



**LETTER AGREEMENT
NO. 95-32-PGE**

IBEW



PACIFIC GAS AND ELECTRIC COMPANY
INDUSTRIAL RELATIONS DEPARTMENT
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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 testing of safety-sensitive employees.

Accordingly, pursuant to Section 500.5 of the Physical Agreement, Company proposes to implement the attached Alcohol Testing Program for Pipeline employees at PG&E, with application retroactive to January 1, 1995.

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.

, 1995

By: 
Business Manager

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**SCOPE
AND
APPLICATION**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

SCOPE AND APPLICATION

This program of alcohol testing for safety-sensitive pipeline employees is being implemented pursuant to Federal Regulations.

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

PG&E employees who perform covered functions (see Definitions - e.g. operation, maintenance or emergency response functions on a gas pipeline or any facility regulated by these rules) are subject to these alcohol misuse regulations in addition to the current drug testing program required by regulations and contained in Letter Agreement R3-90-86-PGE.

These regulations apply to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to Parts 192, 193, or 195 of these regulations.

IMPLEMENTATION

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

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**PROHIBITED
CONDUCT**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

PROHIBITED ALCOHOL CONDUCT

The following alcohol related activities are prohibited by the Research and Special Programs Administration's (RSPA) alcohol misuse rules for covered employees:

- ◆ Reporting for duty or remaining on duty to perform safety sensitive functions while having an alcohol concentration of 0.04 or greater. (see definition of alcohol and alcohol concentration-page 49).
- ◆ Using alcohol while performing covered functions. (see Definitions section-page 49).
- ◆ When required to take a post-accident alcohol test, using alcohol within eight hours following an accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- ◆ Refusing to submit to an alcohol test required by post-accident, reasonable suspicion or follow-up testing requirements.
- ◆ Pre-duty use - use of alcohol within 4 hours prior to performing covered functions, or if a covered employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**CONSEQUENCES
OF
PROHIBITED
CONDUCT**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

CONSEQUENCES TO EMPLOYEES ENGAGING IN CONDUCT PROHIBITED BY THE RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION'S (RSPA) ALCOHOL MISUSE RULES

Employees who are known to have engaged in prohibited behavior, with regard to alcohol misuse are subject to the following consequences:

- ◆ Employees shall not be permitted to perform safety-sensitive functions and will be removed from duty.
- ◆ Employees shall be advised by the employer of the resources available to them in evaluating and resolving problems associated with the misuse of alcohol.
- ◆ Employees 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.

Before an employee 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.

- ◆ In addition, each employee identified as needing assistance in resolving problems associated with alcohol shall be evaluated by a SAP to determine that the employee has followed the rehabilitation program prescribed prior to returning to perform safety-sensitive duties.
- ◆ The employee shall also be subject to unannounced follow-up alcohol testing. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six tests in the first 12 months. In addition, follow-up testing may include testing for drugs, as directed by the Substance Abuse Professional, to be performed in accordance with 49 CFR part 40.
- ◆ An employee who tests positive for illegal drugs or alcohol 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 (SAP) who is specially trained in substance abuse/alcohol illnesses. In most cases, a second positive test (Drugs, Alcohol or both) will result in the Employee's discharge.

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

- ◆ 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.

OTHER ALCOHOL-RELATED CONDUCT

No employee 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, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until the start of the employee's next regular scheduled duty period, but not less than 8 hours following administration of the test.

Employees failing 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 8 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.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**TYPES
OF
TESTING**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

TYPES OF TESTING

Employees covered under the RSPA (Pipeline) operating agency are subject to the following types of alcohol testing. This is a new category of tests for alcohol, in addition to the current program for controlled substances contained in Letter Agreement R3-90-86-PGE.

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

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**COVERED
CLASSIFICATIONS**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

COVERED CLASSIFICATIONS

It is intended that the provisions of this document apply to those classifications detailed in Letter Agreement R3-90-86-PGE (current Drug Free Pipeline Program).

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 DOTs and Company's requirements.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**ITEMS
OF
UNDERSTANDING**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

ITEMS OF UNDERSTANDING

- 1. Company will meet and confer with Union on the selection of HHS-certified laboratories and Substance Abuse Officers used in the Alcohol Testing Program.**
- 2. Employees will be informed in writing of negative test results at the time of testing.**
- 3. An employee who has been discharged due to a second positive test for alcohol, where no on-the-job impairment is apparent, will be considered eligible for rehire with evidence of completion of an acceptable rehabilitation program.**
- 4. An employee in a covered position who tests positive the second time for 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.**
- 5. If 60 months have elapsed since a 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.**
- 6. A mobile collection site may be used for alcohol testing, at Company's discretion.**
- 7. Information provided to the Substance Abuse Officer or an EAP by the employee will be released by the SAP/EAP only as it relates to issues raised in the grievance procedure or on accident investigations.**
- 8. The Company will conduct random alcohol tests at the minimum annual rates permitted by the Department of Transportation.**
- 9. The Company will use the highest cut-off levels permitted by the Department of Transportation for both screening and confirmation tests.**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

10. 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 (c) before a discussion to determine a rehabilitation program.
11. 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 alcohol during the time period between implementation of this agreement and January 31, 1995. They will, however, be required to complete Substance Abuse Professional-specified rehabilitation and post-rehabilitation testing.
12. 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.
13. For controlled substances testing required by regulations and implemented pursuant to Letter Agreement R3-90-86-PGE, and for Alcohol testing required by regulations, the notification to immediate supervisors of an employee's random drug 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

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PIPELINE EMPLOYEES AT PG&E**

**POST-ACCIDENT
TESTING**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

POST-ACCIDENT ALCOHOL TESTING

(1) As soon as practicable following an accident, each operator shall test each covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator 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 operator to have refused to submit to testing.

Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident or to obtain necessary emergency medical care.

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

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 test continue.
8 hours	Cease attempts to administer alcohol test, and prepare and maintain record described above. Continue with attempts to administer controlled substance test as provided by DOT regulations. Detailed in Letter Agreement R3-90-86-PGE (Drug Free Pipeline Program).
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.

Post-Accident Testing Procedures

1. The company shall promptly determine and test each covered employee for alcohol 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 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. 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.

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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 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 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.

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- 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, denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request for an alcohol 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 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 confirmed positive.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**REASONABLE
SUSPICION
TESTING**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

REASONABLE SUSPICION ALCOHOL TESTING

(1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in these regulations.

(2) The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this regulations only if the observations required by this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with these regulations. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions. Performing a covered function is defined as any period in which an employee is actually performing, ready to perform or immediately available to perform covered functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination to proceed, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(ii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator 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, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

(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 8 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

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

(iii) Except as provided in paragraph(4)(ii), no operator shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this subpart from taking any action otherwise consistent with law.

SUPERVISOR TRAINING

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 detection of possible drug and/or alcohol use:

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) 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.

1. Supervisor Reasonable Suspicion Determination:
 - a. The company's determination that reasonable suspicion exists to require a covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations, concerning the appearance, behavior, speech, or body odors of the

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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.
 - c. Evidence of prohibited alcohol 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.
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.

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- b. Isolate and inform the employee. 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 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 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.
- 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.

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- 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, 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 with 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 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, as shown by the behavioral, speech, or performance indicators of alcohol misuse, 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

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- b. The start of the employee's next regularly scheduled duty period, but not less than 8 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 alcohol test or remove an employee from duty.

**ALCOHOL TESTING PROGRAM FOR
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RECORD RETENTION

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

RECORDS

A written record shall be made of the observations leading to a controlled substances test, and signed by the supervisor or company official who made the observations. This record will be forwarded to the designated drug/alcohol testing representative and shall be retained pursuant to regulatory requirements.

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PIPELINE EMPLOYEES AT PG&E**

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

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES 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 an employee 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.

In the event a return-to-duty test is required, the employee must also be evaluated by a substance abuse professional (SAP) and participate in any assistance program prescribed.

Follow-up Testing

Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the employee will be subject to unannounced follow-up (or "Post-Rehabilitation") alcohol testing as directed by the substance abuse professional. The employee 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 employee is performing safety-sensitive functions, or immediately prior to performing or immediately after performing safety-sensitive functions. Performing a safety-sensitive function is defined as any period in which the driver is actually

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

performing, ready to perform, or immediately able to perform safety-sensitive functions.

1. The Company representative will obtain recommendations from the SAP for the duration and frequency of post-rehabilitation 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, 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, notification shall proceed testing by no 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 or recommend appropriate action, if necessary. 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 complete the test.
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.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**VERIFIED
POSITIVE
TEST
PROCEDURES**

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

Verified Confirmed Positive Test Procedures

1. The Breath Alcohol Tech (BAT) will notify the Program Coordinator and the immediate exempt supervisor on all verified alcohol tests.
2. The Program Coordinator shall promptly notify the responsible Human Resources Manager and/or an 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 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 MRO or SAP. 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 frequent random specimen analysis for up to 60 months.
7. Testing of an additional breath specimen is not authorized by the D.O.T. regulations and, therefore, will not be allowed.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

TEST REFUSAL

TEST ALTERATION

TEST PROCEDURE COMPLIANCE

ALCOHOL TESTING PROGRAM FOR PIPELINE EMPLOYEES AT PG&E

Test Refusal; Specimen Alteration; Test Procedure Compliance

1. If the employee refuses to provide an alcohol 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 confirmed positive test. The employee will be required to cooperate with the 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 Substance Abuse Professional requirements will result in discharge.
2. If the employee willfully tampers with the alcohol test specimen, the exempt supervisor will remove the individual from their work responsibility and the employee will be discharged.

**ALCOHOL TESTING PROGRAM FOR
PIPELINE EMPLOYEES AT PG&E**

**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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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.
- 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.

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(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.

(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.

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- (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).

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

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

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

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

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

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

(3) The employer shall ensure that inspection, maintenance, and calibration of each EBT are performed by the manufacturer or a maintenance representative certified by the device's manufacturer or a state health agency or other appropriate state agency. The employer shall also ensure that each BAT or other individual who performs an external calibration check of an EBT used for

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alcohol testing subject to this part has demonstrated proficiency in conducting such a check of the model of EBT in question.

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

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

40.57 Locations for breath alcohol testing.

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

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

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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.

(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

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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.

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.

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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.

(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

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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.

(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.

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(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:

(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

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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 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

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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).

(l) 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

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

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

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

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

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

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

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

Covered function (safety-sensitive function) means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

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

Employer or operator means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

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

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

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

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).

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