

# COMMUNICATIONS WORKERS OF AMERICA (CWA)



## DRUG-FREE WORKPLACE PROGRAM



# **ADDENDUM A**

**CWA 3170**

**DRUG-FREE WORKPLACE PROGRAM**





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# DRUG-FREE WORKPLACE PROGRAM

## I. PURPOSE

As a part of its commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free working environment, the City of Gainesville, Florida (City) has established this program relating to the use or abuse of alcohol and drugs by its employees. This program is intended to conform to the requirements of the Drug-Free Workplace Program under Florida's Workers' Compensation Law, § 440.101-.102, Fla. Stat., and rules promulgated pursuant thereto. Supplemental programs required by federal regulations will be described in addenda hereto. Substance abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and a decline in the quality of products and services provided. This program is established in part to detect users and remove abusers of drugs and alcohol from the workplace, to prevent the use and/or presence of these substances in the workplace, and to assist employees in overcoming any dependence on drugs and/or alcohol in accordance with the following guidelines.

Section 440.101, Fla. Stat., provides, in part, that an employee who is injured in the course and scope of his/her employment and tests positive on a drug or alcohol test may be terminated and shall forfeit his/her eligibility for medical and indemnity benefits under Florida's Workers' Compensation Law. Refusal to take a drug (urine) or alcohol (blood) test will result in the employee forfeiting his/her eligibility for medical and indemnity benefits under Florida's Workers' Compensation Law and the employee being subject to dismissal. Therefore, if Worker's Compensation benefits are forfeited pursuant to the drug-free workplace program, the employee injured on the job will be without any City provided medical benefits.

Certain components of this program involve utilization of additional techniques and procedures. These additional techniques and procedures, are both justified by, and based upon, federal and state statutes, case law, and regulatory findings. At such time as the regulations implemented pursuant to the Omnibus Transportation Employee Testing Act of 1991 or other regulatory requirements become applicable to City employees, this program will be altered as and if necessary to conform to the specific requirements of the final regulations. Until such time, any additional techniques and procedures shall utilize mechanisms already in use and/or proposed for use by state or federal law and regulation. Prior to making any amendments to this Program, the City shall engage in collective bargaining to the extent required by law.

To the extent that Section 440.101-.102, or the implementing rules issued by the Department of Labor and Employment Security or those issued by the Agency for Health Care Administration are amended, or other statutes and rules requiring drug testing

determined to be applicable to City employees are adopted or amended, this Program will be modified without the necessity of further general notice as required by §440.102 (3).

The City's Drug-Free Workplace Program has been prepared so as not to conflict with public policy and, further, not to be discriminatory or abusive. A drug-free workplace should be the goal of every employer in America. Drug and alcohol testing is only one of the several steps that must be taken to achieve this objective. When incorporated into a comprehensive anti-drug effort, testing can go a long way in combating drug and alcohol abuse in the workplace.

## **II. SCOPE**

All employees covered by this program and, as a condition of employment, are required to abide by the terms of this program and, as applicable, supplemental programs described in addenda to the City of Gainesville's Drug-Free Workplace Program. Any employee in doubt as to the requirements or procedures applicable to their situations may contact the City's Human Resources Department for information. Consistent with policy determinations and legal requirements, the City shall limit testing to that which is considered necessary to meet the Purpose of this Program.

## **III. DRUG-FREE WORKPLACE PROGRAM DISSEMINATION**

- A. The City has given a general one-time notice to all employees that the City prohibits its employees from illegally or improperly using, possessing, selling, manufacturing, or distributing drugs on its property, or while its employees are at work; that it is against City policy to report to work or to work under the influence of drugs; and that it is a condition of employment to refrain from using illegal drugs or alcohol on the job, or abusing legal drugs on or off the job such that it affects their job, and that a drug testing program is being implemented. At least sixty (60) days have elapse between the notice and any employee drug testing implemented pursuant to this program.
- B. Prior to testing, all employees or applicants for employment will have been given a summary of the Drug-Free Workplace Program, a summary of the drugs which may alter or affect a drug test, a list of local employee assistance programs and a list of local alcohol and drug rehabilitation programs.
- C. A notice of drug testing will be included with all job vacancy announcements for which drug testing is required. A notice of the City's drug testing program will also be posted in appropriate and conspicuous locations on the City's premises and copies of the program will be made available for inspection during regular business hours in the Human Resources Department.

#### **IV. DEFINITIONS**

The definitions of words and terms as set forth in § 440.02(1) and § 440.102(1), Fla. Stat., the Florida Workers' Compensation Drug Testing Rules and the Agency for Health Care Administration, Drug-Free Workplace Standards (Fla. Admin. Code R. 59-A24) as may be amended shall apply to the words and phrases used in this program unless the context clearly indicates otherwise. When the phrase "drug and alcohol" testing, use, etc., is used in connection with different testing mechanisms, prohibitions or causes for testing "drug" includes all of the below listed substances except alcohol. "Drug" otherwise has the same meaning as in §440.102(1)(a), Fla. Stat., which defines "drug" as follows:

(a) "Drug" means alcohol, including distilled spirits, wine, malt beverages, and intoxicating liquors; amphetamines; cannabinoids; cocaine; phencyclidine (PCP); hallucinogens; methaqualone; opiates; barbiturates; benzodiazepines; synthetic narcotics; designer drugs; or a metabolite of any of the substances listed herein.

(b) The words fail, failed or failure when used in this policy are based upon a confirmed positive test result reported by the Medical Review Officer (MRO).

#### **V. ALCOHOL USE PROHIBITIONS**

- A. The consumption of alcohol on City property or while on duty (during working hours, while at work, etc.) is prohibited and will result in disciplinary action, up to and including dismissal.
- B. Off-duty use of alcohol may adversely affect an employee's job performance or adversely affect or threaten to adversely affect other interests of the City, including but not limited to the employee's relationship to his/her job, fellow workers' reputations, or goodwill in the community. Disciplinary action up to and including dismissal may be imposed on this basis.
- C. Except as provided herein, the personal possession (i.e., on the person, or in a desk, locker) of alcohol on City property or during working hours will result in disciplinary action, up to and including dismissal.
- D. It is against the City's program and a violation of City policy to report to work or to work under the influence of alcohol.
- E. For purposes of implementing § 440.101-.102, Fla. Stat., an employee is presumed to be under the influence of alcohol if a blood test shows alcohol usage as set forth in Section VIII(L) or as otherwise provided by law (see Section I - Purpose).

- F. An employee who Management has reason to suspect is under the influence of alcohol will be removed immediately from the workplace and will be tested and evaluated by authorized personnel selected in accordance with this program. The City will take further action (i.e., further testing, referral to counseling, and/or disciplinary action) based on medical information, work history, and other relevant factors. The determination of appropriate action in each case rests solely with the City.
- G. Failure to pass an alcohol test will result in further testing or disciplinary action, up to and including dismissal.
- H. Efforts to tamper with, or refusal to submit to an alcohol test will subject the employee to dismissal.

Refusal is defined as follows:

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

- (a) fails to provide adequate breath or blood for testing without a valid medical explanation after he or she has received notice of the requirement for alcohol testing;
  - (b) 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;
  - (c) engages in conduct that clearly obstructs the testing process; or
  - (d) refusal to execute the consent or release to testing form(s) constitutes a refusal to submit per 49 CFR, 40.25 Section (f)(22)(ii).
- I. Employees arrested for an alcohol-related incident, as indicated on the arrest report, shall notify, as soon as feasible, but in any event no later than 24 hours after the arrest, the City management representative having direct administrative responsibility for the arrested employee of the arrest if the incident occurs:
    - 1. During working hours, or
    - 2. While operating a City vehicle, or
    - 3. While operating a personal vehicle on City business.



Failure to comply with this subsection will result in disciplinary action up to and including dismissal.

- J. Violations of alcohol use prohibitions can subject an employee to disciplinary action up to and including dismissal. Dismissal for a first offense will be considered an appropriate penalty absent mitigating circumstances.

## **VI. DRUG USE PROHIBITIONS**

- A. The use, sale, purchase, possession, manufacture, distribution, or dispensation of drugs or their metabolites on City property or while at work (while on duty, during working hours, etc.) is a violation of the City's Program and is just cause for immediate dismissal.
- B. Reporting to work, or working, under the influence of illegal drugs is a violation of the City's Program and is just cause for immediate dismissal.
- C. For purposes of this program, an employee is presumed to be under the influence of drugs if a urine test or other authorized testing procedure shows drug usage as set forth in Section VIII (L) or as otherwise provided by law (see Article I - Purpose).
- D. Participation in a treatment program, will not excuse violations of this policy, work rule violations, improper conduct, or poor performance and an employee may be disciplined or dismissed for such offenses or failure to perform.
- E. Legal medications (over-the-counter) or prescription drugs may also affect the safety of the employee, fellow employees or members of the public. Therefore, any employee who is taking any over-the-counter medications or prescription drugs which might impair safety, performance, or any motor functions shall advise his/her direct management representative of the possible impairment before reporting to work under the influence of such medication or drug. A failure to do so may result in disciplinary action. If Management determines that the impairment does not pose a safety risk, the employee will be permitted to work. Otherwise, management may offer a change in work schedule, temporarily reassign the employee or place the employee in an appropriate leave status during the period of impairment. Improper use of "prescription drugs" is prohibited and may result in disciplinary action. Improper use of prescription drugs includes, but is not limited to, use of multiple prescriptions of identical or interchangeable drugs, and/or consumption of excessive quantities of and individual or therapeutically interchangeable drugs, and/or inappropriately prolonged duration of consumption of drugs, and/or consumption of prohibited drugs for other than valid medical purposes. For the purpose of this Program, consumption of any drug by the employee of more than the manufacturer's maximum recommended daily dosage, or for a longer period of time than recommended (unless otherwise prescribed by employee's physician), or of any prohibited drug prescribed for or intended for another individual, or for other than a valid medical purpose shall be construed to constitute improper use. Prescription

medication shall be kept in its original container (unless approved in advance by management) if such medication is taken during working hours or on City property.

- F. Refusal to submit to, or efforts to tamper with, a drug test will subject the employee to dismissal.

Refusal is defined as follows:

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

- (a) fails to provide adequate breath or blood for testing without a valid medical explanation after he or she has received notice of the requirement for alcohol testing;
  - (b) 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;
  - (c) engages in conduct that clearly obstructs the testing process; or
  - (d) refusal to execute the consent or release to testing form(s) constitutes a refusal to submit.
- G. Violations of drug prohibitions can subject an employee to disciplinary action up to and including dismissal. Dismissal for a first offense will be considered an appropriate penalty absent mitigating circumstances.

## VII. TESTING

### A. Testing of Applicants

- 1. Prior to employment, applicants, whether for temporary or permanent positions, will be tested for the presence of drugs.
- 2. Any job applicant who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment confirmatory drug test will not be hired and, unless otherwise required by law, will be ineligible for hire for a period of at least two (2) years.

### B. Reasonable Suspicion Testing

- 1. "Reasonable suspicion testing" means drug testing based on a belief that an employee is using, or has used drugs in violation of the City's program, on the basis of specific, contemporaneous, physical, behavioral or performance

indicators of probable drug use. It is a belief based on objective facts which could reasonably lead an observer to further investigation.

Two management representatives shall substantiate and concur in the decision to test said employee, if feasible. Only one management representative need personally investigate or witness the conduct. The management representative(s) and witness(es) shall have received training in the identification of actions, appearance, conduct or odors which are indicative of the use of drugs or alcohol. If a management representative believes reasonable suspicion exists, the management representative shall report his or her findings and observations to the next higher management representative having administrative responsibility for the affected employee. Upon approval by the next higher management representative, the employee will be asked to immediately submit to a drug test(s) and sign a form acknowledging his or her consent. When chemical breath testing for alcohol testing is used, the test may be conducted immediately at the work site or later at the collection site. Factors which substantiate cause to test for drugs shall be documented by the management representative on the Substance Abuse Investigation Report Form which must be completed as soon as practicable, but no later than four (4) days after the employee has been tested for drugs. A copy of this report will be given to the employee upon request.

2. Each supervisor shall be responsible to determine if reasonable suspicion exists to warrant drug testing and required to document in writing the specific facts, symptoms, or observations which form the basis for such reasonable suspicion. The documentation shall be forwarded to the Department Head or designee to authorize the drug test of an employee.

The Department Head or designee shall require an employee to undergo drug testing if there is reasonable suspicion that the employee is in violation of the City of Gainesville Drug-Free Workplace Program. Circumstances which constitute a basis for determining "reasonable suspicion", individually (except as provided in g. below) or in combination, may include but are not limited to:

- a. A Pattern of Abnormal or Erratic Behavior - This includes but is not limited to a single, unexplainable incident of serious abnormal behavior or a pattern of behavior which is radically different from what is normally displayed by the employee or grossly differing from acceptable behavior in the workplace.
- b. Information Provided by a Reliable and Credible Source - The first line supervisor or another supervisor/manager receives information from a reliable and credible source as determined by the Department

Head that an employee is violating the City's Drug-Free Workplace Program.

- c. Direct Observation of Drug Use - The first line or another supervisor/manager directly observes an employee using drugs while the employee is on duty. Under these circumstances, a request for drug testing is MANDATORY.
- d. Presence of the Physical Symptoms of Drug Use - The supervisor observes physical symptoms that could include but are not limited to glassy or bloodshot eyes, slurred speech, poor motor coordination, or slow or poor reflex responses different from what is usually displayed by the employee or -what is generally associated with common ailments such as colds, sinus, hay fever, diabetes, etc.

The following will be deemed reasonable suspicion and may provide a sufficient basis for requesting a drug test at the direction of the Department Head or designee:

- e. Violent or Threatening Behavior - First Incident: If an employee engages in unprovoked, unexplained, aggressive, violent and/or threatening behavior against a fellow employee or a citizen, the Department may request that the employee submit to drug testing;
- f. Violent or Threatening Behavior - Subsequent Incident: Whether or not an employee has previously received formal counseling or disciplinary action for unprovoked, unexplained, aggressive, violent and or threatening behavior against a fellow employee or a citizen, upon a second or subsequent episode of similar behavior/conduct (within eighteen months), the Department shall request that the employee undergo drug testing.
- g. Absenteeism and/or Tardiness: If an employee has previously received a suspension action for absenteeism and/or tardiness, a continued poor record (within eighteen months) that warrants a second or subsequent suspension action may result in a request for a drug test. This factor alone will not be cause for testing.
- h. Odor: Odor of cannabis or alcohol upon the person.
- i. Performance Related Accidents: Each employee whose performance either contributed to the accident or whose performance cannot be discounted as a contributing factor to the accident shall be drug tested for both alcohol and drugs. The management representative having administrative responsibility for the employee involved in the

accident shall ensure that a drug test is performed as soon as possible but no later than 32 hours after the accident provided that if the employee is a patient, the attending physician has no objections. Post-accident testing may involve breath, blood, and urine.

Should evidence of alcohol be present, i.e., an odor of alcohol, open containers, or a statement from witness confirming alcohol consumption, the management representative must ensure testing is completed as soon as emergency medical care has been provided. An employee shall supply, if requested, an alcohol specimen within eight (8) hours.

The following are examples of conditions that require accident related testing:

- (1) City employee operating a City vehicle at any time, or a non-City vehicle on City business, and involved in an accident that results in a citation for a moving violation, or in any of the consequences described in 2(a) - (c) below.
- (2) Non-vehicular work related accident resulting in:
  - (a) property damage estimated to be greater than \$1,000.
  - (b) death; or injury to the employee requiring medical treatment at an off-site (away from the scene of the accident) medical facility other than Employee Health Services. If the injury is of such character as would have been treated at Employee Health Services, but for the unavailability of Employee Health Services, management may waive this requirement. "Unavailability" means occurring at a time other than the hours of operation of Employee Health Service or at such distance from Employee Health Services as to render their use impractical.
  - (c) death or injury to another person.

C. Open Section

D. Open Section

E. Follow-up Testing

If an employee in the course of employment enters an employee assistance program for drug related problems or a drug rehabilitation program, the employee must submit to a drug test as a follow-up to such program unless such requirement is waived by the City. Follow-up testing shall be conducted at least once a year for a

two-year period after completion of the program. Advance notice of such follow-up testing must not be given to the employee to be tested. In the case of drivers subject to the commercial motor vehicle addendum, follow-up alcohol testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

**F. Routine Fitness for Duty**

An employee shall submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is required for all members of an employment classification or group. When a routinely scheduled employee fitness-for-duty medical exam is to be included, it shall be subject to collective bargaining, unless such is determined to be applicable to city employees by virtue of statutory or regulatory requirements.

**G. Additional Testing**

Additional testing may also be conducted as required by applicable state or federal laws, rules, or regulations, subject to Section I (Purpose).

**H. Refusal to Test**

Employees who refuse to submit to a blood or urine drug test administered in accordance with this program forfeit their eligibility for all workers' compensation medical and indemnity benefits and will be subject to dismissal. Employees who refuse to submit to a chemical breath test will be subject to dismissal.

## **VIII. TESTING PROCEDURE**

**A. Tested Substances**

The City may test for any or all of the following drugs:

Alcohol

Amphetamines (Binhetamine, Desoxyn, Dexedrine)

Cannabinoids (i.e., marijuana, hashish)

Cocaine

Phencyclidine (PCP)

Methaqualone (Quaalude, Parest, Sopor)

Opiates

Barbiturates (Phenobarbital, Tuinal, Amytal)

Benzodiazophines (Ativan, Azene, Clonopin, Dalmane, Diazepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)

Methadone (Dolophine, Methadose)

Propoxyphene (Darvocet, Darvon N, Dolene)

**B. Consent Required**

Job applicants and employees will be asked to sign a Consent To Testing form. Refusal to execute the consent form constitutes a refusal to be tested, and will subject the employee/applicant to dismissal/failure to hire. Execution of the consent to testing form by the employee shall not constitute a waiver of the grievance/arbitration procedures, if applicable.

**C. Designated Laboratory**

1. Because of the potential adverse consequences of test results on employees, the City will employ a very accurate testing program. Specimen samples will be analyzed by a highly qualified, independent laboratory which has been selected by the City and certified by the appropriate regulatory agency. The name and address of the certified laboratory currently used by the City is on file with Employee Health Services.
2. The City will submit at least five (5) blind samples per year with at least three (3) samples being blank (drug free).

**D. Notification of Prescription Drug Use**

Applicants and employees will be given an opportunity prior to and after testing to, on a confidential basis, provide any information they consider relevant to the test including listing all drugs they have taken within the immediately preceding 30-day period, including prescribed drugs and to explain the circumstances of the use of those drugs in writing or other relevant medical information on a Drug Use Information form, which information will be furnished to the Medical Review Officer (MRO) in the event of a positive confirmed result. Applicants and employees will also be provided with a notice of the most common medication by brand name or common name, as well as the chemical name which may alter or affect a drug test.

**E. Testing of Injured Employees**

An employee injured at work and required to be tested will be taken to a medical facility for immediate treatment of injury. If the injured employee is not at a designated collection site, the employee will be transported to one as soon as it is medically feasible and specimens will be obtained. If it is not medically feasible to move the injured employee, specimens will be obtained at the treating facility under the procedures set forth in this program and transported to an approved testing laboratory. No specimen will be taken prior to the administration of emergency medical care. An injured employee must authorize release to the City the result of any tests conducted for the purpose of showing the presence of alcohol or drugs.

**F. Body Specimens**

Urine will be used for the initial test for all drugs except alcohol and for the confirmation of all drugs except alcohol. Blood will be used for the initial and confirmation tests for alcohol for complying with the provisions of § 440-101-.102,

Fla. Stat. Sufficient volume of specimens shall be obtained so as to provide for the necessary number of samples as may be required, depending upon the number of required procedures. Chemical breath testing methods may be utilized in connection with justifying further alcohol/blood tests in instances involving reasonable suspicion testing under this program, but are not required to be first utilized. In the case of injured employees, the physician will have the discretion to determine to not draw a blood sample if such would threaten the health of the injured employee or if the employee has a medical condition unrelated to the accident which may preclude the drawing of the necessary quantity of blood for a testing specimen. Under these circumstances, no inference or presumption of intoxication or impairment will be made for the purposes of § 440.101-.102, but discipline for violation of the Program may be taken based upon observable conduct or conditions and/or the result of other tests, if any.

**G. Cost of Testing**

The City will pay the cost of initial and confirmation drug tests, which it requires of employees and job applicants. An employee or job applicant will pay the cost of any additional drug tests not required by the City. In the event that the City requires the employee's presence at the collection site outside normal working hours as part of the testing process and the employee passes the drug/alcohol test, such required time outside after normal working hours shall be considered actual time worked for the purpose of Section 13.4 of the CWA labor agreement, if applicable.

**H. Collection Site, Work Site**

1. The City will utilize a collection site designated by an approved laboratory which has all necessary personnel, materials, equipment, facilities, and supervision to provide for the collections, security, chain of custody procedures, temporary storage and shipping or transportation of urine and blood specimens to an approved drug testing laboratory. The City may also utilize a medical facility (designated by the contract laboratory) as a collection site which meets the applicable requirements.
2. The City may require that an employee take a chemical breath test at the Work Site or other City facility.
3. Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen and transportation of the specimen to the laboratory as applicable will meet state or federal rules and guidelines as amended from time to time, and will be used for each employee or job applicant whose blood or urine is tested.

**I. Collection Site, Work Site, Personnel**

A specimen for a drug test will be taken or collected by:



1. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of the accident for the purpose of rendering emergency service or treatment and/or qualified breath alcohol technician as defined in CFR Part 40; or
2. A qualified person employed by a licensed laboratory who has the necessary training and skills for the assigned tasks.

In the case of a chemical breath test, utilizing evidential breath test devices, a technician licensed pursuant to Fla. Admin. Code R. 11D-8, and/or qualified breath alcohol technician as defined in 49 CFR Part 40.

#### J. Testing Laboratory

1. The laboratory used to analyze initial or confirmation drug specimens will be licensed or certified by the appropriate regulatory agencies to perform such tests. The Agency for Health Care Administration has published Drug-Free Workplace Standards (Florida Administrative Code, R 59A-24) which shall be followed by laboratories and employers for testing procedures required under §440.101-.102, Fla. Stat.
2. All laboratory security, chain of custody, transporting and receiving of specimens, specimen processing, retesting, storage of specimens, instrument calibration and reporting of results will be in accordance with applicable state or federal laws and rules established by HCA or the U.S. Department of Transportation; to the extent the above information is readily reproducible by the lab and not confidential, such will be forwarded to the appropriate certified bargaining unit representative upon their request and their payment for reproduction cost.
3. The Medical Review Officer will provide assistance to the employee or job applicant for the purpose of interpreting any positive confirmed test results.

#### K. Initial Tests Used for Implementing § 440.101-.102, Fla. Stat.\*

Initial tests will use an immunoassay except that the test for alcohol will be an enzyme oxidation methodology. The following cutoff levels will be used when screening specimens to determine whether they are positive or negative for these drugs or metabolites. All levels equal to or exceeding the following will be reported as positive:

Alcohol	.05g/dl%
Amphetamines	1000 ng/ml
Cannabinoids	50 ng/ml
Cocaine	300 ng/ml
Phencyclidine	25 ng/ml

Methaqualone	300 ng/ml
Opiates	300 ng/ml
Barbiturates	300 ng/ml
Benzodiazepines	300 ng/ml
Synthetic Narcotics:	
Methadone	300 ng/ml
Propoxyphene	300 ng/ml

\* Chemical breath testing procedures as described in Fla. Admin. Code R. 11D-8 or U.S. Department of Transportation rules, may be used, as determined by the City, prior to requiring a blood sample in its reasonable suspicion testing program. These results are reported only to the appropriate manager who then determines if further testing under this program is warranted.

\*\*D.O.T. cutoff per 49 CFR, 40.29(e).

L. Confirmation Tests Used for Implementing § 440.101-.102, Fla. Stat

All blood and urine specimens identified as positive on the initial test will be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the HCA, except that alcohol will be confirmed using gas chromatography. All confirmation will be done by quantitative analysis. Concentrations which exceed the linear region of the standard curve will be documented in the laboratory and recorded as "greater than highest standard curve value". The following confirmation cutoff levels will be used when analyzing specimens to determine whether they are positive or negative for these drugs metabolites. All levels equal to or exceeding the following will be reported as positive:

Alcohol	.05g/dl%
Amphetamines	500 ng/ml
Cannabinoids	15 ng/ml
Cocaine	150 ng/ml
Phencyclidine	25 ng/ml
Methaqualone	150 ng/ml
Opiates	300 ng/ml
Barbiturates	150 ng/ml
Benzodiazepines	150 ng/ml
Synthetic Narcotics:	
Methadone	150 ng/ml
Propoxyphene	150 ng/ml

M. Comparable Procedures

To the extent allowed by law and regulation, the City shall utilize 49 CFR, Part 40 procedures for workplace drug testing programs in lieu of the comparable

procedures described herein, or incorporated by reference, when such comparable procedures are based upon the requirements of Fla. Admin. Code R. 59A-24.

## **IX. TEST RESULTS**

### **A. Reporting Results**

1. The laboratory shall disclose to the Medical Review Officer (MRO) a written positive confirmed test result report within seven (7) working days after receipt of the sample. The laboratory should report all test results (both positive and negative) to the MRO within seven (7) working days after receipt of the specimen at the laboratory. The name and address of the current MRO is on file with Employee Health Services. The MRO is employed by the City and is not an employee of the drug testing laboratory.
2. The laboratory will report as negative all specimens which are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive on the confirmation test will be reported positive for a specific drug.
3. The laboratory will transmit results in a manner designed to ensure confidentiality of the information. The laboratory and MRO will ensure the security of the data transmission and restrict access to any data transmission, storage and retrieval system.
4. As provided in Fla. Admin. Code R. 59A-24, the MRO will verify that positive and negative test results were properly analyzed and handled according to HCA rules. The MRO may require a re-test. The MRO will have knowledge of substance abuse disorders and shall also be knowledgeable in the medical use of prescription drugs and in the pharmacology and toxicology of illicit drugs. The MRO shall evaluate the drug test result(s) reported by the lab, verify by checking the chain of custody form that the specimen was collected, transported and analyzed under proper procedures and, determine if any alternative medical explanations caused a positive test result. This determination by the MRO may include conducting a medical interview with the tested individual, review of the individual(s) medical history or the review of any other relevant bio-medical factors. The MRO shall also review all medical records made available by the tested individual. The MRO may request the laboratory to provide quantification of test results.
5. Within three (3) days of receipt of the test results, the MRO will (1) notify the Occupational Health Manager of negative results, or (2) contact the employee or job applicant regarding a confirmed positive test result and make such inquiry as to enable the MRO to determine whether prescription or over-the-counter medication could have caused the positive test results.

In this latter case, the MRO will follow the applicable procedure set forth in either the HCA or D.O.T. rules for providing the employee or job applicant the opportunity to present relevant information regarding the test results. After following the appropriate procedures, the MRO will notify the City in writing of any verified test results. If the MRO, after making and documenting all reasonable efforts, is unable to contact the employee or job applicant to discuss positive test results, the MRO will contact a designated management official to arrange for the employee or applicant to contact the MRO. The MRO may verify a positive test without having communicated to the employee or applicant about the results of the test, if (1) the employee or applicant declines the opportunity, or (2) within two (2) days after contacting the designated management official the employee or applicant has not contacted the MRO. Further, employees or applicants must cooperate fully with the MRO. Failure to meet with the MRO upon his or her request or failure to promptly provide requested information will result in an applicant not being hired and an employee immediately being placed upon suspension without pay and may result in discharge.

6. Within five (5) calendar days after the City receives a positive, confirmed verified test result from the MRO, the City will notify the employee or job applicant in writing of such test results, the consequences of such results, and the options available to the employee or job applicant, including the right to file an administrative or legal challenge. Notification shall be mailed certified or hand delivered. Hand delivery is the preferred method of providing notice to employees. Mailed notification shall be deemed received by the employee or applicant when signed for, or seven (7) calendar days after mailing, whichever occurs first.
7. The City will upon request provide to the employee or job applicant a copy of the test results.
8. Unless otherwise instructed by the City in writing, all written records pertaining to a given specimen will be retained by the drug testing laboratory for a minimum of five (5) years. The drug testing laboratory shall retain (in properly secured refrigerated or frozen storage) for a minimum period of 1 year, all confirmed positive specimens. Within this one (1) year period the City, employee, job applicant, MRO or HCA may request in writing that the laboratory retain the specimen for an additional period of time. If no such request, or notice of challenge (See B.3.) is received, the laboratory may discard the specimen after one (1) year of storage.

#### **B. Challenges to Test Results**

1. Within five (5) working days (Monday thru Friday, 0800 - 1700, except observed/designated holidays) after receiving notice of a positive, confirmed and verified test result from the City, the employee or job applicant may

submit information to the City explaining or contesting the test results and why the results do not constitute a violation of this program. The employee or job applicant will be notified in writing if the explanation or challenge is unsatisfactory to the City. This written explanation will be given to the employee or job applicant within 15 days of receipt of the explanation or challenge, and will include why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive results. All such documentation will be kept confidential and will be retained for at least one (1) year.

2. Employees may challenge employment decisions made pursuant to this program as may be authorized by the City personnel policy or collective bargaining agreements.
3. When an employee or job applicant undertakes an administrative or legal challenge to the test results, it shall be the employee's or job applicant's responsibility to notify the City through its Human Resources Director and the laboratory, in writing, of such challenge and such notice shall include reference to the chain of custody specimen identification number. After such notification, the sample shall be retained by the laboratory until final disposition of the case or administrative appeal.
4. Agency for Health Care Administration, employer or MRO detecting a false positive error shall immediately notify the laboratory and the employee's management representative to whom the false positive test result was reported.

#### C. Employee/Applicant Protection

1. During the 180-day period after the employee's or applicant's receipt of the City's written notification of a positive test result, the employee or applicant may request that the City have a portion of the specimen retested, at the employee's or applicant's expense. The re-testing must be done at another HCA licensed laboratory. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory. The first laboratory which performed the test for the City will be responsible for the transfer of the portion of the specimen to be re-tested, and for the integrity of the chain of custody for such transfer.
2. The drug testing laboratory will not disclose any information concerning the health or mental condition of the tested employee or job applicant.
3. The City will not request or receive from the testing facility any information concerning the personal health, habit or condition of the employee or job applicant including, but not limited to, the presence or absence of HIV antibodies in a worker's body fluids.

4. The City will not dismiss, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a MRO.
5. The City will not dismiss, discipline or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while in the employ of the City, for a drug-related problem, if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol or drug rehabilitation program. This shall not prevent follow-up testing as required by this program (Section VII (E)).

**D. Comparable Procedure**

To the extent allowed by law and regulation, the City shall utilize 49 CFR, Part 40 procedures for workplace drug testing programs in lieu of the comparable procedures described herein, or incorporated by reference, when such comparable procedures are based upon the requirements of Fla. Admin. Code R. 59A-24.

**X. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

- A. The City regards its employees as its most important asset. Accordingly, the City maintains an EAP which provides help to employees who suffer from alcohol or drug abuse and other personal or emotional problems. Employees with such problems should seek confidential assistance from the EAP or other community resources before drug or alcohol problems lead to disciplinary action. Employees may contact Employee Health Services for the name of the City's EAP.
- B. Information about a self-referred employee's contact with the EAP is confidential and will not be disseminated without the employee's permission. Further, an employee is not subject to discipline solely as a result of a self referral for treatment.
- C. However, use of the EAP or other community resources will not shield the employee from appropriate disciplinary action for violations of the City's Drug-Free Workplace Program if such violations come to the City's attention through other means, including, but not limited to, reports from employees or outsiders, direct observation, or drug testing.
- D. Follow-up testing shall be monitored by the EAP and shall provide that the employee:
  1. Contact the EAP and strictly adhere to all the terms of treatment and counseling;
  2. Immediately cease any and all abuse/use of alcohol/drugs; and

3. Consent in writing to periodic unannounced testing for a period of up to 60 months after returning to work or completion of any rehabilitation program, whichever is later.
  4. Pass all drug test(s) administered under this program.
  5. The employee and the certified bargaining representative, if any, executes and abides by an agreement, if appropriate, describing the required conditions.
- E. Participation in an employee assistance program or a drug rehabilitation program shall be paid for to the extent authorized under the City's Health insurance plan, whether the particular program is selected by the employee or the City.

## **XI. INVESTIGATION**

- A. To ensure that illegal drugs and alcohol do not enter or affect the workplace, the City reserves the right to undertake reasonable searches of all vehicles, containers, lockers, or other items on City property in furtherance of this program. Individuals may be requested to display personal property for visual inspection.
- B. Searches for the purpose described herein will be conducted only where the City has reasonable suspicion that the employee has violated the City's Drug-Free Workplace Program, and that evidence of such misconduct may be found during the search. A substance abuse investigation report shall be completed within twenty-four (24) hours after any search conducted pursuant to this sub-section.
- C. Preventing a premises/vehicle search or refusing to display personal property for visual inspection pursuant to this section will be grounds for disciplinary action up to and including dismissal and/or denial of access to City premises.
- D. Searches of an employee's personal property will take place only in the employee's presence. All searches under this program will occur with the utmost discretion and consideration for the employee involved.
- E. Individuals may be required to empty their pockets, but under no circumstances will an employee be required to remove articles of clothing or be physically searched except by law enforcement personnel having lawful authority to do so.
- F. Because the City's primary concern is for the safety of its employees, the public and their working environment, the City will not normally seek prosecution in matters involving mere possession of illegal substances discovered solely as a result of a reasonable search under this section. However, the City will turn over all confiscated drugs and drug paraphernalia to the proper law enforcement authorities.

Further, the City reserves the right to cooperate with or enlist the services of proper law enforcement authorities in the course of any investigation.

## **XII. ARREST FOR DRUG-RELATED CRIME**

A. As a condition of employment, each employee obligates himself or herself to notify his or her appropriate management representative of the arrest for any alleged violation of or conviction under any criminal drug statute, including but not limited to, offenses described in Section 316.193, Chapter 859 and Chapter 893, Fla. Stat. (1991). Except for the more immediate notice required under Article V(I) of this program, the employee shall give the required notice within 48 working hours of such event. Failure to notify will result in dismissal.

B. Arrests:

If an employee is arrested on a charge of commission of a drug-related crime, the City will perform a preliminary investigation of all of the facts and circumstances surrounding the alleged offense, and City officials may utilize the drug-testing procedures in accordance with this program. In most cases, the arrest for a drug-related crime, except off-duty alcohol use, will constitute reasonable suspicion of drug use under this program. However, information on drug test results shall not be released or used in any criminal proceeding against the employee. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceeding. In conducting its own investigation the City shall use the following procedures:

During the preliminary investigation, an employee may be placed on leave with pay, if applicable. After the preliminary investigation is completed, but in no event later than 15 days after the employee's department head learns of the arrest, normal personnel procedures shall be implemented.

## **XIII. CONFIDENTIALITY**

All information, interviews, reports, statements, memoranda and drug test results, written or otherwise, received by the City as a part of this drug testing program are confidential communications. Unless required by state or federal laws, rules or regulations, the City will not release such information without a written consent form signed voluntarily by the person tested, except when consulting with legal counsel in connection with action brought under or related to § 440.101-102, Fla. Stat., or when the information is relevant to the City's defense in a civil or administrative matter.

The provisions of §119.07 to the contrary notwithstanding:

A. All information, interview, reports, statement, memoranda, and drug test results, written or otherwise, received or produced as a result of a drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance



with this section or in determining compensability under Chapter 440 Florida Statutes.

- B. Employers, laboratories, employees assistance programs, drug and alcohol rehabilitation programs, and their agents who receive or have access to information concerning drug test results shall keep all information confidential. Release of such information under any other circumstances shall be solely pursuant to written consent form signed voluntarily by the person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section, or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:
1. The name of the person who is authorized to obtain the information.
  2. The purpose of the disclosure.
  3. The precise information to be disclosed.
  4. The duration of the consent.
  5. The signature of the person authorizing release of the information.
- C. Information on drug test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceedings.
- D. Nothing herein shall be construed to prohibit the employer, agent of the employer, or laboratory conducting a drug test from having access to employee drug test information when consulting with legal counsel in connection with actions brought under or related to this section or when the information is relevant to its defense in a civil or administrative matter.

#### **XIV. RECORDS AND TRAINING**

A. **Resource File**

The City will maintain a current resource file of providers of employee assistance including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal or behavioral problems. The City will inform employees and new hires about various employee assistance programs that the employer may have available. The information shall be made available at a reasonable time convenient to the City in a manner that permits discreet review by the employee. The City will provide the names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs to employees and applicants.

**B. Individual Test Results**

1. The MRO shall be the sole custodian of individual positive test results.
2. The MRO shall retain the reports of individual positive test results for a period of five years.
3. The City shall keep confidential and retain for at least one (1) year an employee's challenge or explanation of a positive test result, the City's response thereto, and the report of positive result.
4. The City shall keep all negative test results for five (5) years.

**C. General Records of the City**

1. Records which demonstrate that the collection process conforms to all appropriate state or federal regulations shall be kept for three (3) years.
2. A record of the number of employees tested by type of test shall be kept for five (5) years.
3. Records confirming that managers, supervisors and employees have been trained under this program shall be kept for three (3) years.

**D. Drug Training Program**

1. The City shall establish and maintain a Drug Training Program as required by Chapter 440 Florida Statutes. The Program shall, at a minimum, include the following:
  - a. A written statement on file and available for inspection at its Human Resources Department outlining the Program;
  - b. An educational and training component for employees which addresses drugs; and
  - c. An educational and training component for all supervisory and managerial personnel which addresses drugs.
2. The educational and training components described in D.1.b and D.1.c above shall include the following:
  - a. The effects and consequences of drug use on personal health, safety and work environment.

- b. The manifestations and behavioral changes that may indicate drug use or abuse.
- c. Documentation of training given to employees, supervisory and management personnel.

**E Comparable Procedures.**

To the extent allowed by law and regulation, the City shall utilize 49 CFR, Part 40 procedures for workplace drug testing programs in lieu of the comparable procedures described herein, or incorporated by reference, when such comparable procedures are based upon the requirements of Fla. Admin. Code R. 59A-24.

All Code of Federal Regulations or State Statutes addressed in this document are available for review in the City of Gainesville's Human Resources Office.

# **CDL (FHWA)**



**DRUG TESTING UNDER  
RULES OF THE  
FEDERAL HIGHWAY  
ADMINISTRATION FOR  
OPERATION OF  
CERTAIN  
COMMERCIAL MOTOR  
VEHICLES, DATED  
MARCH 24, 1995**





**"SAMPLE"**

**ADDENDUM**

**DRUG TESTING UNDER RULES OF THE  
FEDERAL HIGHWAY ADMINISTRATION FOR  
OPERATION OF CERTAIN COMMERCIAL  
MOTOR VEHICLES, DATED MARCH 24, 1995.**

**I HEREBY ACKNOWLEDGE RECEIPT OF DRUG AND  
ALCOHOL TESTING INFORMATION TITLED: ADDENDUM  
Drug Testing Under Rules of the Federal Highway Administration  
for Operation of Certain Commercial Motor Vehicles, dated  
March 24, 1995.**

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**Name**

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**Date**

**"SAMPLE"**

**YOUR ORIGINAL SIGNED COPY IS IN YOUR PERSONNEL FILE  
IN HUMAN RESOURCES**





*CITY OF GAINESVILLE*


Inter-Office Memorandum

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*Human Resources Department  
Box 20*

TO: Department/Division Heads

DATE: May 30, 1995

FROM: Tom Motes   
Human Resources Director

SUBJECT: ADDENDUM - Drug Testing Under Rules of the Federal  
Highway Administration for Operators of Certain Commercial  
Motor Vehicles

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Enclosed is the final version of the ADDENDUM - Drug Testing Under Rules of the Federal Highway Administration for Operators of Certain Commercial Motor Vehicles. This document has been ratified by the CWA and the City Commission. Please replace the previous copy sent you with this copy.

Enclosure



## ADDENDUM

### Drug Testing Under Rules of the Federal Highway Administration For Operators of Certain Commercial Motor Vehicles

#### I. Introduction

A. The CITY is required under Federal Law to implement a drug and alcohol testing policy for certain commercial motor vehicle drivers. Drivers of commercial motor vehicles covered under this Addendum include:

- (1) Operators of commercial motor vehicles with a declared gross vehicle weight of 26,001 or more pounds, except RTS Bus (See 49 CFR Part 653) operators; or
- (2) Operators of commercial motor vehicles having declared gross vehicle weight of less than 26,000 pounds and who transport hazardous waste, hazardous substances, flammable cryogenic liquid, or hazardous materials and which vehicles are required to be placarded per 49 CFR part 172, subpart F.
- (3) Operators of a commercial motor vehicle designed to transport 16 or more passengers, including the driver, except RTS Bus (See 49 CFR Part 653).

B. Drivers who are covered under this Addendum are subject to the following rules in addition to the CITY's drug-free workplace policy. Employees and positions covered under this Addendum are described on a list on file in the Human Resources Department.

#### C. Definitions:

- (1) Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- (2) Alcohol Use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
- (3) Commercial Motor Vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle -
  - (a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or



- (b) Has a gross vehicle weight rating of 26,001 or more pounds; or
  - (c) Is designed to transport 16 or more passengers, including the driver; or
  - (d) Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).
- (4) Driver: Means any employee of the CITY who operates a covered commercial motor vehicle. This includes, but is not limited to: full time, regularly employed drivers; or casual, intermittent or occasional drivers. Driver applicant means any person applying for a position which would require the ability to drive a covered commercial motor vehicle, including employees of the CITY seeking promotion or transfer to such a position.
- (5) Accident:
- (a) Except as provided in paragraph (b) of this subsection, the term "accident" means an occurrence involving a commercial motor vehicle resulting in:
    - (i) A fatality;
    - (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
    - (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.
  - (b) The term "accident" does not include:
    - (i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or
    - (ii) An occurrence involving only the loading or unloading of cargo.



- (6) Disabling damage means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.
- (i) Inclusions. Damages to motor vehicles that could have been driven, but would have been further damaged if so driven.
  - (ii) Exclusions.
    - (a) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
    - (b) Tire disablement without other damage even if no spare tire is available.
    - (c) Headlamp or taillight damage.
    - (d) Damage to turn signals, horn, or windshield wipers which makes them inoperative.
- (7) Drug or Alcohol test: Means a program that utilizes the procedures and protocols described in 49 CFR Part 40 to determine the existence of alcohol, marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP) in urine and breath specimens.
- (8) Drugs/Controlled Substances: Means marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP) and their metabolites.
- (9) Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
- (10) Refuse to submit (to an alcohol or controlled substances test) means that a driver/driver applicant:
- (a) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this addendum;
  - (b) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received





notice of the requirement for urine testing in accordance with the provisions of this addendum; or

- (c) engages in conduct that clearly obstructs the testing process.
  - (d) refusal to execute the consent or release to testing form(s) constitutes a refusal to submit per 49 CFR 40.25 section (f) (22) (ii).
- (11) On Duty means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.
- (12) Safety-Sensitive function means any of those on-duty functions set forth in 49 CFR § 395.2 - On-Duty time as follows:
- (a) All times 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;
  - (b) All time inspecting equipment as described in 49 CFR § 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time: For example:
    - (i) inspecting the following equipment:
      - service brakes, including trailer brake connections
      - parking (hand) brakes
      - steering mechanism
      - lighting devices and reflectors
      - tires
      - horns
      - windshield wipers
      - rear vision mirrors
      - coupling devices
      - fire extinguisher
      - spare fuses
      - warning devices for stopped vehicles, or
  - (c) All driving time which means all time spent at the driving controls of a commercial motor vehicle in operation;
  - (d) All time, other than driving time, in or upon any commercial motor vehicle;



- (e) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded;
  - (f) All time spent performing the driver requirements of §§ 392.40 and 392.41 (stopping at scene) of 49 CFR relating to accidents;
  - (g) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- (13) Substance Abuse Professional means a licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

## II. PROHIBITIONS AND CONSEQUENCES

### A. Drug Use Prohibitions

1. No driver shall report for duty, remain on duty, or perform a safety-sensitive function if the driver:
  - a. Uses any controlled substances; or
  - b. Tests positive for use of a drug; or
  - c. Refuses to be tested for use of drugs.
2. No driver shall be on duty and possess, be under the influence of, or use, any of the following drugs or other substances:
  - a. Any Schedule 1 controlled substance;
  - b. An amphetamine or any formulation thereof (including, but not limited, to "pep pills," and "bennies");
  - c. A narcotic drug or any derivative thereof; or
  - d. Any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle.



3. Paragraphs (1)(a)(b) and (2)(b)(c) and (d) above do not apply to the possession or use of a substance administered to a driver by or under the instructions of a physician who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle.

B. Alcohol Prohibitions

- (a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- (b) No driver shall be on duty or operate a commercial motor vehicle while the driver possesses alcohol.
- (c) No driver shall use alcohol while on duty.
- (d) No driver shall perform safety-sensitive functions within four hours after using alcohol.
- (e) No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

C. Refuse to Submit

No driver shall refuse to submit to a post-accident alcohol or controlled substance test required under this Addendum, a random alcohol or controlled substances test required under this Addendum, a reasonable suspicion alcohol or controlled substances test required under this Addendum, or a follow-up alcohol or controlled substances test required under this Addendum.

D. Consequences

Any driver/employee or driver applicant who is presently employed by the City who violates any of the provisions of Subsections A through C of this Section or whose positive test for alcohol is at a result of 0.04 or greater or who otherwise violates the provisions of this Addendum will be removed immediately from safety sensitive functions and is subject to disciplinary action up to and including dismissal. Each driver and each driver applicant already employed by the City who engages in conduct prohibited by Section II A-C or who tests positive for alcohol at 0.04 or greater shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. Except as provided below, dismissals for a first offense will be considered an appropriate penalty absent mitigating circumstances. Driver applicants who are not



already employed by the City will not be hired if they test positive for controlled substances or have any measured alcohol concentration or any detected presence of alcohol. In the event a driver submits to a random alcohol or controlled substances test, which tests positive (in the case of alcohol a concentration greater than 0.04) the driver may be allowed a one-time opportunity to participate in an alcohol/drug rehabilitation program in accordance with the procedures described in 49 CFR 382.605, copy attached (which may include the City's EAP) approved by the City in lieu of being immediately dismissed based upon such test result. However, allowing the driver to participate in such program in lieu of being dismissed is conditioned upon the driver meeting the requirements set forth in paragraph XD of the City's Drug Free Workplace Program. Furthermore, such an opportunity will not be available to an employee who has previously participated in an alcohol/drug rehabilitation program as an alternative to dismissal. Drivers allowed the rehabilitation opportunity described herein may still receive disciplinary action short of dismissal in addition to required participation in the rehabilitation program. Participation in the treatment program, be it entirely voluntary, or pursuant to this subsection will not excuse additional violations of this Addendum, the City's Drug Free Workplace Program, work rules violations, improper conduct, or poor performance and the driver employee may be disciplined or dismissed for such offenses or failure to perform. Drivers who test positive for alcohol with a concentration of 0.02 or greater but less than 0.04 shall be immediately removed from performance of safety sensitive functions for the remainder of their shift and that of the entire next scheduled shift if the next scheduled shift would begin in less than twenty four (24) hours after the test. If the driver is suspended, vacation or sick leave may be used in lieu of being in a no pay status. Use of vacation with respect to this section {II (D)} will be granted on a one time basis; up to a maximum of two (2) shifts. The driver may be subject to additional disciplinary action. In the event that the City requires the employee's presence at the collection site outside normal working hours as part of the testing process and the employee passes the drug/alcohol test, such required time outside after normal working hours shall be considered actual time worked for the purpose of Section 13.4 of the CWA labor agreement, if applicable.

### III. TESTS REQUIRED

#### A. Pre-employment Testing

1. All driver applicants the CITY intends to employ must be tested for the use of alcohol and controlled substances.

#### B. Postaccident Testing

1. All drivers who were performing safety sensitive functions at the time of an accident involving loss of human life or who are involved in an accident and who receive a citation for a moving traffic violation arising from the accident shall submit to breath alcohol test within two (2) hours following the accident but no longer than eight (8) hours following the accident and shall provide a urine





sample to be tested for the presence of controlled substances as soon as possible, but no later than 32 hours, after such accident.

2. All drivers involved in an accident shall inform their management representative or other appropriate CITY official as soon as possible following such accident unless medically unable to do so. A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention of 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. Through this addendum the CITY is providing drivers with necessary information and procedures regarding their obligation to provide specimens under this section.
3. The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable Federal, State, or local requirements, and that the result of the tests are obtained by the City.

C. Random Testing

1. (a) Except as provided in paragraph 2 of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of the average number of driver positions.  
(b) The minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.
2. Any new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication of such in the Federal Register by the FHWA.
3. The selection of drivers for random alcohol and controlled substances testing shall be made by a scientifically valid method, such as random number table of a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made.
4. Random alcohol and controlled substances tests conducted under this Addendum shall be unannounced and that the dates for administering random alcohol and controlled substances tests are spread reasonably throughout the calendar year.



5. Each driver who is notified of selection for random alcohol and/or controlled substances testing shall make himself available at the test site immediately; provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the driver shall cease to perform the safety-sensitive function and make himself available at the testing site as soon as possible.
6. A driver shall only be randomly tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

D. Reasonable Suspicion Testing

1. A driver is required to submit to an alcohol test when the City has reasonable suspicion to believe that the driver has violated the prohibitions of Section II concerning alcohol, except in the case of mere possession. The City's determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver.
2. A driver is required to submit to a controlled substances test when the City has reasonable suspicion to believe that the driver has violated the prohibitions of Section II concerning controlled substances. The City's determination that reasonable suspicion exists to require the driver to undergo a controlled substances tests must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances. For a more detailed description of observations and indicators, see Section VII B2 of the City's Drug Free Workplace Program.
3. The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or management official who is appropriately trained. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the driver.
4. Alcohol testing is authorized by this section only if the observations required by paragraph 1 of this section are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance with this Addendum. A driver may be directed by the City to only undergo reasonable suspicion alcohol testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.
5. Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the



performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the driver perform or continue to perform safety-sensitive functions, until:

- (a) An alcohol test is administered and the driver's alcohol concentration measures less than 0.02; or
  - (b) Twenty-four hours have elapsed following the determination under paragraph 1 of this section that there is reasonable suspicion to believe that the driver has violated the prohibitions of this Addendum concerning the use of alcohol.
6. A written record shall be made of the observations leading to a controlled substance reasonable suspicion test, and signed by the supervisory management official who made the observations, within 24 hours of the observed behavior or before the results of the controlled substances test are released, whichever is earlier.

E. Return to Duty and Follow-up Testing

- 1. Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by Section II of this Addendum concerning alcohol, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
- 2. Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart II of this Addendum concerning controlled substances, the driver shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances.
- 3. In the event that a driver is allowed to return to duty/work after engaging in conduct prohibited by Section II of this Addendum and has been determined to be in need of assistance in resolving problems associated with alcohol misuse and/or the use of controlled substances, the driver will be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional consisting of at least six tests in the first twelve months following the driver's return to duty/work, but shall not exceed sixty months from the date of the driver's return to duty/work. Follow-up alcohol testing conducted pursuant to this addendum shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.



#### IV. TESTING PROCEDURES

Testing procedures for alcohol and drug tests required by this Addendum shall be in conformance with 49 CFR Part 40, a copy of which is attached hereto, except as modified by this Addendum. A summary of 49 CFR Part 40, prepared by J.J. Keller and Associates is available for review (but not copying since this is copyrighted material) at the Human Resources Department. The list of the drivers/classifications covered by this addendum is attached hereto and on file at the Human Resources Department. The Human Resources Director is the city official designated to answer questions about the testing procedures as well as any other matter covered in this addendum.

#### V. HANDLING OF TEST RESULTS AND CONFIDENTIALITY

A. Handling of test results and confidentiality shall be in conformance with 49 CFR Part 40 except as modified below.

- (1) Except as required by law or expressly authorized or required in this section, the City shall not release driver information that is contained in records required to be maintained under 49 CFR §382.401.
- (2) A driver is entitled, upon written request, to obtain copies of any records pertaining to the driver's use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substances tests. The City shall promptly provide the records requested by the driver. Access to a driver's records shall not be contingent upon payment for records other than those specifically requested.
- (3) The City shall release information regarding a driver's records as directed by the specific, written consent of the driver authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.
- (4) Records shall be made available to a subsequent employer upon receipt of a written request from a driver.
- (5) The City may disclose information required to be maintained under 49 CFR 382 pertaining to a driver and driver applicant, the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of such individuals, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by Section II of this addendum (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)





- (6) The City shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.
- (7) The City shall make available copies of all results for City alcohol and/or controlled substances testing conducted under this addendum and any other information pertaining to this alcohol misuse and/or controlled substances use prevention program, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.
- (8) When requested by the National Transportation Safety Board as part of an accident investigation, City shall disclose information related to its' administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

B. Controlled Substances - Medical Review Officer Notifications to the City, Notification by the City to Driver Applicant/Driver

- (1) The medical review officer may report to the City using any communications device, but in all instances a signed, written notification must be forwarded to the City within three business days of completion of the medical review officer's review, pursuant to 49 CFR 40. Such report to the City shall clearly state:
  - (A) That the controlled substances test being reported was in accordance with 49 CFR 40 and 382.
  - (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 (i.e. random, post-accident, etc.);
  - (D) The date and location of the test collection;
  - (E) The identities of the persons or entities performing the collection, analysis of the specimens and serving as the medical review officer for the specific test;
  - (F) The verified results of a controlled substances test, either positive or negative, and if positive, the identity of the controlled substance(s) for which the test was verified positive.
- (2) A designated management official shall make reasonable efforts to contact and request each driver/driver applicant who submitted a specimen under the



employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver. See also 49 CFR 40.33.

- (3) A designated management official shall immediately notify the medical review officer that the driver/driver applicant has been notified to contact the medical review officer within 24 hours. See also 49 CFR 40.33.
- (4) A medical review officer shall report to the City that the medical review officer has made all reasonable efforts to contact the driver/driver applicant as provided in 49 CFR §40.33(c). The City shall, as soon as practicable, request that the driver/driver applicant contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier. See subsection (2) above and 49 CFR 40.33.
- (5) The City shall notify a driver/applicant of the results of a pre-employment controlled substance test conducted under this part, if the driver/applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The City shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The City shall also inform the individual which controlled substance or substances were verified as positive.

C. Medical Review Officer Record of Retention for Controlled Substances

- (1) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.
- (2) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and cancelled controlled substances test results.
- (3) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver/driver applicant. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the City or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in B(1) of this section.



#### D. Notification of Alcohol Test Results

In accordance with the provisions of 49 CFR Part 40, the results of both the screening and confirmation of breath alcohol test are displayed to the individual being tested immediately after the tests. The breath alcohol technician transmits the results to the City in a confidential manner, in writing, in person, or by telephone or electronic means. For more information, see 49 CFR Part 40, subpart (c).

#### VI. ALCOHOL AND DRUG EFFECTS, SYMPTOMS, AND INTERVENTION METHODS

##### 1. Symptoms and Effects of Alcohol

Alcohol or drug problems usually manifest themselves in an employee's work performance, behavior, and appearance. Some of the warning signs of any substance abuse are:

- Excessive absenteeism (especially after weekends and holidays)
- Frequent need to borrow money
- Avoidance of supervisors
- Lack of concentration or decreased productivity after lunch or breaks
- Unsatisfactory work performance
- Drastic weight changes
- Bloodshot eyes, runny nose
- Deterioration in personal grooming and hygiene
- Agitation, rapid or slurred speech, dilated pupils
- Pattern of accidents
- Wearing of sunglasses and long-sleeved shirts at inappropriate times

##### a. Effects of Alcohol Use:

The chronic use of alcohol [three servings per day of beer (12 ounces), whiskey (1 ounce) or wine (6 ounces)] may result in the following:

##### (i) Effects on Health:

- Dependency
- Kidney disease
- Ulcers
- Fatal liver diseases
- Alcohol Related Birth Defects
- Inflammation of the heart muscle
- Permanent brain damage

##### (ii) Effects on Work:

- Slows down physical responses



Progressively impairs mental functions  
Slowed reaction times  
More than 6 times more likely to have an accident  
Confusion  
Loss of memory, judgment and learning ability  
Permanent brain damage

(iii) Effects on Personal Life:

Separation and divorce rate is 7 times the average  
Two-thirds of all Americans will be involved in an alcohol-related vehicle accident  
15 times more likely to commit suicide  
Permanent brain damage

b. Signs and Symptoms of Alcohol Use

Odor of alcohol on breath  
Lack of coordination  
Slurred speech  
Sleepy or stuporous condition.  
Dulled mental process  
(except for odor, these are sign and symptoms of any depressant substance)

2. Symptoms and Effects of Drug Abuse

a. Effects of Drug Abuse on Work, Health, and Personal Life

(i) Marijuana

Irritation to the lungs  
Cancer  
Delayed decision making  
Impaired short-term memory  
Impaired signal detection (risk for users operating machinery)  
Long-term effect on performance

(ii) Cocaine

Strong psychological dependency  
Strokes and heart attacks  
Death  
Paranoia and withdrawal causing unpredictable and violent behavior

(iii) Opiates

High risk for contracting hepatitis and AIDS due to sharing needles  
Increased pain tolerance - failure to seek medical attention





Higher risk for accident caused by mental clouding and drowsiness  
Financial problems

(iv) Amphetamines

Hearth and brain damage

Hearth attack and stroke

Withdrawal may cause severe physical and mental depression

Toxic psychosis - resembles schizophrenia

(v) Phencyclidine (PCP)

Irreversible memory loss

Personalty changes

Thought disorders

Death

Suicidal tendencies and mental dysfunction

Acute toxicity - possibly causing combativeness, catatonia,  
convulsions and coma

b. Signs and Symptoms of Drug Abuse

(i) Marijuana

Reddened eyes

Distinctive odor on clothing

Chronic fatigue and lack of motivation

Chronic sore throat

(ii) Cocaine

Financial problems

Runny or irritated nose

Difficulty in concentration

Secretive behaviors, frequent non-business visitors, delivered  
packages, phone calls

Wide mood swings - unusual defensiveness, anxiety, agitation

Insomnia

Talkativeness

Forgetfulness, absenteeism, tardiness and missed assignments

(iii) Opiates

Mood changes

Nausea, vomiting, and constipation

Impaired mental functioning and alertness

Depression

Fatigue



- (iv) Amphetamines  
Increased heart rate and pupils  
Confusion, panic  
Inability to concentrate  
Profuse sweating
- (v) Phencyclidine (PCP)  
Extreme mood shift  
Muscle rigidity  
Jerky eye movements  
Confusion and agitation  
Dizziness

3. Intervention Methods

- (a) Employees may be referred by management or employees may personally seek assistance for help in combatting alcohol and/or controlled substance abuse from the City's EAP or other community resources. The name of the City's EAP can be obtained from Employee Health Services. Information about a self-referred employee's contact with the EAP is confidential and will not be disseminated without the employee's permission. See Article X of the City's Drug Free Workplace Program and Personnel Policy No. 21 for additional information regarding the City's EAP.
- (b) Participation in an employee assistance program or a drug rehabilitation program or other community assistance program shall be paid for to the extent authorized under the City's Health Insurance Program, whether the particular program is selected by the employee or the City. Information regarding the City's Health Insurance Program can be obtained from the Risk Management.
- (c) The following is a list of drug and alcohol treatment programs within the Alachua and Marion County areas. The City does not recommend or endorse any of the programs. This list is provided for information only.



Alachua and Marion County Drug and Alcohol Treatment Programs  
and Employee Assistance Programs

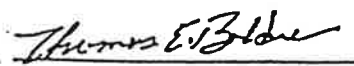
<u>Name</u>	<u>Address</u>	<u>Telephone Number</u>
Charter Springs Hospital, Inc. 371-2335 Charter Counseling Center/Gainesville	2631 N.W. 41st Street  Suite E-5, Foxbridge III Gainesville, Florida 32606	(904)
Corner Drug Store of Gainesville (CDS), Inc.	1300 N.W. 6th Street Gainesville, Florida 32601	(904) 378-1588
Mental Health Services, Inc. of North Florida	4300 S.W. 13th Street Gainesville, Florida 32608	(904) 374-5600
Sid Martin Bridge House	4400 S.W. 13th Street Gainesville, Florida 32608	(904) 374-5615 1-800-330-5616
Alachua Associates 335-4004	3601 S.W. 2nd Avenue, Suite V  Gainesville, Florida 32607	(904)  1-800-329-0440
Vista Pavilion	8900 N.W. 39th Avenue Gainesville, Florida 32606	(904) 338-0097
City of Gainesville Employee (904) 375-1414 Assistance Program (For City employees and covered family)	4140 NW 27th Lane, Suite A  Gainesville, Florida 32606	
Charter Springs Hospital, Inc. 237-7293	3130 S.W. 27th Avenue  Ocala, Florida 32674	(904)
Fountain Center of Ocala Forest, Inc.	25011 N.E. County Highway 314 Salt Springs, Florida 32134	(904) 685-1010 1-800-762-3707
Marion-Citrus Mental Health Centers, Inc. 629-8893	717 S.W. Martin Luther King Jr. Avenue  Ocala, Florida 32674	(904)

IN WITNESS WHEREOF, the parties hereunto set their hands this 28TH day of April 1995.

THE CITY OF GAINESVILLE  
FLORIDA

  
KAREN JOHNSON  
INTERIM CITY MANAGER

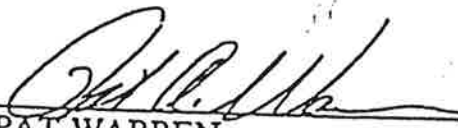
COMMUNICATIONS WORKERS OF  
AMERICA, INC., LOCAL NO. 3170

  
THOMAS E. BOLDUC  
PRESIDENT

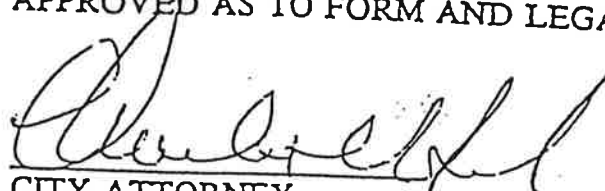
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MICHAEL L. KURTZ  
GENERAL MANAGER FOR UTILITIES

  
PAT WARREN  
INTERNATIONAL REPRESENTATIVE

APPROVED AS TO FORM AND LEGALITY:

  
CITY ATTORNEY

CITY COMMITTEE

Tom Motes  
Fred Hancock  
Darrell Dubose  
Sam Evins  
Charlie Hauck

UNION COMMITTEE

Tom Bolduc  
Pat Warren  
David Welch





# **PART 382--CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING**

## **Subpart A--General**

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- 382.103 Applicability.
- 382.105 Testing procedures.
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## **Subpart B--Prohibitions**

- 382.201 Alcohol concentration.
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382.411 Employer notifications.

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### **Subpart E--Consequences for Drivers Engaging in Substance Use-Related Conduct**

382.501 Removal from safety-sensitive function.

382.503 Required evaluation and testing.

382.505 Other alcohol-related conduct.

382.507 Penalties.

### **Subpart F--Alcohol Misuse and Controlled Substances Use Information, Training, and Referral**

382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

382.603 Training for supervisors.

382.605 Referral, evaluation, and treatment.

Authority: 49 U.S.C. 31133, 31136, 31301 et seq., 31502; and 49 CFR 1.48.

*Editor's Note: Technical amendments to Part 382 were published in the Federal Register on July 17, 1996. This page has been revised to incorporate these changes. Date modified: July 24, 1996*

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

Sec. 382.101 Purpose.

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

Sec. 382.103 Applicability.

(a) This part applies to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State, and is subject to:

- (1) The commercial driver's license requirements of part 383 of this subchapter;
- (2) The Licencia Federal de Conductor (Mexico) requirements; or
- (3) The commercial driver's license requirements of the Canadian National Safety Code.

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

(c) The exceptions contained in Sec. 390.3(g) of this



subchapter do not apply to this part. The employers and drivers identified in Sec. 390.3(g) must comply with the requirements of this part, unless otherwise specifically provided in paragraph (d) of this section.

(d) Exceptions. This part shall not apply to employers and their drivers:

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

(2) Who a State must waive from the requirements of part 383 of this subchapter. These individuals include active duty military personnel; members of the reserves; and members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training and national guard military technicians (civilians who are required to wear military uniforms), and active duty U.S. Coast Guard personnel;

(3) Who a State has, at its discretion, exempted from the requirements of part 383 of this subchapter. These individuals may be:

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

(B) Used to transport either agricultural products, farm machinery, farm supplies, or both to or from a farm;

(C) Not used in the operations of a common or contract motor carrier; and

(D) Used within 241 kilometers (150 miles) of the farmer's farm.

(ii) Firefighters or other persons who operate commercial motor vehicles which are necessary for the preservation of life or property or the execution of emergency governmental functions, are equipped with audible and visual signals, and are not subject to normal traffic regulation.

#### Sec. 382.105 Testing procedures.

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

#### Sec. 382.107 Definitions.

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

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

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

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



**Commerce means:**

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

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

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

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

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

**Controlled substances** mean those substances identified in Sec. 40.21(a) of this title.

**Disabling damage** means damage which precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

- (1) Inclusions. Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.
- (2) Exclusions.
  - (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
  - (ii) Tire disablement without other damage even if no spare tire is





available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

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

**Driver** means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

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

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

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

**Positive rate** means the number of positive results for random controlled substances tests conducted under this part plus the number of refusals of random controlled substances tests required by this part, divided by the total of random controlled substances tests conducted under this part plus the number of refusals of random tests required by this part.

**Refuse to submit (to an alcohol or controlled substances test)** means that a driver:

(1) Fails to provide adequate breath for alcohol testing as required by part 40 of this title, without a valid medical explanation, after he or she has received notice of the requirement for breath testing in accordance with the provisions of this part,

(2) Fails to provide an adequate urine sample for controlled substances testing as required by part 40 of this title, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement for urine testing in accordance with the provisions of this part, or

(3) Engages in conduct that clearly obstructs the testing process.

**Safety-sensitive function** means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.



Safety-sensitive functions shall include:

- (1) All time at an employer 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;
- (2) All time inspecting equipment as required by Secs. 392.7 and 392.8 of this subchapter 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 in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of Sec. 393.76 of this subchapter);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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

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

Sec. 382.109 Preemption of State and local laws.

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

- (1) Compliance with both the State or local requirement and this part is not possible; or
- (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees, employers, or the general public.

Sec. 382.111 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights



of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

**Sec. 382.113 Requirement for notice.**

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

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

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

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

(c) All domestic employers. Each domestic employer that begins commercial motor vehicle operations after March 17, 1994, but before January 1, 1996, will implement the requirements of this part beginning on January 1, 1996. However, such an employer may be subject to the requirements of part 391, subpart H on the date they begin operations, if operating commercial motor vehicles in interstate commerce. A domestic employer that begins commercial motor vehicle operations on or after January 1, 1996, will implement the requirements of this part on the date the employer begins such operations.

(d) Large foreign employers. Each foreign-domiciled employer with fifty or more drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1996.

(e) Small foreign employers. Each foreign-domiciled employer with less than fifty drivers assigned to operate commercial motor vehicles in North America on December 17, 1995, must implement the requirements of this part beginning on July 1, 1997.

(f) All foreign employers. Each foreign-domiciled employer that begins commercial motor vehicle operations in the United States after December 17, 1995, but before July 1, 1997, must implement the requirements of this part beginning on July 1, 1997. A foreign employer that begins commercial motor vehicle operations in the United States on or after July 1, 1997, must implement the requirements of this part on the date the foreign employer begins such operations.

## **Subpart B--Prohibitions**

**Sec. 382.201 Alcohol concentration.**

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

**Sec. 382.205 On-duty use.**



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

Sec. 382.207 Pre-duty use.

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

Sec. 382.209 Use following an accident.

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

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

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

Sec. 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in Sec. 382.107 of this part, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

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

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

Sec. 382.215 Controlled substances testing.

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

## Subpart C--Tests Required





## Sec. 382.301 Pre-employment testing.

(a) Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for alcohol and controlled substances as a condition prior to being used, unless the employer uses the exception in paragraphs (c) and (d) of this section. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the driver has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04, and has received a controlled substances test result from the MRO indicating a verified negative test result. If a pre-employment alcohol test result under this section indicates an alcohol content of 0.02 or greater but less than 0.04, the provision of Sec. 382.505 shall apply.

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

- (1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and
- (2) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

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

- (1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and
- (2) While participating in that program, either
  - (i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or
  - (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and
- (3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

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

- (i) Name(s) and address(es) of the program(s).
- (ii) Verification that the driver participates or participated in the program(s).
- (iii) Verification that the program(s) conforms to part 40 of this



title.

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

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

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

(2) An employer who uses, but does not employ, a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (d)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with Sec. 382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40, the employer shall conduct a pre-employment alcohol and/or controlled substances test.

(e) Notwithstanding any other provisions of this subpart, all provisions and requirements in this section pertaining to pre-employment testing for alcohol are vacated as of May 1, 1995.

#### Sec. 382.303 Post-accident testing.

(a) As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, each employer shall test for alcohol and controlled substances each surviving driver:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
- (2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
- (3) This table notes when a post-accident test is required to be conducted by paragraphs (a)(1) and (a)(2) of this section.

Table for Sec. 382.303(a)(3)

Type of accident involved	Test must be Citation issued to the CMV driver	performed by employer
Human fatality.....	YES.....	YES.
	NO.....	YES.
Bodily injury with immediate medical treatment away from the scene	YES.....	YES.
	NO.....	NO.



Disabling damage to any motor  
vehicle requiring tow away.

YES..... YES.

NO..... NO.

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

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within eight hours. The employer's records of tests that are not completed within eight hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997, and March 15, 1998, for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Reason(s) test could not be completed within eight hours;
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

(3) Records of alcohol tests that could not be completed in eight hours shall be submitted to the FHWA at the following address:

Attn: Alcohol Testing Program, Office of Motor Carrier Research and Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

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

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

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

(e)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent



authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

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

(f) Exception. This section does not apply to:

(1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or

(2) An occurrence involving only the loading or unloading of cargo; or

(3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in Sec. 571.3 of this title) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with Sec. 177.823 of this title.

#### Sec. 382.305 Random testing.

(a) Every employer shall comply with the requirements of this section. Every driver shall submit to random alcohol and controlled substance testing as required in this section.

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

(2) Except as provided in paragraphs (f) through (h) of this section, the minimum annual percentage rate for random controlled substances testing shall be 50 percent of the average number of driver positions.

(c) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol management information system reports required by Sec. 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of drivers. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

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





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

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

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

(f) The FHWA Administrator's decision to increase or decrease the minimum annual percentage rate for controlled substances testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the controlled substances management information system reports required by Sec. 382.403 of this part. In order to ensure reliability of the data, the FHWA Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the FHWA Administrator will publish in the Federal Register the minimum annual percentage rate for random controlled substances testing of drivers. The new minimum annual percentage rate for random controlled substances testing will be applicable starting January 1 of the calendar year following publication.

(g) When the minimum annual percentage rate for random controlled substances testing is 50 percent, the FHWA Administrator may lower this rate to 25 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of Sec. 382.403 for two consecutive calendar years indicate that the positive rate is less than 1.0 percent. However, after the initial two years of random testing by large employers and the initial first year of testing by small employers under this section, the FHWA Administrator may lower the rate the following calendar year, if the combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(h) When the minimum annual percentage rate for random controlled substances testing is 25 percent, and the data received under the reporting requirements of Sec. 382.403 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the FHWA Administrator will increase the minimum annual percentage rate for random controlled substances testing to 50 percent of all driver positions.

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



being tested each time selections are made.

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

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

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

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

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

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

- (1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
- (2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

#### Sec. 382.307 Reasonable suspicion testing.

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

(b) An employer shall require a driver to submit to a controlled substances test when the employer has reasonable suspicion to believe



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

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

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

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

(2) For the years stated in this paragraph, employers who submit MIS reports shall submit to the FHWA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to the FHWA by March 15, 1996; March 15, 1997; and March 15, 1998; for calendar years 1995, 1996, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

- (i) Type of test (reasonable suspicion/post-accident);
- (ii) Triggering event (including date, time, and location);
- (iii) Reason(s) test could not be completed within 8 hours; and
- (iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Records of tests that could not be completed in eight hours shall be submitted to the FHWA at the following address: Attn.: Alcohol Testing program, Office of Motor Carrier Research and Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

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



safety-sensitive functions, until:

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

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

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

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

#### Sec. 382.309 Return-to-duty testing.

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

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

#### Sec. 382.311 Follow-up testing.

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

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

### Subpart D--Handling Of Test Results, Record Retention and Confidentiality

#### Sec. 382.401 Retention of records.

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





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

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

- (i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,
- (ii) Records of driver verified positive controlled substances test results,
- (iii) Documentation of refusals to take required alcohol and/or controlled substances tests,
- (iv) Driver evaluation and referrals,
- (v) Calibration documentation,
- (vi) Records related to the administration of the alcohol and controlled substances testing programs, and
- (vii) A copy of each annual calendar year summary required by Sec. 382.403.

(2) Two years. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).

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

(4) Indefinite period. Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.

(c) Types of records. The following specific types of records shall be maintained. "Documents generated" are documents that may have to be prepared under a requirement of this part. If the record is required to be prepared, it must be maintained.

(1) Records related to the collection process:

- (i) Collection logbooks, if used;
- (ii) Documents relating to the random selection process;
- (iii) Calibration documentation for evidential breath testing devices;
- (iv) Documentation of breath alcohol technician training;
- (v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;
- (vi) Documents generated in connection with decisions on post-accident tests;
- (vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and
- (viii) Consolidated annual calendar year summaries as required by Sec. 382.403.

(2) Records related to a driver's test results:

- (i) The employer's copy of the alcohol test form, including the results of the test;
- (ii) The employer's copy of the controlled substances test chain of custody and control form;
- (iii) Documents sent by the MRO to the employer, including those required by Sec. 382.407(a).



- (iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and
- (v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.
- (vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:
  - (A) Must obtain in connection with the exception contained in Sec. 382.301 of this part, and
  - (B) Must obtain as required by Sec. 382.413 of this subpart.

(3) Records related to other violations of this part.

(4) Records related to evaluations:

- (i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and
- (ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

- (i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;
- (ii) Documentation of compliance with the requirements of Sec. 382.601, including the driver's signed receipt of education materials;
- (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;
- (iv) Documentation of training for breath alcohol technicians as required by Sec. 40.51(a) of this title, and
- (v) Certification that any training conducted under this part complies with the requirements for such training.

(6) Administrative records related to alcohol and controlled substances testing:

- (i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;
- (ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);
- (iii) Quarterly laboratory statistical summaries of urinalysis required by Sec. 40.29(g)(6) of this title;
- (iv) The employer's alcohol and controlled substances testing policy and procedures; and
- (v) Records generated in connection with part 391, subpart H of this subchapter.

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

(e)(1) OMB control number. The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2125-0543, approved through



March 31, 1997.

(2) The information collection requirements of this part are found in the following sections: Section 382.105, 382.113, 382.301, 382.303, 382.305, 382.307, 382.309, 382.311, 382.401, 382.403, 382.405, 382.407, 382.409, 382.411, 382.413, 382.601, 382.603, 382.605.

Sec. 382.403 Reporting of results in a management information system.

(a) An employer shall prepare and maintain a summary of the results of its alcohol and controlled substances testing programs performed under this part during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

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

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

- (1) Number of drivers subject to Part 382;
- (2) Number of drivers subject to testing under the alcohol misuse or controlled substances use rules of more than one DOT agency, identified by each agency;
- (3) Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post-accident);
- (4) Number of positives verified by a MRO by type of test, and type of controlled substance;
- (5) Number of negative controlled substance tests verified by a MRO by type of test;
- (6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;
- (7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;
- (8) Number of drivers who refused to submit to an alcohol or controlled substances test required under this subpart;
- (9)(i) Number of supervisors who have received required alcohol training during the reporting period; and



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

(10) (i) Number of screening alcohol tests by type of test; and

(ii) Number of confirmation alcohol tests, by type of test;

(11) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test;

(12) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test;

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

(i) Had a verified positive controlled substance test result, or  
(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

(14) Number of drivers who were administered alcohol and drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater; and

(15) Number of drivers who were found to have violated any non-testing prohibitions of subpart B of this part, and any action taken in response to the violation.

(d) Short summary. Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02, and does not contain any other violations of subpart B of this part, may prepare and submit, as required by paragraph (b) of this section, either a standard report form containing all the information elements specified in paragraph (c) of this section, or an "EZ" report form. The "EZ" report shall include the following information elements:

(1) Number of drivers subject to this Part 382;

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

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

(4) Number of negatives verified by a medical review officer by type of test;

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

(6) (i) Number of supervisors who have received required alcohol training during the reporting period; and

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

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





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

- (i) Had a verified positive controlled substance test result, or
- (ii) Engaged in prohibited alcohol misuse under the provisions of this part.

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

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

#### Sec. 382.405 Access to facilities and records.

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

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

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

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

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a post-accident alcohol and/or controlled substance test administered following the accident under investigation.

(f) Records shall be made available to a subsequent employer upon receipt of a written request from a driver. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the driver's request.

(g) An employer may disclose information required to be maintained



under this part pertaining to a driver, the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol and/or controlled substance test administered under this part, or from the employer's determination that the driver engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the driver.)

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

Sec. 382.407 Medical review officer notifications to the employer.

(a) The medical review officer may report to the employer using any communications device, but in all instances a signed, written notification must be forwarded within three business days of completion of the medical review officer's review, pursuant to part 40 of this title. A legible photocopy of the fourth copy of Part 40 Appendix A subtitled COPY 4--SEND DIRECTLY TO MEDICAL REVIEW OFFICER--DO NOT SEND TO LABORATORY of the Federal Custody and Control Form OMB Number 9999-0023 may be used to make the signed, written notification to the employer for all test results (positive, negative, canceled, etc.), provided that the controlled substance(s) verified as positive, and the MRO's signature, shall be legibly noted in the remarks section of step 8 of the form completed by the medical review officer. The MRO must sign all verified positive test results. An MRO may sign or rubber stamp negative test results. An MRO's staff may rubber stamp negative test results under written authorization of the MRO. In no event shall an MRO, or his/her staff, use electronic signature technology to comply with this section. All reports, both oral and in writing, from the medical review officer to an employer shall clearly include:

- (1) A statement that the controlled substances test being reported was in accordance with part 40 of this title and this part, except for legible photocopies of Copy 4 of the Federal Custody and Control Form;
- (2) The full name of the driver for whom the test results are being reported;
- (3) The type of test indicated on the custody and control form (i.e. random, post-accident, follow-up);
- (4) The date and location of the test collection;
- (5) The identities of the persons or entities performing the collection, analyzing the specimens, and serving as the medical review officer for the specific test;
- (6) The results of the controlled substances test, positive, negative, test canceled, or test not performed, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

(b) A medical review officer shall report to the employer that the medical review officer has made all reasonable efforts to contact the driver as provided in Sec. 40.33(c) of this title. The employer shall, as soon as practicable, request that the driver contact the medical review officer prior to dispatching the driver or within 24 hours, whichever is earlier.



Sec. 382.409 Medical review officer record retention for controlled substances.

(a) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of five years for verified positive controlled substances test results.

(b) A medical review officer shall maintain all dated records and notifications, identified by individual, for a minimum of one year for negative and canceled controlled substances test results.

(c) No person may obtain the individual controlled substances test results retained by a medical review officer, and no medical review officer shall release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph shall prohibit a medical review officer from releasing, to the employer or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances testing program under this part, the information delineated in Sec. 382.407(a) of this subpart.

Sec. 382.411 Employer notifications.

(a) An employer shall notify a driver of the results of a pre-employment controlled substance test conducted under this part, if the driver requests such results within 60 calendar days of being notified of the disposition of the employment application. An employer shall notify a driver of the results of random, reasonable suspicion and post-accident tests for controlled substances conducted under this part if the test results are verified positive. The employer shall also inform the driver which controlled substance or substances were verified as positive.

(b) The designated management official shall make reasonable efforts to contact and request each driver who submitted a specimen under the employer's program, regardless of the driver's employment status, to contact and discuss the results of the controlled substances test with a medical review officer who has been unable to contact the driver.

(c) The designated management official shall immediately notify the medical review officer that the driver has been notified to contact the medical review officer within 24 hours.

Sec. 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a)(1) An employer shall, pursuant to the driver's written authorization, inquire about the following information on a driver from the driver's previous employers, during the preceding two years from the date of application, which are maintained by the driver's previous employers under Sec. 382.401(b)(1) (i) through (iii) of this subpart:

- (i) Alcohol tests with a result of 0.04 alcohol concentration or greater;
- (ii) Verified positive controlled substances test results; and
- (iii) Refusals to be tested.

(2) The information obtained from a previous employer may contain any alcohol and drug information the previous employer obtained from other previous employers under paragraph (a)(1) of this section.



(b) If feasible, the information in paragraph (a) of this section must be obtained and reviewed by the employer prior to the first time a driver performs safety-sensitive functions for the employer. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 14-calendar days after the first time a driver performs safety-sensitive functions for the employer. An employer may not permit a driver to perform safety-sensitive functions after 14 days without having made a good faith effort to obtain the information as soon as possible. If a driver hired or used by the employer ceases performing safety-sensitive functions for the employer before expiration of the 14-day period or before the employer has obtained the information in paragraph (a) of this section, the employer must still make a good faith effort to obtain the information.

(c) An employer must maintain a written, confidential record of the information obtained under paragraph (a) or (f) of this section. If, after making a good faith effort, an employer is unable to obtain the information from a previous employer, a record must be made of the efforts to obtain the information and retained in the driver's qualification file.

(d) The prospective employer must provide to each of the driver's previous employers the driver's specific, written authorization for release of the information in paragraph (a) of this section.

(e) The release of any information under this section may take the form of personal interviews, telephone interviews, letters, or any other method of transmitting information that ensures confidentiality.

(f) The information in paragraph (a) of this section may be provided directly to the prospective employer by the driver, provided the employer assures itself that the information is true and accurate.

(g) An employer may not use a driver to perform safety-sensitive functions if the employer obtains information on a violation of the prohibitions in subpart B of this part by the driver, without obtaining information on subsequent compliance with the referral and rehabilitation requirements of Sec. 382.605 of this part.

(h) Employers need not obtain information under paragraph (a) of this section generated by previous employers prior to the starting dates in Sec. 382.115 of this part.

### **Subpart E--Consequences For Drivers Engaging In Substance Use-Related Conduct**

Sec. 382.501 Removal from safety-sensitive function.

(a) Except as provided in subpart F of this part, no driver shall perform safety-sensitive functions, including driving a commercial motor vehicle, if the driver has engaged in conduct prohibited by subpart B of this part or an alcohol or controlled substances rule of another DOT agency.

(b) No employer shall permit any driver to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employer has determined that the driver has violated this section.

(c) For purposes of this subpart, commercial motor vehicle means a commercial motor vehicle in commerce as defined in Sec. 382.107, and a commercial motor vehicle in interstate commerce as defined in Part 390 of this subchapter.





**Sec. 382.503 Required evaluation and testing.**

No driver who has engaged in conduct prohibited by subpart B of this part shall perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of Sec. 382.605. No employer shall permit a driver who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions, including driving a commercial motor vehicle, unless the driver has met the requirements of Sec. 382.605.

**Sec. 382.505 Other alcohol-related conduct.**

(a) No driver tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, including driving a commercial motor vehicle, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no employer shall take any action under this part against a driver based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this part from taking any action otherwise consistent with law.

**Sec. 382.507 Penalties.**

Any employer or driver who violates the requirements of this part shall be subject to the penalty provisions of 49 U.S.C. section 521(b).

**Subpart F--Alcohol Misuse and Controlled Substances Use Information, Training, and Referral**

**Sec. 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.**

(a) General requirements. Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

(b) Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

(1) The identity of the person designated by the employer to answer driver questions about the materials;

(2) The categories of drivers who are subject to the provisions of this part;



- (3) Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;
- (4) Specific information concerning driver conduct that is prohibited by this part;
- (5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under Sec. 382.303(d);
- (6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by Sec. 382.303(d) of this part;
- (7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;
- (8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
- (9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under Sec. 382.605;
- (10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
- (11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

(c) Optional provision. The materials supplied to drivers may also include information on additional employer policies with respect to the use of alcohol or controlled substances, including any consequences for a driver found to have a specified alcohol or controlled substances level, that are based on the employer's authority independent of this part. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

(d) Certificate of receipt. Each employer shall ensure that each driver is required to sign a statement certifying that he or she has received a copy of these materials described in this section. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

#### Sec. 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled



substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under Sec. 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

Sec. 382.605 Referral, evaluation, and treatment.

(a) Each driver who has engaged in conduct prohibited by subpart B of this part shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each driver who engages in conduct prohibited by subpart B of this part shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.

(c) (1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

(2) In addition, each driver identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use,

(i) Shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol and controlled substances tests administered by the employer following the driver's return to duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional, and consist of at least six tests in the first 12 months following the driver's return to duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substances, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substances is necessary for that particular driver. Any such testing shall be performed in accordance with the requirements of 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) Evaluation and rehabilitation may be provided by the employer, by a substance abuse professional under contract with the employer, or by a substance abuse professional not affiliated with the employer. The choice of substance abuse professional and assignment of costs shall be made in accordance with employer/driver agreements and employer policies.

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a



person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through--

- (1) A public agency, such as a State, county, or municipality;
- (2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;
- (3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or,
- (4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

(f) The requirements of this section with respect to referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a pre-employment alcohol or controlled substances test or who have a pre-employment alcohol test with a result indicating an alcohol concentration of 0.04 or greater or a controlled substances test with a verified positive test result.





NOTICE TO APPLICANTS AND EMPLOYEES  
ABOUT THE CITY OF GAINESVILLE'S  
DRUG FREE WORKPLACE PROGRAM

In a commitment to safeguard the health of our employees, and to provide a safe working environment for everyone, a Drug-Free Workplace Program has been established by the City of Gainesville. This program is implemented pursuant to the Drug-Free Workplace Program requirements under § 440.102, Fla. Stat., the applicable rules of the agency for Health Care Administration, the Department of Labor and Employment Security and the U.S. Department of Transportation Regulations and Florida Statutes, Chapter 316.

The Program provides for the following:

1. General:

- a. The City prohibits its employees from illegally or improperly using, possessing, selling, manufacturing, or distributing drugs on its property, or while its employees are at work. It is also against City policy to report to work or to work under the influence of drugs. It is a condition of employment to refrain from using illegal drugs or alcohol on the job, or abusing legal drugs on or off the job such that it affects the job. If an injured worker refuses to submit to a test for drugs or alcohol authorized under the program and addendum thereto, he may forfeit his eligibility for medical and indemnity benefits. The drug use prohibitions and the testing procedures provided for under this Program may involve the following drugs:

Alcohol (booze)	Phencyclidine (PCP)	Benzodiazophines (Valium)
Amphetamines (Desoxyn)	Methaqualone	Methadone (Dolophine)
Cannabinoids (marijuana)	Opiates (opium)	Propoxyphene (Darvocet)
Cocaine (coke, crack)	Barbiturates (Phenobarbital)	

- b. To ensure that drugs and alcohol do not enter or affect the workplace, the City reserves the right to conduct reasonable searches of all vehicles, containers, lockers, or other items on City property in furtherance of this program. Individuals may be requested to display personal property for visual inspection upon the City's request. All personal property searches will take place only in the employee's presence. All searches under this program will occur with the utmost discretion and consideration for the employees involved. Searches for the purposes described herein will be conducted when the City has reasonable suspicion that the employee has violated the City's Drug-Free Workplace Program, and that evidence of such misconduct may be found during the search.

2. Job Applicant Drug Testing:

- a. All applicants will be tested for the presence of drugs prior to hiring.
- b. Any job applicant who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment confirmatory drug test will not be hired and, unless otherwise required by law, will be ineligible for hire for a period of at least two (2) years.



3. Employee Drug Testing:

- a. Reasonable Suspicion Testing: All employees will be tested when there is a reasonable suspicion that the employee is using or has used drugs in violation of the program.
- b. Random Testing: To the extent allowed by law, employees in safety sensitive or special risk positions will be required to submit to drug testing on a random basis. Those positions designated as safety-sensitive are described on a list maintained on file in the Human Resources Department.
- c. Routine Fitness for Duty Testing: Employees will be subject to drug testing if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination applicable to all similarly situated employees.
- d. Return to Duty Testing: Any employee who does not pass a test (and has not been fired) may not return to work until meeting the Return to Duty requirements established by this program.
- e. Follow-up Testing: All employees who have entered drug rehabilitation programs while employed by the City may be subject to periodic follow-up tests as may be required.
- f. Position Change Testing: To the extent allowed by law, employees moving from a non-safety sensitive/special risk position to one designated as safety-sensitive or special risk, as a result of a formal personnel action, shall be required to successfully pass a drug test within 48 hours of receiving notification that they have been selected to fill the safety sensitive position.
- g. Additional Testing: Additional testing may also be conducted as required by applicable state or federal laws, or regulations or as deemed necessary by the City. See also addendum for CDL Drivers, Gas Pipeline Workers and Transit Operators.

4. Disciplinary Action:

- a. Any employee using, selling, purchasing, possessing, distributing, or dispensing drugs on duty or on City property, reporting to work or working under the influence of drugs, or having a positive drug test result, except first time violations found through Random Testing, will be subject to dismissal.
- b. In the case of a first-time violation of the City's policy, based on Random Testing only, an employee may be offered an opportunity to enter into a City approved and supervised rehabilitation program as an alternative to dismissal.
- c. Any employee who refuses to submit to a drug test will be dismissed from employment or otherwise disciplined by the City.
- d. An employee injured while at work who refuses to submit to a drug test, or has a positive confirmation test, may be dismissed from employment or otherwise disciplined by the City and may forfeit his eligibility for all City workers' compensation medical and indemnity benefits.



- e. Failure to consent to a reasonable search of vehicles, containers, lockers, or other items on City property, will be grounds for dismissal or reason for denial to City premises.

### Confidentiality

- a. All information, interviews, reports, statement memoranda, and drug test results, written or otherwise, received by the City through a drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as may otherwise be provided by statute or regulation. Similarly, Medical Review Officers, laboratories, employee assistance programs, drug and alcohol rehabilitation programs, and their agents and employees who receive or have access to information concerning drug test results obtained pursuant to this program shall keep all such information confidential except as provided above, or when its release is authorized pursuant to a written consent form, signed voluntarily by the person tested.
- b. Information on drug test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section shall be inadmissible as evidence in any such criminal proceeding.

### 6. Affect of Other Medication

Each employee or job applicant may provide any information he or she considers relevant to a drug test including identification of currently or recently used prescription or non-prescription medication or other relevant information. The employee or applicant may provide this information both before and after testing to the Medical Review Officer. The information provided shall be confidential. Employees and job applicants may consult the Medical Review Officer for technical information regarding prescription and non-prescription medication.

### 7. Explanation of Test Results

An employee or job applicant who receives a positive confirmed test result may contest or explain the result to the Medical Review Officer within five (5) working days after receiving written notification of the test result. If an employee's or job applicant's explanation or challenge is unsatisfactory to the Medical Review Officer, the Medical Review Officer will report a positive test result back to the City. The employee or job applicant may contest the drug result pursuant to the rules adopted by the State of Florida. An employee or job applicant is responsible for notifying the laboratory in the event he/she initiates any administrative or civil action pursuant to § 440.102, Fla. Stat., in order to ensure that the laboratory retains the specimen. Employees covered by a collective bargaining agreement or a "last chance agreement" may challenge actions taken under this program if such challenge(s) is authorized by their collective bargaining agreement, or the last chance agreement as applicable.



## **Over-The Counter And Prescription Drugs Which Could Alter Or Affect The Outcome Of A Drug Test**

The following is a list of over-the-counter or prescription drugs which could alter or affect a test result. Due to the large number of obscure brand names and the constant marketing of new products, this list cannot be said to be all inclusive:

### **ALCOHOL**

Liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As an example, Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contac Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).

### **PHETAMINES**

Amphetamine, Biphphetamine, Desoxyn, Dexedrine, Didrex

### **CANNABINOIDS**

Dronabinol (Dronabinol, THC)

### **COCAINE**

Cocaine HCl topical solution (Roxanne)

### **CHLORZOXAZONE**

Legal by prescription.

### **THIAQUANONE**

Legal by prescription.

### **OPIATES**

Codeine, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Empirin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guafenesin AC, Novahistine DH, Novahistine Expectorant, Hydrocodone (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, etc.

### **BARBITURATES**

Secobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Phenobarbital, Butabital, Phrenilin, Triad, etc.

### **BENZODIAZEPINES**

Alprazolam, Azene, Clonopin, Dalmane, Diazepam, Librium, Xanax, Serax, Tranxene, Valium, Verstran, Lorazepam, Paxipam, Restoril, Centrax.

### **METHADONE**

Methadone, Methadose

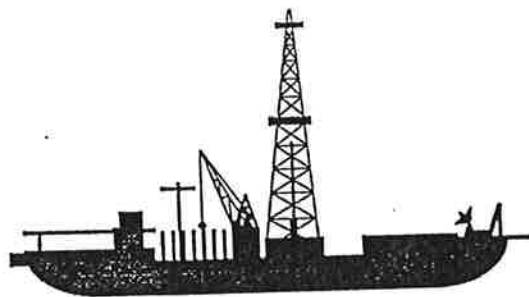
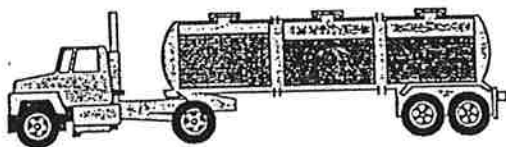
### **DIPHENHYDRAZONE**

Diphenhydramine, Darvon N, Dolene, etc.





# RSPA



**RESEARCH AND  
SPECIAL  
PROGRAMS  
ADMINISTRATION**



# RSPA DRUG AND ALCOHOL TESTING PROGRAM

## SUBPART A - ANTI-DRUG PROGRAM

### POLICY STATEMENT

The purpose of this subpart is to establish procedures for the administration of the Department of Transportation (DOT) anti-drug program pursuant to the Pipeline Safety Regulations, Code of Federal Regulations, Title 49 (49 CFR), Part 199, as amended or superseded, which, in turn, incorporates DOT Procedures for Transportation Workplace Drug Testing Programs, 49 CFR Part 40. Part 199 requires operators of gas systems to have an anti-drug program for persons who perform on these facilities operating, maintenance, or emergency-response functions covered by the DOT Pipeline Safety Standards in 49 CFR Part 192.

Any job applicant applying for a position covered in this policy who refuses or fails a pre-employment drug test will not be hired for the covered position. Any employee covered by this policy who refuses or fails a drug test will immediately be removed from duty. Any employee covered by this policy who refuses or fails a drug test may receive disciplinary action, up to and including termination.

### INTRODUCTION

Unless the context clearly indicates otherwise, words and phrases utilized in this policy shall be defined and utilized as similar phrases are used in 49 CFR Part 199, as may be amended from time to time. In particular, the anti-drug program described herein shall utilize the concepts set forth in 49 CFR, 199.3, dealing with "accident," "DOT procedures," "fail a drug test," and "prohibited drug."

### PROCEDURE

#### 1. Employee Categories

- (a) Testing Program--Covered employee means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by 49 CFR Parts 192, 193 or 195. Currently the following positions are covered employees and are subject to drug testing.

NOTE: See Attachment #1.

- (b) Employee Assistance Program (EAP) Training--Currently the following positions shall receive EAP training for detecting symptoms of drug use:

Gas System Operations Director, Gas Utility Engineer, Gas Measurement and Distribution Manager, Gas Measurement Manager, Gas Distribution Manager, and Gas Crew Leader II



## 2. Types of Drug Testing

Employees/applicants subject to this drug testing program are required to be tested under the following circumstances:

### (a) Pre-employment Testing

- (1) A pre-employment drug test will be conducted when an individual is offered employment in a position covered in this policy.
- (2) A pre-employment drug test will be conducted when a current employee transfers from a position not covered by this policy into a covered position.
- (3) Only applicants who are offered a position covered by this policy will be drug tested before being employed in a covered position. Pre-employment job applicants who test positive will not be hired and do not have the right to have the sample retested. Employees transferring into a position requiring drug testing who test positive do have the right to have their split sample tested. Employees who fail a drug test will not be hired for the position requiring drug testing and are subject to disciplinary action up to and including dismissal. If an applicant's or employee's drug test is positive, the City will refer said applicant/employee to the MRO for review (see Section 4--Medical Review Officer).
- (4) An employee who transfers from one position covered by this policy to another covered by this policy does not require pre-employment drug testing.
- (5) Employees working in a position covered by the CWA RSPA Anti-Drug policy on the effective date of this subpart, and who continue to work in a covered position under this subpart do not require a pre-employment drug test.

### (b) Random Testing

- (1) All employees working in a position covered by this policy are subject to unannounced drug testing based on random selection. This includes temporary employees performing work in a covered position.
- (2) The City will test at a rate equal to at least fifty percent (50%) of employees covered by this policy and the comparable CWA RSPA Anti-Drug policy every twelve (12) months, divided on the basis set forth in paragraph six (6) below. All covered employees will be subject to be randomly picked for drug testing at each random testing date. A person may be randomly picked more than once or not picked at all during the annual period.



- (3) To assure that the selection process is random, all employees covered by this policy and the comparable CWA RSPA Anti-Drug policy will be placed in a common pool. All permanent and temporary covered employees will be in this pool.
- (4) The random selection of employees will be determined using either a random number table or a computer-based number generator that is matched with the employee number.
- (5) The selection procedure will select sufficient additional numbers to be used to reach the appropriate testing level during each test period. These alternate numbers (names) will be tested in order of selection only if persons selected are unavailable for testing due to vacations, medical leave or travel requirements.
- (6) Each month the department will drug test approximately 1/24 of the total number of employees in the pool at that time. The testing schedule will be determined each month by either Employee Health Services or the MRO.
- (7) An employee who fails a random drug test will be allowed a one-time opportunity for rehabilitation using the employee assistance program (EAP) or another City-approved provider, in accordance with Section 8.

(c) Post-accident Testing

- (1) An "accident" on a gas pipeline or LNG facility is defined as an "incident" in 49 CFR, Section 191.3.
- (2) Employees working in positions covered by this policy whose performance either contributed to an accident or cannot be completely discounted as a contributing factor to the accident will be drug tested.
- (3) The employee will be tested as soon as possible, but no later than 32 hours after the accident. Because certain drugs or drug metabolites do not remain in the body for extended periods of time, testing should be as soon as possible.
- (4) All reasonable steps will be taken to obtain a urine sample from an employee after an accident. In case of a conscious but hospitalized employee, the hospital or medical facility will be requested to obtain a sample and, if necessary, reference will be made to the DOT drug testing requirements. If an employee is unconscious or otherwise unable to evidence consent to the procedure, the medical facility shall collect the sample.
- (5) If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional) and refuses to be tested, that employee will be terminated.





(d) Reasonable Cause Testing

- (1) When there is reasonable cause to believe that an employee covered by this policy is using a prohibited drug, the employee will be required to take a drug test.
- (2) Two supervisors/managers from the department must agree to test an employee for reasonable cause. The supervisors/managers must be EAP trained in the symptoms of drug use.
- (3) A decision to test must be based on specific contemporaneous physical, behavioral, or performance indicators of probable drug use. Examples of this are evidence of repeated errors on the job; regulatory, City, or department rule violations; or unsatisfactory time and attendance patterns; coupled with a specific contemporaneous event that indicates probable drug use.
- (4) Employees whose test results are negative, will be allowed to return to work without loss of pay or benefits.

(c) Return to Duty and Follow-up Testing

- (1) Return to duty testing. An employee who refuses to take or does not pass a drug test may not return to duty until the employee passes a drug test administered under this policy and the Medical Review Officer (MRO) has determined that the employee may return to duty.
- (2) An employee who, at the recommendation of the MRO, returns to work after completion of a rehabilitation program instituted pursuant to Section 2(b) (7), will be given follow-up unannounced drug tests, as scheduled by the MRO/SAP. These tests are in addition to the other types of tests stated in this policy.
- (3) The time period for follow-up testing will not be more than 60 months. A reasonable minimum is 12 months. This period will be determined by the MRO/SAP.
- (4) Follow-up testing will be conducted at daily, weekly, monthly or other basis at the discretion of the MRO/SAP.

### 3. Testing Procedures

- (a) Drug testing will be performed utilizing urine samples.
- (b) Tests for marijuana, cocaine, opiates, amphetamines, and phencyclidine will be performed.



- (c) An applicant who is offered a position covered by this policy will be required to report to the drug testing collection site specified in Section 6 of this policy as soon as possible and provide a specimen of his/her urine.
- (d) Upon notification that a drug test is required, an employee will report as soon as possible but no later than 24 hours (32 hours for post-accident) after notification to the drug collection site and provide a specimen of his/her urine.
- (e) The collection agency shall adhere to all requirements outlined in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs utilizing the split sample method of collection.

4. Medical Review Officer (MRO)

- (a) The name, address and phone number of the MRO for this policy is on file at Health Services.

NOTE: The MRO must be a licensed physician, with knowledge of drug abuse disorders. Reference U.S. Department of Health and Human Services Medical Review Officer Manual.

- (b) The MRO shall adhere to all requirements of 49 CFR Part 40 and 49 CFR 199.15, utilizing the split sample method.
- (c) The following is a general listing of the MRO's responsibilities.
  - (1) Receive positive confirmed results from laboratory.
  - (2) Request, if needed, a quantitative description of test results.
  - (3) Receive a certified copy of the original chain of custody.
  - (4) Review and interpret positive test results.
  - (5) Inform the tested individual and provide test results.
  - (6) Offer to conduct a medical interview with the tested individual.
  - (7) Review the individual's medical history or any other relevant biomedical factors.
  - (8) Give the individual an opportunity to discuss test results.
  - (9) Order an analysis of the split sample in a certified laboratory, if necessary.
  - (10) Consult with others if question of accuracy arises. Consistent with Part 10--Confidentiality.



- (11) Consult with laboratory officials.
- (12) Not confirm urinalysis results that do not comply with the Mandatory Guidelines.
- (13) Not declare as positive an opiate-positive urine test without "clinical evidence."
- (14) Determine whether a result is scientifically sufficient.
- (15) Determine whether and when an employee who refused to take or did not pass a drug test administered under DOT procedures may be returned to duty.
- (16) Determine whether a result is consistent with legal drug use.
- (17) Advise Health Services of verified positive results.
- (18) Maintain the required records to administer this program.

(Note: For additional details of responsibilities, see the U.S. Department of Health and Human Services (DHHS) Medical Review Officer Manual.)

5. Testing Laboratory

- (a) The testing laboratory for this policy is currently Doctors Laboratory, Inc. This laboratory may be changed in the future to another City-approved facility, providing advance notification is given.
- (b) The testing laboratory will comply with all methods and procedures of 49 CFR Part 40 and 49 CFR 199.13 and 199.17, utilizing split sample methods, and will provide annual reports to the City showing compliance.

6. Collection Agency

- (a) The collection agency for this policy is Doctors Laboratory, Inc. This collection agency may be changed in the future to another City-approved facility, provided advance notification is given.
- (b) The collection agency will comply with all methods and procedures of 49 CFR Part 40, utilizing the split sample method of collection, and will provide annual reports to the City showing compliance.









as determined by the City, in lieu of being immediately discharged based upon such failure. Provided further, however, that allowing the Employee to participate in such program in lieu of being discharged is conditioned upon the Employee's execution of a written agreement describing his/her obligations under the program. Furthermore, such an opportunity will not be available to an employee who has previously participated in an Alcohol/Drug rehabilitation program, the City's EAP, or other approved similar program, as an alternative to discharge. Finally, employees allowed the rehabilitation opportunity described herein may still receive disciplinary action short of discharge in conjunction with the rehabilitation program.

- (c) Except as provided above, a covered employee's refusal to take or failure to pass a drug test is JUST CAUSE for dismissal.
- (d) Participation in a treatment program, be it entirely voluntary or pursuant to Section b, above, will not excuse work rule violations or poor performance and an employee may be disciplined or discharged for such offenses or failure to perform.

#### 9. Record Keeping

- (a) The City will keep the following records for the period specified. The records described in subsections (1), (3), (4), and (5) below will be maintained in Employee Health Services. The records described in subsection (2) shall be maintained by the MRO.

- (1) Records that demonstrate the collection process conforms to Part 199 will be kept for a minimum of 3 years.

- (2) Records of drug test results that show employees or applicants who failed a drug test, and the type of test failed and records that demonstrate employee rehabilitation, if any, will be kept for a minimum of 5 years, and as to employee records include the following information:

- (i) The functions performed by each employee who fails the drug test.

- (ii) The prohibited drugs which were used by each employee who fails the drug test.

- (iii) The disposition of each employee who fails the drug test (e.g. termination, rehabilitation, leave without pay, etc.)

- (3) Records of employee drug test results that show employees passed a drug test will be kept for a minimum of 1 year.

- (4) A record of the number of employees tested by type of test (e.g., post-accident) will be kept for a minimum of 5 years.







## ANTI-DRUG PROGRAM

### ATTACHMENT #1

The following positions will be subject to drug testing:

- Gas System Operations Director
- Gas Utility Engineer
- Gas Measurement Manager
- Gas Measurement and Distribution Manager
- Gas System Office Coordinator
- Gas Distribution Manager
- Staff Assistant - Gas
- Drafter - Gas
- Measurement Technician I - Gas
- Measurement Technician II - Gas
- Measurement Technician III - Gas
- Measurement Technician Trainee - Gas
- Facilities Protection Technician I - Gas
- Facilities Protection Technician II - Gas
- Facilities Protection Technician III - Gas
- Jobber Trainee - Gas
- Jobber I - Gas
- Jobber II - Gas
- Equipment Operator I - Gas
- Equipment Operator II - Gas
- Construction Trainee - Gas
- Construction Worker I - Gas
- Construction Worker II - Gas
- Gas Crew Leader I
- Gas Crew Leader II
- Office Assistant - Gas



# RSPA DRUG AND ALCOHOL TESTING PROGRAM

- SUBPART B - ALCOHOL MISUSE PREVENTION PROGRAM

## 1. Purpose

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities.

## 2. Definitions

As used in this subpart:

*Accident* means an incident reportable under 49 CFR Part 191, involving gas pipeline facilities or LNG facilities, or an accident reportable under 49 CFR Part 195, involving hazardous liquid or carbon dioxide pipeline facilities.

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

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

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

*Confirmation test* means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

*Covered employee* means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by 49 CFR Parts 192, 193, or 195. *Covered employee* and *individual* or *individual to be tested* have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to 49 CFR Parts 192, 193 or 195.

*Covered function (safety-sensitive function)* means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by 49 CFR Parts 192, 193, or 195, including, but not limited to, activities and operations described and dealt with in subparts F, H, L and M of 49 CFR Part 192.





*On duty* means all times from the time a covered employee begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.

*Performing (a covered function)*: An employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, reading to perform, or immediately available to perform such covered functions.

*Refuse to submit (to an alcohol test)* means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

*Screening test* means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

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

### 3. Alcohol Prohibitions

- (a) No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- (b) No covered employee shall be on duty or perform a covered function while the covered employee possesses alcohol.
- (c) No covered employee shall use alcohol while on duty.
- (d) No covered employee shall perform safety-sensitive functions within four hours after using alcohol, or if called out, within the time period after the covered employee has been ordered to report to work.
- (e) No covered employee who would be required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.



4. Refuse to Submit

No covered employee shall refuse to submit to a post-accident alcohol test required under this subpart, a reasonable suspicion alcohol test required under this subpart, a return to duty alcohol test, or a follow-up alcohol/drug test required under this subpart.

5. Consequences

Any covered employee who violates any of the provisions of Subsections 3 or 4 of this subpart or whose positive test for alcohol is at a result of 0.04 or greater or who otherwise violates the provisions of this subpart will be removed immediately from safety sensitive functions and is subject to disciplinary action up to and including dismissal. Each covered employee who engages in conduct prohibited by subsection 3 or 4 or who tests positive for alcohol at 0.04 or greater shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse. Dismissals for a first offense will be considered an appropriate penalty absent mitigating circumstances. Covered employees who test positive for alcohol with a concentration of 0.02 or greater but less than 0.04 shall be immediately removed from performance of safety sensitive functions for the remainder of their shift and that of the entire next scheduled shift if the next scheduled shift would begin in less than twenty four (24) hours after the test.

If the covered employee is suspended, vacation or sick leave may be used in lieu of being in a no pay status. Use of vacation with respect to this section (5) will be granted on a one time basis; up to a maximum of two (2) shifts. The covered employee may be subject to additional disciplinary action.

In the event that the City requires the employee's presence at the collection site outside normal working hours as part of the testing process and the employee passes the drug/alcohol test, such required time outside normal working hours shall be considered actual time worked for the purpose of Section 13.4 of the CWA labor agreement, if applicable.

6. Alcohol Tests Required

(a) Post-accident

- (1) As soon as practicable following an accident, but no later than eight (8) hours following the accident, each surviving covered employee shall be tested for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident.



- (2) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying management of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing. Nothing in this section shall be construed to required the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee 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.

(b) Reasonable Suspicion Testing

- (1) A covered employee shall be required to immediately submit to an alcohol test when the City has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.
- (2) The City's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor/manager who is trained in detecting the symptoms of alcohol misuse. The supervisor/manager who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.
- (3) Alcohol testing is authorized by this subsection only if the observations required by paragraph (b)(2) of this subsection are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions. Notwithstanding the absence of a reasonable suspicion alcohol test under this section, a covered employee shall not report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse.

(c) Return-To-Duty Testing

Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by this subpart (except section 3(b)), the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.



(d) Follow-up Testing

- (1) Following a determination under this subpart that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee shall be subject to unannounced follow-up alcohol and drug testing as directed by a substance abuse professional in accordance with the provisions of this subpart.
- (2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

## 7. Testing Procedures

Testing procedures for alcohol tests required by this subpart shall be in conformance with 49 CFR Part 40, Subparts C and D, a copy of which is attached hereto, except as modified by this subpart. A summary of Subparts C and D of 49 CFR Part 40, prepared by J.J. Keller and Associates is available for review (but not copying since this is copyrighted material) at the Human Resources Department. The list of the covered employees is attached hereto and on file at the Human Resources Department. The Human Resources Director is the City official designated to answer questions about the testing procedures as well as any other matter covered in this program.

## 8. Handling of Test Results, and Confidentiality

- (a) Handling of test results and confidentiality shall be in accordance with 49 CFR Part 40, except as modified below.
- (1) Except as required by law or expressly authorized or required in this section, the City shall not release covered employee information that is contained in records required to be maintained under 49 CFR §199.227.
  - (2) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The City shall promptly provide the records requested by the covered employee. Access to a covered employee's records shall not be contingent upon payment for records other than those specifically requested.
  - (3) The City shall release information regarding a covered employee's records as directed by the specific, written consent of the covered employee authorizing release of the information to an identified person. Release of such information is permitted only in accordance with the terms of the employee's consent.





- (4) Records shall be made available to a subsequent employer upon receipt of a written request from a covered employee.
- (5) The City may disclose information required to be maintained under 49 CFR 199, Subpart B, pertaining to a covered employee, to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this subpart, or from the employers' determination that the covered employee engaged in conduct prohibited by Sections 3 or 4 (except 3(b) of this subpart (including but not limited to, a workers compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee)).
- (6) The City shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its covered employees.
- (7) The City shall make available copies of all results for City alcohol testing conducted under this subpart and any other information pertaining to this alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its covered employees.
- (8) When requested by the National Transportation Safety Board as part of an accident investigation, the City shall disclose information related to its administration of a post-accident alcohol test administered following the accident under investigation.

9. Referral, Evaluation and Treatment

- (a) Each covered employee who has engaged in conduct prohibited by this subpart (except 3(b)) shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.
- (b) Each covered employee who engages in conduct prohibited under this subpart (except 3(b)) shall be evaluated by a substance abuse professional designated by the City, who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.
- (c) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:



- (1) Shall be evaluated by a substance abuse professional designated by the City, to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (9)(b) of this subsection, and
- (2) Shall be subject to unannounced follow-up alcohol tests administered by the City following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

10. Notification of Alcohol Test Results

In accordance with the provisions of 49 CFR Part 40, the results of both the screening and confirmation of the breath alcohol test are displayed to the individual being tested immediately after the tests. The breath alcohol technician transmits the results to the City in a confidential manner, in writing, in person, or by telephone or electronic means. For more information, see 49 CFR Part 40, Subpart C.

11. Alcohol, Drug Effects and Symptoms, and Intervention Methods

(a) Symptoms and Effects of Alcohol

Alcohol or drug problems usually manifest themselves in an employee's work performance, behavior, and appearance. Some of the warning signs of any substance abuse are:

- Excessive absenteeism (especially after weekends and holidays)
- Frequent need to borrow money
- Avoidance of supervisors
- Lack of concentration or decreased productivity after lunch or breaks
- Unsatisfactory work performance
- Drastic weight changes
- Bloodshot eyes, runny nose
- Deterioration in personal grooming and hygiene
- Agitation, rapid or slurred speech, dilated pupils
- Pattern of accidents
- Wearing of sunglasses and long-sleeved shirts at inappropriate times



(1) Effects of Alcohol Use

The chronic use of alcohol [three servings per day of beer (12 ounces), whiskey (1 ounce) or wine (6 ounces)] may result in the following:

(i) Effects on Health:

- Dependency
- Kidney disease
- Ulcers
- Fatal liver diseases
- Alcohol Related Birth Defects
- Inflammation of the heart muscle
- Permanent brain damage

(ii) Effects on Work:

- Slows down physical responses
- Progressively impairs mental functions
- Slowed reaction times
- More than 6 times more likely to have an accident
- Confusion
- Loss of memory, judgment and learning ability
- Permanent brain damage

(iii) Effects on Personal Life:

- Separation and divorce rate is 7 times the average
- Two-thirds of all Americans will be involved in an alcohol-related vehicle accident
- 15 times more likely to commit suicide
- Permanent brain damage

(2) Signs and Symptoms of Alcohol Use

- Odor of alcohol on breath
- Lack of coordination
- Slurred speech
- Sleepy or stuporous condition
- Dulled mental process

(except for odor, these are signs and symptoms of any depressant substance)



(b) Symptoms and Effects of Drug Abuse

.. (F) Effects of Drug Abuse on Work, Health, and Personal Life

(i) Marijuana

Irritation to the lungs

Cancer

Delayed decision making

Impaired short-term memory

Impaired signal detection (risk for users operating machinery)

Long-term effect on performance

(ii) Cocaine

Strong psychological dependency

Strokes and heart attacks

Death

Paranoia and withdrawal causing unpredictable and violent behavior

(iii) Opiates

High risk for contracting hepatitis and AIDS due to sharing needles

Increased pain tolerance - failure to seek medical attention

Higher risk for accident caused by mental clouding and drowsiness

Financial problems

(iv) Amphetamines

Heart and brain damage

Heart attack and stroke

Withdrawal may cause severe physical and mental depression

Toxic psychosis - resembles schizophrenia

(v) Phencyclidine (PCP)

Irreversible memory loss

Personality changes

Thought disorders

Death

Suicidal tendencies and mental dysfunction

Acute toxicity - possibly causing combativeness, catatonia, convulsions and coma





(2)

(i)

## Redenned eyes

Distinctive odor on clothing

### Chronic fatigue and lack of motivation

### Chronic sore throat

(ii)

## Financial problems

Runny or irritated nose

Difficulty in concentration

Secretive behaviors, frequent non-business visitors, delivered packages, phone calls

Wide mood swings - unusual defensiveness, anxiety, agitation

## Insomnia

## Talkativeness

Forgetfulness, absenteeism, tardiness and missed assignments

(iii)

## Mood changes

### Nausea, vomiting, and constipation

Impaired mental functioning and alertness

## Depression

## Fatigue

(iv)

Increased heart rate and pupils

Confusion, panic

### Inability to concentrate

## Profuse sweating

(v)

## Extreme mood shift

## Muscle rigidity

### Jerky eye movements

### Confusion and agitation

## Dizziness



(c) Intervention Methods

- (1) Participation in an employee assistance program or a drug rehabilitation program or other community assistance program shall be paid for to the extent authorized under the City's Health Insurance Program, whether the particular program is selected by the employee or the City. Information regarding the City's Health Insurance Program can be obtained from the Risk Management.
- (2) The following is a list of drug and alcohol treatment programs within the Alachua and Marion County areas. The City does not recomend or endorse any of the programs. This list is provided for information only.



# Alachua and Marion County Drug and Alcohol Treatment Programs and Employee Assistance Programs

<u>Name</u>	<u>Address</u>	<u>Telephone #</u>
Charter Springs Hospital Inc. & Charter Counseling Center	2631 NW 41st Street Suite E-5, Foxbridge III Gainesville, FL 32606	(352) 371-2335
Corner Drug Store of Gainesville (CDS), Inc.	1300 NW 6th Street Gainesville, FL 32601	(352) 378-1588
Mental Health Center, Inc. of North Florida	4300 SW 13th Street Gainesville, FL 32608	(352) 374-5600
Sid Martin Bridge House	4400 SW 13th Street Gainesville, FL 32608	(352) 374-5615 (800) 330-5616
Alachua Associates	3601 SW 2nd Avenue, Suite V Gainesville, FL 32607	(352) 335-4004
Vista Pavilion	8900 NW 39th Avenue Gainesville, FL 32606	(352) 338-0097
City of Gainesville Employee Assistance Program (For City employees and covered family members)	4140 NW 27th Lane, Suite A Gainesville, FL 32606	(352) 375-1414
Charter Springs Hospital, Inc.	3130 SW 27th Avenue Ocala, FL 32674	(352) 237-7293
Fountain Center of Ocala Forest, Inc.	25011 NE County Hwy. 314 Salt Springs, FL 32134	(352) 685-1010 (800) 762-3707
Marion-Citrus Mental Health Centers	717 SW Martin Luther King Jr. Ave. Ocala, FL 32674	(352) 629-8893

**NOTE:** The City does not recommend or endorse any of the above programs. This list is provided for your information.



(2) The Department of Transportation, based on a written recommendation from DHHS, has recognized a foreign certifying organization as having equivalent laboratory certification standards and procedures to those of DHHS, and the foreign certifying organization has certified the laboratory, pursuant to those equivalent standards and procedures.

### Subpart C - Alcohol Testing

Source: 59 FR 7357, Feb. 15, 1994, unless otherwise noted.

#### Sec. 40.51 The breath alcohol technician.

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

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

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

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

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

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

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

(b) A BAT-qualified supervisor of an employee may conduct the alcohol test for that employee only if another BAT is unavailable to perform the test in a timely manner. A supervisor shall not serve as a BAT for the employee in any circumstance prohibited by a DOT operating administration regulation.

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

#### Sec. 40.53 Devices to be used for breath alcohol tests.

(a) For screening tests, employers shall use only EBTs. When the employer uses for a screening test an EBT that does not meet the requirements of paragraphs (b)(1) through (3) of this section, the employer shall use a log book in conjunction with the EBT (see Sec. 40.59(c)).

(b) For confirmation tests, employers shall use EBTs that meet the following requirements:

(1) EBTs shall have the capability of providing, independently or by direct link to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in paragraphs (2) and (3) of this section.





- (2) EBTs shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out on each copy of the result.
- (3) EBTs shall be capable of printing out, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test.
- (4) EBTs shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level.

(5) EBTs shall be capable of the following operations:

- (i) Testing an air blank prior to each collection of breath; and
- (ii) Performing an external calibration check.

Sec. 40.55 Quality assurance plans for EBTs.

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

- (1) The plan shall designate the method or methods to be used to perform external calibration checks of the device, using only calibration devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests."
  - (2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use).
  - (3) The plan shall specify the tolerances on an external calibration check within which the EBT is regarded to be in proper calibration.
  - (4) The plan shall specify inspection, maintenance, and calibration requirements and intervals for the device.
  - (5) For a plan to be regarded as valid, the manufacturer shall have submitted the plan to NHTSA for review and have received NHTSA approval of the plan.
- (b) The employer shall comply with the NHTSA-approved quality assurance plan for each EBT it uses for alcohol screening or confirmation testing subject to this part.

- (1) The employer shall ensure that external calibration checks of each EBT are performed as provided in the QAP.
- (2) The employer shall take an EBT out of service if any external calibration check results in a reading outside the tolerances for the EBT set forth in the QAP. The EBT shall not again be used for alcohol testing under this part until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.
- (3) The employer shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the device's manufacturer or a state health agency or other appropriate state agency. The employer shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

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

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

Sec. 40.57 Locations for breath alcohol testing.

(a) Each employer shall conduct alcohol testing in a location that affords visual and aural privacy to the individual being



tested, sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel, and materials for breath testing shall be provided at the location where testing is conducted.

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

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

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

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

#### Sec. 40.59 The breath alcohol testing form.

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

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

[59 FR 7357, Feb. 15, 1994, as amended at 59 FR 43001, Aug. 19, 1994]

#### Sec. 40.61 Preparation for breath alcohol testing.

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

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

#### Sec. 40.63 Procedures for screening tests.

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

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

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

(d) (1) If the EBT does not meet the requirements of Sec. 40.53(b)(1) through (3), the BAT shall ensure, before a screening test is administered to each employee, that he or she and the employee read the sequential test number displayed by the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, and time in Step # of the form.

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

(i) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing



device, serial number of the testing device, time and quantified result in Step 3 of the form.

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

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

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

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

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

(3) If the employee does not sign the certification in Step 4 of the form 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 in the "Remarks" section of the form.

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

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

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

(h) If the confirmation test will be conducted at a different site from the screening test, the employer or its agent shall ensure that--

(1) The employee is advised against taking any of the actions mentioned in the first sentence of Sec. 40.65(b) of this Part;

(2) The employee is advised that he or she must not drive, perform safety-sensitive duties, or operate heavy equipment, as noted in Block 4 of the alcohol testing form; and

(3) The employee is under observation of a BAT, STI, or other employer personnel while in transit from the screening test site to the confirmation test site.

[59 FR 7357, Feb. 15, 1994, as amended at 59 FR 43001, Aug. 19, 1994]

#### Sec. 40.65 Procedures for confirmation tests.

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

(b) The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 30 minutes of the completion of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e., to prevent any



accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the "Remarks" section of the form. If the BAT conducts the confirmation test more than 30 minutes after the result of the screening test has been obtained, the BAT shall note in the "Remarks" section of the form the time that elapsed between the screening and confirmation tests and the reason why the confirmation test could not be conducted within 30 minutes of the screening test.

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

(2) In all cases, the procedures of Sec. 40.63 (a), (b), and (c) shall be followed. A new mouthpiece shall be used for the confirmation test.

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

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

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

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

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

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

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

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

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

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

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





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

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

[59 FR 7357, Feb. 15, 1994, as amended at 59 FR 43002, Aug. 19, 1994]

#### Sec. 40.67 Refusals to test and uncompleted tests.

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

(b) If an screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number (in the case of a screening test conducted on an EBT that meets the requirements of Sec. 40.53(b) or in the case of a confirmation test).

#### Sec. 40.69 Inability to provide an adequate amount of breath.

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

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

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

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

(1) [Reserved]

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

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

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

#### Sec. 40.71 - 40.77 [Reserved]

#### Sec. 40.79 Invalid tests.

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

(1) The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP



from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid;

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

(3) The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to the administration of the test, as provided in Sec. 40.65;

(4) The BAT does not sign the form as required by Secs. 40.63 and 40.65;

(5) The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;

(6) An EBT fails to print a confirmation test result; or

(7) On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

(b) [Reserved]

[59 FR 7357, Feb. 15, 1994, as amended at 59 FR 43002, Aug. 19, 1994]

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

(a) Employers shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.

(b) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in the records required to be maintained by this part or by DOT agency alcohol misuse rules.

(c) An employee subject to testing is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The employer shall promptly provide the records requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

(d) Each employer shall permit access to all facilities utilized in complying with the requirements of this part and DOT agency alcohol misuse rules to the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations).

(e) When requested by the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations), each employer shall make available copies of all results for employer alcohol testing conducted under the requirements of this part and any other information pertaining to the employer's alcohol misuse prevention program. The information shall include name-specific alcohol test results, records and reports.

(f) When requested by the National Transportation Safety Board as part of an accident investigation, an employer shall disclose information related to the employer's administration of any post-accident alcohol tests administered following the accident under investigation.

(g) An employer shall make records available to a subsequent employer upon receipt of a written request from a covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(h) An employer may disclose information required to be maintained under this part pertaining to a covered employee to that employee or to the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and



arising from the results of an alcohol test administered under the requirements of this part, or from the employer's determination that the employee engaged in conduct prohibited by a DOT agency alcohol misuse regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

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

#### Sec. 40.83 Maintenance and disclosure of records concerning EBTs and BATs.

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

- (1) Records of the inspection and maintenance of each EBT used in employee testing;
- (2) Documentation of the employer's compliance with the QAP for each EBT it uses for alcohol testing under this part;
- (3) Records of the training and proficiency testing of each BAT used in employee testing;
- (4) The log books required by Sec. 40.59(c).

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

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

#### Subpart D - Non-Evidential Alcohol Screening Testing

#### Sec. 40.91 Authorization for use of non-evidential alcohol screening devices.

Non-evidential alcohol screening tests, performed using screen devices included by the National Highway Traffic Safety Administration on its conforming products list for non-evidential screening devices, may be used in lieu of EBTs to perform screening tests required by operating administrations' alcohol testing regulations. Non-evidential screening devices may not be used for confirmation alcohol tests, which must be conducted using EBTs as provided in Subpart C of this Part.

#### Sec. 40.93 The screening test technician.

(a) Anyone meeting the requirements of this Part to be a BAT may act as a screening test technician (STT), provided that the individual has demonstrated proficiency in the operation of the non-evidential screening device he or she is using.

(b) Any other individual may act as an STT if he or she successfully completes a course of instruction concerning the procedures required by this Part for conducting alcohol screening tests. Only the Department of Transportation model course, or a course of instruction determined by the Department of Transportation's Office of Drug Enforcement and Program Compliance to be equivalent to it, may be used for this purpose.

(c) With respect to any non-evidential screening device involving changes, contrasts, or other readings that are indicated on the device in terms of color, STTs shall, in order to be regarded a proficient, be able to discern correctly these changes, contrasts or readings.

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

(e) The employer or its agent shall document the training and proficiency of each STT it uses to test employees and maintain the documentation as provided in Sec. 40.83.

(f) The provisions of Sec. 40.51 (b) and (c); Sec. 40.57; Sec. 40.59; Sec. 40.61; Sec. 40.63 (e)(1)-(2), (f) (g), and (h); Sec.



arising from the results of an alcohol test administered under the requirements of this part, or from the employer's determination that the employee engaged in conduct prohibited by a DOT agency alcohol misuse regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

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

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

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

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

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

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

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

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

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

**Subpart D - Non-Evidential Alcohol Screening Testing**

**Sec. 40.91 Authorization for use of non-evidential alcohol screening devices.**

Non-evidential alcohol screening tests, performed using screen devices included by the National Highway Traffic Safety Administration on its conforming products list for non-evidential screening devices, may be used in lieu of EBTs to perform screening tests required by operating administrations' alcohol testing regulations. Non-evidential screening devices may not be used for confirmation alcohol tests, which must be conducted using EBTs as provided in Subpart C of this Part.

**Sec. 40.93 The screening test technician.**

(a) Anyone meeting the requirements of this Part to be a BAT may act as a screening test technician (STT), provided that the individual has demonstrated proficiency in the operation of the non-evidential screening device he or she is using.

(b) Any other individual may act as an STT if he or she successfully completes a course of instruction concerning the procedures required by this Part for conducting alcohol screening tests. Only the Department of Transportation model course, or a course of instruction determined by the Department of Transportation's Office of Drug Enforcement and Program Compliance to be equivalent to it, may be used for this purpose.

(c) With respect to any non-evidential screening device involving changes, contrasts, or other readings that are indicated on the device in terms of color, STTs shall, in order to be regarded a proficient, be able to discern correctly these changes, contrasts or readings.

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

(e) The employer or its agent shall document the training and proficiency of each STT it uses to test employees and maintain the documentation as provided in Sec. 40.83.

(f) The provisions of Sec. 40.51 (b) and (c); Sec. 40.57; Sec. 40.59; Sec. 40.61; Sec. 40.63 (e)(1)-(2), (f) (g), and (h); Sec.





40.69; and Sec. 40.81; and other provisions, as applicable, of this Part apply to STTs as well as to BATs.

**Sec. 40.95 Quality assurance plans for non-evidential screening devices.**

(a) In order to be used for alcohol screening tests subject to this part, a non-evidential screening device shall have an approved quality assurance plan (QAP) developed by the manufacturer and approved by the National Highway Traffic Safety Administration (NHTSA).

(1) The plan shall designate the method or methods to be used to perform quality control checks; the temperatures at which the non-evidential screening device shall be stored and used, as well as other environmental conditions (e.g., altitude, humidity) that may affect the performance of the device; and, where relevant, the shelf life of the device.

(2) The QAP shall prohibit the use of any device that does not pass the specified quality control checks or that has passed its expiration date.

(b) The manufacturers' instructions on or included in the package for each saliva testing device shall include directions on the proper use of the device, the time frame within which the device must be read and the manner in which the reading is made.

(c) The employer and its agents shall comply with the QAP and manufacturer's instructions for each non-evidential screening device it uses for alcohol screening tests subject to this Part.

**Sec. 40.97 Locations for non-evidential alcohol screening tests.**

(a) Locations for non-evidential alcohol screening tests shall meet the same requirements set forth for breath alcohol testing in Sec. 40.57 of this Part.

(b) The STT shall supervise only one employee's use of a non-evidential screening device at a time. The STT shall not leave the alcohol testing location while the screening test procedure for a given employee is in progress.

**Sec. 40.99 Testing forms.**

STTs conducting tests using a non-evidential screening device shall use the alcohol testing form as provided in Sec. 40.59 and Appendix B of this Part for the screening test.

**Sec. 40.101 Screening test procedure.**

(a) The steps for preparation for testing shall be the same as provided for breath alcohol testing in Sec. 40.61 of this Part.

(b) The STT shall complete Step 1 on the form required by Sec. 40.99. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

(c) If the employer is using a non-evidential breath testing device, the STT shall follow the same steps outlined for screening tests using EBTs in Sec. 40.63.

(d) If the employer is using a saliva testing device, the STT shall take the following steps:

(1) The STT shall explain the testing procedure to the employee.

(2) The STT shall check the expiration date of the saliva testing device, show the date to the employee, and shall not use a device at any time subsequent to the expiration date.

(3) The STT shall open an individually sealed package containing the device in the presence of the employee.

(4) The STT shall offer the employee the opportunity to use the swab. If the employee chooses to use the swab, the STT shall instruct the employee to insert the absorbent end of the swab into the employee's mouth, moving it actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as provided in the manufacturer's instructions for the



device.

- (5) If the employee chooses not to use the swab, or in all cases in which a new test is necessary because the device did not activate (see paragraph (d)(8) of this section), the STT shall insert the absorbent end of the swab into the employee's mouth, moving it actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as provided in the manufacturer's instructions for the device. The STT shall wear a surgical grade glove while doing so.
- (6) The STT shall place the device on a flat surface or otherwise in a position in which the swab can be firmly placed into the opening provided in the device for this purpose. The STT shall insert the swab into this opening and maintain firm pressure on the device until the device indicates that it is activated.
- (7) If the procedures of paragraph (d)(3)-(d)(5) of this section are not followed successfully (e.g., the swab breaks, the STT drops the swab on the floor or another surface, the swab is removed or falls from the device before the device is activated), the STT shall discard the device and swab and conduct a new test using a new device. The new device shall be one that has been under the control of the employer or STT prior to the test. The STT shall note in the remarks section of the form the reason for the new test. In this case, the STT shall offer the employee the choice of using the swab himself or herself or having the STT use the swab. If the procedures of paragraph (d)(3)-(d)(5) of this section are not followed successfully on the new test, the collection shall be terminated and an explanation provided in the remarks section of the form. A new test shall then be conducted, using an EBT for both the screening and confirmation tests.
- (8) If the procedures of paragraph (d)(3)-(d)(5) of this section are followed successfully, but the device is not activated, the STT shall discard the device and swab and conduct a new test, in the same manner as provided in paragraph (d)(7) of this section. In this case, the STT shall place the swab into the employee's mouth to collect saliva for the new test.
- (9) The STT shall read the result displayed on the device two minutes after inserting the swab into the device. The STT shall show the device and its reading to the employee and enter the result on the form.
- (10) Devices, swabs, gloves and other materials used in saliva testing shall not be reused, and shall be disposed of in a sanitary manner following their use, consistent with applicable requirements.
- (e) In the case of any screening test performed under this section, the STT, after determining the alcohol concentration result, shall follow the applicable provisions of Sec. 40.63(e)(1)-(2), (l), (g), and (h). The STT shall also enter, in the "Remarks" section of the form, a notation that the screening test was performed using a non-evidential breath testing device or a saliva device, as applicable. Following completion of the screening test, the STT shall date the form and sign the certification in Step 3 of the form.

#### Sec. 40.103 Refusals to test and uncompleted tests.

- (a) Refusal by an employee to complete and sign the alcohol testing form required by Sec. 40.99 (Step 2), to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise to cooperate in a way that prevents the completion of the testing process, shall be noted by the STT in the remarks section of the form. This constitutes a refusal to test. The testing process shall be terminated and the STT shall immediately notify the employer.
- (b) If the screening test cannot be completed, for reasons other than a refusal by the employee, or if an event occurs that would invalidate the test, the STT shall, if practicable, immediately begin a new screening test, using a new testing form and, in the case of a test using a saliva screening device, a new device.

#### Sec. 40.105 Inability to provide an adequate amount of breath or saliva.

- (a) If an employee is unable to provide sufficient breath to complete a test on a non-evidential breath testing device, the procedures of Sec. 40.69 apply.
- (b) If an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device), the STT, as provided in Sec. 40.101 of this Part, shall conduct a new test using a new device. If the employee refuses to complete the new test, the STT shall terminate testing and immediately inform the employer. This constitutes a refusal to test.



(c) If the new test is completed, but there is an insufficient amount of saliva to activate the device, STT shall immediately inform the employer, which shall immediately cause an alcohol test to be administered to the employee using an EBT.

**Sec. 40.107 Invalid tests.**

An alcohol test using a non-evidential screening device shall be invalid under the following circumstances:

(a) With respect to a test conducted on a saliva device--

(1) The result is read before two minutes or after 15 minutes from the time the swab is inserted into the device;

(2) The device does not activate;

(3) The device is used for a test after the expiration date printed on its package; or

(4) The STT fails to note in the remarks section of the form that the screening test was conducted using a saliva device;

(b) With respect to a test conducted on any non-evidential alcohol testing device, the STT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording on the form of the test result.

**Sec. 40.109 Availability and disclosure of alcohol testing information about individual employees.**

The provisions of Sec. 40.81 apply to records of non-evidential alcohol screening tests.

**Sec. 40.111 Maintenance and disclosure of records concerning non-evidential testing devices and STTs.**

Records concerning STTs and non-evidential testing devices shall be maintained and disclosed following the same requirements applicable to BATs and EBTs under Sec. 40.81 of this Part.



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## TITLE 49--TRANSPORTATION

### CHAPTER I--RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION--Continued

#### PART 191--TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS--Table of Contents

##### Sec. 191.3 Definitions.

As used in this part and the RSPA Forms referenced in this part--  
Administrator means the Administrator of the Research and Special  
Programs Administration or any person to whom authority in the matter  
concerned has been delegated by the Secretary of Transportation.

Gas means natural gas, flammable gas, or gas which is toxic or  
corrosive;

Incident means any of the following events:

(1) An event that involves a release of gas from a pipeline or of  
liquefied natural gas or gas from an LNG facility and  
(i) A death, or personal injury necessitating in-patient  
hospitalization; or

(ii) Estimated property damage, including cost of gas lost, of the  
operator or others, or both, of \$50,000 or more.

(2) An event that results in an emergency shutdown of an LNG  
facility.

(3) An event that is significant, in the judgement of the operator,  
even though it did not meet the criteria of paragraphs (1) or (2).

LNG facility means a liquefied natural gas facility as defined in  
Sec. 193.2007 of part 193 of this chapter;

Master Meter System means a pipeline system for distributing gas  
within, but not limited to, a definable area, such as a mobile home  
park, housing project, or apartment complex, where the operator  
purchases metered gas from an outside source for resale through a gas  
distribution pipeline system. The gas distribution pipeline system  
supplies the ultimate consumer who either purchases the gas directly  
through a meter or by other means, such as by rents;

Municipality means a city, county, or any other political  
subdivision of a State;

Offshore means beyond the line of ordinary low water along that  
portion of the coast of the United States that is in direct contact with  
the open seas and beyond the line marking the seaward limit of inland  
waters;

Operator means a person who engages in the transportation of gas;

Outer Continental Shelf means all submerged lands lying seaward and  
outside the area of lands beneath navigable waters as defined in Section  
2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil  
and seabed appertain to the United States and are subject to its  
jurisdiction and control.









Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof;

Pipeline or Pipeline System means all parts of those physical facilities through which gas moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

State includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico;

Transportation of gas means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce.

[35 FR 320, Jan. 8, 1970, as amended by Amdt. 191-5, 49 FR 18960, May 3, 1984; Amdt. 191-10, 61 FR 18516, Apr. 26, 1996; Amdt. 191-12, 62 FR 61695, Nov. 19, 1997]





