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Ernest Orlando Lawrence Berkeley National Laboratory

# Department of Transportation



## Drug and Alcohol Informational Materials

Facilities Assurance Office  
12/1/95

Prepared for the U.S. Department of Energy under Contract No. DE-AC03-76SF00098

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## **For Further Information**

Questions about the Berkeley Lab DOT drug and alcohol program, including who is required to be included in it, may be directed to Fred Lothrop, Laboratory Facilities Assurance Officer, at extension 7726.

## SECTIONS AND APPENDICES

**Section 1 - Drug and Alcohol Informational Materials**

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**Regulatory Guidance for the Federal Motor  
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Answers**

**(58 FR 60734)**

**49 CFR 383.5**

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*Drug and Alcohol Informational Materials*

Ernest Orlando Lawrence Berkeley National Laboratory  
Transportation Workplace Drug and Alcohol Testing Program

Paul Johnson, 12/1/95

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***i. Glossary of Terms Used In Sections 1 through 12***

(This glossary is provided as an aid to the reader. Definitions are contained in appropriate regulations.)

*Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol. (49 CFR 382.107 definition)

*Alcohol concentration (or content)* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part. (49 CFR 382.107 definition)

*Alcohol use* means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. (49 CFR 382.107 definition)

*Breath Alcohol Technician (BAT)*. An individual who instructs and assists individuals in the alcohol testing process and operates an EBT. (49 CFR 40.3 definition)

*Chain of custody*. Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form (see § 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory. (49 CFR 40.3 definition)

*Collection container*. A container into which the employee urinates to provide the urine sample used for a drug test. (49 CFR 40.3 definition)

*Collection site*. A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs. (49 CFR 40.3 definition)

*Collection site person*. A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals. (49 CFR 40.3 definition)

*Commercial motor vehicle (CMV)* 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 weight rating of more than 10,000 pounds; or

(b) Has a gross vehicle 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 purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).(49 CFR 383.5 Definition)

*Confirmation (or confirmatory) test*. In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses



a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine. In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. (49 CFR 40.3 definition)

*Driver* means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors 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 purposes of pre-employment/pre-duty testing only, the term *driver* includes a person applying to an employer to drive a commercial motor vehicle. (49 CFR 382.107 definition)

*Employee*. An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part. (49 CFR 40.3 definition)

*Employer* means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *employer* includes an employer's agents, officers and representatives. (49 CFR 382.107 definition)

*EBT (or evidential breath testing device)*. 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 of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs. (49 CFR 40.3 definition)

*Medical Review Officer (MRO)*. A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. (49 CFR 40.3 definition)

*Performing (a safety-sensitive function)* means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. (49 CFR 382.107 definition)

*Pre-employment*, as used in this document, has the same meaning as "pre-assignment," and "pre-placement." It refers to the time prior to a driver performing safety-sensitive DOT functions for an employer.

*Refuse to submit (to an alcohol or controlled substances test)* means that a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or (3) engages in conduct that clearly obstructs the testing process. (49 CFR 382.107 definition)

*Safety-sensitive function* means any of those on-duty functions set forth in § 395.2 *On-Duty time*, paragraphs (1) through (7) of this chapter. (49 CFR 382.107 definition)

*Screening test (or initial test)*. In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen. (49 CFR 40.3 definition)

*Specimen bottle*. The bottle that, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory. (49 CFR 40.3 definition)

*Split specimen*. A urine collection procedure which is mandated by the Omnibus Transportation Employee Testing Act of 1991, Title V of Public Law 102-143. As described in 49 CFR 40.25(f)(10)(i)(B), it consists of at least 45 ml. of urine produced during a single act or urination which is divided into two parts (30 ml. and 15 ml.) and separately sealed and identified and both sent to the same DHHS-certified laboratory for analysis of the first portion. The purpose of the split specimen is to provide the donor an opportunity for a second opinion by a different laboratory in the event the test results of the first portion of the split specimen are found to be positive by the first laboratory and verified positive by the MRO. The results of the analysis of the second portion of a split specimen are final.

*Substance abuse professional* means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. (49 CFR 382.107 definition)

*Violation rate* means the number of drivers (as reported under § 382.305 of this part) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part. (49 CFR 382.107 definition)

## **1. Policy**

The Berkeley Lab is committed to providing a workplace environment that promotes health and safety. The Laboratory endorses the Department of Transportation's (DOT) anti-drug policy and regulations. The Laboratory does not tolerate unauthorized use, abuse, possession or sale of controlled substances, or misuse of alcohol by employees. A drug and alcohol testing program is an integral part of this policy for classifications covered by the DOT rule. The Laboratory provides training, education, and other assistance to employees to help them understand their responsibilities in achieving a drug-free and alcohol-free work environment. Compliance with this policy is a condition of continued employment. Noncompliance with the Laboratory's Substance Abuse in the Workplace policy may result in disciplinary action up to and including suspension or dismissal.

The Laboratory's policies and procedures to implement the Department of Transportation (DOT) drug and alcohol testing program have been balanced with a recognition of employees' legal rights, the preservation of employees' reasonable expectation of privacy, and a commitment to assuring due process.

## 2. Applicability

The DOT rule covers employees and contract labor personnel whose Berkeley Lab job duties are such that federal regulations require them to hold a Commercial Driver's License (CDL) in order to drive a commercial motor vehicle (CMV) on public highways, and who, during the course of the workday, operate or are expected to be in readiness to operate

- a vehicle with a gross combination or gross vehicle weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle rating of more than 10,000 pounds;
- a vehicle originally designed or currently designed to transport 16 or more passengers including the driver; or
- a vehicle of any size used to transport hazardous materials found in the Hazardous Materials Transportation Act, and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations.

In addition to being subject to testing any time while at work for the use of illegal drugs, such individuals are subject to alcohol testing during those periods of time when they are currently performing, have recently performed, are about to perform, or are required to be in readiness to perform and immediately available to perform any of the following on-duty safety-sensitive duties as described in the DOT Federal regulations, including:

- (a) at a carrier's facility or any public property waiting to be dispatched
- (b) inspecting, servicing, or conditioning a CMV
- (c) driving a CMV
- (d) all time in or upon a CMV except in a sleeper berth
- (e) performing, supervising, assisting, or attending CMV loading or unloading, including processing paperwork
- (f) performing post-accident duties
- (g) repairing, obtaining assistance, or attending a disabled CMV.

It is Laboratory policy that all Laboratory drivers are considered to be immediately available to perform one or more of the above on-duty functions (a) through (g) and therefore are subject to random, reasonable suspicion, and follow-up drug and alcohol testing during all working hours, unless explicitly excused from all DOT on-duty functions.

The following classifications are subject to the drug and alcohol use rules and substance abuse testing provisions of the DOT Rule:

- Senior Bus Driver
- Bus Driver
- Truck Driver

- Vehicle Mechanic
- Health/Safety Technician (Senior and Principal)
- Fire Fighter
- Fire Captain

Additional classifications may be added as appropriate or as mandated by legislation. Regardless of job classification, an employee or contractor may not drive a Laboratory CMV unless that individual's name appears on the current Laboratory CDL-holder's list maintained by the Facilities Department indicating that the driver is subject to the random testing provisions of the DOT Rule.

### **3. Mandatory Inquiry**

Applicants for employment at the Berkeley Lab involving the operation of a CMV are required by 49 CFR 391.21<sup>1</sup> to identify all employers for the previous 10 years during which the applicant drove a CMV. From this list of past employers, the Laboratory Human Resources Department will contact employers for the preceding 2 years, as required by 49 CFR 382.413(b)<sup>2</sup>. If any prior employer reports that the applicant had an alcohol test with a concentration of 0.04 or greater, a verified positive controlled substances test result, or a refusal to be tested during this period of time; the application will not be processed further until the applicant submits a specific, written authorization to release this information to the Laboratory for review. Upon receipt of these records, the Laboratory Human Resources Department will forward them to the designated Laboratory substance abuse professional for review. The purpose of this review is to verify that the applicant has not attempted to evade any required treatment and that other reinstatement requirements have been satisfied prior to the time the applicant sought employment at the Berkeley Lab.

#### **Review of evaluation records and return-to-duty test records**

Specifically, records which are required by 49 CFR 382.401(b)(1)(i) through (iii)<sup>3</sup> to be kept by previous employers will be requested in order to check three things:

- (1) The Berkeley Lab will verify that a determination was made by a substance abuse professional concerning the driver's need for assistance.
- (2) The Berkeley Lab will verify that the driver complied with any and all treatment recommendations of the substance abuse professional. If a follow-up testing program had been established, the current status of the applicant's completion of the program will be requested.
- (3) The Berkeley Lab will verify that the driver passed the required return-to-duty test prior to being allowed to perform any safety-sensitive functions. A pre-employment drug test may be used to satisfy return-to-duty drug test requirements.

As described in Section 4 under Pre-employment Testing, the Berkeley Lab will not hire drivers who have not yet had their CDLs reinstated. Therefore, drivers who have violated DOT drug and/or alcohol prohibitions at the Laboratory or elsewhere will not be hired if they have not satisfactorily completed all reinstatement DOT requirements (including any required rehabilitation, medical recertification to drive, and return-to-duty testing).

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<sup>1</sup> See Appendix D, 49 CFR 391.21.

<sup>2</sup> See Appendix D.

<sup>3</sup> See Appendix C.

## 4. Testing For Substances of Abuse

Testing for substance abuse is required by DOT in six situations: Pre-employment, post-accident, random selection, reasonable suspicion, return-to-duty, and follow-up after reinstatement to safety-sensitive functions following removal for violating a drug/alcohol prohibition. Each of these situations is discussed below:

### (1) Pre-Employment Testing

It is Berkeley Lab policy that applicants for CMV driver positions must pass a DOT pre-employment drug and alcohol test which will be conducted after an offer is made but prior to being hired for, or transferred to, the position.

The requirement for DOT pre-employment testing applies to new hires, existing employees transferring into CMV driver positions, and non-Laboratory employee drivers who are used by the Laboratory as CMV drivers<sup>4</sup>. The final results of the tests must be in the Laboratory's possession prior to awarding the position to the applicant or transfer candidate. Therefore, sufficient time should be allowed for pre-employment testing. Drug test results are typically verified by the Medical Review Officer (MRO) within 5 working days but may take a week or longer in some cases.

To facilitate the use of casual, intermittent, or occasional drivers (such as trip-lease drivers and other non-Laboratory employee drivers)<sup>5</sup>, the requirement for pre-employment testing may be waived if the driver has participated in a DOT drug and alcohol testing program elsewhere and the driver releases to the Laboratory Facilities Assurance Officer the following records to allow for verification of participation in that program.

### (2) Waiver of Pre-Employment Drug Test

- Information indicating the individual has participated in a DOT drug testing program within the previous 30 days; **and**
- Information reveals either that the individual was drug tested by that program within the past 6 months or was not tested but was subject to random drug testing for the previous 12 months; **and**
- Information reveals that no prior employer has records showing the applicant engaged in prohibited drug or alcohol conduct within the previous 6 months.

Applicants for driver positions will be required to state whether they have failed an alcohol test (at 0.04 or greater), a drug test, have refused to be tested, or have violated any other DOT drug or alcohol prohibition<sup>6</sup> within the preceding two years. If such violation did occur, applicants are required to sign a written release of these records for review.

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<sup>4</sup> See Appendix C, 49 CFR 382.107, *Driver*; Appendix D; 49 CFR 391.63; and Appendix D, Regulatory Guidance 391.109 Question 5

<sup>5</sup> See Appendix D, 49 CFR 390.5

<sup>6</sup> See Chapter 6, *Prohibitions*

As described in Section 3, Mandatory Inquiry, it is Berkeley Lab policy that employment applicants for Laboratory CMV driver positions who have previously violated DOT drug and/or alcohol prohibitions will not be hired until they are qualified to drive CMVs. That is, they must have satisfactorily completed all reinstatement and CMV driver qualification requirements.

After receipt of these records, an assessment will be made by a designated Laboratory substance abuse professional concerning the applicant's compliance with any required assistance or treatment.

**(3) Post-Accident Testing**

Two situations require drug and alcohol testing of each surviving driver of a CMV as soon as practicable after an accident:

1. The driver was performing safety-sensitive functions with respect to the vehicle and there was a loss of human life, or
2. The driver was issued a citation for a moving traffic violation arising from the accident.

Drivers who are subject to post-accident testing are required to remain readily available for testing for the next 8 hours for an alcohol test and for the next 32 hours for a drug test, unless tested or excused from testing. Except in medical emergencies, failure of the driver to remain available for drug and/or alcohol testing will be deemed as *refusal to submit to testing*. Until tested for alcohol or excused from testing, the driver must abstain from consumption of alcohol for *8 hours* following the accident.

Prior to being allowed to operate a CMV, drivers will be provided with the necessary information, and instructions by their department or division regarding the procedures to follow in regarding where and when to submit to post-accident testing. These procedures will enable the driver to comply with this requirement whether on Berkeley Lab property, on the highway, or elsewhere.

**IMPORTANT NOTE:**

**Nothing in this document (or the rule itself) should be construed as to require the delay of necessary medical attention for injured people following an accident or to prevent a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to an accident, or to obtain necessary emergency medical care.**



#### (4) Random Testing

The Berkeley Lab DOT random selection pool is composed of drivers who are regularly employed at the Laboratory, as well as intermittent, casual, and occasional drivers who are employed elsewhere but used by the Laboratory more than once a year.<sup>7</sup>

Individuals in the pool may be randomly selected for drug testing only or may be randomly selected for both drug and alcohol testing. When an individual is randomly selected for both drug and alcohol testing, these tests will be administered during a single visit to the collection facility in order to minimize the number of work disruptions.

Drivers will be selected for testing through the use of a computer-based random number generator. All drivers will have an equal chance of being selected on each testing day. The dates for administering these tests will be reasonably spread throughout the year but will not be predictable. Random testing may occur on any work shift on any work day throughout the year. Persons who are tested will be immediately available for re-selection on the next test day. Drivers notified of selection for testing must proceed immediately to the designated testing site. *The time allowed between notification and testing is no more than the requisite travel time to the testing site.* A reasonable amount of transportation time will be allowed. If a driver is notified of his or her selection while performing a safety-sensitive function he or she is required to cease performing the function as soon as it can be safely terminated and proceed to the testing site as soon as possible.

It is Berkeley Lab policy that all Laboratory drivers are considered to be immediately available to perform one or more of the on-duty functions listed in 49 CFR 395.2, items 1 through 7 and therefore are subject to random drug and alcohol testing while working at DOE facilities.

**Drivers may be notified of selection for random alcohol testing:**

1. *While* the driver is performing safety-sensitive functions,
2. *Just before* the driver is to perform or is expected to be in readiness to perform safety-sensitive functions, or
3. *Just after* the driver has ceased performing safety-sensitive functions.

#### (5) Random Testing Rate

Initially, the minimum number of random alcohol tests required by DOT to be conducted annually by the industry will be equal to 25 percent of the average number of drivers actually employed by each motor carrier throughout the year. The minimum number of random drug tests will be equal to 50 percent of the average number of employed drivers. However, the DOT may adjust the required minimum rate for alcohol testing either up or down based on the *violation rate* experienced by the nation's federal highway transportation employers.

<sup>7</sup> See Appendix D, Regulatory Guidance Questions 4 and 5.

*Violation Rate for alcohol testing means the number of covered drivers who had an alcohol concentration of 0.04 or greater plus the number of drivers who refused a required random alcohol test, divided by the total reported number of employees in the federal highway transportation industry who were given required random alcohol tests plus the total reported number of employees in the industry who refused a required random alcohol test.*

The alcohol testing rate will be **increased** to the maximum, if the violation rate is poor for 1 year.

The alcohol testing rate may be **decreased** to next lower level if the violation rate is good for 2 years.

- If the alcohol violation rate in a given calendar year is **1% or greater**, the annual rate required will be **increased** from its existing rate to 50%.
- If the alcohol violation rate is **less than 0.5%** for 2 consecutive years, the random testing rate may be **lowered** from 25% to 10 %, or
- if the alcohol violation rate is **0.5% or greater but less than 1%** for 2 consecutive years, the random testing rate may be **lowered** from 50% to 25%.
- If the alcohol violation rate in a given calendar year is **0.5% or greater but less than 1%**, a random alcohol testing rate of 25% **remains** at 25%.

#### (6) Reasonable Suspicion Testing

Drivers are required to submit to drug and/or alcohol testing upon request if supervision or management have reason to believe the driver has violated any of the drug and/or alcohol prohibitions<sup>8</sup> except for suspected possession of alcohol. A reasonable suspicion drug and/or alcohol test will be administered if one or more supervisors or other management officials, who have been trained in behavioral observation, makes a specific, articulable observation concerning a driver's **appearance, behavior, speech or body odor**. In the case of suspected drug use, the observations may include indications of the **chronic or withdrawal effects of controlled substances**. An attempt will be made to obtain corroboration from a second management official. However, failure to obtain the corroboration of a second management official will not prevent the conduct of a reasonable suspicion DOT test. When testing is required, supervision or management will make necessary arrangements for the testing and the required contact with Employee/Labor Relations, as described in DOT supervisory training. To accommodate special circumstances, supervisors are provided instructions during DOT supervisory training on how to arrange the conduct of drug and alcohol tests off site and on weekends and holidays.

If, for any reason, an alcohol test cannot be conducted within 2 hours following the determination that reasonable suspicion exists to require testing, a written explanation of the reason for the delay is required to be placed on file by supervision or management. A copy will be sent to the Laboratory Facilities Assurance Officer. A reasonable suspicion alcohol test will not be administered after 8 hours following the determination and the

<sup>8</sup> See Chapter 6, *Prohibitions*

reason why it was not administered will be documented and placed on file. A copy will be sent to the Laboratory Facilities Assurance Officer.

**Drivers will be requested to undergo reasonable suspicion alcohol testing only:**

1. **While the driver is performing safety-sensitive functions,**
2. **Just before the driver is to perform or is expected to be in readiness to perform safety-sensitive functions, or**
3. **Just after the driver has ceased performing safety-sensitive functions.**

A written record will be made of the observations leading to a reasonable suspicion drug or alcohol test, and signed by the supervisor or other trained company official who made the observations within 24 hours of the observed behavior or before the drug test result is released, whichever is earlier.

#### **(7) Reasonable Suspicion Removal Without an Alcohol Test**

If a supervisor has reason to believe a driver has used alcohol, and a reasonable suspicion alcohol test is not administered, the driver will be prevented from performing or continuing to perform safety-sensitive functions until either an alcohol test is administered with a result of less than 0.02, or 24 hours have elapsed.<sup>9</sup>

#### **(8) Berkeley Lab For-Cause Evaluations**

All Berkeley Lab employees and contractors, whether drivers or not, are expected to be physically and mentally fit for duty while at work. Employees and contractors are held responsible to not report for work if they are impaired or otherwise unfit for duty. In addition to DOT requirements, each supervisor is responsible for taking or requesting others to take appropriate action whenever there is cause to believe that any employee's demonstrated judgment or performance has deteriorated or otherwise seems to be impaired. If any employee is observed to be impaired on the job regardless of whether a federally mandated reasonable suspicion test is determined to be required, the employee may be requested to undergo Berkeley Lab for-cause testing and medical evaluation to determine the reason for the observed impairment.

Berkeley Lab for-cause evaluations may be required if . .

- The individual is a Laboratory employee (not a contractor).
- Behavior is observed that may pose an immediate threat to the health and safety of the employee or others and there is cause to believe that substance abuse or psychological problems may be a factor.
- The use or possession of illegal controlled substances or unauthorized use or possession of alcohol has been observed in the workplace.

<sup>9</sup> Reference Appendix C, 49 CFR 382.307 (e)(2)

- A work-related accident or incident occurs where there is cause to believe the use of controlled substances or alcohol has been a contributing factor and no federal regulations requiring a post-accident or occurrence test are applicable.

**Note:** Employees of contractors who are observed to be unfit for duty at any Berkeley Lab work location will be escorted from the site, have their badge confiscated, and the contractor's management will be notified.

**(9) Return-To-Duty Testing**

Before a driver returns to duty in a safety-sensitive function after engaging in prohibited conduct as listed in Section 6, he or she must undergo a return to duty drug and/or alcohol test as specified by a substance abuse professional. Return-to-duty alcohol test results must be below 0.02<sup>10</sup>.

**(10) Follow-Up Testing**

Each driver who has been identified by a substance abuse professional as needing assistance in resolving a substance abuse problem and who has returned to duty requiring the performance of a safety-sensitive function, will be subject to unannounced follow-up drug and/or alcohol testing. The number, frequency, and types of these follow-up tests will be as specified by the substance abuse professional. Follow-up tests will not involve advance notice to the individual. At least 6 tests will be conducted in the first 12 months after the driver is returned to duty. The substance abuse professional will monitor the test results to determine the duration of follow-up testing, which may be up to a maximum of 60 months.

**Follow-up tests will be conducted:**

1. *while* the driver is performing safety-sensitive functions,
2. *just before* the driver is to perform or when expected to be in readiness to perform safety-sensitive functions, or
3. *just after* the driver has ceased performing safety-sensitive functions.

<sup>10</sup> See Appendix C, 49 CFR 382.309(a).

## **4.1 Drug Testing Procedures**

Transportation employers are required to conduct DOT drug testing in accordance with the procedures set forth in subpart B of 49 CFR 40<sup>11</sup>. These procedures include a strict limitation on the number and types of drugs for which DOT testing may occur, rules ensuring the privacy of the donor during the urine collection process, mandatory splitting of the urine specimen into two separately sealed containers, and rules ensuring the integrity and traceability of the specimen using a chain-of-custody procedure and a standardized federal form.

### **49 CFR 40.21 THE DRUGS**

**Employers shall test for 5 drugs under the DOT rules:**

**MARIJUANA**

**COCAINE**

**OPIATES**

**AMPHETAMINES**

**PHENCYCLIDINE (PCP)**

**Testing for additional drugs under DOT authority is not authorized.**

Urine specimens must be analyzed only at laboratories which have been certified by the Department of Health and Human Services (DHHS). A list of currently certified laboratories appears regularly in the Federal Register.

Basic DHHS-certified laboratory analysis procedures require:

- (1) Use of a laboratory chain of custody document to track specimens
- (2) Accession area of lab, for receipt and inspection of split specimens
- (3) Screening of specimens using immunoassay. Cut-off levels are established to eliminate from further consideration specimens which contain no drug metabolites. If the amount of metabolite is below the cutoff, the specimen is reported as negative.
- (4) Specimens that are positive in the initial screening must be tested using gas chromatography/mass spectrometry (GC/MS). If the amount of metabolite is above the

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<sup>11</sup> See Appendix B.

cutoff level, the specimen is confirmed positive; if it is below the cutoff level, it is reported as negative.

All results are reported (in writing or by electronic means, but not by telephone) to the Berkeley Lab's medical review officer (MRO). When requested, quantitative levels (the specific amount of metabolite found) are reported to the MRO only.

The testing laboratory will retain all records related to the specimens for a minimum of 2 years and will provide secure storage of all positive specimens for at least 1 year unless requested to retain them longer. The employer, the DOT, or DHHS may inspect the laboratory at any time.

#### *4.1.1 The Medical Review Officer (MRO)*

The MRO is a necessary and critical link in the drug testing program. He or she must be a licensed physician who has knowledge of substance abuse disorders. The MRO conducts the final review of all test results reported by the laboratory.

The MRO's review of negative test results is administrative only. However, the MRO's review and verification of positive test results is required before results are reported to the Laboratory management. During this process, the MRO will contact the employee whose test result is reported positive by the DHHS-certified lab to provide the employee the opportunity to discuss the test result.

If the MRO is unable to contact the employee, he/she will ask the employee's supervisor to contact the employee and request that the employee contact the MRO. The MRO will not reveal to the supervisor the test result or any information about the reason for contacting the employee. If after 5 days from being notified to do so, the employee does not contact the MRO, the MRO will verify the positive test result and inform the Laboratory Facilities Assurance Officer that the test was "failed". If the supervisor cannot contact the employee, the supervisor may place the employee on temporary medically unqualified status or medical leave.

If the employee refuses to discuss the test result with the MRO, the MRO will verify the test as positive.

If the MRO concludes that there is a legitimate medical explanation for the positive test result, the test result will be reported as "passed" to the Laboratory Facilities Assurance Officer. No information that a passed test was initially reported positive by the lab will be revealed during this process.

Notification of failed drug test results will be relayed by the Laboratory Facilities Assurance Officer to supervision, Employee/Labor Relations, and if a DOE access authorization is involved, the DOE.

#### *4.1.2 Analysis of The Second Portion of a Split Specimen*

If the first part of the DOT-required split specimen is verified as being positive, the employee may request, through the MRO, that the second portion of the split specimen be analyzed at a different laboratory. Employees may choose any local, currently-certified laboratory for this purpose. This request will be honored if it is made within 72 hours of the donor being notified of a verified positive. The Berkeley Lab's actions, such as removal of

the driver from safety-sensitive functions, will not be delayed pending the results of the analysis of the second portion of the split specimen.

The MRO is required to keep all information obtained from the employee confidential except when:

- (1) A DOT agency requires disclosure, or
- (2) The MRO believes the information could result in the medical unqualification of the employee under a DOT agency rule; or
- (3) The MRO believes that continued performance by the employee of his/her safety-sensitive function could pose a significant safety risk, or
- (4) The donor specifically releases the information in writing.

Such disclosure of information is limited to the Berkeley Lab, DOT, or other federal agency, or the physician responsible for determining the medical qualification of the employee under applicable DOT regulations. The MRO will inform the employee of the disclosure requirements prior to releasing any information.

Drivers have full access to records related to their drug tests. The driver also has a right to access records describing the laboratory's DHHS certification process including review, or revocation of certification process. The only requirement for obtaining these records is that the donor must make the request in writing. Separate requests are necessary for each group holding records.

## 4.2 Alcohol Testing Procedures

Employers are required to conduct alcohol testing in accordance with the procedures set forth in subpart C of 49 CFR part 40<sup>12</sup>. These procedures include training and proficiency requirements for breath alcohol technicians (BATs), quality assurance plans for the breath testing devices (including calibration requirements), requirements for a suitable, private breath test location, and protection of employee records.

Testing must be conducted using *only evidentiary breath testing (EBT)* devices approved by the National Highway Traffic Safety Administration (NHTSA) and listed on their Conforming Products List.

Two breath tests are required to determine if a driver has a prohibited alcohol concentration. A screening test is conducted first. Any result with alcohol concentration less than 0.02 is considered a "negative" test and no further testing is done.

If the alcohol concentration is 0.02 or greater, a second test (called a confirmation test) will be conducted after a 15 minute waiting period. The confirmation test, if required, will also be conducted using an EBT . .

1. that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure the reliability and traceability of the results, **and**

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<sup>12</sup> See Appendix B.

2. for which NHTSA has approved a quality assurance program submitted by the device manufacturer.

**Only the confirmation test result determines any actions taken under the DOT rule as a consequence of the alcohol test.** The driver and the BAT complete the alcohol testing form to ensure that the results are properly recorded. The BAT reports the test results to the Laboratory Facilities Assurance Officer.

Notification of failed alcohol test results will be relayed by the Laboratory Facilities Assurance Officer to supervision, Personnel/Labor Relations, the Laboratory Medical Department, and if a DOE access authorization is involved, the DOE.

*Note: As described in Section 8, if the results of the driver's alcohol test indicate an alcohol concentration of 0.02 or greater, but less than 0.04, the driver will not be permitted to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the administration of the test. Neither an evaluation by a substance abuse professional nor a return-to-duty test is required unless there was a violation of a drug and alcohol prohibition<sup>13</sup>.*

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<sup>13</sup> See Chapter 6.



## 5. Refusal to Cooperate With Testing

Drivers who refuse to submit to drug or alcohol testing in post-accident, random, reasonable suspicion, or follow-up testing situations will not be permitted to perform safety-sensitive functions. Drivers who refuse to submit to a pre-employment drug or alcohol test will not be considered for employment. Drivers who refuse to submit to a return-to-duty drug or alcohol test will not be returned to safety-sensitive functions following removal for violating a drug and alcohol prohibition<sup>14</sup> and will be subject to corrective action as if it were a second violation of the drug and alcohol prohibitions. Refusal to cooperate with such testing is prohibited by DOT regulations and requires the employer to impose the same consequences as for drivers engaging in substance use-related conduct, as described in Section 6. Removed drivers may not resume performance of safety-sensitive activities including driving CMVs in commerce, until satisfactorily completing the reinstatement process<sup>15</sup>.

Examples of actions or inactions constituting refusal to submit to testing include:

- failure to produce an adequate urine<sup>16</sup> or breath<sup>17</sup> specimen for testing, without a legitimate medical excuse as determined by the opinion of a designated, licensed physician;
- failing to cooperate with the testing process in a way that prevents the completion of the test;
- refusal to sign the donor certification statement on testing forms;
- refusal to initial the seal on the donor's urine specimen container;
- attempting to falsify a specimen or to tamper with critical specimen collection facilities or equipment.
- failure of an involved driver to remain readily available for testing for 8 hours after an accident requiring post-accident testing.

Failure to appear for random, reasonable suspicion, or follow-up testing at or before the appointed date and time will be investigated and may result in declaring the incident a refusal to test.

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<sup>14</sup> See Chapter 6.

<sup>15</sup> See Chapter 9.

<sup>16</sup> See Appendix B, 49 CFR 40.25(f)(10)(iv).

<sup>17</sup> See Appendix B, 49 CFR 40.69.

## 6. Prohibitions

Specific drug and alcohol-related conduct by drivers, as listed in this chapter, is prohibited by the DOT. The employer may *not* use a driver to perform a safety-sensitive function if the employer has actual knowledge that the driver has engaged in such conduct. The prohibitions listed below were designed by DOT to enhance driver safety during performance of safety-sensitive functions and to protect the public.

- *Alcohol Concentration*

Drivers may not report for duty or remain on duty in a position requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

**Note:** Reporting for safety-sensitive work with a alcohol concentration of 0.02 but less than 0.04 is, technically, not a violation of these prohibitions but does require removal from safety-sensitive duty as described in Section 8.

- *Alcohol Possession*

Drivers may not be on duty requiring performance of safety-sensitive functions while possessing any amount of unmanifested alcohol, including medication which contains alcohol. Also included in this prohibition are any other types of low molecular weight alcohols such as methyl and isopropyl alcohol.

- *On-duty Use of Alcohol*

Drivers may not consume any beverage, mixture, or preparation, including any medication, containing any concentration of alcohol while performing or while required to be in readiness to perform safety-sensitive functions.

- *Controlled-Substance Use*

Drivers may not report for duty or remain on duty requiring performance of safety-sensitive functions when using any substance listed in Schedules I through V of the Controlled Substances Act, as currently revised. An example copy of these Schedules is attached (see Appendix A). An exception is granted to drivers who have been advised by a physician that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

The Berkeley Lab requires its drivers to inform supervision or management of any therapeutic drug use which the driver has reason to believe may result in unsafe working conditions for themselves or others.

- *Pre-Duty Use of Alcohol*

Drivers may not perform safety-sensitive functions within 4 hours after using alcohol, including any medication containing alcohol. This applies equally to drivers who are requested to perform safety-sensitive functions during other than their normal working hours. That is, they must decline a call to work if acceptance would result in performing safety-sensitive functions within 4 hours after consuming alcohol.

- *Use of Alcohol Following an Accident*

Drivers who are required to take a post-accident alcohol test may not use alcohol for 8 hours following the accident, or until that driver undergoes a post-accident alcohol test, whichever occurs first.

- *Refusal to Submit to a Required Alcohol or Controlled-Substance Test*

Drivers will not be permitted to perform safety-sensitive functions if they refuse to submit to a post-accident, random, reasonable suspicion, or follow-up DOT drug or alcohol test.

- *Drug or Alcohol Test Failures*

Drivers may not report for duty or remain on duty requiring performance of a safety-sensitive function if the driver is notified of a confirmed positive test result for alcohol or an MRO-verified positive test result for drugs until reinstated, as described in Section 9. Drivers who fail a DOT drug test or alcohol test at 0.04 or above are medically unqualified to operate a CMV. They must undergo a DOT medical re-qualification physical examination as part of the reinstatement process.

## **7. Consequences of Violating Prohibitions**

### **Removal**

Any employed driver who violates any of the DOT drug and alcohol prohibitions<sup>18</sup> will be immediately removed from safety-sensitive functions and will be advised

- by supervision that he or she must be evaluated by a substance abuse professional who will determine what assistance, if any, the employee is required to undergo in resolving problems associated with alcohol misuse and/or controlled substances use prior to being considered for reinstatement.
- by the substance abuse professional of resources available to evaluate and resolve problems associated with the misuse of alcohol and use of controlled substances, including a summary of the names, addresses, and telephone numbers of available counseling and treatment resources;
- by supervision of the DOT's requirements for return to safety-sensitive functions and of the Berkeley Lab's reinstatement policies<sup>19</sup> and any restrictions imposed by DOE.

### **DOT Disqualification**

Drivers who, after a fatal accident, test positive for drugs or alcohol or who refuse to be tested will be disqualified by DOT for a period of 1 year through DOT issuance of a letter of disqualification.

### **Penalties**

Employers or drivers who violate the DOT drug and alcohol prohibitions are subject to the penalty provisions of 49 U.S.C. § 521(b). This provides for CDL disqualifications and issuance of a written notice of violation by the Secretary of the DOT with the potential for civil penalties of up to \$10,000.

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<sup>18</sup> See Chapter 6.

<sup>19</sup> See Chapter 9.

## **8. Consequence of Alcohol Level of 0.02 or Greater But Less Than 0.04**

### **Removal and Return to Duty**

Although not a violation of the DOT drug and alcohol prohibitions listed in chapter 6, the DOT requires drivers who are found to have an alcohol concentration of 0.02 or greater but less than 0.04 to be immediately removed from safety-sensitive functions until the start of the driver's next regularly scheduled safety-sensitive duty period, but not less than 24 hours following administration of the test. Berkeley Lab drivers will not be reassigned to other non-safety-sensitive work and will not be paid during this time period.

#### *Examples:*

- If a day shift Laboratory driver is found to have an alcohol concentration of .03 in a random alcohol test after returning from lunch on Tuesday, the driver will be placed on unpaid leave until Thursday morning, the start of the driver's next regularly scheduled work day after a minimum period of 24 hours. This would result in 12 hours of unpaid time.
- If the alcohol test in example 1 above had been conducted after lunch on Friday with the same results, the driver would be placed on unpaid leave until Monday morning, the start of the driver's next regularly scheduled work day after a minimum period of 24 hours. This would result in 4 hours of unpaid time.

The substance abuse professional evaluation requirements of Section 7, and the reinstatement requirements listed in Section 9, do **not** apply in cases such as this, where there was no violation of the DOT drug or alcohol prohibitions.

## 9. Reinstatement

Drivers who have violated any of the DOT drug and alcohol prohibitions<sup>20</sup>, must complete the following requirements for reinstatement to safety-sensitive functions, including driving CMVs:

- Pass a **return-to-duty test** for alcohol with a result of less than 0.02 if the conduct involved alcohol, or a drug test with a verified negative result if the conduct involved a drug. Return -to-duty testing for both drugs and alcohol may be required by the Berkeley Lab substance abuse professional.
- **Be evaluated** by a Berkeley Lab substance abuse professional to determine that the driver has properly followed any required counseling or treatment program.
- Be advised of the requirement for at least 6 unannounced **follow-up tests** in the first 12 months following reinstatement to safety-sensitive functions, and the possible continuation of these tests for a period of up to 60 months as determined by the substance abuse professional.
- Be **medically recertified** to drive a CMV.
- Be subject to any other applicable restrictions imposed by DOT, such as complying with a letter of disqualification for a period of 1 year issued to drivers who test positive for drugs or alcohol or who refuse to be drug tested after a fatal accident. (§391.117<sup>21</sup>)

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<sup>20</sup> See Chapter 6, *Prohibitions*.

<sup>21</sup> See Appendix D.

## 10. Substances of Abuse

Co-workers and supervisors should understand and avoid "enabling" behavior

**Co-workers enable substance abuse when they:**

- Cover up for a co-worker's drug or alcohol use.
- Take over the work or responsibilities of a co-worker who is abusing drugs or alcohol.
- Accept a co-worker's rationalization or excuses.
- Lend money to help a co-worker support a habit.
- Downplay the frequency of abuse incidents.

### Drugs of Abuse

**What They Look Like, How They Are Taken, and Symptoms of Use**

#### Alcohol

- In its pure form, a colorless liquid with a strong distinctive smell.
- Drunk in beverage form in various strengths: beer, 4%; wine, 12%; distilled liquor, more than 40%.
- Acts as a central nervous system depressant, just like a sleeping pill. In high doses it is also an anesthetic. At lower doses it acts as a behavioral stimulant.
- Also called: liquor, booze, drinks, cocktails, spirits.
- The most widely abused drug in the United States.

#### *Symptoms of Use:*

- *Small dosage:* Some impairment is now believed to begin at very low blood-alcohol levels. These become noticeable at 0.04 BAC. Behavioral changes, loss of social inhibitions. Fine muscular coordination affected and complex reaction time lengthened.
- *Large dosage:* Intoxication at about 0.08 BAC, loss of muscular coordination, slowing of heart and lung muscles. Above 0.30 BAC medical assistance may be required. Coma and death may result from central nervous system depression above 0.45 BAC. Memory loss.
- *Withdrawal:* Ranges from typical "hangover" symptoms such as nausea, dizziness and headache to delirium tremens (Dts) with symptoms of convulsions, delusions, and hallucinations.

## **Marijuana**

- The greenish-brown dried and chopped leaves, flowering tops, small stems, and seeds of the hemp plant (*cannabis sativa*).
- Often sold and stored in various sizes of clear plastic bags
- Smoked in hand-rolled cigarettes ("joints"), small metal pipes, water pipes or regular tobacco pipes.
- Impairs or reduces short-term memory, alters sense of time, reduces concentration and motor coordination.
- Also called: pot, dope, grass, weed, reefer.
- The natural mind-altering ingredient in marijuana is THC (Delta-9-Tetrahydrocannabinol). The percentage of THC in the marijuana determines how strong its effects will be. The THC content of marijuana has steadily increased over recent years.
- Hashish is a refined form of marijuana that is more potent, is smoked in smaller doses, and comes in sticky brown or black "cakes" or balls.
- Next to alcohol, the most widely abused drug in the United States.

### *Symptoms of Use:*

- *Small dosage:* Euphoria, relaxed inhibitions, increased appetite, disoriented behavior.
- *Large dosage:* Fatigue, paranoia, possible psychosis.
- *Withdrawal:* Insomnia, hyperactivity and decreased appetite occasionally reported.

## **Cocaine**

- A white crystalline powder derived from the leaves of the coca plant grown in semitropical climates.
- The most potent central nervous system stimulant of natural origin. Potency and use has increased dramatically in recent years.
- Often stored in a small glass vial or folded into a piece of paper.
- In hydrochloride form (most commonly encountered), the powder may be inhaled into the nose.
- The powder is chopped more finely with a razor blade and laid out into "lines" on a mirror or other smooth surface. Half a plastic straw, a rolled piece of currency, or other tube is used to "snort" a "line" into the nose.
- A tiny spoon or the end of a fingernail may be used to hold a small amount of the powder to the nose for snorting. A nasal spray bottle may also be used.
- In its base form, the powder may be smoked as a mixture (called "freebasing").



- Foil, flame, and volatile solvents are required to burn cocaine for freebasing. There is a risk of fire or explosion.
- The powder may be diluted and injected into the veins.
- Also called: coke, blow, snow

*Symptoms of Use:*

- *Small dosage:* Heartbeat, respiration, body temperature, and blood pressure all increase. Euphoria, feeling of confidence, exhilaration, well-being, and sexual excitement.
- *Large dosage:* Psychological dependency, muscle spasms, unpredictable effects are often reported due to contaminants, sudden convulsions, cardiac arrest, possible death.
- *Withdrawal:* Depression, social withdrawal, drug craving, tremors, muscle pain, and eating and sleeping disturbances.

**Crack (Rock Cocaine)**

- A solid form of cocaine that comes in light brown pellets or crystalline rocks.
- An extremely addictive and far more potent form of cocaine.
- Usually sold in small plastic vials or in metal foil wrappers containing one of these rocks.
- Generally smoked in a specially designed glass pipe.
- May also be mixed with marijuana or tobacco and smoked in a regular pipe or cigarette.

*Symptoms of Use:*

- Similar to cocaine with more intense effects. This can result in the user becoming addicted in a few weeks, sometimes instantly.

**Stimulants**

- Chemically manufactured amphetamines and related drugs that stimulate the central nervous system.
- Tablet, pill, or capsule forms are swallowed.
- White powder or solid "rock" forms (methamphetamine) may be diluted and injected into the veins or inhaled through a tube into the nose.
- Also known as: speed, uppers, crank, crystal.
- Can be legitimately manufactured and prescribed—for example as an appetite suppressant—but are also illegally distributed through diverse criminal activity.
- Often produced illegally in crude, clandestine laboratories.

*Symptoms of Use:*

- *Small dosage:* Increased alertness, excitation, euphoria, increased pulse rate & blood pressure, insomnia, loss of appetite.
- *Large dosage:* Agitation, increase in body temperature, hallucinations, convulsions, possible death.
- *Withdrawal:* Apathy, long periods of sleep, irritability, depression, disorientation.

**Depressants**

- Chemically manufactured sedatives that depress the central nervous system, including: barbiturates, methaqualone ("Quaaludes"), and tranquilizers.
- Tablets or capsules that are swallowed.
- Can be legitimately prescribed as sedatives but are also frequently obtained by theft, illegal prescription, or purchase on the illicit market.
- Barbiturates such as phenobarbital, secobarbital, and amobarbital are commonly prescribed and are among the most commonly abused.
- The tranquilizers Librium and Valium are among the most widely prescribed drugs in the U.S. and the most commonly abused.
- Also known as: downers, barbs, reds, ludes.

*Symptoms of Use:*

- *Small dosage:* Slurred speech, disorientation, drunken behavior without odor of alcoholic beverages.
- *Large dosage:* Shallow respiration, clammy skin, dilated pupils, weak and rapid pulse, coma, possible death.
- *Withdrawal:* Anxiety, insomnia, tremors, delirium, convulsions, possible death.

**Narcotics**

- Derived from opium which is produced by a poppy plant. Includes heroin, methadone, codeine, morphine, and common painkillers such as demerol and darvon.
- The most common form of heroin is a white or brown powder often wrapped in tin foil. It is sniffed, smoked, or diluted and injected subcutaneously ("skin popping") or intravenously ("mainlining").
- Narcotics in pill, tablet or capsule form are medically used in small doses as painkillers. These prescription drugs may be abused.

*Symptoms of Use:*

- *Small dosage:* Euphoria, drowsiness, respiratory depression, constricted pupils, nausea.

- *Large dosage:* Slow and shallow breathing, clammy skin, convulsions, coma, possible death.
- *Withdrawal:* Watery eyes, runny nose, yawning, loss of appetite, irritability, tremors, panic, cramps, nausea, chills and sweating.

### **Hallucinogens**

- Chemically manufactured (e.g., PCP and LSD) and naturally occurring (e.g., mescaline) substances that distort perception.
- PCP ("angel dust"), an animal tranquilizer, is notorious for causing bizarre, violent, and self-destructive behavior in humans. It is a white powder that is commonly smoked, sometimes mixed with marijuana.
- LSD ("acid") comes in a liquid form and most often is swallowed after having been placed on a sugar cube or blotting paper.

#### *Symptoms of Use:*

- *Small dosage:* Illusions and hallucinations, poor perception of time and distance.
- *Large dosage:* Longer, more intense "trip" episodes, psychosis, possible death.
- *Withdrawal:* Withdrawal syndrome not reported.

### **Drug Analogs**

- Chemically manufactured imitations of various illegal drugs created by slightly modifying the molecular structure of the original drug.
- Because of their new molecular structures, these drugs are usually not yet classified as illegal.
- Drug analogs are unpredictable in their effects and often hundreds of times stronger than the drug they are intended to imitate.
- There are currently analogs of narcotics, amphetamines, and PCP.
- Also known as: synthetic heroin, China white, ecstasy.

#### *Symptoms of Use:*

- Unpredictable in their effects and often hundreds of times stronger than the drug they are designed to imitate. The effects are typically similar to narcotics, amphetamines, and PCP.

## **11. Employee Assistance Program**

The Laboratory's policy is to ensure that employees are offered confidential assistance in resolving such problems as alcoholism and drug abuse. An employee who is dealing with these problems is encouraged to utilize the Laboratory's Employee Assistance Program (EAP). Employees are assured that self-initiated contacts made with the Laboratory's EAP are kept in strict confidence in accordance with prevailing federal requirements and Laboratory policy on confidential personal health records. The EAP will not contact management concerning employees who refer themselves unless the employee so requests.

Employees participating in the EAP are required to meet job performance standards. Program participation is voluntary and will not affect future employment or career advancement.

The Laboratory has an interim contract with UC Berkeley CARE Services to provide Employee Assistance Program services. The CARE EAP provides free, confidential counseling, consultation, and referral for staff on a wide range of issues, including drug and alcohol problems. CARE Services can be reached at 642-7759.

## 12. Questions and Answers

### General

**Q(1)** How can I get more information about this program?

**A** Questions about the Berkeley Lab DOT drug and alcohol program, including who is required to be included in it, may be directed to Fred Lothrop, Facilities Assurance Officer, at extension 7726.

Copies of the latest revision of the regulations and other official information may be obtained by contacting Federal Highway Administration (FHWA), Office of Motor Carrier Standards, Room 3107, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 366-2981 or (800) 832-5660. You may also contact the California Regional office in at 211 Main Street, Room 1108, San Francisco, California 94105.

### Random Testing

**Q(2)** Once I am randomly selected and tested in a calendar year will I be immune from further DOT random testing at the Berkeley Lab ?

**A** No. All drivers who are in a random selection pool have the same probability of being selected in each sampling period, regardless of whether they have been previously tested in the calendar year.

**Q(3)** How many times may I be expected to be random drug tested under DOT rules? How many times may I be expected to be alcohol tested?

**A** It is not possible to provide an exact answer to this question. It depends upon the required minimum annual sampling rate, and the law of probabilities. Knowing the sampling rate, an approximation of the probability that a given driver will be selected  $x$  number of times in a year may be calculated using the binomial distribution probability if we assume the following are true for calculation purposes: There are a fixed number of random selections for the year (sampling periods), the possible outcomes are only two ("selected" or "not selected"), the selections are independent of each other, and the probability of selection remains constant throughout the year.

The formula for the calculation is . .

$$P(x) = C_x^s \left[ \frac{n}{N} \right] \left[ 1 - \frac{n}{N} \right]^{(s-x)} \quad \text{where } C_x^s = \frac{s!}{x! (s-x)!} \quad \text{and}$$

$$x = 0, 1, 2, \dots, s$$

**A(3)**

**Cont.** In this formula,

$x$  = the exact number of times in a year for which the probability of being selected is to be calculated,

$s$  = the number of test days in the year,

$n$  = the number of individuals to be selected on each test day ( $N/s$ ),

$N$  = the size of the driver population to be sampled.

Let us assume that there will be 6 test days in the year, at the 50% sampling rate for drug testing. These calculations are:

- The probability that a given individual will not be selected ( $x=0$ ) is approximately 59%.
- The probability of being selected exactly 1 time ( $P[1]$ ) is approximately 32%.
- The probability of being selected exactly 2 times ( $P[2]$ ) is approximately 7%.
- The probability of being selected exactly 3 times ( $P[3]$ ) is approximately 1%.

The independent probabilities of being selected for alcohol testing at the currently required annual sampling rate of 25% are:

$$P(0) \approx 78\%, P(1) \approx 20\%, P(2) \approx 2\%, P(3) \approx 0$$

Clearly, this approximation is likely to prove to be somewhat in error in actual practice, mainly because this formula calculates the number of drivers expected to be selected, not tested, as required in the DOT rule. The number who will be tested cannot be easily calculated because that would assume we know the absentee rate in the population and that all drivers in the population have an equal probability of being absent on any given test day. Such a calculation would also unrealistically assume that all members of the population are employed for the entire year.

**Q(4)** A casual driver works regularly for two or more different companies. Whose random pool does the casual driver belong to?

**A** The casual driver will be in the pool of each motor carrier for which the driver works.

**Q(5)** What is the earliest date we can expect to see the required random annual alcohol testing rate reduced?

**A** The first year a reduction in the minimum rate would be possible is 1999, due to the fact the data must be for the entire industry (for two years), which would be reported in 1998. Only one year of data is necessary to raise the minimum rate; however, two years are required to lower the rate.

**Q(6)** Could the required minimum annual drug testing rate be reduced?

**A** The FHWA has proposed to issue a rule to lower the random drug testing rate to 25% if the industry-wide random positive rate is less than 1.0% for two consecutive calendar years, while testing at 50%. The rate would increase back to 50% if the industry rate were 1.0% or higher for any subsequent year.

**Return-to-duty testing**

**Q(7)** If a driver has a return-to-duty alcohol test result of 0.02 or greater but less than 0.04, can the driver just wait 24 hours and be reinstated to a safety-sensitive function without a test?

**A** No. A necessary step in returning to safety-sensitive functions is to pass a return-to-duty test. Unlike other alcohol testing situations, return-to-duty alcohol testing must actually show a test result below 0.02.

**Reasonable suspicion testing**

**Q(8)** Does DOT require me to have a reasonable suspicion alcohol test if I am found to be in possession of alcohol?

**A** No. The mere possession of alcohol does not, by itself, constitute a need for reasonable suspicion testing. Such testing must be based on observations concerning the driver's appearance, behavior, speech, or body odor. However, the possession of alcohol without these indications of alcohol use, is a violation of DOT alcohol prohibitions by itself and will result in removal from safety sensitive function and other actions as described in Section 7, *Consequences of Violating Prohibitions*.

**Possession or Use of Drugs and Alcohol**

**Q(9)** As a driver, what am I expected to do if my doctor or dentist gives me medication during an office procedure or a prescription which could be in my system while I am driving?

**A** Drivers are expected to inquire of physicians whether medications they are given or prescribed contain controlled substances<sup>22</sup>. If so, the driver may not perform safety-sensitive functions unless the driver receives the physician's assurance that the controlled substance will not affect the driver's ability to safely operate a CMV.

**Q(10)** May I use an off-the-shelf cough medication containing a small amount of alcohol while driving a CMV?

**A** No. A driver may not use alcohol in any amount, including in medication, while performing a safety-sensitive function.

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<sup>22</sup> See Appendix A.

**Q(11)** May I carry polish or cleaners containing a small amount of isopropyl alcohol in my truck to use to clean windows?

**A** No. A driver may not be on duty or operate a CMV while possessing any form or quantity of alcohol, unless it is manifested and transported as part of a shipment.

**Safety-sensitive functions**

**Q(12)** I normally do not perform safety-sensitive functions. However, my company requires me to hold a CDL to act as a backup driver. I have never been called on to act in this capacity. Must I be included in the random sampling program?

**A** If your company requires you to hold a CDL in order to drive a CMV in commerce, you must be in the random selection pool for drug testing. With regard to random alcohol testing, if you are required to be in readiness to drive at any time during the day, you are "performing" safety-sensitive functions during that time and may be required to be randomly tested for alcohol.

**Q(13)** Am I subject to the 49 CFR 382 alcohol possession and use regulations after I get off work if I drive the CMV to a restaurant or to a motel?

**A** No. The DOT's alcohol regulations are highly sensitive to the time of performance of safety-sensitive duties. During the period of time when you are not driving a CMV in commerce or performing other safety-sensitive functions, you are not subject to these alcohol prohibitions, provided such possession or use is otherwise allowed by law.

**Q(14)** I work for company A. Daily, I deliver goods in a CMV to company B who has a DOT random testing program. Must I be included in company B's random pool?

**A** No, unless you are employed as a driver by company B and/or using company B's vehicles.

**Q(15)** Is it correct to assume that CDL holders need only be in the random pools of the motor carriers who maintain their qualification file?

**A** No. For purposes of part 382, driver means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors 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.





## Appendix A - 21 CFR 1308.11 - 15

### Controlled Substances, Schedules I - V

#### 21 CFR - Food and Drugs

#### Section 1308.11 Schedule I.

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraph (b)(34) only, the term isomer includes the optical and geometric isomers):

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4- 9815 piperidinyl]-N-phenylacetamide).
- (2) Acetylmethadol.....9601
- (3) Allyprodine.....9602
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM).....9603
- (5) Alphameprodine.....9604
- (6) Alphamethadol.....9605
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4- 9814 piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N- propanilido) piperidine).
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4- 9832 piperidinyl]-N-phenylpropanamide).
- (9) Benzethidine.....9606
- (10) Betacetylmethadol.....9607
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl 9830 ]-N-phenylpropanamide).
- (12) Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2- 9831 phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide.
- (13) Betameprodine. ....9608
- (14) Betamethadol .....9609
- (15) Betaprodine.....9611
- (16) Clonitazene.....9612
- (17) Dextromoramide .....9613
- (18) Diampromide .....9615
- (19) Diethylthiambutene.....9616
- (20) Difenoxin.....9168
- (21) Dimenoxadol.....9617
- (22) Dimepheptanol.....9618
- (23) Dimethylthiambutene.....9619
- (24) Dioxaphetyl butyrate.....9621
- (25) Dipipanone.....9622
- (26) Ethylmethylthiambutene .....9623

(27) Etonitazene.....	9624
(28) Etoxidine .....	9625
(29) Furethidine.....	9626
(30) Hydroxypethidine.....	9627
(31) Ketobemidone.....	9628
(32) Levomoramide.....	9629
(33) Levophenacymorphan.....	9631
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N- 9813 phenylpropanamide).	
(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4- 9833 piperidinyl]-N-phenylpropanamide).	
(36) Morpheridine.....	9632
(37) MP3P (1-methyl-4-phenyl-4-propionoxypiperidine).....	9661
(38) Noracymethadol.....	9633
(39) Norlevorphanol.....	9634
(40) Normethadone.....	9635
(41) Norpipanone .....	9636
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4- 9812 piperidinyl] propanamide).	
(43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine.....	9663
(44) Phenadoxone.....	9637
(45) Phenampromide.....	9638
(46) Phenomorphan.....	9647
(47) Phenoperidine.....	9641
(48) Piritramide.....	9642
(49) Proheptazine.....	9643
(50) Properidine.....	9644
(51) Propiram.....	9649
(52) Racemoramide.....	9645
(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]- 9835 propanamide).	
(54) Tilidine.....	9750
(55) Trimeperidine.....	9646

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine.....	9319
(2) Acetyldihydrocodeine.....	9051
(3) Benzylmorphine.....	9052
(4) Codeine methylbromide.....	9070
(5) Codeine-N-Oxide.....	9053
(6) Cyprenorphine.....	9054
(7) Desomorphine.....	9055
(8) Dihydromorphine.....	9145
(9) Drotebanol.....	9335
(10) Etorphine (except hydrochloride salt).....	9056
(11) Heroin.....	9200
(12) Hydromorphanol.....	9301
(13) Methyl-desorphine.....	9302
(14) Methyl-dihydromorphine.....	9304
(15) Morphine methylbromide.....	9305
(16) Morphine methylsulfonate.....	9306

(17) Morphine-N-Oxide.....	9307
(18) Myrophine.....	9308
(19) Nicocodeine.....	9309
(20) Nicomorphine.....	9312
(21) Normorphine.....	9313
(22) Pholcodine.....	9314
(23) Thebacon.....	9315

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1) 4-bromo-2,5-dimethoxy-amphetamine.....	7391	Some trade or other names: 4-bromo-2,5-dimethoxy- $\pm$ -methylphenethylamine; 4-bromo-2,5-DMA
(2) 2,5-dimethoxyamphetamine.....	7396	Some trade or other names: 2,5-dimethoxy- $\pm$ -methylphenethylamine; 2,5 -DMA
(3) 2,5-dimethoxy-4-ethylamphet-amine.....	7399	Some trade or other names: DOET
(4) 4-methoxyamphetamine.....	7411	Some trade or other names: 4-methoxy- $\pm$ -methylphenethylamine; paramethoxyamphetamine, PMA
(5) 5-methoxy-3,4-methylene-dioxy-amphetamine.....	7401	
(6) 4-methyl-2,5-dimethoxy-amphetamine .....	7395	Some trade and other names: 4-methyl-2,5-dimethoxy- $\pm$ -methylphenethylamine; "DOM"; and "STP"
(7) 3,4-methylene-dioxy amphetamine.....	7400	
(8) 3,4-methylene-dioxymethamphetamine (MDMA).....	7405	
(9) 3,4-methylene-dioxy-N-ethylamphetamine (also known as N-ethyl- 7404 alpha-methyl-3,4(methylene-dioxy)phenethylamine, N-ethyl MDA, MDE, MDEA.		
(10) N-hydroxy-3,4-methylene-dioxyamphetamine (also known as N-hydroxy 7402 -alpha-methyl-3,4(methylene-dioxy)phenethylamine, and N-hydroxy MDA.		
(11) 3,4,5-trimethoxy amphetamine.....	7390	
(12) Bufotenine.....	7433	Some trade and other names: 3-(--Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5- hydroxy-N,N-dimethyltryptamine; mappine
(13) Diethyltryptamine.....	7434	Some trade and other names: N,N-Diethyltryptamine; DET
(14) Dimethyltryptamine.....	7435	Some trade or other names: DMT
(15) Ibogaine.....	7260	Some trade and other names: 7-Ethyl-6,6,7,8,9,10,12,13-octahydro-2- methoxy-6,9-methano-5H-pyrido [1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga
(16) Lysergic acid diethylamide.....	7315	
(17) Marihuana.....	7360	
(18) Mescaline.....	7381	
(19) Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy- 7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.		

- (20) Peyote.....7415 Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts (Interprets 21 USC 812(c), Schedule I(c) (12))
- (21) N-ethyl-3-piperidyl benzilate.....7482
- (22) N-methyl-3-piperidyl benzilate.....7484
- (23) Psilocybin.....7437
- (24) Psilocyn.....7438
- (25) Tetrahydrocannabinols.....7370  
Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: .1 cis or trans tetrahydrocannabinol, and their optical isomers

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Section 1308.12 Schedule II.

(a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the Controlled Substances Code Number set forth opposite it.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate excluding apomorphine, thebaine-derived butorphanol, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (1) Raw opium.....9600
- (2) Opium extracts.....9610
- (3) Opium fluid.....9620
- (4) Powdered opium.....9639
- (5) Granulated opium.....9640
- (6) Tincture of opium.....9630
- (7) Codeine.....9050
- (8) Ethylmorphine.....9190
- (9) Etorphine hydrochloride.....9059
- (10) Hydrocodone.....9193
- (11) Hydromorphone.....9150
- (12) Metopon.....9260
- (13) Morphine.....9300
- (14) Oxycodone.....9143
- (15) Oxymorphone.....9652
- (16) Thebaine.....9333

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy

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Section 1308.13 Schedule III.

(a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form 1405 containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under Section 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine.....1228
- (3) Chlorphentermine.....1645
- (4) Clortermine.....1647
- (5) Phendimetrazine.....1615

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture or preparation containing:

- (i) Amobarbital.....2126
- (ii) Secobarbital.....2316
- (iii) Pentobarbital.....2271 or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(2) Any suppository dosage form containing:

- (i) Amobarbital.....2126
- (ii) Secobarbital.....2316
- (iii) Pentobarbital.....2271 or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

- (3) Any substance which contains any quantity of a derivative of 2100 barbituric acid or any salt thereof.
- (4) Chlorhexadol.....2510
- (5) Lysergic acid.....7300
- (6) Lysergic acid amide.....7310
- (7) Methyprylon.....2575
- (8) Sulfondiethylmethane.....2600
- (9) Sulfonethylmethane.....2605
- (10) Sulfonmethane.....2610
- (11) Tiletamine and zolazepam or any salt thereof.....7295

Some trade or other names for a tiletamine-zolazepam combination product: Telazol

Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone

Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e] [ 1,4]-diazepin-7(1H)-one, flupyrazapon.

(d) Nalorphine 9400.

(e) Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) Not more than 1.8 grams of codeine per 100 milliliters or not 9803 more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.
- (2) Not more than 1.8 grams of codeine per 100 milliliters or not 9804 more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (3) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) 9805 per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.
- (4) Not more than 300 milligrams of dihydrocodeinone (hydrocodone) 9806 per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.
- (5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or 9807 not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters 9808 or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 9809 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or 9810 per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts of isomers is possible within the specific chemical designation:

(1) Anabolic Steroids .....4000

[39 FR 22142, June 20, 1974, as amended at 41 FR 43401, Oct. 1, 1976; 43 FR 3359, Jan. 25, 1978; 44 FR 40888, July 13, 1979; 46 FR 52334, Oct. 27, 1981; 51 FR 5320, Feb. 13, 1986; 52 FR 2222, Jan. 21, 1987; 52 FR 5952, Feb. 27, 1987; 56 FR 5754, Feb. 13, 1991; 56 FR 11932, Mar. 21, 1991]

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Section 1308.14 Schedule IV.

(a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section. Each drug or substance has been assigned the DEA Controlled Substances Code Number set forth opposite it.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 9167 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3- 9278 methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam .....2882  
(2) Barbital .....2145  
(3) Bromazepam .....2748



(4) Camazepam .....	2749
(5) Chloral betaine .....	2460
(6) Chloral hydrate .....	2465
(7) Chlordiazepoxide .....	2744
(8) Clobazam .....	2751
(9) Clonazepam .....	2737
(10) Clorazepate .....	2768
(11) Clotiazepam .....	2752
(12) Cloxazolam .....	2753
(13) Delorazepam .....	2754
(14) Diazepam .....	2765
(15) Estazolam .....	2756
(16) Ethchlorvynol .....	2540
(17) Ethinamate .....	2545
(18) Ethyl loflazepate .....	2758
(19) Fludiazepam .....	2759
(20) Flunitrazepam .....	2763
(21) Flurazepam .....	2767
(22) Halazepam .....	2762
(23) Haloxazolam .....	2771
(24) Ketazolam .....	2772
(25) Loprazolam .....	2773
(26) Lorazepam .....	2885
(27) Lormetazepam .....	2774
(28) Mebutamate .....	2800
(29) Medazepam .....	2836
(30) Meprobamate .....	2820

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Section 1308.15 Schedule V.

(a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

- (1) Buprenorphine .....9064

(c) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- (1) Pyrovalerone.....1485.
- (2) [Reserved]

[39 FR 22143, June 20, 1974, as amended at 43 FR 38383, Aug. 28, 1978; 44 FR 40888, July 13, 1979; 47 FR 49841, Nov. 3, 1982; 50 FR 8108, Feb. 28, 1985; 52 FR 5952, Feb. 27, 1987; 53 FR 10870, Apr. 4, 1988; 56 FR 61372, Dec. 3, 1991]



## **Appendix B - 49 CFR 40 Procedures For Transportation Workplace Drug Testing Programs**

**59 FR 7340**

Authority: 49 U.S.C. 102,301,322; 49 U.S.C. app. 1301nt., app. 1434nt., app. 2717, app. 1618a.

Source: 54 FR 49866, Dec. 1, 1989, unless otherwise noted.

### **Subpart A-GENERAL**

#### **§ 40.1 Applicability.**

This part applies, through regulations that reference it issued by agencies of the Department of Transportation, to transportation employers, including self-employed individuals, required to conduct drug and/or alcohol testing programs by DOT agency regulations and to such transportation employers' officers, employees, agents and contractors (including, but not limited to, consortia). Employers are responsible for the compliance of their officers, employees, agents, consortia and/or contractors with the requirements of this part.

#### **§ 40.3 Definitions.**

The following definitions apply to this part:

*Air blank.* A reading by an EBT of ambient air containing no alcohol. (In EBTs using gas chromatography technology, a reading of the device's internal standard.)

*Alcohol.* The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

*Alcohol concentration.* The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

*Alcohol use.* The consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

*Aliquot.* A portion of a specimen used for testing.

*Blind sample or blind performance test specimen.* A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens, and which is spiked with known quantities of specific drugs or which is blank, containing no drugs.

*Breath Alcohol Technician (BAT).* An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

*Canceled or invalid test.* In drug testing, a drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither a positive nor a negative test. For purposes of this part, a sample that has been rejected for testing by a laboratory is treated the same as a canceled test. In alcohol testing, a test that is deemed to be invalid under § 40.79. It is neither a positive nor a negative test.

*Chain of custody.* Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. With respect to drug testing, these procedures shall require that an appropriate drug testing custody form (see § 40.23(a)) be used from time of collection to receipt by the laboratory and that upon receipt by the laboratory an appropriate laboratory chain of custody form(s) account(s) for the sample or sample aliquots within the laboratory.

*Collection container.* A container into which the employee urinates to provide the urine sample used for a drug test.

*Collection site.* A place designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

*Collection site person.* A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

*Confirmation (or confirmatory) test.* In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

*DHHS.* The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

*DOT agency.* An agency of the United States Department of Transportation administering regulations related to drug or alcohol testing, including the United States Coast Guard (for drug testing purposes only), the Federal Aviation Administration, the Federal Railroad Administration, the Federal Highway Administration, the Federal Transit Administration, the Research and Special Programs Administration, and the Office of the Secretary.

*Employee.* An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. As used in this part "employee" includes an applicant for employment. "Employee" and "individual" or "individual to be tested" have the same meaning for purposes of this part.

*Employer.* An entity employing one or more employees that is subject to DOT agency regulations requiring compliance with this part. As used in this part, employer includes an industry consortium or joint enterprise comprised of two or more employing entities.

*EBT (or evidential breath testing device).* 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 of Evidential Breath Measurement Devices" (CPL), and identified

on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

*Medical Review Officer (MRO).* A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

*Screening test (or initial test).* In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

*Secretary.* The Secretary of Transportation or the Secretary's designee.

*Shipping container.* A container capable of being secured with a tamper-evident seal that is used for transfer of one or more urine specimen bottle(s) and associated documentation from the collection site to the laboratory.

*Specimen bottle.* The bottle that, after being labeled and sealed according to the procedures in this part, is used to transmit a urine sample to the laboratory.

## **Subpart B-Drug Testing**

### **§ 40.21 The drugs.**

(a) DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

(b) An employer may include in its testing protocols other controlled substances or alcohol only pursuant to a DOT agency approval, if testing for those substances is authorized under agency regulations and if the DHHS has established an approved testing protocol and positive threshold for each such substance.

(c) Urine specimens collected under DOT agency regulations requiring compliance with this part may only be used to test for controlled substances designated or approved for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT agency regulations.

(d) This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

### **§ 40.23 Preparation for testing.**

The employer and certified laboratory shall develop and maintain a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens under this part. Such a procedure shall include, at a minimum, the following:

(a) Utilization of a standard drug testing custody and control form (carbonless manifold). The form shall be a multiple-part, carbonless record form with an original (copy 1), and a "second original" (copy 2), both of which shall accompany the specimen to the laboratory. Copies shall be provided for the Medical Review Officer (copy 3, to go directly to the MRO), the donor

(copy 4), the collector (copy 5), and the employer representative (copy 6). If the employer desires to exercise the split sample option, then an additional copy of the urine custody and control form is required. This copy (copy 7) shall be the "split specimen original," and is to accompany the split specimen to the same lab, a second lab, or an employer storage site. There must be a positive link established between the first specimen and the split specimen through the specimen identification number; the split specimen identification number shall be an obvious derivative of the first specimen identification number. The form should be a permanent record on which identifying data on the donor, and on the specimen collection and transfer process, is retained. The form shall be constructed to display, at a minimum, the following elements, which shall appear on its respective parts as indicated: [See NOTES at the end of this document for amendment which will supersede §40.23(a) effective February 16, 1995.]

(1) The following information shall appear on all parts of the form:

(i) A preprinted specimen identification number, which shall be unique to the particular collection. If the split sample option is exercised, the preprinted specimen identification number for split specimen shall be an obvious derivative of the first specimen; e.g., first specimen identification number suffixed "A," split specimen suffixed "B."

(ii) A block specifying the donor's employee identification number or Social Security number, which shall be entered by the collector.

(iii) A block specifying the employer's name, address, and identification number.

(iv) A block specifying the Medical Review Officer's name and address.

(v) Specification for which drugs the specimen identified by this form will be tested.

(vi) Specification for the reason for which this test conducted (preemployment, random, etc.), which shall be entered by the collector.

(vii) A block specifying whether or not the collector read the temperature within 4 minutes, and then notation, by the collector, that the temperature of specimen just read is within the range of 32.5-37.7C/90.5-99.8F; if not within the acceptable range, an area is provided to record the actual temperature.

(viii) A chain-of-custody block providing areas to enter the following information for each transfer of possession: Purpose of change; released by (signature/print name); received by (signature/print name); date. The words "Provide specimen for testing" and "DONOR" shall be preprinted in the initial spaces.

(ix) Information to be completed by the collector: Collector's name; date of collection; location of the collection site; a space for remarks at which unusual circumstances may be described; notation as to whether or not the split specimen was taken in accordance with Federal requirements if the option to offer the split specimen was exercised by the employer; and a certification statement as set forth below and a signature block with date which shall be completed by the collector:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certification on Copy 3 of this form, that it bears the same identification number as that set forth above, and that it has been collected, labelled and sealed as in accordance with applicable Federal requirements.

(2) Information to be provided by the laboratory after analysis, which shall appear on parts 1, 2 and 7 (if applicable) of the form only: Accession number; laboratory name; address; a space for remarks; specimen results; and certification statement as set forth below, together with spaces to enter the printed name and signature of the certifying laboratory official and date:

I certify that the specimen identified by this accession number is the same specimen that bears the identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth below are for that specimen.

(3) A block to be completed by the Medical Review Officer (MRO), after the review of the specimen, which shall appear on parts 1, 2 and 7 (if applicable) of the form only, provides for the MRO's name, address, and certification, to read as follows, together with spaces for signature and date:

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My final determination/verification is:

(4) Information to be provided by the donor, which shall appear on parts 3 through 6 of the form only: Donor name (printed); daytime phone number; date of birth; and certification statement as set forth below, together with a signature block with date which shall be completed by the donor.

I certify that I provided my urine specimen to the collector; that the specimen bottle was sealed with a tamper-proof seal in my presence; and that the information provided on this form and on the label affixed to the specimen bottle is correct.

(5) A statement to the donor which shall appear only on parts 3 and 4 of the form, as follows:

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 4-Donor) of this form-DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE YOUR COPY WITH YOU.

A form meeting the requirements of this paragraph is displayed at appendix A to this part.

(6) The drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.

(b)(1) Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen. A clean, single-use collection container (e.g., disposable cup or sterile urinal) that is securely wrapped until used may also be employed. *If urination is directly into the specimen bottle, the specimen bottle shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided. If a separate collection container is used for urination, the collection container shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior*



to its being provided; and the collection site person shall unwrap the specimen bottle in the presence of the employee at the time the urine specimen is presented.

(2) Use of a tamperproof sealing system, designed in a manner such to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form, and space shall be provided to initial the bottle affirming its identity. For purposes of clarity, this part assumes use of a system made up of one or more preprinted labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which the specimen and associated paperwork may be transferred and which can be sealed and initialed to prevent undetected tampering. In the split specimen option is exercised, the split specimen and associated paperwork shall be sealed in a shipping (or storage) container and initialed to prevent undetected tampering.

(d) Written procedures, instructions and training shall be provided as follows:

(1) Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required in this part

(i) A non-medical collection site person shall receive training in compliance with this part and shall demonstrate proficiency in the application of this part prior to serving as a collection site person. A medical professional, technologist or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person is provided instructions described in this part and performs collections in accordance with those instructions.

(ii) Collection site persons shall be provided with detailed, clear instructions on the collection of specimens in compliance with this part. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(3) Unless it is impracticable for any other individual to perform this function, a direct supervisor of an employee shall not serve as the collection site person for a test of the employee. If the rules of a DOT agency are more stringent than this provision regarding the use of supervisors as collection site personnel, the DOT agency rules shall prevail with respect to testing to which they apply.

(4) In any case where a collection is monitored by non-medical personnel or is directly observed, the collection site person shall be of the same gender as the donor. A collection is monitored for this purpose if the enclosure provides less than complete privacy for the donor (e.g., if a restroom stall is used and the collection site person remains in the restroom, or if the collection site person is expected to listen for use of unsecured sources of water.)

#### **§ 40.25 Specimen collection procedures.**

(a) *Designation of collection site.* (1) Each employer drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities

and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory. An independent medical facility may also be utilized as a collection site provided the other applicable requirements of this part are met.

(2) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this part, including a properly equipped mobile facility. A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(b) *Security.* The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen.

(1) Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(2) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access (e.g., through a rear door not in the view of the collection site person) is not possible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the employee or distraction of the collection site person.

(3) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply. The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

(c) *Chain of custody.* The chain of custody block of the drug testing custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be cancelled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site. Every effort shall be made to minimize the number of persons handling specimens.

(d) *Access to authorized personnel only.* No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person and ensure against any confusion in the identification of specimens, the collection site person shall have only one donor under his or her supervision at any time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialled, the drug testing custody and control form has been executed, and the employee has departed the site (or, in the case of an employee who was unable to provide a complete specimen, has entered a waiting area).

(e) *Privacy.* (1) Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided, as further described in this paragraph.

(2) For purposes of this part, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute the specimen:

(i) The employee has presented a urine specimen that falls outside the normal temperature range (32degs.-38degs. C/90degs.-100degs. F), and

(A) The employee declines to provide a measurement of oral body temperature, as provided in paragraph (f)(14) of the part; or

(B) Oral body temperature varies by more than 1 degree C/1.8 degree F from the temperature of the specimen;

(ii) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;

(iii) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or

(iv) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to service.

(3) A higher-level supervisor of the collection site person, or a designated employer representative, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described in subparagraph (2) of this paragraph.

(f) *Integrity and identity of specimen.* Employers shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains

blue. Where practicable, there shall be no other source of water (e.g., shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.

(2) When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container, if applicable, for this purpose.

(8) The collection site person shall note any unusual behavior or appearance on the urine custody and control form.

(9) In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) The collection site person shall instruct the employee to provide at least 45 ml of urine under the split sample method of collection or 30 ml of urine under the single sample method of collection.

(i)(A) Employers with employees subject to drug testing only under the drug testing rules of the Research and Special Programs Administration and/or Coast Guard may use the "split sample" method of collection or may collect a single sample for those employees.

(B) Employers with employees subject to drug testing under the drug testing rules of the Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, or Federal Aviation Administration shall use the "split sample" method of collection for those employees.

(ii) Employers using the split sample method of collection shall follow the procedures in this paragraph (f)(10)(ii):

(A) The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml.

(B)(1) If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.

(2) If a single specimen bottle is used as a collection container, the collection site person, in the presence of the donor, shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).

(C) Nothing in this section precludes the use of a collection method or system that does not involve the physical pouring of urine from one container or bottle to another by the collection site person, provided that the method or system results in the subdivision of the specimen into a primary (30 ml) and a split (at least 15 ml) specimen that can be transmitted to the laboratory and tested in accordance with the requirements of this Subpart.

(D) Both bottles shall be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the chain of custody form, to the laboratory.

(E) If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.

(F) When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.

(G) The result of the test of the split specimen is transmitted by the second laboratory to the MRO.

(H) Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split specimen.

(I) If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the employer, and the employee.

(iii) Employers using the single sample collection method shall follow the procedures in paragraph:

(A) The collector may choose to direct the employee to urinate either directly into a specimen bottle or into a separate collection container.

(B) If a separate collection container is used, the collection site person shall pour at least 30 ml of the urine from the collection container into the specimen bottle in the presence of the employee.

(iv) In either collection methodology, upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30 milliliters of urine for the primary or single specimen bottle and, where the split specimen collection method is used, an additional 15 ml of urine for the split specimen bottle. If the individual is unable to provide such a quantity of urine, the collection site person shall instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen shall be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the employer so notified. The MRO shall refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. (In preemployment testing, if the employer 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 or her conclusions to the employer in writing.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

(13) A specimen temperature outside the range of 32 degs.-38 degs. C/90 degs. - 100 degs. F constitutes a reason to believe that the individual has altered or substituted the specimen (see paragraph (e)(2)(i) of this section). In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in paragraph (e)(2)(i) or (iii) of this section, a second specimen shall

be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual being tested shall be present at the same time during procedures outlined in paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamperproof seal shall also be applied.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.

(22)(i) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided.

(ii) When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release from authorizing the collection of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

(23) The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.

(24) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

(25)(i) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him or her or shall secure them. After the collection site person returns to the

work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

(ii) The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the employer) a new collection begun.

(g) *Collection control.* To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled.

(h) *Transportation to Laboratory.* Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering with the specimen and/or the form. On the tape sealing the shipping container, the collection site person shall sign and enter the date specimens were sealed in the shipping container for shipment. The collection site person shall ensure that the chain of custody documentation is enclosed in each container sealed for shipment to the drug testing laboratory. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site.

(i) *Failure to cooperate.* If the employee refuses to cooperate with the collection process, the collection site person shall inform the employer representative and shall document the non-cooperation on the drug testing custody and control form.

(j) *Employee requiring medical attention.* If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.

(k) *Use of chain of custody form.* A chain of custody form (and a laboratory internal chain of custody document, where applicable), shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain of custody shall be identified. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken



out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site. Every effort shall be made to minimize the number of persons handling specimens.

**§ 40.27 Laboratory personnel.**

(a) *Day-to-day management.* (1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by a State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraph (a)(2) (i), (ii), or

(iii) of this section, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multi-specialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures

and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in § 40.29(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) *Test validation.* The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) *Day-to-day operations and supervision of analysts.* The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) *Other personnel.* Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) *Training.* The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) *Files.* Laboratory personnel files shall include: resume of training and experience, certification or license if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

#### **§ 40.29 Laboratory analysis procedures.**

(a) *Security and chain of custody.*

(1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to areas where records are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in

urine testing or on behalf of DHHS, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) *Receiving.*

(1)

(i) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the employer's chain of custody forms attached to the shipment shall be immediately reported to the employer and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(ii) Where the employer has used the split sample method, and the laboratory observes that the split specimen is untestable, inadequate, or unavailable for testing, the laboratory shall nevertheless test the primary specimen. The laboratory does not inform the MRO or the employer of the untestability, inadequacy, or unavailability of the split specimen until and unless the primary specimen is a verified positive test and the MRO has informed the laboratory that the employee has requested a test of the split specimen.

(2) In situations where the employer uses the split sample collection method, the laboratory shall log in the split specimen, with the split specimen bottle seal remaining intact. The laboratory shall store this sample securely (see paragraph (c) of this section). If the result of the test of the primary specimen is negative, the laboratory may discard the split specimen. If the result of the test of the primary specimen is positive, the laboratory shall retain the split specimen in frozen storage for 60 days from the date on which the laboratory acquires it (see paragraph (h) of this section). Following the end of the 60-day period, if not informed by the MRO that the employee has requested a test of the split specimen, the laboratory may discard the split specimen.

(3) When directed in writing by the MRO to forward the split specimen to another DHHS-certified laboratory for analysis, the second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GC/MS confirmation shall be conducted without regard to the cutoff levels of § 40.29(f). The split specimen shall be retained in long-term storage for one year by the laboratory conducting the analysis of the split specimen (or longer if litigation concerning the test is pending).

(c) *Short-term refrigerated storage.* Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.

(d) *Specimen processing.* Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) *Initial test.*

(1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

	Initial test cutoff levels (ng/ml)
Marijuana metabolites .....	50
Cocaine metabolites .....	30
Opiate metabolites .....	* 300
Phencyclidine .....	25
<u>Amphetamines</u> .....	1,000

\*-25 ng/ml if immunoassay specific for free morphine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(f) *Confirmatory test.*

(1) All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite {1}.....	15
Cocaine metabolite {2}.....	150
Opiates	
Morphine.....	300
Codeine.....	00
Phencyclidine.....	25
Amphetamines:	
Amphetamine.....	500
<u>Methamphetamine {3}</u>	500

- {1} Delta-9-tetrahydrocannabinol-9-carboxylic acid.
- {2} Benzoyllecgonine
- {3} Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(g) *Reporting results.*

(1) The laboratory shall report test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number).

(2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the employer. Provided, that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide the employer an aggregate quarterly statistical summary of urinalysis testing of the employer's employees. Laboratories may provide the report to a consortium provided that the laboratory provides employer-specific data and the consortium forwards the employer-specific data to the respective employers within 14 days of receipt of the laboratory report. The laboratory shall provide the report to the employer or consortium not more than 14 calendar days after the end of the quarter covered by the summary. Laboratory confirmation data only shall be included from test results reported within that quarter. The summary shall contain only the following information:

- (i) Number of specimens received for testing;
- (ii) Number of specimens confirmed positive for-
  - (A) Marijuana metabolite
  - (B) Cocaine metabolite
  - (C) Opiates;
  - (D) Phencyclidine;
  - (E) Amphetamines;
- (iii) Number of specimens for which a test was not performed.

Quarterly reports shall not contain personal identifying information or other data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent disclosure of such data, the laboratory shall not send such a report until data are sufficiently aggregated to make such an inference unlikely. In any quarter in which a report is withheld for this reason, or because no testing was conducted, the laboratory shall so inform the consortium/employer in writing.

Marijuana metabolites  
Cocaine metabolites  
Opiate metabolites  
Phencyclidine  
Amphetamine

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) *Long-term storage.* Long-term frozen storage (-20 degrees C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1-year period, an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

(i) *Retesting specimens.* Because some analytes 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.

(j) *Subcontracting.* Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in this part. This paragraph does not prohibit subcontracting of laboratory analysis if specimens are sent directly from the collection site to the subcontractor, the subcontractor is a laboratory certified by DHHS as required in this part, the subcontractor performs all analysis and provides storage

required under this part, and the subcontractor is responsible to the employer for compliance with this part and applicable DOT agency regulations as if it were the prime contractor.

(k) *Laboratory facilities.*

(1) Laboratory facilities shall comply with applicable provisions of any State licensing requirements.

(2) Laboratories certified in accordance with DHHS Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) *Inspections.* The Secretary, a DOT agency, any employer utilizing the laboratory, DHHS or any organization performing laboratory certification on behalf of DHHS reserves the right to inspect the laboratory at any time. Employer contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the employer and the DOT agency of jurisdiction (directly or through an agent) to conduct unannounced inspections.

(m) *Documentation.* The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

(n) *Additional requirements for certified laboratories.*-(1) Procedure manual. Each laboratory shall have a procedure manual which includes the principles of each test preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of methods, cutoff values, mechanisms for reporting results, controls criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) *Standards and controls.* Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) *Instruments and equipment.*

(i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) *Remedial actions.* There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) Personnel available to testify at proceedings. A laboratory shall have qualified personnel available [sic]

(6) The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO.

**§ 40.31 Quality assurance and quality control.**

(a) *General.* Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) *Laboratory quality control requirements for initial tests.* Each analytical run of specimens to be screened shall include:

- (1) Urine specimens certified to contain no drug;
- (2) Urine specimens fortified with known standards; and
- (3) Positive controls with the drug or metabolite at or near the cutoff level.

In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure the carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) *Laboratory quality control requirements for confirmation tests.* Each analytical run of specimens to be confirmed shall include:

- (1) Urine specimens certified to contain no drug;
- (2) Urine specimens fortified with known standards; and
- (3) Positive controls with the drug or metabolite at or near the cutoff level. The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.



(d) *Employer blind performance test procedures.*

(1) Each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures as provided in this paragraph.

(2) Each employer shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter. A DOT agency may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

(3) For employers with 2000 or more covered employees, approximately 80 percent of the blind performance test samples shall be blank (i.e., containing no drug or otherwise as approved by a DOT agency) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibit spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.

(4) Employers with fewer than 2000 covered employees may submit blind performance test specimens as provided in paragraph (d)(3) of this section. Such employers may also submit only blank samples or may submit two separately labeled portions of a specimen from the same non-covered employee.

(5) Consortiums shall be responsible for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium.

(6) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individual responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the finding to DHHS.

(7) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the employer shall promptly notify the DOT agency concerned. The DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and, if there is reason to believe the error could have been systemic, the DOT agency may also require review and reanalysis of previously run specimens.

(8) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality control data from the batch of specimens which included the false positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-

to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

**§ 40.33 Reporting and review of results.**

*(a) Medical review officer shall review confirmed positive results.*

(1) An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.

(2) The duties of the MRO with respect to negative results are purely administrative.

*(b) Medical review officer-qualifications and responsibilities.*

(1) The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.

(2) The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest, including assuring that the MRO has no responsibility for, and is not supervised by or the supervisor of, any persons who have responsibility for the drug testing or quality control operations of the laboratory.

(3) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results or urine samples that are not obtained or processed in accordance with this part.

*(c) Positive test result.*

(1) Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test result with him or her.

(2) The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person

may gather information from the employee. Except as provided in paragraph (c)(5) of this section, the MRO shall talk directly with the employee before verifying a test as positive.

(3) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated management official who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.

(4) If, after making all reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave.

(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

(i) The employee expressly declines the opportunity to discuss the test;

(ii) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see paragraphs (c) (3) and (4) of this section), and more than five days have passed since the date the employee was successfully contacted by the designated employer representative; or

(iii) Other circumstances provided for in DOT agency drug testing regulations.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5)(ii) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

(7) Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both.

(d) *Verification for opiates; review for prescription medication.* Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence-in addition to the urine test-of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the employer's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) In a situation in which the employer has used the single sample method of collection, the MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a reanalysis of the original specimen, if the test is verified positive. If requested to do so by the employee within 72 hours of the employee's having been informed of a verified positive test, the Medical Review Officer shall direct, in writing, a reanalysis of the original sample. The MRO may also direct, in writing, such a reanalysis if the MRO questions the accuracy or validity of any test result. Only the MRO may authorize such a reanalysis, and

such a reanalysis may take place only at laboratories certified by DHHS. If the reanalysis fails to reconfirm the presence of the drug or drug metabolite, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the employer and the employee.

(f) In situations in which the employer uses the split sample method of collection, the MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the employer, and the employee.

(g) If an employee has not contacted the MRO within 72 hours, as provided in paragraphs (e) and (f) of this section, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

(h) When the employer uses the split sample method of collection, the employee is not authorized to request a reanalysis of the primary specimen as provided in paragraph (e) of this section.

(i) Disclosure of information. Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.

(1) The MRO may disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if-

(i) An applicable DOT regulation permits or requires such disclosure;

(ii) In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

(iii) In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued performance by the employee of his or her safety-sensitive function could pose a significant safety risk.

(2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

**§ 40.35 Protection of employee records.**

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

**§ 40.37 Individual access to test and laboratory certification results.**

Any employee who is the subject of a drug test conducted under this part shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

**§ 40.39 Use of DHHS-certified laboratories.**

Employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988, and subsequent amendments thereto.

**Subpart C-Alcohol Testing**

**§ 40.51 The breath alcohol technician.**

(a) The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the EBT he or she is using and in the alcohol testing procedures of this part.

(1) Proficiency shall be demonstrated by successful completion of a course of instruction which, at a minimum, provides training in the principles of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath sample, and interpreting and recording EBT results.

(2) Only courses of instruction for operation of EBTs that are equivalent to the Department of Transportation model course, as determined by the National Highway Traffic Safety Administration (NHTSA), may be used to train BATs to proficiency. On request, NHTSA will review a BAT instruction course for equivalency.

(3) The course of instruction shall provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) he/she will use.

(4) Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT, to include practical experience and demonstrated competence in preparing the breath alcohol simulator or alcohol standard, and in maintenance and calibration of the EBT.

(5) The BAT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

(6) The employer or its agent shall establish documentation of the training and proficiency test of each BAT it uses to test employees, and maintain the documentation as provided in § 40.83.

(b) A BAT-qualified supervisor of an employee may conduct the alcohol test for that employee only if another BAT is unavailable to perform the test in a timely manner. A supervisor shall

not serve as a BAT for the employee in any circumstance prohibited by a DOT operating administration regulation.

(c) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. In order for a test conducted by such an officer to be accepted under Department of Transportation alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT that was used for the test.

**§ 40.55 Quality assurance plans for EBTs.**

(a) In order to be used in either screening or confirmation alcohol testing subject to this part, an EBT shall have a quality assurance plan (QAP) developed by the manufacturer.

(1) The plan shall designate the method or methods to be used to perform external calibration checks of the device, using only calibration devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests."

(2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use).

(3) The plan shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration.

(4) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.

(5) For a plan to be regarded as valid, the manufacturer shall have submitted the plan to NHTSA for review and have received NHTSA approval of the plan.

(b) The employer shall comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol screening or confirmation testing subject to this part.

(1) The employer shall ensure that external calibration checks of each EBT are performed as provided in the QAP.

(2) The employer shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in the QAP. The EBT shall not again be used for alcohol testing under this part until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.

(3) The employer shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the device's manufacturer or a state health agency or other appropriate state agency. The employer shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

(4) The employer shall maintain records of the external calibration checks of EBTs as provided in § 40.83.

(c) When the employer is not using the EBT at an alcohol testing site, the employer shall store the EBT in a secure space.

**§ 40.57 Locations for breath alcohol testing.**

(a) Each employer shall conduct alcohol testing in a location that affords visual and aural privacy to the individual being tested, sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.

(b) An employer may use a mobile collection facility (e.g., a van equipped for alcohol testing) that meets the requirements of paragraph (a) of this section.

(c) No unauthorized persons shall be permitted access to the testing location when the EBT remains unsecured or, in order to prevent such persons from seeing or hearing a testing result, at any time when testing is being conducted.

(d) In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet the requirements of paragraph (a) of this section. In such a case, the employer or BAT shall provide visual and aural privacy to the employee to the greatest extent practicable.

(e) The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing location while the testing procedure for a given employee (see §§ 40.61 through 40.65) is in progress.

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**§ 40.59 The breath alcohol testing form and log book.**

(a) Each employer shall use the breath alcohol testing form prescribed under this part. The form is found in appendix A to this subpart. Employers may not modify or revise this form, except that a form directly generated by an EBT may omit the space for affixing a separate printed result to the form.

(b) The form shall provide triplicate (or three consecutive identical) copies. Copy 1 (white) shall be transmitted to the employer. Copy 2 (green) shall be provided to the employee. Copy 3 (blue) shall be retained by the BAT. Except for a form generated by an EBT, the form shall be 8 1/2 by 11 inches in size.

(c) A log book shall be used in conjunction with any EBT used for screening tests that does not meet the requirements of § 40.53(b) (1) through (3). There shall be a log book for each such device, that is not used in conjunction with any other device and that is used to record every test conducted on the device. The log book shall include columns for the test number, date of the test, name of the BAT, location of the test, result displayed on the EBT, and initials of the employee taking each test.

**§ 40.61 Preparation for breath alcohol testing.**

(a) When the employee enters the alcohol testing location, the BAT will require him or her to provide positive identification (e.g., through use of a photo I.D. card or identification by an employer representative). On request by the employee, the BAT shall provide positive identification to the employee.

(b) The BAT shall explain the testing procedure to the employee.

**§ 40.63 Procedures for screening tests.**

(a) The BAT shall complete Step 1 on the Breath Alcohol Testing Form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

(b) An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.

(c) The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(d)(1) If the EBT does meet the requirements of sec 40.53(b)(1) through (3), the BAT shall ensure, before the screening test is administered for each employee, that he or she and the employee read the sequential test number displayed by the EBT.

(2) If the EBT does not meet the requirements of § 40.53(b)(1) through (3), the BAT and the employee shall take the following steps:

(i) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, time and quantified result in Step 3 of the form.

(ii) Record the test number, date of the test, name of the BAT, location, and quantified test result in the log book. The employee shall initial the log book entry.

(3) If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).

(4) If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.

(e)(1) In any case in which the result of the screening test is a breath alcohol concentration of less than 0.02, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

(2) No further testing is authorized. The BAT shall transmit the result of less than 0.02 to the employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained as required by § 40.81.

(3) If a test result printed by the EBT (see paragraph (d)(3) or (d)(4) of this section) does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the screening test (see paragraph (d)(1) of this section), the BAT shall note the disparity in the "Remarks" section. Both the employee and the BAT shall initial and sign the notation. In accordance with sec 40.79, the test is invalid and the employee shall be so advised.

(4) If a test result printed by the EBT (see paragraph (d)(2) or (d)(3) of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the



employee and the BAT shall initial or sign the notation. In accordance with § 40.79, the test is invalid and the employer and employee shall be so advised.

(f) If the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test shall be performed as provided in § 40.65.

(g) If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form and log book entry. The BAT will provide the employee with Copy 2 of the form.

**§ 40.65 Procedures for confirmation tests.**

(a) If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall follow the procedures of § 40.61.

(b) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form.

(c) (1) If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall complete Step 1 on the form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test. The BAT shall note in the "Remarks" section of the form that a different BAT conducted the screening test.

(2) In all cases, the procedures of § 40.63 (a), (b), and

(c) shall be followed. A new mouthpiece shall be used for the confirmation test.

(d) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using that instrument, which shall be taken out of service. However, testing may proceed on another instrument. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is completed and the EBT is found to be within tolerance limits.

(e) Before the confirmation test is administered for each employee, the BAT shall ensure that he or she and the employee read the sequential test number displayed by the EBT.

(f) In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any action under operating administration rules shall be based.

(g) (1) If the EBT provides a printed result, but does not print the results directly onto the form, the BAT shall show the employee the result displayed on the EBT. The BAT shall then affix the test result printout to the breath alcohol test form in the designated space, using a method that will provide clear evidence of removal (e.g., tamper-evident tape).

(2) If the EBT prints the test results directly onto the form, the BAT shall show the employee the result displayed on the EBT.

(h) (1) Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

(2) If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign in the "Remarks" section.

(3) If a test result printed by the EBT (see paragraph (g)(1) or (g)(2) of this section) does not match the displayed result, or if a sequential test number printed by the EBT does not match the sequential test number displayed by the EBT prior to the confirmation test (see paragraph (e) of this section), the BAT shall note the disparity in the "Remarks" section. Both the employee and the BAT shall initial and sign the notation. In accordance with sec 40.79, the test is invalid and the employee shall be so advised.

(i) The BAT shall transmit all results to the employer in a confidential manner.

(1) Each employer shall designate one or more employer representatives for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BATs to the employer concerning the alcohol testing results of employees shall be to a designated employer representative.

(2) Such transmission may be in writing (the employer copy (Copy 1) of the breath alcohol testing form), in person or by telephone or electronic means, but the BAT shall ensure immediate transmission to the employer of results that require the employer to prevent the employee from performing a safety-sensitive function.

(3) If the initial transmission is not in writing (e.g., by telephone), the employer shall establish a mechanism to verify the identity of the BAT providing the information.

(4) If the initial transmission is not in writing, the BAT shall follow the initial transmission by providing to the employer the employer's copy of the breath alcohol testing form. The employer shall store the information so as to ensure that confidentiality is maintained as required by § 40.81.

#### **§ 40.67 Refusals to test and uncompleted tests.**

(a) Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section of the form. The testing process shall be terminated and the BAT shall immediately notify the employer.

(b) If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as

applicable, using a new breath alcohol testing form with a new sequential test number (in the case of a screening test conducted on an EBT that meets the requirements of § 40.53(b) or in the case of a confirmation test).

**§ 40.69 Inability to provide an adequate amount of breath.**

(a) This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.

(b) The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the employer.

(c) If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the breath alcohol testing form and immediately inform the employer.

(d) If the employee attempts and fails to provide an adequate amount of breath, the employer shall proceed as follows:

(1) [Reserved]

(2) The employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's medical ability to provide an adequate amount of breath.

(i) If the physician determines, in his or her reasonable medical judgment, that a medical condition has, or with a high degree of probability, could have, precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the employer a written statement of the basis for his or her conclusion.

(ii) If the licensed physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (d)(2)(i) of this section the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion to the employer.

**§ 40.79 Invalid tests.**

(a) A breath alcohol test shall be invalid under the following circumstances:

(1) The next external calibration check of an 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 event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid;

(2) The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test, as provided in § 40.65(b);

- (3) The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test, as provided in § 40.65;
- (4) The BAT does not sign the form as required by §§ 40.63 and 40.65;
- (5) The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;
- (6) An EBT fails to print a confirmation test result; or
- (7) On a confirmation test and, where applicable, on a screening test, 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.

(b) [Reserved]

**§ 40.81 Availability and disclosure of alcohol testing information about individual employees.**

- (a) Employers shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.
- (b) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in the records required to be maintained by this part or by DOT agency alcohol misuse rules.
- (c) An employee subject to testing is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
- (d) Each employer shall permit access to all facilities utilized in complying with the requirements of this part and DOT agency alcohol misuse rules to the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations).
- (e) When requested by the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations), each employer shall make available copies of all results for employer alcohol testing conducted under the requirements of this part and any other information pertaining to the employer's alcohol misuse prevention program. The information shall include name-specific alcohol test results, records and reports.
- (f) When requested by the National Transportation Safety Board as part of an accident investigation, an employer shall disclose information related to the employer's administration of any post-accident alcohol tests administered following the accident under investigation.
- (g) An employer shall make records available to a subsequent employer upon receipt of a written request from a covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(h) An employer may disclose information required to be maintained under this part pertaining to a covered employee to that employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under the requirements of this part, or from the employer's determination that the employee engaged in conduct prohibited by a DOT agency alcohol misuse regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(i) An employer shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.

**§ 40.83 Maintenance and disclosure of records concerning EBTs and BATs.**

(a) Each employer or its agent shall maintain the following records for two years:

(1) Records of the inspection and maintenance of each EBT used in employee testing;

(2) Documentation of the employer's compliance with the QAP for each EBT it uses for alcohol testing under this part;

(3) Records of the training and proficiency testing of each BAT used in employee testing;

(4) The log books required by § 40.59(c).

(b) Each employer or its agent shall maintain for five years records pertaining to the calibration of each EBT used in alcohol testing under this part, including records of the results of external calibration checks.

(c) Records required to be maintained by this section shall be disclosed on the same basis as provided in § 40.81.

**NOTES:**

Amendment to §40.23(a) effective February 16, 1995:

(a) Use of the drug testing custody and control form prescribed under this Part. This form is found in Appendix A to this part. Employers and other participants in the DOT drug testing program may not modify or revise this form, except that the drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.



## **Appendix C - 49 CFR 382 Controlled Substances And Alcohol Use And Testing**

Authority: 49 U.S.C. app. 2505; 49 U.S.C. app. 2701 et seq.; 49 U.S.C. 3102; 49 CFR 1.48.

### **Subpart A--General**

#### **§ 382.101 Purpose.**

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol or use of controlled substances by drivers of commercial motor vehicles.

#### **§ 382.103 Applicability.**

(a) This part applies to every person who operates a commercial motor vehicle in interstate or intrastate commerce, and is subject to the commercial driver's license requirements of part 383 of this subchapter.

(b) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement an alcohol and controlled substances testing program that includes more persons than himself/herself as covered employees in the random testing pool.

(c) This part shall not apply to employers and their drivers:

(1) Required to comply with the alcohol and/or controlled substances testing requirements of parts 653 and 654 of this title; or

(2) Granted a full waiver from the requirements of the commercial driver's license program; or

(3) Granted an optional State waiver from the requirements of part 383 of this subchapter; or

(4) Of foreign domiciled operations, with respect to any driver whose place of reporting for duty (home terminal) for commercial motor vehicle transportation services is located outside the territory of the United States.

#### **§ 382.105 Testing procedures.**

Each employer shall ensure that all alcohol or controlled substances testing conducted under this part complies with the procedures set forth in part 40 of this title. The provisions of part 40 of this title that address alcohol or controlled substances testing are made applicable to employers by this part.

**§ 382.107 Definitions.**

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 or § 40.73 of this title, except as provided herein-

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

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

*Alcohol use* means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

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

*Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle-

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

*Confirmation test* For alcohol testing means a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

*Consortium* means an entity, including a group or association of employers or contractors, that provides alcohol or controlled substances testing as required by this part, or other DOT alcohol or controlled substances testing rules, and that acts on behalf of the employers.

*DOT Agency* means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, 653 and 654), in accordance with part 40 of this title.

*Driver* means any person who operates a commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers;



leased drivers and independent, owner-operator contractors 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 purposes of pre-employment/pre-duty testing only, the term *driver* includes a person applying to an employer to drive a commercial motor vehicle.

*Employer* means any person (including the United States, a State, District of Columbia or a political subdivision of a State) who owns or leases a commercial motor vehicle or assigns persons to operate such a vehicle. The term *employer* includes an employer's agents, officers and representatives.

*Performing (a safety-sensitive function)* means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

*Refuse to submit (to an alcohol or controlled substances test)* means that a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or (3) engages in conduct that clearly obstructs the testing process.

*Safety-sensitive function* means any of those on-duty functions set forth in § 395.2 *On-Duty time*, paragraphs (1) through (7) of this chapter.

*Screening test (also known as initial test)*. In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing, it means an immunoassay screen to eliminate "negative" urine specimens from further consideration.

*Substance abuse professional* means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

*Violation rate* means the number of drivers (as reported under § 382.305 of this part) found during random tests given under this part to have an alcohol concentration of 0.04 or greater, plus the number of drivers who refuse a random test required by this part, divided by the total reported number of drivers in the industry given random alcohol tests under this part plus the total reported number of drivers in the industry who refuse a random test required by this part.

#### **§ 382.109 Preemption of State and local laws.**

(a) Except as provided in paragraph (b) of this section, this part preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) 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.

**§ 382.111 Other requirements imposed by employers.**

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use or possession of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

**§ 382.113 Requirement for notice.**

Before performing an alcohol or controlled substances test under this part, each employer shall notify a driver that the alcohol or controlled substances test is required by this part. No employer shall falsely represent that a test is administered under this part.

**§ 382.115 Starting date for testing programs.**

(a) *Large employers.* Each employer with fifty or more drivers on March 17, 1994, shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each employer with fewer than fifty drivers on March 17, 1994, shall implement the requirements of this part beginning on January 1, 1996.

(c) *All employers* shall have alcohol and controlled substances programs that conform to this part by the date in paragraph (a) or (b) of this section, whichever is applicable, or by the date an employer begins commercial motor vehicle operations, whichever is later.

**Subpart B--Prohibitions**

**§ 382.201 Alcohol concentration.**

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 or greater shall permit the driver to perform or continue to perform safety-sensitive functions.

**§ 382.204 Alcohol possession.**

No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. No employer having actual knowledge that a driver possesses unmanifested alcohol may permit the driver to drive or continue to drive a commercial motor vehicle.

**§ 382.205 On-duty use.**

No driver shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall permit the driver to perform or continue to perform safety-sensitive functions.

**§ 382.207 Pre-duty use.**

No driver shall perform safety-sensitive functions within four hours after using alcohol. No employer having actual knowledge that a driver has used alcohol within four hours shall permit a driver to perform or continue to perform safety-sensitive functions.

**§ 382.209 Use following an accident.**

No driver required to take a post-accident alcohol test under § 382.303 of this part shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

**§ 382.211 Refusal to submit to a required alcohol or controlled substances test.**

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substances test required under § 382.307, or a follow-up alcohol or controlled substances test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

**§ 382.213 Controlled substances use.**

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(b) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(c) An employer may require a driver to inform the employer of any therapeutic drug use.

**§ 382.215 Controlled substances testing.**

No driver shall report for duty, remain on duty or perform a safety-sensitive function, if the driver tests positive for controlled substances. No employer having actual knowledge that a driver has tested positive for controlled substances shall permit the driver to perform or continue to perform safety-sensitive functions.

**Subpart C--Tests Required**

**§ 382.301 Pre-employment testing.**

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for alcohol and controlled substances. No employer shall allow a driver to perform safety-sensitive functions unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the medical review officer indicating a verified negative test result. If a pre-employment alcohol test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provisions of § 382.505 shall apply.

(b) *Exception for pre-employment alcohol testing.* An employer is not required to administer an alcohol test required by paragraph (a) of this section if:

(1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

(c) *Exception for pre-employment controlled substances testing.* An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a drug testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or

(ii) Participated in a random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substance use rule of another DOT agency within the previous six months.

(d) (1) An employer who exercises either paragraph (b) or (c) of this section shall contact the alcohol and/or controlled substances testing program(s) in which the driver participates or participated and shall obtain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conform to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for alcohol or controlled substances.

(v) The date the driver was last tested for alcohol and controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ, a driver more than once a year must assure itself once every six months that the driver participates in an alcohol and controlled substances testing program(s) that meets the requirements of this part.

**§ 382.303 Post-accident testing.**

(a) As soon as practicable following an accident involving a commercial motor vehicle, each employer shall test for alcohol and controlled substances each surviving driver:

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident.

(b) (1) *Alcohol tests.* If a test required by this section is not administered within two hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within eight hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(2) *Controlled substance tests.* If a test required by this section is not administered within 32 hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FHWA upon request of the Associate Administrator.

(c) A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(d) An employer shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a commercial motor vehicle, so that drivers will be able to comply with the requirements of this section.

(e) The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable Federal, State or local requirements, and that the results of the tests are obtained by the employer.

**§ 382.305 Random testing.**

(a) (1) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.

(2) The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(b) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by § 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the FHWA Administrator will publish in the **Federal Register** the minimum annual percentage rate for random alcohol testing of drivers. The

new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c) (1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA Administrator may lower this rate to 10 percent of all drivers if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all drivers if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d) (1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent for all drivers.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 382.403 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent for all drivers.

(e) The selection of drivers from random alcohol and controlled substances testing shall be made by a scientifically valid method, such as a random number table of a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.

(f) The employer shall randomly select a sufficient number of drivers for alcohol testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the FHWA Administrator. For controlled substances testing, the employer shall randomly select a sufficient number of drivers for controlled substances testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate of 50 percent of drivers. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances testing rule.

(g) Each employer shall ensure that random alcohol and controlled substances tests conducted under this part are unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.

(h) Each employer shall require that each driver who is notified of selection for random alcohol and/or controlled substances testing proceeds to the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(i) A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(j) If a given driver is subject to random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency for the same employer, the driver shall be subject to random alcohol and/or controlled substances testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

(k) If an employer is required to conduct random alcohol or controlled substances testing under the alcohol or controlled substances testing rules of more than one DOT agency, the employer may-

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

**§ 382.307 Reasonable suspicion testing.**

(a) An employer shall require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning alcohol, except for § 382.204. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions of subpart B of this part concerning controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

(c) The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or company official who is trained in accordance with § 382.603 of this part. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

(e) (1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (a) of this section, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the

determination under paragraph (a) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

(i) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or

(ii) Twenty four hours have elapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions in this part concerning the use of alcohol.

(3) Except as provided in paragraph (e)(2) of this section, no employer shall take any action under this part against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.

(f) A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

**§ 382.309 Return-to-duty testing.**

(a) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(b) Each employer shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

**§ 382.311 Follow-up testing.**

(a) Following a determination under § 382.605(b) that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, each employer shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional in accordance with the provisions of § 382.605(c)(2)(ii).

(b) Follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.



**Subpart D--Handling Of Test Results, Record Retention And Confidentiality**

**§ 382.401 Retention of records.**

(a) *General Requirement.* Each employer shall maintain records of its alcohol misuse and controlled substances use prevention programs as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of Retention.* Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years.* The following records shall be maintained for a minimum of five years:

(i) Records of driver alcohol test results with results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Calibration documentation,

(v) Driver evaluation and referrals shall be maintained for a minimum of five years, and (vi) A copy of each annual calendar year summary required by § 382.403.

(2) *Two years.* Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of negative and canceled controlled substances test results (as defined in part 40 of this title) and alcohol test results with a concentration of less than 0.02 shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and
  - (viii) Consolidated annual calendar year summaries as required by § 382.403.
- (2) Records related to a driver's test results:
- (i) The employer's copy of the alcohol test form, including the results of the test;
  - (ii) The employer's copy of the controlled substances test chain of custody and control form;
  - (iii) Documents sent by the medical review officer to the employer, including those required by § 382.407(a).
  - (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and
  - (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.
- (3) Records related to other violations of this part.
- (4) Records related to evaluations:
- (i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and
  - (ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.
- (5) Records related to education and training:
- (i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
  - (ii) Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials;
  - (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion; and
  - (iv) Certification that any training conducted under this part complies with the requirements for such training.
- (6) Records related to drug testing:
- (i) Agreements with collection site facilities, laboratories, medical review officers, and consortia;
  - (ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);
  - (iii) Monthly laboratory statistical summaries of urinalysis required by § 40.29(g)(6); and

(iv) The employer's drug testing policy and procedures.

(d) *Location of records.* All records required by this part shall be maintained as required by § 390.31 of this subchapter and shall be made available for inspection at the employer's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

**§ 382.403 Reporting of results in a management information system.**

(a) An employer shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs performed under this part. By March 15 of each year, all employers shall complete the annual summary covering the previous calendar year.

(b) If an employer is notified, during the month of January, of a request by the Federal Highway Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Federal Highway Administration by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

(c) Each annual calendar year summary that contains information on a verified positive controlled substances test result, an alcohol screening test result of 0.02 or greater, or any other violation of the alcohol misuse provisions of subpart B of this part shall include the following informational elements:

(1) Number of drivers subject to part 382;

(2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;

(3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

(8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;

- (9) (i) Number of supervisors who have received required alcohol training during the reporting period; and
- (ii) Number of supervisors who have received required controlled substances training during the reporting period;
- (10) (i) Number of screening alcohol tests by type of test; and
- (ii) Number of confirmation alcohol tests, by type of test;
- (11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;
- (12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;
- (13) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:
- (i) Had a verified positive controlled substance test result, or
- (ii) Engaged in prohibited alcohol misuse under the provisions of this part;
- (14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and
- (15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.
- (d) Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an "EZ" report form. The "EZ" report shall include the following information elements:
- (1) Number of drivers subject to part 382;
- (2) Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency;
- (3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);
- (4) Number of negatives verified by a medical review officer by type of test;
- (5) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;
- (6) (i) Number of supervisors who have received required alcohol training during the reporting period; and

(ii) Number of supervisors who have received required controlled substances training during the reporting period;

(7) Number of screen alcohol tests by type of test; and

(8) Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional as described in §§ 382.503 and 382.605), in this reporting period, who previously:

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

(e) Each employer that is subject to more than one DOT agency alcohol or controlled substances rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substances test on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(f) A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance with this section. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

**§ 382.405 Access to facilities and records.**

(a) Except as required by law or expressly authorized or required in this section, no employer shall release driver information that is contained in records required to be maintained under § 382.401.

(b) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The employer shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(d) Each employer shall make available copies of all results for employer alcohol and/or controlled substances testing conducted under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained under this part pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

(h) An employer shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

**§ 382.407 Medical review officer notifications to the employer.**

(a) The medical review officer may report to the employer using any communications device, but in all instances a signed, written notification must be forwarded within three business days of completion of the medical review officer's review, pursuant to part 40 of this title. A medical review officer shall report to an employer clearly:

(1) That the controlled substances test being reported was in accordance with part 40 of this title and this part;

(2) The name of the individual for whom the test results are being reported;

(3) The type of test indicated on the custody and control form (i.e. random, post-accident, etc.);

(4) The date and location of the test collection;

(5) The identities of the persons or entities performing the collection, analysis of the specimens and serving as the medical review officer for the specific test;

(6) The verified results of a controlled substances test, either positive or negative, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the employer that the medical review officer has made all reasonable efforts to contact the driver as provided in § 40.33(c) of this title. The employer shall, as soon as practicable, request that the driver contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier.

**§ 382.409 Medical review officer record retention for controlled substances.**

(a) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in § 382.407(a) of this subpart.

**§ 382.411 Employer notifications.**

(a) An employer shall notify a driver of the results of a pre-employment controlled substance test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated management official shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated management official shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

**§ 382.413 Release of alcohol and controlled substances test information by previous employers.**

(a) An employer may obtain, pursuant to a driver's written consent, any of the information concerning the driver which is maintained under this part by the driver's previous employers.

(b) An employer shall obtain, pursuant to a driver's consent, information on the driver's alcohol tests with a concentration result of 0.04 or greater, positive controlled substances test results, and refusals to be tested, within the preceding two years, which are maintained by the driver's previous employers under § 382.401(b)(1)(i) through (iii).

(c) The information in paragraph (b) of this section must be obtained and reviewed by the employer no later than 14 calendar days after the first time a driver performs safety-sensitive functions for an employer, if it is not feasible to obtain the information prior to the driver performing safety-sensitive functions. An employer may not permit a driver to perform safety-sensitive functions after 14 days without obtaining the information.

(d) If the driver stops performing safety-sensitive functions for the employer before expiration of the 14 day period or before the employer has obtained the information in paragraph (b) of this section, the employer must still obtain the information.

(e) The prospective employer must provide to each of the driver's employers within the two preceding years the driver's specific, written authorization for release of the information in paragraph (b).

(f) The release of any information under this part may take the form of personal interviews, telephone interviews, letters, or any other method of obtaining information that ensures

confidentiality. Each employer must maintain a written, confidential record with respect to each past employer contacted.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on the driver's alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the driver, without obtaining information on a subsequent substance abuse professional evaluation and/or determination under § 382.401(c)(4) and compliance with § 382.309.

#### **Subpart E--Consequences For Drivers Engaging In Substance Use-Related Conduct**

##### **§ 382.501 Removal from safety-sensitive function.**

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in § 382.107, and a commercial motor vehicle in interstate commerce as defined in part 390.

##### **§ 382.503 Required evaluation and testing.**

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of § 382.605.

##### **§ 382.505 Other alcohol-related conduct.**

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

##### **§ 382.507 Penalties.**

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. § 521(b).



**Subpart F--Alcohol Misuse and Controlled Substances Use Information, Training, and Referral**

**§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.**

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) *Required content.* The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;

(3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part;

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under § 382.605;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled

substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) *Optional provision.* The materials supplied to drivers may also include information on additional employer policies with respect to the use or possession of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) *Certificate of receipt.* Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

#### **§ 382.603 Training for supervisors.**

(a) Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307 receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

#### **§ 382.605 Referral, evaluation, and treatment.**

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counselling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

(c) (1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use,

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer

may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through-

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

(f) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.



## Appendix D -Selected References

### **Regulatory Guidance for the Federal Motor Carrier Safety Regulations, Questions and Answers (58 FR 60734)**

§391.109

Question 4: When a driver works for two or more different companies in whose random pool must the driver be included?

Guidance: The driver must be in the pool of each motor carrier for which the driver works.

Question 5: After what period of time may a motor carrier remove a casual driver from a random pool?

Guidance: A motor carrier may remove a casual driver, who is not used by the carrier, from its random pool when it no longer expects the driver to be used. The time period should be no longer than 1 year.

### **49 CFR 383.5 Definitions.**

*Commercial motor vehicle (CMV)* 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 weight rating of more than 10,000 pounds; or
- (b) Has a gross vehicle 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 purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

### **49 CFR 390.5 Definitions.**

*Intermittent, casual, or occasional driver* means a driver who in any period of 7 consecutive days is employed or used as a driver by more than a single motor carrier. The qualification of such a driver shall be determined and recorded in accordance with the provisions of .. 391.63 or 391.65 of this subchapter, as applicable.

### **49 CFR 391.21 Application for employment.**

(a) Except as provided in subpart G of this part, a person shall not drive a motor vehicle unless he has completed and furnished the motor carrier that employs him with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him, and must contain the following information:

- (1) The name and address of the employing motor carrier;
- (2) The applicant's name, address, date of birth, and social security number;
- (3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;
- (4) The date on which the application is submitted;
- (5) The issuing State, number, and expiration date of each unexpired motor vehicle operator's license or permit that has been issued to the applicant;
- (6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he has operated;
- (7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;
- (8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;
- (9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;
- (10) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he was employed by, and his reason for leaving the employ of, each employer;
- (11) For those drivers applying to operate a commercial motor vehicle as defined by Part §383 of this subchapter, a list of the names and addresses of the applicant's employers during the 7-year period preceding the 3 years contained in paragraph (b)(10) of this section for which the applicant was an operator of a commercial motor vehicle, together with the dates of employment and the reasons for leaving such employment; and
- (12) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

(Date)

(Applicant's signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he provides in accordance with paragraph (b) (10) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by §391.23.

**49 CFR 391.63 Intermittent, casual, or occasional drivers.**

(a) If a motor carrier employs a person who is not a regularly employed driver (as defined in § 390.5 of this subchapter) to drive a motor vehicle for a single trip or on an intermittent, casual, or occasional basis, the motor carrier shall comply with all requirements of this part, except that the motor carrier need not-

- (1) Require the person to furnish an application for employment in accordance with § 391.21;
- (2) Make the investigations and inquiries specified in § 391.23 with respect to that person,
- (3) Perform the annual review of the person's driving record required by § 391.25; or

(4) Require the person to furnish a record of violations or a certificate in accordance with § 391.27. (b) Before a motor carrier permits a person described in paragraph (a) of this section to drive a motor vehicle, the motor carrier must obtain his name, his social security number, and the identification number, type and issuing State of his motor vehicle operator's license. The motor carrier must retain that information in its files for 3 years after the person's employment by the motor carrier ceases.

**49 CFR 391.65 Drivers furnished by other motor carriers.**

(a) A motor carrier may employ a driver who is not a regularly employed driver of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if-

- (1) The driver is regularly employed by another motor carrier; and
- (2) The motor carrier which regularly employs the driver certifies that the driver is fully qualified to drive a motor vehicle in a written statement which-
  - (i) Is signed and dated by an officer or authorized employee of the regularly employing carrier;
  - (ii) Contains the driver's name and signature;
  - (iii) Certifies that the driver has been regularly employed as defined in §390.5;
  - (iv) Certifies that the driver is fully qualified to drive a motor vehicle under the rules in part §391 of the Federal Motor Carrier Safety Regulations;
  - (v) States the expiration date of the driver's medical examiner's certificate;

(vi) Specifies an expiration date for the certificate, which shall be not longer than 2 years or, if earlier, the expiration date of the driver's current medical examiner's certificate; and

(vii) After April 1, 1977, is substantially in accordance with the following form:

*(Name of driver)*

*(SS No.)*

*(Signature of driver)*

*I certify that the above named driver, as defined in §391.3(c) is regularly driving a vehicle operated by the below named carrier and is fully qualified under part §391, Federal Motor Carrier Safety Regulations. His current medical examiner's certificate expires on ---- (Date)*

*This certificate expires:*

*(Date not later than expiration date of medical certificate)*

*Issued on ---- (date)*

*Issued by -----*

*(Name of carrier)*

*(Address)*

*(Signature)*

*(Title)*

(b) A motor carrier that obtains a certificate in accordance with paragraph (a) (2) of this section shall retain a copy of that certificate in its files for 3 years.

(c) A carrier which certifies a driver's qualifications under this section shall-

(1) Be responsible for the accuracy of the certificate; and

(2) Recall the unexpired certificate carried by a driver immediately upon learning that the driver is no longer qualified under the rules in this part.

**49 CFR 391.113 Post-accident testing requirements.**

(a) A driver shall provide a urine sample to be tested for the use of controlled substances as soon as possible, but not later than 32 hours, after an accident, as defined in §390.5 of this subchapter, if the driver of the commercial motor vehicle receives a citation for a moving traffic violation arising from the accident.

(b) A driver who is seriously injured and cannot provide a specimen at the time of the accident shall provide the necessary authorization for obtaining hospital reports and other documents that would indicate whether there were any controlled substances in his/her system.

(c) A motor carrier shall provide drivers with necessary information and procedures so that the driver will be able to meet the requirement of paragraph (a) of this section.



[53 FR 47151, Nov. 21, 1988, as amended at 55 FR 3556, Feb. 1, 1990]

**49 CFR 391.117 Disqualification.**

(a) *Disqualification for refusal.* Except for a driver who meets the conditions of §391.113(b), a driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year following a refusal to give a urine sample when the driver has been involved in a fatal accident.

(b) *Disqualification for use of controlled substances.* A driver shall be disqualified by issuance of a letter of disqualification for a period of 1 year for a positive test of controlled substance use when the driver has been involved in a fatal accident.

**49 CFR 395.2 On-Duty Time**

*On-duty time* means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. On-duty time shall include:

- (1) All time at a carrier or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;
- (2) All time inspecting equipment as required by §392.7 and §392.8 of this chapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at anytime;
- (3) All driving time as defined in the term driving time in this section;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth as defined by the term sleeper berth of this section;
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
- (6) All time spent performing the driver requirements of §392.40 and §392.41 of this chapter relating to accidents;
- (7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle;
- (8) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part §382 or part §391, subpart H, of this subchapter, whichever is applicable, when directed by a motor carrier.
- (9) Performing any other work in the capacity of, or in the employ or service of, a common, contract or private motor carrier; and
- (10) Performing any compensated work for any nonmotor carrier entity.



## **Appendix E - Supervisor Aids**