COUNTY OF MONMOUTH

SUBSTANCE ABUSE POLICY

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MONMOUTH COUNTY SUBSTANCE ABUSE POLICY

POLICY STATEMENT

The Monmouth County Board of Chosen Freeholders recognizes the problem of substance abuse and the effect it can have on our society and the extent to which it can affect the County, its agencies and employees.

In order to make the County's work environment **drug and alcohol free**, and to comply with Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Department of Transportation regulations, the County has established this Substance Abuse Policy.

This Policy is intended to help deter, detect and address substance abuse problems and to encourage employees who may be abusing drugs or alcohol to seek assistance voluntarily.

Important: Employees who have drug and/or alcohol abuse problems should voluntarily seek treatment through the County's Employee Assistance Program. Employees may be able to avoid negative consequences regarding their employment by seeking help to correct a substance abuse problem before there is a breach of discipline.

I. APPLICABILITY

This policy will apply to all employees whose job duties require that they hold a Commercial Drivers License [CDL], and / or those who perform safety sensitive functions as defined by Federal Highway Administration, and Federal Transit Administration, Department of Transportation regulations.

Note: *The provisions of this Policy shall be subject to any limitations or requirements imposed by State or Federal law. The testing procedures of 49 CFR Part 40 will be followed unless otherwise modified by applicable collective bargaining agreements, and any employment action taken under this Policy shall be in accordance with applicable collective bargaining agreements.*

This Policy shall also apply to all County employees with respect to reasonable individualized suspicion testing.

Testing shall take place under the following circumstances:

1. **All Employees**

   A. Reasonable Individualized Suspicion Testing.
   An employee may be required to submit to a controlled substances and/or alcohol test based upon specific, contemporaneous, articulable observations of an employee's appearance, behavior, speech, and/or body odors, which cause reasonable suspicion to believe that the employee is on duty and is impaired and under the influence of a controlled substance or alcohol.

2. **CDL Drivers**

   A. Random Selection Testing.
   Employees whose job duties require that they hold a Commercial Drivers License [CDL], including the performance of safety sensitive functions, as defined by the Federal Highway Administration or Federal Transit Administration, Department of Transportation regulations shall be randomly selected for controlled substances and alcohol testing.

   B. Post-Accident Testing.
   If a CDL driver is involved in an accident resulting in the loss of life to another person or in the employee receiving a citation under the State or local law for a moving traffic violation arising from the accident, where there is bodily injury to another person requiring medical treatment away from the scene of the accident or where there is disabling damage to any motor vehicle as a result of the accident and requires removal from the scene by tow truck; then the employee shall be required to submit to controlled substances and alcohol testing. Post–accident testing may also be ordered for any "covered employee" [Federal Transit Administration] whose performance could have contributed to the accident.

C. Pre-Employment Testing.
Employees whose job duties require they hold a CDL, including the performance of safety sensitive functions, as defined by the Federal Highway Administration and Federal Transit Administration, Department of Transportation regulations, shall undergo testing for controlled substances as a condition of employment, unless otherwise exempted by Federal regulation.

D. Return-to-Duty Testing.
Employees whose job duties require they hold a CDL, including the performance of safety sensitive functions, as defined by the Federal Highway Administration and Federal Transit Administration Department of Transportation regulations, will be required to submit to controlled substances and/or alcohol testing prior to being permitted to resume their job duties following a positive test.

E. Follow-up Testing.
Employees whose job duties require they hold a CDL, including the performance of safety sensitive functions, as defined by the Federal Highway Administration and Federal Transit Administration Department of Transportation regulations, may be required to submit to controlled substances and/or alcohol testing pursuant to the determination and recommendation of a substance abuse professional following a positive test.

It is prohibited conduct to report for work under the influence of drugs or alcohol as prohibited by this policy.

Any employee who fails a controlled substance and/or alcohol test administered under this Policy will be immediately suspended without pay pending disciplinary action consistent with the test failed. In addition, a suspended employee will be advised of the availability of the County's Employee Assistance Program [EAP] to help evaluate and resolve any problems with the misuse of alcohol or use of controlled substances. The County's Drug-Alcohol Program Coordinators will also refer CDL employees and employees covered under the Federal Transit Administration for evaluation by a substance abuse professional.

II. ADDITIONAL REQUIREMENTS

All employees must report any arrest or conviction for offenses involving either alcohol or drugs to their immediate supervisor within five (5) days of a formal charge or conviction. In no case may an employee drive a County vehicle unless they possess a valid license.

All employees are expected to become thoroughly familiar with this Policy. In no case should an individual not thoroughly familiar with this Policy order a substance abuse test. **A substance abuse test can only be ordered by a Drug-Alcohol Program Coordinator [DAPC].**

This Policy shall be distributed to all employees and to all new employees, which shall be evidenced by each employee signing an acknowledgment form that they have received a copy of this Policy.

Each department shall provide periodic update/training sessions for supervisors and new supervisors.

The Departments of Public Works, Transportation, Parks, and Personnel shall coordinate the maintenance of those records which are required to be retained.

NOTE: *This policy does not in any way replace any other substance abuse policy adopted or followed by the County's Constitutional Officers, including the Prosecutor or the Sheriff, and employees working under the jurisdiction of those officials.*

III. DEFINITIONS

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

Alcohol Use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol. For CDL drivers this means any use of alcohol while on-duty, use within the four (4) hours prior to going on-duty or prior to performing any safety-sensitive functions, and use within eight (8) hours after an accident where a post-accident test is required or until such time as the post-accident test is administered, whichever is earlier.

CDL Driver means any employee whose job requires that they hold a valid Commercial Drivers License [CDL], and as defined by Federal Highway Administration (FHWA) or Federal Transit Administration (FTA), Department of Transportation regulations.

Controlled Substances means those substances identified through the Code of Federal Regulations at 49 CFR Parts 382, 653 and 654, and includes those substances defined by NJSA Title 24, and companion regulations, and as any of these definitions may be amended or revised from time to time. They include, without limitation, all derivatives of the following classes of drugs: marijuana, cocaine, opiates (heroin, etc.), phencyclidine (PCP) and amphetamines.

Note: *legally obtained non-prescription and prescription drugs taken in recommended dosages are not intended to be included in the definition of "controlled substances".*

Disabling Damage means damage that precludes departure of any motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs, including instances where further damage will occur to the vehicle if driven from the scene.

Note: *this does not include damage which can be temporarily remedied at the scene without special tools, nor does it include tire replacement without other damage, headlight or taillight damage, or damage to turn signals, horns, windshield wipers which makes them inoperable.*

Drug and Alcohol Free Work Environment means that reporting to work or performing work for the County while under the influence of drugs or alcohol.

Drug-Alcohol Program Coordinator [DAPC] means the individual(s) selected by the County to communicate with the County's testing vendor.

Medical Review Officer [MRO] means a licensed physician with appropriate medical training and knowledge of substance abuse conditions who is responsible for receiving laboratory results from a positive substance abuse test and who has the appropriate medical training to interpret and evaluate a positive test result together with an employee's medical history and any other relevant medical information.

Prescription Medication means prescription medication prescribed by a licensed physician and which is in its original container that identifies the drug, dosage, date of prescription and the name of the authorizing physician. Employees are responsible to review with their physician any work restrictions which may result from the use of a prescription medication. When the use of medication requires work restrictions, it is the employee's responsibility to report such restrictions to their supervisor or manager by a physician's note and to disclose such medication use to the Medical Review Officer when requested.

Note: *Failure to notify a manager or supervisor of such work restrictions shall be a violation of this Policy that may subject an employee to discipline.*

Non-Prescription Drug Use means over-the-counter and non-prescription medications.

Note: *over-the-counter and non-prescription medications may impair the ability to properly operate a commercial vehicle or to perform safety sensitive functions. Employees are required to be fit for duty at all times when on duty.*

Refusal to submit to alcohol or controlled substance testing means an employee who fails to provide adequate breath for alcohol testing or who fails to provide an adequate urine sample after having received notice of the requirement for breath or urine testing. It includes any conduct that clearly obstructs the testing process, including any adulteration of the test sample.

Safety-Sensitive Function means the time a covered employee begins to work, or who is required to be ready for work, until the time when relieved from work and all responsibility for performing work. Safety-sensitive functions include those activities defined in 49 CFR Parts 382, 653 and 654, which include, but are not limited to the following examples: all time in attendance to a vehicle such as inspecting, servicing or conditioning equipment, time at the controls of a vehicle, including time loading or unloading or attending the loading or unloading of a vehicle, and all time repairing, obtaining assistance for repairs or remaining with a vehicle while it is repaired.

Split Specimen means a separate specimen collected from and at the same time as the original specimen. This separate specimen is to be available for testing in the event the original specimen tests "positive".

IV. REASONABLE INDIVIDUALIZED SUSPICION TESTING

1. Basis of Testing

An employee will be required to submit to controlled substances and/or alcohol testing based on a **reasonable individualized suspicion** that the employee is on duty and is impaired and under the influence of a controlled substance or alcohol.

Note: *Reasonable Individualized Suspicion Testing must be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, and body odors.*

2. Employer Responsibilities

A. Supervisory Training.
All supervisory personnel authorized to recommend reasonable individualized suspicion testing are required to complete 60 minutes of training regarding alcohol misuse and an additional 60 minutes of training regarding controlled substance use. This training shall address the physical, behavioral, speech, performance, and other indicators of alcohol and controlled substance abuse.

B. Determination of reasonable individualized suspicion.
Whenever practicable, at least two supervisors should confer and agree that reasonable individualized suspicion exists to request an employee to submit to testing. A Supervisor of another unit may be called for a second observation, but when only one supervisor is available, then the use of one supervisor is permissible. Reasonable individualized suspicion testing should not be based solely on third person observations or reports unless the supervisor(s) can clearly verify the observations and articulate in writing that such observations are reliable.

C. Record of basis of determination of reasonable individualized suspicion.
Each observing supervisor shall promptly make a written record of their own separate observations leading to reasonable individualized suspicion testing. The individual records of observations shall be completed prior to any test being administered. The supervisor who makes the observation must sign the observation record.

D. Initial Supervisor Actions.

i. A supervisor shall make all reasonable attempts to respect an employee's privacy.

ii. A supervisor should not unnecessarily identify an employee to co-workers when initiating conversations concerning possible violations of this Policy. In most instances this will mean an employee is to be questioned away from their designated job station and away from other employees.

iii. Each supervisor shall make and complete their own independent record of their reasonable individualized suspicion prior to the administration of any substance abuse test, using the **"Checklist For Reasonable Suspicion Substance Abuse Testing".**

E. Actions to be taken upon the determination of Reasonable Individualized Suspicion.

i. The Department Head or designee must decide if a drug/alcohol test should be recommended.

ii. In making this decision, the "**Checklist for Reasonable Suspicion Substance Abuse Testing"** must be satisfactorily completed and provide sufficient information upon which to make a decision.

iii. A written record must be made of the final recommendation, and the Department Head or designee shall contact the DACP with the recommendation to test and for further action by the DACP.

iv. The employee should not be permitted to operate machinery or vehicles. Any machinery being used by the employee must be immediately taken out of operation by the supervisor until inspected and cleared for reuse. However, there should be no attempt to use force in seeking compliance with this Policy.

Note: *Security personnel or law enforcement officials may be called when a supervisor determines that an employee's refusal to follow directions under this section presents a serious management and/or safety concern.*

v. The Department Head or supervisor will escort the employee to a designated testing facility for the submission of a urine, breath and/or blood specimen.

vi. Following testing, an employee should be directed to wait in a designated area until arrangements are made for the transportation of the employee to their home. The County will first attempt to contact the employee's spouse or member of their family for transportation. In the event no one can be promptly contacted, the Department Head will make arrangements to transport the employee to their home.

F. Actions to be taken upon the determination of a positive test.

i. The MRO will inform the employee of the right to have the split specimen tested within 72 hours from the time of notification of a positive drug test. If the split specimen test is negative, the employee will be reimbursed the reasonable cost of the test.

ii. The Department Head will coordinate disciplinary action notices, including the **"Notice Of Immediate Suspension" Form** with the Personnel Department.

G. Post-Test Employment Status.

Employees tested under the above circumstances will be suspended without pay pending the results of the test. If the test results are negative, the employee will be reinstated with full back pay. If the results are positive, the employee will be subject to the discipline as outlined below.

3. Employee Responsibilities

A. Every employee is required to submit to reasonable individualized suspicion testing as directed.

B. Refusal to sign the consent or release forms or any failure to provide a valid specimen for testing, including a refusal to proceed to the testing facility as directed, will be regarded as a failed test.

4. Failure of Test

A. Violations for Controlled Substance.
Immediate suspension without pay pending formal disciplinary action.

B. Alcohol Use Violations [.04 BAC and above].
Immediate suspension without pay pending formal disciplinary action.

Note: For CDL drivers, FHWA and FTA covered employees, if a return to duty is determined to be appropriate, it must be conditioned on the successful attendance and completion of an SAP directed program and satisfactory passing of an alcohol re-test. For other employees, this may be done only with the employee's consent.

C. Alcohol Use Violations [.02 to .039 BAC].
Immediate removal from CDL duties for at least 24 hours, pending possible formal disciplinary action based upon an employee's prior disciplinary record. FTA covered employees may not return to duty until the employee has undergone a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

Note: For CDL drivers, FHWA and FTA covered employees, if a return to duty is determined to be appropriate, it must be conditioned on the successful attendance and completion of an SAP-directed program and satisfactory passing of an alcohol re-test. For other employees, this may be done only with the employee's consent.

V. RANDOM TESTING [CDL DRIVERS and FTA COVERED EMPLOYEES]

1. Basis of Testing

A. Selection of Employees to be Tested.

Selection of employees for random testing shall be made by a scientifically valid method by the substance abuse test vendor engaged by the County. Random testing will be conducted at intervals throughout the year and each employee will have an equal chance of being selected at each interval regardless of an employee's having been tested at an earlier test interval.

B. Number of Employees to be Tested.

Based on the annual average number of CDL drivers and FTA covered employees, a minimum of 50 percent of the identified population shall be subject to unannounced random selection controlled substances testing, or at the minimum annual percentage rate that may be set by the FWHA and FTA Administrator, as published yearly in the Federal Register.

Based on the annual average number of CDL drivers and FTA covered employees, a minimum of 10 percent of the identified population shall be subject to unannounced random selection alcohol testing, or at the minimum annual percentage rate that may be set by the FHWA or FTA Administrator, as published yearly in the Federal Register.

C. Random Test Pool.

The random test pools for FWHA and FTA administrated programs shall remain separate.

2. Employer Responsibilities

A. The County will provide primary and backup DAPCs who will be authorized to directly assist the County's vendor in conducting its random testing.

B. The DAPC will forward current CDL driver and/or safety sensitive job lists and required information to the County's vendor and ensure the accuracy of the information provided.

C. The DAPC will receive communications from the vendor.

D. The DAPC will receive random testing lists from the vendor, verify their completeness and accuracy, determine employee availability and notify the vendor of those employees who will be available for testing as requested by the vendor.

E. The DAPC will cause notice to be given to employees of their selection for testing and direct employee participation in random testing as requested by the vendor.

F. The DAPC will coordinate notification of the employee of their right to have a split specimen tested where an initial test is "positive" and that the request must be made within 72-hours from the time the employee was given notice of a "positive" test. If the split specimen test is "negative", the employee will be reimbursed the reasonable cost of the test.

G. In the event of a failed test, the Department Head will issue a "**Notice of Immediate Suspension" Form** to the employee attaching a copy of this policy to the Notice.

H. The Department Head will coordinate disciplinary action notices consistent with the test result with the Personnel Department.

3. Employee Responsibilities

A. Every employee is expected to comply with requests to submit to testing and to immediately proceed to the testing facility upon notification and as directed.

B. Refusal to sign the appropriate release and consent form for testing or any failure to provide a valid specimen for testing, including a refusal to proceed to the testing facility as directed, will be regarded as a failed test.

4. Failure of Test

A. Controlled Substances.

Immediate suspension without pay pending formal disciplinary action.

B. Alcohol Use Violations [.04 BAC and above].

Immediate suspension without pay pending formal disciplinary action.

Note: *For CDL drivers, FHWA and FTA covered employees, if a return to duty is determined appropriate, it must be conditioned on the successful attendance and completion of an SAP-directed program and satisfactory passing of an alcohol re-test. For all other employees, this may be done only with the employee's consent.*

C. Alcohol Use Violations [.02 to .039 BAC].

Immediate removal from CDL duties for at least 24 hours, pending possible formal disciplinary action based upon an employee's prior disciplinary record. FTA covered employees may not return to duty until the employee has undergone a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

Note: *For CDL drivers, FHWA and FTA covered employees, if a return to duty is determined appropriate, it must be conditioned on the successful attendance and completion of an SAP-directed program and satisfactory passing of an alcohol re-test. For all other employees, this may be done only with the employee's consent.*

VI. POST-ACCIDENT TESTING [CDL DRIVERS AND FTA COVERED EMPLOYEES]

The County requires all CDL drivers who are involved in an accident on a public road while operating a County vehicle for which a CDL license is required to **immediately report such an accident to their supervisor or to a management representative.**

1. Basis of Testing

A. CDL drivers who are involved in an accident which results in the death of an individual or in the employee receiving a citation under State or local law for a moving traffic violation arising from the accident, where there is bodily injury to another person requiring medical treatment away from the scene, or where there is disabling damage to any motor vehicle, as a result of the accident, requiring removal from the scene by tow, and FTA covered employees whose performance could have contributed to the accident, as determined by the employer, using the best information available at the time of the decision, will be required to undergo alcohol and controlled substance testing as soon as practicable.

Type of Accident Involved	Citation issued to the CMV driver	Test must be performed By employer
Human fatality.....	YES	YES
	NO	YES
Bodily injury with immediate medical treatment away from the scene.....	YES	YES
	NO	NO
Disabling damage to any motor vehicle requiring tow away.....	YES	YES
	NO	NO

B. Alcohol tests are to be administered **within 2 hours** of an accident and up to 8 hours, but in no case may a test be administered later than 8 hours following the time of an accident.

C. Controlled substances tests must be administered promptly, but in no case may a test be administered later than 32 hours following an accident.

IMPORTANT: Nothing in this Policy shall require any delay of medical attention for anyone injured following an accident nor prohibit a driver from leaving the scene of an accident for their own immediate medical attention, to obtain immediate assistance to respond to the accident, or to comply with the specific requests of law enforcement officials.

2. Substitution of Tests

Alcohol and/or controlled substances tests conducted by federal, state or local authorities having independent authority for testing may in some cases (CFR PART 40) be considered to meet the requirements of this Policy provided the results may be timely released to the County.

3. Employer Responsibilities

Upon receiving notification from an employee and/or local law enforcement officials of the employee's involvement in a reportable accident, the following steps shall be taken:

A. The DAPC will determine if post-accident testing is appropriate using the guidelines in the Code of Federal Regulations.

***Note**: post-accident testing applies only to commercial motor vehicles and is not required for an occurrence involving the operation of a passenger car.*

B. The DAPC will contact the County's testing vendor and make arrangements for post-accident testing.

C. In the event that law enforcement officials have already initiated their own testing, the DAPC shall obtain those results and determine if the testing conforms to the appropriate Federal, State or local alcohol testing requirements. If it does, then the test may be deemed to meet the requirements of this section; if it does not, or if the results cannot be obtained in a timely manner, separate testing with the County's vendor should be initiated.

D. The DAPC shall be responsible to maintain records of substance abuse testing done under this section as required by 49 CFR Parts 382, 653, and 654, as applicable.

E. The DAPC shall provide CDL drivers ,FHWA and FTA covered employees, with all necessary post-accident information, procedures and instructions prior to their resuming operation of a commercial motor vehicle so they may be in compliance with the requirements of 49 CFR Parts 382, 653 and 654, as applicable.

4. Employee Responsibilities

A. Notify a supervisor of any accident which occurs on a public road while operating a County vehicle for which a CDL license is required as soon as is practicable.

B. Remain readily available for testing. Failure to be available for testing will be deemed a refusal to submit to testing.

C. Do not consume any alcohol until after the County's vendor has administered a test or until advised that the DAPC has accepted a law enforcement test. This restriction shall not exceed 8 hours following an accident.

D. Refusal to sign the appropriate release and consent form for testing or any failure to provide a valid specimen for testing, including a refusal to proceed to the testing facility as directed, will be regarded as a failed test.

5. Actions to be taken upon a determination of a positive test result

A. The DAPC will promptly inform the employee of their right to have the split specimen tested within 72 hours from the time of notification of positive drug test. If the split specimen test is negative, the employee will be reimbursed the reasonable cost of the test.

B. The Department Head will coordinate disciplinary action notices including the **"Notice of Immediate Suspension" Form** with the Personnel Department.

6. Failure of Test

A. Violations for Controlled Substances:

Immediate suspension without pay pending formal disciplinary action.

B. Alcohol Use Violations [.04 BAC and above]:

Immediate suspension without pay pending formal disciplinary charges.

Note: For CDL drivers, FHWA and FTA covered employees, if a return to duty is determined appropriate, it must be conditioned on the successful attendance and completion of an SAP-directed program and satisfactory passing of an alcohol re-test. For all other employees, this may be done only with the employee's consent.

C. Alcohol Use Violations [.02 to .039 BAC]:

Immediate removal from CDL duties for at least 24 hours, pending possible formal disciplinary action based upon an employee's prior disciplinary record. FTA covered employees may not return to duty until the employee has undergone a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

Note: For CDL drivers, FHWA and FTA covered employees, if a return to duty is determined appropriate, it must be conditioned on the successful attendance and completion of an SAP-directed program and satisfactory passing of an alcohol re-test. For all other employees, this may be done only with the employee's consent.

VII. PRE- EMPLOYMENT TESTING [CDL]

1. Basis of Testing

A. The County of Monmouth requires all offers of employment extended to applicants whose job duties require that they hold a Commercial Drivers License [CDL], including the performance of safety sensitive functions as defined by Federal Highway Administration and Federal Transit Administration, Department of Transportation regulations, be conditioned on the applicant's ability to pass a Department of Transportation mandated physical examination which includes a drug screen. This shall also apply to transferred employees, former employees returning to County service via re-employment lists, interim or temporary employees.

B. Failure to pass pre-employment screening will result in withdrawal of a conditional offer of employment.

C. Applicants who are denied full employment status may request the test results up to 60 days from the date of testing from the County's testing vendor.

Notice of Policy—All applicants will be notified of the County's substance abuse policy [this Policy], and the mandatory pre-placement drug screen at the time they complete their job application and prior to the test. All applicants subject to testing shall be provided with a copy of the testing procedures to review prior to the drug screen.

2. Employer Responsibilities

A. The Personnel Department will extend offers of employment, conditioned upon the applicant passing a controlled substance test or upon providing proof of exemption from such pre-employment testing pursuant to the Code of Federal Regulations at 49 CFR 382.301(b) and(c) [exceptions]; and it will maintain the necessary records under (d)(1) [records], and 49 CFR Parts 653.41 and 654.31.

B. The Personnel Department will coordinate the testing with the County's testing vendor.

C. The Personnel Department will receive the test results from the vendor and notify the applicant.

D. If the test results are positive, the Personnel Department will notify applicant of the right for split specimen test, within 72 hours of the notification, which will be at the applicant's cost. In the event the second test proves negative, the reasonable cost of the test will be refunded to the applicant.

3. Applicant Responsibilities

A. Signing the appropriate consent and release forms for testing.

B. Providing a valid specimen for testing.

C. Keeping an agreed testing appointment with the County's testing vendor.

D. Refusal to sign the appropriate release and consent form for testing or any failure to provide a valid specimen for testing will be regarded as a failed test, thereby rendering the applicant disqualified for employment with the County.

RETURN TO DUTY TESTING [CDL DRIVERS and FTA COVERED EMPLOYEES]

1. Basis of Testing

An employee shall not be permitted to resume CDL driving and/or safety sensitive functions until the County is certain that a return to duty can be accomplished safely and in accordance with required return-to-duty testing.

2. Conditions of return to duty

A. Confirmation of evaluation by an SAP and

B. Successful passing of the alcohol test previously failed with a satisfactory result of less than 0.02 BAC, or

C. Successful passing of a controlled substance test previously failed, and

D. The DAPC and the Department Head has approved the return to duty.

3. Employer Responsibilities

A. The DAPC shall follow up communication with the SAP regarding the employee's compliance and test results and communicate that follow-up to the Department Head.

B. In the event of non- compliance or continued test failure by an employee, the DAPC will notify the Department Head who will coordinate disciplinary action with the Personnel Department.

4. Employee Responsibilities

A. CDL drivers, FHWA and FTA covered employees, are required to be evaluated by a SAP upon a positive test result for a substance abuse test, regardless of any disciplinary action taken.

B. Refusal to be evaluated by a SAP, including any failure to provide a valid specimen for return to work testing, will be regarded as a failed test.

C. CDL drivers, FHWA and FTA covered employees, are required to follow the SAP'S recommendation.

IX. FOLLOW-UP TESTING [CDL]

1. Basis of Testing

Following a determination by an SAP that a CDL driver, FHWA and FTA covered employee, is in need of assistance in resolving problems associated with alcohol misuse and / or controlled substances use, follow-up testing must be directed following a return to work.

2. Conditions of follow-up testing

A. Pursuant to the direction of the SAP, a CDL driver, FHWA and FTA covered employee, may be subject to unannounced follow-up testing of at least 6 follow-up tests during the first 12 months following a return to work.

B. The SAP may direct more than the minimum of 6 tests during the first year. Follow-up testing may extend to a maximum of 60 months following an employee's return to work.

3. Employee Responsibilities

A. Every CDL driver, FHWA and FTA covered employees, is required to follow the directions of the SAP for follow-up testing.

B. Refusal to undergo follow-up testing will be regarded as a failed test.

PART I

GENERAL INFORMATION

IMPORTANT TELEPEHONE NUMBERS

DRUG ALCOHOL PROGRAM COORDINATOR (DAPC) - 1

[FHWY COVERED AND GENERAL COUNTY EMPLOYEES]

Assistant County Road Supervisor..... 431-6550

DRUG ALCOHOL PROGRAM COORDINATOR (DAPC)- 2

[FTA COVERED EMPLOYEES] AND BACKUP FOR DAPC – 1]

Transportation Coordinator..... .....577-6731 –EXT. #6

DRUG ALCOHOL PROGRAM COORDINATOR (DAPC) – 3

[PARKS EMPLOYEES]

Assistant Director of Parks .....842 – 4000 - EXT. 4216

Assistant County Park Superintendent.....842-4000 – EXT.4213

EMPLOYEE ASSISTANCE PROGRAM

Horizon Behavioral Services.....800 –865 -3200

SUBSTANCE ABUSE PROFESSIONAL SERVICES

Horizon Behavioral Services.....800 – 865 -3200

The Board of Chosen Freeholders
of the County of Monmouth

FREDRICA A. BROWN
Personnel Officer

HALL OF RECORDS
1 E. MAIN STREET
FREEHOLD, NEW JERSEY 07728
Telephone: (732) 431-7300
Fax: (732) 431-7924

MEMO TO : All Employees

FROM : The Board of Chosen Freeholders

RE : ***EMPLOYEE ASSISTANCE PROGRAM***

Monmouth County maintains an Employee Assistance Program (EAP) for employees of Monmouth County and their dependent family members. The program is administered by Horizon Behavioral services, a nationally recognized leader in the field of employee assistance programs. Horizon has been providing such services for over 20 years.

Monmouth County is committed to providing accessible, quality healthcare for all employees and considers the EAP to be an important part of the employee benefits package. Monmouth County encourages employees and their dependent family members who have substance abuse problems to utilize Horizon's services.

The Monmouth County EAP offers the following:

- **Ease of access.** All Services are through Horizon's toll free "800" number.
- **Hotline for emergency services.** This service is available 24 hours a day, seven days a week.
- **Counseling benefits.** Up to 6 visits per employee and covered dependents for the evaluation, short-term counseling and/or referral for all behavior healthcare issues at no cost.
- **Counseling for a variety of issues.** Counseling services cover a wide range of issues that are designed to assist people in dealing with problems related to marital or family issues, emotional dilemmas we all share in common.
- **National service delivery.** Employees and dependent family members have available to them Horizon's entire network of over 12,000 licensed counselors located throughout the country.
- **Confidential Counseling.** Use of the EAP for counseling services is completely confidential and protected by State and Federal Law. No information can be released without your written request.

If you would like further information about the program or would like to access counseling services, you may call toll-free at 800-865-3200.

Self test:

Are you troubled by someone's drinking or drug use?

Al-non, an organization for family members, relatives or friends of alcoholics or drug addicts, has prepared the following questionnaire to help you assess how a problem drinker or drug user is affecting your life.

1. Do you worry about someone else's use of alcohol or drugs?
2. Do you have money problems because of someone else's drinking or using?
3. Do you tell lies to cover up for someone else's drinking or using?
4. Do you feel that if the drinker/user loved you, he or she would stop drinking or using, to please you?
5. Do you blame the abuser's behavior on their association with other heavy drinkers or drug users?
6. Are plans frequently upset or canceled, or meals delayed because of the drinker or user?
7. Do you make threats, such as, "If you don't stop drinking, I'll leave you"?
8. Do you secretly try to smell the drinker's breath?
9. Are you afraid to upset someone for fear it will set off a bout of drinking or drugging?
10. Have you been hurt or embarrassed by the abuser's behavior?
11. Are holidays and gatherings spoiled because of drinking or using?
12. Have you considered calling the police for help in fear of abuse?
13. Do you search for hidden alcohol or drugs?
14. Do you often ride in a car with a driver who has been drinking or using?
15. Have you refused social invitations out of anxiety or fear?
16. Do you sometimes feel like a failure when you think of the lengths you have gone to control the drinker or user?
17. Do you think, if the drinker stopped drinking or the user stopped using drugs, your other problems would be solved?
18. Do you ever threaten to hurt yourself to scare the drinker or user?
19. Do you feel angry, confused or depressed most of the time?
20. Do you feel there is no one who understands your problems?

Answering yes to three or more of the questions above is a serious indication that you have a family member or friend who is addicted to alcohol or drugs (also referred to as chemical dependency) and that you need help. It is strongly recommended that you seek professional help for coping with the issues and difficulties of living with an alcoholic/addict.

It is vitally important that you understand the following: *Alcoholism/addiction is a progressive disease. Untreated, it will progressively get worse, never better. Additionally, the disease has usually progressed further than the outward symptoms indicate. If no action is taken, the alcoholism/addiction will ultimately prove fatal.*
As long as the alcoholic/addict is using alcohol or drugs, your life will progressively get worse and worse. This is why it is important for you to get professional help now. You must get help for yourself first. This is also the best action you can take to help the person you care about.

YOUR EMPLOYEE ASSISTANCE PROGRAM (EAP) IS HERE TO HELP
If you or someone you know has a problem with alcohol or other drugs, your EAP can help you. The EAP is strictly confidential and EAP counselors are specially trained to help people get the right help for an alcohol or drug problem. ***Why not call today? We're here to help 1-800-USA-REACH.***

The Governor's Council For A
Drug Free Workplace

DRUGS DON'T WORK IN NJ!

"So We Had a Few Beers At Lunch. So What?"

Contrary to popular belief, alcohol is not a stimulant but a depressant—and the first thing it depresses is that part of your brain that reminds you to be careful. This is why a drink after work feels so relaxing—and why a drink during work hours is a prescription for disaster.

One Drink

What exactly is one drink? Is a hard-liquor drink the same as a beer or glass of wine? The National Safety Council defines a "drink" as 1 1/2 ounces of 80-proof liquor, whether in a mixed drink or straight, a 12-ounce beer or a 5-ounce glass of wine. The actual amount of alcohol in these drinks is exactly the same. Your body doesn't know the difference between beer, wine and hard liquor.

How Much Is Too Much?

For most men, two drinks within one hour can impair judgment and coordination enough to cause an accident. For women it usually takes less, because women weigh less than men and because women lack an enzyme that breaks down the alcohol. Even a single drink makes you less alert and less careful than if you were completely sober. Because of this, drinking on the job is always unacceptable.

If you work with dangerous equipment or make decisions affecting other workers' safety, you know your good judgment is important. It just doesn't make sense to take a chance with your safety and that of others. But what if you suspect that someone at work is using alcohol or other drugs?

For most men, two drinks within one hour can impair judgment and coordination enough to cause an accident.

Understand the Signs

Alcohol can affect on-the-job performance in two ways. The person who drinks on the job will be directly impaired in performance—less alert, less coordinated and less open to suggestions from others. But the chronic alcoholic also presents a workplace hazard. Even when sober, alcoholics are less productive and less able to make good decisions. They have high accident rates, and because they are frequently absent or late, they force other workers to put in extra time and effort to get the job done. Extra stress means everyone is more prone to accidents. And frequent illness and absences drive up the costs—including health insurance—that we all have to pay.

Alcoholics frequently ask other workers to cover up for them. This makes everyone feel angry and resentful. And it is difficult to reason with alcoholics because they are seldom able to admit they have a problem.

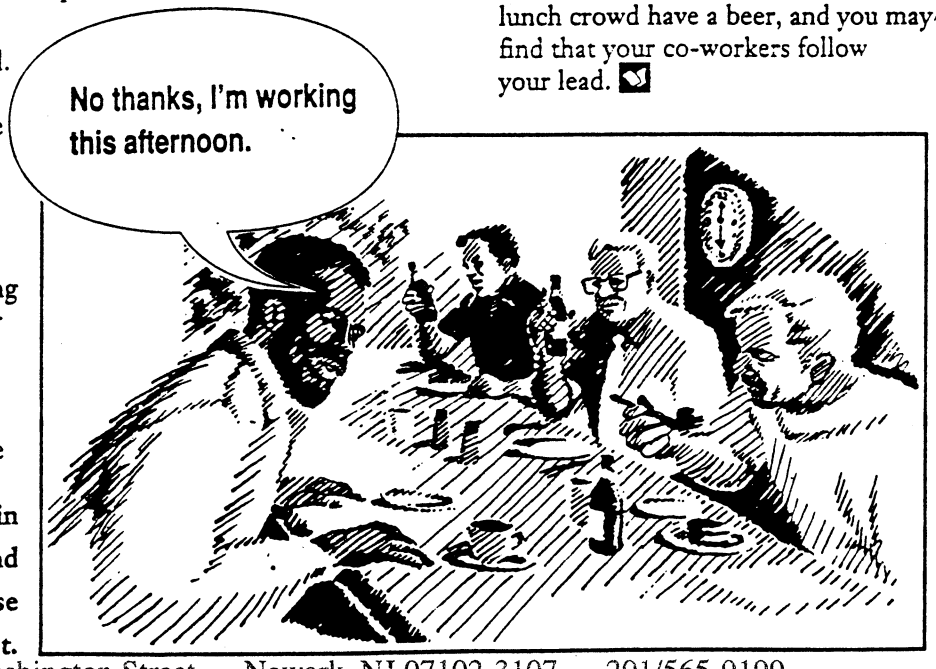
Get Involved

If you suspect that a co-worker has a drinking problem, don't be afraid to get involved. You can help keep your workplace safe in three ways:

1. Refuse to cover up for a drinker by lying or doing extra work. You only reinforce the drinking behavior when you do this.
2. If you have a trusting relationship with someone you suspect is an alcoholic, talk about it to him or her. Express your concern and willingness to help. Let your co-worker know that you will support efforts to quit.
3. If alcohol use is interfering with a worker's on-the-job safety or performance, report the problem to your supervisor. You don't have to accuse the person of being an alcoholic; simply expressing your concern about the worker's performance is enough.

Your Behavior Counts

When it comes to drinking or using drugs on the job, your actions make a statement. Say no when others in your lunch crowd have a beer, and you may find that your co-workers follow your lead.



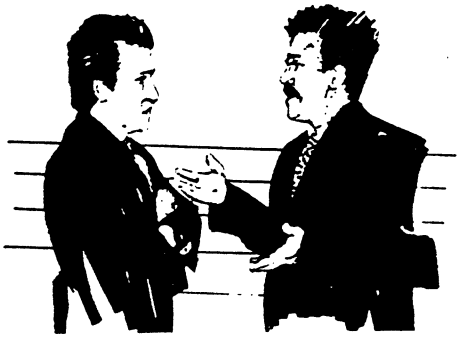
10th Floor 33 Washington Street Newark, NJ 07102-3107 201/565-9199

A Coworker Has a Drinking Problem

It's Not Your Problem—Or Is It?

You may be working with someone who has a serious drinking problem. An estimated 650,000 working people are alcoholics. You can make work safer for everyone if you help the alcoholic get help.

Alcoholism is an illness with serious effects. In 1986, alcohol was involved in nearly 23,000 deaths on U.S. highways, 3,000 drownings, and 10,000 suicides.



If you suspect a coworker has a drinking problem, speak to your supervisor.

Learn the Facts

For alcoholics, drinking is addictive. They depend on it physically and emotionally. They can't "just say no."

All alcohol is poisonous, even wine and beer. Over time it damages the digestive and immune systems, and all the organs, especially the liver. Eventually, too much drinking leads to death.

Alcoholics may start drinking to avoid feelings like fear or insecurity. But their drinking creates these and other emotions: anger, guilt, shame, anxiety. The problems include their families, friends and coworkers.

Understand the Effects

Alcoholics are less productive and less able to make good decisions than nonalcoholics. They have high accident rates. Alcoholics are often late or absent. Their behavior forces others to work harder to fix their mistakes or finish their work.

As their disease gets worse, alcoholics will do almost anything to protect their drinking. They may lie or steal. They may ask friends to cover up for them. Then everyone at work may feel tense, angry and resentful. Because alcoholics usually deny that they have an alcohol problem, it can be difficult to reason with them about changing their behavior.

Watch for Signs

People with drinking problems often leave a trail of clues like:

1. taking off work frequently
2. arriving late and leaving early
3. making excuses that are hard to believe while acting guilty, resentful or angry
4. being unreliable, unable to concentrate; missing deadlines.

Stress, money or family problems can cause these behaviors, too. Don't assume you know the causes.

Myths and Reality

It may surprise you to learn the myths versus the realities about alcoholism.

"Alcoholics are skid-row bums." The fact is, many alcoholics have held responsible jobs for years.

"If you only drink after work or on weekends, you can't be an alcoholic." The fact is, many alcoholics drink only at these times.

"It's no one else's business." The fact is, that's only true for people who don't work, have friends or family, or drive. For anyone else, the problems of alcohol abuse make it everyone's business.

Don't Cover Up

Lying for an alcoholic or covering up mistakes is not really helping a coworker with a problem. All that does is help the person remain dependent.

If you think a coworker has an alcohol problem, don't ignore it. If you have a close relationship, you may want to talk to him or her about it. Express your concern and willingness to support their efforts to stop.

If alcohol use is interfering with a coworker's ability to do his or her job properly or safely, tell your supervisor. Avoid accusing someone of being an alcoholic. Simply tell your supervisor that you are concerned about the coworker's job performance.

Someone in Your Workplace May Have an Alcohol or Other Drug Abuse Problem . . .

The patterns listed below may be signs that a coworker has a problem with alcohol or other drugs. Do you see someone you know?

Work Habits

William used to be a very organized worker. His work was always neat and on time. Lately, William's desk is a mess, his work is sloppy, and he misses deadlines.

Absenteeism

Juanita was always an engineer you could count on -- always there and on time. For the past month, she's been coming in late more often and she's missed a lot of days.

Accidents

Leroy used to have a good safety record. Over the past 2 months, he's been to the company nurse three times, and his supervisor has reported him for safety violations.

Complaints

Linda owns a small but growing landscape company, and she's had to hire a lot of new people. Lately, customers have complained about two new employees who go off at lunch and don't seem to do much in the afternoon. Everyone else is picking up the slack.

Productivity

Franco used to be a good salesman. Over the past year his sales have gone way down and he has missed meetings.

Mood

Tawana is a bank teller who was always well liked by her coworkers and customers, but lately she's become more and more moody and hard to work with.

Crime

Ann owns a small machine shop. This past weekend the shop was broken into and tools and equipment were taken. Two of Ann's employees were arrested. They had drugs on them at the time of the arrest.

Employee Fact Sheet #1

Why Have a Drug-Free Workplace?

It's Important to Our Organization!

. . . Having a drug-free workplace protects our health and safety.

. . . Employees who are free of alcohol and other drugs have fewer accidents, make fewer mistakes, and are more productive.

The Tragedy of Substance Abuse

At Least Five Dead and 150 Hurt as Subway Derails

On August 28, 1991, a New York subway operator crashed his train near a station in lower Manhattan. Five people were killed and 215 others were injured. The operator admitted that he had been drinking prior to the crash. After the crash his blood alcohol content was .21, over twice the legal limit in New York.

People Who Drink and Drive . . . and Kill

A young electrician had just returned from attending a marriage class with his fiancé. He stepped out of his truck and was struck and killed by a car speeding down the wrong side of the street. When police caught the driver, they discovered that he was drunk. The driver, a 27-year-old engineer, had a history of drunk driving and had been driving without a license since it was revoked in 1986.

Your Role in the Drug-Free Workplace Program

Know your organization's policy and program.

Find the answers to these questions:

- What is my organization's written policy?
- What happens if I violate the policy?
- Does my organization's policy include drug testing?
- Will my organization help me or my coworkers get help with an alcohol or drug problem?
- How can I help promote a drug-free workplace?

Follow your organization's drug-free workplace policy.

Report to work fit for duty. Come to work free of alcohol and other drugs.

Don't use alcohol or other drugs on the job.

Seek help if you think you have a problem.

Talk to your supervisor if you think a coworker may need help or if you see a policy violation.

If your organization has a "concerned other" or "tip line," you can call it without giving your name.

The Governor's Council For A
Drug Free Workplace

DRUGS DON'T WORK IN NJ!

DRUG ABUSERS AS EMPLOYEES

EMPLOYED DRUG ABUSERS ARE.....

3 TIMES MORE LIKELY TO BE LATE FOR WORK

10 TIMES AS LIKELY TO MISS WORK

2.5 TIMES MORE LIKELY TO HAVE ABSENCES OF EIGHT DAYS OR MORE

2.2 TIMES MORE LIKELY TO REQUEST EARLY DISMISSAL OR TIME OFF

3.6 TIMES MORE LIKELY TO INJURE THEMSELVES OR ANOTHER PERSON IN A WORK PLACE ACCIDENT

5 TIMES MORE LIKELY TO BE INVOLVED IN AN ACCIDENT OFF THE JOB (WHICH, IN TURN, AFFECTS ATTENDANCE AND JOB PERFORMANCE)

5 TIMES MORE LIKELY TO FILE A WORKER'S COMPENSATION CLAIM

RESPONSIBLE FOR **40% OF ALL** INDUSTRIAL FATALITIES

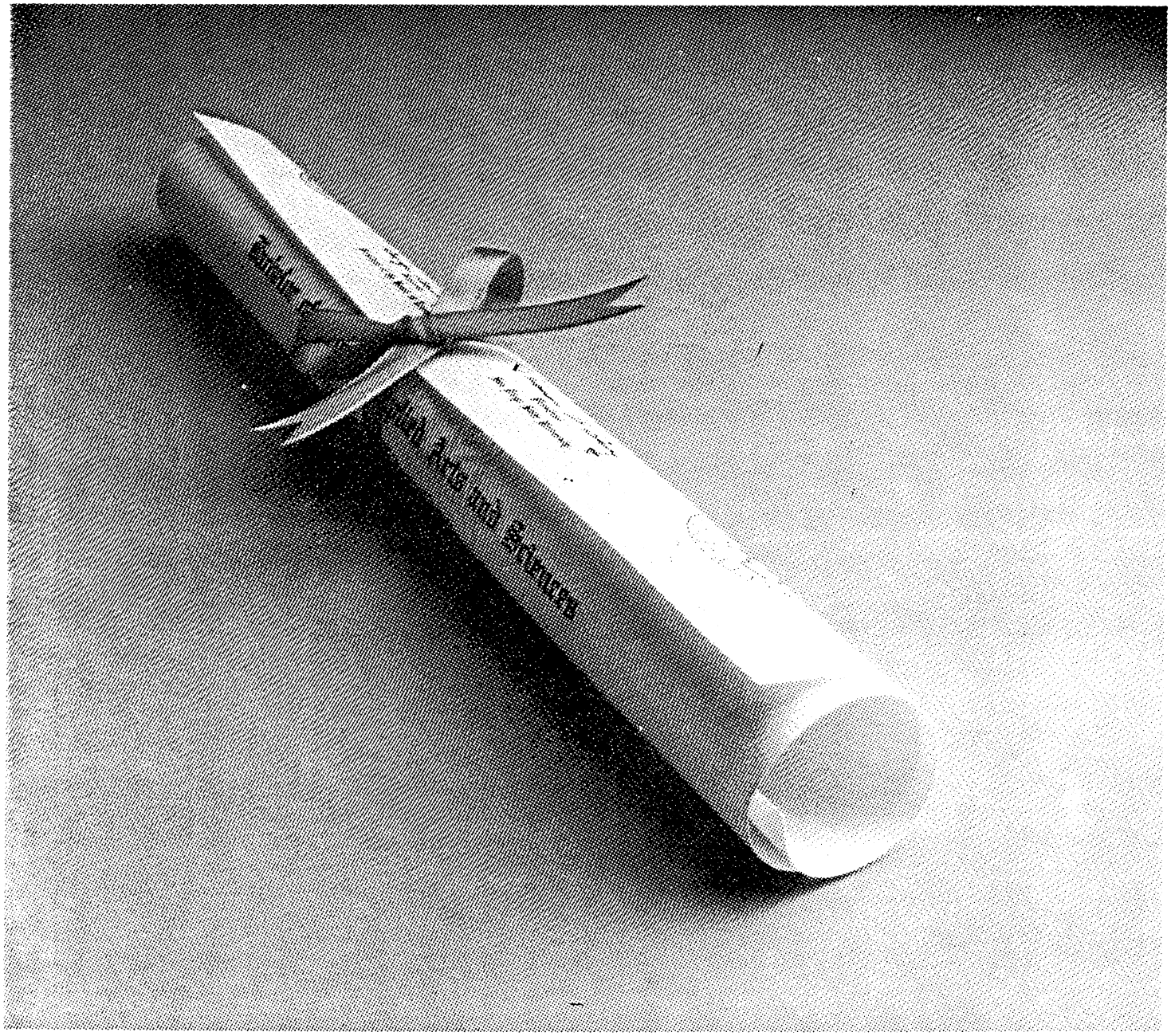
LIKELY TO INCUR **300% HIGHER** MEDICAL COSTS AND BENEFITS

33% LESS PRODUCTIVE

.....WHEN COMPARED TO THEIR NON-ABUSING COUNTERPARTS.

10th Floor 33 Washington Street Newark, NJ 07102-3167 201/565-9199

IF YOU'RE INTO DOPE, YOU MIGHT AS WELL SMOKE THIS.



There's one sure way to see your future go up in smoke.
Do drugs.
Last year alone, America's businesses lost more than $60 billion to drugs. So this year, most of the Fortune 500 will be administering drug tests. If you fail the test, you're out of a job.
The message is simple. Doing drugs could blow your whole education.

WE'RE PUTTING DRUGS OUT OF BUSINESS.

If you or someone you care about wants to know more about substance abuse call New Jersey's ALA—CALL—1-800-322-5525—for advice and a referral.

Partnership For A Drug-Free New Jersey

In Cooperation With The Governor's Council On Alcoholism & Drug Abuse

PART II

THE LAWS

Item and category of records	Retention period
3. Supporting data for periodical statistical of operating results or performance by tonnage, mileage, passengers carried, piggyback traffic, commodities, costs, analyses of increases and decreases, or otherwise.	3 years.
M. Miscellaneous	
1. Index of records	Until revised as record structure changes.
2. Statement listing records prematurely destroyed or lost	For the remainder of the period as prescribed for records destroyed.

Note A.—Records referenced to this note shall be maintained as determined by the designated records supervisory official. Companies should be mindful of the record retention requirements of the Internal Revenue Service, Securities and Exchange Commission, State and local jurisdictions, and other regulatory agencies. Companies shall exercise reasonable care in choosing retention periods, and the choice of retention periods shall reflect past experiences, company needs, pending litigation, and regulatory requirements.

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

Subpart A—General

Sec.

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382.103 Applicability.
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382.107 Definitions.
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382.205 On-duty use.
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Subpart F—Alcohol Misuse and Controlled Substances Use Information, Training and Referral

382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.
382.603 Training for supervisors.
382.605 Referral, evaluation, and treatment

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

SOURCE: 61 FR 9553, Mar. 8, 1996, unless otherwise noted.

Subpart A—General

§ 382.101 Purpose.

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

§ 382.103 Applicability.

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

(1) The commercial driver's license requirements of part 383 of this subchapter;

(2) The Licencia Federal de Conductor (Mexico) requirements; or

(3) The commercial driver's license requirements of the Canadian National Safety Code.

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

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

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

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

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

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

(i) Operators of a farm vehicle which is:

(A) Controlled and operated by a farmer;

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

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

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

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

[61 FR 9553, Mar. 8, 1996, as amended at 62 FR 1296, Jan. 9, 1997]

§ 382.105 Testing procedures.

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

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5 of this subchapter, and § 40.3 of this title, except as provided herein—

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

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

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

Commerce means:

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

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

(1) Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

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

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

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

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

(1) *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

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

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

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

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

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

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

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

the number of refusals of random tests required by this part.

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

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

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

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

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

(1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;

(2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of § 393.76 of this subchapter);

(5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

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

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

[61 FR 9553, Mar. 8, 1996, as amended at 61 FR 37224, July 17, 1996]

§ 382.109 Preemption of State and local laws.

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

(1) Compliance with both the State or local requirement and this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

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

§ 382.111 Other requirements imposed by employers.

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

of controlled substances, including authority and rights with respect to testing and rehabilitation.

§ 382.113 Requirement for notice.

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

§ 382.115 Starting date for testing programs.

(a) *All domestic employers.* Each domestic-domiciled employer that begins commercial motor vehicle operations will implement the requirements of this part on the date the employer begins such operations.

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

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

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

[62 FR 37151, July 11, 1997]

Subpart B—Prohibitions

§ 382.201 Alcohol concentration.

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

§ 382.205 On-duty use.

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

§ 382.207 Pre-duty use.

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

§ 382.209 Use following an accident.

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

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

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

§ 382.213 Controlled substances use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107 of this part, who has advised the driver

that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

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

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

§ 382.215 Controlled substances testing.

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

Subpart C—Tests Required

§ 382.301 Pre-employment testing.

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

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

(1) The driver has undergone an alcohol test required by this section or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the alcohol misuse rule of another DOT agency within the previous six months.

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

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer) or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

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

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

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

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

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

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

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

§ 382.303 Post-accident testing.

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

(1) Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(3) This table notes when a post-accident test is required to be conducted by paragraphs (a)(1) and (a)(2) of this section.

TABLE FOR § 382.303(A)(3)

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

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

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

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within eight hours;

(iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred; and

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

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

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

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

(e)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

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

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

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

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

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

§ 382.305 Random testing.

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

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

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

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

(d)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the FHWA

Administrator may lower this rate to 10 percent of all driver positions if the FHWA Administrator determines that the data received under the reporting requirements of § 382.403 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

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

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

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

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

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

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

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

(j) The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for

random alcohol and controlled substances testing determined by the FHWA Administrator. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers to be tested may be calculated for each individual employer or may be based on the total number of drivers covered by the consortium who are subject to random alcohol and/or controlled substances testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule.

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

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

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

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

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

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

§ 382.307 Reasonable suspicion testing.

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

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

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

(d) Alcohol testing is authorized by this section only if the observations required by paragraph (a) of this section are made during, just preceding, or just after the period of the work day that

the driver is required to be in compliance with this part. A driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

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

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

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Reason(s) test could not be completed within 8 hours; and

(iv) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

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

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

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

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

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

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

§ 382.309 Return-to-duty testing.

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

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

result indicating a verified negative result for controlled substances use.

§ 382.311 Follow-up testing.

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

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

Subpart D—Handling Of Test Results, Record Retention, and Confidentiality

§ 382.401 Retention of records.

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

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

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

(i) Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater,

(ii) Records of driver verified positive controlled substances test results,

(iii) Documentation of refusals to take required alcohol and/or controlled substances tests,

(iv) Driver evaluation and referrals,

(v) Calibration documentation,

(vi) Records related to the administration of the alcohol and controlled substances testing programs, and

(vii) A copy of each annual calendar year summary required by § 382.403.

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

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

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

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

(1) Records related to the collection process:

(i) Collection logbooks, if used;

(ii) Documents relating to the random selection process;

(iii) Calibration documentation for evidential breath testing devices;

(iv) Documentation of breath alcohol technician training;

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substances tests;

(vi) Documents generated in connection with decisions on post-accident tests;

(vii) Documents verifying existence of a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing; and

(viii) Consolidated annual calendar year summaries as required by § 382.403.

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

(i) The employer's copy of the alcohol test form, including the results of the test;

(ii) The employer's copy of the controlled substances test chain of custody and control form;

(iii) Documents sent by the MRO to the employer, including those required by § 382.407(a).

(iv) Documents related to the refusal of any driver to submit to an alcohol or controlled substances test required by this part; and

(v) Documents presented by a driver to dispute the result of an alcohol or controlled substances test administered under this part.

(vi) Documents generated in connection with verifications of prior employers' alcohol or controlled substances test results that the employer:

(A) Must obtain in connection with the exception contained in § 382.301 of this part, and

(B) Must obtain as required by § 382.413 of this subpart.

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

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance; and

(ii) Records concerning a driver's compliance with recommendations of the substance abuse professional.

(5) Records related to education and training:

(i) Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use;

(ii) Documentation of compliance with the requirements of § 382.601, including the driver's signed receipt of education materials;

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol and/or controlled substances testing based on reasonable suspicion;

(iv) Documentation of training for breath alcohol technicians as required by § 40.51(a) of this title, and

(v) Certification that any training conducted under this part complies with the requirements for such training.

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

(i) Agreements with collection site facilities, laboratories, breath alcohol technicians, screening test technicians, medical review officers, consortia, and third party service providers;

(ii) Names and positions of officials and their role in the employer's alcohol and controlled substances testing program(s);

(iii) Quarterly laboratory statistical summaries of urinalysis required by § 40.29(g)(6) of this title; and

(iv) The employer's alcohol and controlled substances testing policy and procedures.

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

(e)(1) *OMB control number.* The information collection requirements of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2125–0543.

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

[61 FR 9553, Mar. 8, 1996, as amended at 62 FR 37151, July 11, 1997]

§ 382.403 Reporting of results in a management information system.

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

(b) If an employer is notified, during the month of January, of a request by the Federal Highway Administration to report the employer's annual calendar year summary information, the employer shall prepare and submit the report to the Federal Highway Administration by March 15 of that year. The employer shall ensure that the annual summary report is accurate and received by March 15 at the location that

the Federal Highway Administration specifies in its request. The report shall be in the form and manner prescribed by the Federal Highway Administration in its request. When the report is submitted to the Federal Highway Administration by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

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

(1) Number of drivers subject to Part 382;

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

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

(4) Number of positives verified by a MRO by type of test, and type of controlled substance;

(5) Number of negative controlled substance tests verified by a MRO by type of test;

(6) Number of persons denied a position as a driver following a pre-employment verified positive controlled substances test and/or a pre-employment alcohol test that indicates an alcohol concentration of 0.04 or greater;

(7) Number of drivers with tests verified positive by a medical review officer for multiple controlled substances;

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

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

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

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

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

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

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

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

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part;

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

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

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

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

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

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

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

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

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

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

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

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

(i) Had a verified positive controlled substance test result, or

(ii) Engaged in prohibited alcohol misuse under the provisions of this part.

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

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

§ 382.405 Access to facilities and records.

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

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

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

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

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

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

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

proceeding relating to a benefit sought by the driver.)

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

§ 382.407 Medical review officer notifications to the employer.

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

(1) A statement that the controlled substances test being reported was in accordance with part 40 of this title and this part, except for legible photocopies of Copy 4 of the Federal Custody and Control Form;

(2) The full name of the driver for whom the test results are being reported;

(3) The type of test indicated on the custody and control form (i.e. random, post-accident, follow-up);

(4) The date and location of the test collection;

(5) The identities of the persons or entities performing the collection, analyzing the specimens, and serving as the medical review officer for the specific test;

(6) The results of the controlled substances test, positive, negative, test canceled, or test not performed, and if positive, the identity of the controlled substance(s) for which the test was verified positive.

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

§ 382.409 Medical review officer record retention for controlled substances.

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

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

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

§ 382.411 Employer notifications.

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

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

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

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

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

(i) Alcohol tests with a result of 0.04 alcohol concentration or greater;

(ii) Verified positive controlled substances test results; and

(iii) Refusals to be tested.

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

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

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

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

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

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

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

(h) Employers need not obtain information under paragraph (a) of this section generated by previous employers

prior to the starting dates in § 382.115 of this part.

Subpart E—Consequences for Drivers Engaging In Substance Use-Related Conduct

§ 382.501 Removal from safety-sensitive function.

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

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

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

§ 382.503 Required evaluation and testing.

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

§ 382.505 Other alcohol-related conduct.

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

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

§ 382.507 Penalties.

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

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

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

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

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

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

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

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

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

(3) Sufficient information about the safety-sensitive functions performed by

those drivers to make clear what period of the work day the driver is required to be in compliance with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);

(6) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d) of this part;

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under § 382.605;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a coworker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

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

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

§ 382.603 Training for supervisors.

Each employer shall ensure that all persons designated to supervise drivers receive at least 60 minutes of training on alcohol misuse and receive at least an additional 60 minutes of training on controlled substances use. The training will be used by the supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing under § 382.307. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

§ 382.605 Referral, evaluation, and treatment.

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

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

(c)(1) Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less

than 0.02 if the conduct involved alcohol, or a controlled substances test with a verified negative result if the conduct involved a controlled substance.

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

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

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

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

(e) The employer shall ensure that a substance abuse professional who determines that a driver requires assistance in resolving problems with alcohol misuse or controlled substances use does not refer the driver to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a driver for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol or controlled substance problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the driver's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the driver.

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

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

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

SOURCE: 52 FR 20587, June 1, 1987, unless otherwise noted.

Subpart A—General

§ 383.1 Purpose and scope.

(a) The purpose of this part is to help reduce or prevent truck and bus accidents, fatalities, and injuries by requiring drivers to have a single commercial motor vehicle driver's license and by disqualifying drivers who operate commercial motor vehicles in an unsafe manner.

(b) This part:

(1) Prohibits a commercial motor vehicle driver from having more than one commercial motor vehicle driver's license;

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

(3) Requires that a driver provide previous employment information when applying for employment as an operator of a commercial motor vehicle;

(4) Prohibits an employer from allowing a person with a suspended license to operate a commercial motor vehicle;

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements;

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

[52 FR 20587, June 1, 1987, as amended at 53 FR 27648, July 21, 1988; 54 FR 40787, Oct. 3, 1989]

§ 383.3 Applicability.

(a) The rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

PART 653—PREVENTION OF PROHIBITED DRUG USE IN TRANSIT OPERATIONS

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APPENDIX A TO PART 653—[RESERVED]

APPENDIX B TO PART 653—FTA DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

APPENDIX C TO PART 653—FTA DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

AUTHORITY: 49 U.S.C. 5331; 49 CFR 1.51.

SOURCE: 59 FR 7589, Feb. 15, 1994, unless otherwise noted.

Subpart A—General

§ 653.1 Overview.

(a) This part describes the anti-drug program to be implemented by a recipient of certain funding from the Federal Transit Administration.

(b) The part includes six subparts. Subpart A covers the general requirements of the FTA anti-drug program. Subpart B specifies the basic requirements of each employer's anti-drug program, including the types of tests to be conducted, and the elements required to be in each employer's drug testing program. Subpart C describes the different types of drug tests to be conducted. Subpart D describes a new drug testing procedural requirement mandated by the Act. Subpart E contains administrative matters such as reports and recordkeeping requirements. Subpart F specifies how a recipient certifies compliance with the rule.

§ 653.3 Purpose.

The purpose of this part is to require a recipient to implement an anti-drug program to deter and detect the use of prohibited drugs by covered employees.

§ 653.5 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to a recipient under—

(1) Section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act); or

(2) Section 103(e)(4) of title 23 of the United States Code.

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR parts 219 and 382, as appropriate, and § 653.83 of this part for its railroad operations, and this part for its non-railroad operations, if any.

NOTE: For recipients who operate marine vessels, see also Coast Guard regulations at 33 CFR part 95 and 46 CFR parts 4,5, and 16.)

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995]

§ 653.7 Definitions.

As used in this part—

Accident means an occurrence associated with the operation of a vehicle, if as a result—

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle;

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

Anti-drug program means a program to detect and deter the use of prohibited drugs as required by this part.

Canceled test means a test that has been declared invalid by a Medical Review Officer. It is neither a verified positive nor a verified negative test, and includes a specimen rejected for testing by a laboratory.

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (*See* § 653.77 for certification requirements.)

Chain-of-custody means the procedures in part 40 of this title concerning the handling of a urine specimen.

Consortium means an entity, including a group or association of employers, operators, recipients, subrecipients, or contractors, which provides drug testing as required by this part, or other DOT drug testing rule, and which acts on behalf of the employer.

Contractor means a person or organization that provides a service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

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

(1) *Inclusion.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.* (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

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

DOT means the United States Department of Transportation.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring drug testing (see parts 199, 219, 382, and 653 of this title; 14 CFR part 121, appendix J; 33 CFR part 95; and 46 CFR parts 4 and 16).

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient primarily operating in an urbanized area of 200,000 or more in population.

Medical Review Officer(MRO) means 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.

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

Prohibited drug means marijuana, cocaine, opiates, amphetamines, or phencyclidine.

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

Refuse to submit means that a covered employee fails to provide a urine sample as required by 49 CFR part 40, without a genuine inability to provide a specimen (as determined by a medical evaluation), after he or she has received notice of the requirement to be tested in accordance with the provisions of this part, or engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means any of the following duties:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 3 funding and is in an area of less than 50,000 in population or section 18 funding and contracts out such services; or

(5) Carrying a firearm for security purposes.

Small operator means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A *mass transit vehicle* is a vehicle used for mass transportation or for ancillary services.

Verified negative (drug test result) means a drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use.

Verified positive (drug test result) means a drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use.

[59 FR 7589, Feb. 15, 1994, as amended at 59 FR 62230, Dec. 2, 1994; 60 FR 12297, Mar. 6, 1995; 60 FR 39620, Aug. 2, 1995; 61 FR 37224, July 17, 1996]

§ 653.9 Preemption of State and local laws.

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

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

(b) This part shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property,

whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 653.11 Other requirements imposed by an employer.

An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

§ 653.13 Starting date for drug testing programs.

(a) *Large employers.* Each recipient operating primarily in an urbanized area of 200,000 or more in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each recipient operating primarily in a nonurbanized area or in an urbanized area of 200,000 or less in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1996.

(c) An employer shall have an anti-drug program that conforms to this part by January 1, 1996, or by the date the employer begins operations, whichever is later.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 3, 1995]

Subpart B—Program Requirements

§ 653.21 Requirement to establish an anti-drug program.

Each employer shall establish an anti-drug program consistent with the requirements of this part.

§ 653.23 Required elements of an anti-drug testing program.

An anti-drug program shall include the following:

(a) A statement describing the employer's policy on prohibited drug use in the workplace, including the consequences associated with prohibited drug use. This policy statement shall include all of the elements specified in § 653.25. Each employer shall disseminate the policy consistent with the provisions of § 653.27.

(b) An education and training program which meets the requirements of § 653.29.

(c) A testing program, as described in § 653.31 that meets the requirements of this part and part 40 of this title.

(d) Procedures for assessing the covered employee who has a verified positive drug test result as described in § 653.37.

§ 653.25 Policy statement contents.

The policy statement shall be adopted by the local governing board of the employer or operator, be made available to each covered employee, and shall include, at a minimum, detailed discussion of:-

(a) The identity of the person designated by the employer to answer employee questions about the anti-drug program.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior that is prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs under the provisions of this part.

(e) The procedures that will be used to test for the presence of drugs, protect the employee and the integrity of the drug testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug test and a statement that such a refusal constitutes a verified positive drug test result.

(h) The consequences for a covered employee who has a verified positive drug test result or refuses to submit to a drug test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional.

(i) If the employer implements elements of an anti-drug program that are in addition to this part (See § 653.31), the employer shall give each covered

employee specific information concerning which provisions are mandated by this part and which are not.

§ 653.27 Requirement to disseminate policy.

Each employer shall provide written notice to every covered employee and to representatives of employee organizations of the employer's anti-drug policies and procedures.

§ 653.29 Education and training programs.

Each employer shall establish an employee education and training program for all covered employees, including:

(a) *Education.* The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(b) *Training*—(1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms which may indicate prohibited drug use.

(2) *Supervisors.* Supervisors who may make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use.

§ 653.31 Drug testing.

(a) An employer shall establish a program which provides for testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up, as described in detail in each case in subpart C of this part.

(b) When administering a drug test, an employer shall ensure that the following drugs are tested for:

(1) Marijuana;
(2) Cocaine;
(3) Opiates;
(4) Amphetamines; and
(5) Phencyclidine.

§ 653.33 Notice requirement.

Before performing a drug test under this part, each employer shall notify a covered employee that the drug test is required by this part. No employer shall falsely represent that a test is administered under this part.

§ 653.35 Action when employee has a verified positive drug test result.

(a) As soon as practicable after receiving notice from the medical review officer (MRO) that an employee has a verified positive drug test result, or if an employee refuses to submit to a drug test, the employer shall require that a covered employee cease performing a safety-sensitive function.

(b) Before allowing the covered employee to resume performing a safety-sensitive function, the employer shall ensure that the covered employee meets the requirements of this part for returning to duty, including taking a return to duty drug test with a verified negative result, as required by § 653.49.

§ 653.37 Referral, evaluation, and treatment.

(a) A covered employee who has a verified positive drug test result or refuses to submit to a drug test under this part shall be advised by the employer of the resources available to the covered employee in evaluating and resolving problems associated with prohibited drug use, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(b)(1) The employer shall ensure that each covered employee who has a verified positive drug test result or refuses to take a drug test shall be evaluated by a substance abuse professional who shall determine whether the covered employee is in need of assistance in resolving problems associated with prohibited drug use.

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

(3) The employer shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with prohibited drug use does not refer the employee to the substance abuse professional's private practice from which the substance abuse professional receives remuneration or to a person or organization from which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(i) A public agency, such as a State, county, or municipality;

(ii) The employer or a person under contract to provide treatment for prohibited drug use problems on behalf of the employer;

(iii) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(iv) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

(c) An employer shall ensure that, before returning to duty to perform a safety-sensitive function, a covered employee has complied with the referral and evaluation provisions of this part and takes a return to duty drug test with a verified negative result under § 653.49.

(d) The requirements of this section do not apply to applicants.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995]

Subpart C—Types of Drug Testing

§ 653.41 Pre-employment testing.

(a) An employer may not hire an applicant to perform a safety-sensitive function unless the applicant takes a drug test with a verified negative result administered under this part.

(b) An employer may not transfer an employee from a nonsafety-sensitive function to a safety-sensitive function until the employee takes a drug test with a verified negative result administered under this part.

(c) If an applicant or employee drug test is canceled, the employer shall require the employee or applicant to take another pre-employment drug test.

§ 653.43 Reasonable suspicion testing.

(a) An employer shall conduct a drug test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug.

(b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. The required observations must be made by a supervisor who is trained in detecting the signs and symptoms of drug use.

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995]

§ 653.45 Post-accident testing.

(a)(1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall test each surviving covered employee operating the mass transit vehicle at the time of the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, the employer shall test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered emplyee's performance can be completely discounted as a contributing factor to the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the employer

shall test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The decision not to administer a test under this paragraph shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(b) An employer shall ensure that a covered employee required to be tested under this section is tested as soon as practicable and within 32 hours of the accident. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or the employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing.

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

[59 FR 7589, Feb. 15, 1994, as amended at 60 FR 12297, Mar. 6, 1995; 60 FR 39620, Aug. 2, 1995]

§ 653.47 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this part. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry positive rate. Each year, the Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication.

(c) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of § 653.73 for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent. However, after the initial two years of random testing by large transit operators and the initial first year of testing by small transit operators, the Administrator may lower the rate the following calendar year, if the combined positive testing rate is less than 1.0 percent, and if it would be in the interest of safety.

(d) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of § 653.73 for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

(e) The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall

have an equal chance of being tested each time selections are made.

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

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

(h) If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same employer, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function.

(i) If an employer is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

[59 FR 62230, Dec. 2, 1994]

§ 653.49 Return to duty testing.

(a) *Return to duty.* An employer shall ensure that, before returning to duty to perform a safety-sensitive function, each covered employee who has refused to submit to a drug test or has a verified positive drug test result—

(1) Has been evaluated by a substance abuse professional to determine whether the covered employee has properly followed the recommendations for action by the substance abuse professional, including participation in any rehabilitation program;

(2) Has taken a return to duty drug test with a verified negative result. If a test is canceled, the employer shall require the employee to take another return to duty drug test.

(3) A substance abuse professional may recommend that the employee be subject to a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02, to be conducted in accordance with 49 CFR part 40.

(b) *Marine employers.* Marine employers subject to U.S. Coast Guard chemical testing regulations shall ensure that each covered employee who has a verified positive drug test result administered under this part is evaluated by a Medical Review Officer.

§ 653.51 Follow-up testing.

Each employer shall ensure that each covered employee who returns to duty after a required evaluation made under § 653.37 is subject to unannounced follow-up drug testing as provided for in § 653.63(d). The employer may require the employee to take one or more follow-up alcohol tests, with a result indicating an alcohol concentration of less than 0.04, as directed by the SAP, to be performed in accordance with 49 CFR part 40.

Subpart D—Drug Testing Procedures

§ 653.61 Compliance with testing procedures requirements.

The drug testing procedures of part 40 of this title apply to employers covered by this part, unless expressly provided otherwise in this part.

§ 653.63 Substance abuse professional.

(a) An employer's anti-drug program shall have available the services of a designated substance abuse professional.

(b) The substance abuse professional shall determine whether a covered employee who has refused to submit to a drug test or has a verified positive drug test result is in need of assistance in

resolving problems associated with prohibited drug use. The substance abuse professional then recommends a course of action to the employee.

(c) The substance abuse professional shall determine whether a covered employee who has refused to submit to a drug test or has a verified positive drug test result has properly followed the SAP's recommendations.

(d) The substance abuse professional shall determine the frequency and duration of follow-up testing for a covered employee. Such employee shall be required to take a minimum of six follow-up drug tests with verified negative results during the first 12 months after returning to duty. After that period of time, the substance abuse professional may recommend to the employer the frequency and duration of follow-up drug testing, provided that the follow-up testing period ends 60 months after the employee returns to duty. In addition, follow-up testing may include testing for alcohol, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40.

§ 653.65 Supervisor acting as collection site person.

An employer shall not permit a direct supervisor of an employee to serve as the collection site person for a drug test of the employee.

[59 FR 7589, Feb. 15, 1994. Redesignated at 60 FR 12297, Mar. 6, 1995]

Subpart E—Administrative Requirements

§ 653.71 Retention of records.

(a) *General requirement.* An employer shall maintain records of its anti-drug program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* In determining compliance with the retention period requirement, each record shall be maintained for the specified period of time, measured from the date of the document's or data's creation. Each employer shall maintain the records in accordance with the following schedule:

(1) *Five years:* Records of covered employee verified positive drug test results, documentation of refusals to take required drug tests, and covered employee referrals to the SAP, and copies of annual MIS reports submitted to FTA.

(2) *Two years:* Records related to the collection process and employee training.

(3) *One year:* Records of negative drug test results.

(c) *Types of records.* The following specific records must be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Documents generated in connection with decisions to administer reasonable suspicion drug tests.

(iv) Documents generated in connection with decisions on post-accident drug testing.

(v) MRO documents verifying existence of a medical explanation of the inability of a covered employee to provide an adequate urine sample.

(2) Records related to test results:

(i) The employer's copy of the custody and control form.

(ii) Documents related to the refusal of any covered employee to submit to a drug test required by this part.

(iii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to referral and return to duty and follow-up testing:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for referral for assistance in resolving problems associated with drug use.

(ii) Records concerning a covered employee's entry into and completion of the program of treatment recommended by the substance abuse professional.

(4) Records related to employee training:

(i) Training materials on drug use awareness, including a copy of the employer's policy on prohibited drug use.

(ii) Names of covered employees attending training on prohibited drug use

and the dates and times of such training.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for drug testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

(5) Copies of annual MIS reports submitted to FTA.

§ 653.73 Reporting of results in a management information system.

(a) Each recipient shall submit to FTA's Office of Safety and Security by March 15 of each year a report covering the previous calendar year (January 1 through December 31), which summarizes the results of its anti-drug program.

(b) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, consortium or joint enterprise or by a third party service provider acting on the employer's behalf.

(c) Each report that contains information on verified positive drug test results shall be submitted on the FTA Drug Testing Management Information System (MIS) Data Collection Form and shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2) Number of covered employees subject to testing under the anti-drug regulations of the United States Coast Guard.

(3) Number of specimens collected by type of test (i.e., pre-employment, periodic, random, etc.) and employee category.

(4) Number of positives verified by a Medical Review Officer (MRO) by type of test, type of drug, and employee category.

(5) Number of negatives verified by a MRO by type of test and employee category.

(6) Number of persons denied a position as a covered employee following a verified positive drug test.

(7) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 653.37).

(8) Number of employees with tests verified positive by a MRO for multiple drugs.

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

(10) Number of covered employees who refused to submit to a random drug test required under this part.

(11) Number of covered employees who refused to submit to a non-random drug test required under this part.

(12) Number of covered employees and supervisors who received training during the reporting period.

(13) Number of fatal and nonfatal accidents which resulted in a verified positive post-accident drug test.

(14) Number of fatalities resulting from accidents which resulted in a verified positive post-accident drug test.

(15) Identification of FTA funding source(s).

(d) If all drug test results were negative during the reporting period, the employer must use the "EZ form" (appendix C). It shall contain:

(1) Number of FTA covered employees.

(2) Number of covered employees subject to testing under the anti-drug regulation of the United States Coast Guard.

(3) Number of specimens collected and verified negative by type of test and employee category.

(4) Number of covered employees verified positive by an MRO or who refused to submit to a drug test, who were returned to duty in covered positions during the reporting period (having complied with the recommendations of a substance abuse professional as described in § 653.37).

(5) Number of covered employees who refused to submit to a random drug test under this part and how many of those were random test refusals.

(6) Number of covered employees who refused to submit to a non-random drug test required under this part.

(7) Number of covered employees and supervisors who received training during the reporting period.

(8) Identification of FTA funding source(s).

§ 653.75 Access to facilities and records.

(a) Except as required by law, or expressly authorized or required in this section, no employer may release information pertaining to a covered employee that is contained in records required to be maintained by § 653.71.

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

(c) An employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) An employer shall disclose data for its drug testing program and any other information pertaining to the employer's anti-drug program required to be maintained by this part, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the employer or covered employee or to a State oversight agency authorized to oversee rail fixed guideway systems.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, employers shall disclose information related to the employer's administration of a drug test following the accident under investigation.

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

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of a drug test administered under this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the covered employee.)

(h) An employer shall release information regarding a covered employee's record as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Subpart F—Certifying Compliance

§ 653.81 Compliance a condition of FTA financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under section 3, 9, or 18 of the Federal Transit Act, as amended, or under section 103(e)(4) of title 23 of the United States Code if a recipient fails to establish and implement an anti-drug program as required by this part. Failure to certify compliance with these requirements, as specified in § 653.83, will result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under section 1001 of title 18 of the United States Code.

(c) *State's role.* Each State shall certify compliance on behalf of its section 3, 9 or 18 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 3, 9 or 18 subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 653.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall certify annually to the applicable FTA Regional Office compliance with the requirements of this part, including the training requirements. Large operators shall certify compliance initially by January 1, 1995. Small operators and States shall certify compliance initially by January 1, 1996.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so. A certification must comply with the applicable sample certification provided in appendix A to this part.

APPENDIX A TO PART 653 [RESERVED]

APPENDIX B TO PART 653 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the drug testing information in the Federal Transit Administration (FTA) Drug Testing MIS Data Collection Form. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-v as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. DRUG TESTING INFORMATION	ii-v	3-4
D. OTHER DRUG TESTING/PROGRAM INFORMATION	v	5
E. DRUG TRAINING/EDUCATION	vi	5
F. FTA FUNDING SOURCES	vi	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the name of the employer for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for all categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG,** requires that you identify the number of employees in each employee category.

Section C is used to summarize the drug testing results for applicants and covered employees. There are six categories of testing to be completed. The first part of the table is where you enter the data on pre-employment testing. The following five parts are for entering drug testing data on random, post-accident, reasonable suspicion, return to duty and follow-up testing, respectively. Items necessary to complete these tables include:

1) the number of specimens collected in each employee category;
2) the number of specimens tested which were verified negative and verified positive for any drug(s); and
3) individual counts of those specimens which were verified positive for each of the five drugs.

Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the tables.

A sample table with detailed instructions is provided for the first part, **PRE-EMPLOYMENT** testing information. The format and explanations used for the sample apply to all six parts of the table in Section C.

Information on actions taken with those persons testing positive is required at the end of both pages. Specific instructions for providing this latter information are given after the instructions for completing the table in Section C.

Page 3

DRUG TESTING INFORMATION (Section C) requires information for drug testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in covered positions only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers do not include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Three types of information are necessary to complete the left side of this table. The first blank column with the heading "**NUMBER OF SPECIMENS COLLECTED,**" requires a count for all collected specimens by employee category. The second blank column with the heading "**NUMBER OF SPECIMENS VERIFIED NEGATIVE,**" requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO).

The third blank column with the heading "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS," refers to the number of specimens provided by applicants or employees that were verified positive. "Verified positive" means the results were verified by your MRO.

The right hand portion of this table, with the heading "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG," requires counts of positive tests for each of the five drugs for which tests were done, i.e., marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines. The number of specimens positive for each drug should be entered in the appropriate column for that drug type. Again, "verified positive" refers to test results verified by your MRO.

If an applicant or employee tested positive for more than one drug; for example, both marijuana and cocaine, that person's positive results would be included once in each of the appropriate columns (marijuana and cocaine).

Each column in the table should be added and the answer entered in the row marked "TOTAL".

A sample table is provided on page iv with example numbers.

Page 3 Below the part of the table containing pre-employment testing information is a box with the heading "Number of persons denied a position as a covered employee following a verified positive drug test". This is simply a count of those persons who were not placed in a covered position because they tested positive for one or more drugs.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, DRUG TESTING INFORMATION, which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing the form.

A Urine specimens were collected for 157 applicants for revenue service vehicle operation positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B The Medical Review Officer (MRO) for the employer reported that 153 of those 157 specimens from applicants for revenue service vehicle operation positions were negative (i.e., no drugs were detected). Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation".

C The MRO for the employer reported that 4 of those 157 specimens from applicants for revenue service vehicle operation positions were positive (i.e., a drug or drugs

were detected). Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

D With the 4 specimens that tested positive, the following drugs were detected:

Specimen	Drugs
#1	Marijuana
#2	Amphetamines
#3	Marijuana and Cocaine (Multi-drug specimen)
#4	Marijuana

Marijuana was detected in three (3) specimens, cocaine in one (1), and amphetamines in one (1). This information is entered in the columns on the right hand side of the table under each of these drugs. Two different drugs were detected in specimen #3 (multi-drug) so an entry is made in both the marijuana and the cocaine column for this specimen. Information on multi-drug specimens must also be entered in Section D, OTHER DRUG TESTING/PROGRAM INFORMATION, on page 5 of the reporting form.

Please note that the sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue service vehicle operation should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 specimens were collected resulting in 105 verified negatives and 2 verified positives – 1 for marijuana and 1 for opiates. This information is entered in the row marked "Armed Security Personnel".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 specimens from applicants for revenue service vehicle operation positions were collected and 107 for applicants for armed security personnel positions. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column, i.e., add all the numbers in that column and place the answer in the last row.

PRE-EMPLOYMENT								
EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				MARIJUANA (THC)	COCAINE	PHENCY-CLIDINE (PCP)	OPIATES	AMPHET-AMINES
REVENUE VEHICLE OPERATION	157	153	4	3	1	0	0	1
ARMED SECURITY PERSONNEL	107	105	2	1	0	0	1	0
TOTAL	264	258	6	4	1	0	1	1

A B C D E

Note that adding up the numbers for each type of drug in a row ("NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG") will not always match the number entered in the third column, "NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS". The total for the numbers on the right hand side of the table may differ from the number of specimens testing positive since some specimens may contain more than one drug.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 4 — Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide counts of fatal and non-fatal accidents and fatalities which resulted in positive post-accident drug tests for any employee involved in the accident. This information should be available from the safety program manager or the drug program manager.

Page 4 — Also following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule. This information should be available from the personnel office and/or drug program manager.

Page 5 — **OTHER DRUG TESTING/PROGRAM INFORMATION** (Section D) requires that you complete a table dealing with specimens positive for more than one drug, employees testing positive for both drugs and alcohol, and a table dealing with employees who refused to submit to a drug test.

Page 5 — **SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG** requires information on specimens that contained more than one drug. Indicate the **EMPLOYEE CATEGORY** and the **NUMBER OF VERIFIED POSITIVES**. Then specify the combination of drugs reported as positive by placing the number in the appropriate columns. For example, if marijuana and cocaine were detected in 3 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "3" as the number of verified positives, and "3" in the columns for "Marijuana" and "Cocaine". If marijuana and opiates were detected in 2 revenue vehicle operator specimens, then you would write "Revenue Vehicle Operation" as the employee category, "2" as the number of verified positives, and "2" in the columns for "Marijuana" and "Opiates".

Page 5 — Next you must provide a count of **employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.**

Page 5 — **EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a random or non-random (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

Page 5 **DRUG TRAINING/EDUCATION** (Section E) requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS DATA COLLECTION FORM OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 19___

A. EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Drug Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

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B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FTA drug testing regulation.

   - The information requested should only include testing for marijuana (THC), cocaine, phencyclidine (PCP), opiates, and amphetamines using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER DRUG TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Do not include the results of any quality control (QC) samples submitted to the testing laboratory in any of the tables.

5. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

This part of the form requires information on VERIFIED POSITIVE and VERIFIED NEGATIVE drug tests. These are the results that are reported to you by your Medical Review Officer (MRO).

C. DRUG TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
PRE-EMPLOYMENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RANDOM								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
POST-ACCIDENT								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
Number of persons denied a position as a covered employee following a verified positive drug test:								

C. DRUG TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SPECIMENS COLLECTED	NUMBER OF SPECIMENS VERIFIED NEGATIVE	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR ONE OR MORE OF THE FIVE DRUGS	NUMBER OF SPECIMENS VERIFIED POSITIVE FOR EACH TYPE OF DRUG				
				Marijuana (THC)	Cocaine	Phencyclidine (PCP)	Opiates	Amphetamines
REASONABLE SUSPICION								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
RETURN TO DUTY								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								
FOLLOW-UP								
Revenue Vehicle Operation								
Revenue Vehicle and Equipment Maintenance								
Revenue Vehicle Control/Dispatch								
CDL/Non-Revenue Vehicle								
Armed Security Personnel								
Total								

Number of accidents, as defined by the FTA drug testing regulation, which resulted in a positive post-accident drug test:	FATAL	NON-FATAL

Number of fatalities resulting from accidents which resulted in a positive post-accident drug test:	
Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	

D. OTHER DRUG TESTING/PROGRAM INFORMATION

SPECIMENS VERIFIED POSITIVE FOR MORE THAN ONE DRUG						
EMPLOYEE CATEGORY	NUMBER OF VERIFIED POSITIVES	Marijuana (THC)	Cocaine	Phency-clidine (PCP)	Opiates	Amphet-amines

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	

E. DRUG TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3 ___	9 ___	16(b)(2) ___	18 ___

APPENDIX C TO PART 653 - DRUG TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Drug Testing MIS "EZ" Data Collection Form.** This form should only be used if there are **no positive tests** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) drug testing regulations.

SECTION A - EMPLOYER INFORMATION requires the company name for which the report is done, a current address, contact name, and phone number. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Also indicate the year covered by this report. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA drug testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA drug testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Additional information must be completed if the employer has personnel who perform duties also covered by the anti-drug rule of the United States Coast Guard (USCG). **NUMBER OF EMPLOYEES COVERED BY THE USCG,** requires that you identify the number of employees in each employee category.

SECTION C - DRUG TESTING INFORMATION requires information for drug testing, refusal for testing, and training. The first table requests information on the **NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. **"COLL"** requires the number of specimens collected in each employee category for each category of testing. **"NEG"** requires a count for all completed tests by employee category that were verified negative by your Medical Review Officer (MRO). Do not include results of quality control (QC) samples submitted to the testing laboratory in any of the categories. Each column in the table should be added and the answer entered in the row marked **"TOTAL".**

Following the table that summarizes **DRUG TESTING INFORMATION**, you must provide a count of **employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule.** This information should be available from the personnel office and/or drug program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) drug test required under the FTA regulation.

DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of covered employees and supervisory personnel who have received drug training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section(s).

For FTA Use Only

FTA DRUG TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0556

YEAR COVERED BY THIS REPORT: 19___

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Drug Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____
Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0556); Washington, D.C. 20503.

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B. COVERED EMPLOYEES

COVERED EMPLOYEES		
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES	NUMBER OF EMPLOYEES COVERED BY THE USCG
Revenue Vehicle Operation		
Revenue Vehicle and Equipment Maintenance		
Revenue Vehicle Control/Dispatch		
CDL/Non-Revenue Vehicle		
Armed Security Personnel		
TOTAL		

C. DRUG TESTING INFORMATION

NUMBER OF SPECIMENS COLLECTED AND VERIFIED NEGATIVE												
EMPLOYEE CATEGORY	PRE-EMPLOYMENT		RANDOM		POST-ACCIDENT		REASONABLE SUSPICION		RETURN TO DUTY		FOLLOW-UP	
	COLL.	NEG	COLL.	NEG	COLL.	NEG	COLL.	NEG	COLL.	NEG	COLL.	NEG
Revenue Vehicle Operation												
Revenue Vehicle and Equipment Maintenance												
Revenue Vehicle Control/Dispatch												
CDL/Non-Revenue Vehicle												
Armed Security Personnel												
TOTAL												

Number of employees returned to duty during this reporting period who had a verified positive drug test or refused a drug test required under the FTA rule:	
EMPLOYEES WHO REFUSED TO SUBMIT TO A DRUG TEST	Number
Covered employees who refused to submit to a random drug test required under the FTA regulation:	
Covered employees who refused to submit to a non-random drug test required under the FTA regulation:	
DRUG TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	Number
Covered employees who have received at least 60 minutes of initial training on the consequences, manifestations, and behavioral cues of drug use as required by the FTA drug testing regulation:	
Supervisory personnel who have received 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable drug use as required by the FTA drug testing regulation:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3	9	16(b)(2)	18

PART 654—PREVENTION OF ALCOHOL MISUSE IN TRANSIT OPERATIONS

Subpart A—General

Sec.
654.1 Purpose.
654.3 Applicability.
654.5 Alcohol testing procedures.
654.7 Definitions.
654.9 Preemption of State and local laws.
654.11 Other requirements imposed by employers.
654.13 Requirement for notice.
654.15 Starting date for alcohol testing programs.

Subpart B—Prohibitions

654.21 Alcohol concentration.
654.23 On-duty use.
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654.27 Use following an accident.
654.29 Refusal to submit to a required alcohol test.

Subpart C—Tests Required

654.31 Pre-employment testing.
654.33 Post-accident testing.
654.35 Random testing.
654.37 Reasonable suspicion testing.
654.39 Return to duty testing.
654.41 Follow-up testing.
654.43 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.
654.45 Supervisor acting as breath alcohol technician.

Subpart D—Administrative Requirements

654.51 Retention of records.
654.53 Reporting of results in a management information system.
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654.61 Removal from safety-sensitive function.
654.63 Required evaluation and testing.
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Subpart F—Alcohol Misuse Information, Training, and Referral

654.71 Employer obligation to promulgate a policy on the misuse of alcohol.
654.73 Training for supervisors.
654.75 Referral, evaluation, and treatment.

Subpart G—Compliance

654.81 Compliance a condition of FTA financial assistance.
654.83 Requirement to certify compliance.

APPENDIX A TO PART 654—[RESERVED]

APPENDIX B TO PART 654—ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM.

APPENDIX C TO PART 654—ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM.

AUTHORITY: 49 U.S.C. 5331; 49 CFR 1.51.

SOURCE: At 59 FR 7549, Feb. 15, 1994, unless otherwise noted.

Subpart A—General

654.1 Purpose.

The purpose of this part is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions for employers receiving assistance from the Federal Transit Administration (FTA).

654.3 Applicability.

(a) Except as specifically excluded in paragraph (b) of this section, this part applies to a recipient under—

(1) Section 3, 9, or 18 of the Federal Transit Act, as amended (FT Act); or

(2) Section 103(e)(4) of title 23 of the United States Code.

(b) A recipient operating a railroad regulated by the Federal Railroad Administration (FRA) shall follow 49 CFR part 219 and 382, as appropriate, and § 654.83 of this part for its railroad operations, and this part for its non-railroad operations, if any.

(NOTE: For recipients who operate marine vessels, see also United States Coast Guard regulations at 33 CFR part 95 and 46 CFR parts 4, 5, and 16.)

[59 FR 7549, Feb. 15, 1994, as amended at 60 FR 12299, Mar. 6, 1995]

§ 654.5 Alcohol testing procedures.

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

§ 654.7 Definitions.

As used in this part—

Accident means an occurrence associated with the operation of a vehicle, if as a result—

(1) An individual dies;

(2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;

(3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle;

(4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service.

Administrator means the Administrator of the Federal Transit Administration or the Administrator's designee.

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

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

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

Certification means a recipient's written statement, authorized by the organization's governing board or other authorizing official, that the recipient has complied with the provisions of this part. (See § 654.87 for requirements on certification.)

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

Consortium means an entity, including a group or association of employers, operators, recipients, subrecipients, or contractors, which provides alcohol testing as required by this part, or other DOT alcohol testing rule, and which acts on behalf of the employer.

Contractor means a person or organization that provides a service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

Covered employee means a person, including an applicant or transferee, who performs a safety-sensitive function for an entity subject to this part; however, a volunteer is covered only if operating a vehicle designed to transport sixteen or more passengers, including the driver.

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

(1) *Inclusion.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) *Exclusions.*

(i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlamp or taillight damage.

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

DOT means the United States Department of Transportation.

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

Employer means a recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

FTA means the Federal Transit Administration, an agency of the U.S. Department of Transportation.

Large operator means a recipient or subrecipient primarily operating in an

urbanized area of 200,000 or more in population.

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

Railroad means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Recipient means an entity receiving Federal financial assistance under section 3, 9, or 18, of the FT Act, or under section 103(e)(4) of title 23 of the United States Code.

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 part, or engages in conduct that clearly obstructs the testing process.

Safety-sensitive function means any of the following duties:

(1) Operating a revenue service vehicle, including when not in revenue service;

(2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;

(3) Controlling dispatch or movement of a revenue service vehicle;

(4) Maintaining a revenue service vehicle or equipment used in revenue service, unless the recipient receives section 3 funding and is in an area of less than 50,000 in population or section 18 funding and contracts out such services; or

(5) Carrying a firearm for security purposes.

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

Small operator means a recipient or subrecipient primarily operating in a nonurbanized area or in an urbanized area of less than 200,000 in population.

Vehicle means a bus, electric bus, van, automobile, rail car, trolley car, trolley bus, or vessel. A "mass transit vehicle" is a vehicle used for mass transportation or for ancillary services.

Violation rate means the number of covered employees (as reported under § 654.53 of this part) found during random tests given under this part to have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by this part, divided by the total reported number of employees in the industry given random alcohol tests under this part plus the total reported number of employees in the industry who refuse a random test required by this part.

[59 FR 7549, Feb. 15, 1994, as amended at 60 FR 12299, Mar. 6, 1995; 60 FR 39620, Aug. 2, 1995; 61 FR 37224, July 17, 1996]

§ 654.9 Preemption of State and local laws.

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

(1) Compliance with both the State or local requirement and any requirement in this part is not possible; or

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.

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

§ 654.11 Other requirements imposed by employers.

Except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 654.13 Requirement for notice.

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

§ 654.15 Starting date for alcohol testing programs.

(a) *Large employers.* Each recipient operating primarily in an urbanized area of 200,000 or more in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1995.

(b) *Small employers.* Each recipient operating primarily in a nonurbanized area or in an urbanized area of 200,000 or less in population on March 17, 1994 shall implement the requirements of this part beginning on January 1, 1996.

(c) An employer shall have an alcohol misuse program that conforms to this part by January 1, 1996, or by the date the employer begins operations, whichever is later.

[59 FR 7549, Feb. 15, 1994, as amended at 60 FR 12299, Mar. 6, 1995]

Subpart B—Prohibitions

§ 654.21 Alcohol concentration.

Each employer shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 654.23 On-duty use.

Each employer shall prohibit a covered employee from using alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions shall permit the employee to perform or continue to perform safety-sensitive functions.

§ 654.25 Pre-duty use.

(a) *General.* Each employer shall prohibit a covered employee from using alcohol within 4 hours prior to performing safety-sensitive functions. No employer having actual knowledge that a covered employee has used alcohol within four hours of performing a safety-sensitive function shall permit the employee to perform or continue to perform safety-sensitive functions.

(b) *On-call employees.* An employer shall prohibit the consumption of alcohol for the specified on-call hours of each covered employee who is on-call. The procedure shall include:

(1) The opportunity for the covered employee to acknowledge the use of alcohol at the time he or she is called to report to duty and the inability to perform his or her safety-sensitive function.

(2) The requirement that the covered employee take an alcohol test, if the covered employee has acknowledged the use of alcohol, but claims ability to perform his or her safety-sensitive function.

§ 654.27 Use following an accident.

Each employer shall prohibit any covered employee required to take a post-accident alcohol test under § 654.33 from alcohol use for eight hours following the accident or until he or she undergoes a post-accident alcohol test, whichever occurs first.

§ 654.29 Refusal to submit to a required alcohol test.

Each employer shall require a covered employee to submit to a post-accident alcohol test required under § 654.33, a random alcohol test required under § 654.35, a reasonable suspicion alcohol test required under § 654.37, or a follow-up alcohol test required under § 654.41. No employer shall permit an

employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.

Subpart C—Tests Required

§ 654.31 Pre-employment testing.

(a) Prior to the first time a covered employee performs safety-sensitive functions for an employer, the employer shall ensure that the employee undergoes testing for alcohol. No employer shall allow a covered employee to perform safety-sensitive functions, unless the employee has been administered an alcohol test with a result indicating an alcohol concentration less than 0.04. If a pre-employment test result under this section indicates an alcohol concentration of 0.02 or greater but less than 0.04, the provisions of § 654.65 shall apply.

(b) An employer may elect not to administer an alcohol test required by paragraph (a) of this section, if:

(1) The employee has undergone an alcohol test required by this part or the alcohol misuse rule of another DOT agency under part 40 of this title within the previous six months, with a result indicating an alcohol concentration less than 0.04; and

(2) The employer ensures that no prior employer of the covered employee of whom the employer has knowledge has records of a violation of this subpart or the alcohol misuse rule of another DOT agency within the previous six months.

EFFECTIVE DATE NOTE: At 60 FR 24766, May 10, 1995, § 654.31 was suspended indefinitely, effective May 10, 1995.

§ 654.33 Post-accident testing.

(a)(1) *Fatal accidents.* As soon as practicable following an accident involving the loss of human life, an employer shall test each surviving covered employee operating the mass transit vehicle at the time of the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(2) *Nonfatal accidents.* (i) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, the employer shall test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accicent. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

(ii) As soon as practicable following an accident not involving the loss of human life, in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the employer shall test each covered employee operating the mass transit vehicle at the time of the accident unless the employer determines, using the best information available at the time of the decision, that the covered employee's performance can be completely discounted as a contributing factor to the accident. The decision not to administer a test under this paragraph shall be based on the employer's determination, using the best available information at the time of the determination, that the employee's performance could not have contributed to the accident. The employer shall also test any other covered employee whose performance could have contributed to the accident, as determined by the employer using the best information available at the time of the decision.

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

(2) For the years stated in this paragraph, the employer shall submit to

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

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Employee category (do *not* include employee name or other identifying information);

(iv) Reason(s) test could not be completed within 8 hours; and

(v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(c) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the employer or employer representative of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

[59 FR 7549, Feb. 15, 1994, as amended at 59 FR 62240, Dec. 2, 1994; 60 FR 12300, Mar. 6, 1995; 60 FR 39620, Aug. 2, 1995]

§ 654.35 Random testing.

(a) Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing shall be 25 percent of covered employees.

(b) The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the reported violation rate for the entire industry. All information used for this determination is drawn from the alcohol MIS reports required by §654.53. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the FEDERAL REGISTER the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

(c)(1) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §654.53 for two consecutive calendar years indicate that the violation rate is less than 0.5 percent. However, after the initial two years of testing by large transit operators and the initial first year of testing by small transit operators, the Administrator may lower the rate the following calendar year, if the combined violation rate is less than 0.5 percent and is in the interests of safety.

(2) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of §654.53 for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

(d)(1) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of §654.53 for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent, but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(2) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of § 654.53 for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

(e) The selection of employees for random alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

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

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

(h) Each employer shall require that each covered employee who is notified of selection for random alcohol testing proceeds to the test site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

(i) A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(j) If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency for the same employer, the covered employee shall be subject to random alcohol testing at the minimum annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the covered employee's function.

(k) If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may—

(1) Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or

(2) Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

[59 FR 7549, Feb. 15, 1994, as amended at 60 FR 12300, Mar. 6, 1995]

§ 654.37 Reasonable suspicion testing.

(a) An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the prohibitions in this part.

(b) The employer'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.

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

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

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

(i) Type of test (reasonable suspicion/post-accident);

(ii) Triggering event (including date, time, and location);

(iii) Employee category (do *not* include employee name or other identifying information);

(iv) Reason(s) test could not be completed within 8 hours; and

(v) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(3) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an employer shall not permit a covered employee to report for duty or remain on duty requiring the performance of safety-sensitive 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 employer permit the covered employee to perform or continue to perform safety-sensitive functions, until:

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

(ii) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this part.

(4) Except as provided in paragraph (d)(2), no employer shall take any action under this part 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 employer with the authority independent of this part from taking any action otherwise consistent with law.

[59 FR 7549, Feb. 15, 1994, as amended at 59 FR 62240, Dec. 2, 1994]

§ 654.39 Return to duty testing.

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. (See § 654.75)

§ 654.41 Follow-up testing.

(a) Follow-up testing shall be conducted when the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

(b) Following a determination under § 654.75(b) that a covered employee is in

need of assistance in resolving problems associated with alcohol misuse, each employer shall ensure that the employee is subject to unannounced follow-up testing as directed by a substance abuse professional in accordance with the provisions of § 654.75(c)(2)(ii).

§ 654.43 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.

Each employer shall retest a covered employee to ensure compliance with the provisions of § 654.65, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

§ 654.45 Supervisor acting as breath alcohol technician.

An employer shall not permit a direct supervisor of an employee to serve as the breath alcohol technician for an alcohol test of the employee.

[60 FR 12300, Mar. 6, 1995]

Subpart D—Administrative Requirements

§ 654.51 Retention of records.

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

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

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, and employee evaluation and referrals shall be maintained for a minimum of five years. Each employer shall maintain a copy of its annual MIS report(s) for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of EBT's) and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results less than 0.02 shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained.

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process.

(iii) Calibration documentation for evidential breath testing devices.

(iv) Documentation of breath alcohol technician training.

(v) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(vi) Documents generated in connection with decisions on post-accident tests.

(vii) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The employer's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

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

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Copies of annual MIS reports submitted to FTA.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 654.71 of this part.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a

determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this part complies with the requirements for such training.

§ 654.53 Reporting of results in a management information system.

(a) Each recipient shall submit to the FTA Office of Safety and Security by March 15 of each year a report covering the previous calendar year (January through December 31), summarizing the results of its alcohol misuse prevention program.

(b) Each recipient shall ensure the accuracy and timeliness of each report submitted by an employer, consortium, joint enterprise, or by a third party service provider acting on the employer's behalf.

(c) Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of this part shall include the following informational elements:

(1) Number of FTA covered employees by employee category.

(2)(i) Number of screening tests by type of test and employee category.

(ii) Number of confirmation tests, by type of test and employee category.

(3) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test and employee category.

(4) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.

(5) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater.

(6) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions during the reporting period (having complied with the recommendation of a substance abuse professional as described in § 654.75).

(7) Number of fatal and nonfatal accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater.

(9) Number of covered employees who were found to have violated other provisions of subpart B of this part and the action taken in response to the violation.

(10) Number of covered employees who were administered alcohol and drug tests at the same time, with a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(11) Number of covered employees who refused to submit to a random alcohol test required under this part.

(12) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(13) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(14) Identification of FTA funding source(s).

(d) Each report with no screening test results of 0.02 or greater or violations of the alcohol misuse provisions of this part shall include the following informational elements. (This report may only be submitted if the program results meet these criteria.)

(1) Number of FTA covered employees.

(2) Number of alcohol tests conducted with results less than 0.02 by type of test and employee category.

(3) Number of employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in a covered position during the reporting period.

(4) Number of covered employees who refused to submit to a random alcohol test required under this part.

(5) Number of covered employees who refused to submit to a non-random alcohol test required under this part.

(6) Number of supervisors who have received training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(7) Identification of FTA funding source(s).

§ 654.55 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this section, no employer shall release covered employee information that is contained in records required to be maintained under § 654.51.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The 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.

(c) Each employer shall permit access to all facilities utilized in complying with the requirements of this part to the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees or to a State oversight agency authorized to oversee rail fixed guideway systems.

(d) Each employer shall make available copies of all results for employer alcohol testing conducted under this part and any other information pertaining to the employer's alcohol misuse prevention program, when requested by the Secretary of Transportation, or any DOT agency with regulatory authority over the employer or covered employee, or to a State oversight agency authorized to oversee rail fixed guideway systems.

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

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

(g) An employer may disclose information required to be maintained under this part pertaining to a covered employee to the employee or 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 this part, or from the employer's determination that the employee engaged in conduct prohibited by subpart B of this part (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) 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 by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

Subpart E—Consequences for Employees Engaging in Alcohol-related Conduct

§ 654.61 Removal from safety-sensitive function.

Except as provided in subpart F of this part, no employer shall permit any covered employee to perform safety-sensitive functions if the employee has engaged in conduct prohibited by subpart B of this part or an alcohol misuse rule of another DOT agency.

§ 654.63 Required evaluation and testing.

No employer shall permit any covered employee who has engaged in conduct prohibited by subpart B of this part to perform safety-sensitive functions unless the employee has met the requirements of § 654.75.

§ 654.65 Other alcohol-related conduct.

(a) No employer shall permit a covered employee tested under the provisions of subpart C of this part who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 to perform or continue to perform safety-sensitive functions, until:

(1) The employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but

not less than eight hours following administration of the test.

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

Subpart F—Alcohol Misuse Information, Training, and Referral

§ 654.71 Employer obligation to promulgate a policy on the misuse of alcohol.

(a) *General requirements.* Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting those requirements. The policy shall be adopted by the employer's governing board.

(1) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under this section of the employer's alcohol misuse prevention program and to each person subsequently hired or transferred to a covered position.

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

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

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

(2) The categories of employees who are subject to the provisions of this part.

(3) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this part.

(4) Specific information concerning employee conduct that is prohibited by this part.

(5) The circumstances under which a covered employee will be tested for alcohol under this part.

(6) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this part.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions imposed under subpart B, including the requirement that the employee be removed immediately from safety-sensitive functions, and the procedures under § 654.75 of this part.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of intervening when an alcohol problem is suspected, including confrontation, referral to any available EAP, and/or referral to management.

(c) *Optional provisions.* The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol concentration, that are based on the employer's authority independent of this part. Any such additional policies or consequences shall be clearly and obviously described as being based on independent authority.

§ 654.73 Training for supervisors.

Every employer shall ensure that supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 654.37 receive at

least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

§ 654.75 Referral, evaluation, and treatment.

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

(b) Each covered employee who engages in conduct prohibited under subpart B shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by subpart B of this part, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. In addition, the substance abuse professional may recommend that the employee be subject to a return to duty drug test, performed in accordance with 49 CFR part 40.

(2) In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse:

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

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

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

(e) The employer shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice from which the substance abuse professional receives remuneration or to a person or organization in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through—

(1) A public agency, such as a State, county, or municipality;

(2) The employer or a person under contract to provide treatment for alcohol problems on behalf of the employer;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

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

Subpart G—Compliance

§ 654.81 Compliance a condition of FTA financial assistance.

(a) *General.* A recipient may not be eligible for Federal financial assistance under section 3, 9, or 18 of the Federal Transit Act, as amended, or under section 103(e)(4) of title 23 of the United States Code if a recipient fails to establish and implement an alcohol misuse prevention program as required by this part. Failure to certify compliance with these requirements, as specified in § 654.83, will result in the suspension of a grantee's eligibility for Federal funding.

(b) *Criminal violation.* A recipient is subject to criminal sanctions and fines for false statements or misrepresentations under § 1001 of title 18 of the United States Code.

(c) *State's role.* Each State shall certify compliance on behalf of its section 3, 9 or 18 subrecipients, as applicable, whose grant the State administers. In so certifying, the State shall ensure that each subrecipient is complying with the requirements of this part. A section 3, 9 or 18 subrecipient, through the administering State, is subject to suspension of funding from the State if such subrecipient is not in compliance with this part.

§ 654.83 Requirement to certify compliance.

(a) A recipient of FTA financial assistance shall certify annually to the applicable FTA Regional Office compliance with the requirements of this part, including the training requirements. Large operators shall certify compliance initially by January 1, 1995. Small operators and States shall certify compliance initially by January 1, 1996.

(b) A certification must be authorized by the organization's governing board or other authorizing official, and must be signed by a party specifically authorized to do so. A certification must comply with the applicable sample certification provided in appendix A to this part.

APPENDIX A TO PART 654—[RESERVED]

APPENDIX B TO PART 654 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the alcohol testing information in the Federal Transit Administration (FTA) Alcohol Testing MIS Data Collection Form. These instructions outline and explain the information requested and indicate the probable sources for this information. A sample testing results table with a narrative explanation is provided on pages iii-iv as an example to facilitate the process of completing the form correctly.

This reporting form includes six sections. Collectively, these sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations. The six sections, the page number for the instructions, and the page location on the reporting form are:

Section	Instructions Page	Reporting Form Page
A. EMPLOYER INFORMATION	i	1
B. COVERED EMPLOYEES	i	2
C. ALCOHOL TESTING INFORMATION	ii-iv	3-4
D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION	v	5
E. ALCOHOL TRAINING/EDUCATION	v	5
F. FTA FUNDING SOURCES	v	5

Page 1 **EMPLOYER INFORMATION** (Section A) requires the year covered by this report, the agency name for which the report is done, a current address, a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

Page 2 **COVERED EMPLOYEES** (Section B) requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the

recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

Page 3

ALCOHOL TESTING INFORMATION (Section C) requires information for alcohol testing by category of testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Each part of this table must be completed for each category of testing. These categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. These numbers **do not** include refusals for testing. A sample section of the table with example numbers is presented on page iv.

Four types of information are necessary to complete this table. The first blank column with the heading **"NUMBER OF SCREENING TESTS,"** requires a count for all screening tests conducted for each employee category. The second blank column with the heading **"NUMBER OF CONFIRMATION TESTS,"** requires a count for all confirmation alcohol tests performed for each employee category.

The third blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO 0.02, BUT LESS THAN 0.04,"** requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.02, but less than 0.04.

The fourth blank column with the heading **"NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04,"** requires a count for each employee category of completed alcohol tests that resulted in an alcohol concentration equal to or greater than 0.04. **Note: For return to duty testing, a confirmation result equal to or greater than 0.02 is a violation of the alcohol rule. Therefore, if the number of results equal to or greater than 0.04 is unknown, you may report all results in the third column of the table.**

Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

A sample table is provided on page iv with example numbers.

Page 3

Below the part of the table containing pre-employment testing information are three boxes. This information should be available from the safety program manager or the alcohol program manager.

1) **"Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater".** This is a count of those persons who were not placed in a covered position because they took a breath test that resulted in an alcohol concentration of 0.04 or higher.

2) **"Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater".** This is a count of fatal and non-fatal accidents which resulted in post-accident breath alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the accident.

3) **"Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater".** This is a count of fatalities in accidents which resulted in post-accident alcohol tests indicating a concentration of 0.04 or greater for any employees involved in the fatal accidents.

Page 4 Following the table that summarizes **ALCOHOL TESTING INFORMATION,** you must provide the **number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations).** This information should be available from the personnel office and/or alcohol program manager.

SAMPLE APPLICANT TEST RESULTS TABLE

The following example is for Section C, **ALCOHOL TESTING INFORMATION,** which summarizes pre-employment testing results. The procedures detailed here also apply to the other categories of testing in Section C which require you to summarize testing results for employees. This example uses the categories "Revenue Vehicle Operation" and "Armed Security Personnel" to illustrate the procedures for completing this section.

A Screening tests were performed on 157 job applicants for revenue vehicle operator positions during the reporting year. This information is entered in the first blank column of the table in the row marked "Revenue Vehicle Operation".

B Confirmation tests were necessary for 6 of the 157 applicants for revenue vehicle operator positions. Enter this information in the second blank column of the table in the row marked "Revenue Vehicle Operation". The confirmation test results for these 6 applicants were the following:

Applicant	Confirmation Result
#1	0.06
#2	0.01
#3	0.11
#4	0.04
#5	0.03
#6	0.02

C The confirmation test results for 2 of the applicants for revenue vehicle operator positions were equal to or greater than 0.02, but less than 0.04. Enter this information in the fourth blank column of the table in the row marked "Revenue Vehicle Operation".

D The confirmation test results for 3 of the applicants for revenue vehicle operator positions were equal to or greater than 0.04. Enter this information in the third blank column of the table in the row marked "Revenue Vehicle Operation".

E The last row, marked "TOTAL", requires you to add the numbers in each of the columns. With this example, 157 applicants for revenue vehicle operator positions and 107 applicants for armed security personnel positions were subjected to screening tests. The total for that column would be 264 (i.e., 157+107). The same procedure should be used for each column. (i.e., add all the numbers in that column and place the answer in the last row).

Please note that our sample data collection form also has information for armed security personnel on line two. The same procedures outlined for revenue vehicle operators should be followed for entering the data on armed security personnel. With applicants for armed security personnel positions, 107 screening tests were conducted resulting in 3 confirmation tests. No confirmation results were equal to or greater than 0.02, but less than 0.04; and the confirmation test result for 1 of the armed security personnel applicants was equal to or greater than 0.04. This information is entered in the row marked "Armed Security Personnel".

PRE-EMPLOYMENT				
EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
Revenue Vehicle Operation	157	5	2	3
Armed Security Personnel	107	3	0	1
TOTAL	264	8	2	4

A B C D E

Note that adding up the numbers for confirmation results in columns three and four will not always match the number entered in the second column, "NUMBER OF CONFIRMATION TESTS". These numbers may differ since some confirmation test results may be less than 0.02.

Remember that the same procedures indicated above are to be used for completing all of the categories for testing in Section C.

Page 5 **OTHER ALCOHOL TESTING/PROGRAM INFORMATION** (Section D) requires information on employees tested for drugs and alcohol at the same time and that you complete a table dealing with violations of other alcohol provisions/prohibitions of the regulation and a table dealing with employees who refused to submit to an alcohol test.

Page 5 **Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater,** requires that a count of all such employees be entered in the indicated box.

Page 5 **VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION** requires supplying the number of covered employees who used alcohol prior to performing a safety-sensitive function, while performing a safety-sensitive function, and before taking a required post-accident alcohol test. The action taken with covered employees who violate any of these FTA alcohol regulation provisions is also to be supplied. Other violations not delineated in this table may also be provided.

Page 5 **EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST** requires information on the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

Page 5 **ALCOHOL TRAINING/EDUCATION** (Section E) requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

Page 5 **FTA FUNDING SOURCES** (Section F) asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS DATA COLLECTION FORM OMB No. 2132-0557

YEAR COVERED BY THIS REPORT: 19___

A: EMPLOYER INFORMATION

Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on this Federal Transit Administration Alcohol Testing Management Information System Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____

Signature Date of Signature

_____

Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

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B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

READ BEFORE COMPLETING THE REMAINDER OF THIS FORM:

1. All items refer to the current reporting period only (for example, January 1, 1994 - December 31, 1994).

2. This report is only for testing REQUIRED BY THE FEDERAL TRANSIT ADMINISTRATION (FTA) AND THE U.S. DEPARTMENT OF TRANSPORTATION (DOT):

   - Results should be reported only for employees in COVERED POSITIONS as defined by the FTA alcohol testing regulation.
   - The information requested should only include testing for alcohol using the standard procedures required by DOT regulation 49 CFR Part 40.

3. Information on refusals for testing should only be reported in Section D ["OTHER ALCOHOL TESTING INFORMATION"]. Do not include refusals for testing in other sections of this report.

4. Complete all items; DO NOT LEAVE ANY ITEM BLANK. If the value for an item is zero (0), place a zero (0) on the form.

C. ALCOHOL TESTING INFORMATION

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
PRE-EMPLOYMENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RANDOM				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
POST-ACCIDENT				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater:		
Number of accidents, as defined by the FTA alcohol testing regulation, which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:	FATAL	NON-FATAL
Number of fatalities resulting from accidents which resulted in a post-accident alcohol test indicating an alcohol concentration of 0.04 or greater:		

C. ALCOHOL TESTING INFORMATION (cont.)

EMPLOYEE CATEGORY	NUMBER OF SCREENING TESTS	NUMBER OF CONFIRMATION TESTS	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.02, BUT LESS THAN 0.04	NUMBER OF CONFIRMATION TEST RESULTS EQUAL TO OR GREATER THAN 0.04
REASONABLE SUSPICION				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
RETURN TO DUTY				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				
FOLLOW-UP				
Revenue Vehicle Operation				
Revenue Vehicle and Equipment Maintenance				
Revenue Vehicle Control/Dispatch				
CDL/Non-Revenue Vehicle				
Armed Security Personnel				
Total				

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position during this reporting period (having complied with the recommendations of a substance abuse professional as described in FTA regulations):	

D. OTHER ALCOHOL TESTING/PROGRAM INFORMATION

Number of employees administered drug and alcohol tests at the same time resulting in a verified positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater:	

VIOLATIONS OF OTHER ALCOHOL PROVISIONS/PROHIBITIONS OF THIS REGULATION		
NUMBER OF COVERED EMPLOYEES	VIOLATION	ACTION TAKEN
	Covered employee used alcohol while performing safety-sensitive function.	
	Covered employee used alcohol within 4 hours of performing safety-sensitive function.	
	Covered employee used alcohol before taking a required post-accident alcohol test.	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	

E. ALCOHOL TRAINING/EDUCATION

TRAINING DURING CURRENT REPORTING PERIOD	Number
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

F. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3 ___	9 ___	16(b)(2) ___	18 ___

APPENDIX C TO PART 654 - ALCOHOL TESTING MANAGEMENT INFORMATION SYSTEM (MIS) "EZ" DATA COLLECTION FORM

INSTRUCTIONS

The following instructions are to be used as a guide for completing the Federal Transit Administration (FTA) **Alcohol Testing MIS "EZ" Data Collection Form**. This form should only be used if there is **no alcohol misuse** to be reported by your company. These instructions outline and explain the information requested and indicate the probable sources for this information. This reporting form includes four sections. These sections address the data elements required in the FTA and the U.S. Department of Transportation (DOT) alcohol testing regulations.

SECTION A - EMPLOYER INFORMATION requires the year covered by this report, the agency name for which the report is done, a current address, and a person's name and phone number to contact if there are any questions about the report. Below this, information must be entered for the consortium used (if applicable). Finally, a signature, title, and date are required certifying the correctness and completeness of the form. Note: A separate report must be submitted by each FTA recipient for each of its contract service and contract maintenance providers covered by the FTA alcohol testing regulation.

SECTION B - COVERED EMPLOYEES requires a count for each employee category that must be tested under the FTA alcohol testing regulation. The employee categories are: Revenue Service Vehicle Operation, Revenue Service Vehicle and Equipment Maintenance, Revenue Service Vehicle Control/Dispatch, Commercial Driver License (CDL) Holders who operate Non-Revenue Service Vehicles, and Security Personnel who carry Firearms. The most likely source for this information is the employer's personnel department. These counts should be based on the recipient's or contractor's records for the reported year. The **TOTAL** is a count of **all** covered employees for **all** categories combined, i.e., the sum of the columns.

SECTION C - ALCOHOL TESTING INFORMATION requires information for alcohol testing, refusals for testing, and training/education. The first table requests information on the **NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED** in each category for testing. All numbers entered into the pre-employment category section of the table should be separated into the category of employment for which the person was applying or transferring. The other categories are for employee testing and require information for employees in **covered positions** only. Enter the number of alcohol screening tests conducted by employee category for each category of testing. Testing categories include: (1) random, (2) post-accident, (3) reasonable suspicion, (4) return to duty, and (5) follow-up testing. Each column in the table should be added and the answer entered in the row marked **"TOTAL"**.

Following the table that summarizes **ALCOHOL TESTING INFORMATION**, you must provide a count of **employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation)**. This information should be available from the personnel office and/or alcohol program manager.

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST requires a count of the **NUMBER OF COVERED EMPLOYEES** who refused to submit to a **random** or **non-random** (pre-

employment, post-accident, reasonable suspicion, return to duty, or follow-up) alcohol test required under the FTA regulation.

ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD requires information on the number of supervisory personnel who have received alcohol training during the current reporting period.

SECTION D - FTA FUNDING SOURCES asks for the sources of FTA funds for your organization. Simply place a check mark by each applicable funding section.

For FTA Use Only

FTA ALCOHOL TESTING MIS "EZ" DATA COLLECTION FORM OMB No. 2132-0557
(No Alcohol Misuse)

YEAR COVERED BY THIS REPORT: 19__

A. EMPLOYER INFORMATION

Company Name _____

Address _____

_____

Contact _____

Phone _____

Consortium Used (if applicable)

Name _____

Address _____

_____

Contact _____

Phone _____

I, the undersigned, certify that the information provided on the attached Federal Transit Administration Alcohol Testing Management Information System "EZ" Data Collection Form is, to the best of my knowledge and belief, true, correct, and complete for the period stated.

_____ _____
Signature Date of Signature

_____
Title

Title 18, U.S.C. Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

The Federal Transit Administration estimates that the average burden for this report form is 8 hours. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to: Office of Safety and Security (TTS-3); Federal Transit Administration; 400 7th St., S.W.; Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project (2132-0557); Washington, D.C. 20503.

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B. COVERED EMPLOYEES

COVERED EMPLOYEES	
EMPLOYEE CATEGORY	NUMBER OF FTA COVERED EMPLOYEES
Revenue Vehicle Operation	
Revenue Vehicle and Equipment Maintenance	
Revenue Vehicle Control/Dispatch	
CDL/Non-Revenue Vehicle	
Armed Security Personnel	
TOTAL	

C. ALCOHOL TESTING INFORMATION

NUMBER OF ALCOHOL SCREENING TESTS CONDUCTED						
EMPLOYEE CATEGORY	PRE-EMPLOYMENT	RANDOM	POST-ACCIDENT	REASONABLE SUSPICION	RETURN TO DUTY	FOLLOW-UP
Revenue Vehicle Operation						
Revenue Vehicle and Equipment Maintenance						
Revenue Vehicle Control/Dispatch						
CDL/Non-Revenue Vehicle						
Armed Security Personnel						
Total						

Number of employees who engaged in alcohol misuse who were returned to duty in a covered position (having complied with the recommendations of a substance abuse professional as described in the FTA regulation):	

EMPLOYEES WHO REFUSED TO SUBMIT TO AN ALCOHOL TEST	Number
Covered employees who refused to submit to a random alcohol test required under the FTA regulation:	
Covered employees who refused to submit to a non-random alcohol test required under the FTA regulation:	
ALCOHOL TRAINING/EDUCATION DURING CURRENT REPORTING PERIOD	**Number**
Supervisory personnel who have received at least 60 minutes of initial training on the specific contemporaneous physical, behavioral, and performance indicators of probable alcohol use as required by FTA alcohol testing regulations:	

D. FTA FUNDING SOURCES

FTA FUNDING SOURCES				
Check all sections that apply:	3 ___	9 ___	16(b)(2) ___	18 ___

49 CFR PART 40
PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG TESTING PROGRAMS

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

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.

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 - 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.

Subpart D - Non-Evidential Alcohol Screening Tests
40.91 Authorization for use of non-evidential alcohol screening devices.
40.93 The screening test technician.
40.95 Quality assurance plans for non-evidential screening devices.
40.97 Locations for non-evidential alcohol screening tests.
40.99 Testing forms.
40.101 Screening test procedure.
40.103 Refusals to test and uncompleted tests.
40.105 Inability to provide an adequate amount of breath or saliva.
40.107 Invalid tests.
40.109 Availability and disclosure of alcohol testing. information about individual employees.
40.111 Maintenance and disclosure of records concerning non-evidential testing devices and STTs.

APPENDIX A TO PART 40 - FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM
APPENDIX B TO PART 40 - THE BREATH ALCOHOL TESTING FORM

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, 45101-45106.

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' officers, 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.
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 instructs 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 confirmatory) 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 that uses a different technique 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 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), and identified on the CPL as conforming with the model specifications available from the National Highway Traffic Safety Administration, Office of Alcohol and State Programs.

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.

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.

Substance abuse professional. A licensed physician (Medical Doctor or Doctor of Osteopathy); or a licensed or certified psychologist, social worker, or employee assistance professional; or an addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

40.5-40.19 [Reserved]

Subpart B - Drug Testing

40.21 The drugs.

(a) DOT agency drug testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine.

(b) An employer may include in its testing protocols other controlled substances or alcohol only pursuant to a DOT agency approval, if testing for those substances is authorized under agency regulations and if the DHHS has established an approved testing protocol and positive threshold for each such substance.

(c) Urine specimens collected under DOT agency regulations requiring compliance with this part may only be used to test for controlled substances designated or approved for testing as described in this section and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT agency regulations.

(d) This section does not prohibit procedures reasonably incident to analysis of the specimen for controlled substances (e.g., determination of pH or tests for specific gravity, creatinine concentration or presence of adulterants).

40.23 Preparation for testing.

The employer and certified laboratory shall develop and maintain a clear and well-documented procedure for collection, shipment, and accessioning of urine specimens under this part. Such a procedure shall include, at a minimum, the following:

(a)(1) Except as provided in paragraph (a)(2) of this section, use of the drug testing form prescribed under this part.

(i) This form is found in Appendix A to this part.

(ii) Employers and other participants in the DOT drug testing program may not modify or revise this form, except that the drug testing custody and control form may include such additional information as may be required for billing or other legitimate purposes necessary to the collection, provided that personal identifying information on the donor (other than the social security number or other employee ID number) may not be provided to the laboratory.

(iii) Donor medical information may appear only on the copy provided the donor.

(2) Notwithstanding the requirement of paragraph (a)(1)(ii) of this section, employers and other participants may use existing forms that were in use in the DOT drug testing program prior to February 16, 1995, until June 1, 1995.

(3) Appendix A to part 40 is amended by revising the Federal Drug Testing Custody and Control Form, Copy 1, to read as follows: Appendix A to Part 40-Federal Drug Testing Custody and Control Form

(b)(1) Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen. A clean, single-use collection container (e.g., disposable cup or sterile urinal) that is securely wrapped until used may also be employed. If urination is directly into the specimen bottle, the specimen bottle shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided. If a separate collection container is used for urination, the collection container shall be provided to the employee still sealed in its wrapper or shall be unwrapped in the employee's presence immediately prior to its being provided; and the collection site person shall unwrap the specimen bottle in the presence of the employee at the time the urine specimen is presented.

(2) Use of a tamperproof sealing system, designed in a manner such to ensure against undetected opening. The specimen bottle shall be identified with a unique identifying number identical to that appearing on the urine custody and control form, and space shall be provided to initial the bottle affirming its identity. For purposes of clarity, this part assumes use of a system made up of one or more preprinted labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which the specimen and associated paperwork may be transferred and which can be sealed and initialed to prevent undetected tampering. In the split specimen option is exercised, the split specimen and associated paperwork shall be sealed in a shipping (or storage) container and initialed to prevent undetected tampering.

(d) Written procedures, instructions and training shall be provided as follows:

(1) Employer collection procedures and training shall clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the donor, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required in this part

(i) A non-medical collection site person shall receive training in compliance with this part and shall demonstrate proficiency in the application of this part prior to serving as a collection site person. A medical professional, technologist or technician licensed or otherwise approved to practice in the jurisdiction in which the collection takes place is not required to receive such training if that person is provided instructions described in this part and performs collections in accordance with those instructions.

(ii) Collection site persons shall be provided

with detailed, clear instructions on the collection of specimens in compliance with this part. Employer representatives and donors subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(3) Unless it is impracticable for any other individual to perform this function, a direct supervisor of an employee shall not serve as the collection site person for a test of the employee.

If the rules of a DOT agency are more stringent than this provision regarding the use of supervisors as collection site personnel, the DOT agency rules shall prevail with respect to testing to which they apply.

(4) In any case where a collection is monitored by non-medical personnel or is directly observed, the collection site person shall be of the same gender as the donor. A collection is monitored for this purpose if the enclosure provides less than complete privacy for the donor (e.g., if a restroom stall is used and the collection site person remains in the restroom, or if the collection site person is expected to listen for use of unsecured sources of water.)

40.25 Specimen collection procedures.

(a) Designation of collection site.

(1) Each employer drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a certified drug testing laboratory. An independent medical facility may also be utilized as a collection site provided the other applicable requirements of this part are met.

(2) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this part, including a properly equipped mobile facility. A designated collection site shall be a location having an enclosure within which private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(b) Security. The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen.

(1) Procedures shall provide for the designated collection site to be secure. If a collection site facility is dedicated solely to urine collection, it shall be secure at all times. If a facility cannot be dedicated solely to drug testing, the portion of the facility used for testing shall be secured during drug testing.

(2) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present and undetected access (e.g., through a rear door not in the view of the collection site person) is not possible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the employee or distraction of the collection site person.

(3) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed mailer is transferred for shipment, the following minimum procedures shall apply. The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in the mailer. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person.

(c) Chain of Custody. The chain of custody block of the drug testing custody and control form shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain of custody procedures. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site. Every effort shall be made to minimize the number of persons handling specimens.

(d) Access to authorized personnel only. No unauthorized personnel shall be permitted in any part of the designated collection site where urine specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the

collection site person and ensure against any confusion in the identification of specimens, the collection site person shall have only one donor under his or her supervision at any time. For this purpose, a collection procedure is complete when the urine bottle has been sealed and initialed, the drug testing custody and control form has been executed, and the employee has departed the site (or, in the case of an employee who was unable to provide a complete specimen, has entered a waiting area).

(e) Privacy.

(1) Procedures for collecting urine specimens shall allow individual privacy unless there is a reason to believe that a particular individual may alter or substitute the specimen to be provided, as further described in this paragraph.

(2) For purposes of this part, the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute the specimen:

(i) The employee has presented a urine specimen that falls outside the normal temperature range (32-38 C/90-100F), and

(A) The employee declines to provide a measurement of body temperature (taken by a means other then the use of a rectal thermometer), as provided in paragraph (f)(14) of the part; or

(B) Body temperature varies by more than 1C/1.8F from the temperature of the specimen;

(ii) The last urine specimen provided by the employee (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2g/L;

(iii) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.); or

(iv) The employee has previously been determined to have used a controlled substance without medical authorization and the particular test was being conducted under a DOT agency regulation providing for follow-up testing upon or after return to service.

(3) A higher-level supervisor of the collection site person, or a designated employer representative, shall review and concur in advance with any decision by a collection site person to obtain a specimen under the direct observation of a same gender collection site person based upon the circumstances described in subparagraph (2) of this paragraph.

(f) Integrity and identity of specimen. Employers shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the urine custody and control form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

(1) To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. Where practicable, there shall be no other source of water (e.g., shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure it shall be effectively secured or monitored to ensure it is not used as a source for diluting the specimen.

(2) When an individual arrives at the collection site, the collection site person shall ensure that the individual is positively identified as the employee selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity cannot be established, the collection site person shall not proceed with the collection. If the employee requests, the collection site person shall show his/her identification to the employee.

(3) If the individual fails to arrive at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests it, the collection site personnel shall provide the employee a receipt for any personal belongings.

(5) The individual shall be instructed to wash and dry his or her hands prior to urination.

(6) After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.

(7) The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection site person shall provide the individual with a specimen bottle or collection container, if applicable, for this purpose.

(8) The collection site person shall note any unusual behavior or appearance on the urine custody and control form.

(9) In the exceptional event that an employer-designated collection site is not accessible and there is an immediate requirement for specimen collection (e.g., circumstances require a post-accident test), a public rest room may be used according to the following procedures: A collection site person of the same gender as the individ-

ual shall accompany the individual into the public rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain of custody procedures.

(10) 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.

(B) Employers with employees subject to drug testing under the drug testing rules of the Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, or Federal Aviation Administration shall use the "split sample" method of collection for those employees.

(ii) Employers using the split sample method of collection shall follow the procedures in this paragraph (f)(10)(ii):

(A) The donor shall urinate into a collection container or a specimen bottle capable of holding at least 60 ml.

(B)(1) If a collection container is used, the collection site person, in the presence of the donor, pours the urine into two specimen bottles. Thirty (30) ml shall be poured into one specimen bottle, to be used as the primary specimen. At least 15 ml shall be poured into the other bottle, to be used as the split specimen.

(2) If a single specimen bottle is used as a collection container, the collection site person, in the presence of the donor, shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).

(C) Nothing in this section precludes the use of a collection method or system that does not involve the physical pouring of urine from one container or bottle to another by the collection site person, provided that the method or system results in the subdivision of the specimen into a primary (30 ml) and a split (at least 15 ml) specimen that can be transmitted to the laboratory and tested in accordance with the requirements of this Subpart.

(D) Both bottles shall be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the chain of custody form, to the laboratory.

(E) If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.

(F) When the MRO informs the laboratory in writing that the employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the chain of custody form with appropriate chain of custody entries.

(G) The result of the test of the split specimen is transmitted by the second laboratory to the MRO.

(H) Action required by DOT agency regulations as the result of a positive drug test (e.g., removal from performing a safety sensitive function) is not stayed pending the result of the test of the split specimen.

(I) If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test, and report the cancellation and the reasons for it to the DOT, the employer, and the employee.

(iii) Employers using the single sample collection method shall follow the procedures in paragraph:

(A) The collector may choose to direct the employee to urinate either directly into a specimen bottle or into a separate collection container.

(B) If a separate collection container is used, the collection site person shall pour at least 30 ml of the urine from the collection container into the specimen bottle in the presence of the employee.

(iv)(A)(1) In either collection methodology, upon receiving the specimen from the individual, the collection site person shall determine if the specimen has at least 30 milliliters of urine for a single specimen collection or 45 milliliters of urine for a split specimen collection.

(2) If the individual has not provided the required quantity of urine, the specimen will be discarded. The collection site person shall direct the individual to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a new urine specimen, whichever occurs first. If the employee refuses to drink fluids as directed or to provide a new urine specimen, the collection site person shall terminate the collection and notify the employer

that the employee has refused to submit to testing.

(3) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide a specimen, the collection site person shall discontinue the collection and notify the employer.

(B) The employer shall direct any employee who does not provide a sufficient urine specimen (see paragraph (f)(10)(iv)(A)(3) of this section) to obtain, as soon as possible after the attempted provision of urine, an evaluation from a licensed physician who is acceptable to the employer concerning the employee's ability to provide an adequate amount of urine.

(1) If the physicians 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 urine, the employee's failure to provide an adequate amount of urine shall not be deemed a refusal to take a test. For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a documented preexisting psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration. The physician shall provide to the MRO a brief written statement setting forth his or her conclusion and the basis for it, which shall not include detailed information on the medical condition of the employee. Upon receipt of this statement, the MRO shall report his or her conclusions to the employer in writing.

(2) If the physician, in his or her reasonable medical judgment, is unable to make the determination set forth in paragraph (f)(10)(iv)(B)(1) of this section, the employee's failure to provide an adequate amount of urine shall be regarded as a refusal to take a test. The physician shall provide to the MRO a brief written statement setting forth his or her conclusion and the basis for it, which shall not include detailed information on the medical condition of the employee. Upon receipt of this statement, the MRO shall report his or her conclusion to the employer in writing.

(11) After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(12) Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

(13) A specimen temperature outside the range of 32-38 C/90 100 F constitutes a reason to believe that the individual has altered or substituted the specimen (see paragraph (e)(2)(i) of this section). In such cases, the individual supplying the specimen may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen.

(14) Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the urine custody and control form.

(15) All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.

(16) Whenever there is reason to believe that a particular individual has altered or substituted the specimen as described in paragraph (e)(2) (i) or (iii) of this section, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.

(17) Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. As provided below, the specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the employee. If the specimen is transferred to a second bottle, the collection site person shall request the individual to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.

(18) The collection site person and the individual being tested shall be present at the same time during procedures outlined in paragraphs (f)(19)-(f)(22) of this section.

(19) The collection site person shall place securely on the bottle an identification label which contains the date, the individual's specimen number, and any other identifying information provided or required by the employer. If separate from the label, the tamperproof seal shall also be applied.

(20) The individual shall initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.

(21) The collection site person shall enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the drug testing custody and control form certifying that the collection was accomplished according to the applicable Federal requirements.

(22)(i) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided.

(ii) When specified by DOT agency regulation or required by the collection site (other than an employer site) or by the laboratory, the employee may be required to sign a consent or release form authorizing the collec-

tion of the specimen, analysis of the specimen for designated controlled substances, and release of the results to the employer. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others.

(23) The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the employee and shall certify proper completion of the collection.

(24) The urine specimen and chain of custody form are now ready for shipment. If the specimen is not immediately prepared for shipment, the collection site person shall ensure that it is appropriately safeguarded during temporary storage.

(25)(i) While any part of the above chain of custody procedures is being performed, it is essential that the urine specimen and custody documents be under the control of the involved collection site person. If the involved collection site person leaves his or her work station momentarily, the collection site person shall take the specimen and drug testing custody and control form with him or her or shall secure them. After the collection site person returns to the work station, the custody process will continue. If the collection site person is leaving for an extended period of time, he or she shall package the specimen for mailing before leaving the site.

(ii) The collection site person shall not leave the collection site in the interval between presentation of the specimen by the employee and securement of the sample with an identifying label bearing the employee's specimen identification number (shown on the urine custody and control form) and seal initialed by the employee. If it becomes necessary for the collection site person to leave the site during this interval, the collection shall be nullified and (at the election of the employer) a new collection begun.

(g) Collection control. To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has urinated. After the specimen is collected, it shall be properly sealed and labeled.

(h) Transportation to Laboratory. Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers); and those containers shall be securely sealed to eliminate the possibility of undetected tampering with the specimen and/or the form. On the tape sealing the shipping container, the collection site person shall sign and enter the date specimens were sealed in the shipping container for shipment. The collection site person shall ensure that the chain of custody documentation is enclosed in each container sealed for shipment to the drug testing laboratory. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel.
This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site.

(i) Failure to cooperate. If the employee refuses to cooperate with the collection process, the collection site person shall inform the employer representative and shall document the non-cooperation on the drug testing custody and control form.

(j) Employee requiring medical attention. If the sample is being collected from an employee in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.

(k) Use of chain of custody form. A chain of custody form (and a laboratory internal chain of custody document, where applicable), shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain of custody shall be identified. Since specimens and documentation are sealed in shipping containers that would indicate any tampering during transit to the laboratory and couriers, express carriers, and postal service personnel do not have access to the chain of custody forms, there is no requirement that such personnel document chain of custody for the shipping container during transit. Nor is there a requirement that there be a chain of custody entry when a specimen which is sealed in such a shipping container is put into or taken out of secure storage at the collection site prior to pickup by such personnel. This means that the chain of custody is not broken, and a test shall not be canceled, because couriers, express carriers, postal service personnel, or similar persons involved solely with the transportation of

a specimen to a laboratory, have not documented their participation in the chain of custody documentation or because the chain of custody does not contain entries related to putting the specimen into or removing it from secure temporary storage at the collection site. Every effort shall be made to minimize the number of persons handling specimens.

40.27 Laboratory personnel.

(a) Day-to-day management.

(1) The laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratory's urine drug testing facility.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by a State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in paragraph (a)(2) (i), (ii), or (iii) of this section, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse, and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the drug testing laboratory even where another individual has overall responsibility for an entire multi-specialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of the drug testing laboratory. He or she shall assure the continued competency of laboratory personnel by documenting their in-service training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the drug testing laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents of the procedure manual are described in 40.29(n)(1).)

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that sample results are not reported until all corrective actions have been taken and he or she can assure that the tests results provided are accurate and reliable.

(b) Test validation. The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) Day-to-day operations and supervision of analysts. The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain of custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) Other personnel. Other technicians or non-technical staff shall have the necessary training and skills for the tasks assigned.

(e) Training. The laboratory's urine drug testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) Files. Laboratory personnel files shall include: resume of training and experience, certification or license if any; references; job descriptions; records of

performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

40.29 Laboratory analysis procedures.

(a) Security and chain of custody.

(1) Drug testing laboratories shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory process or to areas where records are store. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. With the exception of personnel authorized to conduct inspections on behalf of Federal agencies for which the laboratory is engaged in urine testing or on behalf of DHHS, all authorized visitors and maintenance and service personnel shall be escorted at all times. Documentation of individuals accessing these areas, dates, and time of entry and purpose of entry must be maintained.

(2) Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.

(b) Receiving.

(1)(i) When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the employer's chain of custody forms attached to the shipment shall be immediately reported to the employer and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession.

(ii) Where the employer has used the split sample method, and the laboratory observes that the split specimen is untestable, inadequate, or unavailable for testing, the laboratory shall nevertheless test the primary specimen. The laboratory does not inform the MRO or the employer of the untestability, inadequacy, or unavailability of the split specimen until and unless the primary specimen is a verified positive test and the MRO has informed the laboratory that the employee has requested a test of the split specimen.

(2) In situations where the employer uses the split sample collection method, the laboratory shall log in the split specimen, with the split specimen bottle seal remaining intact. The laboratory shall store this sample securely (see paragraph (c) of this section). If the result of the test of the primary specimen is negative, the laboratory may discard the split specimen. If the result of the test of the primary specimen is positive, the laboratory shall retain the split specimen in frozen storage for 60 days from the date on which the laboratory acquires it (see paragraph (h) of this section). Following the end of the 60-day period, if not informed by the MRO that the employee has requested a test of the split specimen, the laboratory may discard the split specimen.

(3) When directed in writing by the MRO to forward the split specimen to another DHHS-certified laboratory for analysis, the second laboratory shall analyze the split specimen by GC/MS to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen. Such GC/MS confirmation shall be conducted without regard to the cutoff levels of 40.29(f). The split specimen shall be retained in long-term storage for one year by the laboratory conducting the analysis of the split specimen (or longer if litigation concerning the test is pending).

(c) Short-term refrigerated storage. Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6C. Emergency power equipment shall be available in case of prolonged power failure.

(d) Specimen processing. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.

(e) Initial test.

(1) The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs:

Initial test	cutoff levels (ng/ml)
Marijuana metabolites	50
Cocaine metabolites	300

Opiate metabolites	* 2,000
Phencyclidine	25
Amphetamines	1,000

*-25 ng/ml if immunoassay specific for free morphine.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(f) Confirmatory test.

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

Confirmatory test	cutoff levels (ng/ml)
Marijuana metabolite{1}	15
Cocaine metabolite{2}	150
Opiates:	
Morphine	2,000
Codeine	2,000
Phencyclidine	25
6-Acetylmorphine {4}	10mg\mL*
Amphetamines:	
Amphetamine	500
Methamphetamine{3}	500

{1} Delta-9-tetrahydrocannabinol-9-carboxylic acid.

{2} Benzoylecgonine.

{3} Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

{4} Test for 6AM when the morphine concentration exceeds 2,000ng/mL.

(2) These cutoff levels are subject to change by the Department of Health and Human Services as advances in technology or other considerations warrant identification of these substances at other concentrations.

(g) Reporting results.

(1) The laboratory shall report test results to the employer's Medical Review Officer within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the employer, and the drug testing laboratory specimen identification number (accession number).

(2) The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug.

(3) The Medical Review Officer may request from the laboratory and the laboratory shall provide quantitation of test results. The MRO shall report whether the test is positive or negative, and may report the drug(s) for which there was a positive test, but shall not disclose the quantitation of test results to the employer. Provided, that the MRO may reveal the quantitation of a positive test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from a verified positive drug test.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer the original or a certified true copy of the drug testing custody and control form (part 2), which, in the case of a report positive for drug use, shall be signed (after the required certification block) by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.

(6) The laboratory shall provide the employer an aggregate quarterly statistical summary of urinalysis testing of the employer's employees. Laboratories may provide the report to a consortium provided that the laboratory provides employer-specific data and the consortium forwards the employer-specific data to the respective employers within 14 days of receipt of the laboratory report. The laboratory shall provide the report to the employer or consortium not more than 14 calendar days after the end of the quarter covered by the summary. Laboratory confirmation data only shall be included from test results reported within that quarter. The summary shall contain only the following information:

(i) Number of specimens received for testing;

(ii) Number of specimens confirmed positive for-

(A) Marijuana metabolite

(B) Cocaine metabolite

(C) Opiates;

(D) Phencyclidine;

(E) Amphetamines;

(iii) Number of specimens for which a test was not performed. Quarterly reports shall not contain personal identifying information or other data from which it is reasonably likely that information about individuals'

tests can be readily inferred. If necessary, in order to prevent disclosure of such data, the laboratory shall not send such a report until data are sufficiently aggregated to make such an inference unlikely. In any quarter in which a report is withheld for this reason, or because no testing was conducted, the laboratory shall so inform the consortium/employer in writing.

(7) The laboratory shall make available copies of all analytical results for employer drug testing programs when requested by DOT or any DOT agency with regulatory authority over the employer.

(8) Unless otherwise instructed by the employer in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.

(h) Long-term storage. Long-term frozen storage (-20C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Drug testing laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1-year period, an employer (or other person designated in a DOT agency regulation) may request the laboratory to retain the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

(i) Retesting specimens. Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cutoff requirement but must provide data sufficient to confirm the presence of the drug or metabolite.

(j) Subcontracting. Drug testing laboratories shall not subcontract and shall perform all work with their own personnel and equipment. The laboratory must be capable of performing testing for the five classes of drugs (marijuana, cocaine, opiates, phencyclidine and amphetamines) using the initial immunoassay and confirmatory GC/MS methods specified in this part. This paragraph does not prohibit subcontracting of laboratory analysis if specimens are sent directly from the collection site to the subcontractor, the subcontractor is a laboratory certified by DHHS as required in this part, the subcontractor performs all analysis and provides storage required under this part, and the subcontractor is responsible to the employer for compliance with this part and applicable DOT agency regulations as if it were the prime contractor.

(k) Laboratory facilities.

(1) Laboratory facilities shall comply with applicable provisions of any State licensing requirements.

(2) Laboratories certified in accordance with DHHS Guidelines shall have the capability, at the same laboratory premises, of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

(l) Inspections. The Secretary, a DOT agency, any employer utilizing the laboratory, DHHS or any organization performing laboratory certification on behalf of DHHS reserves the right to inspect the laboratory at any time. Employer contracts with laboratories for drug testing, as well as contracts for collection site services, shall permit the employer and the DOT agency of jurisdiction (directly or through an agent) to conduct unannounced inspections.

(m) Documentation. The drug testing laboratories shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

(n) Additional requirements for certified laboratories.-

(1) Procedure manual. Each laboratory shall have a procedure manual which includes the principles of each test preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of methods, cutoff values, mechanisms for reporting results, controls criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual.

(2) Standards and controls. Laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) Instruments and equipment.

(i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) There shall be written procedures for instru-

ment set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks and instructions for major trouble shooting and repair. Records shall be available on preventive maintenance.

(4) Remedial actions. There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) Personnel available to testify at proceedings. A laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an employee when that proceeding is based on positive urinalysis results reported by the laboratory.

(6) The laboratory shall not enter into any relationship with an employer's MRO that may be construed as a potential conflict of interest or derive any financial benefit by having an employer use a specific MRO.

40.31 Quality assurance and quality control.

(a) General. Drug testing laboratories shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain of custody security and reporting of results, initial and confirmatory testing and validation of analytical procedures. Quality assurance procedures shall be designed, implemented and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) Laboratory quality control requirements for initial tests. Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level. In addition, with each batch of samples a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cutoff. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure the carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at least one sample, shall be the laboratory's own quality control samples.

(c) Laboratory quality control requirements for confirmation tests. Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the cutoff level. The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(d) Employer blind performance test procedures.

(1) Each employer covered by DOT agency drug testing regulations shall use blind testing quality control procedures as provided in this paragraph.

(2) Each employer shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter. A DOT agency may increase this per quarter maximum number of samples if doing so is necessary to ensure adequate quality control of employers or consortiums with very large numbers of employees.

(3) For employers with 2000 or more covered employees, approximately 80 percent of the blind performance test samples shall be blank (i.e., containing no drug or otherwise as approved by a DOT agency) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the employer is testing. This paragraph shall not be construed to prohibit spiking of other (potentially interfering) compounds, as technically appropriate, in order to verify the specificity of a particular assay.

(4) Employers with fewer than 2000 covered employees may submit blind performance test specimens as provided in paragraph (d)(3) of this section. Such employers may also submit only blank samples or may submit two separately labeled portions of a specimen from the same non-covered employee.

(5) Consortiums shall be responsible for the submission of blind samples on behalf of their members. The blind sampling rate shall apply to the total number of samples submitted by the consortium.

(6) The DOT agency concerned shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result and, based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record

shall be dated and signed by the individual responsible for the day-to-day management and operation of the drug testing laboratory. Then the DOT agency shall send the document to the employer as a report of the unsatisfactory performance testing incident. The DOT agency shall ensure notification of the finding to DHHS.

(7) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the employer shall promptly notify the DOT agency concerned. The DOT agency and the employer shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and, if there is reason to believe the error could have been systemic, the DOT agency may also require review and reanalysis of previously run specimens.

(8) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the employer shall instruct the laboratory to submit all quality control data from the batch of specimens which included the false positive specimen to the DOT agency concerned. In addition, the laboratory shall retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's urine drug testing. The DOT agency concerned may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the DOT agency, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

40.33 Reporting and review of results.

(a) Medical review officer shall review confirmed positive results.

(1) An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of a DOT agency regulation. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.

(2) The duties of the MRO with respect to negative results are purely administrative.

(b) Medical review officer-qualifications and responsibilities.

(1) The MRO shall be a licensed physician with knowledge of substance abuse disorders and may be an employee of a transportation employer or a private physician retained for this purpose.

(2) Reserved.

(3) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results or urine samples that are not obtained or processed in accordance with this part.

(c) Positive test result.

(1) Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test result with him or her.

(2) The MRO shall contact the individual directly, on a confidential basis, to determine whether the employee wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the employee. Except as provided in paragraph (c)(5) of this section, the MRO shall talk directly with the employee before verifying a test as positive.

(3) If, after making all reasonable efforts and documenting them, the MRO is unable to reach the individual directly, the MRO shall contact a designated management official who shall direct the individual to contact the MRO as soon as possible.
If it becomes necessary to reach the individual through the designated management official, the designated management official shall employ procedures that ensure, to the maximum extent practicable, the requirement that the employee contact the MRO is held in confidence.

(4) If, after making all reasonable efforts, the designated management official is unable to contact the employee, the employer may place the employee on temporary medically unqualified status or medical leave.

(5) The MRO may verify a test as positive without having communicated directly with the employee about the test in three circumstances:

(i) The employee expressly declines the opportunity to discuss the test;

(ii) Neither the MRO nor the designated employer representative, after making all reasonable

efforts, has been able to contact the employee within 14 days of the date on which the MRO receives the confirmed positive test result from the laboratory;

(iii) The designated employer representative has successfully made and documented a contact with the employee and instructed the employee to contact the MRO (see paragraphs (c)(3) and (c)(4) of this section, and more than five days have passed since the date the employee was successfully contacted by the designated employer representative.

(6) If a test is verified positive under the circumstances specified in paragraph (c)(5)(ii) or (iii) of this section, the employee may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the MRO or designated employer representative (paragraph (c)(5)(ii) of this section) or from contacting the MRO (paragraph (c)(5)(iii) of this section) within the times provided. The MRO, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.

(7) Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the official's designated agent), or both.

(d) Verification for opiates; review for prescription medication. Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence-in addition to the urine test-of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if the employer's GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine.)

(e) In a situation in which the employer has used the single sample method of collection, the MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a reanalysis of the original specimen, if the test is verified positive. If requested to do so by the employee within 72 hours of the employee's having been informed of a verified positive test, the Medical Review Officer shall direct, in writing, a reanalysis of the original sample. The MRO may also direct, in writing, such a reanalysis if the MRO questions the accuracy or validity of any test result. Only the MRO may authorize such a reanalysis, and such a reanalysis may take place only at laboratories certified by DHHS. If the reanalysis fails to reconfirm the presence of the drug or drug metabolite, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the employer and the employee.

(f)(1) In situations in which the employer uses the split sample method of collection, the MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a test of the split specimen, if the test is verified as positive. If the employee requests an analysis of the split specimen within 72 hours of having been informed of a verified positive test, the MRO shall 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.

(2) If the analysis of the split specimen is reconfirmed by the second laboratory for the presence of the drug(s) or drug metabolites(s), the MRO shall notify the employer and employee of the results of the test.

(g) If an employee has not contacted the MRO within 72 hours, as provided in paragraphs (e) and (f) of this section, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably 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.

(i) Disclosure of information. Except as provided in this paragraph, the MRO shall not disclose to any third party medical information provided by the individual to the MRO as a part of the testing verification process.

(1) The MRO may disclose such information to the employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the employee under an applicable DOT agency regulation, as applicable, only if-

(i) An applicable DOT regulation permits or requires such disclosure;

(ii) In the MRO's reasonable medical judgment, the information could result in the employee being determined to be medically unqualified under an applicable DOT agency rule; or

(iii) In the MRO's reasonable medical judgment, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the employee, the information indicates that continued perfor-

mance by the employee of his or her safety-sensitive function could pose a significant safety risk.

(2) Before obtaining medical information from the employee as part of the verification process, the MRO shall inform the employee that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.

40.35 Protection of employee records.

Employer contracts with laboratories shall require that the laboratory maintain employee test records in confidence, as provided in DOT agency regulations. The contracts shall provide that the laboratory shall disclose information related to a positive drug test of an individual to the individual, the employer, or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test.

40.37 Individual access to test and laboratory certification results.

Any employee who is the subject of a drug test conducted under this part shall, upon written request, have access to any records relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

40.39 Use of certified laboratories.

(a) Except as provided in paragraph (b) of this section, employers subject to this part shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs," April 11, 1988, and subsequent amendments thereto.

(b) Employers subject to this part may also use laboratories located outside the United States if—

(1) The Department of Transportation, based on a written recommendation from DHHS, has certified the laboratory as meeting DHHS laboratory certification standards or deemed the laboratory fully equivalent to a laboratory meeting DHHS laboratory certification standards; or

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

Subpart C - Alcohol Testing

40.51 The breath alcohol technician.

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

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

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

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

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

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

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

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

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

40.53 Devices to be used for breath alcohol tests.

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

(3) EBTs shall be capable of printing out, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test.

(4) EBTs shall be able to distinguish alcohol from acetone at the 0.02 alcohol concentration level.

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

(i) Testing an air blank prior to each collection of breath; and

(ii) Performing an external calibration check.

40.55 Quality assurance plans for EBTs.

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

(1) The plan shall designate the method or methods to be used to perform external calibration checks of the device, using only calibration devices on the NHTSA "Conforming Products List of Calibrating Units for Breath Alcohol Tests."

(2) The plan shall specify the minimum intervals for performing external calibration checks of the device. Intervals shall be specified for different frequencies of use, environmental conditions (e.g., temperature, altitude, humidity), and contexts of operation (e.g., stationary or mobile use).

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

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

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

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

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

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

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

(4) The employer shall maintain records of the external calibration checks of EBTs as provided in 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) that meets the requirements of paragraph (a) of this section.

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

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

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

40.59 The breath alcohol testing form.

(a) Each employer shall use the breath alcohol testing form prescribed under this part. The form is found in appendix A to this subpart. Employers may not modify

or revise this form, except that a form directly generated by an EBT may omit the space for affixing a separate printed result to the form.

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

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 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 shall ensure, before a screening test is administered to each employee, that he or she and the employee read the sequential test number displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, and time in Step # of the form.

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

(i) Show the employee the result displayed on the EBT. The BAT shall record the displayed result, test number, testing device, serial number of the testing device, time and quantified result in Step 3 of the form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 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 maintained by this part or by DOT agency alcohol misuse rules.

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

(d) Each employer shall permit access to all facilities utilized in complying with the requirements of

this part and DOT agency alcohol misuse rules to the Secretary of Transportation, any DOT agency with regulatory authority over the employer, or a state agency with regulatory authority over the employer (as authorized by DOT agency regulations).

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

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

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

(h) An employer may disclose information required to be maintained under this part pertaining to a covered employee to that employee or to the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under the requirements of this part, or from the employer's determination that the employee engaged in conduct prohibited by a DOT agency alcohol misuse regulation (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

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

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.

Subpart D - Non-Evidential Alcohol Screening Devices

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

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

40.93 The screening test technician.

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

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

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

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

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

(f) The provisions of 40.51(b) and (c); 40.57; 40.59; 40.61; 40.63 (e)(1)-(2), (f), (g), and (h); 40.69;

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

40.95 Quality assurance plans for non-evidential screening devices.

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

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

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

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

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

40.97 Locations for non-evidential alcohol screening tests.

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

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

40.99 Testing forms.

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

40.101 Screening test procedure.

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

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

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

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

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

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

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

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

(5) If the employee chooses not to use the swab, or in all cases in which a new test is necessary because the device did not activate (see paragraph (d)(8) of this section), the STT shall insert the absorbent end of the swab into the employee's mouth, moving it actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as provided in the manufacturer's instructions for the device. The STT shall wear a surgical grade glove while doing so.

(6) The STT shall place the device on a flat surface or otherwise in a position in which the swab can be firmly placed into the opening provided in the device for this purpose. The STT shall insert the swab into this opening and maintain firm pressure on the device until the device indicates that it is activated.

(7) If the procedures of paragraph (d)(3)-(d)(5) of this section are not followed successfully (e.g., the swab breaks, the STT drops the swab on the floor or another surface, the swab is removed or falls from the device before the device is activated), the STT shall discard the device and swab and conduct a new test using a new device. The new device shall be one that has been under the control of the employer or STT prior to the test. The STT shall note in the remarks section of the form the reason for the new test. In this case, the STT shall offer the employee the choice of using the swab himself or herself or having the STT use the swab. If the procedures of paragraph (d)(3)-(d)(5) of this section are not followed successfully on the new test, the collection shall be terminated and an explanation provided in the remarks section of the form. A new test shall then be conducted, using an EBT for both the screening and confirmation tests.

(8) If the procedures of paragraph (d)(3)-(d)(5)

of this section are followed successfully, but the device is not activated, the STT shall discard the device and swab and conduct a new test, in the same manner as provided in paragraph (d)(7) of this section. In this case, the STT shall place the swab into the employee's mouth to collect saliva for the new test.

(9) The STT shall read the result displayed on the device two minutes after inserting the swab into the device. The STT shall show the device and its reading to the employee and enter the result on the form.

(10) Devices, swabs, gloves and other materials used in saliva testing shall not be reused, and shall be disposed of in a sanitary manner following their use, consistent with applicable requirements.

(e) In the case of any screening test performed under this section, the STT, after determining the alcohol concentration result, shall follow the applicable provisions of 40.63 (e)(1) (2), (f), (g), and (h). The STT shall also enter, in the "Remarks" section of the form, a notation that the screening test was performed using a non-evidential breath testing device or a saliva device, as applicable. Following completion of the screening test, the STT shall date the form and sign the certification in Step 3 of the form.

40.103 Refusals to test and uncompleted tests.

(a) Refusal by an employee to complete and sign the alcohol testing form required by 40.99 (Step 2), to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise to cooperate in a way that prevents the completion of the testing process, shall be noted by the STT in the remarks section of the form. This constitutes a refusal to test. The testing process shall be terminated and the STT shall immediately notify the employer.

(b) If the screening test cannot be completed, for reasons other than a refusal by the employee, or if an event occurs that would invalidate the test, the STT shall, if practicable, immediately begin a new screening test, using a new testing form and, in the case of a test using a saliva screening device, a new device.

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

(a) If an employee is unable to provide sufficient breath to complete a test on a non-evidential breath testing device, the procedures of 40.69 apply.

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

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

40.107 Invalid tests.

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

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

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

(2) The device does not activate;

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

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

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

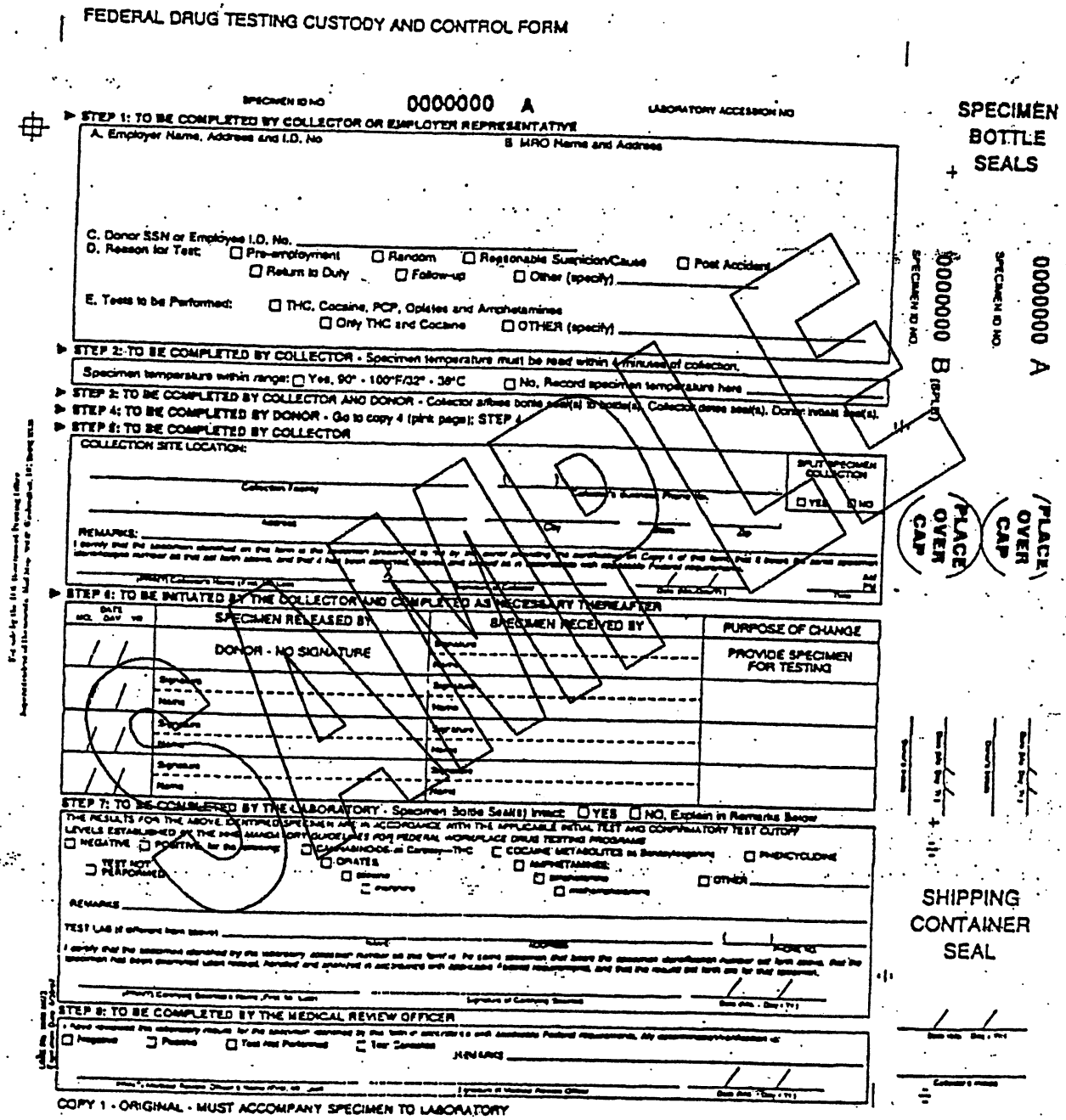
40.109 Availability and disclosure of alcohol testing information about individual employees.

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

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

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

Appendix A to Part 40
Drug Testing Custody And Control Form



FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. 0000000 A

LABORATORY ACCESSION NO

SPECIMEN BOTTLE SEALS

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No.

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify)

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify)

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) & checks(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page); STEP 4.

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION:

Collection Facility

Address

City State Zip

Telephone Number

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

REMARKS:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the specimen on Copy 4 of this form, that it bears the donor's specimen identification number as listed above, and that it has been obtained, handled, and labeled in accordance with applicable Federal regulations.

Collector's Name (Print or Type) Signature of Collector Date (Mo., Day, Yr.) Time

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE (MO. DAY YR)	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
	Signature Name	Signature Name	
	Signature Name	Signature Name	
	Signature Name	Signature Name	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: ☐ YES ☐ NO, Explain in Remarks Below

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE INITIAL TEST AND CONFIRMATORY TEST CUTOFF LEVELS ESTABLISHED BY THE MOST RECENT DOT GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS

☐ NEGATIVE ☐ POSITIVE for the following: ☐ MARIJUANA or Cannabinoids—THC ☐ COCAINE METABOLITES ☐ PHENCYCLIDINE ☐ OPIATES ☐ AMPHETAMINES ☐ OTHER

☐ TEST NOT PERFORMED

REMARKS

TEST LAB (if different from above) Name Address Phone No.

I certify that the specimen identified by this laboratory accession number on this form is, to the best of my knowledge, the specimen described by the donor whose specimen identification number appears above, that the specimen has been examined, labeled, handled and analyzed in accordance with applicable Federal requirements, and that the results are true and correct for that specimen.

Typed or Printed Name of Certifying Scientist Signature of Certifying Scientist Date (Mo., Day, Yr.)

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed this laboratory results for the specimen identified by this form in accordance with Department Federal requirements. My determination is as follows:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS

Name of Medical Review Officer (Print or Type) Signature of Medical Review Officer Date (Mo., Day, Yr.)

COPY 1 - ORIGINAL - MUST ACCOMPANY SPECIMEN TO LABORATORY

SPECIMEN ID NO. 0000000 B (SPLIT)

SPECIMEN ID NO. 0000000 A

(PLACE OVER CAP)

(PLACE OVER CAP)

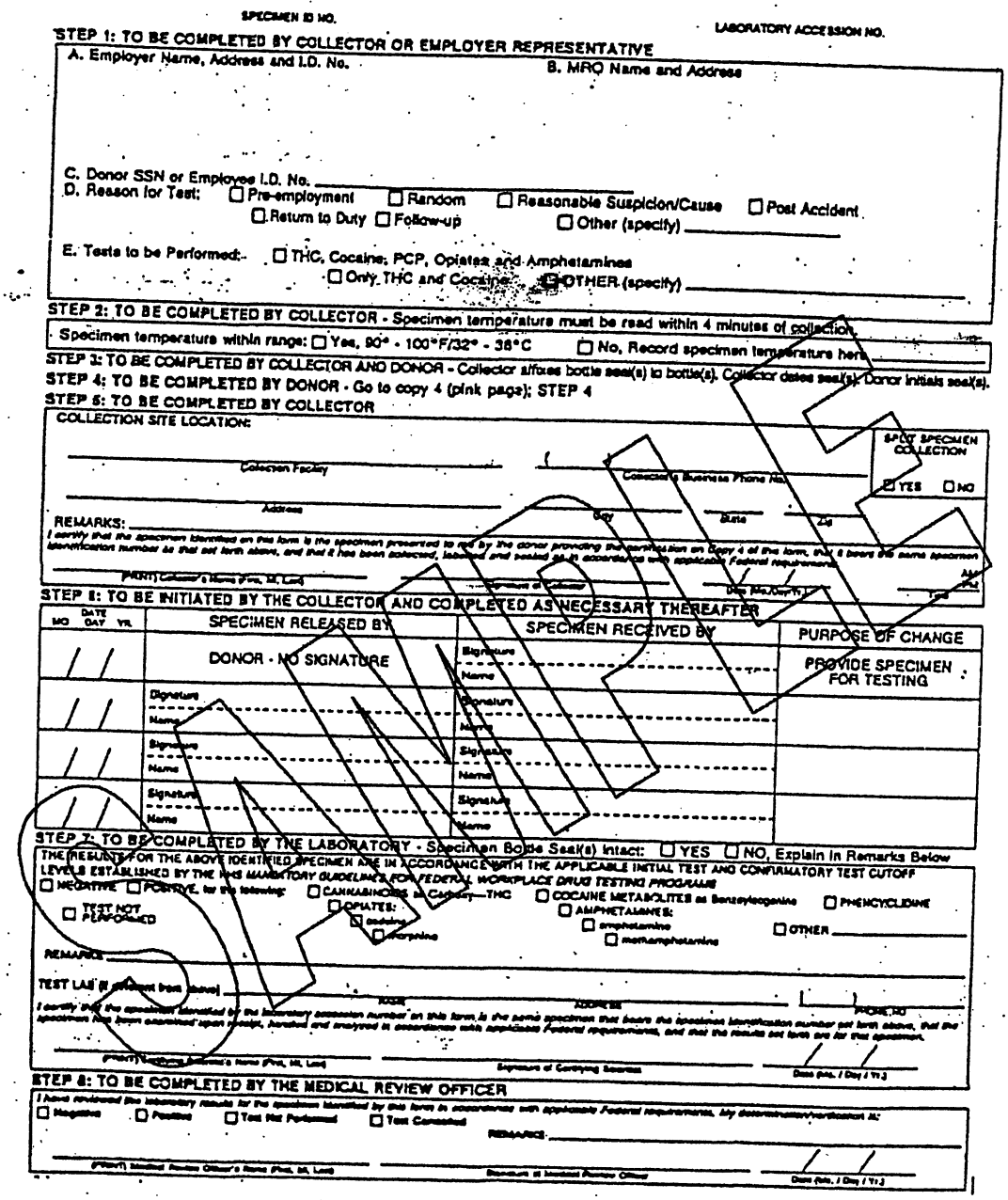
SHIPPING CONTAINER SEAL

Paperwork Reduction Act Notice (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated for each respondent to average: 5 minutes/donor; 4 minutes/collector; 3 minutes/laboratory; and 3 minutes/Medical Review Officer. Federal employees may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Rm 721-B, 200 Independence Ave. S.W., Washington, D.C. 20201. Individuals from the private sector may send comments/suggestions to: Department of Transportation, Drug Enforcement and Program Compliance, Rm 9404, 400 Seventh St. S.W., Washington, D.C. 20590. In addition, copies of all comments/suggestions may be sent to: Office of Management and Budget, Paperwork Reduction Project, Rm 3001, 725 Seventeenth St. N.W., Washington, D.C. 20503

Back of Copy 1; 2, 3, 4, and 6.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM



SPECIMEN ID NO.

LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No.

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify)

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify)

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page); STEP 4

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION:

Collection Facility

Collector's Business Phone No.

SPOT SPECIMEN COLLECTION ☐ YES ☐ NO

Address

City

State

Zip

REMARKS:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the specimen on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labeled and sealed all in accordance with applicable Federal requirements.

[PRINT] Collector's Name (First, MI, Last)

Signature of Collector

Date (Mo./Day/Yr.)

AM PM Time

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO DAY YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature / Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature / Name	Signature / Name	
/ /	Signature / Name	Signature / Name	
/ /	Signature / Name	Signature / Name	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: ☐ YES ☐ NO, Explain in Remarks Below

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE INITIAL TEST AND CONFIRMATORY TEST CUTOFF LEVELS ESTABLISHED BY THE HHS *MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS*

☐ NEGATIVE ☐ POSITIVE for the following: ☐ CANNABINOIDS as Carboxy-THC ☐ COCAINE METABOLITES as Benzoylecgonine ☐ PHENCYCLIDINE ☐ OPIATES: ☐ codeine ☐ morphine ☐ AMPHETAMINES: ☐ amphetamine ☐ methamphetamine ☐ OTHER

☐ TEST NOT PERFORMED

REMARKS

TEST LAB (Name and Address)

PHONE NO.

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

[PRINT] Laboratory Reviewer's Name (First, MI, Last)

Signature of Certifying Scientist

Date (Mo. / Day / Yr.)

STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS

[PRINT] Medical Review Officer's Name (First, MI, Last)

Signature of Medical Review Officer

Date (Mo. / Day / Yr.)

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. -B LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: TO BE COMPLETED BY DONOR - Go to copy 4 (pink page); STEP 4

STEP 5: TO BE COMPLETED BY COLLECTOR

COLLECTION SITE LOCATION:

Collection Facility ( ) Collector's Business Phone No.

Address City State Zip

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

REMARKS:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the identification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labeled, and sealed as in accordance with applicable Federal requirements.

(Print) Collector's Name (First, MI, Last) Signature of Collector Date (Mo./Day/Yr.) Time AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

STEP 7: TO BE COMPLETED BY THE LABORATORY - Specimen Bottle Seal(s) Intact: ☐ YES ☐ NO, Explain in Remarks Below.

THE RESULTS FOR THE ABOVE IDENTIFIED SPECIMEN ARE IN ACCORDANCE WITH THE APPLICABLE PROCEDURES ESTABLISHED BY THE HHS MANDATORY GUIDELINES FOR FEDERAL WORKPLACE DRUG TESTING PROGRAMS.

☐ RECONFIRMED for the following: ☐ CANNABINOIDS as Carboxy—THC ☐ COCAINE METABOLITES as Benzoylecgonine ☐ PHENCYCLIDINE

☐ FAILED TO RECONFIRM ☐ OPIATES: ☐ codeine ☐ morphine ☐ AMPHETAMINES: ☐ amphetamine ☐ methamphetamine ☐ OTHER _____

☐ TEST NOT PERFORMED

REMARKS

TEST LAB (if different from above) NAME ADDRESS PHONE NO.

I certify that the specimen identified by the laboratory accession number on this form is the same specimen that bears the specimen identification number set forth above, that the specimen has been examined upon receipt, handled and analyzed in accordance with applicable Federal requirements, and that the results set forth are for that specimen.

(Print) Certifying Scientist's Name (First, MI, Last) Signature of Certifying Scientist Date (Mo. / Day / Yr.)

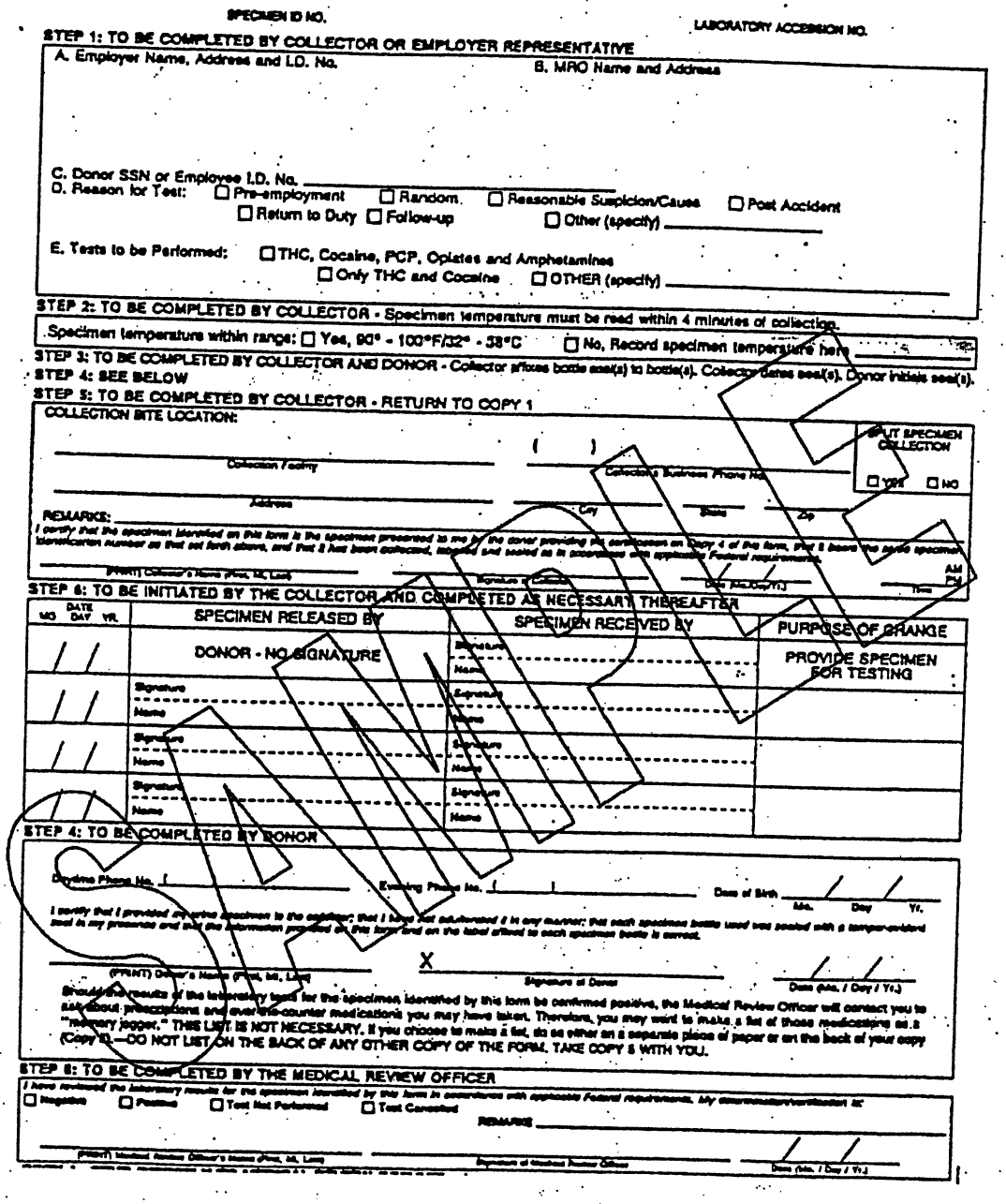
STEP 8: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

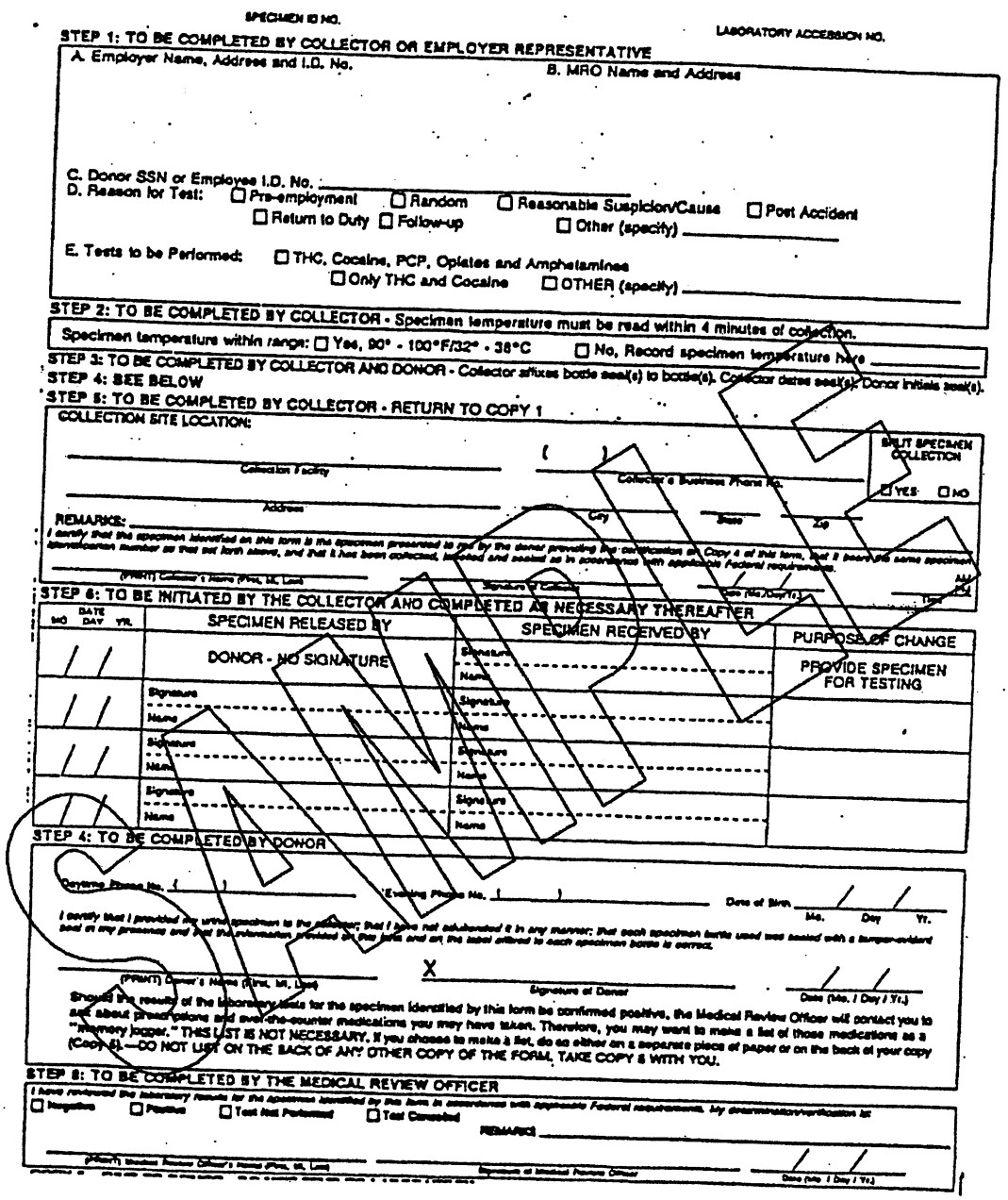
☐ Reconfirmed ☐ Failed to reconfirm- Both tests unconfirmed ☐ Test not performed Both tests unconfirmed REMARKS

(Print) Medical Review Officer's Name (First, MI, Last) Signature of Medical Review Officer Date (Mo. / Day / Yr.)

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM



FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM



SPECIMEN ID NO.

LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No.

B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: SEE BELOW

STEP 5: TO BE COMPLETED BY COLLECTOR - RETURN TO COPY 1

COLLECTION SITE LOCATION:

Collection Facility

Collector's Business Phone No.

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address

City

State

Zip

REMARKS:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the certifications on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last)

Signature of Collector

Date (Mo./Day/Yr.)

Time

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO DAY YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature / Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature / Name	Signature / Name	
/ /	Signature / Name	Signature / Name	
/ /	Signature / Name	Signature / Name	

STEP 4: TO BE COMPLETED BY DONOR

Daytime Phone No. ( )

Evening Phone No. ( )

Date of Birth Mo. Day Yr.

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence and that the information provided on this form and on the label affixed to each specimen bottle is correct.

(PRINT) Donor's Name (First, MI, Last)

X

Signature of Donor

Date (Mo. / Day / Yr.)

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5). —DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 5: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS

(PRINT) Medical Review Officer's Name (First, MI, Last)

Signature of Medical Review Officer

Date (Mo. / Day / Yr.)

Privacy Act Statement: (For Federal Employees Only)

Submission of the information on the attached form is voluntary. However, incomplete submission of the information, refusal to provide it or the giving of a substitution or adulteration of a specimen may result in delay or denial of your application for employment/appointment or may result in removal from the Federal service or other disciplinary action.

The authority for obtaining the urine specimen and identifying information contained herein is Executive Order 12564 ("Drug-Free Federal Workplace"), 5 U.S.C. § 3301 (2), 5 U.S.C. § 7301 and Section 503 of Public Law 100-71, 5 U.S.C. § 7301 note. Under provisions of Executive Order 12564 and 5 U.S.C. 7301, test results may only be disclosed to agency officials on a need-to-know basis. This may include the agency Medical Review Officer, the administrator of the Employee Assistance Program, and a supervisor with authority to take adverse personnel action. This information may also be disclosed to a court where necessary to defend against a challenge to an adverse personnel action.

Submission of your SSN is not required by law and is voluntary. Your refusal to furnish your number will not result in the denial of any right, benefit, or privilege provided by law. Your SSN is solicited, pursuant to Executive Order 9397, for purposes of associating information in agency files relating to you and for purposes of identifying the specimen provided for urinalysis testing for illegal drugs. If you refuse to indicate your SSN, a substitute number or other identifier will be assigned as required, to process the specimen.

In the event laboratory analysis determines the presence of one or more illegal drugs in the specimen you provide, you will be contacted by an agency Medical Review Officer (MRO). The MRO will determine whether there is a legitimate medical explanation for the drug(s) identified by urinalysis.

Paperwork Reduction Act Notice (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information, including the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information is estimated for each respondent to average: 5 minutes/donor; 4 minutes/collector; 3 minutes/laboratory; and 3 minutes/Medical Review Officer. Federal employees may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to Public Health Service Reports Clearance Officer, Attn: PRA, Hubert H. Humphrey Building, Rm. 721-B, 200 Independence Ave. S.W., Washington, D.C. 20201. Individuals from the private sector may send comments/suggestions to: Department of Transportation, Drug Enforcement and Program Compliance, Rm. 9404, 400 Seventh St. S.W., Washington, D.C. 20590. In addition, copies of all comments/suggestions may be sent to: Office of Management and Budget, Paperwork Reduction Project, Rm. 3001, 725 Seventeenth St. N.W., Washington, D.C. 20503.

Back of Copy 5.

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM

SPECIMEN ID NO. LABORATORY ACCESSION NO.

STEP 1: TO BE COMPLETED BY COLLECTOR OR EMPLOYER REPRESENTATIVE

A. Employer Name, Address and I.D. No. B. MRO Name and Address

C. Donor SSN or Employee I.D. No. _____

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post Accident ☐ Return to Duty ☐ Follow-up ☐ Other (specify) _____

E. Tests to be Performed: ☐ THC, Cocaine, PCP, Opiates and Amphetamines ☐ Only THC and Cocaine ☐ OTHER (specify) _____

STEP 2: TO BE COMPLETED BY COLLECTOR - Specimen temperature must be read within 4 minutes of collection.

Specimen temperature within range: ☐ Yes, 90° - 100°F/32° - 38°C ☐ No, Record specimen temperature here _____

STEP 3: TO BE COMPLETED BY COLLECTOR AND DONOR - Collector affixes bottle seal(s) to bottle(s). Collector dates seal(s). Donor initials seal(s).

STEP 4: SEE BELOW

STEP 5: TO BE COMPLETED BY COLLECTOR - RETURN TO COPY 1

COLLECTION SITE LOCATION:

Collection Facility Collector's Business Phone No.

SPLIT SPECIMEN COLLECTION ☐ YES ☐ NO

Address City State Zip

REMARKS:

I certify that the specimen identified on this form is the specimen presented to me by the donor providing the identification on Copy 4 of this form, that it bears the same specimen identification number as that set forth above, and that it has been collected, labeled and sealed as in accordance with applicable Federal requirements.

(PRINT) Collector's Name (First, MI, Last) Signature of Collector Date (Mo./Day/Yr.) Time AM PM

STEP 6: TO BE INITIATED BY THE COLLECTOR AND COMPLETED AS NECESSARY THEREAFTER

DATE MO DAY YR	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
/ /	DONOR - NO SIGNATURE	Signature / Name	PROVIDE SPECIMEN FOR TESTING
/ /	Signature / Name	Signature / Name	
/ /	Signature / Name	Signature / Name	
/ /	Signature / Name	Signature / Name	

STEP 4: TO BE COMPLETED BY DONOR

Daytime Phone No. Evening Phone No. Date of Birth Mo. Day Yr.

I certify that I provided my urine specimen to the collector; that I have not adulterated it in any manner; that each specimen bottle used was sealed with a tamper-evident seal in my presence; and that the information provided on this form and on the label affixed to each specimen bottle is correct.

(PRINT) Donor's Name (First, MI, Last) Signature of Donor Date (Mo. / Day / Yr.)

Should the results of the laboratory tests for the specimen identified by this form be confirmed positive, the Medical Review Officer will contact you to ask about prescriptions and over-the-counter medications you may have taken. Therefore, you may want to make a list of those medications as a "memory jogger." THIS LIST IS NOT NECESSARY. If you choose to make a list, do so either on a separate piece of paper or on the back of your copy (Copy 5).—DO NOT LIST ON THE BACK OF ANY OTHER COPY OF THE FORM. TAKE COPY 5 WITH YOU.

STEP 5: TO BE COMPLETED BY THE MEDICAL REVIEW OFFICER

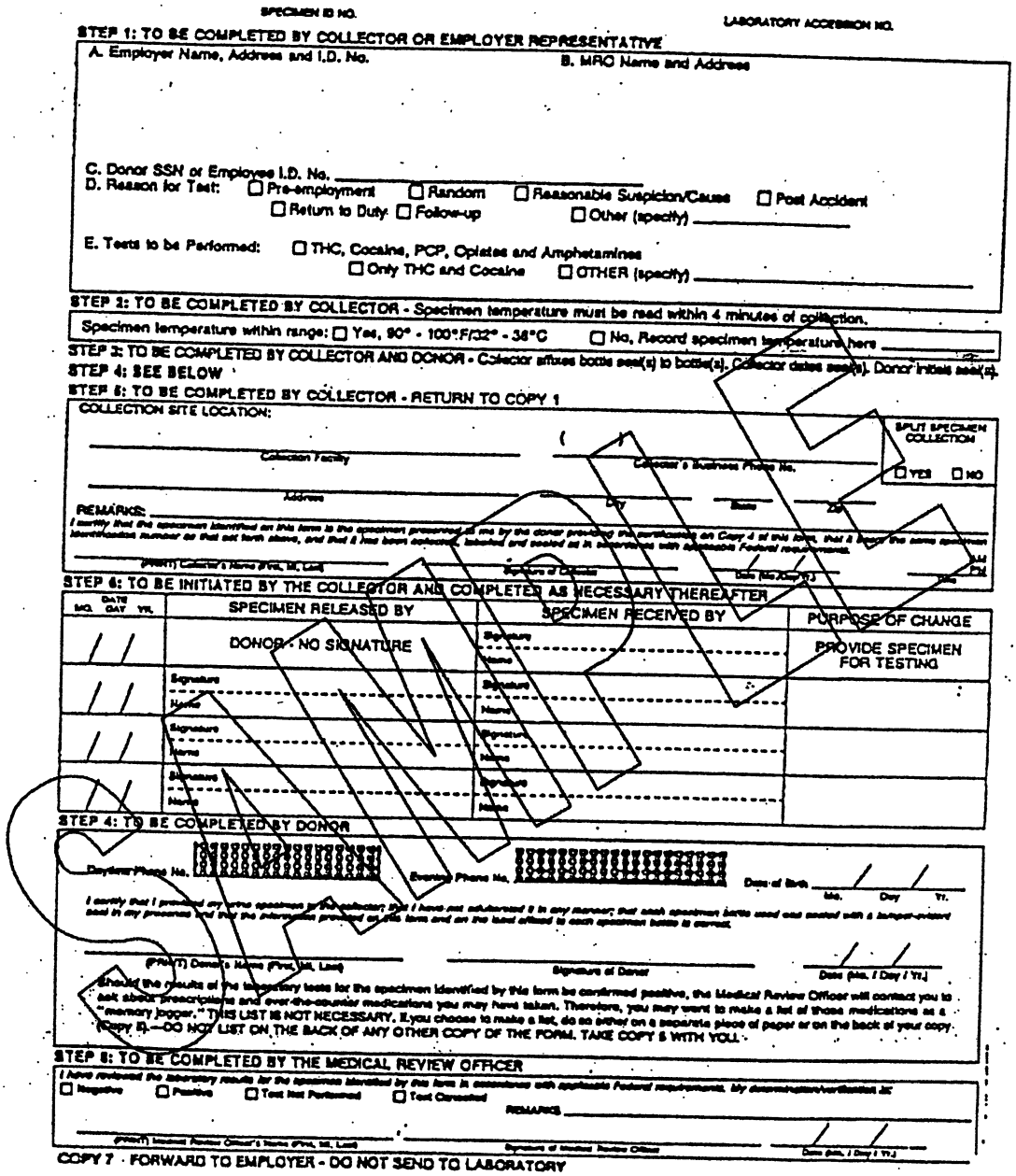
I have reviewed the laboratory results for the specimen identified by this form in accordance with applicable Federal requirements. My determination/verification is:

☐ Negative ☐ Positive ☐ Test Not Performed ☐ Test Cancelled

REMARKS

(PRINT) Medical Review Officer's Name (First, MI, Last) Signature of Medical Review Officer Date (Mo. / Day / Yr.)

FEDERAL DRUG TESTING CUSTODY AND CONTROL FORM



INSTRUCTION FOR COMPLETING DRUG TESTING CUSTODY AND CONTROL FORM

The following instructions are in accordance with procedures established by the Department of Health and Human Services and the Department of Transportation mandatory guidelines for federal and transportation workplace drug testing programs

NOTE: Use ballpoint pen, press hard, and check all copies for legibility

STEP 1

If the information in STEP 1 has not been completed, collector (and donor) completes STEP 1 (A-E)

NOTE: Donor refusal to provide SSN or Employee I.D. number must be annotated in STEP 5, collector's REMARKS section

STEP 2.

Upon receiving specimen from donor, check specimen temperature This must be accomplished within 4 minutes.

Check block marked "Yes" if temperature is within range.

If specimen temperature is not within range, check block marked "No" and record specimen temperature.

STEP 3. FOR SPLIT SPECIMEN COLLECTIONS ONLY

Secure caps on both specimen bottles and affix specimen bottle seal labeled A over the cap and down the sides of the primary specimen (bottle containing at least 30ml of urine)

Affix specimen bottle seal labeled B (split) on the split specimen (bottle containing at least 15ml of urine) in the same manner.

Record date on both specimen bottle seals.

FOR SINGLE SPECIMEN COLLECTION ONLY

Secure cap on specimen bottle (containing at least 30ml of urine) and affix specimen bottle seal labeled A over the cap and down the sides of the specimen bottle.

Record date on specimen bottle seal.

Instruct donor to initial the specimen bottle seal

STEP 4.

Turn to Copy 4 (pink page), STEP 4.

Instruct donor to complete STEP 4.

Ensure donor provides his/her daytime and evening phone number and date of birth

Instruct donor to read certification statement Ensure donor prints his/her name and signs and dates the certification statement.

NOTE: Donor refusal to sign must be annotated in STEP 5, collector's remarks section.

Upon completion, check donor entries, return to Copy 1.

STEP 5.

After returning to Copy 1, go to STEP 5.

Complete the name and address of the facility at which the collection is taking place.

List a business telephone number where collector can be reached.

Place a check in the box indicating whether or not a split specimen was collected

Record any unusual occurrences concerning the collection (e.g. donor refusal to provide information/sign certification statement, specimen collected under direct observation, suspected adulteration) in the remarks section

Collector completes collection certification section by printing and signing his/her name, recording the date and time of collection Be sure to circle A.M. or P.M.

STEP 6. CHAIN OF CUSTODY SECTION

NOTE: Each time the specimen is handled, transferred, or placed into storage prior to being packaged for shipment, every individual must be identified (including a direct observer, if required) and the date and purpose of change recorded. The following instructions pertain to a collection in which the donor provides a specimen directly to the collector who seals, packages, and ships the specimen to the laboratory.

Record date of collection.

In the "Specimen Received By" column, sign and print your name indicating that you have received the specimen from the donor.

The "Purpose of Change" entry in the next column is pre printed (Provide Specimen for Testing) and explains the transfer of the specimen from the donor to the collector

On the next line, record the date the specimen was released by you.

Complete the "Specimen Released By" block by signing and printing your name

If you are preparing the specimen for shipment to the laboratory complete the "Specimen Received By" block by printing the carrier or shipment provider name only. (See Example)

Complete the "Purpose of Change" block explaining the transfer of the specimen from the collector to the carrier or shipment provider (e.g. Ship Specimen to Lab).

DATE MO. DAY YR.	SPECIMEN RELEASED BY	SPECIMEN RECEIVED BY	PURPOSE OF CHANGE
8 / 15 / 94	DONOR - NO SIGNATURE	Signature Connies Collector Name Connie Collector	PROVIDE SPECIMEN FOR TESTING
8 / 15 / 94	Signature Connies Collector Name Connie Collector	Signature Name ABC Courier Service	SHIP SPECIMEN TO LAB
/ /	Signature Name	Signature Name	
/ /	Signature Name	Signature Name	

COMPLETING THE COLLECTION PROCESS

Upon completing Step 6, give donor his/her copy. Copy 5, (green page) of the Drug Testing Custody and Control Form

Donor may leave the collection site at this point

If a split specimen collection was performed, place both specimen bottles and Copies 1, 2, and 3 of the Drug Testing Custody and Control Form in the shipping container

If a single collection was performed, place the specimen bottle and Copies 1 and 2 of the Drug Testing Custody and Control Form in the shipping container Discard Copy 3.

Secure the shipping container. On the shipping container seal, record your initials and the date

Send Copy 4 (pink page) directly to the Medical Review Officer Do not send to laboratory

Retain Copy 6 (yellow page) for your records

Forward Copy 7 (blue page) to the employer Do not send to laboratory.

Appendix B to Part 40
The Breath Alcohol Testing Form

APPENDIX B TO PART 40—THE BREATH ALCOHOL TESTING FORM

U.S. Department of Transportation (DOT)
Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

( ) _____
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ / / /
Signature of Employee Date Month Day Year

STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulations, 49 CFR Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete only if the testing device is not designed to print the following.

_____ _____ _____ _____ AM PM _____
Test No. Testing Device Name Testing Device Serial Number Time Result

Confirmation test: Confirmation test results MUST be affixed to the back of each copy of this form.

Remarks: _____

_____ _____ / / /
(PRINT) Breath Alcohol Technician's Name (First, M.I., Last) Signature of Breath Alcohol Technician Date Month Day Year

STEP 4: TO BE COMPLETED BY EMPLOYEE

I certify that I have submitted to the breath alcohol test the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are 0.02 or greater.

_____ / / /
Signature of Employee Date Month Day Year

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

OMB No. 2105-0529
Exp. Date: 2/28/97

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE)	AFFIX CONFIRMATION TEST RESULTS HERE
USE TAMPER-EVIDENT TAPE	USE TAMPER-EVIDENT TAPE

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9454, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

OMB No. 2105-0529
Exp. Date: 2/28/97

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE)	AFFIX CONFIRMATION TEST RESULTS HERE
USE TAMPER-EVIDENT TAPE	USE TAMPER-EVIDENT TAPE

Privacy Act Statement

(applicable in those cases where completed Breath Alcohol Testing Forms are retained in a Federal Privacy Act system of records)

Except for your Social Security Number (SSN), submission of the information on the front side of this form is mandatory. Incomplete submission of the information, failure to provide an adequate breath specimen for testing without a valid medical explanation, engaging in conduct that clearly obstructs the testing process, or failure to sign the certification statements on the front side of this form may result in delay or denial of your application for employment/appointment, your inability to resume performing safety-sensitive duties, removal from a safety-sensitive position, or other disciplinary action.

The authority for obtaining the breath specimen required by the U.S. Department of Transportation is the Omnibus Transportation Employee Testing Act of 1991, Pub. L. 102-143, Title V. The principal purpose for which the information sought is to be used is to ensure that you have submitted to breath alcohol testing and to ensure that you are promptly notified in the event of noncompliance with the U.S. Department of Transportation breath alcohol testing requirements.

Submission of your SSN is not required by law and is voluntary. If you object to the use of your SSN in this form, you will not be denied any right, benefit, or privilege provided by law; a substitute number or other identifier will be assigned.

The information provided in this form may be disclosed, as a routine use, to a Federal, State, or local agency for authorized investigative or enforcement purposes or to a court or an administrative tribunal when the Government or one of its agencies is a party to a judicial proceeding before the court or involved in administrative proceedings before the tribunal.

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burdens or burden, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9454, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 2 - EMPLOYER RETAINS

OMB No. 2105-0529
Exp. Date: 2/28/97

U.S. Department of Transportation (DOT)
Breath Alcohol Testing Form

[THE INSTRUCTIONS FOR COMPLETING THIS FORM ARE ON THE BACK OF COPY 3]

▸ STEP 1: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

A. Employee Name _____
(PRINT) (First, M.I., Last)

B. SSN or Employee ID No. _____

C. Employer Name, Address, & Telephone No. _____

_____

_____
Telephone Number

D. Reason for Test: ☐ Pre-employment ☐ Random ☐ Reasonable Suspicion/Cause ☐ Post-accident ☐ Return to Duty ☐ Follow-up

▸ STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to breath alcohol testing required by U.S. Department of Transportation regulations and that the identifying information provided on this form is true and correct.

_____ Date ___/___/___
Signature of Employee Month Day Year

▸ STEP 3: TO BE COMPLETED BY BREATH ALCOHOL TECHNICIAN

I certify that I have conducted breath alcohol testing on the above named individual in accordance with the procedures established in the U.S. Department of Transportation regulations, 49 CFR, Part 40, that I am qualified to operate the testing devices identified, and that the results are as recorded.

Screening test: Complete only if the testing device is not designed to print the following.

_____ _____ _____ _____ AM/PM _____
Test No. Testing Device Name Testing Device Serial Number Time Result

Confirmation test: Confirmation test results MUST be affixed to the back of each copy of this form.

Remarks: _____

_____

_____

_____ _____ Date ___/___/___
(PRINT) Breath Alcohol Technician's Name (First, M.I., Last) Signature of Breath Alcohol Technician Month Day Year

▸ STEP 4: TO BE COMPLETED BY EMPLOYEE

I certify that I have submitted to the breath alcohol test the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment if the results are 0.02 or greater.

_____ Date ___/___/___
Signature of Employee Month Day Year

COPY 3 - BREATH ALCOHOL TECHNICIAN RETAINS

OMB No. 2105-0529
Exp. Date: 3/28/97

AFFIX SCREENING TEST RESULTS HERE (IF APPLICABLE)	AFFIX CONFIRMATION TEST RESULTS HERE
USE TAMPER-EVIDENT TAPE	USE TAMPER-EVIDENT TAPE

INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION BREATH ALCOHOL TESTING FORM

NOTE: Use a ballpoint pen, press hard, and check all copies for legibility.

STEP 1 The Breath Alcohol Technician (BAT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

NOTE: If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

STEP 2 Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

NOTE: If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

STEP 3 The Breath Alcohol Technician (BAT) completes the information required in this step. After conducting the alcohol screening test, do the following (as appropriate):

If the breath testing device used in conducting the screening test is not capable of printing the screening test information located on the front of this form (test number, testing device name, testing device serial number, time of test and results), complete this information in the space provided on the front of this form.

NOTE: Be sure to enter the result of the test exactly as it is indicated on the breath testing device, i.e., 0.00, 0.02, 0.04, etc.

OR, If the breath testing device used in conducting the screening test is capable of printing the screening test information located on the front of this form, affix the printed information in the space provided above. Be sure it is not transcription test.

If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. Go to STEP 4.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

After conducting the alcohol confirmation test, affix the printed information in the space provided above. Be sure it is not transcription test.

Print, sign your name, and enter the date in the space provided. Go to STEP 4.

STEP 4 Instruct the employee to read, sign, and date the employee certification statement in STEP 4.

NOTE: If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks section in STEP 3.

Forward Copy 1 (white page) to the employer.
Give Copy 2 (green page) to the employee.
Retain Copy 3 (blue page) for BAT records.

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

Public reporting burden for this collection of information is estimated for each respondent to average 1 minute/employee, 4 minutes/Breath Alcohol Technician. Individuals may send comments regarding these burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to U.S. Department of Transportation, Drug Enforcement and Program Compliance, Room 9404, 400 Seventh St., SW, Washington, D.C. 20590 or Office of Management and Budget, Paperwork Reduction Project, Room 3001, 725 Seventeenth St., NW, Washington, D.C. 20503.

COPY 3 - BREATH ALCOHOL TECHNICIAN RETAINS

OMB No. 2105-0529
Exp. Date: 2/28/97

[59 FR 43013, Aug. 19, 1994]

PART III

FORMS

CHECKLIST FOR REASONABLE SUSPICION SUBSTANCE ABUSE TESTING

This form is used to document the supervisor's reasons for requesting that an employee be asked to undergo a controlled substance or alcohol test. All questions that apply should be answered. Additional pages may be attached with any other relevant documents. This form is intended for use by supervisors who have had appropriate training.

Employee Name: _____ **Title:** _____

Department: _____ **Work Hours:** _____

1. Was there an incident? ☐ Yes ☐ No

If yes, describe the incident (include date and time, employee's actions, and extent of any injury to any person(s) or property):

_____

_____

_____

2. Observation of Employee Date: _____ Time: _____

a. WALKING	☐ Falling ☐ Unsteady	☐ Holding on ☐ Unable to walk		☐ Staggering ☐ Stumbling	☐ Normal
b. STANDING	☐ Feet wide apart ☐ Unable to stand	☐ Rigid ☐ Staggering	☐ Swaying	☐ Sagging	☐ Normal
c. SPEECH	☐ Silent ☐ Slow	☐ Incoherent ☐ Slurred	☐ Rambling ☐ Whispering	☐ Shouting	☐ Normal
d. DEMEANOR	☐ Calm ☐ Sarcastic	☐ Cooperative ☐ Talkative	☐ Crying ☐ Excited	☐ Fighting ☐ Sleepy	☐ Normal
e. ACTIONS	☐ Calm ☐ Excited ☐ Hyperactive	☐ Drowsy ☐ Hostile ☐ Profane	☐ Erratic ☐ Fighting ☐ Threatening	☐ Resistive	☐ Normal
f. EYES	☐ Bloodshot ☐ Watery	☐ Close ☐ Glassy	☐ Dilated	☐ Droopy	☐ Normal
g. FACE	☐ Flushed	☐ Pale	☐ Sweaty		☐ Normal
h. APPEARANCE & CLOTHING	☐ Excrement ☐ Neat	☐ Stained ☐ Soiled	☐ Messy ☐ Partially dressed	☐ Strong odor	☐ Normal
I. BREATH	☐ Heavy alcohol odor		☐ Faint alcohol odor		☐ No odor
j. MOVEMENTS	☐ Fumbling	☐ Hyperactive	☐ Nervous	☐ Slow	☐ Normal
k. EATING/ CHEWING	☐ Candy	☐ Gum	☐ Mints	☐ Other	☐ Normal
l. OTHER	_____				

Signature Of Person Completing Form	*Printed Name*	*Title*	*Date*
_____	_____	_____	_____

At least two supervisors, whenever practicable, should confer and agree that reasonable suspicion exists to request an employee to submit to testing. Each observing supervisor shall make a written record of the observations. A supervisor from another unit may be called for the second observation.

Non-CDL
Individual Notice of Substance Abuse Policy

Department: _____

Division or Unit: _____

TO: County Employees [Non-Commercial Drivers License]

We are pleased to provide you with the ***County of Monmouth Substance Abuse Policy*** containing the following:

- information on who is subject to alcohol and controlled substance testing;
- the circumstances which would require you to take an alcohol or controlled substance test;
- the procedures under CFR, used to test for the presence of alcohol and controlled substances;
- an explanation of what constitutes a refusal to submit to an alcohol or controlled substance test;
- the consequences if you test positive for drugs or alcohol;
- information concerning:

  - Self-Test: "Are You Troubled By Someone's Drinking or Drug Use?", "So We Had a Few Beers At Lunch...", "A Coworker Has A Drinking Problem", "Someone In Your Workplace May Have an Alcohol or Other Drug Abuse problem...", " Why Have a Drug-Free Workplace?", "Your Role in the Drug-Free Workplace Program", "Drug Abusers As Employees", "If You're Into Dope, You Might As Well Smoke This", and

  - availability of the County of Monmouth Employee Assistance Program **(EAP)** when an alcohol or controlled substance problem affects you or a family member.

Please sign below certifying that you have received the Policy and educational materials listed above and that you understand the request that you read and understand this Policy thoroughly.

_____ _____ _____

Printed name Signature Date

_____

Supervisory Witness Signature

CDL - Individual Notice of Substance Abuse Policy And Alcohol / Controlled Substance Testing Requirement

Department: _____

Division or Unit: _____

TO: County Employees whose positions require a Commercial Driver's License

As you know, your position with the County of Monmouth requires you to have a commercial driver's license. You will be directed to undergo alcohol and controlled substance testing as mandated by Federal Highway Administration regulations (49 CFR, Parts 40 and 382) and Federal Transit Administration regulations (49 CFR, 653 and 654) . Refusal to submit to the testing will result in termination action being initiated against you.

In accordance with the regulations you have been provided with the ***County of Monmouth Substance Abuse Policy*** containing the following:

- information on who is subject to alcohol and controlled substance testing;
- a definition of what period of the workday you are required to be in compliance;
- specific information concerning prohibited behavior;
- the circumstances ,other than random testing, which would require you to take a test;
- the procedures under CFR, used to test for the presence of alcohol and controlled substances;
- the requirement that you submit to the tests;
- an explanation of what constitutes a refusal to submit to an alcohol or controlled substance test;
- the consequences if you test positive for drugs or alcohol ;
- information concerning:

  - Self-Test: "Are You Troubled By Someone's Drinking or Drug Use?" "So We Had a Few Beers At Lunch...", "A Coworker Has A Drinking Problem", "Someone In Your Workplace May Have an Alcohol or Other Drug Abuse Problem...", "Why Have a Drug-Free Workplace?", "Your Role in the Drug-Free Workplace Program", "Drug Abusers As Employees", "If You're Into Dope, You Might As Well Smoke This", and

  - availability of the County of Monmouth Employee Assistance Program **(EAP)** when an alcohol or controlled substance problem affects you or a family member.

Please sign below certifying that you have been notified of the alcohol and controlled substance testing requirements and that you have received the Policy and educational materials listed above and that you understand the request that you read and understand this policy thoroughly.

_____	_____	_____
Printed name	Signature	Date

_____
Supervisory Witness Signature

NOTICE OF IMMEDIATE SUSPENSION

COUNTY OF MONMOUTH

(This form notifies the employee and serves as a record of proceedings for an Immediate Suspension)

(Supervisor See Reverse Side for Instructions)

(Please print clearly)

Employee Name:_____ **Date:**_____

Title:_____ **Department:**_____

Supervisor's Name:_____ **Date of Incident:**_____

Date of Suspension:_____

This is to notify you that you are being immediately suspended without pay. This action is necessary because it has been determined that you are unfit for duty, a hazard to any person if permitted to remain on the job or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services OR because you have been formally charged with a crime of the first, second or third degree or a crime of the fourth degree on the job or directly related to the job. The following is an account of why this suspension is sought with charges and general evidence in support of the charges. Additional sheet(s) attached: YES..... NO.....

_____

_____

_____

_____

_____

If you believe that this suspension should not continue, you may submit a written response, within two days upon receipt of this notice. You should direct your response to the supervisor whose name appears on this form.

Additionally, the Personnel Department will shortly serve you, by certified mail or personal service, a Preliminary Notice of Disciplinary Action (DPF-31A). This Notice will explain the charges and specifications and offers you an opportunity to request a departmental hearing to respond to the charges. In instances involving criminal charges, this hearing will usually be limited to the issue of whether the public's interest would best be served by continuing this suspension until disposition of the criminal complaint or indictment.

Employee's Signature_____ **Date:**_____
(notes receipt only that this Notice was served personally)

Supervisor's Signature:_____ **Date:**_____

White--Personnel final copy / Yellow-- Department / Pink- -Personnel first copy / Blue--Employee

pers 3/98