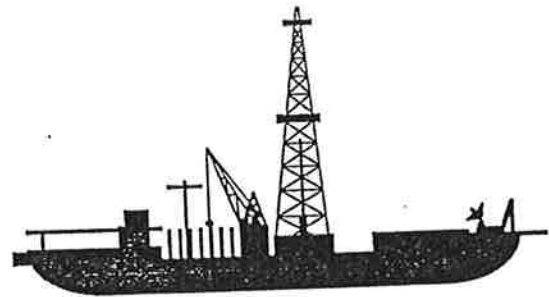
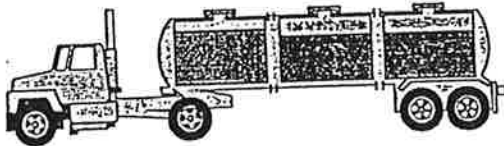


RSPA



**RESEARCH AND
SPECIAL
PROGRAMS
ADMINISTRATION**

SUBPART A - ANTI-DRUG PROGRAM

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pursuant to the Pipeline Safety Regulations, Code of Federal Regulations, Title 49 (49 CFR), Part 199, as amended or superseded, which, in turn, incorporates DOT Procedures for Transportation Workplace Drug Testing Programs, 49 CFR Part 40.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.

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."

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.

(e) 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.

7. Employee Assistance Program (EAP)

(a) -- Education--Every employee covered by this policy will receive the following drug use education.

- (1) Drug information will be periodically distributed and displayed in the work areas.
- (2) A copy of this policy will be given to each employee and displayed in the work area.
- (3) The hot-line telephone number for employee assistance will be given to each employee and displayed in the work area.

(b) Training--Every supervisor covered by this policy who will determine whether an employee must be drug tested based on reasonable cause, will receive the following drug use training:

- (1) A 1-hour (minimum) training period on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

(c) 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. 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. 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.

8. Discipline, Discharge, Return to Duty

(a) Upon the City's receipt of a positive test result, an employee in a covered position shall be suspended with pay for five (5) working days or until the MRO determines whether or not a legitimate medical explanation exists for the confirmed positive test result. Employees must cooperate fully with the MRO. Failure to meet with the MRO upon his/her request, or to promptly provide requested information will result in the Employee immediately being placed upon suspension without pay, and may result in termination and discharge.

(b) An employee who fails a random drug test will be allowed a one-time opportunity to participate in an Alcohol/Drug Rehabilitation Program or the City of Gainesville Employee Assistance Program (EAP) or other approved program

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.

- (5) Records confirming that supervisors and employees have been trained as required by this policy will be kept for a minimum of 3 years. Training records will include copies of all training materials.

10. Confidentiality

- (a) Each individual's record of testing and results under this policy will be maintained private and confidential to the extent allowed by law. With the exception of the testing laboratory, MRO, designated manager, and the Employee Health Services representative, and, if necessary, as part of a judicial or administrative proceeding, or upon request of RSPA or State agency officials as part of an accident investigation, the results of individual drug tests will not be released to anyone without the expressed written authorization of the individual tested. Prior to testing, the individual will be informed about who will receive test data (e.g., testing laboratory, MRO, Human Resources Director).
- (b) All written records will be stored in locked containers or in a secure location with access available only by the individuals listed above.
- (c) To the extent allowed by law, unless an employee gives his or her written consent, the employee's drug testing and/or rehabilitation records will not be released to a subsequent employer.

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 require 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

· (†) 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) 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

(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 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 #</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, STT, 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 a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new breath alcohol testing form with a new sequential test number (in the case of a screening test conducted on an EBT that meets the requirements of 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]

