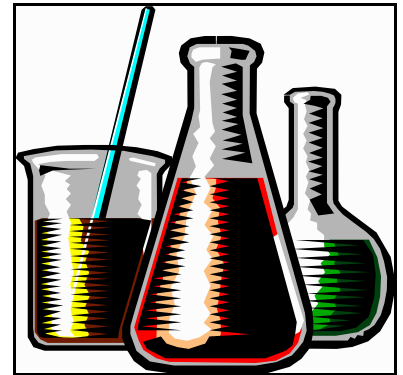
RELATIONSHIP TO OTHERS ON THE JOB:

- ▶ Overreaction to real or imagined criticism (paranoid)
- ▶ Avoiding or withdrawing from peers
- ▶ Complaints from co-workers
- ▶ Borrowing money from fellow employees
- ▶ Complains of problems at home such as separation, divorce and child discipline problems
- ▶ Persistent job transfer requests

WORK PATTERNS:

- ▶ Inconsistency in quality of work, high and low periods of productivity
- ▶ Poor judgement/more mistakes than usual and general carelessness
- ▶ Lapses in concentration, difficulty in recalling instructions and handling complex tasks
- ▶ Difficulty remembering own mistakes, using more time to complete work and missing deadlines

Approximate Duration of Plasma Life and Detectability of Selected Drugs in Urine



SUBSTANCE	PLASMA LIFE	DETECTABILITY
Amphetamines	4-6 Hours	48 Hours
Methamphetamine	4-6 Hours	48 Hours
Barbiturates	Short	24 Hours
	Intermediate	48-72 Hours
	Long	7 Days or Longer
Benzodiazepines	6-12 Hours	72 Hours
Cocaine	3-5 Hours	48 Hours
Methadone	24 Hours	72 Hours
Codeine/Morphine/Heroin	4-6 Hours	48-72 Hours
Cannabinoids (Marijuana)	Single Use	1 X's Per Wk
	Moderate Use	4 X's Per Wk
	Heavy Use	Daily
	Chronic Use	+ Daily
		72 Hours
		96 Hours
		10 Days
		21-27 Days (47)
Methaqualone	8-12 Hours	7 Days +
Phencyclidine (PCP)	10-36 Hours	3-10 Days
Alcohol	2-3 Hours	0 to 10-12 Hours (see chart)

Resume for Gary "Zee" Zvirblis

- * Sergeant (retired) with the Kern County Sheriff's Department with 23 years experience
- * Founder/creator of the K.C. Sheriff's Department Drug Education Program for Industry
- * Twenty-eight years experience in Drug Enforcement, Education/Training & Demand Reduction
- * State of California Certified Instructor for Under the Influence of Controlled Substances, Clandestine Drug Manufacturing and Drug Enforcement
- * Court Tested and Accepted Expert in State and Federal Courts:
 - Under the Influence of Controlled Substances
 - Sales, Possession for Sale and Possession of Drugs
 - Clandestine Drug Manufacturing
 - All Aspects of Drugs in the Workplace
- * Performed more than 1200 examinations and evaluations that resulted in arrests and convictions for Under-the-Influence of Controlled Substances
- * Instructor in the Field of Drug Enforcement and Use for:
 - Federal Executive Board of Los Angeles - Office of the President
 - California Department of Justice
 - U.S. Department of Forestry
 - California Crime Prevention Task Force
 - Numerous other Law Enforcement Agencies
 - University of Southern California
 - U.S. Department of the Navy
- * Published over 41 handbooks and/or papers in the field of Drugs in the Workplace, Drug Enforcement/Investigations, Students and Drug Abuse, Drugs and Our Schools and Under the Influence of Controlled Substances.
- * Owner of Zee Consulting & Associates, founded in 1983, a professional company recognized as a leading authority on the topic of "Drugs in the Workplace" in the United States today and was one of the original developers of the "Fitness-for-Duty" exam to determine drug influence.
- * President/Owner of Contraband Control Specialists, Inc. (founded in 1996), a private investigation firm specializing in employee substance abuse misconduct in the workplace and on-site specimen collection for drug/alcohol testing.
- * Zee Consulting & Associates has successfully trained over 15,000 persons to be able to determine "under-the-influence" on the work site. This has resulted in the reduction of illegal drug use in the workplace and has survived judicial review.

Resources from:

U.S. Department of Transportation – Office of the Secretary

Office of Drug & Alcohol Policy and Compliance

Click on the link below to access the employer training manual:

What Employers Need to Know About DOT Drug & Alcohol Testing (English)

http://www.dot.gov/odapc/employer_handbook

Click on the links below to access the employee training materials, in either English or Spanish:

What Employees Need to Know About DOT Drug & Alcohol Testing (English)

<http://www.dot.gov/odapc/employee-handbook-english>

What Employees need to know about DOT Drug & Alcohol Testing (Spanish)

<http://www.dot.gov/partners/drug-and-alcohol-testing/what-employees-need-know-about-dot-drug-alcohol-testing-spanish>

DOT FMCSA

Drug and Alcohol Testing Policy Addendum

Employee Education Material

The addendum and educational material is for employers and employees regulated by the Federal Motor Carrier Safety Administration (FMCSA).

The Company is providing this information regarding the Commercial Driver's License Drug and Alcohol Clearinghouse. The Clearinghouse rule took effect January 6, 2020. All queries and reporting will be for information as of the effective date and not any information prior to the effective date of January 6, 2020.

The Company has a requirement to publish educational materials to drivers about the Clearinghouse and other regulatory changes contained in the Clearinghouse Final Rule issued December 5, 2016. The Company is required to notify drivers that drug and alcohol test information will be reported to the Clearinghouse beginning January 6, 2020 and to encourage drivers to seek substance abuse treatment if they currently have a problem with the misuse of alcohol and/or use of controlled substance(s).

Information about a driver reported to the Clearinghouse will include the driver's name, date of birth, and commercial driver's license (CDL) number and State of issuance. Other information about specific tests and regarding the return to duty process will be reported. The information reported will be available when queries are made by existing and hiring employers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel.

The Clearinghouse will notify a driver using the method indicated during the driver's Clearinghouse registration—either mail or email—any time information about the driver is added, revised, or removed. If the driver has not yet registered for the Clearinghouse, these notifications will be sent by mail using the address associated with the driver's commercial driver's license (CDL). There is a petition process for drivers to request corrections to their Clearinghouse record (§ 382.717). Drivers may challenge only the accuracy of information reported, not the accuracy or validity of test results or refusals.

Driver violation records will be available in the Clearinghouse for five years from the date of the violation determination, or until the violation is resolved through the successful completion of the return-to-duty (RTD) process and follow-up testing plan, whichever is later.

Only DOT drug and alcohol test results authorized by the Federal Motor Carrier Safety Administration (FMCSA) are reported to the Clearinghouse. The identifying number for the driver will always be the CDL driver's license number and the state of issue.

Do Drivers Need to Register in the Clearinghouse?

Yes and no. Clearinghouse registration is not a required step for drivers but it is highly recommended. If a driver is never required to provide consent to a pre-employment or other full query, and never incurs a drug and alcohol program violation, then the driver will not need to register for the Clearinghouse.

However, a driver will need to be registered to provide electronic consent in the Clearinghouse for a prospective or current employer to conduct a full query of his or her driver record. A full query releases detailed violation information contained in a driver's Clearinghouse record to the querying employer. Beginning January 6, 2020, a full query will be required during a pre-employment driver investigation for a commercial driver's license (CDL) holder who will perform safety-sensitive functions, including operating a commercial motor vehicle (CMV). A driver must also be registered to view the information electronically in his or her own Clearinghouse record.

This information would include any violation information available in the Clearinghouse, along with the status of their return-to-duty (RTD) process, if applicable.

Once registered, a driver will be able to perform the following in the Clearinghouse:

- View their own driver record electronically.
- Provide consent to release detailed violation information to a current or prospective employer.
- Identify a substance abuse professional (SAP) so the SAP may enter specific information regarding the driver's return-to-duty (RTD) activities.

Information about a driver reported to the Clearinghouse will include the driver's name, date of birth, and commercial driver's license (CDL) number and State of issuance. Other information about specific tests and regarding return to duty process will be reported. The information reported will be available when queries are made by existing and hiring employers, FMCSA, State Driver Licensing Agencies, and State law enforcement personnel.

The Clearinghouse will notify a driver using the method indicated during the driver's Clearinghouse registration—either mail or email—any time information about the driver is added, revised, or removed. If the driver has not yet registered for the Clearinghouse, these notifications will be sent by mail using the address associated with the driver's commercial driver's license (CDL). There is a petition process for drivers to request corrections to their Clearinghouse record (§ 382.717). Drivers may challenge only the accuracy of information reported, not the accuracy or validity of test results or refusals.

What Driver Information does the MRO report into the Clearinghouse?

For positive drug test results and MRO determined refusals to test, the Medical Review Officer (MRO) will report information as follows to the Clearinghouse.

- Reason for the test;
- Federal Drug Testing Chain of Custody Form (CCF) specimen ID number;
- Driver's name, date of birth, and commercial driver's license (CDL) number and State of issuance;
- Employer's name, address, and USDOT Number, if applicable;
- Date of the test and date of the verified result;
- Test result;
- In the case of an adulterated specimen, the adulterant/reason must also be provided.

If an MRO changes a verified drug test, the MRO will submit that change to the Clearinghouse within one business day of making the change in the reported results.

What Driver Information does the Employer report into the Clearinghouse?

- An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- A CDL driver's refusal to submit to a Department of Transportation (DOT) test for drug or alcohol use as determined by the employer;
- Actual knowledge of drug or alcohol use while working, as defined in § 382.107;
 - Actual knowledge for the purpose of subpart B of this part, means actual knowledge by an employer that a driver 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 in §382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under §382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or controlled substances.
- Negative Return to Duty test results;

- The date the driver successfully completed all follow-up tests as ordered by the substance abuse professional (SAP).

What Driver Information does the SAP report into the Clearinghouse?

The Substance Abuse Professional (SAP) reports information on a driver who has entered the SAP program. The information reported includes the date of completion of the initial assessment, and the date the SAP determines that the driver is eligible for RTD testing.

Queries and Consent

An employer must conduct a pre-employment query for a prospective employee in the Clearinghouse prior to hiring the employee for a position requiring him or her to perform safety-sensitive functions, such as operating a commercial motor vehicle (CMV). The employer must also query the Clearinghouse annually for all currently employed CDL drivers.

The Clearinghouse rule states, “No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver’s written or electronic consent.” The type of consent required depends on the type of query. For a limited query, a general consent is required. For a full query, the driver must provide specific consent to the employer prior to each full query. This consent must be provided electronically within the Clearinghouse. For all pre-employment a full query is required.

Any employer accessing the Clearinghouse with a query will have access to any violation information that has been reported for a driver by any employer.

How is Driver Information Protected in the Clearinghouse?

The Federal Motor Carrier Safety Administration (FMCSA) takes the protection of personal information very seriously. The Clearinghouse will meet all relevant Federal security standards and FMCSA will verify the effectiveness of the security protections on a regular basis.

- Clearinghouse information will not be available to the public; only authorized users will be able to register and access the Clearinghouse for designated purposes.
- The Clearinghouse will require authentication, via a login.gov username and password, to access records. Login.gov, a shared service which offers secure online access to participating government systems, also requires the completion of a user verification process to ensure the proper person is using those credentials.
- Drivers registered in the Clearinghouse will be able to access their Clearinghouse records at any time, and at no cost to them. Drivers will only be able to access their own information, not information about other drivers.
- FMCSA will only share detailed drug and alcohol violation information with a prospective or current employer, and/or their designated consortium/third-party administrator (C/TPA), when an employer or designated C/TPA has requested and received specific consent from the driver. Drivers will be able to see the information that would be released to an employer before consenting to the release.
- Driver information will only be used by FMCSA and other enforcement agencies as required to enforce drug and alcohol testing regulations.

If you have questions about the Clearinghouse, please contact your Company Designated Employer Representative (DER).

This Page Intentionally Blank

APPENDIX: R

TABLE OF CONTENTS

APPENDIX R.....	122
Code of Federal Regulations 49 CFR Part 40, as amended, Subpart	
C Code of Federal Regulations 49 CFR Part 382, Subpart B	

Appendix R

Code of Federal Regulations 49 CFR Part 40, as amended

Please refer to Code of Federal Regulations
Title 49: Transportation, Part 40, as amended

This information may be accessed using the following web site addresses:

https://www.transportation.gov/sites/dot.gov/files/docs/PART40_20160808.pdf

<https://www.fmcsa.dot.gov/regulations/title49/part/382>

This Page Intentionally Blank