



LETTER AGREEMENT NO. 95-31-PGE

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
INDUSTRIAL RELATIONS DEPARTMENT
201 MISSION STREET, ROOM 1513A
MAIL CODE P15A
P.O. BOX 770000
SAN FRANCISCO, CALIFORNIA 94177
(415) 973-3425

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, AFL-CIO
LOCAL UNION 1245, I.B.E.W
P.O. BOX 4790
WALNUT CREEK, CALIFORNIA 94596
(510) 933-6060

RONALD L. BAILEY, MANAGER OR
DAVID J. BERGMAN, DIRECTOR AND CHIEF NEGOTIATOR

JACK McNALLY, BUSINESS MANAGER

April 26, 1995

Local Union No. 1245
International Brotherhood of
Electrical Workers, AFL-CIO
P.O. Box 4790
Walnut Creek, CA 94598

Attention: Mr. Jack McNally, Business Manager

Gentlemen:

Company is required by Federal Regulations to implement procedures for alcohol and drug testing of Commercial Drivers. Accordingly, pursuant to Section 500.5 of the Physical Agreement, Company proposes to implement the attached Alcohol and Drug Testing Program applicable to employees who operate commercial motor vehicles at PG&E, with application retroactive to January 1, 1995.

In executing this agreement, the parties agree to adopt the Department of Transportation's "Operating Guidance for DOT Mandated Drug Testing Programs" (June 1, 1992 - attached) which defines the "fatal flaws" in a DOT drug collection process for purposes of standardization of interpretation of the application of the procedures defined in 49 CFR Part 40. The parties further agree to adopt any amendment to these operating guidelines as may be issued by the DOT.

If you are in accord with the foregoing and agree thereto, please so indicate in the space provided and return one executed copy of this letter to the Company.

Very truly yours,

PACIFIC GAS & ELECTRIC COMPANY

By: 
Director and Chief Negotiator

The Union is in accord with the foregoing and agrees thereto as of the date hereof.

June 12, 1995

By: 
Business Manager





PREVIOUS EDITION OBSOLETE

June 1, 1992

Operating Guidance for DOT Mandated
Drug Testing Programs

The Department of Transportation, (DOT) in response to many inquiries concerning criteria for determining the acceptability of urine specimens for testing and the forensic validity of drug testing results, provides the following guidance base on 49 CFR Part 40, Procedures for Transportation Workplace Drug Testing Programs. This operating guidance is intended to provide standardization of interpretation in the application of the procedures outlined in 49 CFR Part 40.

Specimens presented to laboratories should be rejected for testing when any of the following procedural errors occur:

- 1) specimen I.D. number on specimen bottle and custody and control form do not match.
- 2) specimen I.D. number is omitted on specimen bottle.
- 3) collector's signature is omitted from certification statement.
- 4) chain of custody block is incomplete (minimum: 2 signatures; shipping entry; date).
- 5) donor SSN or I.D. number is omitted on custody and control form unless "refusal of donor to provide" is stated in remarks section.
- 6) specimen volume is less than 30ml; if upon arrival at the laboratory, specimen volume is slightly below the 30ml minimum (within 10%), the specimen may be accepted if the laboratory can ensure that sufficient volume will be available for storage and any necessary reanalyses for quality control or reconfirmation of results.

NOTE: This provision does not change the DOT requirement for the donor to provide 60 ml of urine. The provision is meant to apply to situations such as leakage.

- 7) specimen bottle seal is broken or shows evidence of tampering.

- 8) specimen shows obvious adulteration (i.e. color, foreign objects, unusual odor).

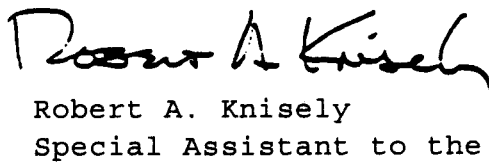
Positive specimen results reviewed by the Medical Review Officer should be cancelled when the following procedural errors occur:

- 1) donor's signature is omitted from the certification statement unless "donor refusal to sign" is stated in the remarks section.
- 2) certifying scientists' signature is omitted on laboratory copy of the drug testing custody and control form.

The Department recommends that laboratories retain specimen not suitable for testing a minimum of five working days. If the employer, collection site person, or donor supplies the omitted information and certifies, in writing, that the information is true and accurate, the laboratory may proceed with analysis of the specimen. Similarly, the MRO may elect to reconstruct omitted donor or certifying scientist signatures by obtaining the relevant information along with a written statement from the donor or certifying scientist indicating that the information is true and accurate. When a specimen is not tested by the laboratory for reasons outlined above, or the test result is considered invalid by the MRO for reasons outlined above, the specimen should be considered a cancelled test and reported as such to the employer.

Other procedural errors evidenced on the custody and control form, specimen bottle, or shipping container should be noted by the laboratory or MRO as appropriate. Decisions about the ultimate impact of procedural errors will be determined by administrative or legal proceedings and are not within the scope of this document.

This document does not constitute regulation, and provides only operating guidance in the implementation of DOT mandated drug testing as prescribed in 49 CFR Part 40.



Robert A. Knisely
Special Assistant to the Secretary
Director, Drug Enforcement and
Program Compliance

**ALCOHOL AND DRUG TESTING PROGRAM
FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

**SCOPE
AND
APPLICATION**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

SCOPE AND APPLICATION

The program of Alcohol and Drug Testing of commercial drivers is being implemented pursuant to Federal Regulations.

The purpose of these regulations 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.

These regulations are applicable to every person who operates a commercial motor vehicle in interstate or intrastate commerce and is subject to the commercial driver's license requirements.

Under these regulations, a commercial motor vehicle driver is defined as 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.

PG&E employees who operate a commercial motor vehicle are subject to the controlled substance and alcohol testing rules. A commercial driver's license is required for drivers operating a commercial motor vehicle which is defined by the regulations as:

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

- (1) Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (2) Has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) Is designed to transport 16 or more passengers, including the driver, or
- (4) Is of any size and is used in the transportation of hazardous materials requiring placards.

Accordingly, it is intended that the provisions of this document apply to employees in classifications which operate commercial motor vehicles, employees in classifications receiving the CDLA premium, and employees in classifications who are designated as volunteer standby commercial drivers.

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IMPLEMENTATION

PG&E is required to implement these alcohol and controlled substances testing rules by 01/01/95.

**ALCOHOL AND DRUG TESTING PROGRAM
FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

**PROHIBITED
CONDUCT**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

PROHIBITED ALCOHOL AND CONTROLLED SUBSTANCE-RELATED CONDUCT

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

- ◆ Reporting for duty or remaining on duty to perform safety sensitive functions while having an alcohol concentration of 0.04 or greater. (see alcohol and alcohol concentration definitions-page 93).
- ◆ Being on duty or operating a CMV while the driver possesses alcohol.
- ◆ Using alcohol while performing safety-sensitive functions.**
- ◆ When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- ◆ Refusing to submit to an alcohol or controlled substance test required by post-accident, random, reasonable suspicion or follow-up testing requirements.
- ◆ Pre-duty use - use of alcohol within 4 hours prior to performing safety-sensitive functions.
- ◆ Reporting for duty or remaining on duty, requiring the performance of safety-sensitive functions, when the driver uses any controlled substance, except when instructed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a CMV.
- ◆ Reporting for duty, remaining on duty or performing a safety-sensitive function, if the driver tests positive for controlled substances.

Under these regulations, any unauthorized use of controlled substances is prohibited. Illicit use of drugs by drivers of commercial motor vehicles is prohibited on or off duty.

*****Performing (a safety-sensitive function)**"-any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

*****Safety-sensitive function**"-is defined as any of those on-duty functions set forth in 395.2 On-Duty, paragraphs (1) through (7) as listed below:

(1) All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched,

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- (2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- (3) All time spent at the driving controls of a commercial motor vehicle.
- (4) All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
- (6) All time spent performing the driver requirements associated with an accident.
- (7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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**CONSEQUENCES
OF
PROHIBITED
CONDUCT**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

CONSEQUENCES TO DRIVERS ENGAGING IN CONDUCT PROHIBITED BY THE FEDERAL HIGHWAY ADMINISTRATION'S DRUG USE AND ALCOHOL MISUSE RULES

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

- ◆ Drivers shall not be permitted to perform safety-sensitive functions and will be removed from duty.
- ◆ Drivers shall be advised by the employer of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances.
- ◆ Drivers shall be evaluated by a Substance Abuse Professional (SAP) who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use.

Before a driver returns to duty requiring performance of a safety-sensitive function, he/she shall undergo a return-to-duty alcohol test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, or a controlled substance test with a verified negative result if the conduct involved controlled substance use.

- ◆ In addition, each driver identified as needing assistance in resolving problems associated with alcohol or controlled substance shall be evaluated by a Substance Abuse Professional to determine that the driver has followed the rehabilitation program prescribed prior to returning to perform safety-sensitive duties.
- ◆ The driver shall also be subject to unannounced follow-up alcohol and/or controlled substance testing. The number and frequency of such follow-up testing shall be as directed by the Substance Abuse Professional/Medical Review Officer (MRO), and consist of at least six tests in the first 12 months.

An employee who tests positive for illegal drugs or alcohol misuse during one of the testing programs may be offered the First Time Offender program which currently exists. This will include a prescribed rehabilitation program as specified by a Medical Review Officer or Substance Abuse Professional who is specially trained in substance abuse/alcohol illnesses. In most cases, a second

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positive test (Drugs, Alcohol or both) will result in the employee's discharge.

An employee who refuses to provide a test specimen when required by the regulations or who refuses to follow the specimen collection procedures will be suspended for insubordination and considered to have tested positive. If they fail to follow treatment as prescribed by the Medical Review Office/Substance Abuse Professional they will be considered to have a second positive test and they will be discharged. Employees who willfully tamper or alter a test specimen will be discharged.

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OTHER ALCOHOL-RELATED CONDUCT

No driver tested under these regulations 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, including driving a commercial motor vehicle. In this event, an employer may not permit the driver to perform or continue to perform safety-sensitive functions, until the start of the driver's next regular scheduled duty period, but not less than 24 hours following administration of the test.

Employees falling under the application of these provisions will be removed from duty without permission and without pay until the start of the employee's next regular scheduled duty period, but not less than 24 hours following administration of the test.

Employees falling under the application of these provisions will be subject to disciplinary action under the Positive Discipline System.

After returning from the collection site, the employee should not be allowed to return to performing any covered functions. The supervisor should instruct the employee to make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the fact that he/she is under the influence of alcohol. If the employee insists on driving, the proper local law enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle and the employee will be subject to disciplinary action, up to and including termination.

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**TYPES
OF
TESTING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

TYPES OF TESTING

In order to enhance highway transportation safety, Congress passed the Omnibus Transportation Employee Testing Act of 1991. The Act required the FHWA to establish regulations requiring CMV drivers to be tested for the use of controlled substances and the misuse of alcohol. The following are the types required to be performed:

- ◆ Pre-employment Testing
- ◆ Random Testing
- ◆ Reasonable Suspicion Testing
- ◆ Post-Accident Testing
- ◆ Return-to-Duty Testing
- ◆ Follow-up Testing

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Controlled Substances

Current Federal Regulations require that drivers of commercial motor vehicles be tested for the following controlled substances:

- ◆ Marijuana
- ◆ Cocaine
- ◆ Opiates (including Heroin)
- ◆ Amphetamines
- ◆ Phencyclidine (PCP)

The testing is a two-stage process. First a screening test is performed. If it is positive for one or more of the prohibited drugs, then a confirmation test is performed for each identified drug.

Split Sample Testing

Controlled substances tests must follow split sample procedures. Under this provision, a driver whose urine sample has tested positive for a controlled substance has the option (within 72 hours of being notified by the MRO) of having the other portion of the split sample tested at another laboratory. If the second portion of the sample also tests positive, then the driver is subject to the sanctions contained in the regulations and PG&E Policy. If the second portion produces a negative result, or for any reason the second portion is not available, the test is considered negative and no sanctions are imposed.

The split testing procedure is not applicable to the Breath Alcohol Testing Process.

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**COVERED
CLASSIFICATIONS**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

COVERED CLASSIFICATIONS

It is intended that the provisions of this document apply to employees in classifications which operate commercial motor vehicles, employees in classifications receiving the CDLA premium and employees in classifications who are designated as volunteer standby commercial drivers.

Both management and bargaining unit employees on rotational assignments may occasionally fall within the legal definition of a covered employee, depending upon actual work assignment.

Contract workers are included when they are engaged in covered work as defined by 49CFR, Paragraph 149. They may meet these guidelines by implementing their own program which meets the DOT's and Company's requirements.

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**ITEMS
OF
UNDERSTANDING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

ITEMS OF UNDERSTANDING

- 1. Company will meet and confer with Union on the selection of HHS-certified laboratories, Medical Review Officers, and contractors used in the Alcohol and Drug Testing Programs.**
- 2. Substances will be added to the panel for testing only with agreement of the parties or as required by DOT Guidelines following discussions between the parties.**
- 3. Employees will have the option to be informed in writing of negative test results if requested on the chain of custody form.**
- 4. An employee who has been discharged due to a second verified positive test for illegal drugs or alcohol, where no on-the-job impairment is apparent, will be considered eligible for rehire with evidence of completion of an acceptable rehabilitation program.**
- 5. An employee in a covered position who tests positive the second time for illegal drugs or alcohol when there was no on-the-job impairment evident, will be given another opportunity for rehabilitation if they had previously self-referred to EAP and were following EAP's recommended course of treatment in the prior 30 days. A subsequent positive test on this employee will result in discharge.**
- 6. If 60 months have elapsed since a verified or confirmed positive test occurred that did not involve on-the-job impairment and there have been no further positive tests, the first positive test will not be used to support action on a future positive test that might result.**
- 7. Union may request reanalysis of a controlled substance specimen if it is an issue in the grievance procedure.**
- 8. A mobile collection site may be used for drug and alcohol testing, at Company's discretion.**
- 9. Information provided to the MRO or an EAP by the employee will be released by the MRO/EAP only as it relates to issues raised in the grievance procedure or on accident investigations.**
- 10. The split sample method of collection will be used. If the test of the first bottle is positive, the employee may request that the MRO direct that the**

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second bottle be tested in a DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the first bottle. If the result of the second test is negative, the MRO shall cancel the test.

In his/her evaluation and interpretation of the positive test result from the laboratory the MRO shall not consider the results of any tests that were obtained outside of the PG&E Drug Testing Program.

11. The Company will conduct random drug and alcohol tests at the minimum annual rates permitted by the Department of Transportation.
12. The Company will use the highest cut-off levels permitted by the Department of Transportation for both screening and confirmation tests.
13. Employees shall have the right to a shop steward under the following conditions: (a) during discussions with management prior to a reasonable suspicion test; (b) prior to an interview with the Substance Abuse Professional or Medical Review Officer; or (c) before a discussion to determine a rehabilitation program.
14. An employee who has self-referred to EAP and has been following EAP's recommended course of treatment will not be deemed to have tested positive for Company purposes if they should test positive for a drug or alcohol during the time period between implementation of this agreement and January 31, 1995. They will, however, be required to complete Medical Review Officer/Substance Abuse Professional-specified rehabilitation and post-rehabilitation testing.
15. Nothing in this policy 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 the accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
16. The notification to the immediate supervisor of an employee's random drug and/or alcohol test may occur up to 3 working days prior to the scheduled date of the test. Improper use of this information by the supervisor may result in disciplinary action.
17. If the Company is required to conduct alcohol or random controlled substances testing under the rules of more than one DOT agency, the Company may either:

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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 rate; or

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 employee is subject.

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**PRE-EMPLOYMENT
AND
TRANSFER
TESTING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

PRE-EMPLOYMENT/TRANSFER ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Prior to the first time a driver performs safety-sensitive functions (any of those on-duty functions listed in the Federal Motor Carrier Safety Regulations section 395.2 On-duty time, paragraphs 1 through 7 - such as time spent driving vehicle, inspecting vehicle, loading vehicle, etc.) for an employer, the driver must submit to testing for alcohol and controlled substances.

No employer shall allow a driver to perform a safety-sensitive function unless the result of the breath alcohol test indicates a breath alcohol level of less than 0.02, and has received a controlled substance test result from the medical review officer (MRO) indicating a verified negative result.

If the results of the driver's alcohol test indicate a blood alcohol concentration of 0.02 or greater, but less than 0.04, the driver shall not be permitted to perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period, but not less than 24 hours following the administration of the test. Employees taking a transfer test who fall under the application of these provisions will be placed on time off with permission without pay until the start of the employee's next regular scheduled duty period, but not less than 24 hours following administration of the test.

Employees falling under the application of these provisions will be subject to the normal application of positive discipline.

After returning from the collection site, the employee should not be allowed to return to performing any covered functions. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the fact that he/she is under the influence of alcohol. If the employee insists on driving, the proper local law enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle and the employee will be subject to disciplinary action, up to and including termination..

Exceptions:

An employer is not required to administer a pre-employment alcohol test if the driver has undergone a DOT required alcohol test within the previous 6 months, with a result indicating a blood alcohol level below 0.04. However, the employer

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must ensure that no prior employer of the driver has records of violations of any DOT alcohol misuse rules for the driver in the previous 6 months. In addition, an employer is not required to administer a pre-employment controlled substance test if the following conditions are met:

- ◆ The driver must have participated in a drug testing program meeting the requirements of this rule within the previous 30 days; and
- ◆ While participating in this program the driver must have either been tested for controlled substances in the previous 6 months, or participated in a random drug testing program for the previous 12 months; and
- ◆ The employer must ensure that no prior employer of the driver has record of violations of any DOT controlled substance use rule for the driver in the previous 6 months.

In order to exercise either of the exceptions listed above, the employer must first contact the alcohol and/or controlled substance testing program(s) in which the driver has participated and obtain the following information:

- (1) The name(s) and address(es) of the program(s). This would generally be the driver's prior and/or current employer.
- (2) Verification that the driver participates or participated in the program(s).
- (3) Verification that the program conforms to the required procedures set forth in 49 CFR Part 40.
- (4) Verification that the driver is qualified under this rule, including that the driver has not refused to submit to an alcohol or controlled substance test.
- (5) The date the driver was last tested for alcohol and controlled substances.
- (6) The results of any drug or alcohol test administered in the previous six months, and any violations of the alcohol misuse or controlled substance rules.

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**POST-ACCIDENT
TESTING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

POST-ACCIDENT ALCOHOL AND CONTROLLED SUBSTANCE TESTING

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

- ◆ the accident involved a fatality or an injury treated away from the scene, or a vehicle is required to be towed from the scene; or
- ◆ the driver receives a citation under state or local law for a moving traffic violation arising from the accident.

When a required alcohol and controlled substances test has not been administered within a reasonable time frame following the accident, the following actions shall be taken:

<u>Time elapsed</u>	<u>Action Required</u>
2 hours	If the driver has not submitted to an alcohol test at this time, the employer shall prepare and maintain on file a record stating the reason the test was not promptly administered. Attempts to administer post-accident alcohol and controlled substances tests continue.
8 hours	Cease attempts to administer alcohol test, and prepare and maintain record described above. Continue with attempts to administer controlled substance test.
32 hours	If the driver has not submitted a controlled substance test at this time, the employer shall cease attempts to administer the test, and prepare and maintain the record described above.

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IMPORTANT NOTE:

Nothing in these regulations should be construed as to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

Driver's responsibility:

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

Employer's responsibility:

The employer shall provide drivers with necessary post-accident information, procedures and instructions, so that drivers will be able to comply with the requirements of this rule.

The FHWA recognized post-accident tests conducted by Federal, State, and local officials as meeting the requirements of this rule under the following conditions:

- ◆ The official must have independent authority to conduct the test;
- ◆ Test must conform to Federal, State or local requirements;
- ◆ Alcohol tests require blood or breath sample; and
- ◆ Controlled substance tests require urine sample.

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Post-Accident Testing Procedures

1. The company shall promptly determine and test each covered employee for alcohol and controlled substances if that employee's performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol or controlled substances test under this section shall be based on the company's determinations, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident.
2. Each employee shall be required to submit to an alcohol test within 2 hours of the accident and a controlled substance test within 32 hours of the accident. If a alcohol test is not administered within 8 hours following the accident the company shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted. A copy of this documentation should be forwarded to the Company's Drug and Alcohol Free Program Coordinator.
3. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the company or company representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the company to have refused to submit to testing.
4. The employee must remain available for alcohol testing and may not consume any alcohol for 8 hours following the accident or until the alcohol test has been conducted. Notwithstanding the previous statement, employees should seek and obtain emergency medical care whenever necessary.
5. The following steps may be used by supervisors as a guide in a post-accident situation.
 - a. Verify the post-accident decision. Does the definition of accident apply to the current situation? Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a factor which contributed to the accident? Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

saw. How far away were they? Before proceeding further, the supervisor may obtain approval from the division manager/department head or designee and the PG&E Drug and Alcohol Free Program coordinator to proceed with post-accident testing.

- b. Isolate and inform the employee. Remove the employee from the immediate work place. Explain that you have reason to believe his/her performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident and therefore, they will be required to submit to an alcohol and controlled substances test.
- c. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity enroute to the collection site for the employee to ingest anything that could affect the outcome of the post-accident tests.
- d. Document the events. Record the activity performed that support the determination to conduct a post-accident test. This documentation of the employee's activity should be prepared and signed by the immediate supervisor and a copy sent to the Company's Drug and Alcohol Free Program Coordinator.
- e. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid submission to a post-accident test. If he/she is not under the influence of alcohol/controlled substances, denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request for an alcohol and controlled substances test is not an accusation; it is merely a request for additional objective data.
- f. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions if their alcohol test result is positive and if any disciplinary action is pending. In this event, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the belief that he/she is under the influence of alcohol. If the employee insists on driving, the proper local law enforcement

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authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle, and the employee will be subject to disciplinary action, up to and including termination.

- g. If an employee refuses to be tested, the immediate supervisor will take immediate steps to remove the employee from duty, and they will be treated as if they were a verified or confirmed positive.

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**RANDOM
TESTING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

RANDOM ALCOHOL TESTING

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

- ◆ Random alcohol testing shall be administered at a minimum annual rate of 25 percent of the average number of driver positions.
- ◆ The employer shall ensure that random alcohol tests are unannounced and spread reasonably throughout the calendar year.
- ◆ The employer shall ensure that drivers selected for random alcohol tests proceed immediately to the testing site upon notification of being selected.
- ◆ A driver may 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. Performing a safety-sensitive function is defined as any period in which the driver is actually performing, ready to perform or immediately able to perform any safety-sensitive function.
- ◆ In the event a driver, who is selected for a random alcohol test, is on vacation, sick leave or an extended medical absence, the immediate exempt supervisor will report back to the Company Representative that the individual selected was unavailable for testing.

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

RANDOM CONTROLLED SUBSTANCES TESTING

Random controlled substance testing shall be conducted in accordance with the following requirements:

- ◆ Random controlled substances testing shall be administered at a minimum annual rate of 50 percent of the average number of driver positions.
- ◆ The employer shall ensure that random controlled substances tests are unannounced and spread reasonably through the calendar year.
- ◆ The employer shall ensure that drivers selected for random controlled substances tests proceed immediately to the testing site upon notification of being selected.
- ◆ If an employer is required to conduct random controlled substances testing under the rules of more than one DOT agency, the employer may either:

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

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.

- ◆ In the event a driver, who is selected for a random controlled substances test, is on vacation, sick leave or an extended medical absence, the immediate exempt supervisor will report back to the Company Representative that the individual selected was unavailable for testing.

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

RANDOM DRUG AND ALCOHOL TESTING FOR COMMERCIAL DRIVERS

1. A designated Company representative for each Business Unit may maintain a list of all classifications subject to random alcohol/drug testing, along with a list of all current regular and temporary employees in these classifications.
2. The separate listings from each Business Unit will be combined into one main listing containing all of the classifications subject to random alcohol/drug testing.
3. Employees from this list will be randomly selected each month for drug and alcohol testing at the rates required by the regulations. The selection process will utilize a random number generator within a computer.
4. To meet DOT random requirements the covered employees will be subject to selection each month even though they may have been previously selected.
5. The selections will be grouped by site, classification, employee name and sex.
6. The monthly list of employees to be tested will be sent confidentially to the contracted specimen collector. The collector will also be given the name of a Company Representative to contact at each site.
7. The contracted specimen collector will schedule the testing such that all the monthly collections are completed within that month.
8. Company employees who are within the covered positions as specified by DOT's regulations will not be aware of the collector's schedule. In the event that the Company contact at the site is also a covered employee, notification will take place upon arrival at the site or an alternate contact may be used.
9. The Company Representative will notify the appropriate immediate supervisors when employees under their supervision have been selected for a random drug or alcohol test. This notification may occur up to 3 working days prior to the scheduled date of the scheduled test.
10. The immediate exempt supervisor or a designated exempt alternate will make notifications to employees along with the reporting time and location. In general, notification shall proceed testing by no more than two hours.

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11. If necessary, the immediate exempt supervisor will report back to the Company representative if an individual is unavailable at that time for legitimate reason (e.g., sick, day off, vacation, transferred to another shift, etc.).
12. The immediate exempt supervisor will provide the employee with the "Random Drug and Alcohol Testing Program Checklist For Employees" form and request they complete all necessary paperwork.
13. The employee will take the pre-test information form to the collection site facility.
14. The designated testing lab will be responsible for reporting back to the Program Coordinator the number of tests administered to assure that the D.O.T. minimum of 50 percent for drug and 25 percent for alcohol of the work force is tested within a 12-month period.
15. An employee who has a positive drug or alcohol test result will be immediately removed from their work responsibility and be considered as a first time offender under the First Time Offender program. They will be required to complete the required rehabilitation program as specified by the Medical Review Officer/Substance Abuse Professional. At the Medical Review Officer/Substance Abuse Professional's discretion, they can return to work while completing the rehabilitation program's requirements.
16. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions if their alcohol test result is positive and if any disciplinary action is pending. In this event, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the belief that he/she is under the influence of alcohol. If the employee insists on driving, the proper local law enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle, and the employee will be subject to disciplinary action, up to and including termination.

**ALCOHOL AND DRUG TESTING PROGRAM
FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

**REASONABLE
SUSPICION
TESTING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

REASONABLE SUSPICION ALCOHOL AND CONTROLLED SUBSTANCES TESTING

(1) 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 these regulations 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.

(2) 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 these regulations 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.

(3) 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 these regulations. 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 part. A driver may be directed by the employer to only undergo reasonable suspicion testing 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. Performing a safety-sensitive function is defined as any period in which the driver is actually performing, ready to perform or immediately able to perform any safety-sensitive functions.

(5)

(1) If an alcohol test required by this section is not administered within two hours following the determination under paragraph (1) 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

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

section is not administered within eight hours following the determination under paragraph(1) of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(2) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators or 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 (1) 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.

Company retains sole discretion to make the determination to administer an additional alcohol test or remove an employee from duty for 24 hours.

(3) Except as provided in paragraph (5)(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.

(6) 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. This record will be forwarded to the designated drug/alcohol testing representative and shall be retained pursuant to regulatory requirements.

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Reasonable Suspicion Testing Procedures.

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

1. **Supervisor Reasonable Suspicion Determination:**
 - a. The company's determination that reasonable suspicion exists to require a covered employee to undergo an alcohol and/or controlled substances 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 or company official trained in accordance with these regulations.
 - b. The supervisor who makes such a determination that reasonable suspicion exists shall not be authorized to conduct the breath alcohol test on that employee.
2. In making a determination of reasonable suspicion, the factors to be considered include, but are not limited to the following:
 - a. Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of alcohol related behavior on or off the work site.
 - b. Physical signs and symptoms consistent with alcohol abuse and/or controlled substance use.
 - c. Evidence of prohibited alcohol and controlled substance use, possession, sale, or delivery while on duty.
 - d. Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.

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3. The following steps may be used by supervisors in a reasonable suspicion situation.
 - a. Verify the reasonable suspicion decision. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable suspicion referral. If witnesses say a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What if anything, caused them to believe it was alcohol or controlled substances related? On what basis did they reach their conclusion? Before proceeding further, obtain concurrence or approval from the manager/department head or designee and PG&E Drug and Alcohol Free Program coordinator to proceed with reasonable suspicion testing.
 - b. Isolate and inform the employee that the Company intends to order a DOT reasonable suspicion test. Remove the employee from the immediate work location. Explain that there is reasonable suspicion to believe the employee's performance is being affected by alcohol and/or controlled substances, and offer the employee shop steward representation. Ask the employee to explain the suspected behavior and to describe the events that took place from his/her perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may or may not deter you from asking for the employee to submit to a reasonable suspicion test. If there is still a reasonable belief that alcohol and/or controlled substances is a factor in the situation/incident, a request for testing should be made, if no reasonable belief is determined then a request for testing should not be made. If the decision to test is made, inform the employee that they are being requested to accompany the appropriate company official or representative to the specimen collection site to conduct a reasonable suspicion test. Inform the employee of the consequences of refusal to submit to reasonable suspicion testing.
 - c. Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. **In all cases, a reasonable suspicion decision must be made by a supervisor who has received the required training.** This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable cause determination.

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- d. Transport the employee. An exempt supervisor will accompany the employee to the collection site. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity enroute to the collection site for the employee to ingest anything that could affect the test results.
 - e. Document the events. Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion test. This documentation of the employee's conduct should be prepared and maintained on file to document the request for reasonable suspicion testing. A copy of this documentation should be sent to the Company's Drug and Alcohol Free Program Coordinator.
 - f. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid reasonable suspicion testing. If he/she is not under the influence or affected by alcohol and/or controlled substances, denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to submit to a reasonable suspicion test is not an accusation; it is merely a request for additional objective data.
 - g. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions if their alcohol test result is positive and if any disciplinary action is pending. In this event, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable suspicion that he/she is under the influence of alcohol. If the employee insists on driving, the proper local law enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle, and the employee will be subject to disciplinary action, up to and including termination.
4. If a reasonable suspicion test for alcohol is not administered within two hours following the determination, the company shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. If the required test for alcohol is not administered within eight hours of the determination, the company shall cease all attempts to

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administer an alcohol test and shall state in the record the reasons for not administering the test. Copies of all such documentation should be forwarded to the Company's Drug and Alcohol Free Program Coordinator.

5. The company shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol or controlled substances, as shown by the behavioral, speech, or performance indicators of alcohol misuse or controlled substances use, nor shall the employee be permitted to perform or continue to perform covered functions until:
 - a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
 - b. The start of the employee's next regularly scheduled duty period, but not less than 24 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions of these regulations.

Company retains sole discretion to make the determination to administer an additional alcohol test or remove an employee from duty.

6. The exempt supervisor may remove the employee from covered duties pending a controlled substances test if the employee's physical condition or behavior pose an immediate safety problem. The exempt supervisor has the authority to require the DOT drug test, but it is a doctor who determines whether or not the employee can be released back to work pending the test results.
7. If an employee refuses to be tested, the immediate supervisor will take immediate steps to remove the employee from duty, and they will be treated as if they were a verified positive or confirmed positive.
8. Employees whose test is verified positive for controlled substance or confirmed positive for alcohol shall be removed from their covered position and considered to be under the First Time Offender program. The employee cannot be returned to duty until released by the Medical Review Officer/Substance Abuse Professional. The Medical Review Officer/Substance Abuse Professional may release the employee while they are still enrolled in a rehabilitation program.

**ALCOHOL AND DRUG TESTING PROGRAM
FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

**RETURN
TO DUTY
AND
FOLLOW-UP
TESTING**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

RETURN TO DUTY AFTER A LEAVE OF ABSENCE

Before a driver returns to duty requiring performance of safety-sensitive duties after a leave of absence, sick leave or vacation of 30 days duration or greater, the employee shall undergo a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02 and a controlled substance test with a result indicating a verified negative result. NOTE: If an employee is returned to duty before the test results are received they CANNOT perform covered/safety-sensitive duties until those results are received and reported to local supervision.

RETURN-TO-DUTY AND FOLLOW-UP TESTING

Return-To-Duty Testing

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

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

In the event a return-to-duty test is required, the driver must also be evaluated by a Substance Abuse Professional (SAP) and participate in any assistance program prescribed.

Follow-up Testing

Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the driver will be subject to unannounced follow-up (or "Post-Rehabilitation") alcohol and/or controlled substances testing as directed by the Substance Abuse Professional. The driver shall be subject to a minimum of six follow-up controlled substance and/or alcohol tests in the first 12 months.

Alcohol follow-up testing shall be performed only when the driver is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions. Performing a safety-sensitive function is

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defined as any period in which the driver is actually performing, ready to perform or immediately able to perform any safety-sensitive functions.

1. The Company representative will obtain recommendations from the MRO or Substance Abuse Professional for the duration and frequency of post-rehabilitation drug and/or alcohol testing for employees returned to duty upon completion of rehabilitation. The duration will not exceed 60 months.
2. The Company representative will schedule post-rehabilitation testing, in addition to random testing, for rehabilitated employees and will notify the immediate supervisor of the appointment and location for collection.
3. The immediate exempt supervisor or a designated exempt alternate will notify the employee of the testing along with the reporting time and location. In general, employee notification shall precede testing by not more than two hours.
4. If necessary, the immediate exempt supervisor will report back to the Company representative to reschedule an appointment if an individual is unavailable at that time for legitimate reason (e.g., sick, day off, vacation, transferred to another shift, etc.).
5. If an employee does not arrive at the designated collection site at the appointed time the collection site person will notify the Company representative, who will investigate and, if necessary, take and or recommend appropriate action. The employee may be subject to disciplinary action up to and including discharge if the reason for failure to arrive at the designated time is not acceptable. The employee will still be required to provide the breath and/or urine sample.
6. If it is necessary to reschedule an individual for testing due to a legitimate reason, the Company representative will advise the immediate exempt supervisor of the new appointment time.

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**NOTIFICATION OF
TEST RESULTS &
RECORD RETENTION**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

MEDICAL REVIEW OFFICER'S NOTIFICATION OF TEST RESULTS AND RETENTION OF RECORDS

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

Employer Notification

The MRO may report controlled substances test results to the employer by any means of communication; however, a signed, written notification must be forwarded within three business days of the completion of the MRO's evaluation.

The MRO must report to the employer the following:

- ◆ That the controlled substances test being reported was in accordance with CFR Part 40.
- ◆ The name of the individual for who the test results are being reported.
- ◆ The type of test indicated on the custody and control form (random, pre-employment, etc.).
- ◆ The date and location of the test collection.
- ◆ The identification of the persons or entities performing the collection and analysis of the specimens, and serving as the MRO for the specific test.
- ◆ The verified results of the controlled substances test (positive or negative) and, if positive, the identity of the controlled substance(s) for which the test was verified positive.
- ◆ That the MRO had made every reasonable attempt to contact the driver.

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Employee Notification

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

Under split-sample collections procedures, the driver has 72 hours following notification of a positive controlled substances result to request the secondary sample be analyzed. While the primary sample is tested at specific thresholds for each controlled substance, the secondary (split) sample is analyzed only for the presence of controlled substances. If a negative result is reached on the secondary test, the original test results are disregarded.

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**MEDICAL
REVIEW
OFFICER
PROCEDURES**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

Medical Review Officer Procedures

1. The Medical Review officer (MRO) is a licensed physician responsible for receiving laboratory results generated by an employer's drug testing program. He or she has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test results together with his or her medical history and any other relevant biomedical information. The following information is to be provided to the Medical Review Officer (MRO):
 - A. The HHS-certified laboratory shall report test results, for each specimen only to the Medical Review Officer (MRO). They shall be provided within 5 working days of receipt of the specimen at the laboratory. The report for each specimen shall include the following information:
 1. PG&E identification of specimen.
 2. Laboratory identification of specimen.
 3. Initial test or retest.
 4. Substances tested for.
 5. Cut off level for each substance.
 6. Qualitative test result for each substance: "positive" if above cut off level; "negative" if below cut off level.
 - B. The HHS-certified laboratory also shall send only to the MRO a certified copy of the original Chain-of Custody Form attesting to the validity of the test report for each specimen. The Chain of Custody Form and a copy of the test report shall be attached to each other in a single submittal.
 - C. The HHS-certified laboratory shall send on the same day, whenever possible, the test reports and Chain of Custody Forms for all specimens that were received on a single day.
2. Requirements for Review and Notification of Test Results
 - A. The MRO must review and evaluate all positive test results, prior to notifying the Program Coordinator.

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- B. Any "Positive" test result received from the laboratory shall be considered a "confirmed positive" test until the MRO has completed his/her evaluation. If the MRO determines that the result is positive, only then shall the result be considered to be "verified positive". A confirmed positive will require an interview process as described in Paragraph 3A.
 - C. Prior to notifying the Program Coordinator of a verified positive test result the MRO must notify the individual who was tested positive.
 - D. The MRO must notify immediately the Program Coordinator if he/she determines that the individual presents a threat to his/her own safety or the safety of others (consistent with current legal and ethical obligations of medical professionals).
 - E. Upon receipt of urine specimen test results from the HHS-certified laboratory, the MRO shall review and evaluate all positive test results and report to the Program Coordinator test results (positive and negative) within 10 days of the initial screening performed at the HHS-certified laboratory.
 - F. The MRO shall notify the Program Coordinator of all negative and verified positive test results.
 - G. All reporting and notification to PG&E management by the MRO shall be made to the Program Coordinator.
3. Interview of Individuals
- A. The main element in the review and-evaluation-of a positive test result received by the MRO from the laboratory is a confidential interview by the MRO with the individual who tested positive in order to examine possible alternate medical explanations for the positive test result.
 - B. The MRO shall contact the individual at the contact specified on the Chain of Custody Form, inform the individual of the positive result, and provide for an opportunity to discuss the result confidentially. If necessary, the MRO will make arrangements for a mutually agreeable meeting (location, date and time) within no more than five calendar days. The employee and the MRO are encouraged to meet as soon as is possible. If the employee

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decides to visit the MRO during work hours, and so notifies his supervisor, it will be on Company time. If the employee elects not to notify his supervisor that he is seeing the MRO, the time off will be shown as a doctors appointment and he will be allowed to take sick leave. Any meetings outside of the employees normal work hours will be on personal time.

- C. The MRO shall request the individual to make available any prescription for medication he/she has taken within the last 30 days, including prescriptions not made out in the individuals name (e.g., prescriptions for relatives that were taken by the individual).
 - D. During the interview the MRO shall inquire about the individuals medical history, use of legal and illegal drugs, and other biomedical factors. The MRO shall review and consider medical records and other information made available by the individual to determine if the positive test result could have resulted from legally prescribed medication or can be explained on another basis.
 - E. In addition, for a positive test result for opiates the MRO shall determine during the interview if there is clinical evidence (in addition to the urine specimen test) of an unauthorized use of any opium, opiate, or opium derivatives (e.g., morphine or codeine). Clinical signs of abuse include recent needle tracks or behavioral and psychological signs of acute opiate intoxication or withdrawal. This requirement does not apply if the confirmatory testing by gas chromatograph/mass spectroscopy for opiates confirms the presence of six-monoacetylmorphine.
4. Evaluation and PG&E Notification of Test Results
- A. The MRO shall determine if further information or verification is required to reach a "verified positive" determination. This additional information can include consultation with the individuals physician or a reanalysis of the initial specimen if there is any question regarding the accuracy or validity of the positive test result. The MRO shall request the assistance, as needed, of the HHS-certified laboratory and other qualified individuals.
 - B. If the MRO determines that a positive test result for drugs can be attributed to the use of DOT prohibited drugs not prescribed to the individual (e.g., prescription drugs for relatives), in such cases the MRO shall declare the test result as "verified positive".

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- C. The MRO shall also authorize a reanalysis of the initial specimen if he/she deems necessary to complete the analysis.
- D. In his/her evaluation and interpretation of the positive test result from the laboratory the MRO shall not consider the results of any tests that were obtained outside of the PG&E Drug Testing Program.
- E. Within one day of receipt of all available information on the positive test result (i.e., test report, Chain of Custody Form, interview information, both verbal and documents, etc., reanalysis of test results, if applicable, consultation with physician) the MRO must determine, if the test result is "verified positive" or "negative" in accordance with the following guide lines:
 - 1. The MRO determines that there is a legitimate explanation for the positive test results and the use of substance, as identified through the testing. In this case the MRO shall declare the test result as negative, record the result as negative in the individuals file, and report the result as negative to Program Coordinator.
 - 2. The MRO determines that the positive result of the specimen is scientifically insufficient for further action. In this case the MRO shall declare the test result as negative, record the result as negative in the individuals file, and report the result as negative to the Program Coordinator, indicating that the negative determination is based on the result being scientifically insufficient.
 - a. The Program Coordinator shall maintain records that summarize any negative findings based on scientific insufficiency.
 - b. In order to declare a test result as negative on the basis of being "scientifically insufficient" the MRO must have considered all available information as described in Sections 3 and 4.
 - c. The MRO determines that the test result is positive and therefore declares the test as "verified positive". The individual did not present any or inadequate information to explain the results. The MRO shall record the result as "verified positive" in the individuals file, and report the result as "verified positive" to the Program Coordinator.

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- F. In the case of a verified positive test, the MRO must also assess the individuals immediate fitness or duty and determine the individuals work status.
 - G. The MRO shall notify the Program Coordinator of all "verified" positive test results. The Program Coordinator will notify the respective Human Resources Department who will in turn notify the employee (the supervisor will be informed that the employee is off work for medical reasons).
 - H. Once the employee is notified by the Company of a verified positive he/she must contact the EAP/MRO within one work day to begin discussion of rehabilitation programs. During that time, the employee may consult with their shop steward, and EAP or an alternative source.
 - I. If the employee chooses rehabilitation, he or she will have a further discussion with the EAP/MRO to develop a rehabilitation program, including consideration of the employee's medical coverage, various program/provider options consistent with the rehabilitation requirements normally prescribed by the MRO for similar test result evaluations, and any personal or financial issues presented by the employee.
 - J. The MRO will then specify a rehabilitation program which will be communicated through the EAP/Program Coordinator to the employee.
 - K. During rehabilitation, EAP will monitor compliance with the treatment plan and will notify the MRO when treatment is completed.
5. Post Treatment Evaluation
- A. The MRO shall perform, at the request of the EAP Counselor, a medical evaluation of an individual to determine his/her fitness for duty within the scope of the Drug Testing Program and to make a recommendation regarding the individuals return to work status.
 - B. Such evaluation must be made prior to the reinstatement to their normal job duties.

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- C. The MRO shall consider in the evaluation, as applicable, the results of the individuals rehabilitation program (to be provided by the Employee Assistance Program Counselor) and of any follow-up testing performed within the scope of this program. The MRO shall perform, as deemed necessary, an interview with the individual.
 - D. The MRO shall notify the Program Coordinator of his/her determination and recommendation by confidential correspondence.
6. Quantitation of Test Results
- A. The MRO shall request from the HHS-certified laboratory quantitation of test results on positive tests. The MRO shall not disclose quantitation of test results for an individual to the Program Coordinator or other PG&E personnel or management unless required in a formal appeals process by the individual.
 - B. The MRO shall provide quantitation of test results to the Program Coordinator Manager without any information that-potentially could identify an individual (name, number, date, etc.) as is needed to compile statistical summaries for program evaluation.
 - C. The MRO shall provide quantitation of test results to the individual if he/she submits a written request to the MRO.
7. Information Transmittal
- A. The HHS-certified laboratory shall transmit any test result to the MRO in a manner that ensures the confidentiality of the information. Results shall not be provided verbally by telephone from the laboratory to the MRO. The transmittal by various electronic means (e.g., teleprinters, facsimile or computer) is acceptable, however, the sender shall clearly mark the transmittal as confidential and ensure that the transmittal is confidential (e.g., inform the MRO by phone immediately prior to the forthcoming transmittal).
 - B. Any information transmitted by U.S. Mail or courier service must be clearly identified as confidential and to be opened by addressee only.

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- C.** The MRO shall inform the Program Coordinator of any test result (both positive and negative) in a manner that ensures the confidentiality of the information. If the information is provided verbally by telephone the MRO shall first inform the recipient that the subject to be discussed involves confidential information. The Program Coordinator shall not receive such information over a speaker phone or while other Persons are in the vicinity. The Company will receive only the following information specific to an individual from the MRO interview:
- Negative Test Results
 - Positive Test Results
 - Rehabilitation Program Recommendations
 - Expected Date of Return to Work
- D.** Information provided to the MRO by the employee during the interview will be released by the MRO only as it relates to issues raised in the grievance procedure.
- E.** Any test result or information that was transmitted verbally (by phone or in direct conversation) shall also be documented by follow-up letter or memorandum clearly marked confidential.
- F.** The MRO shall conduct his/her interaction with an individual, in a confidential manner and maintain any records confidentially.

**ALCOHOL AND DRUG TESTING PROGRAM
FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

**VERIFIED AND
CONFIRMED
POSITIVE TEST
PROCEDURES**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

Verified and Confirmed Positive Test Procedures

1. The Medical Review Officer (MRO) shall notify the Program Coordinator of all verified positive tests. The Breath Alcohol Tech (BAT) will notify the PG&E Program Coordinator and the immediate exempt supervisor on all confirmed positive alcohol tests.
2. The Program Coordinator shall promptly notify the responsible Human Resources Manager and/or exempt supervisor to have the employee removed from his/her work responsibilities.
3. Upon notification from the Program Coordinator, the HR Manager will work with the exempt supervisor to promptly remove the tested individual from his/her work responsibilities. If the employee qualifies for the First Time Offender Program, they will be sent home pending startup of a rehabilitation program. If already off duty, the individual will remain off duty until a rehabilitation program commences.
4. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions if their alcohol test result is positive and if any disciplinary action is pending. In this event, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the belief that he/she is under the influence of alcohol. If the employee insists on driving, the proper local law enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle, and the employee will be subject to disciplinary action, up to and including termination.
5. An employee who is unable to perform his/her normal work duties because they have been removed due to a verified or confirmed positive test, will be placed, at their option, on paid sick leave or vacation, if available, or unpaid leave.
6. The individual will be reinstated to full job duties upon approval of the Medical Review Officer or Substance Abuse Professional. This could occur while an employee is in a rehabilitation program or after the successful completion of one. After the rehabilitation program, the employee will be required to have random post-rehabilitation testing for up to 60 months.

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7. If an employee does not agree to the MRO's decision of a verified positive controlled substance test, he/she can request that the MRO authorize the lab to conduct another analysis of the original specimen or an analysis of the second part of the "split sample" being held by the laboratory. This analysis will be performed by another PG&E contracted laboratory. The specimen is tested for the presence of the drug(s) for which a positive result was obtained in the test of the first part. The results of this test are transmitted to the MRO without regard to the cutoff values stipulated in the DOT regulations. The MRO shall honor such request if it is made within 72 hours of the employee's having actual notice that he or she tested positive.
8. If the results of the test on the second part of the "split sample" are positive, the "verified positive" test result is validated and the employee will be required to follow the Medical Review Officer's instructions.
9. If the results of the test on the second part of the "split sample" are negative, the "verified positive" test will be changed to a negative test result and reported to the Program Coordinator.
10. The cost of the analysis of the second part of the "split sample" will be borne by the employee only if the second test verifies the presence of the drug(s) for which a positive result was obtained in the test of the first part. The employee will be reimbursed for such expense if the re-analysis is negative.
11. Testing of an additional urine or breath specimen is not authorized by the D.O.T. regulations and, therefore, will not be allowed.

**ALCOHOL AND DRUG TESTING PROGRAM
FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

TEST REFUSAL

TEST ALTERATION

TEST PROCEDURE COMPLIANCE

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

Test Refusal; Specimen Alteration; Test Procedure Compliance

1. If the employee refuses to provide an alcohol or controlled substance test specimen (be tested) or willfully fails to follow test procedures causing the test to be invalid, the exempt supervisor will immediately remove the employee from their work responsibility for insubordination and their refusal will be treated as if they had a verified or confirmed positive test. The employee will be required to cooperate with the Medical Review Officer/Substance Abuse Professional, follow his/her instructions, and comply with the treatment recommendations and be subject to post rehabilitation testing. Failure to follow the above Medical Review Officer/Substance Abuse Professional requirements will result in discharge.
2. If the employee willfully tampers with the controlled substance or alcohol test specimen, the exempt supervisor will remove the individual from their work responsibility and the employee will be discharged.

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FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E**

**COLLECTION
SITE
PROCEDURES**

ALCOHOL AND DRUG TESTING PROGRAM FOR COMMERCIAL MOTOR VEHICLE DRIVERS AT PG&E

Collection Site Procedures - CDL Employees -Controlled Substances

1. A contract organization is responsible for the specific activities of specimen collection, including:
 - A. Collection, processing, documentation and shipment of all specimens to the HHS-certified laboratory.
 - B. Maintaining the integrity of each specimen, including the secure and appropriate storage, from the collection of the specimen to the shipment of the specimen.
 - C. Making an initial assessment of the specimens (temperature, volume, clarity, color, unusual observations).
 - D. Notifying the Company representative of any unusual circumstances during the collection process (late arrival of individual, need for second urine specimen, failure to cooperate).
 - E. Notifying the Company representative of any failure by the individual to cooperate with the urine specimen collection, including refusal to provide a specimen, to complete or sign paperwork and to follow specific instructions.
 - F. Obtaining approval for second urine specimen from Company representative.
 - G. Ensuring the modesty and privacy of the individual collecting a urine specimen and avoiding any conduct or remarks that might be construed to be accusatory, suggestive or otherwise offensive or inappropriate.
 - H. Assuring the cleanliness and orderly appearance of the entire Collection Site Facility, in particular of the processing room and restroom facilities.
 - I. Monitoring, as necessary, the toilet control agent (bluing agent).
 - J. Monitoring of the restroom facility for any unauthorized equipment and supplies.

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2. Employees to be tested are responsible for the following:

- A. To know and understand the provisions for drug abuse and the consequences for violating them.
- B. To report for specimen collection testing upon notification and cooperate with the process.

3. Precautions

The following precautions shall be taken at all times throughout the specimen collection process.

A. Privacy

Ensure the privacy of the individual during his/her collection of the urine specimen, except for conditions stated in paragraph 3C.

B. Collection Site Person/Individual Interface

- 1. The Collection Site Person must ensure the modesty and privacy unless an observed specimen collection is required of the individual and avoid any conduct or remarks that might be construed to accusatorial, suggestive, or otherwise offensive.
- 2. The Collection Site Person shall not make any conclusions or remarks, except as provided for in this procedure, or provide any interpretation regarding any specimen.
- 3. The Collection Site Person shall not make any remarks or provide any information or interpretation of a specimen with respect to the employment status of the individual.

C. Second Specimen

- 1. If there is reason to believe that the first specimen was substituted or adulterated the collection of a second urine specimen must be approved by the Company representative.

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2. The collection of a second urine specimen by the individual must be observed by an appropriately trained person of the same gender as the individual.

D. Confidentiality

All information provided by the individual and recorded on the Chain of Custody Forms must be treated as confidential.

E. Observation of Individual and Specimen

The Collection Site Person must observe the individual and the specimens) at all times, however, as stated in paragraph 3A, the specimen collection will only be observed if tampering or substitution is suspected.

F. Unusual Circumstances

In the case of any conditions during the specimen collection process that is not covered by these procedures, the Collection Site Person shall not proceed with the specimen collection process but shall request further direction from the Company representative.

Instructions for Specimen Collection

4. Check-in and Preparation

A. Check-in

1. The individual scheduled for the collection of urine specimen shall report to the designated Collection Site at the specified time.
2. The arrival time and departure time shall be recorded by the Collection Site staff.
3. Drinking of liquids (e.g., water, juice, etc.) in sealed containers may be provided by the Site Collection Person.

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4. The individual shall remain in the reception room or other area designated by the Collection Site Person until requested to enter the processing area.

B. Failure to Report

1. If the individual cannot report at the specified time, he/she shall promptly notify his/her supervisor, explain the circumstances and indicate the exact time when he/she can report. The supervisor or the Company representative shall determine if the delay is acceptable, taking into consideration such factors as other scheduled tests, previous testing history of the individual, and type of test to be conducted (preaccess, random, for-cause, follow-up).
2. If the individual does not inform his/her supervisor of any anticipated delay and reports to the Collection Site later than the scheduled time, the Collection Site Person shall promptly notify the Company representative requesting further guidance.

C. Documents and Forms

1. Upon signing in, the individual shall be provided with the following:
 - a. Guidance and requirements for the individual regarding his/her conduct and function in the collection of the specimens.
 - b. The Chain of Custody Form is for the initial specimen. If a second urine specimen is taken, an additional form will be used.
2. The individual shall familiarize himself/herself with the document and form, while remaining in the reception room.
3. The Collection Site Person records the time of entry into the process room and all other required information.
4. From the time of entry into the process room until leaving the Collection Site Facility, the individual shall always remain in view of the Collection Site Person, except when providing an unobserved specimen collection.

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D. Identity of Individual

- 1. The Collection Site Person shall establish the identity of the individual on the basis of an official picture ID such as his/her PG&E badge or current driver's license. The individual shall not be tested until his/her identity has been established.**
- 2. If no positive identification can be made, the Collection Site Person shall notify the Company representative and request further direction.**

E. Chain of Custody Form

- 1. The Collection Site Person, in the presence of the individual, shall complete the following items on the "Drug Testing Custody and Control Form":**
 - a. Name of individual**
 - b. Social Security**
 - c. Duty Location**
 - d. Birth Date**
 - e. Job Title**
- 2. Each Chain of Custody Form must accompany its specimen at all times.**
- 3. Each specimen, its Chain of Custody Form and other records and documents must at all times be under the control of the Collection Site Person.**

F. Preparation

- 1. The Collection Site Person shall request the individual to remove any unnecessary outer garments that might conceal items or substances that could be used to tamper with or adulterate the urine specimen (for example coat, overcoat, jacket, hard-hat, etc.).**
- 2. The Collection Site Person shall request the individual to remove all objects from his/her pockets using a container provided for storage. The individual may keep his/her wallet.**

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3. The garments and personal belongings such as purse, briefcase, tools or lunch box shall be kept out of the restroom facilities but at the collection site in a secured place.

G. Failure to Cooperate

The Collection Site Person shall notify the Company representative and request further guidance if, at any time during the specimen collection process the individual does not cooperate. This includes refusal to provide a specimen, to complete or sign required paperwork or to follow specific instructions. Such refusal shall be recorded on the Chain of Custody Form.

5. Urine Specimen Collection

A. Collection Process

1. The individual shall wash his/her hands thoroughly with soap and water, rinse and dry. The area will be kept separate from the restroom facilities, if at all possible.
2. The Collection Site Person shall escort the individual to the restroom or stall in the restroom, maintaining constant visual contact and assuring that the individual has no access to any material or objects that could be used to adulterate the urine specimen (for example, water fountain, beverage container, faucet, soap dispenser, coffee pot, cleaning materials).
3. The Collection Site Person shall request the individual to select and unwrap a sealed collection kit (or wrapped cup where applicable).
4. The Collection Site Person shall direct the individual not to flush the toilet until the specimen is delivered to him/her.
5. The Collection Site Person shall request the individual to provide a urine specimen.
6. The Collection Site Person monitors the individual at all times prior to entering the restroom/stall (visual and audible) and while in the restroom/stall (audible only). Any unusual

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circumstances, behavior or appearance is recorded (for example, excessive liquid splashing, sound of opening container, sound of pouring of liquid, paper noise, very short or very long time spent in restroom/stall).

7. The individual collects his/her urine specimen, leaves the restroom/stall, and returns the specimen cup to the Collection Site Person.
8. After the Collection Site Person is in possession of the specimen, the individual shall be instructed to flush the toilet.

B. Specimen Acceptability

The Collection Site Person shall determine the acceptability of the urine specimen with respect to temperature, observations, and volume in accordance with paragraphs 5C through 5F.

C. Temperature Measurement - Time Limit

1. The Collection Site Person immediately measures the temperature of the urine specimen. The measurement must be performed within 4 minutes after the individual provides the specimen to the Collection Site Person. If the temperature has not been measured within 4 minutes, due to the collector's error, the employee will not be required to submit an additional specimen. However, if the delay was caused by the employee, another specimen will be collected.
2. The temperature of the second specimen shall be measured immediately (i.e., in less than 4 minutes) and the specimen shall be processed in accordance with Section 5D. The first specimen is discarded by the Collection Site Person in the designated sink in the process room and in view of the individual. The specimen will be identified as a second specimen, with appropriate explanation, on the Chain of Custody Form.

D. Temperature Range

The measured temperature shall be recorded on the Chain of Custody Form. If the measured temperature of the specimen falls in the range from 90.5 degrees Fahrenheit to 99.8 degrees Fahrenheit (32.5 C to

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37.7 C) the specimen processing continues following Section 5E; if the measured temperature falls outside this range the evaluation continues following 5I.

E. Observations

The Collection Site Person evaluates the observations noted in Section 5A and determines if, on the basis of that information or any other indication, there is reason to believe that the individual may have altered or substituted his/her urine specimen. If no tampering is suspected the urine specimen process continues in accordance with Section 5F; if tampering is suspected the processing shall continue in accordance with Section 5K.

F. Volume

The Collection Site Person shall determine the volume of the urine specimen provided and shall record the volume on the Chain of Custody Form-. If the volume is 45 ml or more, the processing of the specimen continues in accordance with Section 5G; if the volume is less than 45 *ml* the processing continues following Section 5K.

G. Color and Clarity

The Collection Site Person shall visually inspect the specimen and determine its color (for example, white, orange, yellow, no color, brown, bluish) and its clarity (for example, clear, suspected matter, cloudy). The results are recorded in the Permanent Record Book and on the Chain of Custody Form. Any unusual appearance or condition will be recorded.

H. Temperature Outside Range

1. If the measured temperature falls outside the temperature range in Section 5D, the measurement shall be repeated immediately with another thermometer of the same type. The time lapse between measurements shall be recorded on Chain of Custody Form.
2. If the second measurement falls within the temperature range in Section 5D the temperature is considered acceptable and the urine specimen preparation process shall continue with Section 5E.
3. If the second measurement also falls outside the temperature range, the Collection Site Person shall notify immediately the

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Company Representative and request permission to have the individual provide a second urine specimen under direct observation by a person of the same gender as the individual or to obtain further direction.

4. The Collection Site Person shall inform the individual that he/she may elect, prior to providing a second specimen, to have his/her oral temperature taken to provide evidence that the urine specimen temperature being outside the specified temperature range in Section 5D is supported by his/her oral temperature. An oral temperature measurement that is within 1.8 degree Fahrenheit of the specimen temperature is considered to be acceptable evidence.
5. If the individual elects to have his/her oral temperature taken and the oral temperature supports the specimen temperature, the specimen processing continues with Section 5E.
6. If the individual does not elect to have his/her oral temperature taken or if the oral temperature does not support the specimen temperature a second specimen must be obtained and the specimen collection process continues with Section I.
7. All information obtained shall be recorded on the Chain of Custody Form.

Collection of Second Specimen Based on Temperature

After the Collection Site Person has determined, as a result of the steps taken in Section 5H that a second urine specimen is required, the following procedures shall be followed:

1. The Collection Site Person informs the individual that a second urine specimen is required and explains the basis. Approval for the second specimen must be obtained by the Collection Site Person from the Company Representative and shall be recorded in the Permanent Record Book. A new Chain of Custody Form must be prepared for the second specimen.
2. Prior to initiating the collection of the second specimen, the first specimen must be completely processed, sealed, and prepared for shipment in order to eliminate any potential for any switching or discrepancies

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between the two specimens and their associated documentation and records.

3. In order to be able to provide a second specimen the individual will be given the opportunity to drink a reasonable amount of plain water (sealed bottle of water), to be provided by the Collection Site Person, and to wait a reasonable time. Any water not consumed and the container shall be returned to the Collection Site Person prior to entering the restroom/stall.
4. The individual shall remain at the Collection Site Facility or be escorted and observed at all times by the Collection Site Person or other designated person.
5. The individual shall be provided with a new receiving cup (see Section 5.A.3), enter the stall with a same gender Collection Site Person or other person designated by the Program Coordinator and provide a second specimen under direct observation of the same gender person.
6. The Collection Site Person shall immediately take two successive temperature measurements of the second urine specimen with two, same type, thermometers and record both temperatures in the Permanent Record Book on the Chain of Custody Form.
7. The Collection Site Person shall promptly inform the Company Representative of the results. The specimen preparation process continues with Section 5E.
 - J. Collection of Second Specimen Based on other Observation.
 1. The Collection Site Person shall immediately notify the Company Representative and request permission to have the individual provide a second urine specimen under direct observation by a same gender person as the individual or obtain further instructions.
 2. The Collection Site Person shall inform the individual that a second specimen must be taken and explain the reasons.
 3. A new Chain of Custody Form must be proposed for the second specimen.
 4. The second specimen shall be provided in accordance with Section 5.

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5. The Collection Site Person shall promptly inform the Company Representative of the results and request further directions if necessary.

K. Additional Specimen - Inadequate Volume

1. If there is less than 45 ml of urine the individual will be informed that more urine is needed.
2. The individual will be offered water or other liquids.
3. The initial specimen will be discarded in the individuals presence.
4. Repeat Section 5A with clean disposable cup when individual is able to urinate again.
5. Proceed with steps 5C through 5G.
6. If the individual fails to provide for any reason a volume of 45 ml of urine, the Collection Site Person will inquire of the individual about the reason, document the information on the Chain of Custody Form and promptly inform the Company Representative for directions for further action.

Cleanup

1. After the Collection Site Person finds the urine specimen acceptable or after other action has been initiated in accordance with specific instructions by the Company representative, the individual shall wash his/her hands in the designated sink in the Collection Site facility.
2. All disposable equipment and supplies shall be discarded promptly in a container (trashcompactor).

M. Specimen Splitting, Sealing and Identification

The splitting, sealing and identification labeling of urine specimens must be performed in full view of the individual and the Collection Site Person as follows:

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1. The splitting of a urine specimen (split samples) into two specimens for analysis will only occur when testing for reasonable cause, post-rehabilitation, pre-transfer or random. Pre-employment will only have one specimen sample collected and will not be split.
2. All specimens collected, which includes both parts of the "split sample", will be forwarded to the contracted HHS-certified laboratory for storage and analysis.
3. The individual will be requested to select two individually wrapped shipping packages for his/her urine specimen.

NOTE: At a minimum, 10 shipping packages shall be available for selection.

4. The Collection Site Person unpacks the shipping package, prepares the shipping bottle (opens bottle, inspects for cleanliness and breakage) that has been previously selected when specimen was collected and transfers the specimen into the two bottles.
5. The first bottle is to be used for the DOT-mandated test, and 30 ml of urine shall be poured into it. If there is no additional urine available for the second specimen shipping bottle, the first specimen bottle shall nevertheless be processed for testing.
6. Up to 45 ml of the remaining urine shall be poured into the second specimen shipping bottle.
7. The Collection Site Person shall tightly close the bottle, securely attach the tamper-evident seal/identification label over the top and down the sides of the bottle, enter the required information on each label, request the individual to initial the seal/identification label, and date and sign the seal/ identification label.
8. Both the individual and the Collection Site Person shall ensure that the specimen identification on each bottle, on the Chain of Custody Form and in the Permanent Record Book is identical. The employee shall initial the seal/identification label on each bottle to certify that the specimen in each bottle was collected from him/her.

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9. The completion of the records and preparation of the urine specimen for shipment shall continue in accordance with the procedures in Section 6

6. Records and Shipment of Specimens

A. Specimen Visibility

During the completion of records and preparation for shipment, every specimen collected from the individual (with the exception of a first urine specimen as discussed in Section 5C) shall remain in full view of the Collection Site Person and the individual until each specimen is placed in its shipping container.

B. Recorded Information

The Collection Site Person, in the presence of the individual, completes or verifies completion of the following information on the Chain of Custody Form for each specimen collected from the individual.

1. Name or other identification of individual.
2. Specimen collection date.
3. Specimen shipment date.
4. Collection Site Person (name and position).
5. Type of specimen collected.
6. Any unusual or noteworthy observation/experience during collection of specimen.
7. Specimen temperature.

C. Specimen Information Review by Individual

1. The individual shall review the information on the Chain of Custody Form for each specimen which he/she provided to the Collection Site Person or which he/she entered on the form.
2. The individual shall revise and/or add/delete any information which he/she considers necessary and shall initial such changes.

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3. The individual shall sign and date each Chain of Custody Form certifying the authenticity of the specimen and the accuracy and completeness of the information.

D. Specimen Information Review by Collection Site Person.

1. The Collection Site Person certifies the completion of the Chain of Custody Form for each specimen by his/her signature and dates the form.
2. A copy of the Chain of Custody Form is removed and will be filed in the file for the individual.
3. The original, signed Chain of Custody Form (white color) and all remaining copies of the form are placed with the specimen for shipment to the HHS-certified laboratory.
4. The Collection Site Person places each specimen with its Chain of Custody Form into a shipping container. The container will be sealed with tamper-evident tape when it is to be shipped.

E. Debriefing and Dismissal of Individual

1. The individual shall be offered the opportunity to ask any question pertaining to the collection of specimens, the test performed, and the Drug Testing Program in general. Questions that cannot be answered immediately shall be answered as soon as possible by Company representative.
2. The Collection Site Person will dismiss the individual and note the time of dismissal.

F. Storage and Shipment of Specimens

1. The Collection Site Person shall place each sealed specimen into a shipping container with its Chain of Custody Form. When the shipping container is full, it shall be secured in accordance with specific shipping instructions from the HHS-certified laboratory.
2. The Collection Site Person shall seal the container with a tape to eliminate the possibility of undetected tampering and will indicate the shipment date on the tape.

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3. All specimens collected during a single day and prepared for shipment in accordance with Step 2 above shall be shipped on the same day for overnight delivery to the HHS-certified laboratory using a pickup time and location prearranged with an overnight courier service.
4. A list of all shipments for a single day shall be maintained and telefaxed to the HHS-certified laboratory on that day. The laboratory shall inform the Collection Site Person daily and immediately after receipt of any shipment on the list that was not received, that shows any indication of having been tampered with, or that has been received in a damaged condition.

**ALCOHOL AND DRUG TESTING PROGRAM
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Procedures for transportation work place drug and alcohol testing programs.

It is the intent of the parties to comply with the following amended regulatory procedures for drug and alcohol testing programs.

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PART 40 - PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for Part 40 is revised to read as follows:

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

2. 40.1 through 40.19 are designated as subpart A and revised to read as follows:

Subpart A - General
40.1 Applicability
40.3 Definitions
40.5-40.19 [Reserved]

Subpart A - GENERAL

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

40.3 Definitions - The following definitions apply to this part:

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

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

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

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

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Aliquot. A portion of a specimen used for testing.

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

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

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

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

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

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

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

Confirmation (or contributory) test. In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In

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

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

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

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

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

EBT (or evidential breath testing device). An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices"(CPL).

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

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

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

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

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

40.5 - 40.19 [Reserved]

2. 40.21 through 40.39 are designated subpart B.

Subpart B-Drug Testing

40.21 The drugs.

40.23 Preparation for testing.

40.25 Specimen collection procedures.

40.27 Laboratory personnel.

40.29 Laboratory analysis procedures.

40.31 Quality assurance and quality control.

40.33 Reporting and review of results.

40.35 Protection of employee records.

40.37 Individual access to test and laboratory certification results.

40.39 Use of DHHS - certified laboratories.

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

3. In 40.25, paragraph (f)(10) is revised to read as follows:

40.25 Specimen collection procedures.

* * * * *

(f) * * *

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

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

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(B) Employers with employees subject to drug testing under the drug testing rules of the Federal Highway Administration, Federal Railroad direct, in writing, the laboratory to provide the split specimen to another DHHS-certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the DOT, the employer, and the employee.

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

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

* * * * *

7. A new subpart C is added to part 40, to read as follows:

Subpart C - Alcohol Testing

- 40.51 The breath alcohol technician.
- 40.53 Devices to be used for breath alcohol tests.
- 40.55 Quality assurance plans for EBTs.
- 40.57 Locations for breath alcohol testing.
- 40.59 The breath alcohol testing form and log book.
- 40.61 Preparation for breath alcohol testing.
- 40.63 Procedures for screening tests.
- 40.65 Procedures for confirmation tests.
- 40.67 Refusals to test and uncompleted tests.
- 40.69 Inability to provide an adequate amount of breath.
- 40.71 [Reserved]
- 40.73 [Reserved]
- 40.75 [Reserved]
- 40.77 [Reserved]
- 40.79 Invalid Tests.

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

40.83 Maintenance and disclosure of records concerning EBTs and BATs.

Appendix A - The Breath Alcohol Testing Form

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

40.51 The breath alcohol technician.

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

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

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

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

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

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

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

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

40.53 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)(A) THROUGH (3) of this section, the employer shall use a log book in conjunction with EBT (see 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 (b) (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 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.

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 operations (e.g., stationary or mobile use).

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(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 to used for alcohol testing under this part until it has been serviced and has had an external calibration check resulting in a reading within the tolerances for the EBT.

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

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

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

40.57 Locations for breath alcohol testing.

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

(b) An employer may use a mobile collection facility (e.g., a van quipped for alcohol testing and 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

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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 procedures for a given employee (see 40.61 through 40.65) is in progress.

40.59 The breath Alcohol testing form and log book.

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

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

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

40.61 Preparation for breath alcohol testing.

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

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

40.63 Procedures for screening tests.

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

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

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(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 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.

(2) 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 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).

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

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

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

(3) If a test result printed by the EBT (see paragraph (d)(2) or (d)(3) of this section) does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with 40.79, the test is invalid and the employer and employee shall be so advised.

(4) 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 the confidentiality is maintained as required by 40.81.

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

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

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40.65 Procedures for confirmation tests.

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

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

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

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

(d) Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, the BAT shall conduct one more air blank. If the reading is greater than 0.00, testing shall not proceed using the instrument. However, testing may proceed on another instrument.

(e) 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 conducted and the EBT is found to be within tolerance limits.

(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.

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(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 or does not initial the log book entry for a test, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.

(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, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. In accordance with 40.79, the test is invalid and the employer and the employee shall be so advised.

(4) The BAT shall conduct an air blank. If the reading is greater than 0.00, the test is invalid.

(l) 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.

(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 combinations by BATs to the employer concerning the alcohol testing results of the employees shall be to a designated employer representative

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

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

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

40.67 Refusals to test and uncompleted tests.

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

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

40.69 Inability to provide an adequate amount of breath.

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

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

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

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

(1) [Reserved]

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

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

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

40.71 - 40.77 [Reserved]

40.79 Invalid tests.

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

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- (1) The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of 0.02 or above obtained on the device since the last valid external calibration check shall be invalid;
 - (2) The BAT does not observe the minimum 15-minute waiting period prior to the confirmation test, as provided in 40.65(b);
 - (3) The BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test, as provided in 40.65;
 - (4) The BAT does not sign the form as required by 40.63 and 40.65;
 - (5) The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result;
 - (6) An EBT fails to print a confirmation test result; or
 - (7) On a confirmation test and, where applicable on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.
- (b) [Reserved.]

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

- (a) Employers shall maintain records in a secure manner, so that disclosure of information to unauthorized persons does not occur.
- (b) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in the records required to be 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

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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 regulations (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

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

40.83 Maintenance and disclosure of records concerning EBTs and BATs.

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

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

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

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

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

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

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

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DEFINITIONS

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DEFINITIONS

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

“Breath alcohol technician (BAT)”-an individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

“Commercial motor vehicle”-a motor vehicle or combination of motor vehicles and used in commerce to transport passengers or property if the motor vehicle-

- (1) Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- (2) Has a gross vehicle weight rating of 26,001 or more pounds; or
- (3) Is designed to transport 16 or more passengers, including the driver, or
- (4) Is of any size and is used in the transportation of hazardous materials requiring placards.

“Confirmation test”-for alcohol testing means a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, 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.

“Driver”-any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle.

“Employer”-means any person (including the United States, a State, the District of Columbia or a political subdivision of a State) who owns or leases a

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commercial motor vehicle or assigns persons to operate such a vehicle, including agents, officers, and representatives of the employer.

“Evidential breath testing device(EBT)”-A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA’s “conforming Products List of Evidential Breath Measurement Devices” (CPL).

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

“Performing (a safety-sensitive function)”-any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.

“Refusal to submit (to an alcohol or controlled substance test)”-a driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing, (2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing, or (3) engages in conduct that clearly obstructs the testing process.

“Safety-sensitive function”-any of those on-duty functions set forth in 395.2 On-Duty, paragraphs (1) through (7) as listed below:

- (1) All time at a carrier or shipper plant, terminal, facility, or other property, waiting to be dispatched,
- (2) All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSRs), or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
- (3) All time spent at the driving controls of a commercial motor vehicle.
- (4) All time, other than driving time, spent on or in a commercial motor vehicle (except for time spent resting in the sleeper berth).
- (5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.

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- (6) All time spent performing the driver requirements associated with an accident.
- (7) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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

“Substance Abuse Professional”-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.

