

# **East Tennessee State University | Office of Human Resources**

## **PPP-51 Alcohol and Drug Testing Policy**

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### **I. Policy**

It is our goal to provide a healthy, satisfying working and learning environment which promotes personal opportunities for growth. In meeting these goals, it is our policy to (1) assure that employees and students are not impaired in their ability to learn or perform assigned duties in a safe, productive, and healthy manner; (2) create an environment free from the adverse effects of drug and alcohol substance abuse or misuse; (3) prohibit the unlawful manufacture, distribution, dispensing, possession, or use of alcohol and controlled substances; and (4) to encourage students and employees to seek professional assistance any time personal problems, including alcohol or drug dependency, adversely affect their ability to learn or perform their assigned duties.

**THEREFORE, IT IS THE POLICY OF THE TENNESSEE BOARD OF REGENTS AND EAST TENNESSEE STATE UNIVERSITY THAT NO EMPLOYEE PERFORMING SAFETY-SENSITIVE DUTIES WHO IS REQUIRED TO HAVE A COMMERCIAL DRIVER'S LICENSE (CDL) OR STUDENT REQUIRED TO HAVE A CDL TO PARTICIPATE IN A TRUCK DRIVER TRAINING PROGRAM WILL BE ALLOWED TO PERFORM A SAFETY-SENSITIVE FUNCTION WHILE UNDER THE INFLUENCE OR WITH DETECTABLE AMOUNTS OF ALCOHOL OR ILLEGAL DRUGS, NOR MANUFACTURE, DISTRIBUTE, POSSESS OR USE SUCH DURING WORK OR CLASS HOURS.**

APPROPRIATE DISCIPLINE, UP TO AND INCLUDING TERMINATION OF THE EMPLOYEE OR EXPULSION OF THE STUDENT, WILL BE TAKEN FOR THOSE NOT IN COMPLIANCE WITH THIS POLICY.

**NO EMPLOYEE OR STUDENT WILL BE ALLOWED TO PERFORM SAFETY-SENSITIVE FUNCTIONS WHILE UNDER THE INFLUENCE OF PRESCRIBED OR OTHER LAWFULLY OBTAINED DRUGS TAKEN IN THE APPROPRIATE DOSAGE WHEN THE TAKING OF SUCH DRUG IMPAIRS THE EMPLOYEE'S OR STUDENT'S ABILITY TO PERFORM SAFETY-SENSITIVE FUNCTIONS.**

### **II. Purpose**

The purpose of this policy is to assure driver fitness and to protect our employees, students and the public from the risks posed by the use of alcohol and prohibited drugs. This policy is also intended to comply with applicable Federal regulations governing workplace anti-drug programs. The Federal Highway Administration (FHWA) of the U.S. Department of Transportation has enacted 49 CFR Part 382 et seq., and Part 395.2 ("the rules") that mandate urine drug testing and evidential breath testing device (EBT) alcohol testing for safety-sensitive positions and prevent performance of safety-sensitive functions when there is a positive test result. The U.S. Department of Transportation (USDOT) has also enacted 49 CFR Part 40 that sets standards for the collection and testing of urine and breath specimens.

### **III. Applicability**

Pursuant to FHWA Rule 49 CFR Part 382 et seq., as of January 1, 1996, the Tennessee Board of Regents institutions to which the rules apply, will implement mandatory alcohol, and controlled substance ("drug") testing of persons in, or applying for safety-sensitive positions requiring CDLs, as well as students applying for enrollment or enrolled in truck driver training programs. This policy applies to those persons. The testing will be performed by professionals under contract with the Tennessee Board of Regents, and conform to guidelines and requirements established by Federal Rule 49 CFR Part 40.

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Beginning in December 1995, each person directing or supervising persons with CDLs will undergo training regarding the implementation of the alcohol and drug testing policy, and must implement the policy in the workplace.

### **IV. Chemical Effects**

(See Attachment A - Physical Affects and Health Risks)

### **V. Penalties**

Drivers who receive a verified positive drug or confirmed alcohol presence test will be removed from performance of safety-sensitive functions in the manner described herein, and will also be subject to disciplinary action. For employees, this action may be up to and including termination. Applicants for employment who receive a verified positive drug or confirmed alcohol presence test will be subject to withdrawal of any offer of employment made prior to the test.

### **VI. Definitions**

**Accident** - an accident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.

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

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

**Commercial motor vehicle (CMV)** - 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 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 hazardous materials requiring placards.

**Driver** - any person, either employee or student, who has a CDL and operates a commercial motor vehicle. For the purpose of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle and a student who has applied for enrollment in a truck driver training course or program.

**Evidential breath testing device (EBT)** - A device 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).

**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.

**Performing (a safety-sensitive function)** - any period in which the driver is actually performing, ready to

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perform, or immediately able to perform any safety sensitive functions.

**Prohibited Substances-** addressed by this policy include the following:

### 1. Illegally Used Controlled Substances or Drugs

Any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1308.11 through 1308.15. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs.

### 2. Legal Drugs

The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited and will not result in discipline or the consequences outlined in Section VIII. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected should be reported to supervisory personnel and medical advice should be sought, as appropriate, before performing safety-sensitive functions.

A legally prescribed drug means that an individual has a prescription or other written approval from a physician for the use of a drug in the course of medical treatment. It must include the patient's name, the name of the substance, quantity/amount to be taken, and the period of authorization. The misuse or abuse of legal drugs while performing safety-sensitive functions is prohibited.

### 3. Alcohol

The use of beverages or other substances containing alcohol, including medications, such that alcohol is present in the body while performing safety-sensitive functions, is prohibited. The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device (EBT).

**Reasonable Suspicion** - Belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

**Refusal to submit (to an alcohol or controlled substance test)** - 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, (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, or (3) engages in conduct that clearly obstructs the testing process.

**Return to duty** - for both employees and students, this term means returning to perform safety-sensitive functions after engaging in prohibited conduct. No employment relationship is implied or established by use of or reference to this term with regard to students.

**Safety-sensitive function** - Any of those on-duty functions set forth in 49 CFR Part 395.2 On-Duty Time, paragraphs 1 through 10 as listed below:

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 employer.

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2. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
3. All time spent at the driving controls of a commercial motor vehicle.
4. All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
5. All time loading or unloading a commercial motor 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 associated with an accident.
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, whichever is applicable.
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.

**Substance abuse professional (SAP)** - 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.

**Trained Supervisor** - A CDL driver's supervisor trained as required under the rules to identify the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances by employees. With reference to students, the supervisor will be the student's instructor.

## VII. Prohibited Alcohol and Controlled Substance-related Conduct

The following alcohol and controlled substance-related activities are prohibited by the FHWA drug use and alcohol misuse rules for CDL drivers of commercial motor vehicles (CMVs):

- A. Reporting for duty or instruction, or remaining on duty or for instruction requiring the performance of safety-sensitive functions as either employee or student while having an alcohol concentration of 0.04 or greater.
- B. Being on duty or operating a CMV while the driver possesses alcohol. This includes the possession of medicines containing alcohol (prescription or over-the-counter).
- C. Using alcohol within four (4) hours prior to performing safety-sensitive functions.
- D. When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- E. Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements.
- F. Reporting for duty or instruction, or remaining on duty or for instruction, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when instructed by a

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physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.

- G. Reporting for duty or instruction, remaining on duty or for instruction, requiring the performance of safety-sensitive functions, or performing a safety-sensitive function, if the driver tests positive for controlled substances.
- H. No supervisor shall allow a driver to perform a safety-sensitive function unless the result of the breath alcohol test indicates a breath alcohol level of less than 0.02, and the supervisor has received a controlled substance test result for the driver from the medical review officer (MRO) indicating a verified/negative result.
- I. If the results of the driver's alcohol test indicate a blood alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall not be permitted to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period or instructional period, but not less than 24 hours following the administration of the test.
- J. The misuse or abuse of legal drugs while performing safety-sensitive functions.

### **VIII. Consequences to Drivers Engaging in Conduct prohibited by the Federal Highway Administration's Drug Use and Alcohol Misuse Rules**

Drivers who are known to have engaged in prohibited behavior, with regard to alcohol misuse, or use of controlled substances, are subject to the following consequences:

- A. Drivers shall not be permitted to perform safety-sensitive functions.
- B. Drivers shall be advised by their supervisor of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances including, if an employee, a referral to the state Employee Assistance Program (EAP).
- C. Before returning to duty requiring the performance of a safety-sensitive function, drivers shall be evaluated by a substance abuse professional (SAP) who shall determine what assistance, if any, the driver needs in resolving problems associated with alcohol misuse or controlled substances use.
- D. Before a driver returns to duty requiring performance of a safety-sensitive function, he or she shall undergo a return-to-duty alcohol test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use.
- E. In addition, each driver identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by a SAP to determine that the driver has followed the rehabilitation program prescribed.
- F. The driver shall also be subject to unannounced follow-up alcohol and controlled substance testing. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six tests in the first 12 months.
- G. Any CDL driver performing safety-sensitive functions engaging in the manufacture, distribution, possession, or use of prohibited substances or under the influence of such while on State premises, while on State business, or during instructional periods, will be subject to disciplinary action up to and including termination for employees and expulsion for students. Law enforcement shall be notified, as

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appropriate, where criminal activity is suspected.

- H. Any CDL driver performing safety-sensitive functions who is reasonably suspected by a trained supervisor of being intoxicated, impaired, under the influence of a prohibited substance, or not fit for duty, shall be suspended from job duties, or if a student, precluded from performing safety-sensitive functions, pending verification of condition. Drivers found to be under the influence of prohibited substances or who fail to pass a drug or alcohol test shall be removed from duty and subject to disciplinary action, up to and including termination or expulsion. A drug or alcohol test is considered positive if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in 49 CFR Part 40, as described in this policy statement.
  - I. No CDL driver performing safety-sensitive functions should report for duty or instruction, or remain on duty or for instruction when his or her ability to perform assigned functions is adversely affected by alcohol or when his or her blood alcohol concentration is 0.02 or greater. No CDL driver performing safety-sensitive functions shall use alcohol while on duty. No CDL driver performing safety-sensitive functions shall have used alcohol within four hours of reporting for duty. Violation of these provisions is prohibited and shall result in disciplinary action up to and including termination or expulsion.
  - J. All CDL drivers performing safety-sensitive functions will be subject to urine drug testing and breath alcohol testing. Any driver who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be removed from duty immediately, and his/her employment terminated or expelled from the program. Refusal can include an inability to provide a specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test.
  - K. All CDL drivers performing safety-sensitive functions are encouraged to make use of the available resources for treatment for alcohol and substance abuse problems. Any CDL driver performing safety-sensitive functions who refuses or fails to comply with requirements for treatment, after care, or return to duty shall be subject to disciplinary action, up to and including termination or expulsion.
  - L. Any CDL driver who performs safety-sensitive functions who tests positive for the presence of illegal drugs or alcohol above the minimum thresholds set forth in 49 CFR Part 40, who is not terminated or expelled, will be evaluated by a SAP. The SAP will evaluate each driver to determine what assistance, if any, the driver needs in resolving problems associated with prohibited substance abuse or misuse.
  - M. Assessment by a SAP does not shield a driver from disciplinary action or guarantee employment or reinstatement with the institution or continued enrollment. Tennessee Board of Regents and institutional disciplinary rules, policies and procedures should be consulted to determine the penalty for performance-based infractions and violation of policy provisions. Each disciplinary or termination action shall be handled on a case-by-case basis.
- Additionally, when imposing discipline on a student, the school must comply with the student code of conduct disciplinary procedures.
- N. If a driver is allowed to return to duty, he or she must properly follow the rehabilitation program prescribed by the SAP, pass return to duty drug and alcohol tests, and be subject to unannounced follow-up tests for a period of one to five years. The cost of any treatment or rehabilitation services

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will be paid directly by the driver or his insurance provider. Employees will be allowed to take accumulated sick leave, annual leave, compensatory leave and any leave allowed under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), to participate in the prescribed rehabilitation program.

With regard to students, absences incurred due to required treatment will be evaluated under the institution's policy on progression and retention. Students should be informed that drug or alcohol use resulting in or requiring their absence from the program to undergo treatment may result in their academic suspension or termination from the program.

- O. CDL employees removed from safety-sensitive functions as a result of tests that indicate the misuse of alcohol and/or the use of controlled substances may, at the discretion of the appointing authority, be allowed to take sick, annual and/or compensatory leave or, be placed on leave without pay, including leave allowed under the FMLA and the ADA, for the removal periods required under the rules for such drivers.

With regard to students, absences incurred due to removal periods will be evaluated under the institution's policy on progression and retention. Students should be informed that drug and alcohol use resulting in or requiring absence from the program during the removal periods may result in their academic suspension or termination from the program.

## **IX. Procedures Used for Testing**

(See Attachment B, Alcohol and Controlled Substances Testing Procedures and also available in the Office of Human Resources.)

## **X. Types of Testing**

Employees or students required to obtain CDLs will be tested for alcohol and controlled substances. The following are the types of tests required to be performed:

Pre-employment or pre-enrollment Testing (Drug only)  
Random Testing  
Reasonable Suspicion Testing  
Post-Accident Testing  
Return-to-Duty Testing  
Follow-up Testing

### **A. Split Sample Procedures**

Controlled substances tests conducted on CDL drivers must follow split sample procedures. Under this provision, a driver whose urine sample has tested positive for a controlled substance has the option (within 72 hours of being notified by the MRO) of having the other portion of the split sample tested at another laboratory. The driver will be required to pay for the second test in advance. If the second portion of the sample also tests positive, then the driver is subject to the sanctions contained in the regulations and will not be reimbursed for such test. If the second portion produces a negative result, or for any reason the second portion is not available, the test is considered negative and no sanctions are imposed and the driver will be reimbursed by the institution for the cost of the test.

### **B. Pre-Employment/Pre-Enrollment Controlled Substance Testing**

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1. Prior to the first time a driver performs safety-sensitive functions, the driver must submit to testing for controlled substances. For employees, the tests shall be conducted after the offer of employment has been accepted, but before the individual reports for duty. For students, the tests shall be conducted after receiving a conditional acceptance of the enrollment application. Final acceptance and enrollment in the program is contingent upon the receipt of negative test results.
2. No driver shall be allowed to perform a safety-sensitive function unless the driver's supervisor has received a controlled substance test result from the medical review officer (MRO) indicating a verified negative result.
3. Exceptions:
  - a) The institution is not required to administer a pre-employment controlled substance test if the following conditions are met:
    - (i) The driver must have participated in a drug testing program meeting the requirements of this rule within the previous 30 days; and
    - (ii) While participating in this program, the driver must have either been tested for controlled substances in the previous 6 months, or participated in a random drug testing program for the previous 12 months; and
    - (iii) The institution must ensure that no prior employer of the driver has record of violations of any USDOT controlled substance use rule for the driver in the previous 6 months.
  - b) In order to exercise the exception listed above, the institution must first contact the controlled substance testing program(s) in which the driver has participated and obtain the following information:
    - (i) The name(s) and address(es) of the program(s). This would generally be the driver's prior and/or current employer.
    - (ii) Verification that the driver participates or participated in the program(s).
    - (iii) Verification that the program conforms to the required procedures set forth in 49 Part 40.
    - (iv) Verification that the driver is qualified under this rule, including that the driver has not refused to submit to an alcohol or controlled substance test.
    - (v) The date the driver was last tested for controlled substances.
    - (vi) The results of any drug test administered in the previous six months, and any violations of the controlled substance rules.
- NOTE: An institution which uses a driver more than once a year, but does not employ the driver, must assure itself at least once every six months that the driver participates in a drug testing program which meets the requirements of the rule.
4. The institution reserves the right to withdraw or otherwise terminate the employment of drivers, if the results of the driver's pre-employment controlled substances test indicates a verified positive result. The institution reserves the right to withdraw a conditional acceptance of enrollment if the results of the applicant's pre-enrollment controlled substances test indicates a verified positive

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### **C. Return-to-Duty and Follow-Up Testing**

#### **1. Return-To-Duty Testing**

The institution shall ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding alcohol misuse, the driver shall undergo a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.

The institution shall also ensure that before a driver returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding controlled substance use, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

In the event a return-to-duty test is required, the driver must also be evaluated by a SAP and participate in any assistance program, such as the Employee Assistance Program (EAP), prescribed.

Employees will be allowed to take the following accumulated leave they are eligible for: annual, sick, compensatory, leave without pay, FMLA, ADA, for return-to-duty testing and SAP evaluation.

#### **2. Follow-Up Testing**

Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the institution shall ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the SAP. The driver shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the first 12 months.

Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions. Drivers referred for follow-up testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

### **D. Post-Accident Alcohol and Controlled Substances Testing**

#### **1. As soon as practicable following an accident involving a commercial motor vehicle, the institution shall test for alcohol and controlled substances each surviving driver when either:**

- a) the accident involved a fatality; or
- b) The driver receives a citation under state or local law for a moving traffic violation arising from the accident.

\* For the purpose of this policy, an accident is defined as an incident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.

#### **2. When a required controlled substances test has not been administered within a reasonable time**

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frame following the accident, the following actions shall be taken:

### **Time Elapsed   Action Required**

2 hours	If the driver has not submitted to an alcohol test at this time, the institution shall prepare and maintain on file a record stating the reason a test was not promptly administered.
8 hours	Cease attempts to administer an alcohol test, and prepare and maintain the record described above.
32 hours	If the driver has not submitted to a controlled substance test at this time, the employer shall cease attempts to administer the test, and prepare and maintain the record described above.

**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 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.

### **3. Driver's responsibility:**

A driver who is subject to post-accident testing must remain available, or the institution may consider the driver to have refused to submit to testing. The driver subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.

### **4. Institution's responsibility:**

- a) The institution shall provide drivers with necessary post-accident information, procedures and instructions, prior to the driver operating a CMV, so that drivers will be able to comply with the requirements of this rule.
- b) \*\*The FHWA recognizes post-accident tests conducted by Federal, State and local officials as meeting the requirements of this rule under the following conditions:
  - (i) The official must have independent authority to conduct the test;
  - (ii) The test must conform to Federal, State or local requirements.
  - (iii) Alcohol tests require blood or breath sample; and
  - (iv) Controlled substances tests require urine sample.
- c) Drivers referred for post-accident testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

## **XI. Random Alcohol and Controlled Substances Requirements**

### **A. Random Alcohol Testing Requirements**

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B. Random alcohol testing shall be conducted in accordance with the following requirements:

1. Random alcohol testing shall be administered at a minimum annual rate of 25 percent of the average number of driver positions.
2. The institution shall ensure that random alcohol tests are unannounced and spread reasonably throughout the calendar year.
3. The institution shall ensure that drivers selected for random alcohol tests proceed immediately to the testing site upon notification of being selected.
4. A driver shall only be tested for alcohol while the driver is performing safety-sensitive functions, immediately prior to performing or immediately after performing safety-sensitive functions.

C. Alcohol Testing Rate

1. The FHWA Administrator may decide to increase or decrease the minimum annual percentage rate for random alcohol testing based on the reported violation rate for the entire industry. The decision to change the testing rate will be made according to the following results:

<b>Violation Rate</b>	<b>Testing Rate</b>
Less than .5% for 2 consecutive years	10%
.5% - 1.0%	25%
1.0% or greater	50%

2. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new rate will become applicable on January 1 of the following year.
3. 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.

D. Random Controlled Substances Testing

1. Random controlled substances testing shall be conducted in accordance with the following requirements:
  - a) Random controlled substances testing shall be administered at a minimum annual rate of 50 percent of the average number of driver positions.
  - b) The institution shall ensure that random controlled substances tests are unannounced and spread reasonably throughout the calendar year.
  - c) The institution shall ensure that drivers selected for random controlled substances tests proceed immediately to the testing site upon notification of being selected.
  - d) In the event a driver, who is selected for a random controlled substances test, is on vacation

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or an extended medical absence, the agency can either select another driver for testing or keep the original selection confidential until the driver returns.

2. Controlled Substances Testing Rate
3. The FHWA has proposed to lower the random testing rate to 25 percent if the industry-wide random positive rate is less than 1.0 percent for two consecutive calendar years, while testing at 50 percent. The rate would increase back to 50 percent if the industry random positive rate were 1.0 percent or higher for any subsequent year.

### **E. On-Duty Time**

Drivers referred for random testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

## **XII. Reasonable Suspicion Alcohol and Controlled Substances Testing**

- A. The institution must require a driver to submit to an alcohol or controlled substance test when the agency has reasonable suspicion to believe the driver has violated the alcohol or controlled substances prohibitions.
- B. "Reasonable Suspicion" - Belief that the driver has violated the alcohol or controlled substances prohibitions, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

### **C. Supervisor Training**

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or state official who is trained in accordance with the following requirements:

1. The institution must ensure persons designated to determine whether reasonable suspicion exists to require a driver to undergo alcohol or controlled substances testing receive one hour of training on detection and documentation of alcohol misuse and one hour of training on detection and documentation of controlled substances use.
2. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substances.

### **D. Alcohol**

Alcohol testing is authorized only if the observations are made during, just before, or just after the period of the work day the driver is required to be in compliance.

If a reasonable suspicion alcohol test is not administered within two hours following the observations, the institution shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight hours, the institution shall cease attempts to administer the test, and shall prepare and maintain the record listed above.

The supervisor who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test.

### **E. Records**

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A written record shall be made of the observations leading to a controlled substances test, and signed by the supervisor or official who made the observations.

NOTE: The mere possession of alcohol does not constitute a need for reasonable suspicion testing, which must be based on observations concerning the driver's appearance, behavior, speech, or body odor. However, possession of alcohol while on duty or in class is conduct prohibited by this policy.

### **F. On-Duty Time**

Drivers referred for reasonable suspicion testing shall be considered to be on duty during the time period that they are being tested, including travel time to and from the testing site, and shall be compensated accordingly.

## **XIII. Retention of Records**

A. This document explains which controlled substance and alcohol test records must be completed and maintained, where they must be maintained and for how long. All records shall be maintained in a secure location with controlled access.

### **B. Required period of retention:**

<b>Document to be maintained</b>	<b>Period required to be Maintained</b>
Alcohol test results indicating a breath alcohol concentration of 0.02 or greater	5 yrs.
Verified positive controlled substance test results	5 yrs.
Refusals to submit to required alcohol or controlled substance tests	5 yrs.
Required calibration of Evidential Breath Testing Devices (EBT's)	5 yrs.
Substance Abuse Professional's (SAP) evaluations and referrals	5 yrs.
Annual calendar year summary	5 yrs.
Records related to the collection process (except calibration) and required training	2 yrs
Negative and canceled controlled substance test results	1 yr.
Alcohol test results indicating a breath alcohol concentration less than 0.02	1 yr.

### **C. Types of records required to be maintained:**

#### **1. Records related to the collection process:**

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- a) Collection logbooks (if used)
  - b) Documents related to the random selection process
  - c) Calibration documentation for EBT's
  - d) Documentation of Breath Alcohol Technician (BAT) training
  - e) Documentation of reasoning for reasonable suspicion testing
  - f) Documentation of reasoning for post-accident testing
  - g) Documents verifying a medical explanation for the inability to provide adequate breath or urine for testing
  - h) Consolidated annual calendar year summaries
2. Records related to the driver's test results:
- a) Institution's copy of the alcohol test form, including results
  - b) Institution's copy of the drug test chain of custody and control form
  - c) Documents sent to the institution by the Medical Review Officer
  - d) Documentation of any driver's refusal to submit to a required alcohol or controlled substance test
  - e) Documents provided by a driver to dispute results of test
3. Documentation of any other violations of controlled substance use or alcohol misuse rules
4. Records related to evaluations and training:
- a) Records pertaining to SAP's determination of driver's need for assistance
  - b) Records concerning a driver's compliance with SAP's recommendations
5. Records related to education and training:
- a) Materials on drug and alcohol awareness, including a copy of the institution's policy on drug use and alcohol misuse
  - b) Documentation of compliance with requirement to provide drivers with educational material, including driver's signed receipt of materials
  - c) Documentation of supervisor training
  - d) Certification that training conducted under this rule complies with all requirements of the rule
6. Records related to drug testing:
- a) Agreements with collection site facilities, laboratories, and MROs.
  - b) Names and positions of officials and their role in the TBR/institution's alcohol and controlled substance testing program
  - c) Quarterly statistical summaries of urinalysis (40.29 (g) (6))

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- d) The TBR/institution's drug testing policy and procedures

### **D. Location of records:**

All required records shall be maintained in a secure location with limited access. Records shall be made available for inspection at the appropriate institution's principal place of business within two business days after a request has been made by an authorized representative of the Federal Highway Administration.

For example: Specific records may be maintained on computer, or at a regional or district office, provided the records can be made available upon request from FHWA within two working days.

## **XIV. Medical Review Officer's Notification of Test Results**

### **A. Medical Review Officer**

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

### **B. Employer Notification**

1. The MRO may report controlled substances test results to the institution by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the MRO's evaluation.
2. The MRO must report to the appropriate institution the following:
  - a) That the controlled substances test being reported was in accordance with 49 CFR Part 40.
  - b) The name of the individual for whom the test results are being reported.
  - c) The type of test indicated on the custody and control Form (random, pre-employment, etc.).
  - d) The date and location of the test collection.
  - e) The identification of the persons or entities performing the collection and analysis of the specimens, and serving as the MRO for the specific test.
  - f) The verified results of the controlled substances test (positive or negative) and, if positive, the identity of the controlled substance(s) for which the test was verified positive.
  - g) That the MRO has made every reasonable attempt to contact the driver.

### **C. Driver Notification**

1. Prior to verifying a "positive" result, the MRO shall make every reasonable effort to contact the driver (confidentially), and afford him or her the opportunity to discuss the test result. If after making all reasonable efforts and documenting them, the MRO is unable to reach the driver directly, the MRO shall contact a designated management official, who shall direct the driver to contact the MRO as soon as possible (within 24 hours).

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2. Under split-sample collection procedures, the driver has 72 hours following notification of a positive result to request the secondary sample be analyzed. In the event a split-sample was not taken, or was of inadequate quantity, the original test would be voided, and the driver would not be subject to a retest.
3. While the primary sample is tested at specific thresholds for each controlled substance, the secondary (split) sample is analyzed only for the presence of controlled substances. If a negative result is reached on the secondary test, the original test results are disregarded.

### **D. Record Retention**

1. The MRO shall maintain all dated records and notifications for verified positive controlled substances test results, identified by individual, for a period of five years.
  2. The MRO shall maintain all dated records and notifications for negative and canceled controlled substances test results, identified by individual, for a period of one year.
- E. The MRO shall not release the individual controlled substances test results of any driver to any person without a specific, written authorization from the tested driver. However, this shall not prohibit the MRO from releasing results to the appropriate State agency or Federal, State or local officials with regulatory authority over the controlled substances testing program.

## **XV. Release of Alcohol and Controlled Substances Test Information by Previous Employers**

- A. An institution may obtain from any previous employer of a driver, provided the driver has given his or her written consent, any information concerning the driver's participation in a controlled substances and alcohol testing program.
- B. An institution must obtain and review the information listed below from any employer for which the driver performed safety-sensitive functions during the previous two years. The information must be obtained and reviewed no later than 14 days after the first time a driver performs safety-sensitive functions. The information obtained must include:
  1. Information on the driver's alcohol test in which a breath alcohol concentration of 0.04 or greater was indicated.
  2. Information on the driver's controlled substances test in which a positive result was indicated.
  3. Any refusal to submit to a required alcohol or controlled substance test.
- C. If the driver stops performing safety-sensitive functions for the institution before expiration of the 14-day period or before the institution has obtained the information listed above, the institution must still obtain the information. For example, if a driver quits after one week of employment and the information has not been obtained, the institution must still obtain the information.
- D. The prospective employer institution must provide to each of the driver's previous employers of the past two years a written authorization from the driver for release of the required information. The release of this information may take the form of personal interviews, telephone interviews, letters, or any other method that ensures confidentiality.
- E. Each institution must maintain a written, confidential record with respect to each past employer

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contacted.

- F. The institution may not use a driver to perform safety-sensitive functions if the institution obtains information indicating the driver has tested positive for controlled substances, tested at or above 0.04 breath alcohol concentration, or refused to test unless the institution has evidence the driver has been evaluated by a substance abuse professional, completed any required counseling, passed a return-to-duty test, and been subject to follow-up testing.

### **XVI. Annual Calendar Year Summary**

- A. The institution shall prepare and maintain an annual calendar year summary of the results of its alcohol and controlled substances testing programs. All institutions shall complete the annual summary by March 15 each year, covering the previous calendar year.
- B. Management Information System
  1. Each year in January, the FHWA will notify a select number of employers to submit their calendar year summary of alcohol and controlled substances test results. Upon notification, the employer shall submit the required summary to the FHWA by March 15 of that year, to the location specified. Unless otherwise specified, State government constitutes one employer. The report shall be accurate and in the form and manner prescribed by the FHWA. When the report is submitted by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official.
  2. The report shall contain all the information outlined in 49 CFR Part 382.403. Sample forms detailing the required information shall be made available upon request. This information is only required to be submitted when requested by the FHWA. If not requested, the annual calendar year summary shall be maintained by the employer for a period of five years, and presented for review, upon request from an agent of the U.S. Department of Transportation. If the report is submitted to the FHWA when not requested, it will be discarded.

### **XVII. Proper Application of the Policy**

The Tennessee Board of Regents is dedicated to assuring fair and equitable application of this substance abuse and testing policy. Therefore, supervisors and managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor or manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates or students, shall be subject to disciplinary action, up to and including termination.

### **XVIII. Notice of Policy Education Materials and Certification of Receipt**

- A. Each institution shall notify its CDL drivers of this policy, and that the alcohol and controlled substances testing specified herein is required by Federal law. CDL drivers shall also be provided with a copy of this policy and educational materials that explain the policy requirements and procedures with respect to meeting these requirements.
- B. Institutions shall ensure that a copy of these materials is distributed to each CDL driver prior to the start of alcohol and controlled substances testing under this policy, and to each CDL driver subsequently hired or transferred to a position requiring a CDL.

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- C. Each institution shall ensure that each CDL driver is required to sign a statement certifying that he or she has received a copy of the educational materials required in this policy. Each institution shall maintain the original of the signed certificate, and may provide a copy of the certificate to the CDL driver.

*Source: Tennessee Board of Regents memorandum from the Vice Chancellor for Administration and Facilities Development, dated December 21, 1995.*

### **XIX. Attachment A: Physical Affects and Health Risks**

#### **Physical Affects**

##### **What Parts of the Body Does Alcohol Affect**

Alcohol affects virtually every organ in the body. To the body, alcohol is a poison. It either kills cells or dissolves into cell membranes so the cell can no longer respond properly. In this manner, it affects the entire body.

More specifically, studies show alcohol effects every part of the brain from the outer layer (cortex) which is the home of thinking and reasoning to the inner layers which are responsible for controlling heart rate, coordination and balance as well as the functions that mark us as humans rather than animals. Alcohol can permanently destroy brain cells.

Alcohol weakens the pumping of the heart muscle and decreases blood flow to the heart. It is the most common cause of high blood pressure. Alcohol decreases the ability of the liver to metabolize fat and kills other liver cells which can lead to hepatitis and cirrhosis which is one of leading causes of death in the United States.

Alcohol also causes the stomach to secrete more acid than normal, which can lead to ulcers and gastritis. With continued drinking, the digestive system may hemorrhage and malnutrition may take place.

#### **The Health Risks of Drugs of Abuse**

All drugs of abuse achieve their primary effects by making chemical changes in the central nervous system which includes the brain, spinal cord, and the nerves of the body. Drugs of Abuse either:

- Slow actions and reactions down (depress)
- Speed actions and reactions up (stimulate)

These changes in our natural chemistry change both how our bodies work (physiology), and how we feel about ourselves and our lives (psychology). While a person's size, experience, and overall health play a role in how they are effected by a drug, whenever drugs interfere with the normal functions of the central nervous system, changes automatically occur in the way vital organs function. These organs include the heart, lungs, liver, pancreas, stomach and productive systems. These changes can range from mild to severe and, in some cases, cause death.

#### **Health Risks**

##### **Cocaine**

Cocaine over stimulates the circulatory, respiratory, and central nervous systems. Cocaine interferes with the natural chemical in the brain that stimulate and regulate the firing of nerve cells. Muscle spasms in various parts of the body can occur. Over stimulation of the nervous system can cause convulsions which can lead to respiratory collapse and death. Long term crack (rock like bits of cocaine that can be smoked) smokers have also suffered permanent damage to the cortex, the part of the brain that is used to think. Since it can be purchased legally, it is also impossible to tell what other drugs may be mixed with the street substance.

##### **Marijuana**

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The mind altering chemical in Marijuana is Tetrahydrocannabinol or THC. Because Marijuana is many times also used in combination with other drugs, it is difficult to distinguish which effects are induced solely by THC. However, smoking marijuana seems to effect the structure of the brain associated with emotion, motivation the regulation of hormones. While permanent damage has yet to be proved, smokers many times have memory problems which is caused when THC prevents the brain from transferring information from short-term memory to long-term memory storage. Other health risks include sore throats and upper respiratory problems such as bronchitis and shortness of breath. Marijuana smoke is generally thought to be 15 times more harmful to the lungs than cigarette smoke. It also contains some of the same ingredients as the ones in tobacco that cause emphysema and cancer. In women, THC may interfere with ovulation and other hormone relate functions while in men, studies have proven that sperm counts decrease caused by reduced testosterone levels. Studies also indicate THC may cause cellular damage that interferes with the body's ability to fight disease and lower the body's resistance to infections and foreign agents.

### **Opiates**

These drugs, codeine, morphine and common painkillers such as Demerol and Darvon are all legally manufactured from opium which is a byproduct of the poppy plant. Heroin, an illegally manufactured product, as well as those legal narcotics, all find their way into the drug market place. When taken outside a doctor's care, the user risks mental and physical dependence in the form of prolonged lethargy, apathy, slurring of speech, loss of judgement and self-control. All of these may result in convulsions, coma, nausea, diarrhea, occasional vomiting, and malnutrition as the drug replaces a balanced diet.

### **Amphetamines**

Amphetamines are central nervous system stimulants which tend to throw off the complete bodily rest and repair system. Hyperactivity and mental anxiety are common. Repeated high dose results in lethargy, exhaustion, mental confusion and paranoid thoughts. Abnormal dyskinetic movements may persist long after chronic stimulant use stops. This can be accompanied by emotionalism which can be manifested in the form of hallucinations and finally blood pressure and heart problems.

### **Phencyclidine (PCP)**

PCP or "angel dust" was originally manufactured as an animal tranquilizer and can cause violent and self-destructive behavior in humans. "Dust" affects brain functions and many times takes the user both out of reality and into a mindset that overrides the natural tendency to be cautious in dangerous circumstances. Consequently, users many times place themselves in situations that may cause serious injury. In effect, the user may become irrational and think themselves to be indestructible. Use may also result in blurred vision, diminished sensations, ataxia, hyperreflexia, clonus, auditory hallucinations and variable motor depression which may lead to other aggressive or bizarre behavior. Blood pressure rises, and there may also be diaphoresis and salivation. High dose may lead to convulsions, coma, hyperpyrexia, and respiratory depression or arrest (death).

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### **XX. Attachment B: Alcohol and Controlled Substances Testing Procedures**

#### **A. Scope.**

1. The drug testing custody and control form is to be used as a permanent record on which identifying data about the employee and on the specimen collection and transfer process are retained. The drug testing plan requires testing for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).
2. Urine specimens collected under this plan may be used only to test for controlled substances designated or approved for testing as described in this appendix and shall not be used to conduct any other analysis or test.
3. This plan does not prohibit procedures reasonably incidental to analysis of the specimen for controlled substances (e.g., determination of PH or tests for specific gravity, creatinine concentration, or presence of adulterants).

#### **B. Procedures.**

1. The collection site person shall utilize the drug testing custody and control form (COC) provided by company; this form must address the requirements as contained in f 40.23. The COC form must comply with the provisions as contained in 49 CFR Part 40 with regard to the information that must be contained on the form.
2. 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 employee identification number) may not be provided to the laboratory. Donor medical information may appear only on the copy provided to the donor.

#### **C. Security.**

1. The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process of the specimen.
2. The designated collection site is 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 secure during drug testing.
3. 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.
4. 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:
  - a) The specimen shall remain under the direct control of the collection site person from

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delivery to its being sealed in the mailer.

- b) The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

### **D. Chain of Custody.**

- 1. 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.
- 2. Handling the transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Every effort shall be made to minimize the number of persons handling specimens.

### **E. Access to Authorized Personnel Only.**

- 1. No unauthorized personnel shall be permitted in any part of the designated collection site when 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 a specimen (under the conditions specified in this section).
- 2. 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 supervision at any time.
- 3. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialed, 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).

### **F. 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 procedure, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute the specimen:
  - a) The employee has presented a urine specimen that falls outside the normal temperature range (32° -38°C/90° - 100°F) and
    - (i) The employee declines to provide measurement of oral body temperature, as provided in paragraph G. 14. of this section; or
    - (ii) oral body temperature varies by more than 1 °C/1.8°F from the temperature of the specimen.
  - b) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the lab to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L.
  - c) 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

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in specimen presented); or

- d) 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 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 paragraph 2 above.
- G. Integrity and Identity of Specimen. The collection site person 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 the toilet tank wherever possible, so that the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water (e.g., no 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 proper 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 person shall provide 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 their 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.

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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. Collection Methodology.**

- a) Upon receiving the specimen from the individual, the collection site person shall determine if it has at least 30m1 of urine for the primary or single specimen bottle and an additional 15m1 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 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. Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.
- b) In pre-employment testing, if the company does not wish to hire the individual, the MRO is not required to make sure a referral. Upon completion of the examination, the MRO shall report his or her conclusion to the company in writing.

### **11. Employers using the split sample method of collection shall follow the procedures set forth below:**

- a) The donor shall urinate into a collection container or specimen bottle capable of holding at least 60 ml.
- b) 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 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.
- c) If a single specimen bottle is used as a collection container, the collection site person, in the presence of the donor, shall pour 15m1 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).
- 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

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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.
12. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
13. 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.
14. A specimen temperature outside the range of 32°C - 38° C/90°F - 100°F, constitutes a reason to believe that the individual has altered or substituted the specimen (See Section F.2a.). In such cases, the individual supplying the specimen may volunteer to have their temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.
15. 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.
16. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
17. Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in Section F.2a. and c., a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
18. 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 tamper-proof 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

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site person shall request the individual to observe the transfer of the specimen and the placement of the tamper-proof seal over the bottle cap and down the sides of the bottle.

19. The collection site person and the employee shall be present at the same time during procedures outlined in items 20 through 23 of this section.
20. 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 tamper-proof seal shall also be applied.
21. The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collection from the donor.
22. The collection site person shall enter on the drug testing custody and control form 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.
23. The individual shall be asked to read and sign a statement on the drug testing custody and control form that the specimen collected from him/her is in fact that specimen he/she provided.
24. 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.
25. 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.
26. Control of Specimen
  - a) 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.
  - b) If the involved collection site person leaves their work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with them 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, they shall package the specimen for mailing before leaving the site.
  - c) 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 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 company a new collection may begin.
- H. 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.

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- I. Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimens 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. On the tape sealing the container, the collection site person shall sign and enter the date specimens are sealed in the container for shipment. This collection site person shall ensure that the chain-of-custody documentation is attached to each container sealed for shipment to the drug testing laboratory.
- J. Failure to Cooperate. If the employee refuses to cooperate with the collection process, the collection site person shall inform the designated company representative and shall document the non-cooperation on the drug testing custody and control form.
- K. Employee Requiring Medical Attention. If the sample is being collected from an employee in need of medical attention 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.
- L. Use of Chain of Custody Forms. A chain of custody form 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 shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

### **Laboratory Testing Procedures**

#### A. Testing.

1. Initial Test - The initial test shall use an immunoassay which meets the requirement of the Food and Drug Administration ("FDA") 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	300
Opiate metabolites	300*
Phencyclidine (PCP)	25
Amphetamines	1,000

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

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

	Confirmation test cutoff levels (ng/ml)
Marijuana metabolites (1)	15

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Cocaine metabolites (2)	150
Opiates:	
Morphine	300
Codeine	300
Phencyclidine (PCP)	25
Amphetamines:	
Amphetamine	500
Methamphetamine(3)	500
(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid	
(2) Benzoylecgonine	
(3) Specimen must also contain amphetamine at a concentration greater than or equal to 300 ng/ml	

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.

### **B. Reporting Results.**

1. The laboratory shall report test results to the company's MRO 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 test, 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 results.
2. The laboratory shall report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for specific drug.
3. The MRO 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 company. The MRO may reveal the quantitation of a positive test result to the company, the employee, or the decision maker 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 MRO by various electronic means (e.g., teleprinter, 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 MRO the original or a certified true copy of the drug testing custody and control form (copy 1), 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.

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6. The laboratory shall provide to the company, its agent, or third-party administrator (TPA), responsible for coordination of the drug testing program, a quarterly statistical summary of urinalysis testing of the company's employees and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that quarter.
  7. Quarterly reports shall not include data from which it is reasonably likely that information about individuals' tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send 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, the laboratory will so inform the employer in writing.
  8. The laboratory shall make available copies of all analytical results for company drug testing programs when requested by DOT with regulatory authority over the company.
  9. Unless otherwise instructed by the company in writing, all record pertaining to a given urine specimen shall be retained by the drug testing laboratory for minimum of 2 years.
- C. Long-Term Storage. Long-term frozen storage (-20 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.
- D. 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.
- E. 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 appendix. 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 appendix, the subcontractor performs all analysis and provides storage required under this appendix, and the subcontractor is responsible to the company for compliance with this appendix and applicable DOT regulations as if it were the prime contractor.
- F. Inspections. DOT, any company utilizing the laboratory, DHHS, or an organization performing laboratory certification on behalf of DHHS reserves the right to inspect the laboratory at any time. Company contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the company and the DOT of jurisdiction (directly or through an agency) to conduct unannounced inspections.
- G. 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

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notification by DOT or by any company 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; 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.

### **H. Protection of Employee Record.**

1. Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT regulations.
2. 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 decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

## **Evidential Breath Testing (EBT) Procedures**

### **A. Scope.**

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

### **B. Alcohol Testing Form and Log Book.**

1. The BAT shall utilize the Breath Alcohol Testing form provided by the company. The alcohol testing form must comply with the provisions as contained in 49 CFR Part 40 with regard to the information that must be contained on the form. The form must address the specific requirements contained in '40.59. The company may not modify or revise the form.
2. The company may utilize a form that is directly generated by an EBT and may omit the space for affixing a separate printed result to the testing form. The form shall provide triplicate or three consecutive identical copies with copy 1 (white copy) being retained by the company, copy 2 (green copy) shall be provided to the employee, and copy 3 (blue copy) shall be retained by the BAT.
3. The company shall use only approved evidential breath testing (EBT) devices for conducting the alcohol testing provisions required in the company's policy and procedures. The company shall use a log book in conjunction with any EBT used for screening tests if the EBT being utilized does not have:
  - a) capabilities to be attached independently or by direct link to a separate printer, print a result in triplicate (or three consecutive identical copies) of each breath test;
  - b) capabilities to assign a unique and sequential number to each completed test so that the number can be read by the breath alcohol technician (BAT) and the employee before each test and be printed out on each copy of the result;
  - c) capabilities of printing out the manufacturer's name of the device, serial number and time of the test.

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4. The breath alcohol testing form may include such additional information as may be required for billing or other legitimate purposes necessary to the testing provided that personal identifying information on the individual (other than the social security number or employee identification number) may not be provided.

### **C. Breath Testing Locations.**

1. The company shall ensure that there are sufficient breath testing sites or the availability of BATs located within a reasonable proximity to each of the company's work locations.
2. The company shall conduct the testing in a location that affords visual and aural privacy to the employee being tested. The location shall prevent unauthorized personnel from seeing or hearing test results. All necessary equipment, personnel, and materials for conducting the alcohol testing shall be provided at the testing site.
3. A mobile collection facility, such as a van that is equipped for alcohol testing, that meets the requirements set forth in the company's policy and procedures may be utilized.
4. No unauthorized persons shall be permitted access to the testing site when the EBT remains unsecured, or in order to prevent such individuals from seeing or hearing a test result.
5. In some circumstances the company may have to conduct such alcohol testing outdoors at the scene of an accident that does not meet the requirements as specified in post-accident provisions of the company's policies and procedures, then the BAT shall provide the necessary visual and aural privacy to the employee to the greatest extent practicable.
6. The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing site while the testing process is in progress.

### **D. Breath Alcohol Testing Preparations.**

1. When an employee arrives at the alcohol testing site, the BAT shall ensure that the individual is positively identified as the employee selected for alcohol testing (e.g. through presentation of photo identification or identification by the company's representative). If the employee's identity cannot be established, the BAT shall not proceed with the alcohol test. If the employee requests, the BAT shall show proper identification to the employee.
2. The BAT shall explain the alcohol testing process to the employee.
3. If the employee fails to arrive at the assigned time, the BAT should contact the appropriate authority to obtain guidance on any action to be taken

### **E. Screening Test Procedures.**

1. The BAT shall begin the alcohol testing process by completing Step 1 on the Alcohol Breath Testing form. The employee shall then complete Step 2 by signing the certification. Refusal by the employee to sign the certification shall be regarded as refusal to take the alcohol test.
2. The BAT shall select an individually-sealed mouthpiece and shall open it in full view of the employee and attach it to the EBT in accordance with the manufacturer's instructions.
3. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT instrument indicates that an adequate amount of breath has been obtained.

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4. The BAT shall show the employee the result displayed on the EBT and 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. The BAT shall record in the log book the test number, date of the test, name of the BAT, location, and quantified test result. The employee shall then initial the log book entry.
5. 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. The result shall be secured in such a manner that will provide clear evidence of removal, such as the use of tamper-evident tape.
6. If the EBT prints the test result directly onto the alcohol form, then the BAT shall show the employee the result displayed on the EBT.
7. If the result of the screening alcohol 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 then sign the certification and fill in the date in Step 4 of the form. If the employee does not sign the certification in Step 4 or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.
8. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the "Remarks" section. Both the BAT and the employee shall initial or sign the notation. The alcohol test is invalid and the company representative and the employee shall be so advised.
9. At this point, no further testing is authorized. The BAT shall transmit the result of less than 0.02 to the PM or other company designated representative in a confidential manner. The company shall receive and store the information so as to ensure that confidentiality is maintained as required in the company's policy and procedures.
10. If the result of the screening test is an alcohol concentration of 0.02 or greater, then the BAT shall perform a confirmation test. If the confirmation will be conducted by a different BAT, then the BAT who conducts the screening test shall complete and sign the form and log entry. The BAT will upon completion of the alcohol test provide the employee with Copy 2 of the breath alcohol testing form.

### **F. Confirmation Test Procedures.**

1. When a BAT other than the one who conducted the screening test is required to conduct the confirmation test, the new BAT will require the employee to provide positive identification such as photo ID card or identification by a company representative. The BAT will, upon request of the employee being tested provide such identification.
2. The BAT shall instruct the employee not to eat, drink, put any object or substance in his/her mouth, and to the extent possible, not belch during the waiting period just prior to the confirmation test. This waiting period shall begin with the completion of the screening test and shall not be less than 15 minutes, but must be within 20 minutes of the completion of the screening test. The BAT shall explain to the employee that the reason for this is to prevent any accumulation of mouth alcohol leading to an artificially high reading and that it is for the benefit of the employee to comply with these instructions. The BAT shall also explain that the test will be

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conducted at the end of the required waiting period, even if the employee has disregarded the instructions. Should the BAT become aware that the employee has not complied with the instructions as provided, the BAT shall note the observation in the "Remarks" section of the form.

3. When a BAT other than the one who conducted the screening test is required to conduct the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing form. The BAT shall then complete step 1 on the form and the employee shall then complete Step 2 by signing the certification. If the employee should choose not to sign the certification, the BAT shall then make an appropriate notation in the "Remarks" section indicating the employee's refusal to take the alcohol test. The BAT shall note in the "Remarks" section that a different BAT conducted the screening test.
4. The BAT shall open, in the presence of the employee, a new individually-sealed mouthpiece and attach the mouthpiece to the EBT in accordance with the manufacturer's instructions. The BAT will then 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.
5. The BAT shall ensure, prior to the confirmation test being administered to the employee, that the EBT shall register 0.00 on an air blank. If the reading is greater, the BAT shall conduct one more air blank. Should the EBT again register greater than 0.00, the testing shall not proceed using that EBT. An 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 conducted and the EBT is found to be within the accepted tolerance limits. Alcohol testing using another EBT may proceed.
6. In the event that the screening and confirmation test results are not identical, the confirmation test result shall be deemed to be the final result on which any disciplinary action by the company may be taken in order to comply with the company's policy and procedures and any applicable federal requirements.
7. 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. The result shall be secured in such a manner that will provide clear evidence of removal, such as the use of tamper-evident tape.
8. If the EBT prints the test result directly onto the alcohol form, then the BAT shall show the employee the result displayed on the EBT.
9. After the confirmation test is completed, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall then be instructed to sign the certification and fill in the date in Step 4. If the employee should elect to not sign the certification or to not provide his/her initials in the log book entry for the test conducted, it shall not be considered as a refusal to be tested. The BAT shall then note the employee's failure to sign or initial the log book entry in the "Remarks" section of the testing form
10. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the "Remarks" section. Both the BAT and employee shall initial or sign the notation on the testing form. The test shall be considered "invalid" and the company representative and the employee shall be so advised.
11. The BAT shall transmit all alcohol testing results to the PM or other designated company

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representative in a confidential manner. All communications by BATs shall be to the PM or other company designated contract only; and may be provided in writing, in person, or by telephone or electronic means. The BAT shall ensure that immediate transmission of test results to the company is conducted in order for the company to prevent the employee from performing any covered functions.

12. Should the initial transmission not be accomplished in writing, but via telephone notification, the PM or company designated contact shall establish a mechanism to verify the identity of the BAT providing the information. The BAT shall follow the initial transmission by providing to the PM or company designated contact the company's copy of the breath alcohol testing form. The test results shall be stored in such a manner so as to protect the confidentiality of the results and to eliminate the disclosure of information to unauthorized persons.

### **G. Refusals to Test and Uncompleted Tests.**

1. Refusal by an employee to complete and sign Step 2 of the breath alcohol testing form, 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 company PM or designated contact.
2. If a screening or confirmation test cannot be completed or if an event occurs to invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test using a new breath alcohol testing form with a new sequential test number.

### **H. Inadequate Amount of Breath.**

1. If the employee is unable, or alleges that he/she is unable, to provide sufficient amount of breath to permit a valid breath test because of a medical condition, the BAT shall again instruct the employee to attempt to provide an adequate amount. If the employee refuses to make the attempt, the BAT shall immediately inform the PM or company designated contact.
2. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the "Remarks" section of the test form and shall immediately inform the PM or designated contact. The PM shall direct the employee to obtain, as soon as practical after the attempt, an evaluation from a licensed physician who is acceptable to the company concerning the employee's medical ability to provide an adequate amount of breath.
3. If the physician determines, in his/her reasonable medical judgment, that a medical condition has or 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 as a refusal to take an alcohol test. The physician shall provide to the company PM a written statement of the basis of his/her conclusion.
4. If the physician, in his/her reasonable medical judgment, is unable to make the determination that a medical condition has precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall be regarded as refusal to take a test. The physician shall provide a written statement of the basis for his/her conclusion to the company PM.

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### **I. Invalid Test**

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

1. The EBT does not pass its next external calibration check. This invalidates all test results of 0.02 or greater on tests conducted since the last valid external calibration test. This would not invalidate any negative tests conducted.
2. The BAT does not observe the minimum 15-minute waiting period prior to conducting the confirmation test.
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 0.00 prior to the administration of an alcohol test.
4. The BAT does not sign the breath alcohol testing form.
5. The BAT fails to note in the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing or attachment to the form of the test results.
6. An EBT fails to print a confirmation test result.
7. The sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number of alcohol concentration on the printed result.

### **J. Availability and disclosure of alcohol testing information**

1. The company shall maintain records in a secure manner, and will disclose individual test information to unauthorized persons only, on a need to know basis.
2. Except as required by law or by the Department of Transportation (DOT), the company will not release information about an employee's alcohol test without the written consent of the employee.
3. The company shall make records available to a subsequent employer upon receipt of a written request from the former employee. Disclosure will be by the specific terms of the employee's written consent.
4. An employee is entitled, upon written request, to copies of any records pertaining to the employee's use of alcohol including any records pertaining to an alcohol tests. The company shall provide the records requested by an employee.

### **K. Maintenance and disclosure of records concerning EBTs and BATs**

1. The company or its designated agent shall maintain the following records for two years:
  - a) Records of inspection and maintenance of each EBT used in employee testing;
  - b) Documentation of compliance with the QAP for EBT used for alcohol testing;
  - c) Records of the training and proficiency testing of each BAT used in testing;
  - d) The log books required by 49 CFR Part 40.59(c)
2. The company or its agent shall maintain for five years records pertaining to the calibration of each EBT used in alcohol testing, including records of the results of external calibration checks.

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**XXI. Verification of Receipt of Education Materials**

Verification of Receipt of Education Materials

(according to federal regulation issued February 15, 1994)

I hereby certify that, in accord with federal safety regulations, I have been provided with and have received a policy on alcohol misuse and substance abuse in the workplace.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

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Print Driver Name

Driver Signature