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ATHENA CONSTRUCTION, L.L.C.

COMPANY POLICY MANUAL

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WELCOME

It is with pride that I welcome you to ATHENA CONSTRUCTION, L.L.C. ("the company"), and it is pride that I hope you will have in all your endeavors in our behalf.

Our goal is to provide our customers with the finest services and equipment available. To meet that goal we must all work together to assure our customers that each project undertaken by the company reflects pride in our work, in our reputation, and in ourselves.

This manual has been designed to help our employees be more aware of our company policies and objectives. We can be certain that situations will arise that are not covered by this booklet. Therefore, each employee must use his or her best judgment when confronted with such a situation. Suggestions for additions or changes should be submitted to your supervisor for implementation and as changes are made, employees will be given as much advance notice as possible.

So, Welcome! May our association be a long, lasting one.


President

COMPANY POLICY

DISCLAIMER: This Company Policy Manual is not intended to be and shall not be interpreted as a contract. No person has the authority to modify the arrangement expressed in this disclaimer, unless such modification is put in writing and signed by an officer of the company. Athena retains the right to modify all benefits and provisions contained in this manual at any time, with or without notice.

1. AUTOMOBILES & TRUCKS

No job is so urgent that it cannot be performed safely. Preventing accidents is important to this goal.

A. GENERAL.

1. Parking facilities are provided on company property for the convenience of employees, but the company assumes no responsibility for damages to, or loss of, automobile or other personal property in providing such facilities.
2. Company vehicles assigned to an employee are for company use, home-to-office commuting, and personal use as outlined in Paragraph B below. All trucks and carryalls not assigned will be returned to the office each night. The driver of each vehicle is responsible for all activity carried on in his vehicle.
3. The driver of each vehicle is also responsible for the cleanliness and mechanical upkeep of his vehicle. If repairs and/or preventive maintenance are required, arrangements will be made.
4. All tickets or violations due to negligence are the driver's responsibility.
5. All drivers of company vehicles must have a valid driver's license on file with the company office.
6. No riders or hitchhikers are allowed.
7. Use of drugs or alcoholic beverages in company vehicles by drivers or passengers will not be tolerated and can lead to disciplinary actions against responsible parties. Remember, the driver is responsible for actions carried on in his vehicle.

8. Use of cellular phones while driving is restricted. See: M. Transportation – 5. Cell Phone Usage in the Safety Policy Manual.

B. PERSONAL USE.

1. Personal use of company vehicles is allowed for vehicles assigned to an employee. Those vehicles not assigned may be used with permission from the fleet manager.
2. It is the policy of this company to prohibit the use of company vehicles for personal use by the employee's family, except in the case of medical emergencies.

C. DRIVING STANDARDS.

Only those employees who have a good driving record and have taken driving training classes will be allowed to drive a company vehicle, or their own vehicle on company business. Failure of an employee who is required to drive a company vehicle to meet safe driving standards, as determined by the Company, will be subject to disciplinary action, up to and including termination.

II. BENEFITS. The Company provides Medical and Life Insurance benefits effective the first day following 30 days of employment. A Benefit Package will be given to the employee outlining the various benefits available and the cost of each.

III. BULLETIN BOARD

- A. All notices that affect employees in any way will be posted on the bulletin board, including information on safety and policy changes.
- B. No one may post information on the bulletin board without first obtaining approval from the office.
- C. No handbills or notices may be distributed on company property without prior approval by the office.

IV. EMPLOYMENT

A. HIRING

The company is an equal opportunity employer and will not discriminate in the hiring process on the basis of race, creed, color, age, sex, religion, national origin, or ancestry. The same actions apply to the hiring of any handicapped person, unless the handicap is directly related to job performance. The company will always endeavor to hire the best qualified applicant. The selection will be based on qualifications, skill, training, personality, temperament, etc.

All employees are subject to the satisfactory completion of an initial trial period. During this time the new employee will be evaluated to determine if he/she is qualified and suitable for the type of work done by Athena. This evaluation process will continue throughout your employment.

Successful completion of this trial period and continued employment does not, however, constitute a Contract of Employment. Athena retains the right to terminate your employment at any time for any reason and you retain the right to resign at any time, with or without cause, and with or without notice. The policy set forth in this paragraph may be modified only by written agreement signed by the employee and an officer of the company.

No guarantee of any specific number of hours of work per day or number of days per week is made.

B. FAIR EMPLOYMENT PRACTICE

It is the policy of this company to adhere at all times to the laws and requirements of the Fair Employment Practices Act.

C. EQUAL EMPLOYMENT OPPORTUNITIES

It is the policy of this company not to discriminate against any employee or applicant for employment because of race, creed, color, religion, age, sex, national origin or ancestry. This policy not to discriminate in employment includes, but is not limited to the following:

1. The company will employ those applicants who possess necessary skills, education, and experience, without regard to race, creed, color, religion, age, sex, national origin, or ancestry.
2. The company will promote, upgrade, transfer, or demote, recruit, advertise or solicit for employment without regard to race, creed, color, religion, age, sex, national origin, or ancestry.
3. The company will train during employment and select for training and apprenticeship programs without regard to race, creed, color, religion, age, sex, national origin, or ancestry.
4. No employee shall aid, abet, compel, coerce, or conspire to discharge or cause another employee to resign because of race, creed, color, religion, age, sex, national origin, or ancestry.
5. The company will establish rates of pay, terms, conditions, or privileges of employment without regard to race, creed, color, religion, age, sex, national origin, or ancestry.

D. EMPLOYMENT APPLICATION

1. Anyone applying for employment will be asked to fill out an employment application and other related documents.
2. Applicant must possess a valid Social Security Number. In the event it is determined that the employee's social security number is invalid, the employee will have 30 days to give the company either a new SSN card with the correct information or a document from SSA stating the employee is in the process of resolving the discrepancy. An employee who, within 90 days of the discrepancy notice, fails to furnish the company with a new SSN card displaying the employee's correct name and SSN shall be discharged. An employee so discharged, who later returns with a valid SSN, shall be eligible to be considered for rehire.
3. Anyone applying for employment shall be tested for illegal drug and alcohol use.
4. Anyone applying for employment shall undergo a back x-ray.
5. The information gathered from the employment application, pre-offer physical, drug testing, and any other document or test will help determine if the applicant is qualified for employment with the company.
6. All information contained in these documents will be confidential.

E. I-9's

This form must be completed by each and every new employee. Employees who are unable to present documentation may be given a 3 day period in which to provide the documentation or receipts showing that a document has been applied for. The newly issued documents must be presented within 90 days. Any employee failing to present the required documents will be put on unpaid leave or terminated (at the company's discretion) until the required documents are received.

F. PHYSICAL EXAMINATION/DRUG SCREEN

Each applicant being considered for employment will be required to take a physical examination, including back x-rays and drug screening. The cost of the examination is at the expense of the company. Should the applicant become an employee, and, in accordance with LSA-R.S.23:634,

should the employee resign within ninety (90) days from his first day of work, the cost of the pre-employment medical examination and drug test will be withheld from his wages.

G. CRIMINAL HISTORY CHECK

Because of the work that the company performs for operators in the Gulf of Mexico, it is a requirement of our customers that we perform criminal history checks before our employees are allowed to access their facilities. Therefore, each new employee will be subject to a criminal history check.

This background check is solely for the purpose of obtaining information regarding a criminal conviction and may be repeated at any time during your employment with the company.

If the background check reveals a negative finding, the employee will be notified and will have an opportunity to review the information and to present further information. The entire file will be reviewed by a three-person committee set up for that specific purpose. After review, if it is determined that the employee could present a threat to employees or property of either the company or our customers, the employee shall be terminated.

H. WAGES

1. CONFIDENTIALITY

Wages are kept confidential by the company and are an individual matter between the company and each employee.

2. GARNISHMENT

By law, the company is required to honor legal garnishment of employee's wages or salaries. Repeated garnishment may be considered cause for suspension and/or DISMISSAL. The personnel department will give an employee written notification of a garnishment received by the company.

3. PAY PERIOD

Wages are paid once a week, with the pay period running from Monday to Sunday. All checks are mailed to the employees. If mailing is a problem, please notify the office.

4. SUBSISTENCE

Any employee working on a job that requires him to stay out of town overnight will be given subsistence pay for each night spent out of town. This pay will come with his salary check, but on a separate check, and will cover the same period as his salary check.

5. UNCLAIMED PAY CHECKS

Paychecks not claimed by employees within two weeks of the date issued must be returned to the personnel department.

6. PAYCHECKS LOST

Employees are responsible for their paychecks after they have been issued. Checks lost or otherwise missing should be reported immediately to the payroll department so that payment can be stopped on the check. The payroll department shall determine when a new check will be issued to replace a lost or missing check.

7. CASHING PAYCHECKS

Employees are expected to cash their paychecks on their own personal time and in a timely manner.

8. PAYROLL DEDUCTIONS

a. By law, the company is required to deduct, where applicable, Federal Withholding, Social Security, and State taxes and any legal garnishments from an employee's paycheck.

- b. Deductions shall also be made for any benefits requiring a premium payment from the employee.

9. SPECIAL DEDUCTIONS

- a. The Company will pay for any pre-employment medical examination and/or drug test. If the employee fails to report to work or quits within 90 working days from his date of employment for any reason other than a substantial change in employment by the Company, the cost of any pre-employment medical examination and drug test shall be withheld from the employee's last paycheck.
- b. All employees will be issued safety equipment and will sign a receipt for the items taken. If the employee leaves the Company's employment before six months is reached, and the equipment is not returned, then the cost of this equipment shall be deducted from his last paycheck.
- c. All employees are required to wear uniforms. The weekly rental fee will be deducted from the employee's paycheck as outlined on the Uniform Policy Acknowledgement Form.

10. FINAL PAYCHECK FOR DISMISSED OR VOLUNTARILY RESIGNING EMPLOYEES

A final paycheck will be issued to a dismissed or voluntarily resigning employee on the next regular payday, not to exceed 15 days from discharge.

I. RAISES

Raises are earned—not given. Each employee is evaluated on his/her own merits, relative to his productivity and profitability. Management will review the status of each employee periodically. At that time, cost-of-living raises, as well as merit raises will be considered. Management will also review your progress in your position and make recommendations aimed at improving your status with the company. Promotions within the company are based on a mutual understanding of your goals and the company's ability to help you achieve your goals.

J. OVERTIME

Employees will receive one and one-half times their regular rates of pay for each hour in excess of forty (40) hours in a weekly payroll period (Monday through Sunday).

K. TIME KEEPING

All supervisory personnel will be responsible to record and submit to the office the hours worked by employees under their charge. If an employee is working in the yard or on a job with no supervisor, it is his responsibility to have his time recorded by office personnel.

L. WORK SCHEDULES

- 1. Work week runs from Monday morning to Sunday evening.
- 2. Hours worked per day and days per week will be determined on an individual job basis. This is, in most cases, controlled solely by our customers.

M. PROMOTIONS & TRANSFERS

Whenever possible, new or vacant positions will be filled from within the company by promoting qualified employees.

- 1. Promotions shall be made on the basis of qualifications and merit as determined by supervisors and management.
- 2. Length of continuous service shall also be strongly considered for promotion and transfers.

N. TEMPORARY JOB ASSIGNMENT

1. It is recognized by the company that sometimes, due to circumstances beyond its control, it may become necessary to assign people on short notice to duties or crew differing from their present position. Training and experience gained on temporary assignments can aid the individual in future advancement opportunities. Your cooperation will be appreciated by supervisors and management.
2. Temporary transfer from one job to another, when requested by the company, will not affect your rate of pay.

O. HOLIDAYS

1. Listed below is a schedule of company-paid holidays:

New Year's Day
Mardi Gras Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

2. Each employee will receive an additional 8 hours pay for the above dates.
3. We must all realize that we work for our customers and this means that we cannot say we will not work on certain days. It is our intention that if the customer we are working for allows us to shut down for any of the above days, the employee will be off with compensation. However, if the customer wants us to work, we expect all employees to work and additional hours will be added to his weekly payroll to compensate him.
4. In order to receive a paid holiday, an employee must work the day before and the day after a company-paid holiday unless prior authorization is received.

P. VACATION

An employee wishing to take a vacation will notify his supervisor of his vacation schedule in ample time for a suitable replacement to be found. A request for vacation time must be in writing and a check will be made in order to clear any conflicts. Written authorization for the time off will be given.

V. GENERAL RULES

The listed rules are not exclusive, and the recommended procedures for discipline is not binding on the company. Any step in the system may be skipped or the company may decide not to use the procedures at all when the seriousness of an employee's misconduct justifies his immediate discharge.

A. DISCIPLINARY ACTION

1. Theft of property from the company, customers or other employees.
First Offense: DISMISSAL.
2. Falsifying company records.
First Offense: DISMISSAL.
3. Misuse or damage of company property, customer's property, or the property of another employee.
First Offense: 3 Day Suspension
Second Offense: DISMISSAL.

4. Failure to report an injury or accident.
First Offense: 3 Day Suspension.
Second Offense: DISMISSAL.
5. Unauthorized use of equipment.
First Offense: 1 Day Suspension.
Second Offense: 3 Day Suspension
Third Offense: DISMISSAL
6. Failure to work harmoniously with other employees.
First Offense: Oral Warning.
Second Offense: 5 Day Suspension
Third Offense: DISMISSAL.
7. Insubordination to Supervisor.
First Offense: Oral Warning .
Second Offense: 5 Day Suspension.
Third Offense: DISMISSAL.
8. Lateness/Failure to Show Up
First Offense: Oral Warning.
Second Offense: 3 Day Suspension.
Third Offense: 5 Day Suspension.
Fourth Offense: DISMISSAL.

B. COMPANY PROPERTY

1. An employee is expected to exercise due care in his use of company property and to utilize such property only for authorized purposes. Negligence in the care and use of company property may be considered cause for suspension.
2. Unauthorized removal of company property from the premises or its conversion to personal use will be considered cause for suspension and/or dismissal.
3. Company property issued to an employee must be returned to the company at the time he terminates employment or when it is requested. The value of any property issued and not returned may be deducted from an employee's paycheck.
4. All material remaining at the end of ANY job is the property of the company. No material will be removed from the premises without the company's permission.

C. PERSONAL PROPERTY

The company assumes no responsibility for loss or damage to the personal property of an employee.

D. COURTESY

1. Employees should not work in a manner that willfully obstructs or hinders another employee from completing his or her assigned duties.
2. Employees should operate in a manner both safe to themselves and their fellow workers.
3. Personal problems between employees should not be pursued at work.
4. When leaving the work area for other than lunch, all employees should have the permission of their supervisor who will be told why, and for how long they will be gone.

5. Any employee who changes his or her address or family status should report it to the office immediately.

E. DRESS CODE

1. Garments of employees should cover the body. Avoid exposure.
2. Suggestive patches should not be worn. For example, obscenity, nudity, and other suggestive printed designs are not allowed.
3. Garments should be loose enough to be comfortable, but tucked in and buttoned at all times for safety purposes.
4. Safety equipment such as hard hat, safety glasses, and steel-toed boots must be worn at all times in the field.
5. Hair shall be no longer than collar length or shall be pulled back from the face and secured.
6. Due to safety considerations, we recommend and urge field employees to refrain from wearing jewelry, including rings, necklaces, bracelets, earrings, etc.

F. UNIFORMS

The company has made arrangements with Cintas to provide uniforms for its employees. The uniform policy is further explained in the Uniform Policy Acknowledgment Form which the employee is required to sign.

G. EQUIPMENT MAINTENANCE PROCEDURES

1. Equipment that works properly is our livelihood. Our reputation is based on providing the finest and best serviced equipment available.
2. All employees are required to maintain all equipment. A shop mechanic is on duty to service equipment if an employee is unable or unqualified to do so. The mechanic must be notified when service is needed.
3. Make sure that equipment is always clean, undamaged and in good working condition.
4. Any employee who repeatedly fails to maintain equipment will be subject to suspension or dismissal.

H. ILLNESS

1. Employees who become ill during working hours should notify their immediate supervisor.
2. In case of illness that will cause the employee to miss work, he must notify his immediate supervisor as soon as possible so that arrangements can be made for a substitute. **MAKE SURE YOU HAVE YOUR SUPERVISOR'S PHONE NUMBER!**
3. In case of serious illness, employees are requested to notify their supervisor and the office of the length of illness.
4. The company will accept the decision of the attending physician as final in all cases of illness.

I. INJURIES

1. Regardless of the nature or severity, ALL injuries incurred while on the job must be reported at once to your supervisor and an accident report completed.

2. The company insures employees against accidental injuries under the Worker's Compensation Act of the State of Louisiana.
3. Any employee who fails to report an injury at the time the injury occurs will be subject to disciplinary action.

J. LIGHT DUTY

2. Employees are encouraged to return to work as soon as possible after an injury.
2. The company will make available to an injured employee some form of "light duty" to conform within guidelines of instructions of the employee's attending physician.

K. ACCESS TO MEDICAL RECORDS

1. Access to an employee's exposure or medical records will be granted to the employee, or his legal representative, in a reasonable manner, time, and location, after such request has been made by the employee or his legal representative.
2. Access may include providing copies of such records.
3. Access may be obtained by contacting Jean Angeron at the company's office.

L. TARDINESS

1. Employees are expected to be on time. Transportation is provided from the office and it must leave at a designated time. If an employee is late, there is no one to take his place. Therefore, continuously being late will not be tolerated and may result in the employee's DISMISSAL.
2. If you are going to be unavoidably detained, you should phone your supervisor. **MAKE SURE YOU HAVE YOUR SUPERVISOR'S PHONE NUMBER!**

M. JOB ABANDONMENT

An employee will be considered to have abandoned his job and will be terminated if he does not report for duty as required, and does not contact his supervisor or the company office for a consecutive period of 3 days with a valid excuse for his absence.

A valid excuse is:

1. Illness of either himself or a close family member that requires immediate attention not previously anticipated. If the employee's illness prevents him from notifying the proper parties, then a third party must contact the company for him. Known illness problems must be cleared with his supervisor in advance so that a replacement can be found.
2. Death of a close family member.
3. Any other valid excuse as approved by the company.

N. MOONLIGHTING

1. Moonlighting is allowed only with prior approval of the company. Work requirements, including company overtime, will have precedence over any part-time employment.
2. Moonlighting is not permitted during any type of leave that has been granted to the employee, including FMLA leave.
3. The company discourages its full-time employees from taking employment outside the company.

4. If an employee is planning to take an outside job, permission must first be obtained from his/her supervisor.
5. Permission will not be given for an employee to take an outside job in the employment of another company which is in the same business as the company, or which is in any way a competitor of the company.
6. If permission is granted for a worker to take an outside job, the employee must report to his/her supervisor that he/she has started working at the outside company.
7. If the employee is unable to maintain a high work performance standard at the company as a result of his/her moonlighting at the outside job, the permission to work the outside job may be rescinded, or the employee is subject to DISMISSAL.
8. The company will not pay medical benefits for injuries or sickness resulting from employment at an outside company.

O. PERSONAL TELEPHONE CALLS

1. Because of the large volume of company business transacted by telephone, the use of company telephones for personal matters is discouraged.
2. However, the company recognizes there may occasionally be times when personal calls must be made or received during business hours. Such calls must be held to a minimum and must not interfere with the employee's work.
3. When a long-distance call must be made, authorization must be obtained through the office.

P. SAFETY

1. It is the policy of the company to provide and maintain safe and healthful working conditions, follow operating practices that will safeguard all employees, and result in safe working conditions and efficient operation. A company safety manual is included within this manual. Safety meetings will be held on a regular basis to keep employees aware of hazards that exist with work being carried out.
2. A clean work area makes for a more pleasant, as well as a safe place to work.
3. Employees in all areas are asked to help keep the surroundings as neat and orderly as possible.

Q. HORSEPLAY

Horseplay and practical joking can result in serious injuries or death; therefore, anyone engaging in horseplay or practical joking will be subject to disciplinary action and possible DISMISSAL.

R. VISITORS AND VENDORS

1. Visits by personal friends of employees are discouraged.
2. No visitors are allowed to break company rules affecting safety, and any employee seeing this happening should inform his/her supervisor.
3. All vendors will report to management before conducting any business with any company employee.

S. PROHIBITION OF HARASSMENT

The company is committed to courteous and considerate treatment of its employees at all times as an accepted standard of behavior. Consequently, we are committed to a work atmosphere that is

free of tension caused by demeaning or harassing conduct, including animosity engendered by inappropriate religious, racial, ethnic, age, disability, or sexual conduct or comments.

Equal employment opportunity regulations identify two basis types of unlawful "sexual harassment":

1. Where submission is unwelcome sexual advances and other physical or verbal conduct is made a term or condition of an individual's employment, such as demanding that a subordinate accept a date with a supervisor in order for the subordinate to keep his or her job.
2. Where such conduct interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, such as telling offensive jokes and engaging in offensive behavior in the workplace.

No person in this organization has the authority to grant or deny promotions, or in fact to force any change in any employee's job status, on the basis of the provision of or denial of sexual favors by the employee. Sexual harassment is specifically prohibited by the company's policies.

Other types of harassment also prohibited are identified as verbal or physical conduct that denigrates or shows hostility toward another because of his or her race, color, religion, gender, national origin, age, or disability. Any form of harassment should be reported immediately. It is the obligation of each person to report any conduct that violates these standards—whether you are the victim or not; whether the perpetrator is a supervisor, member of management, co-worker, or business invitee; and regardless of the sex of the perpetrator. Failure to report any act of harassment that you witness can result in your being disciplined also.

Same-sex harassment is also covered by this policy.

Report any act of harassment to your supervisor or Drake Stansbury at Athena's office. Management will immediately conduct a confidential investigation of any complaint, protecting the identity of the complaining party, witnesses, and the individual alleged to have violated the policy, to the extent possible. A complaint made in good faith assures that the employee making the complaint shall be protected from any retaliatory action. Appropriate action will be taken if a violation of policy has occurred, up to and including termination of employment, as determined by Management. Harassment in any form will not be tolerated

T. EMPLOYEES OFF CLOCK

Employees are not allowed on company facilities, barges, or around equipment (excluding main office) except during working times.

U. WORKPLACE VIOLENCE

The Company is firmly committed to providing a workplace that is free from acts of violence or threats of violence. In keeping with this commitment, we have established a strict policy that prohibits any employee from threatening or committing any act of violence in the workplace, while on duty, while on Company-related business, or while operating any vehicle or equipment owned or leased by the Company. This policy applies to all employees, including managers, supervisors, and non-supervisory employees. It also applies to third parties, including employee guests, who are on Company property. The Company has zero tolerance for individuals and employees who make threats, engage in threatening behavior, or commit acts of violence against employees, visitors, guests, or other individuals. Compliance with this policy is every employee's responsibility.

Experts report that people who commit a violent act usually exhibit some warning signs. The potential felon is:

- A loner;
- Usually angry;
- Paranoid;
- Depressed; and
- Fascinated with firearms

The above factors, combined with personal losses such as a family death, lay-offs, or divorce could result in a potentially dangerous situation. Supervisors should watch for personality changes, antisocial behavior, emotional outbursts, chemical dependency, performance problems, and changes in work performance.

Be aware of other warning signs such as:

- *General Threats* ("something bad could happen to Joe Smith" or "that machine in the warehouse could explode very easily")
- *Bizarre Statements* ("the world is falling apart" or "I was the only person in the company qualified for that promotion")
- *Statements Showing Obsession* ("I'll get even with John Jones someday" or "she will learn to love me, you'll see")
- *Threatening Conduct* (attempts to scare or frighten coworkers, or violent gestures, such as flashing a weapon to a coworker)
- *Change in Behavior* (an otherwise neat person reports to work looking sloppy; someone who is always on time, all of a sudden is frequently tardy; a good, productive employee, suddenly makes many mistakes)

Employees are required immediately to report to a supervisor, or to a member of management, any incident involving a threat of violence or violent behavior. If an employee is confronted with a potentially violent situation, the employee should not attempt to handle the situation, but should report it immediately to a member of management. The matter will be investigated promptly and appropriate corrective action, if required, will be taken. This action may include disciplinary action, up to and including immediate dismissal, of employees involved.

Employees who become aware of any workplace security hazards, or who have suggestions for increasing security in the workplace, should speak with their supervisors or a member of management. The Company encourages employees to help make the workplace as safe and secure as possible.

Employees are required to report violations of this policy, including any incidents involving actual or threatened violence. Employees making good faith reports may do so without fear of retaliation.

VI. SUGGESTIONS

The company maintains an open mind with regard to the improvement of its operating procedures, and encourages its employees to make suggestions to this end. Suggestions are welcomed on such subjects as safety, and ways to save labor, money, energy, time, and materials.

VII. ACKNOWLEDGMENTS

A duplicate form as shown below will be given each employee for completion and signature after hiring and orientation and will be kept in the proper personnel records of the company.

ACKNOWLEDGMENT

ATHENA CONSTRUCTION, L.L.C.

NEW EMPLOYEE EVALUATION PROCEDURE

ATHENA CONSTRUCTION, L.L.C. uses a Performance Appraisal procedure on all new employees. An appraisal will be done on each employee by his supervisor at the end of his third week, third month, and fifth month of employment.

Employees will be given access to the completed appraisals and supervisors will discuss appraisal results with the employees. If the employee ranks below standard on his General Traits and/or unsatisfactory on his Safety Rules, he will be subject to termination from employment.

I, _____, have reviewed an example
(Printed employee name)

Performance Appraisal Sheet and understand how it will be used to review my job status.

(Date)

(Employee Signature)

ACKNOWLEDGMENT

ATHENA CONSTRUCTION, L.L.C.
COMPANY POLICY

Name _____
(print name)

I have read or have had read to me the contents of the Athena Construction, L.L.C. "Company Policy" manual and fully understand the material contained therein.

I further agree to abide by the instructions set forth therein.

(Date)

(Employee Signature)

(Company Representative Signature)

ATHENA CONSTRUCTION, L.L.C.

SAFETY POLICY

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MANAGEMENT SAFETY POLICY STATEMENT

It is the policy of ATHENA CONSTRUCTION, L.L.C. (the "company") that each and every one of our employees are entitled to work in a safe and healthful environment. To accomplish this, continued emphasis will be placed on accident prevention, employee health protection, and general loss control.

The company will comply with appropriate safety and security laws and regulations such as those established by:

- The Occupational Safety and Health Act (OSHA),
- The EPA (Environmental Protection Agency),
- The DOT (Department of Transportation), and
- All other applicable federal, state, and local safety and health regulations.

Supervisors, department heads, and employees at all levels of the company's workforce are directed to make job safety a matter equal in importance to all other company operations. It is our belief that workplace accidents and incidents are symptomatic of operational problems, therefore, the control of these incidents will result in efficient production.

The following guidelines are established to assist employees in the areas of accident prevention. It is important to note that the majority of accidents and/or incidents can be prevented by taking common sense precautions. It is, however, up to each and every employee to assume full cooperation in these measures taken for their safety and protection.

Our incident prevention principles are simple:

- **Do it safely or not at all.**
- **There is always time to do it right.**
- **When in doubt, find out.**

Only you, the individual, can make safe work practices a habit!


President

I. ORGANIZATIONAL SAFETY RESPONSIBILITIES

The application of accident/incident control procedures is basically the same as the application of any other managerial control. The company's organizational structure in all supervisory duties is one where the first-line supervisor is considered the key person. Each higher level of management has the responsibility of the first-line supervisor's performance.

The following is an outline of the specific requirements of each level of management's responsibilities relative to job safety.

A. CORPORATE MANAGEMENT

The company's president, through his staff, is responsible for the planning, establishment, operation, enforcement, and reporting of the company's Safety and Health Program.

B. GENERAL SUPERVISION AND OPERATING MANAGEMENT are responsible for:

1. Providing line supervisors with training, standards and procedures relative to implementing the Safety and Health Program.
2. Development of measurement procedures whereby line supervisors can be held accountable for safety and health activities under their direct control.
3. Periodic audit and review of the Safety and Health Program's direct effect on his operations.
4. Maintaining an open line of communication between both employees, line supervisors and general operating management relative to the free exchange of safety and health data.
5. Provide periodic statistics and reports as required.

C. LINE SUPERVISORS are responsible for:

1. Implementing the elements of the Safety and Health Program as developed herein.
2. Instructing employees as to their responsibility in the safe performance of their duties and enforcing of each safety procedure, rule and regulation at all times.
3. Making inspections of his immediate assigned work areas for the purpose of correcting unsafe conditions or acts and the reporting to accountable supervision of those conditions or acts that cannot be corrected within the scope of their authority.
4. Providing assistance to the Safety Director in the investigation of accidents and/or incidents occurring in their assigned work area.
5. Enforcing the wearing of personal protective equipment.

D. SAFETY DIRECTOR responsibilities are:

To coordinate our Safety and Health Program, Jean L. Angeron has been appointed Safety Director. The overall effectiveness of our program is her responsibility.

The primary duties of this position are the review and analysis of statistical information, such as minutes of safety meetings, accident reports, etc. with follow-up recommendations to General Supervision relative to safety and health control.

The Safety Director's duties are also statistical measurements, periodic audits, and advisory safety and health activities.

E. EMPLOYEE responsibilities are:

1. Knowing and following all safety rules and policies of the company.
2. Properly wearing all necessary personal protective equipment.
3. Reporting any observed unsafe acts or unsafe conditions to immediate supervisor so that corrective action can be taken.
4. Working in such a manner so as to not endanger their own or a fellow employee's well-being.
5. Comply with all federal, state, and local rules and regulations relevant to their work.

Employees who do not fulfill their responsibilities with regard to the company's Safety Policy are subject to disciplinary action, up to and including dismissal.

B. FIRE HAZARDS

1. Disposal: Flammable waste & rubbish
Correctly _____ Incorrectly _____
2. Storage and Handling: Solvents & Flammables
Correctly _____ Incorrectly _____

C. FLOORS

1. Surface: Tripping Hazards _____ Breaks _____ Slipping Hazards _____
2. Openings: Permanent Guarding _____ Temporary Guarding _____
3. Obstructions: Clear Passage _____

D. STAIRS – RAMPS

1. Lighting: Adequate _____ Inadequate _____
2. Emergency Lighting:
Adequate _____ Inadequate _____ Functioning _____
3. Treads & Surface Conditions: Satisfactory _____ Unsatisfactory _____
4. Handrails: Adequate _____ Secured _____

E. LADDERS AND SCAFFOLDS

1. Materials and conditions:
Satisfactory _____ Unsatisfactory _____
2. Surfaces (Obstructions): _____ (Yes/No)
3. Handrails (Rungs & Height):
Satisfactory _____ Unsatisfactory _____
4. Ladders and Scaffolds: Secured _____ Satisfactory _____ Unsatisfactory _____

F. CUTTING GASES

1. Hoses, Manifold & Regulators:
Adequate _____ Inadequate _____
2. Cylinders (Secured & Capped):
Adequate _____ Inadequate _____

G. HOISTS – CRANES

1. Properly Guarded (Gears):
Adequate _____ Inadequate _____
2. Cables, Cable Clamps, Slings, Stops and Guides:
Adequate _____ Inadequate _____
3. Certification: Posted _____ Not Posted _____

H. ABRASIVE CLEANING/COATING OPERATION

1. Equipment Controls: Tagged _____
Maintenance Conditions: Okay _____
2. Personnel Protection Devices and Equipment:
Satisfactory _____ Unsatisfactory _____

I. GENERAL MARINE HAZARD

1. Gears, Pulleys, Machine Parts:
Guarded _____ Unguarded _____
2. Points of Operations Guarded:
Adequate _____ Inadequate _____

J. UNSAFE PRACTICES

1. Personal Protective Equipment:
Goggles, Glasses, Face Shields: Being Used _____
Not Used _____ Condition _____
Safety Shoes, Gloves: Being Used _____
Not Used _____ Condition _____ Correct Size _____
Hard Hats and Bump Caps: Being Used _____
Not Used _____ Lines Intact _____

2. Following General Safety Rules: Satisfactory _____ Unsatisfactory _____

3. **GENERAL CONDITIONS**

- a. First Aid (Reporting): Adequate _____ Inadequate _____
- b. Lighting: Adequate _____ Inadequate _____
- c. Ventilation: Adequate _____ Inadequate _____
- d. Housekeeping: Satisfactory _____ Unsatisfactory _____
- e. Material Handling: Satisfactory _____ Unsatisfactory _____
- f. Marking Aisles: Adequate _____ Inadequate _____
- g. Toxic or Hazardous Materials: Storage:
- h. Flammables in flammable liquids cabinets _____ (Yes/No)
- i. Paint and Thinners in Paints Lockers _____ (Yes/No)
- j. Labeling:
- k. All containers properly labeled _____ (Yes/No)
- l. Transfer containers properly labeled _____ (Yes/No)
- m. Handling and Disposal: Adequate _____ Inadequate _____

4. **WORK FLOATS**

Satisfactory _____ Unsatisfactory _____

5. **PILE DRIVING EQUIPMENT**

Satisfactory _____ Unsatisfactory _____

B. **MAIN OFFICE INSPECTIONS**

MAIN OFFICE QUARTERLY INSPECTION

The office and shop area shall be inspected by the Safety Director or her appointee on a quarterly basis. This inspection shall be conducted in accordance with the checklist below.

Comments

A. **FIRE PROTECTION**

- 1. Fire Extinguishers: Proper Type _____ Tagged _____ Accessible _____
Hose _____
- 2. Exits: Marked _____ Accessible _____
- 3. Fire Escapes: Adequate _____ Accessible _____ Safe _____

B. **FIRE HAZARDS**

- 1. Disposal: Flammable waste Correct _____ Incorrect _____
- 2. Storage: Solvents & Flammables Correct _____ Incorrect _____

C. **ELECTRICAL**

- 1. Breaker Panels: Labeled _____ Accessible _____ Openings Covered _____
- 2. Outlets: Faceplates _____ Overloaded _____ Condition _____
- 3. GFCI Outlets: Properly Located _____ Tested _____
- 4. Extension Cords: Proper Size _____ Condition of Plugs _____ Breaks in Covering _____

D. **FLOORS**

- 1. Surface: Tripping Hazards _____ Breaks _____ Slipping Hazards _____
- 2. Openings: Permanent Guarding _____ Temporary Guarding _____
- 3. Obstructions: Clear Passage _____

E. **STAIRS - RAMPS**

- 1. Lighting: Adequate _____ Inadequate _____
- 2. Treads & Surface Conditions: Satisfactory _____ Unsatisfactory _____
- 3. Handrails: Adequate _____ Inadequate _____

F. **LADDERS AND SCAFFOLDS**

- 2. Surfaces (Obstructions) Yes _____ No _____
- 3. Handrails (Rungs & Height): Satisfactory _____ Unsatisfactory _____
- 4. Secured Yes _____ No _____

G. SHOP EQUIPMENT

- 1. Bench Grinder Guards _____ Tool Rests _____ Cord _____ Wheels _____
- 2. Ice Machine Guards _____ Cord _____
- 3. Compressed Gas Cylinders Property Secured _____ Capped _____
- 4. Air Compressor Guards _____ Cord _____
- 5. Bench Light Condition _____ Cord _____

H. GENERAL CONDITIONS

- 1. First Aid (Reporting): Satisfactory _____ Unsatisfactory _____
- 2. Lighting: Adequate _____ Inadequate _____
- 3. Ventilation: Adequate _____ Inadequate _____
- 4. Housekeeping: Satisfactory _____ Unsatisfactory _____
- 5. Material Handling: Satisfactory _____ Unsatisfactory _____
- 6. Hazardous Materials Storage: Satisfactory _____ Unsatisfactory _____
- 7. Hazardous Materials Labeling: Satisfactory _____ Unsatisfactory _____
- 8. Material Safety Data Sheets: Satisfactory _____ Unsatisfactory _____

Date: _____

Company Representative Signature

IV. ACCIDENT REPORTING AND INVESTIGATION/ROOT CAUSE ANALYSIS (RCA)

A. REPORTING

Regardless of the nature or severity, ALL injuries incurred while on the job must be reported at once to your supervisor and an accident/incident report completed.

B. INVESTIGATION

1. Supervisor's Investigation

Each line supervisor shall conduct a formal written investigation of each and every job injury or incident whether or not it requires a visit to a clinic or physician. The immediate line supervisor of the affected employee shall conduct the investigation by completing a copy of the Alleged Incident Report form provided in this section. This form shall be completed within the immediate work shift following the date of the incident and forwarded to operating management for review and comments.

2. Root Cause Analysis (RCA)

A Root Cause Analysis shall be conducted by the Safety Director in order to identify the basic source of origin of the problem. This information will be shared with the employee and his supervisor.

ATHENA CONSTRUCTION, L.L.C.
P. O. Box O
Morgan City, Louisiana 70381
Ph: 504-384-5724 ----- Fax: 504-384-5727

ALLEGED INCIDENT REPORT
(Please print. Answer all questions.)

Date of Report _____ Date & Time of Injury _____ AM/PM _____
Normal Starting Time Day of Acc _____ AM/PM . If Employee Back to Work Give Date _____
At same wage? _____ Yes/No _____ If Fatal Injury Give Date of Death _____
Date Employer Knew of Injury _____ Date Disability Began _____ Last Full Day Paid-Date _____
Full Name of Employee _____ S/S # _____
Address _____ Ph: _____
Race: _____ White _____ Black _____ Am.Indian _____ Asian _____ Other. _____ D/Birth _____
Marital Status: _____ Single _____ Married _____ Divorced _____ Separated _____ Widowed _____ Date of Hire _____
No. of Children Under 18 yrs. _____ Job Title _____

Exact Location of Alleged Incident (field, nearest town/city, etc.)

Customer _____ Job # _____ Weather _____
Conditions _____
Name of Athena Barge/Tug (if any) _____

Nature and Location of Injury (describe fully, include parts of body affected). **Employee states:**

Description of Incident. **Employee states:**

Name & Address of Physician and/or Hospital providing medical treatment

(Continued on back)

SEND IN TO OFFICE AS SOON AS POSSIBLE

Members of crew/employees in immediate area.

| Name (print) | Witnessed Alleged Incident (Yes/No) | Job Title | Signature |
|--------------|-------------------------------------|-----------|-----------|
| | | | |
| | | | |
| | | | |
| | | | |

OTHER WITNESSES

| Name | Address | Telephone# | JobTitle | Employer |
|------|---------|------------|----------|----------|
| | | | | |
| | | | | |
| | | | | |

NOTES:

Supervisor _____ Employee _____

(print name) (print name)

SEND IN TO OFFICE AS SOON AS POSSIBLE

V. SAFETY MEETING REQUIREMENTS

Safety meetings shall be held daily by each line supervisor with his employees. A written record of these meetings will be made by means of a notation on the Daily Labor and Equipment Report to include the safety topic discussed. For example: "10 min safety meeting. Slips, Trips, and Falls."

VI. GENERAL SAFETY

A. GENERAL

1. Be alert to hazardous conditions. Whenever possible, correct or eliminate the hazardous condition yourself. Report to your supervisor all such hazards and the measures you have taken to correct them. Documentation should describe the hazard and give its location. Responsibility for remedial action should be assigned. If a hazard cannot be corrected immediately, clearly mark it until it can be corrected.
2. You must promptly report to your supervisor any injury you sustain while at work. You must report all company owned, leased, or rented vehicle and/or job related automotive accidents, major or minor, as soon as possible to your supervisor.

Never attempt to perform work or drive a vehicle when you are impaired by alcohol or drugs.

The unauthorized introduction, possession, or use of intoxicating beverages, illegal drugs, drug-related paraphernalia, narcotics, firearms, explosives, weapons or other hazardous substances is strictly PROHIBITED on company property or in company vehicles.

You must inform your supervisor if you are on prescribed medication that could affect your performance. Any medical formation that may be useful during a medical emergency should also be reported to your supervisor.

3. When working alone, notify another person of your location, and always try to anticipate any hazards that you might encounter. You should not attempt to do a job alone when safe working practices and common sense tell you assistance is needed. Use the “buddy system” wherever possible.
4. Never attempt to lift or move a heavy object in an unsafe manner, particularly if it is beyond your capability.
5. Never defeat the function of a safety device unless approved by your supervisor for a unique operating circumstance or a maintenance procedure. Use lock-out and tag-out procedures whenever possible. Flag and report any unserviceable safety devices to your supervisor immediately.
6. Do not be distracted by outside influences. Preoccupation with matters other than the work at hand causes accidents.
7. Do not use makeshifts of any kind that could conceivably compromise safety. In those rare instances where it must be done, obtain approval from your supervisor, and then replace or correct it with appropriate equipment or procedures as soon as possible.
8. Be careful when moving about the work area to avoid slipping, tripping, or falling. Be especially careful when weather or other conditions create or aggravate hazardous situations.
9. Never engage in scuffling, practical joking, or horseplay on the job.
10. Employee must inform immediate supervisor when leaving shop and office area.

B. SLIPS, TRIPS, AND FALLS

Slips, trips and falls are a major contributor to injuries and lost time accidents. Be careful and observe the following rules.

1. The following situations should be avoided to help prevent slipping:
 - a. Wet floors/decks
 - b. Oily floors/decks
 - c. Highly waxed and polished floors
 - d. Throw rugs at the foot or top of a stairway
2. Remove any spilled liquid from the floor or deck IMMEDIATELY.
3. Good traction helps prevent slipping. Wear shoes that provide good traction.
4. Make sure that your footing is stable when exerting extreme force on wrenches in case the wrench slips or releases quickly.

5. Good housekeeping helps prevent tripping. Do not leave small, loose debris lying around in any place, particularly in areas where personnel walk.
6. Never run unless the situation is life-threatening. Do not take dangerous shortcuts. Avoid jumping from elevated places.
7. Every opening in a deck, floor or the ground, and pit that a person could accidentally step into should be well marked. Those that are temporarily unprotected should be manned to prevent accidental injury.
8. Employees must wear approved safety harnesses when working six (6) feet or more above the ground, unless other adequate protection against falling is provided.

C. STAIRWAYS AND WALKWAYS

1. When carrying tools or material, always keep one hand free to use the handrails as you go up and down stairways. The use of two free hands is the recommended choice. Use a hand basket or line to hoist tools to an elevated work station.
2. Stairs to attic areas in warehouses must be equipped with adequate railings. All stairways should be well illuminated.
3. All steps, walkways, and stairs must be kept free of obstructions and slippery materials such as oil and grease.
4. When walkways and steps are provided, they must be used. Do not take shortcuts.
5. Tools, equipment, and material must not be left on walkways.
6. Use handrails when walking up or down stairways or steps.
7. Wooden walkways and handrails should be inspected frequently to determine their strength and integrity.
8. The use of colors to denote elevation changes is **encouraged**.
9. Secure hoses and electrical cords to the floor or ground whenever they are laid across walkways.

D. PROTECTIVE EQUIPMENT AND CLOTHING

1. INTRODUCTION.

An assessment of the workplace has been conducted to determine any actual or potential hazards that require the use of Personal Protective Equipment (PPE). The following subsections denote the type and use of PPE. Training for the proper use is done at the time of employment prior to use and on a daily basis by our supervisors.

- a. All persons are required to wear their personal protective equipment (hard hats, safety glasses, and steel toe shoes or boots) at all times while in any designated work area other than offices, and other designated safe-zones.
- b. Personal protective equipment is vital to safety in your work location. The equipment should be properly cleaned, inspected after each use, and stored in clearly marked and properly designated areas.
- c. Any equipment that no longer provides adequate protection should be repaired or replaced immediately. Unserviceable equipment should be destroyed.

2. EARS.

- a. Appropriate hearing protection is provided by the company and must be worn by all personnel in areas where excessive noise levels exist.
- b. See Section "Hearing Conservation Program" for further information on hearing protection.

3. EYES.

- a. All employees and visitors must wear approved safety glasses at all times where the potential for eye injury exists, except when special-purpose eye protection is needed or required.
- b. Contact lenses DO NOT provide eye protection but increase the need for eye protection and, consequently, are discouraged. When contact lenses are worn, goggles or special safety glasses with side shields must be worn for additional protection where eye protection is required. Contact lenses should not be worn in operations where there is a risk of liquid spray from hydrocarbons, chemicals, caustics, acids, or any liquid substances that can burn or be corrosive to the eye.
- c. Wearers of contact lenses must inform their supervisors and co-workers that they wear the lenses so that proper emergency treatment can be given if necessary.
- d. Impact type goggles must be worn and a face shield should be worn when engaging in any activity that involves hazards to the unprotected eye from chipped or flying particles. Some examples are chipping, scraping, buffing, grinding, etc.
- e. Complete-coverage eye protection must be worn when dust hazards exist and when using any type of pneumatic tool.
- f. Individuals must wear splash proof goggles when they are handling hazardous chemical liquids, powders, or vapors. They must also wear the goggles when they are in the immediate vicinity of these chemicals.
- g. Welding must not be directly watched without proper eye protection.
- h. Goggles with No. 5 or 6 shade lenses must be worn when material is cut with acetylene gas. Helpers engaged in such work should wear goggles with No. 4 shade lenses.
- i. Electric-arc welding requires the use of welding helmets or hand shields fitted with No. 10 or darker shade lenses.
- j. Cover glasses must be used with all welding goggles, helmets, and shields.
- k. Various "anti-fogging" compounds for lenses and respiratory face masks are available and should be used to maintain clear vision when conditions are conducive to fogging.
- l. For welding and tacking processes, safety glasses in conjunction with a welding shield shall be worn.
- m. Goggles shall be worn beneath the welding shield when working in close quarters where additional eye protection is needed to prevent eye injury.

- n. During grinding operations or operations where caustics, chemicals, oil, and other hydrocarbons are handled, a face shield in addition to standard industrial safety glasses shall be worn.
- o. During grinding operations in close quarters, goggles shall be worn where additional eye protection is needed to prevent eye injuries.
- p. During burning operations where the danger of having molten metal or slag fly into the eye exists, approved burning goggles shall be worn in conjunction with a face shield. Goggles shall be used when working in close quarters where additional eye protection is needed to prevent eye injuries.
- q. Prescription glasses worn on the job site shall be of approved industrial quality and have side shields that are approved for the frames. If you have a question about approved eye wear, contact your supervisor.

4. HEAD AND FACE.

- a. All persons entering any work site or shop area must wear an ANSI approved (Z89.1-1986) hard hat/cap. Safety hard hats/caps must not be painted or altered, nor shall they be worn backwards so that the suspension system is irregular to the design for normal wear.
- b. Any long hair or beard that constitutes a potential hazard around moving machinery or rotating equipment is not permitted. Hair shall be no longer than collar length or shall be pulled back from the face and secured.

5. FEET.

Good, strong shoes must be worn in any operation where the potential for foot injury exists. Sturdy, steel-toe shoes are recommended. The wearing of hobnailed shoes or shoes with protruding nails or metal taps is prohibited. Neoprene or non-slip soles that are oil resistant are recommended.

6. HANDS.

- a. Wearing gloves prevents many minor injuries resulting from rough materials or irritating substances. Wear gloves whenever possible. Leather or leather-palm gloves should be worn when wire rope is being handled. Cloth gloves afford adequate protection when pipe is handled.
- b. Insulated or heat-resistant gloves must be worn when regular work gloves cannot adequately protect against burns.
- c. Gloves shall be removed when a hand injury could occur by the use of gloves such as near moving parts of machinery.
- d. The proper glove for the specific task being performed shall be used. If in doubt, contact your supervisor.

7. SAFETY HARNESSSES.

- a. An ANSI approved climbing harness in conjunction with a personal fall arrest device must be worn at all times while a person is working six (6) feet or more above the ground, unless other adequate protection against falling is provided, such as a safety net.
- b. All safety harnesses should be regularly inspected for excessive wear or damage that could cause them to fail. Belts worn or damaged to the extent that they could fail should be destroyed, not discarded.

- c. Safety harnesses must not be thrown into a toolbox or otherwise subjected to treatment that could damage them or weaken them.

8. CLOTHING.

- a. Clothing suited to the work, the weather, and the environment in which the employee works must be worn.
- b. The wearing of jewelry such as a ring, watchband or neck chain on the job is discouraged because it can cause or contribute to accidents and/or injury.
- c. A person working around moving machinery must not wear neckties or neck chains, gauntlet gloves or gloves that fasten around the wrist, or baggy, loose, or ragged clothing. Never tie or otherwise attach a rag or handkerchief to your person in such a manner that it cannot be removed with one quick, easy pull.
- d. If clothing becomes saturated with oil, gasoline, or chemicals, the employee should immediately wash the exposed skin area with soap and water and change clothes to prevent skin irritation.
- e. Long pant legs are required going to and from work and at work locations. The length shall be ankle length at the shortest.
- f. Personnel handling chemicals or hazardous substances shall wear the clothing specified on the MSDS. **Always consult the MSDS before handling any chemicals.**
- g. Employees participating in welding and/or cutting operations shall not tuck their pant legs into their boots. The practice of tucking pant legs into the boot produces the potential for slag burn.

9. RESPIRATORY PROTECTION.

- a. It is very unlikely that any employee will need to use an air-supplied respirator. In the event that such a condition becomes eminent we shall use a vendor to supply the equipment. Training will also be provided.
- b. Employees will be taught how to use respiratory protection before its actual use is required. Specific training requirements vary for respirator types. Training will be conducted in accordance with applicable regulations.
- c. A person's ability to communicate becomes limited when wearing a respirator. Communication procedures should be included as a part of the training program in high-risk areas.
- d. Respirators must be worn when personnel are working in an atmosphere contaminated with harmful mists, fogs, gases, sprays, and vapors. Respirators must be one of the following types approved by the National Institute of Occupational Safety and Health.
 - 1) Dust Respirators. Used to protect from nuisance and toxic dusts. Not to be used for vapors, mists or fumes unless specified by the manufacturer/supplier.
 - 2) Chemical Cartridge Respirators. Used to protect from mist or vapor such as paint spray. Not to be used for dusts or fumes unless specified by the manufacturer/supplier.

- 3) **Canister Gas Masks.** Used for specific gases based on canister type. Not to be used for dusts, mists, or vapors unless specifically approved by the manufacturer/supplier.
 - 4) **Supplied Air Breathing Airline Apparatus.** Used in almost all hazardous situations. Not to be used in environments considered immediately dangerous to life. An escape bottle must also be included when used in a confined space.
 - 5) **Blower Masks.** Used in almost all hazardous situations. Not to be used in environments considered immediately dangerous to life or in confined spaces.
 - 6) **Self-Contained Breathing Apparatus (SCBA).** For use in high concentrations of toxic gases, in oxygen deficient atmospheres, or in any environment considered immediately hazardous to life.
- e. Respirators must be regularly cleaned, disinfected, and properly stored and/or disposed of after each use.
 - f. Connections on the airlines that supply breathing air to respiratory equipment must be inspected frequently and maintained to ensure their integrity.
 - g. Any employee working in an area where routine or emergency use of a self-contained breathing apparatus is required to perform his job must be clean shaven in the face-piece sealing area and must not have facial hair that could interfere with the function of the mask.
 - h. Before donning a respirator with a full-face piece, a person must remove any head covering, spectacles, or foreign items in the mouth. The mask must be tested for air tightness before the person enters the contaminate area. A negative pressure test must be conducted. In the test, the person wearing the mask inhales after the air supply has been blocked. If the mask fails to collapse against the face, it must not be used before repairs or adjustments have been made. A positive pressure test must be conducted by sealing the exhalation valve and gently blowing into the mask to ensure that it does not leak.
 - i. Employees who wear prescription glasses and are assigned to areas where respirators may be required should be outfitted with a means of attaching the prescription lenses to the face mask of the respirator.
 - j. Respirators must be cleaned and disinfected as per the manufacturers recommendations and stored in a proper sealed container.
 - k. Repairs will be made by competent persons only.

10. PERSONAL FLOTATION DEVICES (PFD).

- a. United States Coast Guard approved work vests must be worn by all employees and visitors on our job sites whenever they are exposed to possible water entry.
- b. Situations including, but not limited to, riding in open boats or on the outside deck of boats, working on open decks of barges and vessels, within 8' of the edge of docks or open water require that work vests be properly worn.

E. SMALL TOOLS & EQUIPMENT

1. GENERAL.

- a. Tools should be kept in an orderly fashion on the tool bench or in the tool chest so that they may be easily found when needed. All tools should be cleaned after use.

- b. All tools and equipment should be inspected regularly. Defective and unsafe tools or equipment must be reported promptly to the supervisor, and repaired or replaced at once.
- c. Hand or power tools should be used only in the manner and for the work for which they are designed. Never remove safety guards from power tools. Never subject a hand or power tool to strain obviously beyond its capacity.
- d. Tools must not be left lying on moving machinery.
- e. Tools or loose material not bolted, tied, or secured in an approved manner must be removed from elevations.
- f. When operating driving tools, use a tool holder for the chisel, bar, or other tool being struck.
- g. When several people are using hammers, shovels, or similar equipment, they should maintain a safe distance from each other.
- h. Nails or sharp edges around the tops of kegs, barrels, boxes, cans, and other containers should be eliminated immediately.
- i. Boards should not be thrown or left around with nail points protruding. The nails should be removed or bent down.

2. ABRASIVE WHEEL GRINDERS.

- a. Safety washers must be used on all abrasive wheels. Abrasive wheels must have a protective shield and a tool rest that is adjustable to maintain a clearance no greater than one-eighth inch (1/8). The operator must wear safety goggles.
- b. Never plug a wheel grinder to a power source without ascertaining that the grinder switch is in the "off" position.
- c. Before a wheel is mounted, it should be closely inspected to make sure it has not been damaged, that there are no cracks or deformations of the wheel. Make sure that the wheel is correct for the RPM of the grinder.
- d. Grinding wheels should always be redressed immediately after they are used on brass and aluminum material. Worn or uneven grinding wheels need to be redressed before they are used.

3. HANDLES.

- a. Remove the handle from a jack when it is not in use. Use the correct jack size.
- b. Handles of all sledges, hammers, mauls, axes, picks, mattocks, and other striking tools must be properly wedged into the heads.
- c. Files should not be used without handles.
- d. Nonconductive materials, such as wood or fiberglass, must be used for handles on shovels and post hole diggers to protect the employee from electric shock.
- e. Cracked or split handles must be replaced as soon as possible. Never paint wooden handles, and never tape cracked or split handles.

4. LADDERS.

- a. Ladders must be maintained in good condition. When portable ladders are used on hard surfaces, they must be equipped with nonskid footing or securely fastened to prevent slipping. The top of the ladder should be secured, or the ladder should be held by another person. The base of the ladder should be placed away from the wall by a distance of about one-fourth of the working length of the ladder.
- b. Ladders should be closely inspected when purchased or installed and re-inspected at least twice a year. Check the condition of the ladder before it is used and correct any defects. The combined weight of the employee and the load should not exceed the load limit for the ladder. Remove any oil, grease, or slippery material from the ladder and from your shoes.
- c. Wooden and fiberglass ladders must not be painted. Wooden ladders should be coated with clear varnish or shellac or treated with boiled linseed oil.
- d. Ladders must not be placed in front of doors that open toward the ladder unless the door is locked or guarded.
- e. When climbing or descending a ladder, a person should face the ladder and hold the side rails—NOT the rungs. Climbers should not carry tools or other encumbrances in their hands. A tool belt or pouch should be used for holding small tools, and a hand line should be used to raise or lower heavy or bulky objects. When a climbing harness is supplied, it must be used by the person ascending or descending the ladder.
- f. When working from a ladder, never extend farther than your arm's length to reach work. Always remember to go no further than your belt buckle. (BELT BUCKLE RULE)
- g. No more than one person should be on a ladder at the same time where possible. If a job requires more than one person, a second ladder or a scaffold should be considered.
- h. Never work on an unsecured ladder in windy conditions.
- i. A person should not stand on the top two steps or the spreader of a step ladder.
- j. A step ladder should not be used as a straight ladder.
- k. When performing electrical work that requires the use of a ladder, use a wooden or approved fiberglass ladder. Metal ladders must not be used.
- l. When raising a ladder, make sure it will not contact an electrical line.
- m. Extension ladders should properly overlap between sections.
- n. Ladders must not be used as scaffold members or for any purpose for which they are not intended.

5. OILING CANS.

Oiling cans with flexible or bent spouts should be used. Oiling cans with straight, rigid spouts are dangerous.

6. POWER MOWERS, EDGERS AND TRIMMERS.

Conditions that must be met:

- a. Before beginning work, carefully inspect the area and remove all wire, rocks, glass, and other objects that could become a missile if struck by the blade. The mower discharge chute and rear mower housing must be equipped with a deflector shield.
- b. Before starting the mower, inspect it for loose parts and defective or loose guards. Disconnect the spark plug wire before attempting an inspection or repair to the mower blade.
- c. Do not add fuel to the engine gas tank while it is running or while it is hot. Do not refuel in a closed area.
- d. Do not allow anyone to loiter in the immediate vicinity of operations.
- e. The operator must wear safety goggles or safety glasses with side shields beneath a full-face shield as appropriate when mowing, edging, or trimming.
- f. Fuel for power mowers must be carried and stored in approved containers.
- g. Never leave power equipment unattended while it is running.

7. POWER TOOLS.

- a. Before repairing, servicing or changing components on any power tool, the power source must be disconnected. If the tool is driven by a gasoline engine the ignition wire should be disconnected from the spark plug, or other precautions must be taken to prevent the accidental firing of the engine. **USE PROPER LOCKOUT-TAGOUT PROCEDURES.**
- b. When there is danger of explosion or fire, air-operated tools should be used.
- c. Electric power tools and equipment showing worn, deteriorated, or inadequate insulation must be removed from service until repaired.

8. SCREWDRIVERS.

- a. Avoid the careless or improper use of screwdrivers. Never attempt to use a screwdriver as a pry tool, drift, or chisel.
- b. Screwdrivers should be held in such a way that if they slip, they will not stab you or anyone else.

9. SLEDGES.

Sledge work should be so arranged that sledging in a horizontal arc is not necessary. If a person must swing the sledge in a horizontal arc, the footing of that person should be as secure as possible. All observers must stand in the clear. Check the clearance overhead and behind before starting to work. Lay sledges flat when they are not in use.

10. STEAM HOSES.

- a. An operator should not point a nozzle in the general direction of other persons. Use heat-resistant gloves.
- b. Steam hoses should be visually inspected before each use. They should be hydrostatically tested to the working pressure of the hose at least once a year.

11. WRENCHES.

- a. All wrenches should be used as is and not cheated, until efforts to break or make up the connection with the largest wrench available has failed. If a cheater is to be used, place it on the largest wrench available. The cheater should extend the full length of the handle so that it will not damage the wrench or slip off the handle. Never use a cheater on a crescent-type or aluminum wrench. Fiberglass and aluminum cheaters should not be used.
- b. All wrenches should be used without modification.
- c. Wrenches should not be used directly over the head. Instead, work at an angle.
- d. The wrench must fit the nut. The only exception will be the use of an open end adjustable.
- e. Never use a wrench to secure leverage by placing its jaw into the jaw or on the handle of another wrench.
- f. Adjustable pipe wrenches and adjustable end wrenches should be adjusted to take a full but snug grip on a pipe or nut. Avoid the use of an adjustable wrench when a box-end wrench or open-end wrench can be used.
- g. Never step or jump on wrenches or tongs when additional force is needed.

12. SCAFFOLDING.

- a. Scaffolds must be constructed to support its own weight and at least four times the maximum intended load without failure. Never exceed the safe working loads of scaffolds.
- b. All scaffolds should be erected level and plumb on a firm base. Adjusting or leveling screws must not be used on scaffolds equipped with wheels. Adjusting screws should not be extended more than 12 inches of thread.
- c. Platform planks should be laid with their edges close together so that there are no spaces large enough for tools or materials to fall through. All planking must be overlapped a minimum of 12 inches or secured from movement. Planks must extend over end supports not less than 6 inches nor more than 12 inches.
- d. When space permits, all scaffold platforms 10 feet or more in height should be equipped with standard guard rails and mid rails, be completely decked with safety plank or manufactured scaffold decking, and have rigidly secured toe boards on sides and ends.
- e. Scaffolds should be tied to and securely braced against the building or structure horizontally and vertically as specified for the type of scaffold in accordance with applicable regulations.
- f. Nonconductive ladders or scaffolds must be used when working on energized electrical circuits.
- g. Before starting work on a scaffold, inspect visually to determine that: guardrails, toe boards, and decking are in place; all wheels are locked on movable scaffolds; and locking pins are in place at each joint.

- h. Personnel must wear properly tied-off safety harnesses on scaffold platforms not equipped with standard guardrails if working surface is 6 feet or more above ground level, unless other adequate protections are provided.

13. MISCELLANEOUS.

- a. Mops or other potentially flammable items must not be placed near engine exhausts or other hot surfaces for drying.
- b. An air hose should not be used to blow particles off clothing, hair, or skin. If air pressure is being used to clean an area, the user must wear protective goggles and the air hose must be equipped with a pressure regulator to reduce the air pressure to less than 30 psig.

F. EMERGENCY RESPONSE

1. GENERAL.

In the event of an emergency, the following personnel will be contacted in order:

- a. Athena's Office (504) 384-5724
- b. Customer Representative on Site varies by customer

Depending upon the nature of the emergency, Athena and/or Customer safety personnel will notify the proper authorities and agencies.

In the event of an injury requiring more than basic first aid treatment, the injured employee(s) will be transported by company vehicle, accompanied by Athena's supervisor or a designated representative, to the nearest medical facility capable of providing proper treatment.

In the event of serious injuries, emergency medical assistance will be summoned to the nearest transition point to receive the injured employee(s) and transport them to the nearest medical treatment facility capable of providing proper treatment. Athena's Safety Director or a designated representative will meet the injured employee(s) at the treatment facility in order to coordinate treatment.

Initial accident/incident reporting and investigation will be conducted by Athena's supervisor.

2. MEDICAL WASTE.

Medical waste will be collected in appropriately labeled (Biohazard) containers and transported by company vehicle to the office of the company physician for disposal.

G. FIRST AID.

First aid kits will be kept on all barges and at all jobsites. CPR and first aid training will be conducted annually.

WHEN RENDERING FIRST AID, ALWAYS REMEMBER TO DO ONLY WHAT YOU HAVE BEEN TRAINED TO DO AND WHAT YOU FEEL COMPETENT IN PERFORMING. IN SEVERE INJURIES ALWAYS SEEK MEDICAL HELP IMMEDIATELY. CALL 911 AS SOON AS POSSIBLE.

1. GENERAL.

- a. The primary objective in first aid is to sustain life by utilizing basic life support techniques to:
 - 1) Maintain an airway
 - 2) Maintain breathing
 - 3) Maintain circulation
 - 4) Control bleeding
 - 5) Treat for shock
 - 6) Get medical care for the victim
- b. The first aid provider must avoid panic, offer reassurance, inspire confidence, and do what is necessary until medical help arrives.

2. SEVERE BLEEDING.

Severe bleeding results from wounds to large vessels. Use Universal Precautions: Treat all blood and other potentially infectious body fluids as if they are infected. Follow the exposure control plan. As a minimum, use disposable gloves as a barrier to blood and other body fluids. Bleeding may be controlled quickly. Don't waste time—apply direct pressure over the wound.

The following procedure should be used in the event of severe bleeding: Call out for help. Enter the EMS by phoning 911.

- a. Place a clean pad, handkerchief, or cloth over the wound and press firmly with your protected hand. If you do not have a pad or bandage, close the wound with your barrier covered hand or fingers.
- b. Apply pressure directly over the wound.
- c. Hold the pad firmly in place with a bandage, necktie, cloth strip, etc.
- d. Raise the bleeding part higher than the rest of the body unless bones have been broken.
- e. Keep the victim lying down.
- f. Keep the victim warm if he/she is cold; keep the victim cool if he/she is hot. The concept is to make the victim as comfortable as possible.
- g. Always treat for shock by monitoring the ABC's.

3. CARDIO AND PULMONARY RESUSCITATION.

Call out for help. Enter the EMS by phoning 9-1-1.

- a. If there is no breathing and/or circulation: do the ABC's:
 - 1) **Airway**—open the victims airway by using the head-tip, chin-lift method.
 - 2) **Breathing**—look, listen, and feel for breathing by placing your cheek and ear as close as possible to the victim's mouth and nose.
 - 3) **Check**—check for breathing return and pulse for 5-10 seconds.
- b. If there is no breathing, begin rescue breathing at the rate of one breath every 5 seconds for an adult (1:5).
- c. If there is no breathing and no pulse—begin one rescuer CPR at the rate of 2 breaths and 15 compressions. Check for breathing and pulse after each minute. Continue

giving CPR until the victim recovers both functions, rescue help arrives, or someone qualified to relieve you arrives. (2:15).

4. BURNS.

Burns can result from extreme temperature (thermal burn) or from chemicals (chemical burns). Burns are very painful and can be complicated by shock, contamination, and dehydration.

BURN – FIRST DEGREE

- DO:** Apply cold water and/or dry sterile dressing.
- DON'T:** Apply butter, oleo, margarine, etc.

BURN – SECOND DEGREE (Deeper; blisters develop)

- DO:** Immerse in cold water; blot dry with sterile cloth for protection. Treat for shock. Obtain medical attention if severe.
- DON'T:** Break blisters. Remove shreds of tissue. Use antiseptic preparation, ointment spray, or home remedy on severe burn.

BURN – THIRD DEGREE (Deeper destruction, skin layers destroyed)

- DO:** Cover with sterile cloth to protect. Treat for shock. Watch for breathing difficulty. Obtain medical attention quickly.
- DON'T:** Remove charred clothing that is stuck to burn. Apply ice. Use home medication.

CHEMICAL BURN

- DO:** Remove by flushing with large quantities of water for at least 5 Minutes. Remove surrounding clothing. Obtain medical attention.

5. HYPOVOLEMIC SHOCK.

Signs and Symptoms:

- Pale or bluish skin, nail bed, and lips
- Dilated (enlarged) pupils
- Slow capillary filling time
- Dull, sunken look to the eyes
- Cool, wet (clammy) skin, heavy sweating
- Thirst
- Rapid breathing and pulse
- Nausea and vomiting
- Loss of consciousness in severe shock

First Aid:

- Always check the ABC's.
- Preserve body heat.
- If there is a head injury or difficulty in breathing, elevate the head and shoulders if there is no spine injury.
- If the victim is unconscious or chance of vomiting, turn the victim on side if no spine injury, otherwise, the legs may be elevated 8—12 inches.
- If less than 1—2 hours from medical care and surgery is possible or an abdominal injury---DO NOT give any fluids except to conscious who are severely burned.

6. ANAPHYLACTIC SHOCK.

Symptoms:

- Coughing, sneezing, wheezing
- Difficulty breathing
- Tightness and swelling in the throat
- Tightness in the chest
- Severe itching, burning, rash, or hives
- Swollen face, tongue, mouth
- Nausea, vomiting
- Dizziness
- Abdominal cramps
- Blueness (cyanosis) around the lips and mouth
- Unconsciousness
- First Aid:
- Check ABC's and treat accordingly.
- If victim has an anaphylaxis kit containing epinephrine: Follow the kit's instructions for injecting the epinephrine. Keep checking the victim since a second injection may become necessary.
- This is a true emergency—seek medical attention **IMMEDIATELY!!**

H. EQUIPMENT.

1. AIR COMPRESSORS.

- a. Air intake piping should be located.
- b. Air compressor discharge piping must be equipped to collect and remove oil and water from air lines.
- c. Air receivers must be equipped with an indicating pressure gauge and correctly sized pressure relief valve. The pressure gauges shall be conveniently located so that regular observation can be done. The maximum working pressure shall be conveniently visible on the vessel.
- d. Automatic start air compressors must have a warning sign stating that the unit starts automatically. (THIS EQUIPMENT STARTS AUTOMATICALLY). The proper lockout/tagout should be followed before any work is performed on the unit.
- e. All moving parts such as shafts, couplings, belts, and sheaves shall be enclosed to provide complete protection of personnel and allow for dissipation of heat.
- f. Compressed air shall be used only for the purpose for which it is provided.
- g. Compressed air is not to be used to dry hands, face, or any other body part, nor shall it be used to blow dust or debris from personnel or their clothing.

2. CYLINDERS, HOSES, AND TORCHES.

- a. Compressed gas cylinders shall be handled carefully even when they are empty. Rough handling may damage cylinders or cause leakage, with consequent danger or fire and explosion.
- b. Dented or damaged cylinders should not be used.
- c. Except when in use, cylinder valves should be closed with caps in place. Do not lift the cylinders by the caps and DO NOT use them for rollers.

- d. Cylinders should be securely fastened in an upright position with valve ends up, except when they are being transported to another location.
- e. At elevated pressures, oil or grease combined with oxygen, can be explosive. Keep oil and grease off regulators, valves, hoses, and gauge connections.
- f. Oxygen shall not be used to inflate tires or blow debris from clothing or skin.
- g. Oxygen and fuel gas cylinders **MUST NOT** be stored together. They should be stored in a safe, dry, well ventilated area at least 20 feet from each other or other combustible materials or separated by a non-combustible barrier at least 5 feet in height and having a fire-resistance rating or at least 30 minutes.
- h. Leaks and bruises in hoses should be repaired immediately. A few inches of that part of the hose near the torch which is subjected to the hardest use should be cut off regularly and the hose reattached.
- i. Should a hose catch fire, close the valve at the cylinder if it is safe to do so. No attempt should be made to extinguish the fire by pinching the hose.
- j. When not in use, the oxy-fuel gas welding units should be racked. Master valves on oxygen and acetylene cylinders should be closed and pressure should be bled from the regulators and hoses after they have been used.
- k. Oxygen and fuel gas regulators shall have properly working gauges near their point of operation.

3. ENGINE AND PUMPS.

- a. Engines and pumps should be located in well ventilated areas as far away as practical from accumulation of explosive vapors.
- b. Gasoline engines should not be killed by choking. Engines or motors that start automatically should have a sign posted, warning of their automatic operation. (THIS EQUIPMENT STARTS AUTOMATICALLY).
- c. Proper guards must be installed around engine clutches, belts, and open fly wheels. Guards must be placed around cranks and other hazardous moving equipment on pumping units. These guards must be in place at all times while the units are operating.
- d. If guards are removed for repairs, they should be placed before the engine or pump is started. Never attempt to grease moving machinery that is not equipped with guarded grease fittings.
- e. A dry-chemical fire extinguisher should be located near the engine or carried on the work vehicle used in servicing or attending the engine.
- f. Before hand-cranking an engine, the cranking area must be free of oil, grease, and any objects that prevent stable footing.
- g. When cranking small engines using a rope starter, never wrap the rope around your hand or wrist. The starting rope should be made of adequate material and should be equipped with a handle.

4. HOISTING EQUIPMENT.

- a. When possible, use a hoist, crane, stiffleg, etc. to lift a heavy load. Never ride on a load being hoisted.

- b. All operators of cranes, cherry pickers, or other lifting equipment must know the load capacities of the equipment and must not exceed those capacities. Capacity charts and signs must be placed so the operator can see them clearly.
- c. Lifting equipment of any kind must receive an appropriate inspection periodically by qualified personnel. Your record of inspection must be retained. Lifting equipment must not be used if it is not working properly.
- d. Hooks on all blocks, including snatch block, must have safety latches. Electrician hooks are exceptions to this rule.
- e. All hooks on hoisting equipment should be visually inspected for cracks before the equipment is used.
- f. The maximum load specifications for the hoist must be noted on the hoist.
- g. Never overload the hoist by trying to lift objects heavier than it is designed to lift or by extending the original length of the mast.
- h. Use appropriate outriggers to stabilize lifting equipment, and make sure they are on firm ground or on timber footing.
- i. Inspect the hoist and its cable on a regular basis.
- j. Always hold tension on the cable when reeling it in or out.
- k. Leather-palm gloves should be used when handling the cable.
- l. Always rig the hoist down and secure it after the work is completed.
- m. For a hoist with manual rotation, lock the hoist in the desired position before lifting the load. Ensure that the locking mechanism is working properly. The load can easily swing out of control if the hoist is not correctly locked. Do not attempt to manually rotate a loaded hoist until an adequate number of tag lines are in place and all personnel are positioned clear of the load.
- n. For jobs that require horizontal positioning of a load after it has been picked up, a hoist with power rotation should be used, if available.

5. BACKHOE OPERATIONS.

- a. The operator must be fully qualified and thoroughly familiar with the backhoe before using it. The operator must read the manual carefully.
- b. The unit must be equipped with a roll bar and a seat belt.
- c. Use hand holes and step plates when getting on or off the unit. Never enter the unit from the rear.
- d. Do not start the engine unless seated in the driver's seat.
- e. Operate the backhoe controls ONLY when properly seated at the controls.
- f. Seat belts must be worn when the machine is in operation if the machine is equipped with a roll bar.
- g. Do not permit anyone but the operator to ride on the unit.

- h. Keep bystanders in the clear while operating the backhoe or moving the stabilizers. No one is allowed in a bell hole while a backhoe is excavating.
- i. Locate utility lines and overhead power lines before starting to dig. Do not operate a backhoe within 15 feet of an overhead electric line.
- j. Never attempt to lift loads in excess of the backhoe capacity.
- k. Never allow anyone to get under the backhoe bucket or reach through the lift arms when the bucket is raised.
- l. Use care at all times to maintain proper stability. Drive at safe speeds over rough ground, on slopes, when crossing ditches, and when turning.
- m. To prevent upsets when operating on a slope, avoid using the full reach and swinging a loaded bucket to the downhill side.
- n. Always center and raise the boom before engaging or disengaging the transport.
- o. Do not get off the tractor while it is in motion.
- p. Do not lubricate or make mechanical adjustments to the unit while it is in motion or when the engine is running.
- q. Never repair or tighten hydraulic hoses for fittings when the system is under pressure, when the engine is running, or when the backhoe cylinders are under a load.
- r. Park the unit on level ground when possible. When parking it on an incline, lower the bucket so that the cutting lip contacts the ground, apply the parking brake, and securely block the wheels.
- s. Use care in attaching towing lines to the backhoe. Pulling from the tractor rear axle or any point above the axle may cause an accident.
- t. Observe proper maintenance and repair of all pivot pins, hydraulic cylinders, hoses, snap rings, and main attaching bolts daily.
- u. Maintain the brakes in good working order.

6. CHERRY PICKER SAFETY PROCEDURES.

- a. The operator must read the operator's manual carefully and be fully qualified and thoroughly familiar with the cherry picker before using it.
- b. Never place any part of the machine or load within 15 feet of high voltage lines.
- c. Never exceed load capacities specified by the manufacturer.
- d. Transport loads at slow speeds on smooth, level surfaces with the boom in the "over front" position and the swing lock engaged.
- e. Loads may be telescoped in or out without damage to the boom or the machine as long as the limits of the load capacity chart are not exceeded.
- f. When a wire-rope hoist is equipped with a free drop option, the load which can be handled under controlled free-fall conditions must not exceed 3,500 pounds or 90 percent of the maximum allowable lift capacity, whichever is less.

- g. The cherry picker is least stable when the boom is operating from the side position.
- h. Rear-axle lockouts must be engaged at all times when the machine is swinging or lifting a load. They can be disengaged when the machine is being transported, if the boom is in the "over front" position.
- i. Do not operate the cherry picker at boom lengths and boom radii that are not listed on the chart. Under extreme conditions, the machine may overturn even without a load on the hook.
- j. Do not reverse the swing control until the swinging motion of the boom is stopped.
- k. The cherry picker is designed for only one operator in the cab. Riders are not permitted in the cab with the operator.
- l. A qualified spotter should assist the operator in placing or retrieving a load. The spotter should not be in a position where the load may fall and cause injury. Use only one spotter. A confused operator is more likely to have accidents.
- m. Always set the parking brake before leaving the machine.

I. OPERATIONS AND PROCEDURES

1. WELDING, BURNING, AND CHIPPING.

- a. No unauthorized person will be allowed to use welding equipment.
- b. Employees must use great caution when working near an electric welding arc. Exposure to it can severely burn the eyes.
- c. Plastic case lighters must not be carried around welding operations or open flames. Smoking is prohibited in areas where oxygen and/or fuel gas is stored.
- d. The fumes generated by welding are hazardous if inhaled. Adequate ventilation should be available to ensure that the fumes are kept out of the employee's breathing zone.
- e. Pieces of hot metal must not be left where workers might get burned by handling or stepping on them. It is a good practice to post the sign "Hot" on a cooling object.
- f. Welders should select their goggles carefully. A proper fit can prevent flying sparks from entering the eyes.
- g. The immediate area shall be free from combustible and/or flammable materials before beginning welding and burning operations.
- h. The area should be checked for smoldering materials and if found, extinguish them before leaving.
- i. Precautions shall be taken to avoid exposure to electrical shock from electrical equipment. Make sure that the equipment is properly grounded.
- j. Welders are responsible for the maintenance of their equipment and for the protection of passersby. Electrical welders should provide a protective screen around the arc when practicable and should not permit anyone to look at the arc without proper protection. In shops where electrical arc welding is used, signs must be displayed warning of the danger of the operation to unprotected eyes.
- k. Arc-welding units should be located in gas-free areas.

- l. Before cutting into a line, it must be punctured by a small air drill, punch, or hacksaw.
- m. All steel drums, barrels, or other closed vessels that have contained volatile liquids or gases must be thoroughly steamed, filled with water, or made safe by other approved methods before a cutting or welding torch is applied.
- n. Before welding is done on a freon system, the system must be properly purged to prevent any oil vapors from causing an explosion, and to prevent freon vapors from creating poison gas when the heater flame is applied.
- o. When a welder is cutting or welding on a line, no one should work in front of or near the open end of the line.
- p. Power to an electric arc machine should be turned off when the equipment is not in use.
- q. Only enough cable to reach the job should be used. The remainder should be kept rolled on racks.
- r. When changing welding electrodes, use care to avoid making contact with the other side of the circuit. A ground should be connected directly to the piece being welded.
- s. Welders working in the field should wear special safety helmets with face shields.
- t. Barrels or drums, empty or full, should not be used for welding platforms.
- u. Welders should dispose of used welding rod stubs. If left on the ground, they can puncture shoes and cause injury.

2. CONNECTION WORK AND PIPELINES.

- a. It is the responsibility of the supervisor in charge to plan carefully all pipeline or system repairs to avoid fire, explosion, or other mishaps.
- b. Before repair work is performed on lines or on equipment that has been in use, the supervisor, operator and any others concerned should be informed that the work is to be done.
- c. The supervisor in charge should ensure that pertinent valves are locked out or tagged before repair work begins. The supervisor should also ensure that none of these valves are opened while locked out or tagged.
- d. Appropriate signs or tags must be placed on block valves that are to be kept closed or on machines or motors that are to be kept in the "off" position during repair work.
- e. Before any repair work is begun on automated test facilities, the instrument as or electric power on the test skid must be disconnected. This action keeps the test header valves from opening accidentally while repair work is in progress.
- f. Underwriters Laboratories (UL) approved safety lights must be used when digging bell holes, repairing leaks, or walking lines at night.
- g. Heat trace circuits should be de-energized before commencing repair or maintenance on piping or pipelines.
- h. All pressure must be removed from vessels, pumps, lines, regulators, meters, fittings, and maintenance access panels before repair work begins. All gas lines and

equipment, including existing systems from which pressure has been relieved, must be thoroughly purged with a non-flammable gas to remove air before the operation begins.

- 1) Until air is completely removed, low pressure levels and low gas velocities must be maintained. Maximum purge pressure should be no greater than ten percent of the maximum operating pressure.
 - 2) Only after the air is purged from the system may foreign material be removed by blowing. This precaution helps eliminate ignition sources in air-gas mixtures.
 - 3) All sources of ignition in the area must be eliminated prior to purging, blowing, and cleaning operations.
- i. All lines and equipment anticipated for use with liquid or gaseous hydrocarbons should be hydrostatically tested to a pressure established by local management. For low pressure service, the hydrostatic test may be waived at the option of local management unless such tests are required by codes and regulations.
 - j. After they have been dismantled, modified, or reworked, all Christmas trees, manifolds, and lines should receive a hydrostatic pressure test to make certain there are no leaks. Only authorized persons making the check should be allowed around the equipment during the test. To use test fluids other than water, approval must come from local management.
 - k. Personnel should stay clear of a system being tested. No work should be performed on the pressurized system.
 - l. The location of all buried lines used for liquid or gaseous hydrocarbons must be marked in accordance with the applicable government regulations and appropriate industry codes.
 - m. When plugs or leaks are being located and when lines are being cleaned, the internal pressure of the lines must not exceed the maximum allowable operating pressure of that line.
 - n. Do not stand in front of bull plugs.
 - o. Before bolts are removed from flange connections, fittings, or installations, pipe connections should be supported properly. When disconnecting bolts, assume the proper body position to avoid undue strain or other injuries due to confined work areas.
 - p. When a bolted connection coupling, flange, plug, choke, cage, etc. is to be disconnected, all pressure on that connection must be bled off before the bolts are loosened, then the bolts should be loosened just enough to relieve any pressure trapped in the connection. Whenever possible, rings should be freed before the bolts are removed. There may still be pressure trapped behind them in the ring joints. Always stand so that pressure will be released away from the body.
 - q. A stream of water, carbon dioxide, or nitrogen gas should be sprayed on the cutters or hacksaw being used to cut through pipe that contains or has contained hydrocarbons and where iron sulfide may be present. However, carbon dioxide or nitrogen gas must not be used in bell holes or other confined working places.
 - r. Warning signs, labels, or other identifiable devices must be conspicuously attached to wellheads and lines on which cathodic protection is installed.
 - s. The location of cathodic protection system components must be established prior to excavation work.

- t. If a pipe is under cathodic protection, the rectifier should be switched off and a shorting cable should be attached to both sides of the pipe before a cut is made.
- u. Some office plates have attached handles. These handles should be maintained because they permit the plates to be lifted from the flanges.
- v. Orifice plates must not be blown out of flanges or orifice fittings.
- w. To prevent injury to the fingers when gaskets and orifice plates are installed, flange spreaders should be used.
- x. Never hammer or pound on lines or fittings that are under pressure.

3. EXCAVATIONS.

a. Before you start to excavate:

- 1) Call the appropriate "One Call".
- 2) Ensure underground installations are protected, supported or removed.
- 3) Remove or secure any unsafe obstacles that may create hazards.
- 4) Classify the type of soil and rock deposits as either type A, B, C by using one visual and one manual analysis.
- 5) Designate someone to inspect the open excavation and site daily.

b. Competent Person:

- 1) Is trained in a capable of identifying existing and predictable hazards which are unclean, hazardous, or dangerous to coworkers.
- 2) Is responsible for performing the soil classification analysis.
- 3) Has the authority to take prompt corrective measure to eliminate any hazards.
- 4) May be responsible for coordination and direction or emergency response.

c. Type of Protective Systems:

- 1) Proper sloping and/or benching of the sides of the excavation.
- 2) Supporting the sides of the excavation with timber shoring or aluminum hydraulic shoring.
- 3) Placing a shield between the sides of the excavation and your work area.

FOUR FOOT RULE: Refers to your means of escape. An exit must be provided if the excavation is four feet deep or greater. This exit must be within 25 feet of every worker.

FIVE FOOT RULE: Refers to when you need a protective system. A protective system isn't needed if the excavation is made entirely in stable rock, or the excavation is less than five feet in length (provided there is no indication of a potential cave-in).

- 1) Excavations must be adequately guarded and marked with a warning sign or covered with planks strong enough to prevent people from falling or stepping into them.
- 2) Before excavating, trenching, boring, or pile driving, you must know the location of underground pipelines and cables. Pipelines should be depressurized and hand digging completed around pipelines and cables before machine excavation begins. Use caution when excavating around lines that may be severely corroded.
- 3) Cellars around producing wells must be covered or filled. Adequate footing should be provided where work is being done at floor level over an uncovered cellar.
- 4) No one should be left alone while digging or working in a bell hole if the hole is deep enough to cave in or if hydrocarbons have been present. Bell holes should have side slopes or steps that provide easy entry and exit. (Reference: 29CFR 1926.650-652).
- 5) When working in a bell hole where hydrogen sulfide (H₂S) or hydrocarbons are present, workers should be equipped with harnesses, safety lines, and respiratory protection. Consider a lock-out system on active wells where lines are open in the bell hole.
- 6) When working in cellars or other excavations, you should recognize the possibility of cave-ins and provide adequate protection. Local regulations, if any, will be observed.
- 7) A daily inspection of all excavation and trenches must be conducted by the person in charge before other personnel are allowed to enter the excavations.
- 8) Do not stand between a pipeline ditch and strung pipe resting on skids. The bank might slough, or temperature changes in the pipe could cause skids to fall and allow the pipe to fall into the ditch.
- 9) Everyone must stay clear of the backhoe while it is in operation.
- 10) Hot work and entry permits must be obtained according to customer guidelines. In cases where the client does not have any specifics, our guidelines will be used.

4. GAS AND GASEOUS CONDITIONS:

- a. In a gaseous area or in an area where gas is known to be escaping, avoid any hammering, chipping, or striking of metal against metal. If you need to hammer or pound on a piece of equipment, remove it from the gaseous area.
- b. Trucks, cars, and boats should be kept a safe distance from a crude oil or gas leak. The person in charge should determine that distance. Always approach a leak from the upwind side.
- c. Unnecessary exposure to gas fumes should be avoided. When entering an area containing gas fumes, these precautions should be followed:
 - 1) Persons entering the danger area must use proper respirator equipment.
 - 2) Safety lines should be attached to all persons entering the danger area.
 - 3) Digging while alone is prohibited in an area that has experienced leaking gas or highly volatile liquids.

J. FIRE PREVENTION

1. GENERAL.

- a. The prevention of fires is of the utmost importance. Good housekeeping and equipment maintenance must be followed to keep fire hazards to a minimum.
- b. Matches and cigarette lighters must not be carried into any area that may have an explosive atmosphere.
- c. Any area subject to contamination by flammable liquids or gas should be designated a "No Smoking" area. A "No Smoking" sign should be displayed in the area.
- d. Attics of all buildings must be designated as "No Smoking" areas and "No Smoking" signs must be prominently displayed.
- e. Oily waste or oil-soaked clothing must be disposed of because of the possibility of spontaneous combustion.
- f. Gasoline, kerosene, or other flammable liquids must not be stored in glass containers or unapproved plastic containers.
- g. Because paint, insect sprays, aerosol sprays, and most paint removers are usually flammable, they should not be used near open flames or other sources of ignition.
- h. Inspection and maintenance of all fire equipment must be performed by a competent inspector in accordance with applicable regulatory and company requirements.
 - 1) All portable extinguishers shall be inspected monthly to ensure that they are in their designated places, that they have not been misused, discharged, if any physical damage is apparent, and that they are current for the annual inspection.
 - 2) Fire fighting equipment is for fire use only and should be kept in its proper location until it is needed.
 - 3) All fire extinguishers must have a durable maintenance tag affixed.
- i. All employees should be trained in the use of fire fighting equipment at their disposal. Attempts are to be made to contain fires only in the incipient stages. Fires beyond the incipient stage require immediate evacuation from the area.
- j. All employees shall be instructed on fire evacuation procedures.
- k. Before an open flame, such as a welding torch, is carried into a closed building or tank, a test shall be made to detect the presence of gas, using an approved combustible-gas indicator.
- l. In the event of a severe gasoline or gas leak in the yard, all flares and engines must be shut down without delay.
- m. When testing for gas leaks on gas connections, use soap suds or an approved leak-detector fluid. Never use an open flame.
- n. If a place requires special precautions against fire, employees at that location must be instructed in those precautions.

2. PLATFORM OPERATIONS.

- a. Smoking on platforms is prohibited except in designated areas. In the absence of designated areas, smoking is restricted to the quarters area.
- b. All gas leaks should be reported immediately.
- c. All personnel on each platform must be familiar with the fire fighting equipment. They must know where it is located and how to use it promptly and effectively.

K. ELECTRICAL HAZARDS

In addition to precautions found elsewhere in the Safety Manual, the following shall apply:

The most common injuries resulting from electric shock are burns. These are generally classified in one of three categories: electrical burns, arc burns, or thermal contact burns.

Electrical accidents are usually caused by a combination of three elements:

- Unsafe equipment or improper installation of equipment.
- Environmental factors which make the workplace unsafe.
- Unsafe work practices or procedures.

1. EMPLOYEE TRAINING.

All employees who face a risk of electric shock must undergo training to become "qualified". "Qualified" persons are then permitted to work on or near exposed energized parts. They must receive training, which must, at a minimum, cover the following:

- a. The ability to develop the skills and techniques needed to distinguish exposed live electrical parts from other parts of electric equipment.
- b. The skills and techniques necessary to determine the nominal voltage of exposed live parts.
- c. The clearance distances required by OSHA regulations and corresponding voltages to which they will be exposed.

Electrical hazard training can be either classroom or on-the-job training.

2. CHECKLIST FOR PREVENTING ELECTRICAL HAZARDS.

- Workplaces should have adequate access to and space around all electrical equipment.
- Electrical cords and cables must be intact.
- Perform a visual check of the workplace.
- Use ground-fault circuit interrupters (GFCI) with all portable electric tools.
- Circuit breakers and other disconnecting devices should be labeled and have obvious on/off switches.
- All installation shall conform to OSHA, the National Electrical Code (NEC) and any industry standard.
- Employees or any conductive object the employee may contact cannot come within 10 feet to an unguarded energized overhead line for voltage to ground 50 KV or below and 10 feet plus 4 inches for every 10 KV over 50 KV.
- At least one individual per electrical crew shall be CPR trained.
- Metal ladders must not be used where they, or a worker on the ladder, could touch energized equipment.
- Lockout-tagout procedures must be strictly followed.

- Energized components of equipment should be properly enclosed to prevent accidental contact.
- Use safety signs, barricades and attendants to warn of hazards.
- All electrical equipment shall be properly grounded and in good working condition.
- Equipment should be labeled with voltage, wattage, or current ratings as well as the manufacturer's name. "High Voltage" labels must appear when needed (i.e., greater than 600 volts).
- Repairs and maintenance should be performed without delay.
- Spark or flame-producing equipment should not be located near any combustible materials.
- Fire extinguishers must be accessible, clearly labeled, and inspected regularly. The required number of fire extinguishers must be in place.
- PPE, including rubber gloves, hoods, and blankets, must be provided and used to protect against electrical shock.
- Employees working near flame or electric arc hazards should wear flame-retardant clothing.

L. OFFICE, SHOPS AND WAREHOUSES

1. SAFETY EQUIPMENT AND PROCEDURES.

- a. Keep current emergency phone numbers for police, fire, and medical aid near the telephone.
- b. Become familiar with all exits and building evacuation procedures. An evacuation plan should include both primary and secondary escape routes.
- c. Know where first aid kits are located. Know who has been trained in first aid and cardiopulmonary resuscitation (CPR) procedures.

2. EMERGENCY PROCEDURES IN CASE OF FIRE.

- a. Know how to report a fire.
- b. Know the location and operating methods of all firefighting equipment in the building.
- c. Know which type of extinguisher is effective on wood, oil, grease, and electrical fires.
- d. Be familiar with survival techniques in case you are trapped by a fire.
 - 1) Do not use elevators. Use stairways to exit.
 - 2) If caught in a smoke-filled area, crawl on the floor and take short breaths through your nose. Is possible, hold a cloth in front of your face.
 - 3) Before opening a door, touch it to check its temperature. If it is hot, do not open it.

3. OFFICE FURNITURE AND EQUIPMENT.

- a. Arrange to have worn electrical cords replaced promptly by qualified personnel. NEVER attempt electrical repairs unless you are qualified to do the work.
- b. Keep walking areas clear of telephone and electrical cords. Tape down cords that temporarily cross walkways.
- c. Electrical outlets must not be overloaded.

- d. Dry your hands thoroughly before plugging, unplugging, or operating electrical equipment.
 - e. Turn off the power overnight for copiers, coffee machines, desk lamps and other electrical devices as required to meet building safety requirements. Always turn off and unplug portable electric heaters when leaving the office.
 - f. Where a microwave oven or other radiation device may be in use, signs announcing the possibility of this activity must be posted at all entrances to the area.
 - g. Keep coffee and other beverages away from electrical equipment such as copy machines.
 - h. Replace burned out light bulbs or fluorescent bulbs promptly.
4. FLAMMABLE AND HAZARDOUS MATERIALS.
- a. Keep all flammable materials away from possible ignition sources and in approved containers, with the contents labeled for identification. Containers must not be left uncapped.
 - b. Do not use aerosol sprays, cleaners, or insect repellents near ignition sources.
 - c. Keep portable electric heaters away from furniture and other flammable materials.
5. WAREHOUSE SAFETY.
- a. Warehouses must have posted smoking and nonsmoking areas.
 - b. All storage areas must be kept free of materials that can cause tripping, fire, explosion, or pest harborage. Aisles, stairways, walkways, and loading platforms must also be kept free of such materials.
 - c. Gasoline and any other highly volatile material must not be stored in a warehouse. Appropriate outside storage should be provided.
 - d. A nonskid surface should be provided on ramps and walkways where there is a danger of slipping.
 - e. Do not overload shelves. Periodically inspect shelves for strength.
 - f. Bins and racks should be spaced and located to allow safe access to material.
 - g. Make provisions for safe access to material on high shelves.
 - h. When storing heavy objects, such as fittings in bins, place strips across the lower part of the bin to keep the fittings from rolling out.
6. FORKLIFTS AND PALLET STORAGE.
- a. The operator must be fully trained, qualified, and licensed to operate the forklift before using it and must read the operator's manual carefully.
 - b. Forklifts should be visually inspected daily for conditions adversely affecting the safety of the vehicle.
 - c. Each forklift should carry a name plate showing its weight and rated capacity.

- d. Each forklift should have a horn or other warning device loud enough to be heard over local noise. The horn should be sounded when leaving and entering a building or when approaching blind corners. Forklifts should be equipped with a backup warning signal.
- e. Never overload the forklift.
- f. Before lifting, be sure that the load is stable and properly balanced.
- g. Always lower the load slowly, a sudden stop may cause the forklift to tilt forward.
- h. Never stack material in roadways or aisles.
- i. The operator must not permit anyone to ride on any part of the forklift.
- j. When a forklift is left unattended, the forks should be fully lowered, controls in neutral, power shut off and brakes set. If parked on an incline, wheels should be chocked.
- k. Never drive over objects lying on floors.
- l. When driving with or without a load, keep the forks 2-4 inches above the ground if possible.
- m. If the load obstructs forward view, the operator must travel with the load trailing.
- n. Never stand under elevated loads.
- o. Gasoline or diesel powered forklifts must be refueled outside buildings with the engine shut off and brakes set.

7. SMALL FRONT END LOADERS (BOBCATS).

- a. The operator must be trained and qualified to operate the loader.
- b. Loaders should be inspected daily for conditions adversely affecting the safe operation of the vehicle.
- c. Each loader should carry a data plate or placard indicating the weight and rated capacity of the unit.
- d. Each loader should have a horn or other warning device loud enough to be heard over local noise. Loaders should be equipped with a backup alarm.
- e. Never overload a loader.
- f. Before lifting the load, be sure that the loader is within its center of gravity.
- g. Always raise and lower the load slowly. A sudden stop may cause the forklift to tilt forward.
- h. When the loader is left unattended, the bucket should be lowered, controls in neutral, power shut off, and brakes set. If parked on an incline, the wheels should be chocked.
- i. Never drive over objects—especially while carrying a load.

8. SHOPS.

- a. Unauthorized persons should not visit or loiter in the shop, and must not use any shop equipment.
- b. Shops should be locked when unattended. A machine must not be left unattended while operating.
- c. Shops must be equipped with an approved first aid kit.
- d. Shop personnel and visitors must wear approved eye protection. Impact-type goggles must be worn and a full-face shield should be worn to protect the head and face of an operator engaged in grinding, machining, hammering, or chipping. Personal protective clothing or equipment must be worn as required by the shop.
- e. All tools should be maintained in good condition, be properly stored, and used for their purpose.
- f. Good housekeeping is essential to good safety practices. The following guidelines will help achieve and maintain good housekeeping.
 - 1) Clean up all spills immediately.
 - 2) Keep the floor free of oil and grease.
 - 3) Keep walkways free of tripping hazards.
 - 4) Store oil rags in a closed metal container.
 - 5) Close workbench drawers when not in use.
- g. Place safety guards on belts and gears. Objects such as set screws must not be left in a position that will cause them to catch on the operator's clothing.
- h. Do not wear gloves, jewelry, or loose clothing around rotating machinery. Never use rags around a machine that is in operation.
- i. Turn off or disconnect the power before making any adjustment to a machine.
- j. Remove the cuttings and filings from the machine and the floor area around the machine. Use a brush, broom, and shovel for this purpose. Never use your bare hands.
- k. Do not exceed the recommended lifting capacity of an overhead crane or a chain hoist. The allowable capacity must be marked on such cranes and hoists.
- l. When electrical tools are being operated, approved rubber floor mats should be used to provide adequate insulation.
- m. Bins and racks should be spaced and located to allow safe access to materials.

M. TRANSPORTATION

1. GENERAL.

- a. All operations of company vehicles must practice defensive driving when operating those vehicles.

- b. All operators of company vehicles must have valid, appropriate driver's licenses and be qualified to drive the vehicle to be driven.
 - c. The certificate of registration and other required documents, along with company accident forms should be carried in all company owned vehicles.
 - d. All drivers of company vehicles must be familiar with and abide by state, federal, and local traffic regulations.
 - e. Seat belts must be worn by all occupants in a moving vehicle.
 - f. Equipment on all company vehicles must conform to state, federal, and D.O.T. regulations.
 - g. Picking up hitchhikers is dangerous and **prohibited**.
 - h. Any automotive accident involving a company owned, rented, or leased vehicle, major or minor, must be reported as soon as possible to the supervisor, and required company, federal, and state accident forms must be completed.
 - i. **NEVER** attempt to perform work or drive a vehicle when you are impaired by alcohol, medications or drugs.
 - j. Before starting out in your vehicle in the morning, clear all windows of any frost, ice, or dew.
 - k. A right-hand outside rear view mirror should be installed on each company vehicle.
 - l. Unsafe and discourteous driving practices such as road hogging, disregarding rights of pedestrians, violating traffic regulations, and deliberate recklessness of any kind are **prohibited**.
 - m. Getting in and out of a vehicle while it is in motion is **prohibited**, as is riding anywhere on the vehicle not designated for passengers. Do not get out of a vehicle and leave the motor running, or drive a vehicle with a door open.
 - n. Driving at the maximum posted speed limit can be too fast for safety in some situations. The driver of a company vehicle should use good judgment and proceed at a pace suitable to the conditions of the vehicle, the road, the traffic, and the weather.
 - o. Smoking is prohibited near a vehicle being refueled.
 - p. Flammable liquids are not to be carried in trunks or luggage compartments of vehicles.
 - q. Do not carry loose items, such as hard hats, books, etc. on the rear package tray of a passenger car.
2. INSPECTIONS, SERVICING, AND REPAIR.
- a. Vehicles must be kept in good mechanical condition, with particular attention being given to brakes, signals, lights, horns, windshield wipers, steering gear, and tires. If a driver detects a mechanical defect or safety hazard in a vehicle, that employee should arrange to have repairs made at once.
 - b. Steering mechanisms should be inspected periodically.

- c. Wheel alignment, brake adjustment, and front-end mechanical condition of company vehicles should be visually inspected at least every 30 days. Brake fluid lines should be examined for defects at least every 6 months. They should be replaced or repaired if found to be faulty.

3. TRUCKS.

- a. Wheels of trucks should be checked at least once a week to see that plugs, bolts, and axle-flange nuts are tight.
- b. All fittings, tools, supplies, equipment, and loose objects hauled on trucks must be firmly secured or restrained to prevent them from falling off into the path of other vehicles.
- c. Employees must not stand on truck bumpers or hoods to act as counterweight for loads.
- d. When inflating truck tires, always stand in the clear to avoid the possibility of an injury if the retaining rings or rims spring out of place.
- e. Truck beds must be kept free of oil and grease.
- f. All trucks should be equipped with a proper fire extinguisher, first aid kit, and other appropriate emergency equipment.
- g. No load should extend directly over the truck cab unless the truck is properly equipped for such hauling.

4. DEFENSIVE DRIVING.

Defensive driving is a technique you can apply while operating your vehicle to greatly lessen your chance of being involved in an accident. Defensive driving assumes first of all that *you* are a good driver, and won't cause an accident *yourself* through poor judgment, carelessness, stupidity, or simple inexperience.

- a. Driving is a full-time occupation. Activities such as turning your head constantly to talk to a passenger, using a cell phone, or otherwise not constantly watching the road ahead, will eventually cause you to have an accident. Keep your eyes moving. Scan the horizon, check your mirrors every 3 to 5 seconds. Be totally aware of what is in front and behind you at all times.
- b. Assume you may have to stop or veer suddenly, and drive at the appropriate speed. Driving fast on gravel or snowy roads may be perfectly safe as long as nothing unexpected happens. If you assume nothing will happen, you're not driving defensively.
- c. Assume the vehicle coming towards you is being driven by an idiot. When you are approaching another vehicle coming the other way, be prepared to veer away if he moves into your lane suddenly. Look for escape routes.
- d. Assume the vehicle nearing the stop sign at the cross road ahead won't stop, but will pull out right in front of you. Keep your foot over the brake pedal and be ready to react if he pulls out in front of you.
- e. At an intersection, assume someone will be running the red light. When you get the green, don't immediately take off into the intersection. Look both ways and make sure some idiot isn't running the light.

- f. When waiting to turn left at an intersection, don't turn your wheels. If you're rear-ended, you'll be pushed into oncoming traffic. Keep your wheels pointing straight until it's safe to turn.
 - g. In city traffic, assume something unexpected could happen at any moment. Keep your eyes on parked cars for pedestrians suddenly entering your lane. Watch for sudden lane changes, and cars appearing from driveways.
 - h. Don't tailgate at high speed. You need to leave a full car length for every 10 mph you're driving at. If someone pulls in ahead of you, readjust by taking your foot off the gas and maintain that distance.
 - i. In heavy traffic on an expressway, use your brakes as little as possible. If someone up ahead has to stop suddenly, you need to be able to react quickly. The constant flashing of brake lights will tend to make you ignore brake lights ahead of you.
 - j. When stopped at an intersection, watch your mirror. You may be able to avoid being rear-ended if you keep your eye on the guy coming up behind you.
 - k. Use Your Horn. Sometimes the embarrassment of being reminded of the other driver's stupidity will improve their driving.
 - l. Report Bad Drivers. Get the license number and a description of the vehicle and phone it in to the police.
 - m. Be especially cautious in large parking lots. In large parking lots watch for idiots driving at highway speeds or across empty parking areas.
 - n. Use convex mirrors when driving on a multi-lane expressway. Get two stick-on convex mirrors and apply them to both your side mirrors. You won't have any blind spots.
 - o. Slow down in fog. If you're moving too fast and something unexpected occurs, you won't be able to stop in time.
 - p. Slow down at night. Your headlight high beams weren't designed for daytime speeds at night. If you're moving too fast, you won't be able to stop in time for what appears ahead of you.
5. Cell Phone Usage.

Purpose: The use of a cell phone while driving may present a hazard to the driver, other employees and the general public. This policy is meant to ensure the safe operation of company vehicles and the operation of private vehicles while an employee is on work time and conducting business.

- a. Employees must adhere to all federal, state or local rules and regulations regarding the use of cell phones while driving. Accordingly, employees must not use cell phones if such conduct is prohibited by law, regulation or other ordinance.
- b. It is recommended that an employee should:
 - 1) Pull over to dial or take notes.
 - 2) Pull over for conversations that are stressful, emotional, or require a lot of concentration.

- 3) Suspend conversations during heavy traffic or hazardous conditions. For example, tell the person on the other end to wait while you pull onto the highway, or tell him you'll call back in a few minutes.

We expect our employees to use discretion in the use of cell phones and not put themselves or others at increased risk.

N. WATER OPERATIONS

1. PERSONAL FLOTATION DEVICES (PFD'S).

- a. Each individual must wear a personal flotation device (PFD) as specified below, except in rare instances where conditions make such use a greater hazard. In this section a PFD must be a type approved for the service intended by the United States Coast Guard (USCG) and must be fastened when worn. A PFD must be worn:

- 1) When transferring to and from marine transportation.
- 2) When boarding or exiting barges or vessels.
- 3) When working beneath decks or outside protective handrails.
- 4) When working off of a work mat on the water.
- 5) When working within 8' of the edge of a dock or open water.
- 6) When working on the deck of a barge or a vessel.

- b. Personnel should wear a PFD at all times when going below the cellar deck.

2. EMERGENCY PROCEDURES AND EQUIPMENT.

It is the responsibility of each person aboard the platform to know what to do in the event of an emergency. Each person should also know where to obtain a PFD and have it readily available at all times.

3. PERSONNEL TRANSFER PROCEDURES.

- a. Swing Rope.

- 1) On platforms, swing rope transfer is acceptable when done in a safe manner.
- 2) Regardless of the method of transfer, every person must wear a PFD at all times while transferring between facilities and a boat.
- 3) Transfer by rope should be made as nearly as possible at the peak of the vessel's rise—NEVER while the vessel is falling away. Always use both hands. Transfer hand articles and luggage separately.
- 4) In rough seas, if an employee considers it too dangerous to try to board a boat or platform, the employee should not be required to try.

- b. Transportation by Helicopter.

- 1) Persons unfamiliar with helicopter flight procedures must be thoroughly briefed by a pilot or helicopter coordinator before they board the helicopter. Be sure you thoroughly understand all pre-flight instructions given by the pilot or coordinator.
- 2) Always approach and leave the helicopter in a crouched position so that you are well below the rotating rotor tips.
- 3) Always approach and leave a helicopter at a 90 degree angle, from the sides, and in view of the pilot.

- 4) Never walk near or under the tail boom or tail rotor of a helicopter.
- 5) The section around the tail rotor blades is the most dangerous area around the helicopter. The tail rotor blades are at or below head height. Never approach a helicopter from the rear for any reason whatsoever.
- 6) There are times when it is necessary to load and unload with the rotors running. In all cases, be aware of your position in relation to the rotor blades.
- 7) Do not approach a helicopter without the Pilot's knowledge when the rotor blades are turning. Wait for a signal from the pilot before you approach.
- 8) Passengers must not disembark a helicopter until instructed to do so by the pilot.
- 9) Passengers wearing glasses should be aware of the down draft from rotors and secure the glasses when they board or disembark the helicopter.
- 10) Hand carry hats, caps, or other light items that can be blown into the rotor or engine intake.
- 11) Passengers wearing safety hats should wear them with chin straps in place when boarding or leaving a helicopter.
- 12) Extreme caution should be observed when fishing rods, section of pipe, or cartons are being carried onto a helicopter. They must not strike the rotors or the body of the helicopter.
- 13) PFD's or inflatable life jackets provided on board the helicopter must be worn during all over-water flights. Keep all straps snug. When leaving the cabin, remove the PFD or life jacket and place it neatly on the seat. Report any PFD or jacket problems or damage to the pilot.
- 14) Safety seat belts must be fastened before takeoff and remain fastened until after the helicopter has landed. Never move about the cabin when the helicopter is in flight. Be certain that the helicopter has completed its landing before you unfasten the seat belt.
- 15) Never touch any of the aircraft controls.
- 16) While in flight, never open the doors of the helicopter or throw anything out of the helicopter.
- 17) Smoking by passengers or the pilot is prohibited at any time while on or near the helicopter.
- 18) Hearing protection should be worn during helicopter flights unless posted otherwise.
- 19) In an emergency, follow the pilot's instructions precisely.
- 20) After a forced landing on water, remain inside the helicopter unless it begins to tip or sink. Exit the helicopter with emergency kits and life rafts. Do not evacuate the helicopter before the rotor blades have stopped turning.
- 21) Learn the location and use of emergency equipment such as life rafts, emergency equipment kits, and fire extinguishers. Know the location of the emergency exits.

O. EMERGENCY PREPAREDNESS & SURVIVAL

1. WATER SAFETY AND SURVIVAL.

If you fall from a vessel or structure, observe the following procedures:

- a. Orient yourself in the water, then move under the platform and away from any boats.
- b. Look for rescue equipment and listen for instructions.
- c. Let rescuers come to you. Avoid swimming a distance if possible, because survival may depend on conservation of energy.

2. WATER ENTRY FROM A HEIGHT.

Abandonment of a platform or vessel by jumping into the water can be hazardous and should only be done if there is no other means of escape. If you must jump, observe the following procedures:

- a. Before jumping, get as close as possible to the water.
- b. Remove your safety hat.
- c. Put on and firmly secure your personal flotation device (PFD), if time permits.
- d. Look to see that your targeted landing area is clear of other personnel, protruding objects, and debris.
- e. Protect your mouth and nose. Place the palm of your hand directly over your mouth and pinch the nose with the thumb and finger.
- f. Secure your PFD by clamping your free arm across your chest and grasping the shoulder strap of the PFD.
- g. Do not dive. Look directly ahead at the horizon and stand straight. Take a deep breath. Jump feet first, keeping your body erect and your ankles crossed or your legs together.

3. UNFAVORABLE WATER CONDITIONS WITHOUT A PERSONAL FLOTATION DEVICE.

- a. Under certain emergency conditions, you may have to abandon a platform or vessel without a PFD. You should therefore be familiar with swimming conditions in unfavorable water.
- b. When swimming in rough water, turn your back to the wind or waves. Keep your head out of water and use a breast stroke.
- c. In the event of an oil or fuel fire on the water, swim under the water. Before you surface, use your hands to splash a breathing hole above your head. Then surface with your eyes closed, take a breath, and re-submerge feet first.
- d. Keep your head up and out of the water when swimming in oil and debris. Push oil or debris away from you by crossing your hands in front of you. Sweep your hands to the side as you swim forward with a modified breast stroke. Protect your eyes, nose and mouth.
- e. When swimming in cold water, conserve body heat to prevent immersion hypothermia by minimizing movement.

4. HELICOPTER EMERGENCIES.

When a helicopter must set down in water because of an emergency, or ditching, the following procedures should be observed:

- a. Follow orders from the pilot.
- b. Tighten your belt. Remove and secure your glasses, dentures, pens, and other personal items. Note the location of life rafts and survival kits. Be prepared to deploy them should the pilot not be in a position to do so.
- c. Select an orientation point. This should be a fixed part of the helicopter such as the bracing underneath the seat. Grasp this tightly during an emergency so that you will maintain a reference point. This cannot be a movable part such as a door handle.
- d. Brace for impact. A second strong jolt will be felt as the rotor blades hit the water. Do not attempt to exit until the blades have completely stopped.
- e. Stay strapped to the helicopter seat. Keep one hand firmly on your seat belt, near the buckle, not on it. Keep the other hand on your orientation point.
- f. Wait for the pilot's command to open windows or doors and to deploy life rafts. In no case should these be opened in flight.
- g. Should the helicopter not remain upright after touchdown or begin to sink, survival becomes an individual responsibility. Do not panic or hamper the survival of others.
- h. As water fills the cabin, take and hold a normal breath.
- i. After the initial rush of water has ceased, normally five to ten seconds, release the belt buckle with one hand, keeping your other hand on the orientation point. The persons seated nearest to the doors should open the doors by the regular method or turn or pull the emergency jettison handles, and push the emergency door or window out. Pull yourself hand-over-hand over the pre-planned escape route. Do not let go and attempt to swim with both hands. Maintain contact with the craft.
- j. If wearing an inflatable life jacket, exit the craft completely before inflating the jacket to avoid being snagged.
- k. Enter a life raft, if possible. Stay with a group of people if it is impossible to enter the life raft. The helicopter may stay afloat for hours, even if the emergency flotation gear has not been deployed. If possible, crawl up on the helicopter but do not tie yourself to it as it may sink without warning. Under rough conditions, it may be advantageous to move away from the helicopter to avoid bodily injury.
- l. Be prepared to assist others who may be disoriented or incapacitated.

5. RESCUE ACTIONS FOR PERSON OVERBOARD.

- a. Person-overboard procedures should be posted, and all individuals should be familiar with these procedures. Individuals should also be able to recognize a person-overboard audio alarm.
- b. Keep an eye on the person overboard while someone else sounds the alarm.
- c. Drop a lifesaving device straight down to the person overboard. This device will mark the spot if the person submerges.
- d. If the device must be thrown, be sure it does not hit the person overboard.

- e. If you reach out towards a person overboard, be sure you stretch without losing your balance.

P. SHORT SERVICE EMPLOYEE (SSE) POLICY

1. GENERAL.

The purpose of Athena Construction's Short Service (SSE) policy is to insure that short service employees are identified, appropriately supervised, trained and managed in order to prevent accidents such as personal injury, injury to others, environmental damage or damage to property.

2. POLICY

- a. SSE Definition. Any employee with less than six (6) months of experience in the same job classification with the company
- b. SSE Identification. All company SSE personnel shall wear a red hard hat for the duration of their training period. No other company personnel will be allowed to wear a red hard hat for any reason while present at an Athena Construction work site.
- c. Mentoring. Each company SSE will be assigned a mentor for the duration of their training period. The primary mentor for a SSE will be the construction supervisor for their assigned work crew. If there is more than one SSE assigned to the work crew, the construction supervisor shall assign additional mentors as needed. It is the mentor's responsibility to closely supervise the assigned SSE and give proper training and instruction where necessary in order that the SSE can safely perform his duties. The mentor will also provide training to help the SSE understand the company's safety culture.

VII. SMOKE FREE FACILITY

It is the policy of the company to maintain a work environment that is safe for employees, customers, and visitors, and is conducive to the maintenance of high work standards.

In light of the recent findings of the U. S. Surgeon General whereby second-hand smoke has been determined to be a health hazard and reclassified as a Class "A" carcinogen, all buildings, vehicles, motor vessels and location work areas are hereby SMOKE-FREE facilities. Smoking will only be allowed during break time and only in specifically designated outdoor areas. These designated areas are subject to change. Check with your supervisor for area locations.

The company, in providing a Smoke-Free environment, will enforce and discourage the use of tobacco products while employees are on company time. If any employee fails to heed this policy, disciplinary action will result:

- A. First offense results in a verbal warning. A record of this warning will be put in Employee's personnel file.
- B. Second offense results in a written warning. This warning is to be dated and signed by both the employee and the supervisor. A copy is kept in the employee's personnel file.
- C. Third offense results in a written warning. This warning is to be dated and signed by both the employee and the supervisor. A copy is kept in the employee's personnel file.

Two written warnings are cause of suspension, without pay, or dismissal. Any serious misconduct, however, may warrant suspension without any prior warnings. The length of time for suspension will vary upon the seriousness of the offense.

VIII. FIREARMS, WEAPONS, OR AMMUNITION

It is the policy of the company to maintain a workplace that provides a safe, efficient, and professional environment for all our employees and to comply with the Federal Law. The possession or use of firearms, weapons, or ammunition constitutes a serious threat to both our employees, clients, and others to potentially serious hazards, the company to considerable potential liability, and also directly conflicts with the goals and objectives of our company. This threatens our economic survival, the ability to employ our personnel, and the privilege of providing service to our customers in a safe and efficient manner.

The company will do all that is possible to prevent and discourage such possession, or use, at any time by any company employees or contractor employees. In accordance with this policy, periodic searches may be conducted. Such searches may be conducted by the company, our clients, or our clients' customers.

As a further precaution, entry into or upon any vessel, vehicle, aircraft, office facility or other work location of the company is conditioned upon the company's right to search the person, personal effects, and vehicle of any entrant for firearms, weapons, ammunition, or possession of unauthorized property or equipment.

Searches may include the person, personal effects, lockers, desks, offices, company vehicles or vehicle being used for company purposes, personal baggage, or any other items on company or client premises. Contraband items may be taken into custody and turned over to the proper enforcement agency when deemed appropriate. When such a search finds an employee to be in possession of a contraband item, the employee will be considered in violation of this policy and will be subject to disciplinary action, up to and including, termination of employment.

Compliance with this policy is strictly voluntary. Refusal by an employee to submit to a search may, however, constitute grounds for termination or appropriate disciplinary action.

The primary purpose of this policy is to promote the safety and well-being of all employees. It would be inconsistent to promote a strong safety effort, while allowing the possession of a firearm or other weapon to undermine the safe and effective performance of employees on the job.

A. FIREARMS/WEAPONS

A firearm or weapon shall be described as any instrument which may be used to do bodily harm or damage property. Also included under this Firearm and Weapon Policy shall be possession of ammunition and unauthorized property or equipment.

B. EMPLOYEES DEFINED

For the purpose of this plan, the term "Employee" is defined as:

1. All salaried, hourly and temporary personnel.
2. All subcontractor personnel performing duties at a site at which company personnel are to be searched.

C. SEARCHES

1. Searches may include the person, personal effects, lockers, desk, offices, personal vehicle, company vehicles or vehicle being used for company purposes, personal baggage, or any other items on company or client premises.
2. Searches may be performed before entry into or upon any vessel, vehicle, aircraft, office facility or other work location of the company.
3. Searches may be performed randomly in conjunction with the company's Drug Testing Policy and Alcohol Misuse Prevention Program.

D. DISCIPLINARY ACTION

Any employee, as defined in Paragraph B above, found in possession of a firearm, weapon, or ammunition shall be subject to disciplinary action up to, and including termination, and may include reporting to the proper law enforcement authorities.

IX. BLOODBORNE PATHOGENS

A. GENERAL

In accordance with the OSHA Bloodborne Pathogens standard 29 CFR 1910.1030, the following exposure control plan has been developed:

1. Bloodborne pathogens are micro-organisms in the bloodstream that can cause disease. Bloodborne pathogens attribute to many other diseases, such as malaria and syphilis. The two diseases that are of concern in the work environment are Hepatitis B and HIV.
2. Employees are required to familiarize themselves with this plan and comply with all phases.

B. BACKGROUND INFORMATION

1. HIV and HBV are usually transmitted, or passed on, when disease organisms enter the body through mucous membranes or through breaks in the skin. **Outside of work**, HIV and HBV are most commonly transmitted from:
 1. Sexual contact.
 2. An infected mother to her unborn child.
 3. Intravenous drug users sharing dirty needles.
2. **At work**, the most common way exposure to these organisms can occur is:
 1. When a worker has an open sore or injury and is in contact with infectious material.
 2. When a worker is not wearing the proper protective equipment (PPE) to protect against contact with infectious material such as blood, human tissue or other body fluids that contain blood.

C. EXPOSURE DETERMINATION

Job classifications in which all employees may be expected to incur exposure:

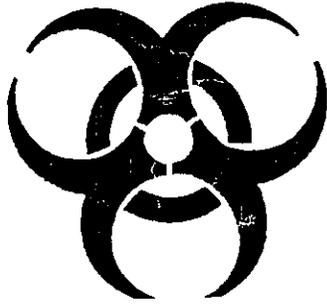
1. There are no jobs that require you to perform any direct personal contact with your co-workers in regard to exchange or handling of blood or blood products or bodily fluids.
2. However, each employee is trained in First Aid and has the opportunity to render such aid in the event of injury. This is the greatest exposure period that any employee is likely to experience.

D. IMPLEMENTATION SCHEDULE AND METHODOLOGY

1. Compliance Methods:

- a. Universal Precautions – Individuals who are infected with Hepatitis B virus or HIV may not show symptoms and may not know if they are infectious. **All human blood and body fluids should be considered infectious, and all precautions should be taken to avoid contact.** This practice is known as universal precautions.
- b. Puncture-resistant containers will be used to contain used sharp objects, such as broken glass and jagged edge metals that have been contaminated. These containers will be labeled with the biohazard label and symbol:

BIOHAZARD LABEL



- c. In the event of a situation involving blood or blood products or body fluids, the **Bloodborne Pathogens Control Kit** provided shall be used. The kit contains all the necessary materials and supplies necessary to properly handle the type of exposure events suspected in our company. You are required to familiarize yourself with the kit and the materials and supplies within.
 - d. Each supervisor will be required to examine the Bloodborne Pathogen Control Kit **MONTHLY** and notify Jean Angeron if there are any discrepancies.
 - e. All employees are required to wash their hands after removal of gloves and/or other protective clothing immediately or as soon as possible after they have had contact with blood or other potentially infectious materials; and upon leaving the work area.
 - f. All PPE (personal protective equipment) shall be removed immediately upon leaving the work area or as soon as possible if overtly contaminated and placed in the designated area in the shop or container for storage, washing, or decontamination. This will be determined on an event basis.
 - g. Eating, drinking, smoking, applying cosmetics or lip balm, and handling contact lenses are **PROHIBITED** in work areas where blood or other potentially infectious materials are present.
 - h. All other procedures involving blood or other potentially infectious materials are to be performed in such a manner as to minimize splashing, spraying, and aerosolization of these substances.
2. Protective Work Clothing and Equipment:
- a. The company provides at no cost to the employee and assures that the employee uses appropriate protective work clothing and equipment such as, but not limited to, gloves, gowns, fluid aprons, face shields or masks, eye protection, mouthpieces, resuscitation bags, pocket masks, or other ventilation devices.
 - b. The company assures that appropriate protective equipment and clothing in the appropriate sizes are readily available at the work site.
 - c. The company provides for the cleaning, laundering, or disposal of protective clothing and equipment.
 - d. The company will repair or replace required protective clothing and equipment as needed to maintain their effectiveness.
 - e. Gloves are to be worn when the associate has the potential for direct skin contact with blood, or other potentially infectious materials, mucous membranes, non-intact skin, and when handling items or surfaces soiled with blood or other potentially infectious materials.

Disposable (single use) gloves, such as surgical or examination gloves are to be replaced when visibly soiled, torn, punctured, or when their ability to function as a barrier is compromised. **THEY ARE NOT TO BE WASHED OR DISINFECTED FOR RE-USE.**

Utility gloves must be discarded if they are cracked, peeling, discolored, torn, punctured, or exhibit other signs of deterioration but may be disinfected for reuse if the integrity of the glove is not compromised.

- f. Masks, eye protection, and face shields are to be worn whenever splashes, spray, splatter, droplets, or aerosols of blood or other potentially infectious material may be generated and there is a potential for eye, nose, or mouth contamination.
- g. Appropriate protective clothing are to be worn when the associate has a potential for exposure to blood and other potentially infectious materials. The type and characteristics will depend upon the task and degree of exposure anticipated. However, the clothing for commonly expected exposures in our job performances is contained in the exposure kit.
- h. In the likelihood of shoe contamination, rubber footwear should be worn.

3. Housekeeping:

- a. Each supervisor is responsible for assuring that the work site is maintained in a clean and sanitary condition. The supervisor will determine and implement a daily cleaning schedule for disinfection based upon type of surface to be cleaned, type of soiling present, and task or procedures being performed.
- b. All equipment and environmental and working surfaces shall be properly cleaned and disinfected after contact with blood or other potentially infectious materials, and at the end of each work shift.
- c. All bins, pails, cans, and similar receptacles intended for re-use which have a potential for becoming contaminated with blood or other potentially infectious materials are to be cleaned and disinfected immediately or as soon as possible upon visible contamination.
- d. Broken glassware that may be contaminated is **NOT** to be picked up directly with the hands. It shall be cleaned up using mechanical means, such as a brush and dustpan, a vacuum cleaner, tongs, and/or cotton swabs or forceps.
- e. Reusable items contaminated with blood or other potentially infectious materials are decontaminated prior to washing and/or reprocessing.
- f. Disinfection of working surfaces shall be accomplished through:
 - 1. Removing all excess blood or other potentially infectious materials using the materials specified in paragraph (4) above.
 - 2. Application of a cleaning agent such as soap an water mixed with Clorox and/or a disinfectant.
 - 3. Application of a disinfectant and/or hypochlorite solution to the area for at least one minute or more.
 - 4. Clean and/or dispose of all cleaning utensils and/or materials as specified in the Disposal section of this manual.

4. Disposal:

- a. All infectious wastes destined for disposal is placed in closable leak-proof containers or bags that are color coded or labeled.

1. If outside contamination of the container or bag is likely to occur, a second leak-proof container or bag which is closable and labeled or color-coded is placed over the outside of the first and closed to prevent leakage during handling, storage, and transport.
 2. Disposal of all infectious waste is in accordance with applicable Federal, State, and local regulations. Consult your supervisor for the latest procedures for disposal.
- b. Immediately after use, sharps are disposed of in closable, leak-proof, puncture resistant, disposable containers that are labeled or color-coded.
1. These containers shall be easily accessible to personnel and located in the immediate area of use.
 2. These containers are replaced routinely and not allowed to overfill.

5. Laundry:

- a. Laundry that is or may be soiled with blood or other potentially infectious materials and/or may contain contaminated sharps is treated as if it were contaminated and shall be handled as little as possible and with minimum agitation.
- b. Contaminated laundry is bagged at the location where it was used.
- c. Contaminated laundry is to be placed in and transported in bags that are labeled or color-coded. Whenever laundry is wet and presents the potential for soak-through of or leakage from the bag, it is to be placed in and transported in leak-proof bags.
- d. All employees who handle contaminated laundry will utilize personal protective equipment to prevent contact with blood or other potentially infectious materials.
- e. Laundry that becomes contaminated with blood or other potentially infectious materials may be destroyed and replaced at no expense to the employee(s), or the laundry will be sent out for professional cleaning. This will be determined on a case-by-case basis by the Safety Director.

6. Hepatitis B Vaccine:

- a. All employees who have been identified as having exposure to blood or other potentially infectious materials will be offered the Hepatitis B Vaccine, at no cost to the employee. The vaccine will be offered within 10 working days of their initial assignment to work involving the potential for occupational exposure to blood or other potentially infectious materials unless the employee has previously had the vaccine or who wishes to submit to antibody testing which shows the employee to have sufficient immunity.
- b. Employees who decline the Hepatitis B Vaccine will sign the following waiver:

I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring Hepatitis B virus (HBV) infection. I have been given the opportunity to be vaccinated with Hepatitis B vaccine, at no charge to myself. However, I decline Hepatitis B vaccination at this time. I understand that by declining this vaccine, I continue to be at risk of acquiring Hepatitis B—a serious disease. If, in the future, I continue to have occupational exposure to blood or other potentially infectious materials and I want to be vaccinated with Hepatitis B vaccine, I can receive the vaccination series at no charge to me.

(Date)

(Employee Signature)

(Company Representative Signature)

- c. The vaccine will be administered by the company physician Dr. William H. Johnson, located at 1124 7th Street, Morgan City, La.

7. Post-Exposure Evaluation and Follow-Up:

- a. If you incur an exposure incident, report it to the Safety Director as soon as possible.
- b. All employees who incur an exposure incident will be offered post-exposure evaluation and follow-up.
- c. The follow-up will consist of the following:
 1. Documentation of the route of exposure and the circumstances related to the incident.
 2. If possible, the identification of the source individual, and if possible, the status of the source individual. The blood of the source individual will be tested (after consent is obtained) for HIV/HBV infectivity.
 3. Results of testing of the source individual will be made available to the exposed employee with the exposed employee informed about the applicable laws and regulations concerning disclosure of the identity and infectivity of the source individual.
 4. The employee will be offered the option of having blood collected for testing of the employees' HIV/HBV serological status. The blood sample will be preserved for at least 90 days to allow the employee to decide if the blood should be tested for HIV serological status. However, if the employee decides prior to that time that testing will be conducted, then the appropriate action can be taken and the blood sample discarded.
 5. The employee will be offered post exposure prophylaxis in accordance with the current recommendations of the U. S. Public Health Service. For more information, consult with the company physician.
 6. The employee will be given appropriate counseling concerning precautions to take during the period after the exposure incident. The employee will also be given information on what potential illnesses to be alert for and to report any related experiences to appropriate personnel.
 7. The Safety Director has been designated to assure that the policy outline here is effectively carried out as well as to maintain records related to this policy.

8. Training

Training for all employees will be conducted prior to initial assignment to tasks where occupational exposure may occur. Training will be conducted in the following manner:

- a. Training will include:
 1. The OSHA standard for Bloodborne Pathogens.
 2. Epidemiology and symptomology of bloodborne diseases.
 3. Modes of transmission of bloodborne pathogens.
 4. This Exposure Control Plan, i.e., points of the plan, lines of responsibility, how the plan will be implemented, etc.
 5. Procedures which might cause exposure to blood or other potentially infectious materials at this facility.

6. Control methods which will be used at the facility to control exposure to blood or other potentially infectious materials.
 7. Personal protective equipment available at this facility and who should be contacted concerning such.
 8. Post-exposure evaluation and follow-up.
 9. Signs and labels used at the facility.
 10. Hepatitis B vaccine program at the facility.
- b. Training will be conducted using a video tape, discussion, question and answer, and testing.
 - c. All employees will receive an annual refresher training course from the date of initial training.
 - d. The course outline may be obtained by contacting the Safety Director.
9. Record Keeping.
All records required by OSHA will be maintained by the Safety Director and/or the company physician.

X. HAZARD COMMUNICATION/ENVIRONMENTAL POLICY

A. ENVIRONMENTAL POLICY

Athena Construction, L.L.C. considers no part of our operation more important than the safety of our environment. We have developed programs to insure that our operation has little to no effect on the surrounding environment and strictly adheres to all Department of Environmental Quality and Environmental Protection Agency applicable regulations.

No program, however well written, can be effective unless the cooperation of all employees and subcontractors is achieved. In this light, the promulgation of this environmental policy will be made to all employees and all subcontractors to heighten the awareness of all concerned and guarantee that environmental safety is incorporated into planning and operational activities.

The enclosed Hazard Communication Program details the commitment on the part of Athena Construction, L.L.C., and this program has been adopted to insure the protection of our environment and our employees.

Each container must be labeled, tagged, or marked with the identity of the hazardous chemical it contains, and must show hazard warnings appropriate for employee protection. The label must include:

1. Name of chemical and synonyms, if any.
2. Signal Word: **CAUTION, DANGER, WARNING.**
3. Statement of hazard.
4. Necessary precautions.
5. First Aid procedures.

F. MATERIAL SAFETY DATA SHEETS

Material Safety Data Sheets must be maintained in current status and readily accessible during each work shift to employees for references at each affected work area. All employees who are expected to work with, or be exposed to chemicals are to be made aware of the location of the MSDS and of the information these sheets provide.

Supervisors are to ensure that the MSDS are kept current and include:

1. Identity of chemical, common names and synonyms.
2. Information on physical and chemical characteristics of the chemical (such as vapor pressure and flash point, potential for fire, explosion, and reactivity).
3. Known acute and chronic health effects, physical and/or health hazards, routes of entry.
4. Information on exposure limits and whether OSHA, the International Agency for Research on Cancer or the National Toxicology Program consider the chemical a carcinogen.
5. Precautionary measures for safe handling.
6. Emergency and first aid procedures.
7. Date of preparations and/or date of latest entry or update.
8. Identification of the party responsible for the MSDS by name, address, and telephone number.

All spaces on every MSDS must be complete. Any category for which no relevant information was found must show that no applicable information was found.

G. EMPLOYEE INFORMATION AND TRAINING

1. Supervisors must ensure that all employees in their department or work area who handle or may be exposed to hazardous chemicals are made aware of this written program, and that it is available for their review. Employees are to be informed of:
 - a. Chemicals kept in and used in the work area.
 - b. Material Safety Data Sheets for the chemicals.
2. Supervisors must ensure that all affected employees in their department or work area at time of initial assignment and whenever a new hazard is introduced into the work area, or when they are shifted to a new area where different substances are used has received and reach each of the following pamphlets:
 - a. "Hazardous Waste Regulations and You."

- b. "The M.S.D.S. – Your Guide to Chemical Safety."
 - c. "Working with Hazardous Materials."
 - d. "Working Safely with Solvents."
3. In addition, each supervisor must ensure that employees assigned to his work area are informed of:
- a. The method that may be used to detect release of hazardous chemical in the work area.
 - b. Physical and health hazards of the chemical.
 - c. Protective measures that can be taken.
 - d. Specific procedures being implemented to protect employees to the hazardous chemicals:
 - 1. Work practices.
 - 2. Emergency procedures.
 - 3. Use of and availability of personal protective devices.
 - e. Details of the hazard communication standard and written program, including:
 - 1. Explanation of the labeling system.
 - 2. Explanation of the Material Safety Data Sheets.
 - 3. How the employee can obtain and use the appropriate hazard information.

H. HAZARDS OF NON-ROUTINE TASKS

Supervisors must inform employees in their work area of any special task that may arise that would involve possible exposure to hazardous chemicals. In such instances, the supervisor must ensure that the affected workers are familiar with and know how to interpret applicable Material Safety Data Sheets.

I. FEDERAL HAZARD COMMUNICATION TRAINING PROGRAM

FACILITY/AGENCY-SPECIFIC INFORMATION

(To be filled out before the training session)

FACILITY

Name: Athena Construction, L.L.C.
 Location: 1105 Levee Road, Morgan City, La.

SAFETY INDUSTRIAL HYGIENE, AND OCCUPATIONAL HEALTH OFFICE(S)

Location: 1105 Levee Road, Morgan City, La.
 Telephone Number: (504) 384-5724

MATERIAL SAFETY DATA SHEETS

Location: On all work barges and tugs
 Telephone Number: N/A
 How to obtain copies: Located in Safety Box

HAZARDOUS CHEMICAL INVENTORY

Location: Safety Box
 Telephone Number: N/A

FACILITY HAZARD COMMUNICAITON PROGRAM

Location: Safety Box

EMERGENCY TELEPHONE NUMBERS

| | |
|------------|---|
| Spill: | Contact Customer and Athena Office (985) 384-5724 |
| Leak: | Contact Customer and Athena Office (985) 384-5724 |
| Fire: | Contact Customer and Athena Office (985) 384-5724 |
| First Aid: | Contact Customer and Athena Office (985) 384-5724 |

XI. LOCK-OUT / TAG-OUT

The purpose of Athena's Lock-Out/Tag-Out procedure is to prevent accidents due to accidental startup or operation of equipment/machinery or the unexpected release of stored energy when maintenance or service is performed on equipment or machinery.

A. GENERAL PROCEDURE

The individual authorized to shut off equipment/machines shall:

1. Locate and identify all energizing devices (i.e., batteries, air tanks, circuit breakers, valves, etc.).
2. Notify all affected employees that a lock-out/tag-out of equipment/machines is going to take place.
3. Know and follow the shut-down procedure of the equipment/machine that is to be serviced.
4. Install lock-out devices so as to prevent the equipment from being started or activated during servicing.
5. Install tag-out tag devices at the same locations where each lock-out device is installed. Sign and date tag.
6. Try to activate the equipment/machine before beginning work activity. If the equipment/machine fails to become energized upon trying, and all instructions have been completed, the equipment/machine is considered locked out of service.
7. Upon completion of work, check to ensure that:
 - a. Non-essential items have been removed.
 - b. Equipment components are operationally intact.
 - c. All employees have been safely removed.
 - d. Affected employees are notified that the lock-out/tag-out devices will be removed.
8. Ensure that the lock-out/tag-out devices are removed only by the employee(s) who applied the devices.
9. Have the supervisor remove any devices that were applied by an employee who is no longer available, **PROVIDING** that the supervisor makes a reasonable effort to locate the employee.
10. Ensure that the supervisor notifies the absent employee that his/her tag has been removed.
11. Energize the equipment/machine to ensure that it is operating properly.
12. If more than one individual is required to lock out equipment, each shall place their personal lock and tag on the isolating device. When multiple locks cannot be used, a multiple lock hasp will be used.

B. GENERAL LOCK-OUT/TAG-OUT

1. The lock-out/tag-out system shall be used if the equipment/machine is capable of accepting a lock-out device. If the equipment/machine is not capable of being locked out, the tag-out system shall be used.
2. Equipment/machinery will be designed to accept a lock-out device when major replacement of parts or repair to equipment/machinery is to be performed.
3. Lock-out/tag-out devices are to be color-coded and used only for lock-outs.
4. Lock-out/tag-out devices must be durable to the weather and the environment and substantial enough to prevent removal and must be legible at all times.
5. The lock-out/tag-out device must show the identity of the person who applied the device.
6. The tag-out device shall have the words: "DO NOT START" and warn against the hazardous condition of the equipment if it is energized.

C. TRAINING

1. Each employee authorized to perform lock-out/tag-out shall receive training in the recognition of sources, types, and magnitudes of hazardous energy and the methods for energy control by the lock-out/tag-out procedure.
2. Each employee affected by the lock-out/tag-out process is to be trained in the purpose and use of energy control by both the lock-out and tag-out procedure.
3. All employees are to be instructed about the procedure and instructed not to energize equipment or remove any lock-out/tag-out device.
4. The employer shall certify that the employee's training has been accomplished and retraining done periodically. Certification shall contain the employee's name and date of training.

D. SPECIFIC LOCK-OUT/TAG-OUT PROCEDURES

Follow the General Procedures for all Lock-Out/Tag-Outs. Listed below are specific instructions to lock-out or disengage sources of energy in equipment/machinery operated by Athena Construction. To re-engage, reverse the procedure.

1. AUTOMOBILES, PULL UNITS, MARSH BUGGY TRACKING UNIT, WELDING MACHINES.
Turn machine off. Disconnect battery and place lock-out device through battery cable clamp.
2. AIR COMPRESSORS.
Turn machine off. Disconnect battery and place lock-out device through the battery cable clamp. Open air storage tank valve and release all stored air and leave valve in the open position.
3. NORTHWEST AND KOEHRING CRANES.
Dog off boom. Lock hoist line brake pedal, and on Koehring, the boom pedal also. Turn machine off. Disconnect battery and place lock-out device through the battery cable clamp. Open air storage tank valve and release all stored air and leave valve in the open position.
4. LINKBELT CRANE.
Dog off boom and swing. Lock hoist line brake pedal. Turn machine off. Disconnect battery and place lock-out device through the battery cable clamp. Release hydraulic pressure by working the swing lever back and forth until the pressure is released.
5. MAINITOWAC CRANE.
Dog off boom. Turn machine off. Disconnect battery and place lock-out device through the battery cable clamp.

6. MARSH BUGGY CRANE.

Boom down until boom is on the ground or other stable support. Lock hoist line brake pedal and boom lever. Turn machine off. Disconnect battery and place lock-out device through the battery cable clamp.

7. BACKHOE.

Boom down so that the bucket is on the ground. Place clutch lever in the "up" position. Turn machine off. Disconnect battery and place lock-out device through the battery cable clamp.

8. BULLDOZER.

Place blade on the ground and place shift lever in neutral position. Disconnect battery and place lock-out device through the battery cable clamp.

9. SPUD UNIT.

Drop spud or pin off spuds, engage brakes, and lock brakes with lock-out device. Disconnect battery and place lock-out device through the battery cable clamp.

10. OFFICE

- a. Electrical Equipment - Unplug from receptacle and place lock-out device over male plug.
- b. Air Conditioner, Blower Unit - Turn breaker off, shut breaker box door, and place lock-out device on door hasp.
- c. Compressor Unit - Turn disconnect off and place lock-out device on handle lock.

11. Hot Water Heater and Electrical System - Turn breaker off. Take breaker in "off" position and tag with tag-out tag.

E. AUTHORIZED PERSONNEL

Lock-out/Tag-outs shall be performed by the mechanic in charge, supervisor and/or operator of equipment.

COLOR CODING:

| | |
|------------|--------------|
| Mechanic | RED |
| Supervisor | BLUE |
| Operator | BLACK |

XII. HEARING

A. PURPOSE

It is the policy of this company to institute an occupational hearing conservation program to prevent any temporary or permanent noise-induced hearing loss to employees, and to comply with Federal OSHA Standard 29 CFR 1926.52.

B. GENERAL

Noise is a common problem at many construction work sites, and carries the very serious health hazard of permanent hearing loss. It has been determined that hearing loss occurs if a particular sound is loud enough and long enough; specifically, if the sound intensity exceeds an average of 85 decibels over an eight-hour shift. Here are some decibel readings to give you an example of the level involved:

| NOISE | DECIBEL LEVEL |
|-------------------------------------|---------------|
| Average Factory | 80-90 dB |
| Lawn mowing with power mower | 91 dB |
| Rock Concert | 105 dB |
| Jet engine, gunfire, and explosives | Above 140 dB |

Noise-induced hearing loss can't be cured, so the only way to avoid hearing damage is to prevent excessive noise exposure. OSHA has developed a regulation to address such noise exposure in the work environment. The regulation governing hearing conservation, hearing protection, and occupational noise exposure, are found in the Occupational Noise Exposure standard at 29 CFR 1910.95. If noise exposure levels exceed certain limits as laid out below under Noise Exposure Level Limit, this regulation has specific requirements for a hearing conservation program that includes:

- Noise monitoring
- Audio metric testing
- Employee use of hearing protection devices.

C. EAR PROTECTION

1. Exposure to high noise levels can cause hearing loss or impairment. It can create physical and psychological stress. There is no cure for noise-induced hearing loss, so the prevention of excessive noise exposure is the only way to avoid hearing damage. Specifically designed protection is required, depending on the type of noise encountered.
2. Prefformed or molded ear plugs should be individually fitted by a professional. Waxed cotton, foam, or fiberglass wool ear plugs are self-forming. When properly inserted, they work as well as most molded ear plugs.
3. Some ear plugs are disposable, to be used one time and then thrown away. The non-disposable type should be cleaned after each use for proper protection. Plain cotton is ineffective as protection against hazardous noise.
4. Earmuffs need to make a perfect seal around the ear to be effective. Glasses, long sideburns, long hair, and facial movements, such as chewing, can reduce protection. Special equipment is available for use with glasses or beards.
5. For extremely noisy situations, ear plugs should be worn in addition to earmuffs. When used together, ear plugs and earmuffs change the nature of sounds; all sounds are reduced including one's own voice, but to her voices or warning signals are easier to hear.

D. MONITORING

1. The Safety Office or contracted consultant (insurance carrier, other qualified individual) will monitor and identify workplace noise levels using a calibrated sound level meter on an annual basis, or whenever there is a change in production processes, equipment, or controls. Monitoring is performed to determine which employees in which areas at which work sites are exposed to excessive noise and fall under the hearing conservation program. Whenever employee noise exposures equal or exceed the levels in the Permissible Noise Exposures Table (Table D-2 in the regulation), the affected employee will be subject to the hearing conservation program.
2. The Safety Office will be informed of upcoming equipment purchases or modifications which may affect sound levels. When the equipment purchase or modification is nearing its final decision phase, the Safety Office is to be notified. If necessary, on-site visits or vendor contact by the Safety Office will be coordinated to monitor noise levels and also assess any potential safety or

ergonomic issues which may affect employees. The Safety & Security Manager will also work with Procurement to obtain necessary technical specifications as well as coordinate any vendor contact on safety issues.

3. Controlling noise at the source utilizing engineering controls must be considered first before any other tactics are implemented.
4. Warning signs will be posted in conspicuous locations at work sites near the high noise level areas to ensure that hearing protection is required when operating machinery.

E. AUDIOMETRIC TESTING PROGRAM

1. The Company will provide audiometric testing at no cost to the employee in the hearing conservation program. Initial testing will be done during a new employee's first 4 months of employment, and thereafter on an annual basis, or whenever changes occur that result in increased noise levels, in employee job transfer situations into or out of an area in the hearing conservation program, and in layoff situations.
2. Audiometric testing will be performed by a licensed/certified audiologist, technician, or any other qualified individual.
3. The Safety Office will inform employees prior to their scheduled testing. Employees must have 14 hours of non-exposure to work site or work-related noise prior to the actual testing. Protective hearing equipment may be substituted for the necessary waiting period.
4. If an employee's audiogram suggests that a standard threshold shift has occurred, the employee will be notified in writing within 21 days. He/she will be retested within 30 days via a clinical audiological evaluation or an otological examination. The new audiogram will be considered as the baseline audiogram for any future testing. The occurrence will be recorded on the OSHA 200 log.
5. Audiometric testing will be conducted on an annual basis.

Currently, the employees in the following areas/sections participate in the hearing conservation program, which includes the mandatory audiometric testing:

| AREA NAME | EMPLOYEE JOB/TITLE |
|-----------------|---|
| Jet I | Captain |
| All Work Barges | Supervisor Operator Oiler Roustabout Welder |

F. HEARING PROTECTION

1. The Safety Director will order and provide adequate hearing protection for employees. All employees subject to work in those areas must be provided with appropriate hearing protection devices from among the types listed in the table in 4 below.
2. Employees are required to wear company-provided hearing protection and at no time may an employee tamper with or modify any hearing protection equipment. Damaged or defective equipment must be discarded and replaced.
3. Supervisors are required to enforce the hearing conservation policy in their area of responsibility.
4. The standard requires the company to provide a variety of hearing protection devices to persons who are required to wear them. The types of protective devices available include:

TYPE OF HEARING PROTECTION**ADVANTAGES****DISADVANTAGES**

| | | |
|--|---|--|
| Ear Muffs | One size fits most adults. Can be easily seen at a distance. Can be put on, adjusted, etc. while wearing gloves. Can be warming to the ears in cold environments. | Usually have a lower noise reduction rating than ear plugs, but still provide effective protection. They are bulky and cannot fit in pockets or stored in tool kits. May interfere with and not sit properly when glasses, hearing aids, etc. are worn. Because of their size, may not be suitable for the work quarters. Excessive heat and sweat accumulation may make uncomfortable to wear in hot locations. Are more difficult to clean than ear plugs. |
| Ear Plugs (2 types: PRE-FORMED and EXPANDABLE) | Have highest noise reduction rating and are very effective in protecting your hearing when worn properly. Do not interfere with work in close quarters. Are easily carried and stored when not in use. Compatible with glasses or any other type of head gear without affecting performance. Can be easily cleaned. | Fitting can be complicated. Ear canals vary in diameter and the left and right ear canals are not necessarily similar in size, shape, or position. Can be easily left in other work clothes or fall out of a jacket or shirt pocket and become lost. Cannot be seen at a distance which makes it difficult to evaluate if person is wearing them. Gloves must be removed and hands washed prior to putting in ear plugs. |

It has been determined that hearing protection is required in the following areas and for the following operations:

1. JET 1
2. Dragline Cab
3. When operating or working within 10' radius of:
 - a. Spud Unit
 - b. Air Compressor
 - c. Welding Machine

In addition, hearing protection is required for employees when using:

1. Power equipment (e.g. chainsaws)
2. Diesel pump operation.
3. Grinders and buffers.
4. Air tools (e.g. impact wrench, air drill, etc.)
5. When staff members are in the designated areas listed above.

G. TRAINING AND INFORMATION

1. The Safety Director will ensure that each employee in the hearing conservation program receives training during the first week of employment.
2. Retraining will be conducted on an annual basis. Information provided in the retraining program will be updated to be consistent with changes in work processes and/or protective equipment.

H. RECORDKEEPING

1. The Safety Director will maintain accurate records for all noise level surveys and employee exposures.
2. Employees' baseline/annual audiograms and any other records will be retained in a separate file in Personnel for the duration of employment plus 30 years after termination.
3. Records will be provided to employees, former employees, or designated representatives thereof, upon written request to the Safety Director.

IX. ACKNOWLEDGMENTS

A duplicate form as shown below will be given each employee for completion and signature.

ACKNOWLEDGMENT

**ATHENA CONSTRUCTION, L.L.C.
SAFETY AND HEALTH PROGRAM**

Name _____
(print name)

I have read or have had read to me the contents of the Athena Construction, L.L.C. "Safety and Health Program" manual and fully understand the safety material contained therein.

I further agree to abide by the instructions set forth herein.

(Date) (Employee Signature) (Company Representative Signature)

ACKNOWLEDGMENT

**ATHENA CONSTRUCTION, L.L.C.
WORK VEST POLICY**

Name: _____
(print name)

I have received instruction on the proper adjustment and wearing of a work vest and have successfully demonstrated the wearing and adjustment of a work vest to the Safety Director or Supervisor of Athena Construction, L.L.C. Furthermore, I have read or had read to me the policy of Athena Construction, L.L.C. specific to the wearing of work vests, and fully understand the material contained therein. I agree to abide by the instructions set forth therein.

(Date) (Employee Signature) (Company Representative Signature)

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Morgan City, La. 70381

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New Effective Date: 4/1/04

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Research and Special Programs Administration

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I. INTRODUCTION

A. Alcohol Misuse Prevention Policy (AMPP) – (§199.202).

1. The Company has a long-standing commitment to maintain the highest standards for employee safety and health and to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions.
2. Company Purpose (§199.200). The purpose of 49 CFR Part 199 is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to 49 CFR Parts 192, 193, or 195 of this part.
3. In addition, the company must comply with all DOT regulations and other regulations, which require affirmative actions to eliminate the impact of the misuse of alcohol in the workplace. The purpose of the alcohol misuse prevention plan is to reduce accidents that result from the misuse of alcohol, thereby reducing fatalities, injuries, and property damage.
4. The company will maintain and follow a written alcohol misuse prevention plan that conforms to the requirements of 49 CFR Part 199 and DOT procedures 49 CFR Part 40 concerning alcohol testing programs.
5. Nothing in Part 199 shall be construed to affect the company's independent authority, or the rights of their employees with respect to the use or possession of alcohol when conducting alcohol testing and rehabilitation.
6. The use or possession of alcoholic beverages while on company property, or in any company vehicle, or on company time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

B. Implementation of Alcohol Misuse Prevention Plan (AMPP).

1. The Company has implemented the Research and Special Programs Administration (RSPA), Alcohol and Drug Testing Regulations as set forth in 49 CFR Part 199 and the Department of Transportation, Procedures for Transportation Workplace Alcohol & Drug Testing Programs as set forth in 49 CFR Part 40.
2. Alcohol materials supplied to covered employees may also include information on additional company mandated policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the company's authority independent of the federal regulations under 49 CFR Part 199 and 40.
3. Applicability (§199.2).
 - a. 49 CFR Part 199 applies to pipeline operators only with respect to employees located within the territory of the United States including those employees located within the limits of the "outer Continental Shelf" as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).
 - b. 49 CFR Part 199 does not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.
 - c. 49 CFR Part 199 does not apply to covered functions performed on:

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- (1) Master meter systems, as defined in 49 CFR Part 199.3.
 - (2) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.
4. Compliance with DOT Regulations §40.1 – DOT Part 40 regulations provide that all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations know how to conduct these tests and what procedures to use. DOT Part 40 concerns the activities of transportation employees, safety-sensitive transportation employees (including self-employed individuals, contractors, and volunteers as covered by DOT agency regulations), and service agents.
 5. Other Requirements Imposed by Operators (§199.209) – Except as expressly provided in 49 CFR Part 199, nothing in this subpart shall be construed to affect the authority of pipeline operators or the right of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.
 6. The alcohol misuse prevention plan herein sets forth the requirements of 49 CFR Parts 199 and 40. Those areas of the plan that appears in bold and underlined print reflect the company's independent authority to require additional provisions with regard to the drug testing procedures.

C. Background.

1. The catalyst for the alcohol misuse plan is Title 49 Code of Federal Regulations (CFR) Part 199 which requires the pipeline operators subject to 49 CFR Parts 192, 193, and 195, and their contractors to test their employees for misuse of alcohol under the following work-related conditions:
 - a. Pre-Employment (optional)
 - b. Post-Accident
 - c. Reasonable Cause
 - d. Return-to-Duty
 - e. Follow-Up
2. Title 49 CFR Part 40 specifies procedures which must be followed by the company when conducting alcohol misuse testing pursuant to regulations issued by agencies of the Department of Transportation.
3. DOT Procedures (§199.5 – Title 49 CFR Part 40 specified procedures that must be followed by the company when conducting drug testing pursuant to regulations issued by agencies of the Department of Transportation. The anti-drug and alcohol programs required by 49 CFR Part 199 must be conducted in accordance to the requirements of 49 CFR Part 199 and DOT procedures. Terms and concepts used in 49 CFR Part 199 have the same meaning as in DOT procedures. Violations of DOT procedures with respect to anti-drug and alcohol programs required by 49 CFR Part 199 are violations of this part.
4. Authoritative Interpretations (§40.5) – The DOT Office of Drug Alcohol Policy & Compliance (ODAPC) and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of 49 CFR Part 40. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters.

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D. Preemption Provisions.

1. Except as provided in Paragraph 2 of this section, Part 199 preempts any state or local law, rule, regulation, or order to the extent that:
 - (a) Compliance with both state or local requirement and this regulation is not possible;
 - (b) Compliance with state or local requirement is an obstacle to the accomplishment and execution of any requirement as set forth in 49 CFR Part 199.
 - (c) The state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.
2. This provision 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.

E. Definitions (§199.3 & §40.3). For purposes of this AMPP the following definitions apply:

1. Accident – means an incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.
 - a. §191.3 – An accident on a gas pipeline or LNG facility is defined as an “incident”, as follows:
 - (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
 - (a) A death, or personal injury necessitating inpatient hospitalization; or
 - (b) Estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more.
 - (2) An event that results in an emergency shutdown of an LNG facility.
 - (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).
 - b. §195.50 – An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:
 - (1) Explosion or fire not intentionally set by the operator.
 - (2) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if this release is:
 - (a) Not otherwise reportable under this section;
 - (b) Not one described in § 195.52(a)(4);
 - (c) Confined to company property or pipeline right-of-way; and
 - (d) Cleaned up promptly.
 - (3) Death of any person.

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- (4) Personal injury necessitating hospitalization;
 - (5) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.
2. Administrator – means the Administrator of the Research and Special Programs Administrator or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.
 3. Affiliate - Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to interlocking management or ownership; shared interest among family members; shared facilities or equipment or common use of employees. Following the issuance of a Public Interest Exclusion (PIE), an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of 49 CFR Part 40, Subpart F.
 4. Air Blank – In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.
 5. Alcohol – means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.
 6. 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 conducted under the federal regulations.
 7. Alcohol Screening Device – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.
 8. Alcohol Use – means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
 9. Breath Alcohol Technician (BAT) – means an individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
 10. Cancelled Test – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
 11. 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.
 12. Continuing Education – Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.

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13. Covered Employee, Employee, or Individual to be Tested – means any person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.
14. Covered Function (Safety-Sensitive Function) – means an operations, maintenance, or emergency-response function regulated by Part 192, 193, or 195 of 49 CFR that is performed on a pipeline or on an LNG facility.
15. Designated Employer Representative (DER) – An employee authorized by the company to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40. Service agents cannot act as DERs.
16. DOT Procedures – means the Procedures for Transportation Workplace Drug and Alcohol Testing program published by the Office of the Secretary of Transportation in 49 CFR Part 40.
17. DOT, The Department, DOT agency – These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.
18. EBT (or evidential breath testing device) – means 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 (CPL) of evidential breath measurement devices.
19. Employer – A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.
20. Error Correction Training – Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correct training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.
21. Missed Tests – means any test that is not administered within 8 hour time period.
22. Office of Drug and Alcohol Policy and Compliance (ODAPC) – The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
23. Operator – is defined as an owner or operator of pipeline facilities.
24. Performing a Covered Function – includes actually performing, ready to perform, or immediately available to perform a covered function.
25. Pipeline – All parts of the physical facilities through which product moves in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.

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26. Pipeline Facilities – includes new and existing pipeline, rights-of-way, and any equipment, facility, or building used in the transportation of product.
27. Prohibited Conduct – means anyone who has an alcohol concentration of 0.02 or greater, who has used alcohol within 4 hours of reporting for duty and anyone who has used alcohol on duty.
28. Qualification Training – The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
29. Refresher Training – The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
30. Refusal to Submit, Refuse, or Refuse to Take – means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test. See Section VII of this plan for additional information.
31. Screening test (or initial test) – means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
32. Screening Test Technician (STT) – means an individual who has successfully completed an approved Department of Transportation non-evidential training course and who will conduct alcohol-screening tests in accordance with Part 199 and Part 40.
33. Secretary – The Secretary of Transportation or the Secretary's designee.
34. Service Agent – Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR Part 199 and Part 40. Service agents are not employers for purposes of 49 CFR Part 199 and 40.
35. Stand-down – The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.
36. State Agency – means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).
37. Substance Abuse Professional (SAP) – A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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F. Company Responsibilities.

1. Alcohol Program Manager (APM) or Designated Employer Representative (DER): Appendix A contains the name and phone number of the responsible individual(s). The APM or DER shall be responsible for the preparation of an alcohol misuse plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR 199 and 49 CFR Part 40. The APM or DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (post-accident, reasonable suspicion, etc.); maintaining a locked file system on all alcohol test results; and overseeing the referral of employees for evaluation and treatment. The company shall ensure a face-to-face evaluation by an approved SAP for employees who either have received a positive drug test or have refused a drug test as required by DOT. The company shall ensure that all covered employees are aware of the provisions and coverage of the company's AMPP and that all employees are notified prior to testing that such a test is required by Part 199.
2. Requirement for Notice (§199.211). The company shall ensure that all covered employees are aware of the provisions and coverage of the company's AMPP and that all employees are notified prior to testing. Before performing an alcohol test under this plan, the company shall notify a covered employee that the alcohol test is required by 49 CFR Part 199. The company shall not falsely represent that an alcohol test is being conducted under the provisions of Part 199.
3. Supervisors: Any company individuals responsible for observing the performance and behavior of employees; observation/documentation of events suggestive of reasonable suspicion; and post-accident testing if determined that it is applicable.
4. Employees: The company shall ensure that each employee is notified and aware of the provisions of the company AMPP and has knowledge of the requirements of the company's AMPP and to fully comply with the provisions of the plan.
5. The company shall be responsible for compliance with all applicable requirements and procedures of 49 CFR Part 40.
6. The company is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
7. All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of 49 CFR Part 40 and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

G. Background Check Procedures (§40.25) – The company must check on the drug and alcohol testing records of employees it is intending to use to perform safety-sensitive duties.

1. The company must, after obtaining an employee's written consent, request the information about the employee listed in paragraph 2 of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for the company for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, the company must not permit the employee to perform safety-sensitive functions.

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2. The company must request the information listed below from DOT-regulated companies who have employed the employee during any period during the two years before the date of the employee's application or transfer:
 - a. Alcohol tests with a result of 0.04 or higher alcohol concentration;
 - b. Verified positive drug tests;
 - c. Refusals to be tested (including verified adulterated or substituted drug test results);
 - d. Other violations of DOT agency drug and alcohol testing regulations; and
 - e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous company does not have information about the return-to-duty process (e.g., a company who did not hire an employee who tested positive on a pre-employment test), the company must seek to obtain this information from the employee.
3. The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.
4. If feasible, the company must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, the company must obtain and review the information as soon as possible. However, the company must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the company has obtained or made and documented a good faith effort to obtain this information.
5. If the company obtains information that the employee has violated a DOT agency drug and alcohol regulation, the company must not use the employee to perform safety-sensitive functions unless the company also obtains information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of 49 CFR Part 40 and DOT agency drug and alcohol regulations.
6. The company must provide to each of the employers from whom they request information under paragraph 2 of this section written consent for the release of the information cited in paragraph 1 of this section.
7. The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. The previous company must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.
8. The company from whom information is requested under paragraph 2 of this section must, after reviewing the employee's specific, written consent, immediately release the requested information to the company making the inquiry.
9. As the company requesting the information required under this section, the company must maintain a written, confidential record of the information the company obtained or of the good faith efforts the company made to obtain the information. The company must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for the company.

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10. The company must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by a company to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the company must not use the employee to perform safety-sensitive functions for the company, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs 2(e) and 5 of this section).

H. DOT Testing versus Non-DOT Testing Provisions (§40.13).

1. DOT tests must be completely separate from non-DOT tests in all respects.
2. DOT tests must take priority and must be conducted and completed before a non-DOT test is begun.
3. Except as provided in paragraph 4 of this section, the company must not perform any tests on DOT urine or breath specimens other than those specifically authorized by 49 CFR Part 40 or DOT agency regulations.
4. No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. The company must not disregard a verified positive drug test result because the employee presents a negative breath test result collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
5. The company must not use the CCF or the ATF in your non-DOT drug and alcohol testing program. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. The company must always use the CCF and ATF for all DOT-mandated drug and alcohol tests. Non-DOT custody and control forms must be used for all non-DOT drug and alcohol tests.

I. Company's Use of Service Agent for DOT Drug & Alcohol Testing Requirements (§40.15).

1. The company may use a service agent to perform the tasks needed to comply with 49 CFR Part 40 and DOT agency drug and alcohol testing regulations, consistent with the requirements of Roles and Responsibilities of Service Agents Section in this plan and other applicable provisions of 49 CFR Part 40.
2. The company is responsible for ensuring that the service agents used meet the qualifications set forth in 49 CFR Part 40 (e.g. Medical Review Officer requirements). The company may require service agents to show documentation that they meet the requirements of 49 CFR Part 40 (e.g. documentation of MRO qualifications as required in this plan).
3. The company remains responsible for compliance with all applicable requirements of 49 CFR Part 40 and other DOT drug and alcohol testing regulations, even when using a service agent. If the company violates any part of this plan or other DOT drug and alcohol testing regulations because a service agent has not provided services as 49 CFR Part 40 requires, a DOT agency can subject the company to sanctions. The company's good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which the company's alleged noncompliance with 49 CFR Part 40 or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
4. The company must not permit a service agent to act as the company's Designated Employer Representative (DER).

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J. Company's Responsibility For Obtaining Information From Its Service Agents (§40.17).

1. The company is responsible for obtaining information required by 49 CFR Part 40 from the company's service agents. This is required whether or not the company chooses to use a consortium/third party administrator (C/TPA) as an intermediary in transmitting information to the company. An example of this requirement would be an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in the company's receipt of the test result from an MRO or C/TPA. The company must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. The company would be in violation of the DOT regulations.

II. ROLES AND RESPONSIBILITIES OF SERVICE AGENTS – 49 CFR PART 40 – SUBPART Q

A. General Provisions for Service Agents (§40.341).

1. Service agent's compliance with DOT drug and alcohol testing requirements (§40.341).
 - a. The service agent who provides services to transportation companies must meet the requirements of 49 CFR Part 40 and the DOT agency drug and alcohol testing regulations.
 - b. If the service agent does not comply, DOT may take action under the Public Interest Exclusions procedures of 49 CFR Part 40 (See Subpart R) or applicable provisions of other DOT agency regulations.

B. Tasks and Functions of Service Agents (§40.343 - 40.345 - 40.347).

1. Tasks that a service agent may perform for the company (§40.343) – The service agent may perform for the company the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.
2. Circumstances in which a C/TPA may act as an intermediary in the transmission of drug and alcohol testing information to the company (§40.345).
 - a. The C/TPA or other service agent, may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the company chooses to have you do so. Each company makes the decision about whether to receive some or all of this information from the C/TPA, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).
 - b. The specific provisions of this part concerning which the C/TPA may act as an intermediary are listed in Appendix F to 49 CFR Part 40.
 - c. In every case, the C/TPA must ensure that, in transmitting information to the company, the C/TPA meets all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the company. For example, if the C/TPA transmits drug-testing results from MROs to DERs, the C/TPA must transmit each drug test result to the DER in compliance with the MRO requirements set forth in §40.167.

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3. Functions that C/TPA may perform with respect to administering testing (§40.347) – The C/TPA, except as otherwise specified in this part may perform the following functions for the company concerning random selection and other selections for testing.
 - a. The C/TPA may operate random testing programs the company and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) companies with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
 - b. The C/TPA may combine employees from more than one company or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
 - (1) If the C/TPA combines employees from more than one transportation industry, C/TPA must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
 - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
 - c. The C/TPA may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither the C/TPA nor the company are permitted to randomly select employees from a "follow-up pool" for testing.

C. Record-keeping Requirements for Service Agents (§40.349).

1. Records that a service agent may receive and maintain (§40.349).
 - a. Except where otherwise specified in this part, a service agent may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. The service agent does not need the employee's consent to receive and maintain these records.
 - b. The C/TPA may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to the company of selected employees) on behalf of the company.
 - c. A service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to the C/TPA or other service agent who maintains this information for the company.
 - d. If the C/TPA is serving as an intermediary, in transmitting information that is required to be provided to the company, the C/TPA must ensure that it reaches the company in the same time periods required elsewhere in this part.
 - e. The C/TPA must ensure that he/she can make available to the company within two days any information the company is asked to produce by a DOT agency representative.
 - f. At the request of the company, the C/TPA must transfer immediately all records pertaining to the company and its employees to the company or to any other service agent the company designates. The C/TPA must carry out this transfer as soon as the company requests it. The C/TPA is not required to obtain employee consent for this transfer. The

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C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.

- g. If the C/TPA is planning to go out of business or the organization will be bought by or merged with another organization, the C/TPA must immediately notify all companies and offer to transfer all records pertaining to the company and its employees to the company or to any other service agent the company designates. The C/TPA must carry out this transfer as soon as the company requests it. The C/TPA is not required to obtain employee consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.

D. Confidentiality Requirements for Service Agents (§40.351 & 40.353).

1. Confidentiality requirements that apply to service agents (§40.351) – Except where otherwise specified in 49 CFR Part 40, the confidentiality requirements apply to the C/TPA and shall include the following:
 - a. When the C/TPA receives or maintains confidential information about employees (e.g., individual test results, the C/TPA must follow the same confidentiality regulations as the company with respect to the use and release of this information.
 - b. The C/TPA must follow all confidentiality and records retention requirements applicable to the company.
 - c. The C/TPA may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose a C/TPA has employers X and Y as clients. Employee Jones works for X, and the C/TPA maintains Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. The C/TPA may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, the C/TPA may not provide this information to employer Z, who is not a C/TPA member, without this consent.
 - d. The C/TPA must not use blanket consent forms authorizing the release of employee testing information.
 - e. The C/TPA must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic databases.
2. Principles that govern the interaction between MROs and other service agents (§40.353) – The service agent other than an MRO (e.g., a C/TPA) is subject to the following principles that govern the interaction with MROs:
 - a. The service agent may provide MRO services to the company, directly or through contract, if the service agent meets all applicable provisions of 49 CFR Part 40.
 - b. If the service agent employs or contracts for an MRO, the MRO must perform duties independently and confidentially. When the service agent has a relationship with an MRO, the service agent must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and
 - c.

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- d operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
- e Only the service agent's staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of the service agent's staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. The service agent must ensure that MRO staff operates under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- f Like other MROs, an MRO the service agent employs or contracts with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, the service agent staff cannot perform these functions.

E. Service Agent Limitations (§40.355).

- 1. Limitations that apply to the activities of service agents – The service agent is subject to the following limitations concerning the service agent's activities in the DOT drug and alcohol-testing program.
 - a The service agent must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
 - b The service agent must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to the service agent with the service agent in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to the service agent's computer system, and the service agent then assign the results to a particular MRO, is not permitted.
 - c The service agent must not transmit drug test results directly from the laboratory to the company (by electronic or other means) or to a service agent who forwards them to the company. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
 - d The service agent must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
 - e Except as provided in paragraph 1.f. of this section, the service agent must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to the service agent with you in turn sending them to the actual employer. However, the service agent may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to the service agent simultaneously with sending them to the DER.
 - f As an exception to paragraph 1.e. of this section, the service agent may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other Self-employed individual.

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- g Except as provided in paragraph 1.h. of this section, the service agent must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the company cannot delegate to a C/TPA. The service agent may, however, provide advice and information to the company regarding these testing issues and how the employer should schedule required testing.
- h As an exception to paragraph 1.g. of this section, the service agent may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- i Except as provided in paragraph 1.j. of this section, the service agent must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the company. The service agent may, however, provide advice and information to the company regarding refusal-to-test issues.
- j The exception to paragraph 1.i. of this section is that the service agent may make a determination that an employee has refused a drug or alcohol test, if:
- (1) The service agent schedules a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
 - (2) The MRO determines that an individual has refused to test on the basis of adulteration or substitution.
- k The service agent must not act as a DER. For example, while the service agent may be responsible for transmitting information to the company about test results, the service agent must not act on behalf of the company in actions to remove employees from safety-sensitive duties.
- l In transmitting documents to laboratories, the service agent must ensure that the service agent sends to the laboratory that conducts testing only the laboratory copy of the CCF. The service agent is not to transmit other copies of the CCF or any ATFs to the laboratory.
- m The service agent must not impose conditions or requirements on the company that DOT regulations do not authorize. For example, as a C/TPA serving the company in the pipeline or motor carrier industry, the service agent must not require the company to have provisions in their DOT plans that RSPA or FMCSA regulations do not require.
- n The service agent must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions the service agent has performed, because of a payment dispute or other reasons.

Example 1 to Paragraph (1.n.): A laboratory that has tested a specimen must not delay transmitting the documentation of the test result to an MRO because of a billing or payment dispute with the MRO or a C/TPA.

Example 2 to Paragraph (1.n.): An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to the employer because of such a dispute with the employer or employee.

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Example 3 to Paragraph (1.n.): A collector who has performed a urine specimen collection must not delay sending the drug specimen and CCF to the laboratory because of a payment or other dispute with the laboratory or a C/TPA.

Example 4 to Paragraph (1.n.): A BAT who has conducted an alcohol test must not delay sending test result information to an employer or C/TPA because of a payment or other dispute with the employer or C/TPA.

- o While the service agent must follow the DOT agency regulations, the company remains accountable to DOT for compliance, and the service agent's failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the company subject to enforcement action by DOT.

III. EMPLOYEE/SUPERVISOR ALCOHOL TESTING REQUIREMENTS

A. Individuals Subject to Alcohol Testing (§199.200).

1. Any applicant/employee who would perform on a pipeline, an operating, maintenance, or emergency response function regulated by Part 192, 193, or 195, would be subject to alcohol testing under this program. A covered employee, employee, or individual to be tested – means any person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.
2. Refer to Appendix B for specific employee titles/job classifications subject to testing under this program.
3. Since it cannot be determined in advance which of the company's employees may be called upon to perform duties covered under the Federal regulations, it shall be the policy of the company that all the company's employees will be tested. Any employee refusing to test under any testing procedure shall be terminated.

B. Procedure for Notifying Employees (§199.202).

1. This AMPP shall be included in the appropriate company manual. Upon receipt of the company's AMPP, each manager shall post the plan in a prominent location that is readily accessible to all covered employees.
2. All covered employees will be provided a complete copy of the AMPP.

C. Criteria for Employee Notification (§199.202).

1. General Criteria. The company shall provide written educational materials explaining the alcohol misuse requirements and the company's policies and procedures on how they will comply with those requirements.
 - a. The company will distribute written material to each covered employee prior to the start of alcohol testing and to each person subsequently hired/transferred to perform covered functions.
 - b. The company shall provide written notice to representatives of employee organizations on the availability of this written educational information.

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2. Required Information (§199.239). The company shall provide written materials to all covered employees that shall include detailed information and discussion of the following elements:
- a. Name of company representative designated to answer questions for covered employees about the alcohol regulations. See Appendix A.
 - b. List of categories of covered employees who are subject to the alcohol regulations. See Appendix B for listing of employee/supervisor job classifications/titles.
 - c. Information about covered functions, which provides sufficient guidance on which portions of the workday the covered employee is required to be in compliance with the AMPP.
 - d. Information concerning covered employee conduct that specifies which is prohibited by the AMPP.
 - e. Circumstances under which a covered employee will be tested for alcohol under the AMPP.
 - f. Procedures that cover:
 - (1) Testing for presence of alcohol
 - (2) Protection of employee rights
 - (3) Integrity of breath testing process
 - (4) Safeguarding validity of test results
 - (5) Assignment of test results to proper employee
 - g. Information concerning requirement for covered employee to submit to various types of alcohol tests.
 - h. Information which detailing what constitutes a refusal and consequences of such refusal.
 - i. Information detailing consequences of covered employees who violate the prohibitions as set forth in the AMPP. It must address removal from performing covered functions and guidance on referral for evaluation and/or treatment.
 - j. Information detailing consequences of covered employees who test at an alcohol concentration of 0.02 or greatest but less than 0.04.
 - k. Information detailing alcohol misuse and how it impacts on:
 - (1) Individual's health, work and personal life
 - (2) Detecting signs and symptoms of alcohol problem
 - (3) Intervening evaluation and resolving problems associated with alcohol misuse (suspicions, confrontation, referral to EAP and referral to management official)

IV. ALCOHOL TESTS REQUIRED (§199.225):

A. Pre-Employment (Optional) (§199.209).

1. The company may, but is not required to, conduct pre-employment alcohol testing under 49 CFR Part 199. If the company conducts pre-employment alcohol testing, the company must:

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- a. Conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions);
- b. Treat all employees the same for the purpose of pre-employment alcohol testing (i.e., company must not test some covered employees and not others);
- c. Conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test;
- d. Conduct all pre-employment alcohol tests using the alcohol testing procedures in the DOT procedures in 49 CFR Part 40; and
- e. Not allow any covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

B. Post-Accident Testing (§199.225(a)).

1. The company shall promptly determine and test each surviving covered employee for alcohol if that employee's performance contributed to the "accident" or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test under this section shall be based on the company's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident.
2. Each employee shall be required to submit to an alcohol test within 2 hours of the accident. If a test is not administered within two hours following the accident, the company shall prepare and maintain on file a record stating the reasons why the test was not administered. If a test is not administered within 8 hours following the accident, the company shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted.
3. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the company or company representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the company to have refused to submit to testing.
4. The employee must remain available for alcohol testing and may not consume any alcohol for 8 hours following the accident or until the alcohol test has been conducted. Notwithstanding the previous statement, employees shall not be delayed in seeking necessary medical attention for injured people. An employee shall not be prohibited from leaving the scene of an accident for a period of time necessary to obtain assistance in responding to the accident or to obtain necessary medical personnel to administer medical care to any injured people.
5. The following steps will be used to guide the supervisor to a satisfactory outcome in a post-accident situation.
 - a. Verify the post-accident decision. Does the definition of accident in Section 1 apply to the current situation? Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a factor which contributed to the accident? Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? Before proceeding further,

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individual may need to obtain approval from the division manager/department head or designee to proceed with post-accident testing.

- b. Isolate and inform the employee. Remove the employee from the work place. Explain that you have reason to believe his/her performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident and therefore, they will be required to submit to an alcohol test.
- c. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the outcome of the alcohol test.
- d. Document the events. Record the activity performed that support the determination to conduct a post-accident alcohol test. This documentation of the employee's activity should be prepared and signed by the supervisor and remain on file. See Appendix E for documentation format if test is not administered within prescribed time frames.
- e. Denial should be an expected reaction. If a person knows they will test positive, he/she may give many explanations and protestations, wanting to avoid submission to an alcohol test. If he/she is not under the influence of alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request for an alcohol test is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.
- f. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur.
- g. Employee Responsibility. As soon as practicable following an accident as defined in this plan, the employee shall make every attempt to contact his/her supervisor and the APM.
 - (1) The employee will be given instructions for obtaining alcohol and substance abuse testing.
 - (2) An employee who is subject to post-accident testing must remain available for testing, or the company may consider the employee to have refused to submit to an alcohol test.
 - (3) The employee subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.
- h. Company Responsibility.
 - (1) Upon receiving a report of an accident, the company shall test the employee (if not a fatality) for alcohol and controlled substance as soon as practicable.
 - (2) The DER will instruct the employee in obtaining the required drug and alcohol test.

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- (3) In addition to testing required under the DOT guidelines, the company shall test each employee involved in an on-the-job injury and reserves the right to test all employees at the job site. This testing will be conducted at the company's designated drug-testing facility if possible. If not possible, the testing will be conducted at a hospital or laboratory facility nearest the job site.

C. Reasonable Suspicion Testing (§199.225(b)).

1. Reasonable suspicion testing is designed to provide management with a tool (in conjunction with supervisor training on the signs and symptoms of alcohol misuse) to identify alcohol-affected employees who may pose a danger to themselves and others in their job performance. Employees may be at work in a condition that raises concern regarding their safety or productivity. Supervisors must then make a decision as to whether there is reasonable suspicion to believe an employee is using or has used alcohol.
2. Supervisor Reasonable Suspicion Determinations:
 - a. The company's determination that reasonable suspicion exists to require a covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who has received at least 60 minutes of training in detecting the symptoms of alcohol misuse.
 - b. The supervisor's observation must be made just before, during, or just after the employee is performing a covered function.
 - c. The supervisor who makes such a determination that reasonable suspicion exists shall not be authorized to conduct the breath alcohol test on that employee.
3. In making a determination of reasonable suspicion, the factors to be considered include, but are not limited to the following:
 - a. Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of alcohol related behavior on or off the work site.
 - b. Physical signs and symptoms consistent with alcohol abuse.
 - c. Evidence of prohibited alcohol use, possession, sale, or delivery while on duty.
 - d. Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.
 - e. The company will direct a covered employee to undergo reasonable suspicion testing only while the employee is performing, just before performing or just after ceasing to perform a covered function. The test must be conducted within 2 hours of the reasonable suspicion determination and the company shall continue to attempt for up to 8 hours and then shall cease all attempts to conduct the test.

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4. The following steps will be used to guide the supervisor to a satisfactory outcome in a reasonable suspicion situation.
 - a. Verify the reasonable suspicion decision. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable suspicion referral. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was alcohol related? On what basis did they reach their conclusion? Before proceeding further, obtain concurrence or approval from the manager/department head or designee to proceed with reasonable suspicion alcohol testing..
 - b. Isolate and inform the employee. Remove the employee from the work location. Explain that there is reasonable suspicion to believe the employee's performance is being affected by alcohol. Ask the employee to explain the suspected behavior and to describe the events that took place from his/her perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may or may not deter you from asking for the employee to submit to an alcohol test. If there is still a reasonable belief that alcohol is a factor in the situation/incident, a request for testing should be made; if no reasonable belief is determined, then no request for testing should be made. If the decision to test is made, inform the employee that they are being requested to accompany the appropriate official or representative to the specimen collection site to conduct an alcohol test. Inform the employee of the consequences of refusal to submit to alcohol testing.
 - c. Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In all cases, a reasonable suspicion decision to test must be made by a supervisor who has received the required supervisor training.. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable cause determination.
 - d. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the alcohol test result.
 - e. Document the events. Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion alcohol test. This documentation (See Appendix D for guidance) of the employee's conduct should be prepared and maintained on file to document the request for reasonable suspicion alcohol testing. See Appendix E for documentation format if test is not administered within prescribed time frames.
 - f. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid alcohol testing. If he/she is not under the influence or affected by alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to submit to an alcohol test is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.

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- g. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable suspicion belief that he/she may be under the influence of alcohol. If the employee insists on driving, the proper local enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle.
5. The company shall conduct an alcohol test within two hours of a determination to test under reasonable suspicion. If a reasonable suspicion test is not administered within two hours following the determination, the company shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. If the required test is not administered within eight hours of the determination, the company shall cease all attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Upon request, such records shall be made available to the agency administrator or any person who has been delegated authority in the matter concerned.
6. The company shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:
- a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
- b. The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP.
7. Except as provided above, the company shall not take any action under 49 CFR Part 199 against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. However, this does not prohibit the company from taking any disciplinary action otherwise consistent with local and/or state laws.

D. Return-To-Duty Testing (§199.225©).

1. The company shall ensure that before an employee may return-to-duty to perform covered functions after engaging in prohibited conduct as set forth in Section VI of this plan, that the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The company shall not permit an employee who refuses to submit to an alcohol test to perform or continue to perform covered functions.
2. If the substance abuse professional makes a determination that some form of evaluation and/or treatment is required, then the employee must comply with the recommended provisions in order to be considered eligible for consideration in being allowed to return-to-duty.
3. To ensure the individual is fit for duty, any employee with a violation of the alcohol testing rule who has been removed from safety-sensitive functions as indicated by a positive alcohol test result of 0.02 to 0.039 must comply with a return-to-duty alcohol test. This test must occur following a removal from safety-sensitive duties and prior to resuming covered functions. The test result must be below 0.02 in order to resume safety-sensitive duties. Refusal to cooperate will be viewed as
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insubordination and the employee would be subject to disciplinary action up to and including discharge.

5. **If an employee refuses to take a drug test, he shall be immediately terminated from employment and shall not be subject to return-to-duty testing or follow-up testing.**

E. Follow-Up Testing (§199.225(d)).

1. Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee will be subject to unannounced follow-up alcohol testing as directed by a substance abuse professional. An employee who returns to duty shall be subject to a reasonable program of follow-up alcohol testing, without prior notice, for up to 60 months after his or her return to duty.
2. The employee shall be subject to at least six unannounced alcohol follow-up tests during the first 12 months following his/her return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the initial six tests have been completed, if the substance abuse professional makes the determination that such testing is no longer warranted.
3. The company may required a covered employee to submit to drug follow-up testing when the substance abuse professional has reason to suspect drug involvement. The drug testing must comply with the requirements contained in 49 CFR Part 40, Subpart A. The same procedures would apply should it be determined that an employee had tested positive for drugs and the substance abuse professional had reason to suspect alcohol misuse.
4. Follow-up testing will only be conducted when the covered employee is performing, just before performing, or just after ceasing to perform covered functions.
5. **An employee subject to follow-up testing will also be subject to all other alcohol tests described in this section. It should be noted that while follow-up testing may last for only sixty (60) months, the employee is not given a "fresh start" after this period; the verified positive result remains on his or her files.**

If any employee tests verified positive on a subsequent follow-up test or on any other test during the employee's employment with the company, that employee shall be terminated from employment with the company.

6. **Pre-Access Testing.**

Any employee performing work for a customer requiring pre-access testing of company employees before being permitted to perform work for that customer will be required to be tested. This pre-access testing shall be in addition to any other testing required.

F. Stand Down Procedures (§40.21). The company may stand down an employee before the MRO has completed the verification by following these procedures:

1. The company is prohibited from standing employees down, except consistent with a waiver a DOT agency grants under 49 CFR Part 40.
2. The company may make a request to the concerned DOT agency for a waiver from the prohibition of the above paragraph in this section. Such a waiver, if granted, permits the company to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.

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- a. For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.
 - b. Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the company's other covered employees.
 - c. The concerned DOT agency provides a written response to each employer that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.
3. The company request for a waiver must include, as a minimum, the following elements:
- a. Information about the company's organization:
 - (1) The company's determination that standing employees down is necessary for safety in the company's organization and a statement of the company's basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;
 - (2) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for the company's employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;
 - (3) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and
 - (4) A statement of which DOT agencies regulate the company's employees.
 - b. The company's proposed written company policy concerning stand-down, which must include the following elements:
 - (1) The company's assurance that they will distribute copies of the company's written policy to all employees that it covers;
 - (2) The company's means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in the company's organization (or subsequently to another company) other than the employee, the MRO and the DER;
 - (3) The company's means of ensuring that all covered employees in a particular job category in the company's organization are treated the same way with respect to stand-down;

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- (4) The company's means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;
 - (5) The company's means of ensuring that the company will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes the continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;
 - (6) The company's means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless the company is informed in writing by the MRO that a longer period is needed to complete the verification process; and
 - (7) The company's means of ensuring that, in the event that the MRO verifies the test negative or cancels it –
 - (a) The company returns the employee immediately to the performance of safety-sensitive duties;
 - (b) The employee suffers no adverse personnel or financial consequences as a result; and
 - (c) The company maintains no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (i.e., the company maintains a record of the test only as a negative or cancelled test).
4. The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of the company's organization, there is a high probability that the procedures the company proposes will effectively enhance safety and protect the interests of the employees in fairness and confidentiality.
- a. The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
 - b. The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that the company has failed to protect effectively the interests of employees in fairness and confidentiality, that the company has failed to comply with the requirements of this section, or that the company has failed to comply with any other conditions the DOT agency has attached to the waiver.
5. The company must not stand employees down in the absence of a waiver, or inconsistent with the terms of your waiver. The company shall be in violation of 49 CFR Part 40 and DOT agency drug testing regulations, and the company is subject to enforcement action by the DOT agency just as the company is for other violations of this 49 CFR Part 40 and DOT agency rules.

G. Provisions Governing Retesting of Covered Employees (§199.237).

1. A covered employee tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform or continue to perform covered functions until:

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- a. The employee's alcohol concentration measures less than 0.02 in another alcohol test administered in compliance with this plan; or
 - b. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the alcohol test.
2. Except as provided above, the company shall not take any action under 49 CFR Part 199 against a covered employee based solely on test results showing an alcohol concentration less than 0.04. However, this does not prohibit the company from taking any disciplinary action otherwise consistent with local and/or state law.

V. SUBSTANCE ABUSE PROFESSIONALS AND THE RETURN-TO-DUTY PROCESS – 49 CFR PART 40 – SUBPART O.

A. SAP Evaluation (§40.281).

1. Qualifications to act as a SAP - To be permitted to act as a SAP in the DOT alcohol and drug testing program, the SAP must meet each of the requirements of this section:
 - a. SAP Credentials. The SAP must have one of the following credentials:
 - (1) A licensed physician (Doctor of Medicine or Osteopathy);
 - (2) A licensed or certified social worker;
 - (3) A licensed or certified psychologist;
 - (4) A licensed or certified employee assistance professional; or
 - (5) A drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).
 - b. SAP Basic Knowledge. The SAP must be knowledgeable in the following areas:
 - (1) The SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
 - (2) The SAP must be knowledgeable about the SAP function as it relates to company interests in safety-sensitive duties.
 - (3) The SAP must be knowledgeable about this part, the DOT agency regulations applicable to the companies for whom the SAP evaluates employees, and the DOT SAP Guidelines, and the SAP must keep current on any changes to these materials.
 - c. SAP Qualification Training. The SAP must receive qualification training meeting the requirements of this paragraph.
 - (1) Qualification training must provide instruction on the following subjects:
 - (a) Background, rationale, and coverage of the Department's drug and alcohol testing program;
 - (b) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;

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- (c) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (d) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs and problems in alcohol tests;
 - (e) SAP qualifications and prohibitions;
 - (f) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education, and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (g) SAP consultation and communication with companies, MROs, and treatment providers;
 - (h) Reporting and record-keeping requirements;
 - (i) Issues that SAPs confront in carrying out their duties under the program.
- (2) Following the SAP completion of qualification training under paragraph 1.c.(1) of this section, the SAP must satisfactorily complete an examination administered by a nationally recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph 1.c.(1) of this section.
- (3) The following is the schedule for qualification training the SAP must meet:
- (a) If the individual became a SAP before August 1, 2001, the SAP must meet the qualifications training requirement no later than December 31, 2003.
 - (b) If the individual becomes a SAP between August 1, 2001, and December 31, 2003, the SAP must meet the qualification training requirements no later than December 31, 2003.
 - (c) If the individual becomes a SAP on or after January 1, 2004, the SAP must meet the qualifications training requirements before the SAP begins to perform SAP functions.
- (4) **SAP Continuing Education.** During each three-year period from the date on which the SAP satisfactorily completed the examination under paragraph 1.c.(2) of this section, the SAP must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (a) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time the SAP met the qualification training requirements of this section.
 - (b) The SAP continuing education activities must include documentable assessment tools to assist the SAP in determining whether the SAP has adequately learned the material.
- (5) **SAP Documentation.** The SAP must maintain documentation showing that he/she currently meet all requirements of this section. The SAP must provide this
- (6)

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documentation on request to DOT agency representatives and to the company and C/TPAs who are using or contemplating using the SAPs services.

2. Criteria for a certification organization to obtain recognition for its members as SAPs (§40.283).
 - a. If the SAP represents a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281(a)(5), the SAP may submit a written petition to DOT requesting a review of the SAPs petition for inclusion.
 - b. The SAP must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on the SAPs petition.
 - c. The SAP must also meet the minimum requirements of 49 CFR Part 40, Appendix E before DOT will act on the SAPs petition.

B. SAP Requirements (§40.287 - §40.289).

1. Requirements for conducting a SAP evaluation.
 - a. When an employee violates the DOT drug and alcohol regulations, the employee cannot again perform any DOT safety-sensitive duties for the company until and unless the employee has completed the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
 - b. A verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.
2. Information the company is required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation (§40.287).
 - a. The company must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to the company, with names, addresses, and telephone numbers. The company cannot charge the employee any fee for compiling or providing this list.
 - b. The company may provide this list or through a C/TPA or other service agent.
3. Company requirements regarding SAP evaluation and treatment services provided to the employees (§40.289).
 - a. The company is not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
 - b. However, if the company offers the employee an opportunity to return to a DOT safety-sensitive duty following a violation, the company must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting

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the requirements of §40.281 and that the employee successfully complies with the SAP's evaluation recommendations.

- c. Payment for SAP evaluations and services is left for the company and employee to decide and may be governed by existing management-labor agreements and health care benefits.
- d. If it is determined that the employee requires rehabilitation, the DER will instruct the employee's supervisor to immediately send the employee home from work without pay. The SAP shall instruct the employee, among other things, to contact the EAP within forty-eight (48) hours to initiate a rehabilitation program. If the employee does not contact the EAP within forty-eight (48) hours of notice from the SAP, the employee will be terminated from employment with the company.

C. SAP Evaluation, Referral, and Treatment (§40.291 - §40.297).

1. The role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations.
 - a. The SAP is charged with:
 - (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
 - (2) Referring the employee to an appropriate education and/or treatment program;
 - (3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations.
 - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
 - (5) Providing the employee and company with recommendations for continuing education and/or treatment.
 - b. The SAP is not an advocate for the company or employee. The SAP function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.
2. The SAP's functions in conducting the initial evaluation of an employee (§40.293) – The SAP must, for every employee who comes to the SAP following a DOT drug and alcohol regulation violation, accomplish the following:
 - a. Provide a comprehensive face-to-face assessment and clinical evaluation.
 - b. Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
 - (1) The SAP must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.

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- (2) The SAP must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
 - c. Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
 - d. Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, outpatient counseling programs, and aftercare.
 - e. The SAP must provide a written report directly to the DER highlighting the specific recommendations for assistance (See §40.311).
 - f. For purposes of the evaluation process, the SAP must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. The SAP must not take into consideration in any way, as a factor in determining what the recommendation will be, any of the following:
 - (1) A claim by the employee that the test was unjustified or inaccurate;
 - (2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or
 - (3) Personal opinions the SAP may have about the justification or rationale for drug and alcohol testing.
 - g. In the course of gathering information for purposes of the evaluation in the case of a drug-related violation, the SAP may consult with the MRO. The MRO is required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.
3. Criteria for employees or the company to seek a second SAP evaluation if they disagree with the first SAP's recommendations (§40.295).
 - a. The employee with a DOT drug and alcohol regulation violation having been evaluated by a SAP must not seek a second SAP's evaluation in order to obtain another recommendation.
 - b. The company must not seek a second SAP's evaluation, if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, the company may not rely on it for any purpose under this part.
4. Authority to change a SAP's initial evaluation (§40.297).
 - a. Except as provided in paragraph 4.b. of this section, no one (e.g., the company, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.

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- b. The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).

D. SAP's Role and Limitations (§40.299). – Requirements of SAP's role and the limits on a SAP's discretion in referring employees for education and treatment.

1. The SAP, upon making a determination of the best recommendation for assistance, will serve as a referral source to assist the employee's entry into an education and/or treatment program.
2. To prevent the appearance of a conflict of interest, the SAP must not refer an employee requiring assistance to the SAP's private practice or to a person or organization from which the SAP receives payment or to a person or organization in which the SAP has a financial interest. The SAP is precluded from making referrals to entities with which the SAP is financially associated.
3. There are four exceptions to the prohibitions in paragraph (b) of this section. The SAP may refer an employee to any of the following providers of assistance, regardless of the company's relationship with them:
 - a. A public agency (e.g., treatment facility) operated by a state, county, or municipality;
 - b. The company or a person or organization under contract to the company to provide alcohol or drug treatment and/or education services (e.g., the employer's contracted treatment provider);
 - c. The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
 - d. The sole source of therapeutically appropriate treatment reasonably available to the employee (e.g., the only treatment facility or education program reasonably located within the general commuting area).

E. SAP Functions in Evaluation, Treatment, and Aftercare or Support Group Services (§40.301--§40.303).

1. The SAP's functions in the follow-up evaluation of an employee.
 - a. The SAP, once the prescribed assistance under §40.293 is complete, must re-evaluate the employee to determine if the employee has successfully carried out the SAP's education and/or treatment recommendations.
 - (1) This is the SAP's way to gauge for the company the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
 - (2) The SAP evaluation may serve as one of the reasons the company decides to return the employee to safety-sensitive duty.
 - b. The SAP must make the follow-up evaluation determination:
 - (1) The SAP must confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and

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- (2) The SAP must conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with the initial evaluation recommendations.

c. SAP Requirements:

- (1) If the employee has demonstrated successful compliance, the SAP must provide a written report directly to the DER highlighting the clinical determination that the employee has complied with the initial evaluation recommendation (See §40.311(d)).
- (2) The SAP may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program prescribed, the SAP may make a "successful compliance" determination even though the SAP concludes that the employee has not yet completed the outpatient counseling you recommended or should continue in an aftercare program.

d. SAP Determinations:

- (1) The SAP, as a result of the follow-up evaluation, finds that the employee has not demonstrated successful compliance with recommendations must provide written notice directly to the DER (See §40.311(e)).
- (2) The company who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations must not return the employee to the performance of safety-sensitive duties.
- (3) The SAP may conduct additional follow-up evaluation(s) if the company determines that doing so is consistent with the employee's progress as the SAP has reported it and with the company's policy and/or labor-management agreements.
- (4) The company, following a SAP report that the employee has not demonstrated successful compliance, may take personnel action consistent with company policy and/or labor-management agreements.

2. Criteria to be followed if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties (§40.303).

- a. The SAP may believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, the SAP must provide recommendations for these services in the follow-up evaluation report (See §40.311(d)(10)).
- b. The company receiving a recommendation for these services from a SAP may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. The company may monitor and document the employee's participation in the recommended services. The company may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees'

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compliance with SAP recommendations. Nothing in this section permits the company to fail to carry out its obligations with respect to follow-up testing (See §40.309).

- c. The employee has an obligation to comply with the SAP's recommendations for these services. If the employee fails or refuses to do so, the employee may be subject to disciplinary action by the company.

F. Completion of the Return-to-Duty Process (§40.305).

1. If the company must decide that the employee is permitted to return to the performance of safety-sensitive functions, the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
2. The company must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph 1 above. However, the company is not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that the company has the discretion to make, subject to collective bargaining agreements or other legal requirements.
3. The SAP or MRO must make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the company, rather than the SAP or MRO who must decide whether to put the employee back to work in a safety-sensitive position.

G. SAP's Functions in Prescribing the Employee's Follow-up Tests (§40.307).

1. The SAP for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, must establish a written follow-up testing plan. The SAP does not establish this plan until after it has been determined that the employee has successfully complied with the recommendations for education and/or treatment.
2. The SAP must present a copy of this plan directly to the DER (See §40.311(d)(9)).
3. The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but the evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, the SAP should require that the employee have follow-up tests for both drugs and alcohol.
4. However, the SAP must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
 - a. The SAP may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g. the SAP may require one test a month during the 12-month period; the SAP may require two tests per month during the first 6-month period and one test per month during the final 6-month period).
 - b. The SAP may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.

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- c. The SAP is not to establish the actual dates for the follow-up tests the SAP prescribes. The decision on specific dates to test is the company's
- d. The company must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
- e. The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

Example 1 to Paragraph e: The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under §40.25.

Example 2 to Paragraph e: The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

- f. The SAP may modify the determinations the SAP has made concerning follow-up tests. For example, even if the SAP recommended follow-up testing beyond the first 12-months, the SAP can terminate the testing requirement at any time after the first year of testing. The SAP must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.

H. Company's Responsibilities on SAP's Directions for Follow-up Tests (§40.309).

- 1. The company must carry out the SAP's follow-up testing requirements. The company may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- 2. The company should schedule follow-up tests on dates of their own choosing, but the company must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
- 3. The company cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.
- 4. The company cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

I. Requirements of SAP's Reports (§40.311).

- 1. The SAP conducting the required evaluations must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in §40.355(e)). The SAP may, however, forward the document simultaneously to the DER and to a C/TPA.

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2. The SAP must ensure that the company receives written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
3. The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
 - a. Employee's name and SSN;
 - b. Employer's name and address;
 - c. Reason for the assessment (specific violation of DOT regulations and violation date);
 - d. Date(s) of the assessment;
 - e. SAP's education and/or treatment recommendation; and
 - f. SAP's telephone number.
4. The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
 - a. Employee's name and SSN;
 - b. Employer's name and address;
 - c. Reason for the initial assessment (specific violation of DOT regulations and violation date);
 - d. Date(s) of the initial assessment and synopsis of the treatment plan;
 - e. Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - f. Inclusive dates of employee's program participation;
 - g. Clinical characterization of employee's program participation;
 - h. SAP's clinical determination as to whether the employee has demonstrated successful compliance;
 - i. Follow-up testing plan;
 - j. Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
 - k. SAP's telephone number.
5. The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
 - a. Employee's name and SSN;
 - b. Employer's name and address;
 - c. Reason for the initial assessment (specific DOT violation and date);
 - d. Date(s) of initial assessment and synopsis of treatment plan;
 - e. Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - f. Inclusive dates of employee's program participation;
 - g. Clinical characterization of employee's program participation;
 - h. Date(s) of the first follow-up evaluation;
 - i. Date(s) of any further follow-up evaluation the SAP has scheduled;
 - j. SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
 - k. SAP's telephone number.
6. The SAP must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.

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7. The SAP is to maintain copies of the employer's reports to employers for 5 years, and the employer's employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. The SAP must make these records available, on request, to DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.
8. The company must maintain the reports from SAP's for 5 years from the date the company receives the reports.

J. Additional Information on SAP Functions and Return-to-Duty Process (§40.313).

Other information on the role and functions of SAP's is located in the following sections of 49 CFR Part 40.

§40.3 – Definition.

§40.347 – Service agent assistance with SAP-required follow-up testing.

§40.355 – Transmission of SAP reports.

§40.329(c) – Making SAP reports available to employees on request.

Appendix E to Part 40 – SAP Equivalency Requirements for Certification Organizations.

VI. ALCOHOL PROHIBITED CONDUCT (§199.215--§199.221).

- A. **General.** The company shall provide guidance to all covered employees regarding the various types of alcohol-prohibited conducts.
- B. **Alcohol Concentration (§199.215).** A covered employee shall be prohibited from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. If a company representative has actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater, the employee shall not be permitted to perform or continue to perform covered functions.
- C. **On-Duty Use (§199.217).** The company shall prohibit a covered employee from using alcohol while performing covered functions. If a company representative has actual knowledge that a covered employee is using alcohol while performing covered functions, the employee shall not be permitted to perform or continue to perform covered functions.
- D. **Pre-Duty Use (§199.219).** The company shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty, the employee shall not be permitted to perform or continue to perform covered functions.
- E. **Use Following an Accident (§199.221).** Each company shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the company as a contributing factor to the accident from using alcohol for eight hours following an accident, unless he or she has been given a post-accident test under (§199.225(a)), or the company has determined that the employee's performance could not have contributed to the accident.
- F. **On-Call Employees.**
 1. Employees who are not at work but who could be called at any time to perform covered functions is subject to the pre-duty alcohol prohibition. An employee, who has been notified to report for duty to respond to an emergency, may not use alcohol after being notified to report. If company personnel determine that an employee has used alcohol within the time period after the employee has been notified to report for duty, the company shall not permit the covered employee to perform or continue to perform covered functions.

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2. Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting to work. If an employee is under the influence of alcohol, the employee must notify company personnel when contacted. Failure to advise the company of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employee's supervisor must be notified.
3. The supervisor must objectively observe the employee's behavior, and, if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the AMPP. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the alcohol program manager is contacted. An alcohol test site location is identified to conduct the test. The supervisor or DER will accompany the individual to the test site and remain at the location for results of the test. If the results are positive, the individual is removed from safety-sensitive duties and may be subject to disciplinary action up to and including termination.

VII. PROBLEMS ASSOCIATED WITH ALCOHOL TESTING (49 CFR PART 40 -SUBPART N)

A. Refusal Criteria and Consequences (§40.261). Criteria for refusal to take an alcohol test and the consequences.

1. An employee is considered to have refused to take an alcohol test if he/she:
 - a. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the company, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.24(b)(1));
 - b. Fails to remain at the testing site until the testing process is complete; provided, that an employee who leaves the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused a test.
 - c. Fails to provide an adequate amount of saliva for any alcohol test required by this part or DOT agency regulations; provided, that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;
 - d. Fails to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (See §40.265(c));
 - e. Fails to undergo a medical examination or evaluation, as directed by the company as part of the insufficient breath procedures outlined in §40.265(c);
 - f. Fails to sign the certification at Step 2 of the ATF (see §40.241(g) and §40.251(d));
 - g. Fails to cooperate with any part of the testing process.
2. Any employee who refuses to take an alcohol test will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

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Any employee refusing to cooperate in the collection procedure shall immediately be terminated from employment.

3. As a BAT or an STT, or as the physician evaluating a "shy lung" situation, when an employee refuses to test as provided in paragraph 1 of this section, the collector must terminate the portion of the testing process in which they are involved, document the refusal on the ATF (or in a separate document which should be attached to the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. The collector must make this notification directly to the DER (not using a C/TPA as an intermediary).
4. An employee who refuses to take a non-DOT test or to sign a non-DOT form has not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

An employee who refuses to take a non-DOT test or to sign a non-DOT form shall immediately be terminated from employment.

B. Consequences for Inability to Provide Sufficient Saliva for Alcohol Test (§40.263) – Consequences for an employee who is unable to provide a sufficient amount of saliva for an alcohol screening test.

1. The STT must take the following steps 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). §40.265.
 - a. The STT must conduct a new screening test using a new screening device.
 - b. If the employee refuses to make the attempt to complete the new test, the STT must discontinue testing, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - c. If the employee has not provided a sufficient amount of saliva to complete the new test, the STT must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
2. The DER, when the STT informs DER that the employee has not provided a sufficient amount of saliva (see paragraph a(3) of this section), must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

C. Criteria for Inability to Provide Sufficient Breath for Alcohol Test (§40.265) – Criteria for an employee who is unable to provide a sufficient amount of breath for an alcohol test.

1. If an employee does not provide a sufficient amount of breath to permit a valid breath test, the BAT must take the steps listed in this section.
2. The BAT must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
 - a. If the employee refuses to make the attempt, the BAT must discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - b. If the employee again attempts and fails to provide a sufficient amount of breath, the BAT may provide another opportunity to the employee to do so if they believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.

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- c When the employee's attempts under paragraph C.2.b. of this section have failed to produce a sufficient amount of breath, the BAT must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
 - d If the BAT is using an EBT that has the capability of operating manually, he/she may attempt to conduct the test in manual mode.
 - e If the collector is qualified to use a saliva ASD and the collector is in the screening test stage, the collector may change to a saliva ASD only to complete the screening test.
3. The company shall, when notified by the BAT that the employee has not provided a sufficient amount of breath, direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to the company, and the physician has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
- a The company is required to provide the physician who will conduct the evaluation with the following information and instructions:
 - (1) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
 - (2) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;
 - (3) That the physician must provide the company with a signed statement of his or her conclusions; and
 - (4) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:
 - (a) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.
 - (b) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.
 - (c) For purposes of paragraphs C.3.a.(4)(a) and (b) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.
 - b The physician who makes evaluation must provide a written statement of his/her conclusions and the basis for them to the DER directly (and not through a C/TPA acting as intermediary). The physician must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain his/her conclusion.

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- c. Upon receipt of the report from the examining physician, the DER must immediately inform the employee and take appropriate action based upon the appropriate DOT agency regulations.

D. Problems Associated with Cancelled Alcohol Tests (§40.267)

1. The company, a BAT, or an STT, must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." He/she must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:
 - a. In the case of a screening test conducted on a saliva ASD or a breath tube ASD:
 - (1) The STT or BAT reads the results either sooner than or later than the time allotted by the manufacturer and 49 CFR 40 – §40.245(a)(8) for the saliva ASD and §40.245(b)(8) for the breath tube ASD.
 - (2) The saliva ASD does not activate (See §40.245(a)(7)); or
 - (3) The device is used for a test after the expiration date printed on the device or on its package (see §40.245(a)(1)) for the saliva ASD and (see §40.245(b)(1)) for the breath tube ASD.
 - b. In the case of a screening or confirmation test conducted on an EBT, 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 (See §40.253(c), (e) and (f)).
 - c. In the case of a confirmation test:
 - (1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (See §40.251(a)(1));
 - (2) The BAT does not conduct an air blank before the confirmation test (See §40.253(a));
 - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (See §40.254(a)(1) and (2));
 - (4) The EBT does not print the result (See §40.253(f)); or
 - (5) The next external calibration check of the 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 case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (See §40.233(a)(1) and (d)).

E. Problems Associated with Cancelled Test & Corrective Action (§40.269) – Problems that cause an alcohol test to be cancelled unless they are corrected.

1. The BAT or STT, or company must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:
 - a. The BAT or STT does not sign the ATF (See §40.247(a)(1) and 40.255 (a)(1)).

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- b. The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (See §40.255(a)(2)).
- c. The BAT or STT uses a non-DOT form for the test (See §40.225(a)).

F. Correction of Alcohol Test Problems (§40.271).

1. The BAT or STT has the responsibility of trying to complete successfully an alcohol test for each employee.
 - a. If, during or shortly after the testing process, the collector becomes aware of any event that will cause the test to be cancelled (See §40.267) they must try to correct the problem promptly, if practicable. They may repeat the testing process as part of this effort.
 - b. If repeating the testing process is necessary, the collector must begin a new test as soon as possible. They must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if they have been trained to do so in accordance with §40.213(c).
 - c. If repeating the testing process is necessary, the collector is not limited in the number of attempts to complete the test, provide that the employee is making a good faith effort to comply with the testing process.
 - d. If another testing device is not available for the new test at the testing site, the collector must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
2. If the STT, BAT, company, or other service administering the testing process becomes aware of a "correctable flaw" (see §40.269), that has not already been corrected, they must take all practicable action to correct the problem so that the test is not cancelled.
 - a. If the problem resulted from the omission of required information, the BAT or STT is responsible for providing the missing information in writing with a signed statement that it is true and accurate. For example, suppose a BAT or STT forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. The BAT or STT would, when the problem is called to his/her attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your statement is true and accurate.
 - b. If the problem is the use of a non-DOT form, the BAT or STT must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. The BAT or STT must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond the BAT or STT control, and the steps taken to prevent future use of non-DOT forms for DOT tests. The BAT or STT must supply this information on the same business day on which notified of the problem, transmitting it by fax or courier.
3. If the BAT or STT cannot correct the problem, they must cancel the test.

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G. Effects of a Cancelled Alcohol Test (§40.273).

1. A cancelled alcohol test is neither positive nor negative.
 - a. The company must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).
 - b. The company must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).
 - c. The company must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph 1.b. of this section or other provisions of this part.
2. A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.
3. When a test must be cancelled, the BAT, STT, or other person who determines that the cancellation is necessary, he/she must inform the affected DER within 48 hours of the cancellation.
4. A cancelled DOT test does not provide a valid basis for the company to conduct a non-DOT test (i.e., a test under company authority).

H. Effects of Procedural Problems That are Not Sufficient to Cancel an Alcohol Test (§40.275).

1. The STT, BAT, company or a service agent administering the testing process must document any errors in the testing process even if they are not "fatal flaws" or "correctable flaws" listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitations of paragraph 2. of this section.
2. No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. (e.g., the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.
3. When the company notes these errors occur, even though not sufficient to cancel an alcohol result, may be subject to enforcement action under DOT agency regulations.

I. Criteria for Acceptable Alcohol Tests (§40.277) - Alcohol tests other than saliva or breath are not permitted under these regulations.

1. No other types of alcohol tests (e.g., blood and urine) are authorized for testing done in conjunction with 49 CFR Part 40.
2. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted under 49 CFR Part 40.

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VIII. EMPLOYEE WHO REFUSES ALCOHOL TEST (§199.223).

A. General.

1. Compliance with this AMPP is a condition of employment.
2. Each company shall require a covered employee to submit to a post-accident, reasonable suspicion, or follow-up alcohol test. No company shall permit a covered employee who refuses to submit to such a test to perform or continue to perform any covered functions.

B. Additional Requirements.

1. The company may impose additional disciplinary actions, as they deem appropriate. This may include removal from performing covered functions, suspension (with or without pay), and even termination. Some examples of various types of disciplinary action are outlined in Section IX.

IX. DISCIPLINARY ACTIONS (§199.243)

A. General.

1. A covered employee who has an alcohol test administered and the alcohol concentration is greater than 0.02 shall not be permitted to perform covered functions or not allowed to continue to perform covered functions. An employee who engages in prohibited conduct as outlined in the AMPP shall be advised of available resources to evaluate and resolve problems associated with alcohol misuse.
2. Removal from Covered Function (§199.233). Except as provided in sections 199.239 through 199.243, the company shall not permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by sections 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.
3. Required Evaluation and Testing (§199.235). The company shall not permit a covered employee who has engaged in conduct prohibited by sections 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of section 199.243 of this plan.

B. Required Referrals and Evaluations (§199.243).

1. The company shall ensure that employees who engage in prohibited conduct are made aware of potential resources to assist in the evaluation of their problems and to help resolve any problems associated with the misuse of alcohol. Employees who engage in prohibited conduct must be referred to a substance abuse professional for evaluation and/or treatment.
2. No covered employee who has violated the rules on alcohol misuse or refuses to submit to testing can perform any covered function unless and until that employee has:
 - a. Been evaluated by a SAP to determine whether the employee is in need of assistance in resolving problems related to alcohol use.
 - b. Completed any treatment recommend by the SAP.

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- c. Been evaluated by a SAP to ensure that the employee has properly followed the treatment program.
- d. Entered into a company approved evaluation and/or treatment and/or rehabilitation program and successfully completed the treatment and/or program.
- e. Undergone a return-to-duty alcohol test with resulting alcohol concentration of less than 0.02.
- f. Been advised of the follow-up testing provisions as specified in section III of this plan.

C. Evaluation, Treatment and Rehabilitation (§199.243).

1. A Substance Abuse Professional (SAP) is a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, certified social worker, licensed or certified employee assistance professional, or a drug and alcohol counselor certified by the National Association of Drug Abuse Counselors Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC) with knowledge about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
2. The company shall not permit an employee to return to duty requiring the performance of a covered function after engaging in conduct prohibited in Section VI of this plan until the employee has undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
3. The company shall ensure that a SAP who determines that a covered employee requires assistance in resolving problems associated with alcohol misuse does not refer the employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or has a financial interest. This does not prohibit a SAP from referring an employee for assistance to a public agency (State, county, or municipality); a person under contract with the company to provide treatment for alcohol on behalf of the company; the sole source of therapeutic treatment under the employee's health insurance policy; or sole source of therapeutic treatment reasonably accessible to the employee.
4. The employee's evaluation and rehabilitation may be provided by the company, a SAP under contract, or a SAP not affiliated with the company.

D. Levels of Disciplinary Actions. Disciplinary action as set forth below will be taken under each of the described circumstances.

1. 0.02 – 0.39 Consequences.
 - a. When the results of an alcohol (screen/confirmation) test indicate an alcohol concentration of 0.02 or greater, but less than 0.04, the employee will be removed immediately from performing the covered function for the remainder of his/her shift and may be subject to loss of pay for that period of time.
 - b. When an employee has an alcohol (screen/confirmation) test conducted and the alcohol concentration is 0.02 or greater, but less than 0.04 on a second test, the employee will be removed immediately from performing the covered function and shall be suspended. The employee shall be referred to a substance abuse

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professional and must follow all the recommendations following completion of the assessment. Any subsequent test at 0.02 or greater will result in disciplinary action up to and including termination from the company.

- c. When the results of another alcohol (screen/confirmation) test indicates alcohol concentration 0.02 or greater, but less than 0.04 after an alcohol test which had produced an alcohol concentration of 0.04 or greater, then that employee will be removed immediately from performing the covered function. The employee shall be suspended and referred to the substance abuse professional and must follow all the recommendations following completion of the assessment. Any subsequent alcohol concentration 0.02 or greater will result in disciplinary action up to and including termination from the company.

2. 0.04 or Greater Consequences.

- a. When an employee has tested for alcohol in a concentration of 0.04 or greater, the employee will be removed from performing the covered function and shall be suspended. The employee shall be referred to a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.
- b. In all cases when an employee tests at an alcohol concentration of 0.04 or greater after an alcohol test which had on a previous occasion produced an alcohol concentration of 0.04 or greater, then the employee shall be removed immediately from performing the covered function. The employee shall be subject to disciplinary action up to and including immediate termination.

3. Other Alcohol Consequences.

- a. When an employee refuses to report for assessment, evaluation, and/or referral for treatment with a substance abuse professional he/she will be removed immediately from performing the covered function and will be subject to disciplinary action up to and including termination.
- b. When an employee, after assessment, is referred for rehabilitation and/or treatment and the employee refuses to enter or successfully complete such a rehabilitation and/or treatment assessment program, he/she will be removed immediately from performing the covered function and subject to disciplinary action up to and including termination.
- c. An employee who refuses to provide an adequate breath for alcohol testing without a valid medical explanation after he/she has received notice of the requirement to be tested in accordance with the requirements of the AMPP, or who engages in conduct that clearly obstructs the testing procedure will be removed immediately from performing the covered function. The employee will be subject to disciplinary action up to and including termination from the company.
- d. On duty use or possession of alcohol on company time, on company premises, or in company vehicles will result in immediate removal from performing the covered function. The employee will be subject to disciplinary action up to and including termination from the company.

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X. DISCLOSURE OF ALCOHOL INFORMATION/RECORDS (§199.231)

A. General.

1. The company, or the authorized agent, shall maintain all alcohol related testing information including all test results and other appropriate records in a secure manner to prevent the disclosure of such information to unauthorized personnel.
2. The APM/DER shall maintain a locked file system, which will contain the alcohol testing information and records. The APM/DER shall provide all records whenever deemed necessary for inspection by any authorized agency or operator. The files shall be maintained as confidential. Employee files shall be handled on strict "need to know" basis.
3. Alcohol test results shall not be included in personnel files.
4. The company may disclose information without employee's consent as provided by DOT procedures 49 CFR Part 40 concerning certain legal proceedings.

B. Disclosure Provisions.

1. The company shall not release covered employee information that is contained in records as required to be maintained by the provisions of the AMPP and in accordance with federal requirements except as required by law or when expressly authorized or required by 49 CFR Parts 199 and 40.
2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his/her alcohol tests. The company shall promptly provide the requested records. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
3. The company shall permit access to all facilities utilized in complying with the requirements of 49 CFR Parts 199 and 40 to the Secretary of Transportation or any DOT or state agency with regulatory authority over the company.
4. The company shall make available copies of all results for alcohol testing conducted under the AMPP as required by 49 CFR Parts 199 and 40 when requested by the Secretary of Transportation or any DOT or state agency with regulatory authority over the company. When specified by the agency, the information shall include name-specific alcohol test results, records, and reports.
5. When requested by the National Transportation Safety Board as part of an accident investigation, the company shall disclose information related to its administration of any post-accident alcohol tests administered following the accident under investigation.
6. The company shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
7. The company may disclose required information pertaining to a covered employee to the employee or 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 as required by the AMPP and the regulations set forth in 49 CFR Parts 199 and 40 or from the company's

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determination that the covered employee engaged in prohibited alcohol conduct including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.

8. The company 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 term of the employee's consent.

C. Drug and Alcohol Testing Information C/TPAs May Transmit to the Company.

1. The C/TPA may, acting as an intermediary, transmit the information in the following sections of 40 CFR Part 40 to the DER for the company, if the company chooses to do so. These are the only items that the C/TPA is permitted to transmit to the company as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to the company, the transmission of SAP reports to the company, the transmission of positive alcohol test results, and the transmission of medical information from MROs to the company.

2. In every case, the C/TPA must ensure that, in transmitting the information, the C/TPA meets all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the company. For example, if the C/TPA transmitted MROs' drug testing results to DERs, the C/TPA must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in §40.167.

3. Drug Testing Information

- Sec. 40.25: Previous two years' test results.
- Sec. 40.35: Notice to collectors of contact information for DER.
- Sec. 40.61(a): Notification to DER that an employee is a "no show" for a drug test.
- Sec. 40.63(e): Notification to DER of a collection under direct observation.
- Sec. 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen.
- Sec. 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the TPA.)
- Sec. 40.111(a): Transmission of laboratory statistical report to the company.
- Sec. 40.127(f): Report of test results to DER.
- Sec. 40.127(g); 40.129(d); 40.159(1)(4)(ii); 40.161(b): Reports to DER that test is cancelled.
- Sec. 40.129(d): Report of test results to DER.
- Sec. 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation.
- Sec. 40.149(b): Report to DER of changed test results.
- Sec. 40.155(a): Report to DER of dilute specimen.
- Sec. 40.167(b) and (c): Reports of test results to DER.
- Sec. 40.187(a)—(f): Reports to DER concerning the reconfirmation of tests.
- Sec. 40.191(d): Notice to DER concerning refusals to test.
- Sec. 40.193(b)(3): Notification to DER of refusal in shy bladder situation.
- Sec. 40.193(b)(4): Notification to DER of insufficient specimen.
- Sec. 40.193(b)(5): Transmission of CCF copies to DER (not to MRO).
- Sec. 40.199: Report to DER of cancelled test and direction to DER for additional collection.
- Sec. 40.201: Report to DER of cancelled test.

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4. Alcohol testing information

§40.215: Notice to BATs and STTs of contact information for DER.

§40.241(b)(1): Notification to DER that an employee is a "no show" for an alcohol test.

§40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02.

§40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02.

§40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath.

XI. CONFIDENTIALITY AND RELEASE OF INFORMATION – PART 40 – SUBPART P

A. General Confidentiality Requirements (§40.321--§40.323).

1. General confidentiality rules for drug and alcohol test information – Except as otherwise provided in this subpart, the service agent or company participating in the DOT drug or alcohol testing process is prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.
 - a. A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
 - b. "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.
2. Criteria for program participant's release of drug or alcohol test information in connection with legal proceedings (§40.323).
 - a. The company may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
 - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the company), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
 - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the company to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to

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determining whether the driver or the driver's employer was negligent. The company is authorized to respond to the court's order to produce the records.

- b. The company may release the information to the decision-maker in the proceedings (e.g., the court in a lawsuit). The company may release the information only with a binding stipulation that the decision-maker to whom it is released will make it available only to parties to the proceeding.
- c. If a service agent receives a company request for its employee's drug or alcohol-testing information from the service agent to use in a legal proceeding as authorized in paragraph 1.a. of this section (e.g., the laboratory's data package), the service agent must provide the requested information to the company.
- d. The company or service agent must immediately notify the employee in writing of any information the company releases under this section.

B. Release of Medical Information in Verification Process (§40.327).

1. MRO procedures regarding release of medical information gathered in the verification process.
 - a. The MRO must not, except as provided in paragraph 1.c. of this section, report drug test results and medical information learned as part of the verification process to third parties without the employee's consent if the MRO determines in their reasonable medical judgment that:
 - (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
 - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.
 - b. The third parties to whom the MRO is authorized to provide information by this section include the company, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (See §40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
 - c. If the law of a foreign country (e.g., Canada) prohibits the MRO from providing medical information to the company, the MRO may comply with that prohibition.

C. Release of Information to Employees & Other Parties (§40.329--§40.331).

1. Information that laboratories, MROs, and other service agents must release to employees.
 - a. The MRO or service agent must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. The MRO or service agent may charge no more than the cost of preparation and reproduction for copies of these records.
 - b. The laboratory must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the

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employee's drug test (i.e., laboratory report and data package). The laboratory may charge no more than the cost of preparation and reproduction for copies of these records.

- c. The SAP must make available to an employee, on request, a copy of all SAP reports (See §40.311). However, the SAP must redact follow-up testing information before providing it to the employee.
2. Additional parties that the company and service agent must release information (§40.331) – The company or service agent must release information under the following circumstances:
- a. If the company or service agent receives a specific written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, the company or service agent must provide the information to the identified person. For example, as a company, when you receive a written request from a former employee to provide information to a subsequent company, the company or service agent must do so. In providing the information, the company or service agent must comply with the terms of the employee's consent.
 - b. The company must, upon request of DOT agency representatives, provide the following:
 - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by 49 CFR Part 40 and DOT agency regulations. The company must provide this information at the company's principal place of business in the time required by the DOT agency.
 - (3) All items in paragraph 2.b.(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
 - c. The service agent must, upon request of DOT agency representatives, provide the following:
 - (1) Access to the service agent's facilities used for 49 CFR Part 40 and all DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by 49 CFR Part 40 and DOT agency regulations. The company must provide this information at the company's principal place of business in the time required by the DOT agency.
 - (3) All items in Paragraph 2.c.(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.

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- d. If requested by the National Transportation Safety Board as part of an accident investigation, the service agent must provide information concerning post-accident tests administered after the accident.
- e. If requested by a Federal, state or local safety agency with regulatory authority over the company or service agent or the employee, company or service agent must provide drug and alcohol test records concerning the employee.
- f. Except as otherwise provided in 49 CFR Part 40, the laboratory must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. If a party seeks a court order directing the release of a specimen or part of a specimen contrary to any provision of 49 CFR Part 40, the laboratory must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of §40.13. The requirement of 49 CFR Part 40 does not require the laboratory to disobey a court order, however,

D. Record-Keeping Requirements for the Company (§199.227).

- 1. Records that are maintained by the company (§40.333).
 - a. The company must keep the following records for the following periods of time:
 - (1) The company must keep the following records for five years:
 - (a) Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - (b) Records of employee verified positive drug test results;
 - (c) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - (d) SAP reports; and
 - (e) All follow-up tests and schedules for follow-up tests.
 - (2) The company must keep records for three years of information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees.
 - (3) The company must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
 - (4) The company must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.
 - b. The company does not have to keep records related to a program requirement that does not apply to the company (e.g., a maritime company who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
 - c. The company must maintain the records in a location with controlled access.

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- d. A service agent may maintain these records for the company. However, the service agent must ensure that the service agent can produce these records at the company's principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, the company must ensure that the service agent can provide them within two working days.
- e. If the company stores records electronically, where permitted by 49 CFR Part 40, the company must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, the company must convert them to printed documentation in a rapid and readily auditable manner, at the request of the DOT agency.

XII. EMPLOYEE ASSISTANCE PROGRAM (EAP) (§199.241)

A. Scope of Program.

1. The EAP will provide education and training on alcohol misuse to all covered employees. The materials should include:
 - (a) Informational material displayed on bulletin boards, employee break rooms, etc., and distributed to employees.
 - (b) A community service hot-line telephone number for employees to obtain assistance regarding alcohol misuse should be displayed on bulletin boards and distributed to covered employees.
 - (c) Distribution of the company's policy regarding alcohol misuse to all new employees. The policy should be displayed in prominent places throughout the company.
2. Each covered employee shall receive a copy of the information specified in section III-C. The employee should acknowledge receipt of this information.
3. The informational materials should address:
 - a. The effects of alcohol misuse on the individual's health, work, and personal life.
 - b. The signs and symptoms of an alcohol problem for an employee or co-worker.
 - c. Procedures for intervening evaluations and assistance in resolving problems associated with the misuse of alcohol.
 - d. Procedures for intervening when an alcohol problem is suspected, including confrontation and referral to management for assistance.
4. The company may provide optional information and provisions concerning the following:
 - a. Company policies with respect to the use or possession of alcohol.
 - b. Consequences for an employee who is found to have a prohibited alcohol level, based on the company's authority independent of Part 199 requirements.
 - c. Any additional policies or consequences shall be clearly identified or described as being based on the company authority.

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B. Supervisor Training (§199.241).

1. Supervisory personnel responsible for those employees covered under Part 199 and 40 will receive training under the alcohol misuse prevention plan.
2. The training shall include at least one 60-minute period of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
3. The supervisory alcohol training materials should address the specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, and body odors of the employee who may be subjected to reasonable suspicion alcohol testing. It shall also address the physical and performance indicators of probable alcohol misuse.
4. The required reasonable suspicion observations shall be made by a company supervisor who is trained in detecting the symptoms of alcohol misuse.

XIII. RECORD-KEEPING PROCEDURES (§199.227)

A. General.

1. The company APM or designee shall maintain the alcohol testing records in accordance with the provisions set out in the AMPP. The APM shall maintain all records under lock and key for the company.
2. Records shall be maintained for the specified periods of time as required in 49 CFR Pars 199 and 49 CFR Part 40.

B. Record Retention Provisions.

1. The following types of records shall be maintained for a minimum period of five years.
 - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater.
 - b. Documentation of refusals to take required alcohol tests.
 - c. Calibration documentation of each EBT used in alcohol testing, including records of the results of external calibration checks.
 - d. Employee referrals and evaluations.
 - e. MIS annual alcohol misuse report data.
 - f. Documentation pertaining to any missed tests (Example of Form in Appendix E – a post-accident or reasonable suspicion test that could not be conducted within the prescribed time frame).
2. The following types of records shall be maintained for a minimum period of two years.
 - a. Records related to the collection process (except calibration of EBT devices).
 - b. Records related to training.
 - c. Records of the inspection and maintenance of each EBT used in employee testing.
 - d. Documentation of the company's compliance with the QAP for each EBT it uses for alcohol testing under the AMPP.
 - e. Records of the training and proficiency testing of each BAT/STT used in employee testing.
 - f. Log books used in conjunction with EBTs.
3. Records of all test results below 0.02 shall be maintained for a minimum period of one year.

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C. Maintenance of Specific Types of Records.

1. The following types of records related to the collection process shall be maintained:
 - a. Collection logbooks if used.
 - b. Calibration documentation for EBT devices.
 - c. Documentation of BAT/STT training.
 - d. Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
 - e. Documents generated in connection with decisions to administer post-accident alcohol tests.
 - f. Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.
2. The following types of records related to test results:
 - a. Company's copy of the alcohol test form, including the test results.
 - b. Documents related to the refusal of any covered employee to submit to a required alcohol test.
 - c. Documents presented by a covered employee to dispute the result of an alcohol test administered under the AMPP.
3. Records related to other violations of Part 199 as outlined in the AMPP.
4. The following types of records related to referrals and evaluations:
 - a. Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
 - b. Records concerning a covered employee's compliance with the recommendations of the SAP.
5. The following types of records related to education and training of employees and supervisors:
 - a. Materials on alcohol misuse awareness, including a copy of the company's policy on alcohol misuse.
 - b. Documentation of compliance with the requirements for access to all company facilities and records.
 - c. Documentation of training provided to supervisors for the purposes of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
 - d. Certification that any training conducted under the AMPP compliance with the requirements of 40 CFR Part 199 and 40.

D. Management Information System (MIS) Requirements (§199.229).

1. Each large pipeline operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at 40.25 and Appendix H to Part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The

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Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

2. Each report, required under this section shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration. The operators may submit a paper report or data electronically using the version of the MIS form provided by DOT.
3. As a company, you may use a service agent (e.g. C/TPA to perform random selections for your company; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for the industry and that only covered employees are in the random testing pool.
4. Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.
5. A service agent (e.g. Consortia/Third Party Administrator as defined in 49 CFR Part 40) may prepare the MIS report on behalf of the operator. However, each report shall be certified by the operator's anti-drug manager or designed representative for accuracy and completeness.
6. Specific pipeline employees information will be maintained to include the following elements:
 - Company name, address, name of certifying official, e-mail address (if applicable), signature, telephone number, date certified, prepared by (if different) and consortium (TPA name and telephone number).
 - Check the appropriate DOT agency for which the reporting is being submitted.
 - Covered Employees: (A) Enter the total number of Safety-sensitive Employees in all employee categories and (B) Enter the total number of employee categories.
 - Enter "Employee Category" and "Total Number of Employees in this Category".
 - Total Number of Test Results (Should equal the sum of columns 2, 3, 7, and 8) for Pre-employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Screening Tests With Results Below 0.02 for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Screening Tests with Results 0.02 or Greater for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Confirmation Test Results for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Confirmation Tests With Results 0.02 through 0.039 for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Confirmation Tests With Results 0.04 or Greater for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Tests for "Shy Lung" With No Medical Explanation.
 - Enter Number of Tests for Other Refusals to Submit to Testing for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
 - Enter Number of Cancelled Tests for Pre-Employment, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
7. **The company shall prepare and submit to the appropriate pipeline operator and/or designated agent for contractor monitoring the proper statistical data report (as directed by**

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the pipeline operator) twice a year. The first report shall cover the 1st and 2nd quarters of the company's testing program for the current calendar year and shall be due no later than 30-days after the end of the 2nd quarter (June 30). The second report shall cover the 3rd and 4th quarters of the company's testing program and shall be due no later than 30-days after the end of the 4th quarter (January 30 of the calendar year).

E. Maintenance and Disclosure of Records Concerning EBTs and BAT/STTs.

1. The company or its designated agent shall maintain the following records for a minimum period of two years.
 - a. All records pertaining to the inspection and maintenance of each EBT used in alcohol testing for its employees.
 - b. Documentation of the company's compliance with the QAP for each EBT it uses for testing employees under the alcohol testing regulations as set forth in Part 199 and 40.
 - c. All records pertaining to the training and proficiency testing of each BAT/STT used by the company or its designated alcohol testing sites for alcohol testing its employees.
 - d. All log books, if applicable, used in conjunction with the alcohol testing provisions.
2. The company or its designated agent shall maintain for a minimum of five years records pertaining to the calibration procedures for each EBT used in conjunction with the alcohol testing as set forth in Part 199 and 40. These records shall also include documentation concerning the results of all external calibration checks conducted on each EBT.
3. The company shall maintain all records required by this section and shall release this information only under the terms as specified in Section XI of this plan. The company will ensure that records regarding the EBTs and BAT/STTs are maintained in a confidential manner and are released only in accordance with applicable federal regulations as outlined in this plan.

XIV. CONTRACTOR MONITORING (§199.245)

- A. General.** The contractor company will include a clause in the contracts that alcohol breath testing, education, and training may be addressed by the contractor/sub-contractor in accordance with Part 199 and Part 40 for covered functions. The company shall be responsible for ensuring compliance with the provisions of Part 199 and 40.
- B. Records and access.**
 1. Contractor/sub-contractor shall retain copies of appropriate alcohol testing records as required by 49 CFR Part 199 and Part 40.
 2. The records and access to the contractor/sub-contractor's property shall be readily accessible for inspection by the pipeline operator, contractor, RSPA, and representatives of those state agencies under which jurisdiction the company operates.
- C. Contractor Coverage.**
 1. Confirmation of contractor compliance/monitoring – Specific guidance on how to develop an effective contractor compliance and monitoring program is outlined herein.

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2. The company can, as an alternative to the above guidance, provide coverage for the contractor employees by including them in the company's alcohol testing program for the duration of the contract or work project. When contractor employees are covered under the company's AMPP, the contractor shall ensure that their employees comply with all the provisions contained in the company's AMPP, unless some provisions for exemptions are authorized.

D. Procedures for Determining Compliance.

1. Qualifying Potential Contractors. Qualifications of the potential contractor as it pertains to alcohol testing policies/procedures is assured by requesting the potential contractor to submit a copy of its AMPP for review and compliance with RSPA/DOT regulations. After review of the AMPP is completed, written correspondence to the contractor will advise it whether or not the AMPP plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor plan shall be completed utilizing the criteria established in the RSPA Alcohol Misuse Inspection form. Addendums made to the contractor's plan shall be attached to the previously submitted AMPP plan. Upon approval of the addendum, a letter of acceptance is then sent to the contractor. The contractor/sub-contractor is now eligible to bid on company contract work that would be covered under Parts 199 and 40.
2. Monitoring Contractor Compliance. The contractor may be required to provide information on their employees who will perform covered functions for the operator. This information may include the name and job title of its employees who will perform any work or functions covered by Part 199 under that contract. A list of each contractor's covered employees may be distributed to appropriate company field management personnel and job sites.
3. Statistical Submission. All contractors will be required to submit AMPP testing statistical information on a periodical basis that may be based on the duration of the contract. Typically this requirement will be conducted on a semi-annual basis. The company may require a more frequent schedule for submission of data should they determine a need for such statistics.
4. Statistical Record Retention. The company shall maintain a complete file on each contractor's statistical drug testing data reports. The company shall make available these reports when requested by the RSPA Administrator, designated representative, or representatives of those state agencies under which jurisdiction the company operates.
5. Access to Records/Property. The company, contractor will allow access to property and records by the operator, the Administrator, contractor, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of the regulations.
6. Subcontractor Not in Compliance: Ramifications for subcontractors whose personnel test verified positive for drug use while working for the company or who do not have a drug testing program in place which complies with 49 CFR 199 and 40, and who have supplied the company with an affidavit to the contrary are:
 - a. If an employee of a subcontractor shall cause the company to incur any liability whatsoever by reason of that employee's drug use, the subcontractor shall indemnify the company for any damages, fees, fines, charges, penalties or costs the company incurs by reason of the employee's drug use, including, but not limited to, civil or criminal fines, penalties or damages, whether special, consequential or punitive.
 - b. Each subcontractor shall agree, as a term of its contract with the company, that it shall indemnify and hold the company harmless from any claim whatsoever which may arise

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against the company by reason of the drug use of one of the subcontractor's employees or by subcontractor's failure to implement a drug testing program in compliance with 49 CFR 199 and 40.

- c. The company shall take into consideration the amount of drug use prevalent among the subcontractor's employees when determining whether or not to make use of that particular subcontractor for future projects and may delete such subcontractor from its approved list.

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APPENDIX A

CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)

Name:
Address: NONE
Phone Number:

ALCOHOL PROGRAM MANAGER (APM) OR DESIGNATED EMPLOYER REPRESENTATIVE (DER)

Name: Dana Lee, Operations Manager
Address: P. O. Drawer O, Morgan City, La. 70381
Phone Number: 985-384-5724

SUBSTANCE ABUSE PROFESSIONAL (SAP)

Name: Dr. William H. Johnson
Address: P. O. Drawer 2347, Morgan City, La. 70381
Phone Number: 985-384-1562

BREATH ANALYSIS TECHNICIAN (BAT/STT) – COLLECTION FACILITY

Name: Harris Swan – Joyce Small – Bridget Dement / Industrial Medical Clinic
Address: 1124 7th St.
Phone Number: Morgan City, La. 70380

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Name: Fairview Treatment Center
Address: 1101 Southeast Blvd. (Bayou Vista), Morgan City, La. 70380
Phone Number: 985-395-4525

LIST APPROVED EVIDENTIAL BREATH TESTING DEVICES (EBTs) UTILIZED:

Intoxilyzer 200

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APPENDIX B

EMPLOYEE/SUPERVISORY POSITIONS

(JOB CLASSIFICATIONS/TITLES)

SUBJECT TO ALCOHOL TESTING

***SUPERVISORY POSITIONS SUBJECT TO DRUG TRAINING (60 MINUTES)**

Employee Titles

Supervisory Titles

Equipment Operators

Foreman

Welders

Manager

Roustabouts

Construction Supervisor

Laborers

Superintendent

Mechanics

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APPENDIX C

I. Alcohol Testing Personnel – 49 CFR Part 40 – Subpart J

A. Conducting DOT alcohol tests (§40.211).

1. Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of 49 CFR Part 40 are the only people authorized to conduct DOT alcohol tests.
2. An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
3. The BAT or STT qualified immediate supervisor of a particular employee may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit the company from doing so.

B. Training Requirements for STTs and BATs (§40.213) – To be permitted to act as a BAT or STT in the DOT alcohol testing program, the BAT or STT must meet each of the requirements of 49 CFR Part 40, Subpart J:

1. Basic information. The STT and/or BAT must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance.
2. Qualification training. The STT and/or BAT must receive qualification training meeting the requirements of this paragraph.
 - a. Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.
 - b. Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (i.e., the ASD(s) or EBT(s) utilized.
 - c. The training must emphasize that the BAT or STT is responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
 - d. The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a “train the trainer” course.
3. Initial Proficiency Demonstration. Following the completion of the qualification training under paragraph B.2. of this section, the BAT or STT must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).
 - a. Another person must monitor and evaluate the BAT or STT performance, in person or by a means that provides real-time observation and interaction between the instructor and

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- trainee, and attest in writing that the mock collections are "error-free". This person must be an individual who meets the requirements of Paragraph B.2.d. of this section.
- b. These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s) that will be utilized by the BAT or STT.
 - c. If the STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, the STT must demonstrate as part of the mock test that the STT was able to discern changes, contrasts, or readings correctly.
4. Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration the BAT or STT must meet:
- a. A collector who became a BAT or STT before August 1, 2001, was required to have met the requirements set forth in paragraphs B.2. and B.3. of this section, and the BAT or STT does not have to meet them again.
 - b. A collector who becomes a BAT or STT on or after August 1, 2001, must meet the requirements of paragraphs B.2 and B.3 of this section before performing BAT or STT functions.
5. Refresher training. No less frequently than every five years from the date on which the BAT or STT satisfactorily complete the requirements of paragraphs B.2. and B.3 of this section, the BAT or STT must complete refresher training that meets all the requirements of paragraphs B.2 and B.3 of this section. If you are a BAT or STT who completed qualification training before January 1, 1998, then the BAT or STT is not required to complete refresher training until January 1, 2003.
6. Error Correction Training. If the BAT or STT makes a mistake in the alcohol testing process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), the BAT or STT must undergo error correction training. This training must occur within 30 days of the date the BAT or STT is notified of the error that led to the need for retraining.
- a. Error correction training must be provided and the BAT or STT proficiency documented in writing by a person who meets the requirements of paragraph (B)(2)(d) of this section.
 - b. Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
 - c. As part of the error correction training, the BAT or STT must demonstrate his/her proficiency in the alcohol testing procedures of 49 CFR Part 40 by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which the BAT or STT error(s) occurred. The person providing the training must monitor and evaluate the BAT or STT performance and attest in writing that the mock tests were error-free.
7. Documentation. The BAT or STT must maintain documentation showing that he/she currently meets all requirements of this section. The BAT or STT must provide this documentation on request to DOT agency representatives and to the company and C/TPAs who are negotiating to use the BAT or STT services.
8. Other persons who may serve as BATs or STTs.

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- a. Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph B.3.
- b. Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

C. Information about DER that company must provide to BATs and STTs (§40.215)

1. The company must provide to the STTs and the BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

D. Additional information on the role of STTs and BATs may be found in the following areas of 49 CFR Part 40 (§40.217)

1. Other information on the role and functions of STTs and BATs can be found in the following sections of 49 CFR Part 40.

§40.3 – Definition.

§40.223 – Responsibility for supervising employees being tested.

§40.225—40.227 – Use of the alcohol testing form.

§40.241—40.245 – Screening test procedures with Ads and EBTs.

§40.251—40.255 – Confirmation test procedures.

§40.261 – Refusal to test.

§40.263-40.265 – Insufficient saliva or breath.

§40.267 – Problems requiring cancellation of tests.

§40.269-40.271 – Correcting problems in tests.

II. Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing – 49 CFR Part 40 – Subpart K

A. Procedure for conducting an alcohol test and location (§40.22 1).

1. A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.
2. A collector operating an alcohol testing site must ensure that it meets the security requirements of §40.223.
3. A collector operating an alcohol testing site must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
4. A collector operating an alcohol testing site must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

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5. If an alcohol testing site fully meeting all the visual and aural privacy requirements is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.
6. An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

B. Steps That Must Be Taken to Protect The Security of Alcohol Testing Sites (§40.223).

1. The BAT, STT, or other person operating an alcohol testing site, must prevent unauthorized personnel from entering the testing site.
 - a. The only people to be treated as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers. DERs, employee representatives authorized by the company (e.g., on the basis of company policy or labor-management agreement), and DOT agency representatives.
 - b. The BAT or STT must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
 - c. The BAT or STT may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
2. The BAT or STT must not allow any person other than the BAT or STT, the employee, or a DOT agency representative to actually witness the testing process (See §40.241—40.255).
3. If the BAT or STT is operating an alcohol testing site he/she must ensure that when an EBT or ASD is not being used for testing, it is stored in a secure place.
4. If the BAT or STT is operating an alcohol testing site he/she must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.
5. The BAT or STT is to avoid distraction that could compromise security. He/she is limited to conducting an alcohol test for only one employee at a time.
 - a. When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, the BAT is not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.
 - b. The BAT who will conduct both the screening and the confirmation test is to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.
 - c. The BAT or STT is not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

C. Forms to be Used For An Alcohol Test (§40.225).

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1. The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test beginning February 1, 2002. The ATF must be a three-part carbonless manifold form. The ATF can be found in 49 CFR Part 40, Appendix G.
2. The company, in using the DOT alcohol-testing program, is not permitted to modify or revise the ATF except s follows:
 - a. The company may include other information needed for billing purposes, outside the boundaries of the form.
 - b. The company may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.
 - c. The company may use an ATF that has the company's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included to assist with negative results.
 - d. The company may use an ATF in which all pages are printed on white paper. The company may modify the ATF by using colored paper, or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and Blue for Copy 3.
 - e. The BAT or STT may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.
 - f. The BAT or STT may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.
3. The company may use an equivalent foreign-language version of the ATF approved by ODAPC. The company may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

D. Company's Use of ATF for non-DOT Tests or non-DOT Forms for DOT Tests (§40.227).

1. The company, BAT, or STT is prohibited from using the ATF for non-DOT alcohol tests. The company, BAT, or STT are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either will subject the company, BAT or STT to enforcement action under DOT agency regulations.
2. If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the company or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with §40.271(b).

E. Devices to Be Used to Conduct Screening Tests (§40.229).

1. EBTs and ASDs on the NHTSA conforming products lists (CPL) for evidential and non-evidential devices are the only devices the BAT or STT is allowed to use to conduct alcohol screening tests under 49 CFR Part 40. The BAT or STT may use an ASD that is on the NHTSA CPL or DOT alcohol tests only if there are instructions for its use in 49 CFR Part 40. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

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F. Devices to Be Used to Conduct Alcohol Confirmation Tests (§40.231).

1. EBTs on the NHTSA CPL for evidential devices that meet the requirements of paragraph F.2. of this section are the only devices the company may use to conduct alcohol confirmation tests under this part. Note that, among devices on the CPL for EBTs, only those devices listed without an asterisk (*) are authorized for use in confirmation testing in the DOT alcohol testing program.
2. To conduct a confirmation test, you must use an EBT that has the following capabilities:
 - a. Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test.
 - b. Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;
 - c. Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
 - d. Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
 - e. Tests an air blank; and
 - f. Performs an external calibration check.

G. Requirements for Proper Use and Care of EBTs (§40.233).

1. An EBT manufacturer must submit, for NHTSA approval, a quality assurance plan (QAP) for the EBT before NHTSA places the EBT on the CPL.
 - a. The manufacturer's QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, the manufacturer's QAP must take into account factors like frequency or use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).
 - b. The manufacturer's QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
2. The manufacturer must include, with each EBT, instructions for its use and care consistent with the QAP.
3. The user of the EBT (e.g., company, service agent) must do the following:
 - a. The user must follow the manufacturer's instructions, including performance of external calibration checks at the intervals the instructions specify.
 - b. In conducting external calibration checks, the user must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."
 - c. If an EBT fails an external check of calibration, the user must take the EBT out of service. The user may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.

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- d. The user must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a)(2).
- e. The user must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

H. Requirements for Proper Use and Care of ASDs (§40.235).

- 1. The ASD manufacturer must submit, for NHTSA approval, a QAP for the ASD before NHTSA places the ASD on the CPL. The manufacturer's QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., temperature, altitude, humidity) that may affect the ASD's performance.
- 2. The manufacturer must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable, the time within which the device must be read, and the manner in which the reading is made.
- 3. The user of the ASD (e.g., company, STT) must follow the QAP instructions.
- 4. The user is not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.
- 5. The company, with respect to breath ASDs, must also follow the device use and care requirements of §40.233.

III. Alcohol Screening Tests – 49 CFR Part 40 – Subpart L

A. First Steps in Alcohol Screening Test (§40.241).

- 1. The BAT or STT will take the following steps to begin all alcohol screening tests, regardless of the type of testing device the BAT or STT is using:
 - a. When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, the DER must be notified that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.
 - b. Ensure that, when the employee enters the alcohol-testing site, the alcohol testing process begins without undue delay. For example, do not wait because the employee says he or she is not ready or because an authorized company or employee representative is delayed in arriving.
 - (1) If the employee is also going to take a DOT drug test, ensure that the alcohol test is completed before the urine collection process begins.

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(2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.

- c. Require the employee to provide positive identification. A photo ID issued by the company (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). Faxes or photocopies of identification are not acceptable. Positive identification by a company representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, the collector must contact the DER to verify the identity of the employee.
- d. If the employee asks, the BAT or STT must provide identification to the employee. The collector's identification must include name and company's name but is not required to include a picture, address, or telephone number.
- e. Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.
- f. Complete Step 1 of the ATF.
- g. Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

B. Procedure for Alcohol Screening Test Using EBT or non-evidential breath ASD (§40.243).

- 1. The BAT or STT must take the following steps:
 - a. Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.
 - b. Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
 - c. Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
 - d. Show the employee the displayed test result.
 - e. If the device is one that prints the test number, testing device name and serial number, time and result directly onto the ATF, check to ensure that the information has been printed correctly onto the ATF.
 - f. If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

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- g. If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, record this information in Step 3 of the ATF.

C. Procedure for An Alcohol Screening Test Using a Saliva ASD (§40.245)

1. The STT or BAT must take the following steps when using the saliva ASD:
 - a. Check the expiration date on the device or on the package containing the device and show it to the employee. The STT or BAT may not use the device after its expiration date.
 - b. Open an individually wrapped or sealed package containing the device in the presence of the employee.
 - c. Offer the employee the opportunity to use the device. If the employee uses it, the STT or BAT must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.
 - d. If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (See paragraph 1.g. of this section), the STT or BAT must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. The STT or BAT must wear single-use examination or similar gloves while doing so and change them following each test.
 - e. When the device is removed from the employee's mouth, the STT or BAT must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.
 - f. Instructions to follow:
 - (1) If the STT or BAT was unable to successfully follow the procedures of paragraphs 1.c. through 1.e. of this section (e.g., the device breaks, you drop the device on the floor), the STT or BAT must discard the device and conduct a new test using a new device.
 - (2) The new device the STT or BAT uses must be one that has been under the STTs control or that of the company before the test.
 - (3) The STT or BAT must note on the "Remarks" line of the ATF the reason for the new test. (Note: The STT or BAT may continue using the same ATF with which you began the test.)
 - (4) The STT or BAT must offer the employee the choice of using the device or having the STT or BAT use it unless the employee, in the opinion of the STT or BAT, was responsible (e.g., the employee dropped the device) for the new test needing to be conducted.
 - (5) If the STT or BAT is unable to successfully follow the procedures of paragraphs 1.c through 1.e. of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.
 - (6) The STT or BAT must then direct the employee to take a new test immediately, using and EBT for the screening test.

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- g. If the STT or BAT is able to successfully follow the procedures of paragraphs 1.c.—1.e. of this section, but the device does not activate, the STT or BAT must discard the device and conduct a new test, in the same manner as provided in paragraph 1.f. of this section. In this case, the STT or BAT must place the device into the employee's mouth to collect saliva for the new test.
 - h. The STT or BAT must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases, the result displayed must be read within 15 minutes of the test. The STT or BAT must then show the device and its reading to the employee and enter the result on the ATF.
 - i. The STT or BAT must never re-use devices, swabs, gloves or other materials used in saliva testing.
 - j. The STT or BAT must note the fact that you used a saliva ASD in Step 3 of the ATF.
2. As the STT or BAT, you must take the following steps when using the breath tube ASD.
- a. Check the expiration date on the device or on the package containing the device and show it to the employee. The STT or BAT may not use the device after its expiration date.
 - b. Remove a device from the package and break the tube's ampule in the presence of the employee.
 - c. Secure an inflation bag on to the appropriate end of the device, as directed by the manufacturer on the device's instructions.
 - d. Offer the employee the opportunity to use the device. If the employee chooses to use (e.g. hold) the device, instruct the employee to blow forcefully and steadily into the lower end of the device until the inflation bag fills with air (approximately 12 seconds).
 - e. If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph 2.d. of this section.
 - f. When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth); remove the inflation bag; and either hold the device or place it on a clean flat surface while waiting for the reading to appear.
 - g. Instructions to follow:
 - (1) If you were unable to successfully follow the procedures of paragraphs 2.d. through 2.f. of this section (e.g., the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct a new test using a new one.
 - (2) The new device you use must be one that has been under your control or that of the employee before the test.
 - (3) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test).

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- (4) You must offer the employee the choice of holding the device or having you hold it unless the employee, in your opinion, was responsible (e.g., the employee failed to fill the inflation bag) for the new test needing to be conducted.
- (5) If you were unable to successfully follow the procedures of paragraphs 2.d. through 2.f. of this section on the new test, you must end the collection and put an explanation on the "Remarks" line on the ATF.
- (6) You must then direct the employee to take a new test immediately, using another type of ASD (e.g., saliva device) or an EBT.
- h. If you were able to successfully follow the procedures of paragraphs 2.d. through 2.f. of this section, you must compare the color of the crystals in the device with the colored crystals on the manufacturer-produced control tube no sooner than the manufacturer instructs. In all cases, color comparisons must take place within 15 minutes of the test.
- i. You must follow the manufacturer's instructions for determining the result of the test. You must then show both the device and the control tube side-by-side to the employee and record the result on the ATF.
- j. You must never re-use devices or gloves used in the breath tube testing. The inflation bag must be voided of air following removal from the device. One inflation bag can be used for up to 10 breath tube tests.
- k. You must note the fact that you used a breath tube device in Step 3 of the ATF.

D. Procedures the BAT or STT is to Follow After a Screening Test Result (§40.247).

- 1. If the test result is an alcohol concentration of less than 0.02, the BAT or STT must do the following:
 - a. Sign and date Step 3 of the ATF; and
 - b. Transmit the result to the DER in a confidential manner, as provided in §40.255.
- 2. If the test result is an alcohol concentration of 0.02 or higher, the BAT or STT must direct the employee to take a confirmation test.
 - a. The BAT who will conduct the confirmation test must then conduct the test using the procedures beginning at §40.251.
 - b. If a different BAT will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.
 - c. If the confirmation test will be performed at a different site from the screening test, the BAT must take the following additional steps:
 - (1) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;

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- (2) Tell the employee the reason for the waiting period required by §40.251(a) (e.g., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
 - (3) Explain that following the BAT instructions concerning the waiting period is to the employee's benefit;
 - (4) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;
 - (5) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;
 - (6) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
 - (7) Ensure that the BAT or another BAT, STT, or company representative observe the employee as he or she is transported to the confirmation testing site. The BAT or STT must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
3. If the screening test is invalid, the BAT or STT must tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (See §40.271).

IV. Alcohol Confirmation Tests – 49 CFR Part 40 – Subpart M

A. First steps in an alcohol confirmation test (§40.251). The BAT for an alcohol confirmation test must follow these steps to begin the confirmation test process:

1. The BAT must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
 - a. The BAT must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, the BAT should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
 - (1) If the confirmation test is taking place at a different location from the screening test (see §40.247(b)(3)), the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.
 - (2) If the BAT cannot verify, through review of the ATF, that waiting period instructions were provided, then the BAT must carry out the waiting period requirement.
 - (3) The BAT or another BAT or STT, or a company representative, must observe the employee during the waiting period.
 - b. Concerning the waiting period, the BAT must tell the employee:

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- (1) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
- (2) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
- (3) That following the BAT's instructions concerning the waiting period is to the employee's benefit; and
- (4) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

c. If the BAT becomes aware that the employee has not followed the instructions, the BAT must note this on the "Remarks" line of the ATF.

2. If the BAT did not conduct the screening test for the employee, the BAT must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. The BAT must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.
3. Complete Step 1 of the ATF.
4. Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, the BAT must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.
5. Even if more than 30 minutes have passed since the screening test result was obtained, the BAT must begin the confirmation test procedures in §40.253, not another screening test.
6. The BAT must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.
7. Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

B. Procedures for Conducting an Alcohol Confirmation Test (§40.253) – The BAT conducting an alcohol confirmation test must follow these steps in order to complete the confirmation test process:

1. In the presence of the employee, the BAT must conduct an air blank on the EBT the BAT is using before beginning the confirmation test and show the reading to the employee.
 - a. If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must conduct another air blank.
 - b. If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must take the EBT out of service.
 - c. If the BAT takes an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.

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- d. The BAT must proceed with the test of the employee using another EBT, if one is available.
2. The BAT must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
3. The BAT must ensure that both the BAT and the employee read the unique test number displayed on the EBT.
4. The BAT must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
5. The BAT must show the employee the result displayed on the EBT.
6. The BAT must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
7. If the EBT provides a separate printout of the result, the BAT must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

C. Procedure to Follow After the Next Alcohol Confirmation Test Result (§40.255).

1. After the EBT has printed the result of an alcohol confirmation test, the BAT must take the following additional steps:
 - a. Sign and date Step 3 of the ATF.
 - b. If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. The BAT must sign and date Step 3 of the ATF.
 - c. If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, the BAT must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.
 - d. If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (See§40.271).
 - e. Immediately transmit the result directly to the DER in a confidential manner.
 - (1) The BAT may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, the BAT must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. The BAT must not transmit these results through C/TPAs or other service agents.
 - (2) If the BAT does not make the initial transmission in writing, the BAT must follow up the initial transmission with Copy 1 of the ATF.
2. The company must take the following steps with respect to the receipt and storage of alcohol test information:

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- a. If the company receives any test results that are not in writing (e.g., by telephone or electronic means), the company must establish a mechanism to establish the identity of the BAT sending you the results.
- b. The company must store all test result information in a way that protects confidentiality.

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APPENDIX E

REASONABLE CAUSE OBSERVATION CHECKLIST

(STRICTLY CONFIDENTIAL)

EMPLOYEE: _____ PERIOD OF EVALUATION _____

SUPERVISOR #1, NAME & TELEPHONE: _____

SUPERVISOR #2, NAME & TELEPHONE: _____

This checklist is intended to assist a supervisor in referring a person for drug testing. Has the employee manifested any of the following behaviors? Indicate (D) if documentation exists.

A. QUALITY AND QUANTITY OF WORK

YES NO

- | | | |
|-------|-------|---|
| _____ | _____ | 1. Clear refusal to do assigned tasks |
| _____ | _____ | 2. Significant increase in errors |
| _____ | _____ | 3. Repeated errors in spite of increased guidance |
| _____ | _____ | 4. Reduced quantity of work |
| _____ | _____ | 5. Inconsistent, "up and down" quantity/quality of work |
| _____ | _____ | 6. Behavior that disrupts workflow |
| _____ | _____ | 7. Procrastination on significant decisions or task |
| _____ | _____ | 8. More than usual supervision necessary |
| _____ | _____ | 9. Frequent, unsupported explanations for poor work performance |
| _____ | _____ | 10. Noticeable change in written or verbal communication |
| _____ | _____ | 11. Other (please specify) _____ |

B. INTERPERSONAL WORK RELATIONSHIPS

YES NO

- | | | |
|-------|-------|--|
| _____ | _____ | 1. Significant change in relations with co-workers, supervisors |
| _____ | _____ | 2. Frequent or intense arguments |
| _____ | _____ | 3. Verbal abusiveness |
| _____ | _____ | 4. Physical abusiveness |
| _____ | _____ | 5. Persistently withdrawn or less involved with people |
| _____ | _____ | 6. Intentional avoidance of supervisor |
| _____ | _____ | 7. Expressions of frustration or discontent |
| _____ | _____ | 8. Change in frequency or nature of complaints |
| _____ | _____ | 9. Complaints by co-workers or subordinates |
| _____ | _____ | 10. Cynical, "distrustful or human nature" comments |
| _____ | _____ | 11. Unusual sensitivity to advice or critique of work |
| _____ | _____ | 12. Unpredictable response to supervision |
| _____ | _____ | 13. Passive-aggressive attitude or behavior, doing things "behind your back" |

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C. GENERAL JOB PERFORMANCE

YES NO

- | | | | |
|-----|-----|-----|---|
| ___ | ___ | 1. | Excessive unauthorized absences-number in last 12 months |
| ___ | ___ | 2. | Excessive authorized absences-number in last 12 months |
| ___ | ___ | 3. | Excessive use of sick leave in last 12 months |
| ___ | ___ | 4. | Frequent Monday/Friday absence or other pattern |
| ___ | ___ | 5. | Frequent unexplained disappearances |
| ___ | ___ | 6. | Excessive "extension" of breaks or lunch |
| ___ | ___ | 7. | Frequently leaves work early-number of days per week or month |
| ___ | ___ | 8. | Increased concern about (actual incidents) safety offenses involving the employee |
| ___ | ___ | 9. | Experiences or causes job accidents |
| ___ | ___ | 10. | Major change in duties or responsibilities |
| ___ | ___ | 11. | Interferes with or ignores established procedures |
| ___ | ___ | 12. | Inability to follow through on job performance recommendation |

D. PERSONAL MATTERS

YES NO

- | | | | |
|-----|-----|-----|--|
| ___ | ___ | 1. | changes in or unusual personal appearance (dress, hygiene) |
| ___ | ___ | 2. | Changes in or unusual speech (incoherent, stuttering, loud) |
| ___ | ___ | 3. | Changes in or unusual physical mannerisms (gesture, posture) |
| ___ | ___ | 4. | Changes in or unusual facial expressions |
| ___ | ___ | 5. | Changes in or unusual level of activity-much reduced/increased |
| ___ | ___ | 6. | Changes in or unusual topics of conversation |
| ___ | ___ | 7. | Engages in detailed discussions about death, suicide, harming others |
| ___ | ___ | 8. | Increasingly irritable or tearful |
| ___ | ___ | 9. | Persistently boisterous or rambunctious |
| ___ | ___ | 10. | Unpredictable or out-of-context display of emotion |
| ___ | ___ | 11. | Unusual fears |
| ___ | ___ | 12. | Lacks appropriate caution |
| ___ | ___ | 13. | Engages in detailed discussion about obtaining/using drugs/alcohol |
| ___ | ___ | 14. | Has personal relationship problems (spouse, girl/boyfriend, children, in-laws) |
| ___ | ___ | 15. | Has received professional assistance for emotional or physical problems |
| ___ | ___ | 16. | Makes unfounded accusations toward others, i.e., has feelings of persecution |
| ___ | ___ | 17. | Secretive or furtive |
| ___ | ___ | 18. | Memory problems (difficulty recalling instructions, data, past behaviors) |
| ___ | ___ | 19. | Frequent colds, flu, excessive fatigue, or other illnesses |
| ___ | ___ | 20. | Makes unreliable or false statements |
| ___ | ___ | 21. | Unrealistic self-appraisal or grandiose statements |
| ___ | ___ | 22. | Temper tantrums or angry outbursts |
| ___ | ___ | 23. | Demanding, rigid, inflexible |
| ___ | ___ | 24. | Major change in physical health |
| ___ | ___ | 25. | Concerns about sexual behavior or sexual harassment |

Other information/observations (Please be specific, attach additional sheet as needed).

SUPERVISOR #1 - SIGN & DATE

SUPERVISOR #2 - SIGN & DATE

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APPENDIX F

ALCOHOL SUPPLEMENT

A. Why You Should Get Involved.

1. Although Athena has not had a history of substance abuse problems, we recognize that alcoholism and alcohol misuse are problems throughout America.
2. There are three good reasons why you should be concerned if any of your co-workers is using drugs or alcohol on the job.
 - a. Your health and safety may be at risk.
 - b. Alcohol misuse costs you money.
 - c. Alcohol creates a negative work environment.
3. According to the National Institute on Alcohol Abuse and Alcoholism, drug and alcohol use on the job costs society an estimated \$102 billion a year. Since most of this cost is passed on to you in the form of higher health insurance rates or in consumer prices, drug and alcohol use on the job costs you and your fellow workers a significant amount of money.
4. Absenteeism among problem drinkers or alcoholics is 3.8 to 8/3 times greater than normal. If your fellow workers don't come to work, you may have to do their jobs in addition to your own.
5. Workers who misuse alcohol don't function at their full potential. Not only is absenteeism a problem, when they are at work these employees may have reduced capabilities and productivity. Since our product is the safe transportation of hazardous liquid (or natural gas), alcohol misuse is an especially serious issue.
6. No matter what your position is in the organization, there is something you can do to ensure that drug and alcohol use on the job never becomes a problem at the company. Acceptance of any misuse puts you, this company, and the public, at risk.

B. Effects of Alcohol Misuse on an Individual's Health, Work, and Personal Life.

1. Alcohol is a central nervous system depressant. Taken in large quantities, it causes not only the euphoria, associated with being drunk but also adversely affects your judgment, ability to think, and your motor functions. Drink enough alcohol fast enough and it can kill you.
2. Long term overuse of alcohol can cause liver damage, heart problems, sexual dysfunction, and other serious medical problems.
3. In some cases, alcohol use can lead to physical and psychological dependence on alcohol. Alcoholism is a serious chronic disease. Left untreated, it will inevitably get worse.
4. Workers who use alcohol (and other drugs) affect everyone. Studies show that compared to alcohol-and drug-free workers, substance abusers are far less productive, miss more workdays, are more likely to injure themselves or someone else, and file more workers' compensation claims.
5. The measurable dollar costs of workplace substance abuse from absenteeism, overtime pay, tardiness, sick leave, insurance claims, and workers' compensation can be substantial. However, the hidden costs resulting from diverted supervisory and managerial time, friction among workers,

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damage to equipment and damage to the company's public image mean that workplace substance abuse can further cut profits and competitiveness.

6. Alcohol can also destroy relationships, lead to serious problems with the law (e.g., drunk driving), and even cause harm to the people you love.
7. If drinking affects your work life, it could lead to job loss and all the financial problems that would follow.

C. Signs and Symptoms of Alcohol Misuse – Any One or More of the Following Signs May Indicate a Drinking Problem:

- Family or social problems caused by drinking
- Job or financial difficulties related to drinking
- Loss of a consistent ability to control drinking
- "Blackouts" or the inability to remember what happened while drinking
- Distressing physical and/or psychological reactions if you try to stop drinking
- A need to drink increasing amounts of alcohol to get the desired effect
- Marked changes in behavior or personality when drinking
- Getting drunk frequently
- Injuring yourself – or someone else – while intoxicated
- Breaking the law while intoxicated
- Starting the day with a drink

D. Available Methods of Evaluating and Resolving Problems Associated with the Misuse of Alcohol.

1. Outpatient programs exist in a variety of setting:
 - a. Community mental health centers.
 - b. Full service agencies
 - c. Private physicians' and therapists' offices
 - d. Occupational settings
 - e. Specialized alcoholism treatment facilities
2. Inpatient services, designed for those with more serious alcohol problems, can be found in hospitals, residential care facilities, community halfway houses, and some alcoholism clinics.
3. Your local phone directory will list helpful referral organizations such as:
 - a. Local council on alcoholism
 - b. Alcoholics Anonymous
 - c. Community alcoholism or mental health clinic
 - d. Social services or human resources department
 - e. County medical society
4. The SAP will perform an initial evaluation, recommend any additional treatment if necessary, and refer employees needing assistance for treatment covered under our health insurance program or state sponsored programs.

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APPENDIX G

**ACKNOWLEDGMENT AND AGREEMENT
WITH RESPECT TO DRUG AND ALCOHOL TESTING**

I, the undersigned employee hereby certify that I have been furnished with a copy of Athena Construction, L.L.C.'s DOT Alcohol and Drug Testing Program, including its Employee Assistance Program, and that I have read and understand the same. I further certify that I have been provided with informational material, education and training on the dangers and problems of drug and alcohol misuse.

I am fully aware, and agree that I may be discharged or otherwise disciplined for any violation by me of said DOT Alcohol and Drug Policy, for any failure or refusal to provide urine and/or breath specimens when requested by my employer, for the failure or refusal to identify and certify same, for the failure to cooperate with the forms and other documents, and/or for any other failure or refusal to cooperate with my employer in its said DOT Alcohol and Drug Testing Program.

Executed this _____ day of _____, 20_____.

Employee Name (Please Print)

Employee Signature

Social Security Number

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ADDENDUM No. 1

ExxonMobil

At End

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I. INTRODUCTION

A. Prohibited Drug Policy.

1. The Company has a long-standing commitment to maintain the highest standards for employee safety and health and the use of controlled substances is contrary to these high standards.
2. Purpose (§199.100). This policy is also to bring the company into compliance with federal law. The purpose of the anti-drug plan is to reduce accidents that result from the use of controlled substances, thereby reducing fatalities, injuries, and property damage by employees who perform covered functions for operators of certain pipeline facilities subject to 49 CFR Parts 192, 193, and 195.
3. The presence in the body of prohibited substances is not condoned.

B. Implementation of Anti-Drug Plan.

1. The Company has implemented the Research and Special Programs Administration, Drug & Alcohol Testing Regulations as set forth in 49 CFR Part 199 and the Department of Transportation, Procedures for Transportation Workplace Drug & Alcohol Testing Programs, 49 CFR Part 40. The company shall maintain confidential records of the testing results and chain of custody procedures as required by Part 199 and 40 of the DOT regulations. The Company has designated the drug program manager as the record-keeping agent for all drug test records. The company shall provide all records, whenever deemed necessary, for inspection by any authorized agency and/or operator.
2. Compliance with DOT regulations §40.1 – DOT Part 40 regulations provide all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations with information on how to conduct these tests and what procedures to use. DOT Part 40 concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.
3. Applicability (§199.2).
 - a. 49 CFR Part 199 applies to pipeline operators only with respect to employees located within the territory of the United States including those employees located within the limits of the "outer Continental Shelf" as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).
 - b. 49 CFR Part 199 does not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.
 - c. 49 CFR Part 199 does not apply to covered functions performed on:
 - (1) Master meter systems, as defined in 49 CFR Part 199.3.
 - (2) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.
4. Anti-Drug Plan (§199.101).
 - a. Each employer shall maintain and follow a written anti-drug plan that conforms to the requirements of 49 CFR Part 199 and the DOT procedures of 49 CFR Part 40. The plan must contain –
 - (1) Methods and procedures for compliance with all the requirements of 49 CFR Part 199, including the employee assistance;

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- (2) The name and address of each laboratory that analyzes the specimen collected for drug testing;
 - (3) The name and address of the employer's Medical Review Officer, and Substance Abuse Professional; and
 - (4) Procedures for notifying employees of the coverage and provisions of the plan.
- b. The Administrator of the State Agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et. Seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.
5. Process for obtaining an exemption from a requirement in 49 CFR Part 40 (§40.7).
- a. An employer may seek an exemption from any provisions of Part 40, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR Part 5. The employer must send requests for an exemption to the following address: Department of Transportation, Deputy Assistant General Counsel for Regulations and Enforcement, 400 7th Street, SW., Room 10424, Washington, DC 20590.
 - b. Under the standards of 49 CFR Part 5, DOT will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impracticable.
 - c. If DOT grants the employer an exemption, the employer must agree to take steps that DOT specifies to comply with the intent of the provision from which an exemption is granted.
 - d. DOT will issue written responses to all exemption requests.
6. The anti-drug plan herein sets forth the requirements of 49 CFR Parts 199 and 40. Those areas of the plan that appears in bold and underlined print reflect the company's independent authority to require additional provisions with regard to the drug testing procedures.

C. Background (§199.1).

1. The catalyst for the anti-drug plan is Title 49 Code of Federal Regulations (CFR) Part 199 which requires the pipeline operators subject to 49 CFR Parts 192, 193, and 195, and their contractors to test their employees for prohibited drugs under the following work-related conditions:
 - a. Pre-Employment
 - b. Post-Accident
 - c. Random
 - d. Reasonable Cause
 - e. Return-to-Duty
 - f. Follow-Up
2. DOT Procedures (§199.5) – Title 49 CFR Part 40 specifies procedures that must be followed by the company when conducting drug testing pursuant to regulations issued by agencies of the Department of Transportation. The anti-drug and alcohol programs required by 49 CFR Part 199 must be conducted in accordance to the requirements of 49 CFR Part 199 and DOT procedures. Terms and

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concepts used in 49 CFR 199 have the same meaning as in DOT procedures. Violations of DOT procedures with respect to anti-drug and alcohol programs required by 49 CFR Part 199 are violations of this part.

3. Authoritative Interpretations (§40.5) – The DOT Office of Drug Alcohol Policy & Compliance (ODAPC) and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of 49 CFR Part 40. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters.

D. Definitions (§199.3 & §40.3).

For purposes of this anti-drug plan the following definitions apply:

1. Accident – An incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.
 - a. §191.3 – An accident on a gas pipeline or LNG facility is defined as an “incident”, as follows:
 - (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
 - (a) A death, or personal injury necessitating inpatient hospitalization; or
 - (b) Estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more (\$50,000 or more for intrastate operators/contractors in Kansas).
 - (2) An event that results in an emergency shutdown of an LNG facility.
 - (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).
 - b. §195.50 – An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:
 - (1) Explosion or fire not intentionally set by the operator.
 - (2) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if this release is:
 - (a) Not otherwise reportable under this section;
 - (b) Not one described in § 195.52(a)(4);
 - (c) Confined to company property or pipeline right-of-way; and
 - (d) Cleaned up promptly.
 - (3) Death of any person.
 - (4) Personal injury necessitating hospitalization;

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(5) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

2. Administrator – means the Administrator of the Research and Special Programs Administrator or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.
3. Adulterated Specimen – A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present, but is at a concentration so high that it is not consistent with human urine.
4. Affiliate - Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to interlocking management or ownership; shared interest among family members; shared facilities or equipment or common use of employees. Following the issuance of a Public Interest Exclusion (PIE), an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of 49 CFR Part 40, Subpart F.
5. Blind Sample or Blind Performance Test Specimen – A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from employee specimens.
6. Cancelled Test – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
7. Chain of Custody – Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health & Human Services (DHHS) certified laboratory be used from time of collection to receipt by the laboratory.
8. Collection Container – A container into which the employee urinates to provide the specimen for a drug test.
9. Collection Site – A place selected by the company where employees present themselves for the purpose of providing a urine specimen for a drug test.
10. Collector – A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.
11. Confirmation (or confirmatory) Drug Test – A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.
12. Confirmation (or confirmatory validity test) – A second test performed on a urine specimen to further support a validity test result.
13. Confirmed Drug Test – A confirmation test result received by an MRO from a laboratory
14. Consortium/Third-Party Administrator (C/TPA) – A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes,

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but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of 49 CFR Part 40.

15. Continuing Education – Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.
16. Covered Employee, Employee, or Individual to be Tested – means any person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.
17. Covered Function (Safety-Sensitive Function) – means an operations, maintenance, or emergency-response function regulated by Part 192, 193, or 195 of 49 CFR that is performed on a pipeline or on an LNG facility.
18. DOT Procedures – means the Procedures for Transportation Workplace Drug and Alcohol Testing Program published by the Office of the Secretary of Transportation in 49 CFR Part 40.
19. Designated Employer Representative (DER) – An employee authorized by the company to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the company, consistent with the requirements of 49 CFR Part 40. Service agents cannot act as DERs.
20. Dilute Specimen – A specimen with creatinine and specific gravity values that are lower than expected for human urine.
21. DOT, The Department, DOT agency – These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.
22. Drugs – The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.
23. Employee – Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.
24. Employer – A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.
25. Error Correction Training – Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correct training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

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26. Fail a Drug Test or Test Positive – The confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in the employee's or applicant's system.
27. HHS – The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.
28. Initial Drug Test – The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.
29. Invalid Drug Test – The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.
30. Initial Validity Test – The first test used to determine if a specimen is adulterated, diluted, or substituted.
31. Laboratory – Any U. S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, the case of foreign laboratories, a laboratory approved for participation by DOT under 49 CFR Part 40.
32. Medical Review Officer (MRO) – A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.
33. Office of Drug and Alcohol Policy and Compliance (ODAPC) – The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
34. Operator – An owner or operator of pipeline facilities.
35. Pass a Drug Test – means that initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.
36. Performing a Covered Function – includes actually performing, ready to perform, or immediately available to perform a covered function.
37. Pipeline – All parts of the physical facilities through which product moves in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.
38. Pipeline Facilities – includes new and existing pipeline, rights-of-way, and any equipment, facility, or building used in the transportation of products.
39. Positive Rate For Random Drug Testing – means the number of verified positive results for random drug tests conducted under this subpart plus the number of refusals of random tests required by this part, divided by the total number of random drug test results (i.e., positive, negative, and refusals under this part).
40. Qualification Training – The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

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41. Refresher Training – The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
42. Refusal to Submit, Refuse, or Refuse to Take – means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test.
43. SAMHSA – Substance Abuse and Mental Health Services Administration, was formerly National Institute on Drug Abuse, ADAMHA, HHS was established by the DHHS in 1986 to regulate laboratories performing analytical tests (drug tests) on human body fluids for employment purposes in the public sector.
44. Secretary – The Secretary of Transportation or the Secretary's designee.
45. Service Agent – Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professions, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR Part 199 and Part 40. Service agents are not employers for purposes of 49 CFR Part 199 and 40.
46. Shipping Container – A container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.
47. Specimen Bottle – The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.
48. Split Specimen – In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.
49. State Agency – means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.)
50. Stand-Down – The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.
51. Substance Abuse Professional (SAP) – A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.
52. Substituted Specimen – A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.
53. Verified Test – A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

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E. Company Responsibilities.

1. Drug Program Manager (DPM) or Designated Employer Representative (DER): Appendix A contains the name and phone number of the responsible individual(s). The DPM or other company designated individual shall be responsible for the preparation of a drug testing anti-drug plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR 199 and 40. The DPM shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling random drug testing and return-to-duty testing; maintaining a locked file system on drug testing results; and overseeing the employee assistance program (EAP). The DPM will ensure a face-to-face evaluation by an approved SAP for employees who either have received a positive drug test or have refused a drug test as required by DOT. The company shall ensure that all covered employees are aware of the provisions and coverage of the company's anti-drug plan.
2. The company shall be responsible for compliance with all applicable requirements and procedures of 49 CFR Part 40.
3. The company is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
4. All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of 49 CFR Part 40 and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.
5. Supervisors: Company individuals responsible for observing the performance and behavior of employees; observation/documentation of events suggestive of reasonable cause; responsible for requests of second supervisor for substantiation and concurrence for reasonable cause testing, if applicable.
6. Employees: Each employee has the responsibility to be knowledgeable of the requirements of the company's anti-drug plan and to fully comply with the provisions of the plan.

F. Preemption Procedures. (§199.9).

1. Except as provided in paragraph 2 of this section, Part 199 preempts any state or local law, rule, regulations, or order to the extent that:
 - a. Compliance with both state or local requirement and this regulation is not possible;
 - b. Compliance with state or local requirement is an obstacle to the accomplishment and execution of any requirement as set forth in 49 CFR Part 199.
 - c. The state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.
2. This provision 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.

G. General Responsibilities of Company under 49 CFR Part 40. (§40.11).

1. The company is responsible for meeting all applicable requirements and procedures of 49 CFR Part 40.

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2. The company is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
3. All agreements and arrangements, written or unwritten, between and among the company and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

H. DOT Testing versus Non-DOT Testing Provisions (§40.13).

1. DOT tests must be completely separate from non-DOT tests in all respects.
2. DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. Any excess urine left over from a DOT test must be discarded and a separate void collected for subsequent non-DOT test.
3. Except as provided in paragraph 4 of this section, the company must not perform any tests on DOT urine or breath specimens other than those specifically authorized by 49 CFR Part 40 or DOT agency regulations. The company may not test a DOT urine specimen for additional drugs, and a laboratory is prohibited from making a DOT urine specimen available for a DNA test or other types of specimen identity testing.
4. The single exception to paragraph 3 of this section is when a DOT drug test collection is conducted as part of a physical examination required by DOT agency regulations. It is permissible to conduct required medical tests related to this physical examination (e.g. for glucose) on any urine remaining in the collection container after the drug test urine specimens have been sealed into the specimen bottles.
5. No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. The company must not disregard a verified positive drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
6. The company must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. The company must always use the CCF and ATF for all DOT-mandated drug and alcohol tests.
7. The company may use a service agent to perform the tasks needed to comply with 49 CFR Part 40 and DOT agency drug and alcohol testing regulations, consistent with the requirements of Roles and responsibilities of Service Agents Section in this plan and other applicable provisions of 49 CFR Part 40.
8. The company is responsible for ensuring that the service agents used meet the qualifications set forth in 49 CFR Part 40 (e.g., Medical Review Officer requirements). The company may require service agents to show documentation that they meet the requirements of 49 CFR Part 40 (e.g., documentation of MRO qualifications as required in this plan).
9. The company remains responsible for compliance with all applicable requirements of 49 CFR Part 40 and other DOT drug and alcohol testing regulations, even when using a service agent. If the company violates any part of this plan or other DOT drug and alcohol testing regulations because a service agent has not provided services as 49 CFR Part 40 requires, a DOT agency can subject the company to sanctions. The company's good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which the company's alleged noncompliance with 49 CFR Part 40 or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.

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10. The company must not permit a service agent to act as the company's Designated Employer Representative (DER).

I. Company's Use of Service Agent for DOT Drug & Alcohol Testing Requirements (§40.15).

1. The company may use a service agent to perform the tasks needed to comply with 49 CFR Part 40 and DOT agency drug and alcohol testing regulations, consistent with the requirements of Roles and Responsibilities of Service Agents Section in this plan and other applicable provisions of 49 CFR Part 40.
2. The company is responsible for ensuring that the service agents used meet the qualifications set forth in 49 CFR Part 40 (e.g. Medical Review Officer requirements). The company may require service agents to show documentation that they meet the requirements of 49 CFR Part 40 (e.g. documentation of MRO qualifications as required in this plan).
3. The company remains responsible for compliance with all applicable requirements of 49 CFR Part 40 and other DOT drug and alcohol testing regulations, even when using a service agent. If the company violates any part of this plan or other DOT drug and alcohol testing regulations because a service agent has not provided services as 49 CFR Part 40 requires, a DOT agency can subject the company to sanctions. The company's good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which the company's alleged noncompliance with 49 CFR Part 40 or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
4. The company must not permit a service agent to act as the company's Designated Employer Representative (DER).

J. Company's Responsibility For Obtaining Information From Its Service Agents (§40.17).

The company is responsible for obtaining information required by 49 CFR Part 40 from the company's service agents. This is required whether or not the company chooses to use a consortium/third party administrator (C/TPA) as an intermediary in transmitting information to the company. An example of this requirement would be an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in the company's receipt of the test result from an MRO or C/TPA. The company must not assume that "no news is good news" and permit the applicant to perform safety-sensitive duties before receiving the result. The company would be in violation of the DOT regulations.

K. Drug and Alcohol Testing Information C/TPAs May Transmit to the Company (49 CFR Part 40, Appendix F).

1. The C/TPA may, acting as an intermediary, transmit the information in the following sections of 49 CFR Part 40 to the DER for the company, if the company chooses to do so. These are the only items that the C/TPA is permitted to transmit to the company as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to the company, the transmission of SAR reports to the company, the transmission of positive alcohol test results, and the transmission of medical information from MROs to the company.
2. In every case, the C/TPA must ensure that, in transmitting the information, the C/TPA meets all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the company. For example, if the C/TPA transmitted MROs' drug testing results to DERs, the C/TPA must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in § 40.167.

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3. Drug Testing Information:

§40.25: Previous two years' test results

§40.35: Notice to collectors of contact information for DER

§40.61(a): Notification to DER that an employee is a "no show" for a drug test

§40.63(e): Notification to DER of a collection under direct observation

§40.65(b)(6) and (7) and (c)2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen

§40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.

§40.111(a): Transmission of laboratory statistical report to employer

§40.127(f): Report of test results to DER.

§40.127(g), 40.129(d), 40.159(a)(4)(ii), 40.161(b): Reports to DER that test is cancelled

§40.129(d): Report of test results to DER

§40.129(g)(1): Report to DER of confirmed positive test in stand-down situation

§40.149(b): Report to DER of changed test result.

§40.155(a): Report to DER of dilute specimen

§40.167(b) and (c): Reports of test results to DER

§40.187(a) – (f): Reports to DER concerning the reconfirmation of tests

§40.191(d): Notice to DER concerning refusals to test

§40.193(b)(3): Notification to DER of refusal in shy bladder situation

§40.193(b)(4): Notification to DER of insufficient specimen

§40.193(b)(5): Transmission of CCF copies to DER (not to MRO)

§40.199: Report to DER of cancelled test and direction to DER for additional collection

§40.201: Report to DER of cancelled test

4. Alcohol testing information.

§40.215: Notice to BATs and STTs of contact information for DER

§40.241(b)(1): Notification to DER that an employee is a "no show" for an alcohol test

§40.247(a)(2): Transmission of alcohol screening test results when test result is less than 0.02

§40.255(a)(4): Transmission of alcohol confirmation test results when test results is less than 0.02

§40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

L. Company use of Consent Form (§40.27).

The company may not require an employee to sign any consent and/or release in connection with the DOT drug and alcohol-testing program. The company must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by 49 CFR Part 40 (including, but not limited to, collections, laboratory testing, MRO, and SAP services).

M. Where Other Company Responsibilities can be found on this Plan (§40.29).

You can find other information on the responsibilities of the company in the following sections of this plan:

§40.3 – definition

§40.35 – information about DERs that employers must provide collectors

§40.45 – modifying CCFs, use of foreign-language CCFs

§40.47 – use of non-Federal forms for DOT tests or Federal CCFs for non-DOT tests

§40.67 – requirements for direct observation

§40.103 – 40.105 – blind specimen requirements

§40.173 – responsibility to ensure test of split specimen

§40.193 – action in "shy bladder" situations

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- §40.197 – actions following report of a dilute specimen
- §40.207 – actions following a report of a cancelled drug test
- §40.209 – actions following and consequences of non-fatal flaws in drug tests
- §40.215 – information about DERs that employees must provide BATs and STTs
- §40.225 – modifying ATFs; use of foreign-language ATFs
- §40.227 – use of non-DOT forms for DOT tests or DOT ATFs for non-DOT tests
- §40.235© and (d) – responsibility to follow instructions for ASDs
- §40.255(b) – receipt and storage of alcohol test information
- §40.265© – (e) – actions in “shy lung” situations
- §40.267 – cancellation of alcohol tests
- §40.271 – actions in “correctable flaw” situations in alcohol tests

- §40.273 – actions following cancelled tests in alcohol tests
- §40.275 – actions in “non-fatal flaw” situations in alcohol tests
- §40.287- 40.289 – responsibilities concerning SAP services
- §40.295 – 40.297 – prohibition on seeking second SAP evaluation or changing SAP recommendation
- §40.303 – responsibilities concerning aftercare recommendations
- §40.305 – responsibilities concerning return-to-duty decision
- §40.309 – responsibilities concerning follow-up tests
- §40.321 – general confidentiality requirement
- §40.323 – release of confidential information in litigation
- §40.331 – other circumstances for the release of confidential information
- §40.333 – record retention requirements
- §40.345 – choice of two reports drug testing information to employers

II. ROLES AND RESPONSIBILITIES OF SERVICE AGENTS – 49 CFR PART 40 – SUBPART Q

A. General Provisions for Service Agents (§40.341).

1. Service agent's compliance with DOT drug and alcohol testing requirements.
 - a. The service agent who provides services to transportation companies must meet the requirements of 49 CFR Part 40 and the DOT agency drug and alcohol testing regulations.
 - b. If the service agent does not comply, DOT may take action under the Public Interest Exclusions procedures of 49 CFR Part 40 (See Subpart R) or applicable provisions of other DOT agency regulations.

B. Tasks and Functions of Service Agents (§40.343 – 40.347).

1. Tasks that a service agent may perform for the company (§40.343) – The service agent may perform for the company the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.
2. Circumstances in which a C/TPA may act as an intermediary in the transmission of drug and alcohol testing information to the company (§40.345).
 - a. The C/TPA or other service agent, may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the company chooses to have you do so. Each company makes the decision about whether to receive some or all of this information from the C/TPA, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).

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- b. The specific provisions of this part concerning which the C/TPA may act as an intermediary are listed in Appendix F to 49 CFR Part 40. These are the only situations in which the C/TPA may act as an intermediary. The C/TPA is prohibited from doing so in all other situations.
 - c. In every case, the C/TPA must ensure that, in transmitting information to the company, the C/TPA meets all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the company. For example, if the C/TPA transmits drug-testing results from MROs to DERs, the C/TPA must transmit each drug test result to the DER in compliance with the MRO requirements set forth in §40.167.
3. Functions that C/TPA may perform with respect to administering testing (§40.347) – The C/TPA, except as otherwise specified in this part may perform the following functions for the company concerning random selection and other selections for testing.
- a. The C/TPA may operate random testing programs for employers and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
 - b. The C/TPA may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
 - (1) If the C/TPA combines employees from more than one transportation industry, the C/TPA must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
 - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
 - c. The C/TPA may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither the C/TPA nor the employers are permitted to randomly select employees from a "follow-up pool" for follow-up testing.

C. Record-keeping Requirements for Service Agents (§40.349).

1. Records that a service agent may receive and maintain (§40.349).
 - a. Except where otherwise specified in this part, a service agent may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. The service agent does not need the employee's consent to receive and maintain these records.
 - b. The C/TPA may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to the company of selected employees) on behalf of the company.
 - c. A service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to the C/TPA or other service agent who maintains this information for the company.
 - d. If the C/TPA is serving as an intermediary, in transmitting information that is required to be provided to the company, the C/TPA must ensure that it reaches the company in the same time periods required elsewhere in this part.

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- e. The C/TPA must ensure that he/she can make available to the company within two days any information the company is asked to produce by a DOT agency representative.
- f. At the request of the company, the C/TPA must, at any time on the request of an employer, transfer immediately all records pertaining to the company and its employees to the company or to any other service agent the company designates. The C/TPA must carry out this transfer as soon as the company requests it. The C/TPA is not required to obtain employee consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.
- g. If the C/TPA is planning to go out of business or the organization will be bought by or merged with another organization, the C/TPA must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. The C/TPA must carry out this transfer as soon as the employer requests it. The C/TPA is not required to obtain employee consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.

D. Confidentiality Requirements for Service Agents (§40.351 & 40.353).

1. Confidentiality requirements that apply to service agents (§40.351) – Except where otherwise specified in 49 CFR Part 40, the confidentiality requirements apply to the C/TPA and shall include the following:
 - a. When the C/TPA receives or maintains confidential information about employees (e.g., individual test results), the C/TPA must follow the same confidentiality regulations as the company with respect to the use and release of this information.
 - b. The C/TPA must follow all confidentiality and records retention requirements applicable to the company.
 - c. The C/TPA may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose a C/TPA that has employers X and Y as clients. Employee Jones works for X, and you maintain Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. The C/TPA may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, the C/TPA may not provide this information to employer Z, who is not a C/TPA member, without this consent.
 - d. The C/TPA must not use blanket consent forms authorizing the release of employee testing information.
 - e. The C/TPA must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic databases.
2. Principles that govern the interaction between MROs and other service agents (§40.353) – The service agent other than an MRO (e.g., a C/TPA) is subject to the following principles that govern the interaction with MROs:
 - a. The service agent may provide MRO services to the company, directly or through contract, if the service agent meets all applicable provisions of 49 CFR Part 40.

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- b. If the service agent employs or contracts for an MRO, the MRO must perform duties independently and confidentially. When the service agent has a relationship with an MRO, the service agent must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
- c. Only the service agent's staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of the service agent's staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. The service agent must ensure that MRO staff operates under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- d. Like other MROs, an MRO the service agent employs or contracts with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, the service agent staff cannot perform these functions.

E. Service Agent Limitations (§40.355).

1. Limitations that apply to the activities of service agents – The service agent is subject to the following limitations concerning the service agent's activities in the DOT drug and alcohol-testing program.
 - a. The service agent must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
 - b. The service agent must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to the service agent with the service agent in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to the service agent's computer system, and the service agent then assign the results to a particular MRO, is not permitted.
 - c. The service agent must not transmit drug test results directly from the laboratory to the company (by electronic or other means) or to a service agent who forwards them to the company. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
 - d. The service agent must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
 - e. Except as provided in paragraph 1.f. of this section, the service agent must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to the service agent with you in turn sending them to the actual employer. However, the service agent may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to the service agent simultaneously with sending them to the DER.
 - f. As an exception to paragraph 1.e. of this section, the service agent may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other Self-employed individual.

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- g. Except as provided in paragraph 1.h. of this section, the service agent must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the company cannot delegate to a C/TPA. The service agent may, however, provide advice and information to the company regarding these testing issues and how the employer should schedule required testing.
- h. As an exception to paragraph 1.g. of this section, the service agent may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- i. Except as provided in paragraph 1.j. of this section, the service agent must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the company. The service agent may, however, provide advice and information to the company regarding refusal-to-test issues.
- j. The exception to paragraph 1.i. of this section is that the service agent may make a determination that an employee has refused a drug or alcohol test, if:
 - (1) The service agent schedules a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
 - (2) The MRO determines that an individual has refused to test on the basis of adulteration or substitution.
- k. The service agent must not act as a DER. For example, while the service agent may be responsible for transmitting information to the company about test results, the service agent must not act on behalf of the company in actions to remove employees from safety-sensitive duties.
- l. In transmitting documents to laboratories, the service agent must ensure that the service agent sends to the laboratory that conducts testing only the laboratory copy of the CCF. The service agent is not to transmit other copies of the CCF or any ATFs to the laboratory.
- m. The service agent must not impose conditions or requirements on the company that DOT regulations do not authorize. For example, as a C/TPA serving the company in the pipeline or motor carrier industry, the service agent must not require the company to have provisions in their DOT plans that RSPA or FMCSA regulations do not require.
- n. The service agent must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions the service agent has performed, because of a payment dispute or other reasons.

Example 1 to Paragraph (1.n.): A laboratory that has tested a specimen must not delay transmitting the documentation of the test result to an MRO because of a billing or payment dispute with the MRO or a C/TPA.

Example 2 to Paragraph (1.n.): An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to the employer because of such a dispute with the employer or employee.

Example 3 to Paragraph (1.n.): A collector who has performed a urine specimen collection must not delay sending the drug specimen and CCF to the laboratory because of a payment or other dispute with the laboratory or a C/TPA.

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Example 4 to Paragraph (1.n.): A BAT who has conducted an alcohol test must not delay sending test result information to an employer or C/TPA because of a payment or other dispute with the employer or C/TPA.

- o. While the service agent must follow the DOT agency regulations, the company remains accountable to DOT for compliance, and the service agent's failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the company subject to enforcement action by the Department.

III. DRUG TESTING REQUIREMENTS

A. Applicability (§199.2).

1. Individuals Subject to Drug Testing: Any applicant/employee who would perform on a pipeline, an operating, maintenance, or emergency response function regulated by Part 192, 193, or 195, would be subject to drug testing under this program. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor. Refer to Appendix B for specific employee titles subject to testing under this program.

Since it cannot be determined in advance which of the company's employees may be called upon to perform duties covered under the Federal regulations, it shall be the policy of the company that all the company's employees will be tested. Any employee refusing to test under any testing procedure shall be terminated.

2. Procedure for Notifying Employees: This anti-drug-testing plan shall be included in the appropriate company manual. Upon receipt of the company's anti-drug plan, each manager shall post the plan in a prominent location that is readily accessible to all covered employees. All covered employees will be provided a complete copy of the anti-drug plan.
3. Substances for Which Testing Must be Conducted: The company shall test each employee who performs a function listed in Appendix B for evidence of the following substances:

Marijuana, Cocaine, Opiates, Phencyclidine (PCP), and Amphetamines

B. Background Check Procedures (§40.25) – A company must check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties.

1. The company must, after obtaining an employee's written consent, request the information about the employee listed in paragraph 2 of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, the company must not permit the employee to perform safety-sensitive functions.
2. The company must request the information listed below from DOT-regulated companies who have employed the employee during any period during the two years before the date of the employee's application or transfer:
 - a. Alcohol tests with a result of 0.04 or higher alcohol concentration;
 - b. Verified positive drug tests;
 - c. Refusals to be tested (including verified adulterated or substituted drug test results);
 - d. Other violations of DOT agency drug and alcohol testing regulations; and

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- e. With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous company does not have information about the return-to-duty process (e.g., a company who did not hire an employee who tested positive on a pre-employment test), the company must seek to obtain this information from the employee.
3. The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.
4. If feasible, the company must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, the company must obtain and review the information as soon as possible. However, the company must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the company has obtained or made and documented a good faith effort to obtain this information.
5. If the company obtains information that the employee has violated a DOT agency drug and alcohol regulation, the company must not use the employee to perform safety-sensitive functions unless the company also obtains information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of 49 CFR Part 40 and DOT agency drug and alcohol regulations.
6. The company must provide to each of the employers from whom they request information under paragraph 2 of this section written consent for the release of the information cited in paragraph 1 of this section.
7. The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. The previous company must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.
8. The company from whom information is requested under paragraph 2 of this section must, after reviewing the employee's specific, written consent, immediately release the requested information to the company making the inquiry.
9. As the company requesting the information required under this section, the company must maintain a written, confidential record of the information the company obtained or of the good faith efforts the company made to obtain the information. The company must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for the company.
10. The company must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by a company to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the company must not use the employee to perform safety-sensitive functions for the company, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs B.2.e. and B.5. of this section).

IV. DRUG TESTS REQUIRED (§199.105):

A. Pre-Employment Testing (§199.105(a)).

1. A pre-employment drug test must be conducted before an individual is hired or contracted and when an individual is transferred/promoted from a non-covered to a covered position. This includes when an individual switches back and forth from a covered position to a non-covered position and back again (i.e. going in and out of the random testing program). This also applies to employees returning from a leave of

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absence who have not been participating in the anti-drug plan and subject to the random selection process.

2. A negative test result is required prior to allowing an employee to perform any covered functions.
3. All applicants will be informed that the specimen they produce will be tested for use of prohibited drugs, and a waiver and release will be signed to the effect. Any applicant testing verified positive for illegal drug use will be informed that he or she failed the company's required physical examination and will not be employed by the company. The applicant may request, in writing, to the DER for a retest of the original specimen at the applicant's expense. Such request must be made within sixty (60) days. Applicants failing the drug test may reapply for employment with the company one year after the date the drug test occurred.

B. Post-Accident Testing (§199.105(b)).

1. The company, as soon as possible but no later than 32 hours after an accident, shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The company's decision not to test must have been based upon the determination, using the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that drug test would reveal whether the performance was affected by drug use.
2. The appropriate company official must take all reasonable steps to obtain a urine sample from an employee after an accident, as defined in this plan, but any injury should be treated first.
 - a. In the case of a conscious but hospitalized employee, management should request that the hospital or medical facility obtain the sample from the employee under DOT drug testing requirements as set forth in 49 CFR Part 40.
 - b. If an employee is injured, unconscious (employee is unable to communicate), or otherwise unable to evidence consent (employee is unable to sign custody and control form) to the drug test, all reasonable steps must be taken to obtain a urine sample from the employee.
 - c. If an employee is conscious (employee can communicate) and he/she is able to evidence consent (employee able to sign custody and control form) to the drug test and is able to void normally (without aid of catheters) the specimen shall be collected.
 - d. If an employee who is subject to post-accident testing is conscious, able to urinate normally (in the opinion of a medical professional), and refuses to be tested, that employee will be removed from duty and will be subject to disciplinary action up to and including termination.
3. The following steps will be used to guide the supervisor to a satisfactory outcome in a post-accident situation.
 - a. Verify the post-accident decision. Does the definition of accident in Section 1 apply to the current situation? Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident? Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? Before proceeding further, obtain approval from the division manager/department head or designee to proceed with post-accident testing.

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- b. Isolate and inform the employee. Remove the employee from the work place. Explain that you have reason to believe their performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident.
 - c. Transport the employee. The potentially affected employee will not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test result or to acquire "clean" urine from another person.
 - d. Document the events. Record the activity performed that support the determination to conduct a post-accident test. This documentation of the employee's activity should be prepared and signed by the supervisor within 24 hours of the accident or before the results of the tests are released, whichever is earlier, if possible.
 - e. Denial should be an expected reaction. If a person knows they will test positive, they may give many explanations and protestations, wanting to avoid drug testing. If they are not under the influence or affected by a prohibited drug, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request for urine specimen is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.
 - f. Following collection. After returning from the collection site, the employee should not be allowed to perform covered functions pending the results of the drug test if there is reason to believe the employee is impaired by possible drug use.
4. In addition to testing required under the DOT guidelines, the company shall test each employee involved in an on-the-job injury and reserves the right to test all employees at the job site. This testing will be conducted at the company's designated drug-testing facility if possible. If not possible, the testing will be conducted at a hospital or laboratory facility nearest the job site.

C. Random Testing (§199.105(c)).

1. The primary purpose of random testing are to deter prohibited drug use and to ensure a drug free workforce. DOT regulations require that covered employees shall be subject to drug testing on an unannounced and random basis. The company shall conduct a number of tests equal to at least 25 percent for RSPA covered employees each calendar year, spread reasonably over a 12-month period. Random testing will be conducted quarterly.

In addition, in order to be in compliance with the requirements of our customers, 100% of all employees will be tested annually. Those not already tested under the DOT guidelines will be separately tested to meet this requirement.

2. The following is a discussion of the key aspects of the random testing selection process.
 - a. Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
 - b. Employees shall be selected for testing by using a computer-based random number generator or equivalent random selection method that is matched with an employee's social security number or employee ID number.
 - c. The process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of collection.

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- d. Employees will be selected for random testing based on the number of covered employees at the time and the necessary testing rate.
 - e. Specimen collection will be conducted on different days of the week throughout the annual cycle to prevent employees from matching their drug use patterns to the schedule for collection.
3. Steps for random testing:
- a. The company, on a pre-determined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
 - b. The company shall ensure that the list of social security numbers or employee identification numbers will identify the correct employees who are to be randomly tested during the testing cycle.
 - c. It is the intent of this plan to notify employees of their selection for random testing after they have reported for duty.
 - (1) The list of employees to be tested will be provided to the appropriate DPM.
 - (2) The list of employees that have been selected for random drug testing will be retained by the DPM or his/her designee in a secure location.
4. Notification of employees:
- a. The appropriate manager/supervisor will notify the employee to be tested to report to the manager/supervisor's office at a specified time.
 - b. The employee will not be notified of the test until after reporting for duty.
 - c. Employees shall report immediately to the collection site or to the collection site within 30 minutes, plus travel time, once notified by the appropriate company official.
 - d. **Unavailability of Employee.**

If an employee is unavailable (i.e., vacation, sick day, out of town, etc.) to produce a specimen on the date random testing occurs, due to work-related causes, the company will omit that employee from that random testing.

D. Reasonable Cause Testing (§199.105(d)).

1. Reasonable cause testing is designed to provide management with a tool (in conjunction with supervisor training on the signs and symptoms of drug use) to identify drug-affected employees who may pose a danger to themselves and others in their job performance. Employees may be at work in a condition that raises concern regarding their safety or productivity. Supervisors must then make a decision as to whether there is reasonable cause to believe an employee is using or has used a prohibited drug.
2. The decision to test must be based on a reasonable and articulate belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence by both supervisors can be accomplished by phone or by having another supervisor travel to the job site, if only one supervisor is available at that particular job site.

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3. A company with fewer than 50 covered employees need only utilize one supervisor under the reasonable cause determination.
4. In making a determination of reasonable cause, the factors to be considered include, but are not limited to the following:
 - a. Adequately documented pattern of unsatisfactory work performance, for which no apparent non-impairment related reason exists, or a change in an employee's prior pattern of work performance, especially where there is some evidence of drug related behavior on or off the work site.
 - b. Physical signs and symptoms consistent with substance abuse.
 - c. Evidence of illegal substance use, possession, sale, or delivery while on duty.
 - d. Occurrence of a serious or potentially serious accident that may have been caused by human error, or flagrant violations of established safety, security, or other operational procedures.
5. The following steps will be used to guide the supervisor to a satisfactory outcome in a reasonable cause situation.
 - a. Verify the reasonable cause decision. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable cause referral. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was substance abuse related? On what basis did they reach their conclusion? Before proceeding further, obtain approval from the division manager/department head or designee to proceed with reasonable cause testing.
 - b. Isolate and inform the employee. Remove the employee from the work location. Explain that there is reasonable cause to believe the employee's performance is or has been affected by some substance. Ask the employee to explain the suspected behavior and to describe the events that took place from their perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may or may not deter you from asking for a urine sample. If there is still a reasonable belief that drugs are a factor in the situation/incident, a request for testing should be made; if no reasonable belief is determined then a request for testing should be not be made. If the decision to test is made, inform the employee that they are being requested to accompany the appropriate official to the specimen collection site to provide a urine specimen. Inform the employee of the consequences of refusal to submit to testing.
 - c. Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In all cases, a reasonable cause decision must be made by two of the employee's supervisors. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable cause determination.
 - d. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity en route to the collection site for the employee to ingest anything that could affect the test result or to acquire "clean" urine from another person.
 - e. Document the events. Record the behavioral signs and symptoms that support the determination to conduct a reasonable cause test. This documentation of the employee's conduct should be prepared and signed by the witnesses within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

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- f. Denial should be an expected reaction. If a person knows they will test positive, they may give many explanations and protestations, wanting to avoid drug testing. If they are not under the influence or affected by a prohibited drug, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to provide a urine specimen is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.
- g. Following collection. After returning from the collection site, the employee shall not perform duties pending the receipt of the drug test results. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable cause belief that they may be under the influence of a drug. If the employee insists on driving, the proper local enforcement authority should be notified that an employee who we believe may be under the influence of a drug is leaving the company premises driving a motor vehicle.

E. Return-To-Duty Testing (§199.105(e)).

1. A covered employee who refuses to take or has a positive drug test may not return to duty in a covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning substance abuse professionals and the return-to-duty process.
2. The employee must pass a DOT drug test and the MRO, the SAP and the company must have determined that the employee may return-to-duty. An employee who returns to duty shall be subject to a reasonable program of follow-up drug testing, without prior notice, for up to 60 months after his or her return to duty. The employee may also be required in some circumstances to complete a company mandated rehabilitation program.

If an employee refuses to take a drug test, he shall be immediately terminated from employment and shall not be subject to return-to-duty testing or follow-up testing.

F. Follow-Up Testing (§199.105(f)).

1. A covered employee who refuses to take or has a positive drug test will be subject to unannounced follow-up drug tests administered by the company following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six (6) tests in the first twelve (12) months following the covered employee's return to duty.
2. 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. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty.
3. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six (6) tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.
4. **An employee subject to follow-up testing will also be subject to all other drug tests described in this section. It should be noted that while follow-up testing may last for only sixty (60) months, the employee is not given a "fresh start" after this period; the verified positive result remains in his or her files.**

If any employee tests verified positive on a subsequent follow-up test or on any other test during the employee's employment with the company, that employee shall be terminated from employment with the company.

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G. Pre-Access Testing.

Any employee performing work for a customer requiring pre-access testing of company employees before being permitted to perform work for that customer will be required to be tested. This pre-access testing shall be in addition to any other testing required.

H. Company Stand Down Procedures (§40.21 & 199.7). The company may stand down on employee before the MRO has completed the verification by following these procedures:

1. The company is prohibited from standing employees down, except consistent with a waiver a DOT agency grants under 49 CFR Part 40.
2. The company may make a request to the concerned DOT agency for a waiver from the prohibition of the above paragraph in this section. Such a waiver, if granted, permits the company to stand an employee

down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.

- a. For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.
 - b. Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the company's other covered employees.
 - c. The concerned DOT agency provides a written response to each employer that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.
3. The company request for a waiver must include, as a minimum, the following elements:
- a. Information about the company's organization:
 - (1) The company's determination that standing employees down is necessary for safety in the company's organization and a statement of the company's basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;
 - (2) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for the company's employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;
 - (3) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and
 - (4) A statement of which DOT agencies regulate the company's employees.
 - b. The company's proposed written company policy concerning stand-down, which must include the following elements:

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- (1) The company's assurance that they will distribute copies of the company's written policy to all employees that it covers;
 - (2) The company's means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in the company's organization (or subsequently to another company) other than the employee, the MRO and the DER;
 - (3) The company's means of ensuring that all covered employees in a particular job category in the company's organization are treated the same way with respect to stand-down;
 - (4) The company's means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;
 - (5) The company's means of ensuring that the company will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes the continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;
 - (6) The company's means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless the company is informed in writing by the MRO that a longer period is needed to complete the verification process; and
 - (7) The company's means of ensuring that, in the event that the MRO verifies the test negative or cancels it –
 - (a) The company returns the employee immediately to the performance of safety-sensitive duties;
 - (b) The employee suffers no adverse personnel or financial consequences as a result; and
 - (c) The company maintains no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (i.e., the company maintains a record of the test only as a negative or cancelled test).
4. The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of the company's organization, there is a high probability that the procedures the company proposes will effectively enhance safety and protect the interests of the employees in fairness and confidentiality.
- a. The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
 - b. The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that the company has failed to protect effectively the interests of employees in fairness and confidentiality, that the company has failed to comply with the requirements of this section, or that the company has failed to comply with any other conditions the DOT agency has attached to the waiver.
5. The company must not stand employees down in the absence of a waiver, or inconsistent with the terms of your waiver. The company shall be in violation of 49 CFR Part 40 and DOT agency drug testing

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regulations, and the company is subject to enforcement action by the DOT agency just as the company is for other violations of this 49 CFR Part 40 and DOT agency rules.

V. COMPANY ACTIONS/REQUIREMENTS UPON RECEIVING VERIFIED TEST RESULTS (§40.23).

A. General

1. When the company receives a verified positive drug test result, the company must immediately remove the employee involved from performing safety-sensitive functions. The company must take this action upon receiving the initial report of the verified positive test results. Do not wait to receive the written report or the result of a split specimen test.
2. When the company receives a verified adulterated or substituted drug test result, the company must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. The company must take this action on receiving the initial report of the verified adulterated or substituted test result. Do not wait to receive the written report or the result of a split specimen test.
3. When the company receives an alcohol test result of 0.04 or higher, the company must immediately remove the employee involved from performing safety-sensitive functions. If the company receives an alcohol test result of 0.02—0.039, the company must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.
4. When the company receives notification that an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, the company must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process of Subpart O of this part.
5. When the company receives a drug test result indicating that the employee's specimen was dilute, the company must take action as provided in Section X, paragraph D of this plan (§40.197).
6. When the company receives a drug test result indicating that the employee's specimen was invalid and that a second collection must take place under direct observation –
 - a. The company must immediately direct the employee to provide a new specimen under direct observation.
 - b. The Company must not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.
 - c. The company must not give any advance notice of this test requirement to the employee.
 - d. The company must instruct the collector to note on the CFF the same reason (e.g. random test, post-accident test) as for the original collection.
7. When the company receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), the company must direct the employee to provide another specimen immediately.
8. The company may also be required to take additional actions required by DOT agency regulations (e.g., FAA rules require some positive drug tests to be reported to the Federal Air Surgeon).
9. The company must not alter a drug or alcohol test result transmitted to you by an MRO, BAT, or C/TPA.

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VI. EMPLOYEE WHO FAILS OR REFUSES A DRUG TEST (\$199.103).

- A. General.** Compliance with the anti-drug testing plan is a condition of employment. Refusal to take a required DOT drug test or failure of a drug test shall result in removal from performing covered functions. **Additional disciplinary action up to and including termination may result.**

The company will immediately remove the employee from his/her job due to a "verified positive test, and will send the employee home without pay for forty-eight (48) hours, until that employee decides whether or not to seek assistance with the EAP. If the employee tests "verified positive" and seeks assistance with the EAP, the company will keep that employee on the payroll, without pay, if the employee's rehabilitation, as determined by the EAP, requires in-patient treatment. If the employee's treatment can be accomplished on an out-patient basis, and if a job is available that is not in violation of the Federal Regulations, the employee will be paid for hours worked. The company reserves the right to adjust the employee's salary according to the job available. If any subsequent test is "verified positive", the employee will be terminated.

- B. Prohibitions on Use.** The company shall not use, in a function covered by Part 199, anyone who:

- (1) Fails a drug test as verified by the MRO and the determination is made by the MRO that there is no legitimate medical explanation for the confirmed positive test other than unauthorized use of a prohibited drug, or
- (2) Refuses to take a drug test required by this plan.

- C. Options For Return-To-Duty.** Paragraph B.1. of this plan does not apply to a person who has –

1. Passed a DOT drug test under DOT procedures;
2. Been considered by the medical review officer in accordance with DOT procedures and been determined by a substance abuse professional to have successfully completed the required education or treatment; and
3. Not failed a drug test required by Part 199 after returning to duty. Such failure will result in removal from performing covered functions and may result in **disciplinary action up to and including termination.**

VII. DRUG TESTING LABORATORY (\$199.107).

- A. SAMHSA Laboratory.**

1. The company shall use a drug testing laboratory certified under DHHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; 53 FR 11970, April 11, 1988 and subsequent amendments.
2. The laboratory shall provide services in accordance with Part 40 and Part 199. The name and address of each SAMHSA laboratory used by the company is contained in Appendix A.
3. The laboratory shall permit inspections by the company, the RSPA Administrator, or if the company is subject to the jurisdiction of a state agency, a representative of the state agency.

- B. Laboratory Procedures.** These procedures are addressed in Appendix D.

VIII. MEDICAL REVIEW OFFICERS AND THE VERIFICATION PROCESS (49 CFR PART 40 - SUBPART G).

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A. Medical Review Officer Qualifications (§199.21).

1. Qualification of Medical Review Officer (§40.121) – To be qualified to act as an MRO in the DOT drug testing program, the MRO must meet each of the requirements of this section:

a. Credentials. The MRO must be a licensed physician (Doctor of Medicine or Osteopathy). If the MRO is a licensed physician in any U. S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, you are authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if the MRO is licensed as an M.D. in one state or province in the U. S., Canada, or Mexico, the MRO is not limited to performing MRO functions in that state or province, and may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.

b. Basic knowledge. The MRO must be knowledgeable in the following areas:

(1) The MRO must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.

(2) The MRO must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.

(3) The MRO must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom the MRO evaluates drug test results, and you must keep current on any changes to these materials. The DOT MRO Guidelines document is available from ODAPC.

c. Qualification training. The MRO must receive qualification training meeting the requirements of this paragraph.

(1) Qualification training must provide instruction on the following subjects:

(a) Collection procedures for urine specimens;

(b) Chain of custody, reporting, and record-keeping;

(c) Interpretation of drug and validity tests results;

(d) The role and responsibilities of the MRO in the DOT drug-testing program;

(e) The interaction with other participants in the program (e.g., DERs, SAPs); and

(f) Provisions of 49 CFR Part 40 and DOT agency rules applying to employers for whom the MRO reviews test results, including changes and updates to 49 CFR Part 40 and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.

(2) Following the completion of qualification training under paragraph 1.c.1. of this section, the MRO must satisfactorily complete an examination administered by a nationally recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of

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DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph 1.c.1. of this section.

(3) The following is the schedule for qualification training you must meet:

- (a) If the MRO became an MRO before August 1, 2001, and have already met the qualifications training requirement, the MRO does not have to meet it again.
 - (b) If the MRO became an MRO before August 1, 2001, but have not yet met the qualifications training requirement, the MRO must do so no later than January 31, 2003.
 - (c) If the MRO became an MRO on or after August 1, 2001, the MRO must meet the qualifications training requirement before performing MRO functions.
- d. Continuing education. During each three-year period from the date on which the MRO satisfactorily completed the examination under paragraph 1.c.2. of this section, the MRO must complete continuing education, consisting of at least 12 professional development hours (e.g., Continuing Education Medical Units) relevant to performing MRO functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in MRO practice, pertaining to the DOT program, since the time the MRO met the qualification training requirements of this section.
 - (2) The MRO continuing education activities must include assessment tools to assist you in determining whether you have adequately learned the material.
 - (3) The MRO who has completed the qualification training and examination requirements prior to August 1, 2001, must complete his/her first increment of 12 CEU hours before August 1, 2004.
- e. Documentation. The MRO must maintain documentation showing that he/she currently meet all requirements of this section. The MRO must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use the MRO services.

B. Medical Review Officer Responsibilities in the DOT Drug Testing Program (§40.123).

1. The MRO must have the following basic responsibilities:

- a. Acting as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.
- b. Providing a quality assurance review of the drug testing process for the specimens under your purview. This includes, but is not limited to:
 - (1) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled (See §40.199 – 40.203). The MRO is not required to review laboratory internal chain of custody documentation. No one is permitted to cancel a test because you have not reviewed this documentation;
 - (2) Providing feedback to companies, collection sites, and laboratories regarding performance issues where necessary; and

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(3) Reporting to and consulting with the ODAPC or a relevant DOT agency when you with DOT assistance in resolving any program issue. The company or service agent is prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug-testing issues with DOT.

- c. The MRO must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug tests results from the laboratory.
- d. While the MRO provides medical review of employees' test results, this part does not deem that you have established a doctor-patient relationship with the employees whose tests you review.
- e. The MRO must act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed, (e.g., cancelled or problematic tests, incorrect results, problems with blind specimens).
- f. The MRO must ensure the timely flow of test results and other information to employers.
- g. The MRO must protect the confidentiality of the drug testing information.
- h. The MRO must perform all your functions in compliance with this part and other DOT agency regulations.

C. Criteria for MRO and Laboratory Relationship (§40.125).

- 1. The MRO may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with your responsibilities to that employer. The MRO may not derive any financial benefit by having an employer use a specific laboratory. For examples of relationships between laboratories and MROs that the Department views as creating a conflict of interest or the appearance of such a conflict, see §40.101(b).

D. Medical Review Officer Functions in Reviewing Negative Test Results (§40.127).

- 1. The MRO must do the following with respect to negative drug test results received from a laboratory, prior to verifying the result and releasing it to the DER:
 - a. Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to initiate corrective action or to cancel the test (See §§ 40.199 and 40.203).
 - b. Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.
 - c. Before reporting a negative test result, the MRO must have in their possession the following documents:
 - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
 - (2) A legible copy (fax, photocopy, or image) of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.
 - d. If the copy of the documentation provided to the MRO by the collector or laboratory appears unclear, the MRO must request that the collector or laboratory send you a legible copy.

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- e. On Copy 2 of the CCF, place a check mark in the "Negative" box (Step 6), provide the MRO's name, and sign, initial, or stamp and date the verification statement.
- f. Report the result in a confidential manner (see §40.163—40.167).
- g. Staff under the MRO's direction, personal supervision may perform the administrative functions of this section for the MRO, but only the MRO can cancel a test. If the MRO cancels a laboratory-confirmed negative result, check the "Test Cancelled" box (Step 6) on Copy 2 of the CCF, make the appropriate annotation in the "Remarks" line, provide his/her name, and sign, initial or stamp and date the verification statement.
 - (1) On specimen results that are reviewed by the MRO staff, the MRO is responsible for assuring the quality of their work.
 - (2) The MRO is required to personally review at least 5 percent of all CCFs reviewed by their staff on a quarterly basis, including all results that required a corrective action. However, the MRO need not review more than 500 negative results in any quarter.
 - (3) The MRO review must, as a minimum, include the CCF, negative laboratory test result, any accompanying corrective documents, and the report sent to the company. The MRO must correct any errors that he/she discovers. The MRO must take action as necessary to ensure compliance by the MRO's staff with 49 CFR Part 40 and document the corrective action. The MRO must attest to the quality assurance review by initialing the CCFs that you review.
 - (4) The MRO must make these CCFs easily identifiable and retrievable by the MRO for review by DOT agencies.

E. Medical Review Officer Functions in Reviewing Laboratory – Confirmed Positive, Adulterated, Substituted, or Invalid Drug Test Results (§40.129).

1. The MRO must do the following with respect to confirmed positive, adulterated, substituted, or invalid drug tests received from a laboratory, before verifying the result and releasing it to the DER:
 - a. Review copy 2 of the CCF to determine if there are any fatal or correctable errors that may require the MRO to cancel the test (see §40.199 and 40.203). Staff under the MRO's direct personal supervision may conduct this administrative review, but only the MRO may verify or cancel a test.
 - b. Review Copy 1 of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form. The MRO is not required to review any other documentation generated by the laboratory during their analysis or handling of the specimen (e.g., the laboratory internal chain of custody).
 - c. If the copy of the documentation provided to the MRO by the collector or laboratory appears unclear, the MRO must request that the collector or laboratory send a legible copy.
 - d. Except in the circumstances spelled out in §40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between the MRO and the employee. The MRO may initiate the verification process based on the laboratory results report.
 - e. Verify the test result as either negative, positive, test cancelled, or refused to test because of adulteration, or substitution, consistent with the requirements of §40.135—40.145 and 40.159.

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2. Before the MRO can report a verified negative, positive, test cancelled, refusal to test because of adulteration or substitution, the MRO must have in his/her possession the following documents:
 - a. Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
 - b. A legible copy (fax, photocopy, image) of Copy 1 of the CCF, containing the certifying scientist's signature.
3. With respect to verified positive test results, place a check mark in the "Positive" box (Step 6) on Copy 2 of the CCF, indicate the drug(s)/metabolite(s) detected on the "Remarks" line, sign and date the verification statement.
4. If the MRO cancels a laboratory confirmed positive, adulterated, substituted, or invalid drug test report, check the "test cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, sign, provide his/her name, and date the verification statement.
5. Report the result in a confidential manner (See §40.163 – 40.167).
6. With respect to adulteration or substitution test results, check the "refusal to test because:" box (Step 6) on Copy 2 of the CCF, check the "Adulterated" or "Substituted" box, as appropriate, make appropriate annotation in the "Remarks" line, sign, and date the verification statement.
7. The MRO's action concerning reporting confirmed positive, adulterated, or substituted results to the employer before he/she has completed the verification process are also governed by the stand-down provisions of §40.21.
 - a. If a company has a stand-down policy that meets the requirements of §40.21, the MRO may report to the DER an employee's laboratory confirmed positive, adulterated, or substituted test result, consistent with the terms of the waiver the company received. The MRO must not provide any further details about the test result (e.g., the name of the drug involved).
 - b. If the company does not have a stand-down policy that meets the requirements of §40.21, the MRO must not inform the company an employee's laboratory confirmed positive, adulterated, or substituted test result until the test result is verified. For example, as an MRO employed directly by a company, the MRO must not tell anyone on the company's staff or management that received an employee's laboratory confirmed test result.

F. MRO or DER Notification to an employee of the Verification Process – After a Confirmed Positive, Adulterated, Substituted, or Invalid Test Result (§40.131).

1. When the MRO receives a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, the MRO must contact the employee directly (i.e., actually talk to the employee), on a confidential basis, to determine whether the employee wants to discuss the test result. In making this contact, the MRO must explain to the employee that, if he or she declines to discuss the result, the MRO will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.
2. The MRO staff under his/her personal supervision may conduct this initial contact for the MRO.
 - a. This staff contact must be limited to scheduling the discussion between the MRO and the employee and explaining the consequences of the employee's declining to speak with the MRO (i.e., that the MRO will verify the test without input from the employee). If the employee declines to speak to the MRO, the staff person must document the employee's decision, including the date and time.

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- b. A staff person must not gather any medical information or information concerning possible explanations for the test result.
 - c. A staff person may advise an employee to have medical information (e.g., prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.
 - d. Since the MRO is required to speak personally with the employee, face-to-face or on the phone, the MRO's staff must not inquire if the employee wishes to speak to the MRO.
3. The MRO or his/her staff must make reasonable efforts to reach the employee at the day and evening telephone numbers listed on the CCF. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If the MRO or his/her staff cannot reach the employee directly after making these efforts, the MRO or his/her staff must take the following steps:
- a. Document the efforts the MRO or staff made to contact the employee, including dates and times. If both phone numbers are incorrect (e.g., disconnected, wrong number), the MRO or staff may take the actions listed in paragraph ©(2) of this section without waiting the full 24-hour period.
 - b. Contact the DER, instructing the DER to contact the employee.
 - (1) The MRO simply direct the DER to inform the employee to contact you.
 - (2) The MRO must not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.
 - (3) The MRO must document the dates and times of attempts to contact the DER, and the MRO must document the name of the DER contacted and the date and time of the contact.
4. The DER must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If the DER successfully contacts the employee (i.e., actually talk to the employee), the DER must document the date and time of the contact, and inform the MRO. The DER should inform the employee that he or she must contact the MRO immediately. The DER must also inform the employee of the consequences of failing to contact the MRO within the next 72 hours (see §40.133(a)(2)).
- a. The DER must not inform anyone else working for the company that the MRO is seeking to contact the employee on behalf of the MRO.
 - b. The DER shall have made all reasonable efforts to contact the employee but failed to do so, the DER may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.
 - (1) The DER must document the dates and times of these efforts.
 - (2) If the DER is unable to contact the employee within this 24-hour period, the DER must leave a message for the employee by any practicable means (e.g., voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

G. Circumstances Where MRO May Verify a Test as Positive, or as a Refusal to Test – Because of Adulteration or Substitution, Without Interviewing The Employee (§40.133).

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1. The MRO normally may verify a confirmed positive test (for any drug or drug metabolite, including opiates), or as a refusal to test because of adulteration or substitution, only after interviewing the employees as provided in §40.135—40.145. However, there are three circumstances in which the MRO may verify such a result without an interview:
 - a. The MRO may verify a test result as a positive or refusal to test, as applicable, if the employee expressly declines the opportunity to discuss the test with the MRO. The MRO must maintain complete documentation of this occurrence, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the MRO.
 - b. DER has successfully made and documented a contact with the employee and instructed the employee to contact the MRO and more than 72 hours have passed since the time the DER contacted the employee.
 - c. The MRO may verify a test result as a positive or refusal to test, as applicable, if neither the MRO nor the DER, after making and documenting all reasonable efforts, has been unable to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory.
2. The MRO when verifying a test result as a positive or refusal to test under this section, the MRO must document the date, time and reason, following the instructions in §40.163.
3. The MRO, after having verified a test result as a positive or refusal to test under this section and reported the result to the DER, must allow the employee to present information to the MRO within 60 days of the verification documenting that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis of such information, the MRO may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation for the confirmed test result.

H. MRO Criteria for Employee Notification in Verification Process (§40.135). What the MRO tells the employee at the beginning of the verification interview.

1. The MRO must tell the employee that the laboratory has determined that the employee's test result was positive, adulterated, substituted, or invalid, as applicable. The MRO must also tell the employee of the drugs for which his or her specimen tested positive, or the basis for the finding of adulteration or substitution.
2. The MRO must explain the verification interview process to the employee and inform the employee that the MRO decision will be based on information the employee provides in the interview.
3. The MRO must explain that, if further medical evaluation is needed for the verification process, the employee must comply with the MRO's request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.
4. The MRO must warn an employee who has a confirmed positive, adulterated, substituted or invalid test that the MRO is required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives you in the verification process without the employee's consent (see §40.327).
 - a. The MRO must give this warning to the employee before obtaining any medical information as part of the verification process.

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- b. For purposes of paragraph 4 of this section, medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.
 - c. For purposes of paragraph 4 of this section, the persons to whom this information may be provided include the employer, a SAP evaluating the employee as part of the return to duty process (See §40.293(g)), DOT, another Federal safety agency (e.g., the NTSB), or any state safety agency as required by state law.
5. The MRO must also advise the employee that, after informing any third party about any medication the employee is using pursuant to a legally valid prescription under the Controlled Substances Act, the MRO will allow 5 days for the employee to have the prescribing physician contact the MRO to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If the MRO receives such information from the prescribing physician, the MRO must transmit this information to any third party to whom the MRO previously provided information about the safety risks of the employee's other medication.
- I. **Basis for the MRO to verify test results – Involving marijuana, cocaine, amphetamines, or PCP (§40.137).**
1. The MRO must verify a confirmed positive test result for marijuana, cocaine, amphetamines, and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system.
 2. The MRO must offer the employee an opportunity to present a legitimate medical explanation in all cases.
 3. The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. The MRO has discretion to extend the time available to the employee for this purpose for up to five days before verifying the test result, if the MRO determines that there is a reasonable basis to believe that the employee will be able to produce relevant evidence concerning a legitimate medical explanation within that time.
 4. If the MRO determines that there is a legitimate medical explanation, the MRO must verify the test result as negative. Otherwise, the MRO must verify the test result as positive.
 5. In determining whether a legitimate medical explanation exists, the MRO may consider the employee's use of a medication from a foreign country. The MRO must exercise professional judgment consistently with the following principles:
 - a. There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.
 - b. There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use. Use of a drug of abuse (e.g., heroin, PCP, marijuana) or any other substance (See §40.151(f) and (g)) that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the substance is obtained legally in a foreign country.
 - c. Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.
 - d. Even if the MRO finds that there is a legitimate medical explanation under this paragraph and verify test negative, the MRO may have a responsibility to raise fitness-for-duty considerations with the employer (See §40.327).

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J. Basis for The MRO to Verify Test Results Involving Opiates (§40.139).

1. The MRO must proceed as follows when receiving a laboratory confirmed positive opiate result:
 - a. If the laboratory detects the presence of 6-acetylmorphine (6-AM) in the specimen, the MRO must verify the test result positive.
 - b. In the absence of 6-AM, if the laboratory detects the presence of either morphine or codeine at 15,000 ng/ml or above, the MRO must verify the test result positive unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see §40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.
 - c. For all other opiate positive results, the MRO must verify a confirmed positive test result for opiates only if the MRO determines that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative (i.e., morphine, heroin, or codeine).
 - (1) The MRO is responsible to use his/her best professional and ethical judgment and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgment include, but are not limited to, the following:
 - (a) Recent needle tracks;
 - (b) Behavioral and psychological signs of acute opiate intoxication or withdrawal;
 - (c) Clinic history of unauthorized use recent enough to have produced the laboratory test result;
 - (d) Use of a medication from a foreign country. See (§40.137(e) for guidance on how to make this determination.
 - (2) In order to establish the clinical evidence referenced in paragraphs (c.(1)(a) and (ii) of this section, personal observation of the employee is essential.
 - (a) Therefore, the MRO must conduct, or cause another physician to conduct, a face-to-face examination of the employee.
 - (b) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph c.(1)(c) or (d) of this section.
 - (3) To be the basis of a verified positive result for opiates, the clinical evidence the MRO finds must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, the MRO doesn't have grounds for verifying the test positive. The admission must be for the substance that was found).
 - (4) The MRO has the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph "c" of this section. If the MRO cannot make this determination (e.g., there is not sufficient clinical evidence or history), the MRO must verify the test as negative. The employee does not need to show the MRO that a legitimate medical explanation exists if no clinical evidence is established.

K. Procedure for the MRO to Obtain Information for The Verification Decision (§40.141).

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1. The MRO must do the following in making the determination needed for a verification decision:
 - a. The MRO must conduct a medical interview. The MRO must review the employee's medical history and any other relevant biomedical factors presented to you by the employee. The MRO may direct the employee to undergo further medical evaluation by you or another physician.
 - b. If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication, the MRO must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides. The MRO may contact the employee's physician or other relevant medical personnel for further information.

L. Criteria for MRO to Verify Test Results Involving Adulteration or Substitution (§40.145).

1. The MRO, upon receipt from the laboratory that a laboratory report indicates a specimen is adulterated or substituted, the MRO must treat that report in the same way the MRO would treat the laboratory's report of a confirmed positive test for a drug or drug metabolite, unless the creatinine concentration for a substituted specimen was reported by the laboratory to be equal to or more than 2 mg/dL.
 - (1) If the laboratory has reported the creatinine concentration for a substituted specimen as equal to or more than 2 mg/dL, you must report the specimen to the DER as being dilute, as provided in §40.55 of 49 CFR Part 40. Notwithstanding any other provision of 49 CFR Part 40, you must also instruct the DER that a second collection under direct observation must take place immediately.
 - (2) If the laboratory has reported the creatinine concentration for a substituted specimen as less than 2 mg/dL or "creatinine not detected," you must follow the procedures set forth in paragraphs (2) and (8) of this section.
2. The MRO must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite (See §40.129, 40.135, 40.141, 40.151), except as otherwise provided in this section.
3. In the verification interview, the MRO must explain the laboratory findings to the employee and address technical questions or issues the employee may raise.
4. The MRO must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the creatinine and specific gravity findings for, the specimen.
5. The employee has the burden of proof that there is a legitimate medical explanation.
 - a. To meet this burden in the case of an adulterated specimen, the employee must demonstrate that the adulterant found by the laboratory entered the specimen through physiological means.
 - b. To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine, through physiological means, meeting criteria for creatinine of less than 2 mg/dL and specific gravity of less than or equal to 1.001 or greater than or equal to 1.020.
 - c. The employee must present information meeting this burden at the time of the verification interview. The MRO has discretion to extend the time available to the employee for this purpose for up to five days before verifying the specimen, if the MRO determines that there is a reasonable basis to believe that the employee will be able to produce relevant evidence supporting a legitimate medical explanation within that time.

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6. The MRO and/or the company is not responsible for arranging, conducting, or paying for any studies, examinations or analysis to determine whether a legitimate medical explanation exists.
7. The MRO must exercise his/her best professional judgment in deciding whether the employee has established a legitimate medical explanation.
 - a. If the MRO determines that the employee's explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, the MRO must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.
 - b. If the MRO believes that the employee's explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, the MRO must direct the employee to obtain, within the five-day period set forth in paragraph 5.c of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to the MRO with expertise in the medical issues raised by the employee's explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise).
 - (1) The MRO and/or company is not responsible for finding or paying a referral physician. However, on request of the employee, the MRO or company must provide reasonable assistance to the employee's efforts to find such a physician. The final choice of the referral physician is the employee's, as long as the physician is acceptable to the MRO or company.
 - (2) The MRO must consult with the referral physician, providing guidance to him or her concerning his or her responsibilities under this section. As part of this consultation, the MRO must provide the following information to the referral physician:
 - (a) That the employee was required to take a DOT drug test, but the laboratory reported that the specimen was adulterated or substituted, which is treated as a refusal to test;
 - (b) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
 - (c) That the referral physician must agree to follow the requirements of paragraph 7.c. through 7.d. of this section; and
 - (d) That the referral physician must provide you with a signed statement of his or her recommendations.
 - c. As the referral physician, the MRO must evaluate the employee and consider any evidence the employee presents concerning the employee's medical explanation. The MRO may conduct additional tests to determine whether there is legitimate medical explanation. Any additional urine tests must be performed in an HHS-certified laboratory.
 - d. As the referral physician, the MRO must then make a written recommendation to the MRO about whether the MRO should determine that there is a legitimate medical explanation, the MRO must seriously consider and assess the referral physician's recommendation in deciding whether there is a legitimate medical explanation.
 - e. If the MRO determines that there is a legitimate medical explanation, the MRO must cancel the test and inform ODAPC in writing of the determination and the basis for it (e.g., referral physician's findings, evidence produced by the employee).
 - f. If the MRO determines that there is not a legitimate medical explanation, the MRO must report the test to the DER as a verified refusal to test because of adulteration or substitution.

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- g. The following are examples of types of evidence an employee could present to support an assertion of a legitimate medical explanation for a substituted result:
- a. Medically valid evidence demonstrating that the employee is capable of physiologically producing urine meeting the creatinine and specific gravity criteria of §40.93(b).
 - (1) To be regarded as medically valid, the evidence must have been gathered using appropriate methodology and controls to ensure its accuracy and reliability.
 - (2) Assertion by the employee that his or her personal characteristics (e.g., with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).
 - b. Information from a medical evaluation under paragraph 7 of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of §40.93(b).
 - (1) A finding or diagnosis by the physician that an employee has a medical condition, in itself, does not constitute a legitimate medical explanation.
 - (2) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of §40.93(b).

M. MRO Procedures to Change Verified Positive Drug Test Result or Refusal to Test (§40.149).

- 1. The MRO may change a verified positive or refusal to test drug test result only in the following situations:
 - a. When the MRO has reopened a verification that was done without an interview with an employee (See §40.133(c).
 - b. If the MRO receives information, not available to him/her at the time, of the original verification, demonstrating that the laboratory made an error in identifying (e.g., a paperwork mistake) of testing (e.g., a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. The MRO verified the test results as reported. Then the laboratory notifies the MRO that it mixed up the two test results, and X was really negative and Y was really positive. The MRO would change X's test result from positive to negative and contact Y to conduct a verification interview.
 - c. If, within 60 days of the original verification decision—
 - (1) The MRO receives information that could not reasonably have been provided to the MRO at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s) /metabolite(s) in the employee's specimen; or
 - (2) The MRO receives credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists. Example to Paragraph 1.c: If the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, the MRO may change the test result from positive to negative if the MRO concludes that the prescription provides a legitimate medical explanation for the drug(s)/metabolite(s) in the employee's specimen.

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d. If the MRO receives the information in paragraph 1.c. of this section after the 60-day period, you must consult with ODAPC prior to changing the result.

e. When the MRO has made an administrative error and reported an incorrect result.

2. If the MRO changes the result, the MRO must immediately notify the DER in writing, as provided in §40.163-40.165.

3. The MRO is the only person permitted to change a verified test result, such as a verified positive test result or a determination that an individual has refused a test because of adulteration or substitution. This is because the MRO has the sole authority under this part to make medical determinations leading to a verified test (e.g., a determination that there was or was not a legitimate medical explanation for a laboratory test result). For example, an arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

N. MRO Prohibitions Concerning the Verification Process (§40.151) – What are MROs Prohibited from Doing as Part of The Verification Process – The MRO is prohibited from doing the following as part of the verification process:

1. The MRO must not consider any evidence from tests of urine samples or other body fluids or tissues (e.g., blood or hair samples) that are not collected or tested in accordance with this part. For example, if an employee tells the MRO he/she sent to his/her own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result or a DNA test result questioning the identity of his/her DOT specimen, the MRO is required to ignore this test result.

2. It is not the MRO's function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open urine containers where other people could access them).

3. It is not the function of the MRO to determine whether the company should have directed that a test occur. For example, if an employee tells you that the company misidentified him/her at the subject to a random test, or directed him/her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, the MRO must inform the employee that you cannot play a role in deciding these issues.

4. It is not the function of the MRO to consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell the MRO that someone slipped amphetamines into his/her drink at a party, that he/she unknowingly ingested a marijuana brownie, or that he/she traveled in a closed car with several persons smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, the MRO must not declare a test as negative based on an explanation of this kind.

5. The MRO must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted).

6. The MRO must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. The MRO also must not

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accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.

7. The MRO must not accept an assertion that there is a legitimate medical explanation for the presence of PCP or 6-AM in a specimen. There are no legitimate medical explanations for the presence of these substances.
8. The MRO must not accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.
9. The MRO must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce urine with no detectable creatinine. There are no physiological means through which a person can produce a urine specimen having this characteristic.

O. MRO Notification to Employees on Their Right to a Test of the Split Specimen (§40.153).

1. The MRO, when verifying a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, must notify the employee of his or her right to have the split specimen tested. The MRO must also notify the employee of the procedures for requesting a test of the split specimen.
2. The MRO must inform the employee that he or she has 72 hours from the time the MRO provides this notification to him or her to request a test of the split specimen.
3. The MRO must tell the employee how to contact the MRO to make this request. The MRO must provide telephone numbers or other information that will allow the employee to make this request. The MRO must have the ability to receive the employee's calls at all times during the 72 hour period (e.g., by use of an answering machine with a "time stamp" feature when there is no one in the MRO office to answer the phone).
4. The MRO must tell the employee that if he or she makes this request within 72 hours, the company must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. The MRO must also tell the employee that the company may seek reimbursement for the cost of the test (See §40.173).
5. The MRO must tell the employee that additional tests of the specimen (e.g., DNA tests) are not authorized.

P. MRO Procedures When A Negative or Positive Test Result is also Dilute (§40.155).

1. When the laboratory reports that a specimen is dilute, or reports that a specimen is substituted with a creatinine quantitation of greater than or equal to 2 mg/dL, the MRO must report to the DER that the specimen, in addition to being negative or positive, is dilute.
2. The MRO must check the "dilute" box (Step 6) on Copy 2 of the CCF.
3. The MRO may only report a dilute test when the MRO is in possession of a legible copy of Copy 1 of the CCF. In addition, the MRO must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.
4. When the MRO reports a dilute specimen to the DER, the MRO must explain to the DER the employer's obligations and choices under §40.197.

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Q. MRO Procedures When a Drug Test Result is Invalid (§40.159).

1. When the laboratory reports that the test result is an invalid result the MRO must do the following:
 - a. Discuss the laboratory results with a certifying scientist to obtain more specific information.
 - b. Contact the employee and inform the employee that the specimen was invalid or contained an unexplained interfering substance. In contacting the employee, use the procedures set forth in §40.131.
 - c. After explaining the limits of disclosure (see §40.135(d) and 40.327), the MRO should inquire as to medications the employee may have taken that may interfere with some immunoassay tests.
 - d. If the employee gives an explanation that is acceptable, the MRO must:
 - (1) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line
 - (2) Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up tests).
 - e. If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, you must:
 - (1) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection required" on the "Remarks" line.
 - (2) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation.
 - (3) Instruct the company to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.
2. The MRO may only report an invalid test result when the MRO is in possession of a legible copy of Copy 1 of the CCF. In addition, the MRO must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.
3. If the employee admits to having adulterated or substituted the specimen, the MRO must, on the same day, write and sign a statement of what the employee said. The MRO must then report a refusal to test in accordance with §40.163.

R. MRO Procedures When a Drug Test Specimen is Rejected for Testing (§40.161) – The MRO shall, when notified by the laboratory the specimen is rejected for testing (e.g., because of a fatal or uncorrected flaw), do the following:

1. Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter the reason on the "Remarks" line.
2. Report to the DER that the test is cancelled and the reason for cancellation, and that no further action is required unless a negative test is required (e.g., in the case of a pre-employment, return-to-duty, or follow-up test).

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3. The MRO may only report a test cancelled because of a rejected for testing test result when the MRO is in possession of a legible copy of Copy 1 of the CCF. In addition, the MRO must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.

S. MRO Reporting of Test Results (§40.163).

1. The MRO has a responsibility to report all drug test results to the company.
2. The MRO may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.
3. If the MRO does not report test results using Copy 2 of the CCF for this purpose, the MRO must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information:
 - a. Full name, as indicated on the CCF, of the employee tested;
 - b. Specimen ID number from the CCF and the donor SSN or employee ID number;
 - c. Reason for the test, if indicated on the CCF (e.g., random, post-accident);
 - d. Date of the collection;
 - e. Date you received Copy 2 of the CCF;
 - f. Result of the test (i.e., positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;
 - g. For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;
 - h. For cancelled tests, the reason for cancellation; and
 - i. For refusal to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).
4. As an exception to the reporting requirements of paragraph S.2. and S.3. of this section, the MRO may report negative results using an electronic data file.
 - a. If the MRO reports negatives using an electronic data file, the report must contain, as a minimum, the information specified in paragraph S.3. of this section, as applicable for negative test results.
 - b. In addition, the report must contain the MRO's name, address, and phone number, the name of any person other than the MRO reporting the results, and the date the electronic results report is released.
5. The MRO must retain a signed or stamped and dated copy of Copy 2 of the CCF in your records. If the MRO does not use Copy 2 for reporting results, the MRO must maintain a copy of the signed or stamped and dated letter in addition to the signed or stamped and dated Copy 2. If the MRO uses the electronic data file to report negatives, the MRO must maintain a retrievable copy of that report in a formal suitable for inspection and auditing by a DOT representative.
6. The MRO must not use Copy 1 of the CCF to report drug test results.

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7. The MRO must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, the MRO must provide the test information in his/her possession so a SAP who consults with you (see §40.293(g)).

T. Procedures for MRO's to Transmit Drug Test Results (§40.165).

1. The MRO must report all drug test results to the DER, except in the circumstances provided for in §40.345.
2. If the company elects to receive reports of results through a C/TPA, acting as an intermediary as provided in §40.345, the MRO must report the results through the designated C/TPA.

U. Procedures for MRO Reporting of Drug Results to The Company (§40.167) – The MRO or C/TPA who transmits drug test results to the employer must comply with the following requirements:

1. The MRO must report the results in a confidential manner.
2. The MRO must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substitute specimen results, and other refusals to test.
 - a. Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up the phone call with appropriate documentation (see §40.163).
 - b. The MRO is responsible for identifying himself/herself to the DER, and the DER must have a means to confirm the MRO's identification.
 - c. The MRO's report that is transmitted to the company must contain all of the information required by §40.163.
3. The MRO must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.
 - a. The MRO must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (See §40.163(b) and (c)).
 - b. Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.
4. In transmitting test results, you or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.
5. MRO reports are not subject to modification or change by anyone other than the MRO, as provided in §40.149©.

V. Additional Information Concerning The Role of MROs and The Verification Process – 49 CFR Part 40 (§40.169).

The company can find more information concerning the role of MROs in several sections of this part:

§40.3 – Definition.

§40.47—40.49 – Correction of form and its errors.

§40.67 – Role in direct observation and other atypical test situations.

§40.83 – Laboratory handling of fatal and correctable flaws.

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- §40.97 – Laboratory handling of test results and quantitative values.
- §40.99 – Authorization of longer laboratory retention of specimens.
- §40.101 – Relationship with laboratories; avoidance of conflicts of interest.
- §40.105 – Notification of discrepancies in blind specimen results.
- §40.171 – Request for test of split specimen.
- §40.187 – Action concerning split specimen test results.
- §40.193 – Role in “shy bladder” situations.
- §40.195 – Role in canceling tests.
- §40.199—40.203 – Documenting errors in tests.
- §40.327 – Confidentiality and release of information.
- §40.347 – Transfer of records.
- §40.353 – Relationships with service agents.

IX. SUBSTANCE ABUSE PROFESSIONALS AND THE RETURN-TO-DUTY PROCESS – 49 CFR PART 40 – SUBPART O.

A. SAP Evaluation (§40.281 - §40.283).

1. Qualifications to act as a SAP - To be permitted to act as a SAP in the DOT alcohol and drug testing program, the SAP must meet each of the requirements of this section:
 - a. SAP Credentials. The SAP must have one of the following credentials:
 - (1) A licensed physician (Doctor of Medicine or Osteopathy);
 - (2) A licensed or certified social worker;
 - (3) A licensed or certified psychologist;
 - (4) A licensed or certified employee assistance professional; or
 - (5) A drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC).
 - b. SAP Basic Knowledge. The SAP must be knowledgeable in the following areas:
 - (1) The SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
 - (2) The SAP must be knowledgeable about the SAP function as it relates to company interests in safety-sensitive duties.
 - (3) The SAP must be knowledgeable about this part, the DOT agency regulations applicable to the companies for whom the SAP evaluates employees, and the DOT SAP Guidelines, and the SAP must keep current on any changes to these materials.
 - c. SAP Qualification Training. The SAP must receive qualification training meeting the requirements of this paragraph.
 - (1) Qualification training must provide instruction on the following subjects:
 - (a) Background, rationale, and coverage of the Department's drug and alcohol testing program;

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- (b) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;
 - (c) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (d) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs and problems in alcohol tests;
 - (e) SAP qualifications and prohibitions;
 - (f) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education, and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (g) SAP consultation and communication with companies, MROs, and treatment providers;
 - (h) Reporting and record-keeping requirements;
 - (i) Issues that SAPs confront in carrying out their duties under the program.
- (2) Following the SAP completion of qualification training under paragraph 1.c.(1) of this section, the SAP must satisfactorily complete an examination administered by a nationally recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph 1.c.(1) of this section.
- (3) The following is the schedule for qualification training the SAP must meet:
- (a) If the individual became a SAP before August 1, 2001, the SAP must meet the qualifications training requirement no later than December 31, 2003.
 - (b) If the individual becomes a SAP between August 1, 2001, and December 31, 2003, the SAP must meet the qualification training requirements no later than December 31, 2003.
 - (c) If the individual becomes a SAP on or after January 1, 2004, the SAP must meet the qualifications training requirements before the SAP begins to perform SAP functions.
- (4) SAP Continuing Education. During each three-year period from the date on which the SAP satisfactorily completed the examination under paragraph 1.c.(2) of this section, the SAP must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (a) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time the SAP met the qualification training requirements of this section.
 - (b) The SAP continuing education activities must include documentable assessment tools to assist the SAP in determining whether the SAP has adequately learned the material.
- (5) SAP Documentation. The SAP must maintain documentation showing that he/she currently meet all requirements of this section. The SAP must provide this documentation on request to DOT agency representatives and to the company and C/TPAs who are using or contemplating using the SAPs services.

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2. Criteria for a certification organization to obtain recognition for its members as SAPs (§40.283).
 - a. If the SAP represents a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281(a)(5), the SAP may submit a written petition to DOT requesting a review of the SAPs petition for inclusion.
 - b. The SAP must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on the SAPs petition.
 - c. The SAP must also meet the minimum requirements of 49 CFR Part 40, Appendix E before DOT will act on the SAPs petition.

B. SAP Requirements (§40.287 - §40.289).

1. Requirements for conducting a SAP evaluation.
 - a. When an employee violates the DOT drug and alcohol regulations, the employee cannot again perform any DOT safety-sensitive duties for the company until and unless the employee has completed the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
 - b. A verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.
2. Information the company is required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation (§40.287).
 - a. The company must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to the company, with names, addresses, and telephone numbers. The company cannot charge the employee any fee for compiling or providing this list.
 - b. The company may provide this list or through a C/TPA or other service agent.
3. Company requirements regarding SAP evaluation and treatment services provided to the employees (§40.289).
 - a. The company is not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
 - b. However, if the company offers the employee an opportunity to return to a DOT safety-sensitive duty following a violation, the company must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of §40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
 - c. Payment for SAP evaluations and services is left for the company and employee to decide and may be governed by existing management-labor agreements and health care benefits.
 - d. If it is determined that the employee requires rehabilitation, the DER will instruct the employee's supervisor to immediately send the employee home from work without pay. The SAP shall instruct the employee, among other things, to contact the EAP within forty-eight (48) hours to initiate a

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rehabilitation program. If the employee does not contact the EAP within forty-eight (48) hours of notice from the SAP, the employee will be terminated from employment with the company.

C. SAP Evaluation, Referral, and Treatment (§40.291 - §40.297).

1. The role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations.
 - a. The SAP is charged with:
 - (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use;
 - (2) Referring the employee to an appropriate education and/or treatment program;
 - (3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations.
 - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
 - (5) Providing the employee and company with recommendations for continuing education and/or treatment.
 - b. The SAP is not an advocate for the company or employee. The SAP function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.
2. The SAP's functions in conducting the initial evaluation of an employee (§40.293) – The SAP must, for every employee who comes to the SAP following a DOT drug and alcohol regulation violation, accomplish the following:
 - a. Provide a comprehensive face-to-face assessment and clinical evaluation.
 - b. Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
 - (1) The SAP must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
 - (2) The SAP must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
 - c. Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
 - d. Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, outpatient counseling programs, and aftercare.
 - e. The SAP must provide a written report directly to the DER highlighting the specific recommendations for assistance (See §40.311(c)).

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f. For purposes of the evaluation process, the SAP must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. The SAP must not take into consideration in any way, as a factor in determining what the recommendation will be, any of the following:

(1) A claim by the employee that the test was unjustified or inaccurate;

(2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or

(3) Personal opinions the SAP may have about the justification or rationale for drug and alcohol testing.

g. In the course of gathering information for purposes of the evaluation in the case of a drug-related violation, the SAP may consult with the MRO. The MRO is required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

3. Criteria for employees or the company to seek a second SAP evaluation if they disagree with the first SAP's recommendations (§40.295).

a. The employee with a DOT drug and alcohol regulation violation having been evaluated by a SAP must not seek a second SAP's evaluation in order to obtain another recommendation.

b. The company must not seek a second SAP's evaluation, if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, the company may not rely on it for any purpose under this part.

4. Authority to change a SAP's initial evaluation (§40.297).

a. Except as provided in paragraph 4.b. of this section, no one (e.g., the company, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.

b. The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).

D. SAP's Role and Limitations (§40.299). – Requirements of SAP's role and the limits on a SAP's discretion in referring employees for education and treatment.

1. The SAP, upon making a determination of the best recommendation for assistance, will serve as a referral source to assist the employee's entry into an education and/or treatment program.

2. To prevent the appearance of a conflict of interest, the SAP must not refer an employee requiring assistance to the SAP's private practice or to a person or organization from which the SAP receives payment or to a person or organization in which the SAP has a financial interest. The SAP is precluded from making referrals to entities with which the SAP is financially associated.

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3. There are four exceptions to the prohibitions in paragraph (b) of this section. The SAP may refer an employee to any of the following providers of assistance, regardless of the company's relationship with them:
 - a. A public agency (e.g., treatment facility) operated by a state, county, or municipality;
 - b. The company or a person or organization under contract to the company to provide alcohol or drug treatment and/or education services (e.g., the employer's contracted treatment provider);
 - c. The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
 - d. The sole source of therapeutically appropriate treatment reasonably available to the employee (e.g., the only treatment facility or education program reasonably located within the general commuting area).

E. SAP Functions in Evaluation, Treatment, and Aftercare or Support Group Services (§40.301--§40.303).

1. The SAP's functions in the follow-up evaluation of an employee.
 - a. The SAP, once the prescribed assistance under §40.293 is complete, must re-evaluate the employee to determine if the employee has successfully carried out the SAP's education and/or treatment recommendations.
 - (1) This is the SAP's way to gauge for the company the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
 - (2) The SAP evaluation may serve as one of the reasons the company decides to return the employee to safety-sensitive duty.
 - b. The SAP must make the follow-up evaluation determination:
 - (1) The SAP must confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
 - (2) The SAP must conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with the initial evaluation recommendations.
 - c. SAP Requirements:
 - (1) If the employee has demonstrated successful compliance, the SAP must provide a written report directly to the DER highlighting the clinical determination that the employee has complied with the initial evaluation recommendation (See §40.311(d)).
 - (2) The SAP may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program prescribed, the SAP may make a "successful compliance" determination even though the SAP concludes that the employee has not yet completed the outpatient counseling you recommended or should continue in an aftercare program.

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d. SAP Determinations:

- (1) The SAP, as a result of the follow-up evaluation, finds that the employee has not demonstrated successful compliance with recommendations must provide written notice directly to the DER (See §40.311(e)).
 - (2) The company who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations must not return the employee to the performance of safety-sensitive duties.
 - (3) The SAP may conduct additional follow-up evaluation(s) if the company determines that doing so is consistent with the employee's progress as the SAP has reported it and with the company's policy and/or labor-management agreements.
 - (4) The company, following a SAP report that the employee has not demonstrated successful compliance, may take personnel action consistent with company policy and/or labor-management agreements.
2. Criteria to be followed if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties (§40.303).
- a. The SAP may believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, the SAP must provide recommendations for these services in the follow-up evaluation report (See §40.311(d)(10)).
 - b. The company receiving a recommendation for these services from a SAP may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. The company may monitor and document the employee's participation in the recommended services. The company may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations. Nothing in this section permits the company to fail to carry out its obligations with respect to follow-up testing (See §40.309).
 - c. The employee has an obligation to comply with the SAP's recommendations for these services. If the employee fails or refuses to do so, the employee may be subject to disciplinary action by the company.

F. Completion of the Return-to-Duty Process (§40.305).

1. If the company must decide that the employee is permitted to return to the performance of safety-sensitive functions, the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
2. The company must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph 1 above. However, the company is not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that the company has the discretion to make, subject to collective bargaining agreements or other legal requirements.
3. The SAP or MRO must make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the company, rather than the SAP or MRO who must decide whether to put the employee back to work in a safety-sensitive position.

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G. SAP's Functions in Prescribing the Employee's Follow-up Tests (§40.307).

1. The SAP for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, must establish a written follow-up testing plan. The SAP does not establish this plan until after it has been determined that the employee has successfully complied with the recommendations for education and/or treatment.
2. The SAP must present a copy of this plan directly to the DER (See §40.311(d)(9)).
3. The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but the evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, the SAP should require that the employee have follow-up tests for both drugs and alcohol.
4. However, the SAP must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
 - a. The SAP may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g. the SAP may require one test a month during the 12-month period; the SAP may require two tests per month during the first 6-month period and one test per month during the final 6-month period).
 - b. The SAP may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
 - c. The SAP is not to establish the actual dates for the follow-up tests the SAP prescribes. The decision on specific dates to test is the company's
 - d. The company must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
 - e. The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

Example 1 to Paragraph e: The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under §40.25.

Example 2 to Paragraph e: The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

- f. The SAP may modify the determinations the SAP has made concerning follow-up tests. For example, even if the SAP recommended follow-up testing beyond the first 12-months, the SAP can terminate the testing requirement at any time after the first year of testing. The SAP must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.

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H. Company's Responsibilities on SAP's Directions for Follow-up Tests (§40.309).

1. The company must carry out the SAP's follow-up testing requirements. The company may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
2. The company should schedule follow-up tests on dates of their own choosing, but the company must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
3. The company cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.
4. The company cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

I. Requirements of SAP's Reports (§40.311).

1. The SAP conducting the required evaluations must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in §40.355(e)). The SAP may, however, forward the document simultaneously to the DER and to a C/TPA.
2. The SAP must ensure that the company receives written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
3. The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
 - a. Employee's name and SSN;
 - b. Employer's name and address;
 - c. Reason for the assessment (specific violation of DOT regulations and violation date);
 - d. Date(s) of the assessment;
 - e. SAP's education and/or treatment recommendation; and
 - f. SAP's telephone number.
4. The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
 - a. Employee's name and SSN;
 - b. Employer's name and address;
 - c. Reason for the initial assessment (specific violation of DOT regulations and violation date);
 - d. Date(s) of the initial assessment and synopsis of the treatment plan;
 - e. Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - f. Inclusive dates of employee's program participation;
 - g. Clinical characterization of employee's program participation;
 - h. SAP's clinical determination as to whether the employee has demonstrated successful compliance;
 - i. Follow-up testing plan;
 - j. Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
 - k. SAP's telephone number.

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5. The SAP'S written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
 - a. Employee's name and SSN;
 - b. Employer's name and address;
 - c. Reason for the initial assessment (specific DOT violation and date);
 - d. Date(s) of initial assessment and synopsis of treatment plan;
 - e. Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - f. Inclusive dates of employee's program participation;
 - g. Clinical characterization of employee's program participation;
 - h. Date(s) of the first follow-up evaluation;
 - i. Date(s) of any further follow-up evaluation the SAP has scheduled;
 - j. SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
 - k. SAP's telephone number.
6. The SAP must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
7. The SAP is to maintain copies of the employer's reports to employers for 5 years, and the employer's employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. The SAP must make these records available, on request, to DOT agency representatives (e.g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.
8. The company must maintain the reports from SAP's for 5 years from the date the company receives the reports.

J. Additional Information on SAP Functions and Return-to-Duty Process (§40.313).

Other information on the role and functions of SAP's is located in the following sections of 49 CFR Part 40.

§40.3 – Definition.

§40.347 – Service agent assistance with SAP-required follow-up testing.

§40.355 – Transmission of SAP reports.

§40.329© – Making SAP reports available to employees on request.

Appendix E to Part 40 – SAP Equivalency Requirements for Certification Organizations.

X. PROBLEMS IN DRUG TESTS (49 CFR PART 40 SUBPART I)

A. Procedures regarding a refusal to take a DOT drug test and the consequences (§40.191).

1. An employee has refused to take a drug test if the employee:
 - a. Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, after being directed to do so by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.61(a));

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- b. Fails to remain at the testing site until the testing process is complete; provided, that an employee who leaves the testing site before the testing process commences (see §40.63©) for a pre-employment test is not deemed to have refused a test.
 - c. Fails to provide a urine specimen for any drug test required by this part or DOT agency regulations; provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63©) for a pre-employment test is not deemed to have refused to test;
 - d. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §40.67(l) and 40.69(g));
 - e. Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));
 - f. Fails or declines to take a second test the employer or collector has directed you to take (See, for instance, §40.197(b)).
 - g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment; or
 - h. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
2. If the MRO reports that the employee has a verified adulterated or substituted test result, the employee is considered to have refused to take a drug test.
 3. An employee who refuses to take a drug test will incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

Any employee refusing to cooperate in the collection procedure shall immediately be terminated from employment.

4. When an employee refuses to participate in the part of the testing process in which the collector is involved, the collector must terminate the portion of the testing process in which the collector is involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.
 - a. The collector must note the refusal in the "Remarks" line (Step 2), and sign and date the CCF.
 - b. The MRO must note the refusal by checking the "refused to test because" box (Step 6) on Copy 2 of the CCF, and add the reason on the "Remarks" line. The MRO must then sign and date the CCF.
5. An employee who refuses to take a non-DOT test or to sign a non-DOT form has not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

An employee who refuses to take a non-DOT test or to sign a non-DOT form shall immediately be terminated from employment.

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B. Procedures for an Employee Who Does Not Provide a Sufficient Amount of Urine for a Drug Test (§40.193).

1. This section prescribes procedures for situations in which an employee does not provide a sufficient amount of urine to permit a drug test (i.e., 45 ml or urine).
2. The collector must do the following:
 - a. Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (see §40.65(b) and (c)).
 - b. Urge the employee 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 sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the "Remarks" line of the CCF (Step 2), and inform the employee of the time at which the three-hour period begins and ends.
 - c. If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. This is a refusal to test.
 - d. If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER.
 - e. Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.
3. The DER, when the collector informs him/her that the employee has not provided a sufficient amount of urine (see paragraph 2(d) of this section), must, after consulting with the MRO, direct the employee to obtain, within five working days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.
 - a. The MRO, if another physician will perform the evaluation, must provide the other physician with the following information and instructions:
 - (1) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of urine to complete the test;
 - (2) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
 - (3) That the referral physician must agree to follow the requirements of paragraph 4 through 7 of this section.
4. The referral physician conducting this evaluation must recommend that the MRO make one of the following determinations:
 - a. A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. If the MRO accepts this recommendation, the MRO must:
 - (1) Check "Test Cancelled" (Step 6) on the CCF; and

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(2) Sign and date the CCF.

- b. There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. If the MRO accepts this recommendation, the MRO must:

(1) Check "Refusal to test because" (Step 6) on the CCF and enter reason in the remarks line; and

(2) Sign and date the CCF.

5. For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.

6. The referral physician making the evaluation and, after completing the evaluation, must provide a written statement of his/her recommendations and the basis for them to the MRO. The physician must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain the conclusion.

7. The referral physician making this evaluation in the case of a pre-employment test, must determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period or time. The physician must set forth his/her determination and the reasons for it in a written statement to the MRO. The MRO, upon receiving such a report must follow the requirements of §40.195, where applicable.

8. The MRO must seriously consider and assess the referral physician's recommendations in making his/her determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. The MRO must report his/her determination to the DER in writing as soon as the determination is made.

9. The company who receives a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section can take no further action with respect to the employee. The employee remains in the random testing pool.

C. Criteria for Insufficient Urine on Pre-Employment or Return-to-Duty (§40.195) – Medical Condition – Procedure for an individual who is unable to provide a sufficient amount of urine for a pre-employment or return-to-duty test because of a permanent or long-term medical condition.

1. This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment or return-to-duty test and the condition involves a permanent or long-term disability. The MRO in this situation must do the following:

- a. The MRO must determine if there is clinical evidence that the individual is an illicit drug user. The MRO must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under §40.193(d).

- b. If the MRO does not personally conduct the medical evaluation, the MRO must ensure that an evaluation is conducted by a licensed physician acceptable to the MRO.

- c. For the purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.

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2. If the medical evaluation reveals no clinical evidence of drug use, the MRO must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under §40.193(d) and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.
 - a. Check "Negative" (Step 6) on the CCF.
 - b. Sign and date the CCF.
3. If the medical evaluation reveals clinical evidence of drug use, the MRO must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under §40.193(d) and any further medical examination. This report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (i.e., the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).
4. For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.
 - a. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters.
 - b. Acute or temporary medical conditions, such as cystitis, urethritis, or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (d)(1) of this section.

D. Procedures for the Company Upon Receiving a Report of a Dilute Specimen (§40.197).

1. If the MRO informs the company that a positive drug test was dilute, the company must simply treat the test as a verified positive test. The company must not direct the employee to take another test based on the fact that the specimen was dilute.
2. If the MRO informs the company that a negative drug test was dilute, take the following action:
 - a. If the MRO directs you to conduct a recollection under direct observation (i.e., because the creatinine concentration of the specimen was equal to or greater than 2 mg/dL, but less than or equal to 5 mg/dL (See §40.145(a)(1)), you must do so immediately.
 - b. Otherwise, (i.e., if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.
 - (1) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (See §40.67(b) and (c)).
 - (2) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (e.g., conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.

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3. The following provisions apply to all test you direct an employee to take under paragraph D.2 of this section:
 - a. You must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;
 - b. You must treat the result of the test you directed the employee to take under paragraph D.2 of this section—and not a prior test—as the test result of record, on which you rely for the purposes of this part;
 - c. If the result of the test you directed the employee to take under paragraph D.2 of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph d.2.a of this section, you must immediately do so.
 - d. If the employee declines to take a test you directed him or her to take under paragraph D of this section, the employee has refused the test for purposes of 49 CFR part 40 and DOT agency regulations.

E. Problems That Cause a Drug Test to be Cancelled (§40.199).

1. When the laboratory discovers a “fatal flaw” during its processing of income specimens (see §40.83), the laboratory will report to the MRO that the specimen has been “Rejected for Testing” (with the reason stated). The MRO must always cancel such a test.
2. The following are “fatal flaws”:
 - a. There is no printed collector’s name and no collector’s signature;
 - b. The specimen ID numbers on the specimen bottle and the CCF do not match;
 - c. The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, see §49.83(g)); and
 - d. Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be re-designated (see §40.83(g)).
3. The MRO must report the result as provided in §40.161.

F. Problems That Cause a Drug Test to be Cancelled and May Result in a Requirement for Another Collection (§40.201) – The MRO must cancel a drug test when a laboratory reports that any of the following problems have occurred. The MRO must inform the DER that the test was cancelled. The MRO must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

1. The laboratory reports an “Invalid Result.” The MRO must follow applicable procedures in §40.159 (recollection under direct observation may be required).
2. The laboratory reports the result as “Rejected for Testing.” The MRO must follow applicable procedures in §40.161 (a recollection may be required).
3. The laboratory’s test of the primary specimen is positive and the split specimen is reported by the laboratory as “Failure to Reconfirm: Drug(s)/Drug Metabolite(s) No Detected.” The MRO must follow applicable procedures in §40.187(b) (no recollection is required in this case).

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4. The laboratory's test result for the primary specimen is adulterated or substituted and the split specimen is reported by the laboratory as "Adulterant not found within criteria," or "specimen not consistent with substitution criteria," as applicable. The MRO must follow applicable procedures in §40.187© (no recollection is required in this case).
5. The laboratory's test of the primary specimen is positive, adulterated, or substituted and the split specimen is unavailable for testing. The MRO must follow applicable procedures in §40.187(d) (recollection under direct observation is required in this case).
6. The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of urine. The MRO must follow applicable procedures in §40.193(d)(1) (no recollection is required in this case).

G. Problems That Cause a Drug Test to be Cancelled Unless They are Corrected (§40.203).

1. The MRO, when a laboratory discovers a "correctable flaw" during its processing or incoming specimens (see §40.83), will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to the MRO that the specimen has been "Rejected for Testing" (with the reason stated).
2. The following is a "correctable flaw" that laboratories must attempt to correct:
 - a. The collector's signature is omitted on the certification statement on the CCF.
 - b. The specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range.
3. When the MRO discovers a "correctable flaw" during the review of the CCF, the MRO must cancel the test unless the flaw is corrected.
4. The following are correctable flaws that the MRO must attempt to correct:
 - a. The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the "Remarks" line of the CCF.
 - b. The certifying scientist's signature is omitted on the laboratory copy of the CCF for a positive, adulterated, substituted, or invalid test result.
 - c. The collector uses a non-Federal form or an expired Federal form for the test. This flaw may be corrected through the procedure set forth in §40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures of this part in an HHS-certified laboratory. During the period August 1 – October 31, 2001, the MRO is not required to cancel a test because of the use of an expired Federal form. Beginning November 1, 2001, if the problem is not corrected, the MRO must cancel the test.

H. Correction of Drug Test Problems (§40.205).

1. The collector has the responsibility of trying to successfully complete a collection procedure for each employee.
 - a. If, during or shortly after the collection process, the collector becomes aware of any event that prevents the completion of a valid test or collection (e.g., a procedural or paperwork error), the collector must try to correct the problem promptly, if doing so is practicable. The collector may conduct another collection as part of this effort.

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- b. If another collection is necessary, the collector must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.
2. If the collector, laboratory, MRO, company, or other person implementing these drug testing regulations becomes aware of a problem that can be corrected (see §40.302), but which has not already been corrected under paragraph (a) of this section, they must take all practicable action to correct the problem so that the test is not cancelled.
 - a. If the problem resulted from the omission of required information, they must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose the collector forgot to make a notation on the "Remarks" line of the CCF that the employee did not sign the certification. The collector would, when the problem is called to his/her attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. The collector must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
 - b. If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e. a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of 49 CFR Part 40. The person must supply this information on the same business day on which notified of the problem, transmitting it by fax or courier.
 - c. The responsible person must maintain the written documentation of a correction with the CCF.
 - d. The responsible person must mark the CCF in such a way (e.g., stamp noting correction) as to make it obvious on the face of the CCF that he/she has corrected the flaw.
3. If the correction does not take place the MRO must cancel the test.

I. Effects of a Cancelled Drug Test (§40.207).

1. A cancelled drug test is neither positive nor negative.
 - a. The company must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position).
 - b. The company must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or follow-up test).
 - c. However, the company must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part that require another test to be conducted (e.g., §40.159(a)(5) and 40.187(b)).
2. A cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the company's minimum random testing rate).
3. A cancelled DOT test does not provide a valid basis for the company to conduct a non-DOT test (i.e., a test under company authority).

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J. Problems That Require Corrective Action but Does Not Result in Cancellation of Test (§40.208).

1. If, as a laboratory, collector, company, or other person implementing the DOT drug testing program, he/she becomes aware that the specimen temperature on the CCF was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range, he/she must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure that the problem does not recur.
2. This error does not result in the cancellation of the test.
3. When the company or service agent, who caused this error, even though not sufficient to cancel a drug test result, may subject the company or service agent to enforcement action under DOT agency regulations or Subpart R of 49 CFR Part 40.

K. Effects of Procedural Problems That are Not Sufficient to Cancel a Drug Test (§40.209).

1. The collector, laboratory, MRO, company or other person administering the drug testing process must document any errors in the testing process of which he/she becomes aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (2) of this section.
2. No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:
 - a. A minor administrative mistake (e.g., the omission of the employee's middle initial, a transposition of numbers in the employee's social security number);
 - b. An error that does not affect employee protections under this part (e.g., the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);
 - c. The collection of a specimen by a collector who is required to have been trained (see §40.33), but who has not met this requirement;
 - d. A delay in the collection process (see §40.61(a));
 - e. Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see §40.121(a) through (b)) but who has not met training and/or documentation requirements (see §40.121(c) through (e));
 - f. The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
 - g. The fact that a test was conducted in a facility that does not meet the requirements of §40.41;
 - h. If the specific name of the courier on the CCF is omitted or erroneous;
 - i. Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on the laboratory copy); or
 - j. Claims that the employee was improperly selected for testing.

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3. The company, when these types of errors occur, even though not sufficient to cancel a drug test result, may subject the company to enforcement action under DOT agency regulations.

XI. RETENTION OF SAMPLES AND ADDITIONAL TESTING (§199.111)

A. General.

1. Samples that yield positive results on confirmation must be retained by the laboratory in a properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or the employee's representative, the pipeline operator, the Administrator, or if the pipeline operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a farther reasonable period specified in the request, the sample may be discarded following the end of the 365-day period.
2. If the Medical Review Officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely, additional testing is requested by the employee according to DOT procedures, the split specimen must be tested. The employee may specify testing by the original laboratory or by a second laboratory that is certified by the Department of Health and Human Services. The employer may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the additional test is negative.
3. If the employee specifies testing by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample.
4. Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results.

B. Retention Period.

1. Within this 365-day period, the employee or designated representative, RSPA or other state agencies with jurisdiction, or the company may request in writing that the sample be retained for an additional period.
2. If the laboratory does not receive the request to retain the sample within the 365 day period, the sample may be discarded.

C. Additional Testing.

1. If the medical review officer determines there is no legitimate medical reason for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT Procedures, the split specimen must be tested.

XII. EMPLOYEE ASSISTANCE PROGRAM (EAP) (§199.113)

A. Scope of Program.

The EAP will provide education and training on drug use to all employees. The education shall include:

1. Informational material displayed on bulletin boards, employee break rooms, locker rooms, etc., and distributed to employees.

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2. A community service hot-line telephone number for employee assistance displayed on bulletin boards and distributed to employees, and
3. Distribution of the company's policy regarding the use of prohibited drugs to all new employees. The policy shall be displayed in prominent places throughout the company (i.e., employee bulletin board, break room, locker room).

B. Supervisor Training.

1. Supervisory personnel responsible for those employees covered under Part 199 will receive training under the anti-drug plan. The training shall include at least one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. This training shall be for supervisors who may determine whether an employee must be drug tested for reasonable cause.

XIII. CONFIDENTIALITY AND RELEASE OF INFORMATION (PART 40 – SUBPART P)

A. General Confidentiality Rule for Drug and Alcohol Test Information (§40.321) – Except as otherwise provided in 49 CFR Part 40 the service agent or company participating in the DOT drug or alcohol testing process is prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

1. A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
2. "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases", in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

B. Criteria for Program Participant's Release of Drug or Alcohol Test Information in Connection With Legal Proceedings (§40.323).

1. The company may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
 - a. These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the company), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
 - b. These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The company is authorized to respond to the court's order to produce the records.
2. In such a proceeding the company may release the information to the decision-maker in the proceeding (e.g., the court in a lawsuit). The company may release the information only with a binding stipulation that the decision-maker to whom it is released will make it available only to parties to the proceeding.

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3. If a service agent receives a company request for its employee's drug or alcohol testing information from the service agent to use in a legal proceeding as authorized in paragraph B.1. of this section (e.g., the laboratory's data package) the service agent must provide the requested information to the company.
4. The company or service agent must immediately notify the employee in writing of any information they release under this section.

C. MRO Procedures Regarding Release of Medical Information Gathered in Verification Process (§40.327).

1. The MRO must, except as provided in paragraph (3) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if the MRO determines in their reasonable medical judgment that:
 - a. The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
 - b. The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.
2. The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see §40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
3. If the law of a foreign country (e.g., Canada) prohibits the MRO from providing medical information to the employer, you may comply with the prohibition.

D. Information Laboratories, MROs, and Other Service Agents Must Release to Employees (§40.329).

1. The MRO or service agent must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. The MRO or service agent may charge no more than the cost of preparation and reproduction for copies of these records.
2. The laboratory must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). The laboratory may charge no more than the cost of preparation and reproduction for copies of these records.
3. The SAP must make available to an employee, on request, a copy of all SAP reports (see §40.311).

E. Additional Parties That Companies and Service Agents Must Release Information (§40.331) – The company or service agent must release information under the following circumstances:

1. If the company or service agent receives a specific written consent from an employee authorizing the release of information about the employee's drug or alcohol tests to an identified person, the employer or service agent must provide the information to the identified person. For example, as a company, when you receive a written request from a former employee to provide information to a subsequent company, the company or service agent must do so. In providing the information, the company or service agent must comply with the terms of the employee's consent.
2. The company must, upon request of DOT agency representatives, provide the following:

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- a. Access to the company facilities used for 49 CFR Part 40 and DOT agency drug and alcohol program functions.
 - b. All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations.
3. The service agent must, upon request of DOT agency representatives, provide the following:
- a. Access to the service agent's facilities used for 49 CFT Part 40 and all DOT agency drug and alcohol program functions.
 - b. All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies and statements that are required by 49 CFR Part 40 and DOT agency regulations.
4. If requested by the National Transportation Safety Board as part of an accident investigation, the service agent must provide information concerning post-accident tests administered after the accident.
5. If requested by a Federal, state or local safety agency with regulatory authority over the company, the company or service agent must provide drug and alcohol test records concerning the employee.
6. Except as otherwise provided in 49 CFR Part 40, the laboratory must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. If a party seeks a court order directing the release of a specimen or part of a specimen contrary to any provision of 49 CFR Part 40, the laboratory must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of §40.13. The requirement of 49 CFR Part 40 does not require the laboratory to disobey a court order, however.

F. Records That are Maintained By the Company (§40.333).

1. The company must keep the following records for the following periods of time:
 - a. The company must keep the following records for five years:
 - (1) Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - (2) Records of employee verified positive drug test results;
 - (3) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - (4) SAP reports; and
 - (5) All follow-up tests and schedules for follow-up tests.
 - b. The company must keep records for three years of information obtained from previous employers under §40.25 concerning drug and alcohol test results of employees.
 - c. The company must keep records of the inspection, maintenance, and calibration of EBTs for two years.

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- d. The company must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.
2. The company does not have to keep records related to a program requirement that does not apply to you (e.g., a maritime company who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
3. The company must maintain the records in a location with controlled access.
4. A service agent may maintain these records for the company. However, the company must ensure that the service agent can produce these records at the company's principal place of business in the time required by the DOT agency. For example, as a motor carrier, when and FMCSA inspector requests your records, the company must ensure that the service agent can provide them within two business days.
5. The company may store records electronically, where permitted by 49 CFR Part 40. The company must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, the company must convert them to printed documentation in a rapid and readily auditable manner at the request of DOT agency personnel.

XIV. RECORD-KEEPING PROCEDURES (§199.117)

A. General.

1. The DPM (or designee) shall maintain a locked file system that will contain drug test results. This file shall be maintained as confidential. Employee files shall be handled on strict "need to know" basis.
2. Drug test results shall not be included in personnel files. Information regarding an individual's drug testing result or rehabilitation may be released only upon written consent of the individual, except:
 - a. Such information must be released regardless of consent to RSPA or other government agency as a part of an accident investigation;
 - b. Such information may be disclosed regardless of consent in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a verified positive drug test.
3. Information regarding an individual's drug testing results or rehabilitation must be released upon the written consent of the individual and as provided by DOT Procedures.

B. Statistical Data.

Statistical data related to drug testing and rehabilitation that is non name-specified and training records may be released to RSPA or other governmental agency upon request.

C. Record Retention. The records that must be maintained are:

1. Records that demonstrate the collection process conforms to 49 CFR Part 40 shall be retained for a 3-year period.
2. Employee drug test results that show positive and test type (pre-employment test, random test, post-accident test, or post-rehabilitation test), and records that demonstrate rehabilitation (including the MRO's determination). These records shall be retained for a 5-year period and must include the following information.

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- a. Job classification and functions of employee.
 - b. Prohibited drug(s) used.
 - c. Disposition of employee (i.e., rehab, suspension, termination, etc.)
3. Employee drug tests that demonstrate negative results shall be retained for a period of 1 year.
 4. A record indicating the total number of employees tested and the results of tests separated into categories shall be retained for a 5-year period.
 5. Training records confirming that supervisors and employees have been trained as required under §199.113, and copies of training material used shall be retained for a 3-year period.
 6. All drug-testing records shall be maintained by the drug program manager or designated company representative under lock and key.

D. Management Information System (MIS) Requirements (§199.119).

1. Each large pipeline operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at 40.25 and Appendix H to Part 40), not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.
2. Each report, required under this section shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration. The operators may submit a paper report or data electronically using the version of the MIS form provided by DOT.
3. To calculate the total number of covered employees eligible for random testing throughout the year, as an operator, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random testing pool. If an employer is conducting random testing more than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis.
4. As a company, you may use a service agent (e.g., C/TPA) to perform random selections for your company; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for the industry and that only covered employees are in the random testing pool.
5. Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.
6. A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR Part 40) may prepare the MIS report on behalf of the operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness.

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7. Specific pipeline covered employee information will be maintained to include the following elements:

- Company name, address, name of certifying official, e-mail address (if applicable), signature, telephone number, date certified, prepared by (if different) and consortium/TPA name and telephone number.
- Check the appropriate DOT agency for which the reporting is being submitted.
- Covered Employees: (A) Enter the total number of Safety-sensitive Employees in all employee categories and (B) enter the total number of employee categories.
- Enter "Employee Category" and "Total Number of Employees in this Category".
- Total Number of Test Results (Should equal the sum of columns 2,3,9,10,11, and 12) for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Verified Negative Results for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Verified Positive Results – For One or More Drugs for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Positive Tests for Marijuana for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Positive Tests for Cocaine for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Positive Tests for PCP for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Positive Tests for Opiates for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Positive Tests for Amphetamines for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Refusal Results for Adulterated for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Refusal Results for Substituted for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Refusal Results for "Shy Bladder" With No Medical Explanation for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Refusal Results for Other Refusals With No Medical Explanation for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Enter Number of Refusal Results for Cancelled Results for Pre-employment, Random, Post-Accident, Reasonable Suspicion/Cause, Return-to-Duty and Follow-up.
- Number of specimens collected by type of test (pre-employment, random, reasonable cause/suspicion, post-accident).
- Number of positives verified by MRO by type of test & controlled substance.
- Number of employee action(s) taken following verified positive(s), by type of action(s).
- Number of negatives verified by MRO by type of test.
- Number of employees with test verified positive by MRO for multiple controlled substances.

8. The company shall prepare and submit to the appropriate pipeline operator and/or designated agent for contractor monitoring the proper statistical data report (as directed by the pipeline operator) twice a year. The first report shall cover the 1st and 2nd quarters of the company's testing program for the current calendar year and shall be due no later than 30 days after the end of the 2nd quarter (June 30). The second report shall cover the 3rd and 4th quarters of the company's testing program and shall be due no later than 30 days after the end of the 4th quarter (January 30 of the calendar year).

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XV. CONTRACTOR/SUB-CONTRACTOR MONITORING (§199.115)

A. General. The contractor/sub-contractor company will include a clause in the contracts that drug testing, education, and training may be addressed by the contractor/sub-contractor in accordance with Part 199 and Part 40 for covered functions. The company shall be responsible for ensuring compliance with the provisions of Part 199 and 40.

B. Records and access.

1. Contractor/sub-contractor shall retain copies of appropriate drug testing records as required by 49 CFR Part 199 and Part 40.
2. The records and access to the contractor/sub-contractor's property shall be readily accessible for inspection by the pipeline operator, contractor, RSPA, and representatives of those state agencies under which jurisdiction the company operates.

C. Contractor/Sub-Contractor Coverage.

1. Confirmation of contractor/sub-contractor compliance/monitoring – Specific guidance on how to develop an effective contractor/sub-contractor compliance and monitoring program are outlined herein.
2. The company can, as an alternative to the above guidance, provide coverage for the contractor/sub-contractor employees by including them in the company's drug testing program for the duration of the contract or work project. When contractor employees are covered under the company's anti-drug plan, the contractor/sub-contractor shall ensure that their employees comply with all the provisions contained in the company's drug plan, unless some provisions for exemptions are authorized.

D. Procedures for Determining Compliance.

1. Qualifying Potential Contractor(s)/Sub-Contractor. Qualifications of the potential contractor/sub-contractor as it pertains to drug testing policies/procedures is assured by requesting the potential contractor/sub-contractor to submit a copy of its drug plan for review and compliance with RSPA/DOT regulations. After review of the drug plan is completed, written correspondence to the contractor/sub-contractor will advise it whether or not the drug plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor/sub-contractor plan shall be completed utilizing the criteria established in the RSPA Anti-Drug Plan Inspection form. Addendum's made to the contractor's/sub-contractor's plan shall be attached to the previously submitted drug plan. Upon approval of the addendum, a letter of acceptance is then sent to the contractor/sub-contractor. The contractor/sub-contractor is now eligible to bid on company contract work that would be covered under Parts 199 and 40.
2. Monitoring Contractor/Sub-Contractor's Compliance. The contractor/sub-contractor may be required to provide information on their employees who will perform covered functions for the operator. This information may include the name and job title of its employees who will perform any work or functions covered by Part 199 under that contract. A list of each contractor's sub-contractor's covered employees may be distributed to appropriate company field management personnel and job sites.
3. Statistical Submission. All contractors/sub-contractors will be required to submit drug testing statistical information on a periodical basis that may be based on the duration of the contract. Typically this requirement will be conducted on a semi-annual basis. The company may require a more frequent schedule for submission of data should they determine a need for such statistics.
4. Statistical Record Retention. The company shall maintain a complete file on each contractor's/sub-contractor's statistical drug testing data reports. The company shall make available these reports when

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requested by the RSPA Administrator, designated representative, or representatives of those state agencies under which jurisdiction the company operates.

5. Access to Records/Property. The company, contractor/sub-contractor will allow access to property and records by the operator, the Administrator, contractor, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of the regulations.
6. Subcontractor Not in Compliance: Ramifications for subcontractors whose personnel test verified positive for drug use while working for the company or who do not have a drug testing program in place which complies with 49 CFR 199 and 40, and who have supplied the company with an affidavit to the contrary are:
 - a. If an employee of a subcontractor shall cause the company to incur any liability whatsoever by reason of that employee's drug use, the subcontractor shall indemnify the company for any damages, fees, fines, charges, penalties or costs the company incurs by reason of the employee's drug use, including, but not limited to, civil or criminal fines, penalties or damages, whether special, consequential or punitive.
 - b. Each subcontractor shall agree, as a term of its contract with the company, that it shall indemnify and hold the company harmless from any claim whatsoever which may arise against the company by reason of the drug use of one of the subcontractor's employees or by subcontractor's failure to implement a drug testing program in compliance with 49 CFR 199 and 40.
 - c. The company shall take into consideration the amount of drug use prevalent among the subcontractor's employees when determining whether or not to make use of that particular subcontractor for future projects and may delete such subcontractor from its approved list.

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**APPENDIX A
CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)**

Name:
Address:
Phone Number:

NONE

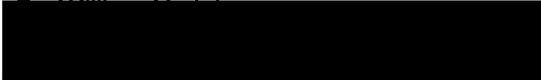
**DRUG PROGRAM MANAGER (DPM) OR DESIGNATED EMPLOYER
REPRESENTATIVE (DER)**

Name:
Address:
Phone Number:



MEDICAL REVIEW OFFICER (MRO)

Name:
Address:
Phone Number:



SUBSTANCE ABUSE MENTAL HEALTH LABORATORY (SAMHSA)

Name:
Address:
Phone Number:

Quest Diagnostics, Inc.
3175 Presidential Dr., Atlanta, Ga. 30340
800-877-7484

COLLECTION SITE(S)

Name:
Address:
Phone Number:

Industrial Medical Clinic
1124 7th St., Morgan City, La. 70380
985-384-1562

AFTER HOURS:

Teche Regional Medical Center
1125 Marguerite St., Morgan City, La. 70380
985-380-4439

EMPLOYEE ASSISTANCE PROGRAM (EAP)

Name:
Address:
Phone Number:

Fairview Treatment Center
1101 Southeast Blvd. (Bayou Vista), Morgan City, La. 70380
985-395-4525

SUBSTANCE ABUSE PROFESSIONAL (SAP)

Name:
Address:
Phone Number:



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APPENDIX B

EMPLOYEE/SUPERVISORY POSITIONS
SUBJECT TO DRUG TESTING
(JOB CLASSIFICATION TITLES)

***SUPERVISORY POSITIONS SUBJECT TO DRUG TRAINING (60 MINUTES)**

Employee Titles

Supervisory Titles

Equipment Operators

Foreman

Welders

Manager

Roustabouts

Construction Supervisor

Laborers

Superintendent

Mechanics

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APPENDIX C

URINE COLLECTION PERSONNEL & COLLECTION SITES, FORMS, EQUIPMENT & SUPPLIES USED IN DOT URINE COLLECTIONS – 49 CFR PART 40 – SUBPART C, D, & E

A. Urine Collection Personnel Requirements – 49 CFR Part 40 – Subpart C

1. Personnel Who May Collect Urine Specimens for DOT Drug Testing (§40.31).

- a. Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
- b. A collector must meet training requirements of this appendix (§40.33).
- c. An immediate supervisor of an employee being testing, may not act as the collector when that employee is tested, unless no other collector is available and the supervisor is permitted to do so under DOT agency drug and alcohol regulations.
- d. A person must not act as the collector for the employee being tested if he/she works for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

2. Training Requirements That Collectors Must Meet (§40.33) – To be permitted to act as a collector in the DOT drug-testing program, each collector must meet each of the requirements of this section:

- a. Basic information. The collector must be knowledgeable about this part, the current "DOT Urine Specimen Collection Procedures Guidelines", and DOT agency regulations applicable to the companies for whom the collector performs collections, and the collector must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC.
- b. Qualification training. The collector must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
 - (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
 - (2) "Problem" collections (e.g., situations like "shy bladder" and attempts to tamper with a specimen);
 - (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
 - (4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;
- c. Initial Proficiency Demonstration. Following the completion of the qualification training under paragraph 2.b. of this section, the collector must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.
 - (1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenarios, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

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- (2) Another person must monitor and evaluate the performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free". This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by –
- (a) Regularly conducting DOT drug test collections for a period of at least a year;
 - (b) Conducting collector training under this part for a year; or
 - (c) Successfully completing a "train the trainer" course.
- d. Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration the collector must meet:
- (1) If you became a collector before August 1, 2001, and have already met the requirements of paragraphs 2.b. and 2.c. of this section, the collector does not have to meet them again.
 - (2) If you became a collector before August 1, 2001, and have yet to meet the requirements of paragraphs 2.b. and 2.c. of this section, the collector must do so no later than January 31, 2003.
 - (3) If you became a collector on or before August 1, 2001, the collector must meet the requirements of paragraphs 2.b. and 2.c. of this section before performing collector functions.
- e. Refresher training. No less frequently than every five years from the date on which the collector's satisfactorily completion of the requirements of paragraphs 2.b. and 2.c. of this section, the collector must complete refresher training that meets all the requirements of paragraphs 2.b. and 2.c. of this section.
- f. Error Correction Training. If the collector makes a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), the collector must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retaining.
- (1) Error correction training must be provided and the collector's proficiency documented in writing by a person who meets the requirements of paragraph 2.c.(2) of this section.
 - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
 - (3) As part of the error correction training, the collector must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which the collector's error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were "error-free."
- g. Documentation. The collector must maintain documentation showing that the collector currently meets all requirements of this section. The collector must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.
3. **Information provided by the DER to collectors (§40.35)** – The employer must provide to collectors the name and telephone number of the appropriate DER and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

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4. **Other information on the role of collectors may be found (§40.37)** – The collector can find other information on the role and functions of collectors in the following sections of the Part regulations:

§40.3 – Definition.

§40.43 – Steps to prepare and secure collection sites.

§40.45—40.47 – Use of CCF.

§40.49—40.51 – Use of collection kit and shipping materials.

§40.61—40.63 – Preliminary steps in collections.

§40.65 – Role in checking specimens.

§40.67 – Role in directly observed collections.

§40.69 – Role in monitored collections.

§40.71 – Role in split specimen collections.

§40.73 – Chain of custody completion and finishing the collection process.

§40.103 – Processing blind specimens.

§40.191 – Action in case of refusals to take test.

§40.193 – Action in “shy bladder” situations.

§40.199—40.205 – Collector errors in tests, effects, and means of correction.

B. Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections – 49 CFR Part 40 – Subpart D

1. Criteria for Urine Collection and Where They May Be Collected (§40.41).

- a. A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- b. The collector operating a collection site must ensure that it meets the security requirements of §40.43.
- c. The collector operating a collection site must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.
- d. The collection site must include a facility for urination described in either paragraph e. or paragraph f. of this section.
- e. The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.
 - (1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.
 - (2) The collection site must have a source of water for washing hands that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and providing moist towelettes outside the closed room.
- f. The second type of facility for urination that a collection site may include is a multi-stall restroom.
 - (1) Such a site must provide substantial visual privacy (e.g., a toilet stall with a partial-length door) and meet all other applicable requirements of this section.
 - (2) If a multi-stall restroom is used, either –

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- (a) Secure all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or
 - (b) Conduct all collections in the facility as monitored collections (see §40.69 for procedures). This is the only circumstance in which you, the collection site, may conduct a monitored collection.
 - (3) No one but the employee may be present in the multi-stall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.
 - g. A collection site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.
- 2. Steps Operators of Collection Sites Must Take to Protect Security and Integrity of Urine Collections (§40.43).**
- a. Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
 - b. The collector must do the following before each collection to deter tampering with specimens:
 - (1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);
 - (2) Ensure that the water in the toilet is blue;
 - (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
 - (4) Inspect the site to ensure that no foreign or unauthorized substances are present;
 - (5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;
 - (6) Ensure that undetected access (e.g., through a door not in view) is not possible;
 - (7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
 - (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.
 - c. If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, the collector must also ensure before the collection that:
 - (1) Access to collection materials and specimens is effectively restricted; and
 - (2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
 - d. The collector must take the following additional steps to ensure security during the collection process:
 - (1) To avoid distraction that could compromise security, the collector is limited to conducting a collection for only one employee at a time. However, during the time one employee is in the

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period for drinking fluids in a "shy bladder" situation (see §40.193(b)), the collector may conduct a collection for another employee.

- (2) To the greatest extent the collector can, keep an employee's collection container within view of both the collector and the employee between the time the employee has urinated and the specimen is sealed.
 - (3) Ensure the collector is the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.
 - (4) In the time between when the employee gives the collector the specimen and when the collector seals the specimen, remain within the collection site.
 - (5) Maintain personal control over each specimen and CCF throughout the collection process.
- e. The collector operating a collection site must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.
- (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph.
 - (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
 - (3) The collector must ensure that all authorized persons are under the supervision of a collection at all times when permitted into the site.
 - (4) The company or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- f. When operating a collection site, you must minimize the number of person handling specimens.

3. Forms to be Used to Document a DOT Urine Collection (§40.45).

- a. The Federal Drug Testing Custody and Control Form (CCF) must be used to document every urine collection required by the DOT drug-testing program. The CCF must be a five-part carbonless manifold form.
- b. The company must not use a non-Federal form or an expired Federal form to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, the company must not provide copies of an expired Federal form to these participants. The company must affirmatively notify these participants that they must not use an expired form (e.g., that beginning August 1, 2001, they may not use the old 7-part Federal CCF for DOT urine collections).
- c. As a participant in the DOT drug-testing program, the company/collector is not permitted to modify or revise the CCF except as follows:
 - (1) The company/collector may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.

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- (2) The CCF must include names, addresses, phone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for a company, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required. The company may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.
 - (3) The company may add the name of the DOT agency under whose authority the test occurred as part of the employer information.
 - (4) The collector may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.
 - d. Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.
 - e. The company may use an equivalent foreign-language version of the CCF approved by ODAPC. The company may use such a non-English language form only in a situation where both the employee and the collector understand and can use the form in that language.
- 4. Company's Use of CCF for non-Federal Collections or non-Federal Forms for DOT Collections (§40.47).**
- a. The company is prohibited from using the CCF for non-Federal urine collections. The company is also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects the company to enforcement action under DOT agency regulations.
 - b. In the rare case where the collection, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.
 - c. The use of the non-Federal form is a "correctable flaw." The MRO, can correct the problem by following the procedures of §40.205(b)(2).
- 5. Materials Used to Collect Urine Specimens (§40.49) – For each DOT drug test, the company must use a collection kit meeting the requirements of 49 CFR Part 40.**
- 6. Materials Are Used to Send Urine Specimens to the Laboratory (§40.51).**
- a. Except as provided in paragraph (b) of this section, the collector must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.
 - b. The collector is not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

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C. Urine Specimen Collections – 49 CFR Part 40 – Subpart E

1. Preliminary Steps in the Collection Process (§40.61) – The collector must take the following steps before actually beginning a collection:

- a. When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test (see §40.191(a)(1)).
- b. Ensure that, when the employee enters the collection site, the collector begins the testing process without undue delay, because an authorized company or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT alcohol test, the collector must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

Example to Paragraph (b)(1): An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

- (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.
- (3) The collector must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.
- (4) If, as an employee, you normally void through self-catheterization, and decline to do so, this constitutes a refusal to test.

- c. Require the employee to provide positive identification. The collector must see a photo ID issued by the company (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). The collector may not accept faxes or photocopies of identification. Positive identification by a company representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
- d. If the employee asks, the collector must provide his/her identification to the employee. The collector's identification must include name and employer's name, but does not have to include the collector's picture, address, or telephone number.

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- e. Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.
 - f. Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. The collector must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with the collector or in a mutually agreeable location. The collector must advise the employee that failure to comply with these directions constitutes a refusal to test.
 - (1) If the employee asks for a receipt for any belongings left with the collector, the collector must provide one.
 - (2) The collector must allow the employee to keep his or her wallet.
 - (3) The collector must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).
 - (4) The collector must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. The employee must allow the collector to make this observation.
 - (5) If, while performing the duties under paragraph (f)(4) of this section, the collector finds any material that could be used to tamper with a specimen, the collector must:
 - a. Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, conduct a directly observed collection using direct observation procedures (see §40.67); or
 - b. Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.
 - g. The collector must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medication on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)
- 2. Steps Collector Must Take in the Collection Process Before the Employee Provides a Urine Specimen (§40.63)** – The collector must take the following steps before the employee provides the urine specimen:
- a. Complete Step 1 of the CCF.
 - b. Instruct the employee to wash and dry his or her hands at this time. Tell the employee not to wash his or her hands again until after delivering the specimen to you. Do not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.
 - c. Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either the collector or the employee, with both present, must unwrap or break the seal of the collection container. The collector must not unwrap or break the seal on any specimen bottle at this time. The collector must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.

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d. Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to the collector with the specimen as soon as the employee has completed the void.

(1) Except in the case of an observed or a monitored collection (see §40.67 and 40.69), neither the collector nor anyone else may go into the room with the employee.

(2) The collector may set a reasonable time limit for voiding.

e. The collector must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If the collector detects such conduct, the collector must require that a collection take place immediately under direct observation (see §40.67) and note the conduct and the fact that the collection was observed in the "Remarks" line of the CCF (Step 2). The collector must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

3. **Collector Must Check for the Following Items When an Employee Presents a Specimen (§40.65) –**
The collector must check the following when the employee give the collection container to the collector:

a. Sufficiency of specimen. The collector must check to ensure that the specimen contains at least 45 mL of urine.

(1) If it does not, the collector must follow "shy bladder" procedures (see §40.193(b)).

(2) When the collector follows "shy bladder" procedures, the collector must discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.

(3) The collector should never combine urine collected from separate voids to create a specimen.

(4) The collector must discard any excess urine.

b. Temperature. The collector must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.

(1) The acceptable temperature range is 32-38°C/90-100°F.

(2) The collector must determine the temperature of the specimen by reading the temperature strip attached to the collection container.

(3) If the specimen temperature is within the acceptable range, the collector must mark the "Yes" box on the CCF (Step 2).

(4) If the specimen temperature is outside the acceptable range, the collector must mark the "No" box and enter in the "Remarks" line (Step 2) his/her findings about the temperature.

(5) If the specimen temperature is outside the acceptable range, the collector must immediately conduct a new collection using direct observation procedures (see §40.67).

(6) In a case where a specimen is collected under direct observation because of the temperature being out of range, the collector must process both the original specimen and the specimen collected using direct observation, and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is

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out of range. The collector must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(7) In a case where the employee refuses to provide another specimen (see §40.191(a)(3)) or refuses to provide another specimen under direct observation (see §40.191(a)(4)), the collector must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

c. Signs of tampering. The collector must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has tampered with the specimen (e.g., blue dye in the specimen, excessive foaming when shaken, smell of bleach), the collector must immediately conduct a new collection using direct observation procedures (see §40.67).

(2) In a case where a specimen is collected under direct observation because of showing signs of tampering, the collector must process both the original specimen and the specimen collected, using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. The collector must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(3) In a case where the employee refuses to provide a specimen under the direct observation (see §40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then the collector must notify the DER as soon as possible.

4. When and How a Direct Observation Collection is Conducted (§40.67).

a. The company must direct an immediate collection under direct observation with no advance notice to the employee, if:

(a) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to the company that there was not an adequate medical explanation for the result;

(b) The MRO reported to you that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed; or

(c) The laboratory reported to the MRO that the specimen was substituted with a creatinine concentration greater than or equal to 2 mg/dL and less than or equal to 5 mg/dL and the MRO reported the specimen to the company as negative and dilute (see §§ 40.145(a)(1) and 40.197).

b. The company may direct a collection under direct observation of an employee if the drug test is a return-to-duty or a follow-up test.

c. The collector must immediately conduct a collection under direct observation if:

(1) The collector is directed by the DER to do so (See paragraph 4.a. and 4.b. of this section); or

(2) The collector observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (See §40.61(f)(5)(i) and 40.63(e)); or

(3) The temperature on the original specimen was out of range (see §40.65(b)(5)); or

(4) The original specimen appeared to have been tampered with (see §40.65©(1)).

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- d. The company must:
- (1) Explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.
 - (2) Explain to the employee the reason, if known, under this part for a directly observed collection under 4.c.(1) through 4.c.(3) of this section.
- e. The collector must complete a new CCF for the directly observed collection.
- (1) The collector must mark the "reason for test" block (Step 1) the same as for the first collection.
 - (2) The collector must check the "Observed, (Enter Remark)" box and enter the reason (see §40.67(b)) in the "Remarks" line (Step 2).
- g. In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (e.g., collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.
- h. The collector must ensure that the observer is the same gender as the employee. The collector never permits an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.
- i. The collector, if someone else is to observe the collection (e.g., in order to ensure a same gender observer) must verbally instruct that person to follow procedures at paragraphs 4.i. and 4.j. of this section. If the collector is the observer, the collector must follow these procedures.
- j. The observer must watch the employee urinate into the specimen container. Specifically, the observer is to watch the urine go from the employee's body into the collection container.
- k. The observer must not take the collection container from the employee, but the observer must observe the specimen as the employee takes it to the collector.
- l. The collector, when someone else has acted as the observer, must include the observer's name in the "Remarks" line of the CCF (Step 2).
- m. If the employee declines to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.
- 5. Criteria for Conducting a Monitored Collection (§40.69).**
- a. The collector must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.
 - b. The collector must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place. The monitor can be a different person from the collector and need not be a qualified collector.
 - c. The collector must, if someone else is to monitor the collection (e.g., in order to ensure a same gender monitor), verbally instruct that person to follow procedures at paragraphs (d) and (e) of this section. If the collector is also the observer, then he/she must follow these procedures.

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- d. The monitor must not watch the employee urinate into the collection container. If he/she hears sounds or makes other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation (see §40.63(e), 40.65©, and 40.67(b)).
- e. The monitor must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.
- f. As the collector, when someone else has acted as the monitor, the collector must note that person's name in the "Remarks" line of the CCF (Step 2).
- g. If the employee being tested declines to permit a collection authorized under this section to be monitored, it is a refusal to test.

6. Collector Preparation of a Urine Specimen (§40.71).

- a. All collections under DOT agency drug testing regulations must be split specimen collections.
- b. The collector must take the following steps, in order, after the employee brings the urine specimen to the collector. The collector must take these steps in the presence of the employee.
 - (1) Check the box on the CCF (Step 2) indicating that this was a split specimen collection.
 - (2) The collector, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.
 - (3) The collector, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.
 - (4) The collector, not the employee, must place and secure (i.e., tighten or snap) the lids/caps on the bottles.
 - (5) The collector, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.
 - (6) The collector, not the employee, must then write the date on the tamper-evident bottle seals.
 - (7) The collector must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimen he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.
 - (8) The collector must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: the collector may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither the collector nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

7. Completion of the Collection Process (§40.73).

- a. The collector must do the following things to complete the collection process. The collector must complete the steps called for in paragraphs (a)(1) through (a)(7) of this section in the employee's presence.

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- (1) Direct the employee to read and sign the certification statement on Copy 2 (Step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, you must note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.
 - (2) Complete the chain of custody on the CCF (Step 5) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory.
 - (3) Ensure that all copies of the CCF are legible and complete.
 - (4) Remove Copy 5 of the CCF and give it to the employee.
 - (5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.
 - (6) Secure both pouches of the plastic bag.
 - (7) Advise the employee that he or she may leave the collection site.
 - (8) To prepare the sealed plastic bag containing the specimens and CCF for shipment, you must:
 - (a) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)
 - (b) Seal the container as appropriate.
 - (c) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.
 - (d) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.
- b. The collector or collection site must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case, within 24 hours or during the next business day.
- 8. DOT Standards for Urine Collection Kits (Appendix A 49 CFR Part 40) – The Collection Kit Contents:**
- a. Collection Container
 - (1) Single-use container, made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
 - (2) Must have graduated volume markings clearly noting levels of 45 mL and above.
 - (3) Must have a temperature strip providing graduated temperature readings 32-38°C/90-100°F, that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable

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provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.

- (4) Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peelable, sealed lid or other easily visible tamper-evident system.
- (5) May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.

b. Plastic Specimen Bottles

- (1) Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles, provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
- (2) Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.
- (3) Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.
- (4) Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
- (5) Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container, or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peelable, sealed lid or other easily visible tamper-evident system.
- (6) Plastic material must be leach resistant.

c. Leak-resistant Plastic Bag

- (1) Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
- (2) The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

d. Absorbent material – Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

e. Shipping Container

- (1) Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, or plastic container).
- (2) May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.
- (3) A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

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SPLIT SPECIMEN PROCEDURES

D. Split Specimen PROCEDURES – 49 CFR Part 40 – Subpart H

1. Employee Requirements for Requesting a Test of a Split Specimen (§40.171).

- a. The employee, when the MRO has notified him/her that they have a verified positive drug test or refusal to test because of adulteration or substitution, has 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If the employee makes this request to the MRO within 72 hours, the employee triggers the requirements of this section for a test of the split specimen.
- b. Employee Request Procedures:
 - (1) If the employee has not requested a test of the split specimen within 72 hours, the employee may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test results, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.
 - (2) If the MRO concludes from the employee's information that there was a legitimate reason for the employee's failure to contact you within 72 hours, the MRO must direct that the test of the split specimen take place, just as the MRO would when there is a timely request.
- c. When the employee makes a timely request for a test of the split specimen under paragraphs 1.a. and 1.b. of this section, the MRO must immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. The MRO must also document the date and time of the employee's request.

2. Responsibility for Payment for The Test of A Split Specimen (§40.173).

- a. The company is responsible for making sure (e.g., by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §40.175—40.185 in a timely manner, once the employee has made a timely request for a test of the split specimen.
- b. The company must not condition compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse you for costs of testing. For example, if the company asks the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, the company must ensure that the test takes place in a timely manner, even though this means that you pay for it.
- c. The company may seek payment or reimbursement of all or part of the cost of the split specimen from the employee (e.g., through your written company policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the company ensures that the testing is conducted as required and the results released appropriately.

3. What Steps Does the First Laboratory Take With a Split Specimen (§40.175).

- a. The laboratory at which the primary and split specimen first arrived must check to see whether the split specimen is available for testing.
- b. If the split specimen is unavailable or appears insufficient, the laboratory must then do the following:

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- (1) Continue the testing process for the primary specimen as the laboratory would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.
 - (2) Upon receiving a letter from the MRO instructing the laboratory to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information about the cause of the unavailability.
 - c. The laboratory that tested the primary specimen is not authorized to open the split specimen under any circumstances (except when the split specimen is re-designated as provided in §40.83).
 - d. When the laboratory receives written notice from the MRO instructing the laboratory to send the split specimen to another HHS-certified laboratory, the laboratory must forward the following items to the second laboratory.
 - (1) The split specimen in its original specimen bottle, with the seal intact;
 - (2) A copy of the MRO's written request; and
 - (3) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.
 - e. The laboratory must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not, however, cause a fatal flaw.
 - f. This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split specimen. That decision is left to the parties involved.
- 4. Second Laboratory Procedures Regarding Split Specimen When Tested to Reconfirm the Presence of a Drug or Drug Metabolite (§40.177).**
- a. The laboratory testing the split specimen must test the split specimen for the drug(s)/drug metabolite(s) detected in the primary specimen.
 - b. The laboratory must conduct this test without regard to the cutoff concentrations of §40.87.
 - c. If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported positive in the primary specimen, the laboratory must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). The laboratory should conduct the same validity tests as the laboratory would conduct on a primary specimen set forth in §40.91.
 - d. In addition, if the test fails to reconfirm the presence of the drugs/drug metabolites or validity criteria that were reported in the primary specimen, the laboratory may transmit the specimen or an aliquot of it to another HHS-certified laboratory that will conduct another reconfirmation test.
- 5. Second Laboratory Procedures Regarding Split Specimen When Tested to Reconfirm An Adulterated Test Result (§40.179).**
- a. The laboratory testing the split specimen must test the split specimen for the adulterant detected in the primary specimen, using the criteria of §40.95 just as the laboratory would do for a primary specimen. The result of the primary specimen is reconfirmed if the split specimen meets these criteria.

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6. Second Laboratory Procedures Regarding Split Specimen When Tested to Reconfirm a Substituted Test Result (§40.181).

- a. The laboratory testing the split specimen must test the split specimen using the criteria of §40.93(b), just as the laboratory would do for a primary specimen. The result of the primary specimen is reconfirmed if the split specimen meets these criteria.

7. Information Laboratories May Report to MROs Regarding Split Specimen Results (§40.183).

- a. The laboratory responsible for testing the split specimen must report split specimen test results by checking the "Reconfirmed" box or the "Failed to Reconfirm" box (Step 5(b)) on Copy 1 of the CCF.
- b. If the laboratory checked the "Failed to Reconfirm" box, one of the following statements must be included (as appropriate) on the "Reason" line (Step 5(b)):

(1) "Drug(s)/Drug Metabolite(s) Not Detected."

(2) "Adulterant not found within criteria."

(3) "Specimen not consistent with substitution criteria (specify creatinine, specific gravity, or both)."

(4) "Specimen not available for testing."

- c. The laboratory's certifying scientist must enter his/her name, sign, and date the CCF.

8. Methods and Procedures the Laboratory Must Report for Split Specimen Results (§40.185).

- a. The laboratory testing the split specimen must report laboratory results directly, and only, to the MRO at his or her place of business. The laboratory must not report results to or through the DER or another service agent (e.g., a C/TPA).
- b. The laboratory must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF, which has been signed by the certifying scientist.
- c. The laboratory must transmit the laboratory result to the MRO immediately, preferably on the same day or next business day as the result is signed and released.

9. MRO Responsibility With Regard to Disposition of Split Specimen Laboratory Results (§40.187) –
The MRO must take the following actions when a laboratory reports the following results of split specimen tests:

a. Reconfirmed.

(1) In the case of a reconfirmed positive test for a drug or drug metabolite, report the reconfirmation to the DER and the employee.

(2) In the case of a reconfirmed adulterated or substituted result, report to the DEER and the employee that the specimen was adulterated or substituted, either of which constitutes a refusal to test. Therefore, "refusal to test" is the final result.

(3) In the case of a reconfirmed substituted result, in which the creatinine concentration for the primary specimen was less than 2 mg/dL and the creatinine concentration of the split specimen is between 2 and 5 mg/dL, inclusive, report the result to the company as "dilute" and instruct the company to conduct an immediate recollection under direct observation.

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- b. Failed to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected.
- (1) Report to the DER and the employee that both tests must be cancelled.
 - (2) Using the format in Appendix D to this part, inform ODAPC of the failure to reconfirm.
- c. Failed to Reconfirm: Adulteration or Substitution (as appropriate) Criteria Not Met.
- (1) Report to the DER and the employee that both tests must be cancelled.
 - (2) Using the format in Appendix D to this part, inform ODAPC of the failure to reconfirm.
- d. Failed to Reconfirm: Specimen not Available for Testing.
- (1) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.
 - (2) Direct the DER to ensure immediate collection of another specimen from the employee under direct observation, with no notice to the employee of this collection requirement until immediately before the collection.
 - (3) Using the format in paragraph 11 of this section (Appendix D 49 CFR Part 40), notify ODAPC of the failure to reconfirm.
- e. Failed to Reconfirm: Specimen Results Invalid.
- (1) Report to the DER and the employee that both tests must be cancelled and the reason for cancellation.
 - (2) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
 - (3) Using the format in Appendix D to this part, notify ODAPC of the failure to reconfirm.
- f. Failed to Reconfirm: Split Specimen Adulterated.
- (1) Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated.
 - (2) Follow the procedure of §40.145 to determine if there is a legitimate medical explanation for the laboratory finding of adulteration.
 - (3) If the MRO determines that there is a legitimate medical explanation for the adulterated test result, report to the DER and the employee that the test is cancelled. Using the format in Appendix D to this part, notify ODAPC of the result.
 - (4) If the MRO determines that there is not a legitimate medical explanation for the adulterated test result, take the following steps:
 - (a) Report the test to the DER and the employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen also is present in the primary specimen.

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- (b) Except that the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §40.153, 40.171, 40.173, 40.179, and 40.185.
- (c) The laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.
- (d) If the test of the primary specimen reconfirms the adulteration finding of the split specimen, the MRO must report the test result as a refusal as provided in Section §40.187(a)(2)
- (e) If the test of the primary specimen fails to reconfirm the adulteration finding of the split specimen, the MRO can cancel the test. Follow the procedures of paragraph (e) of this section in this situation.

- g. Enter your name, sign and date (Step 7) of Copy 2 of the CCF.
- h. Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, (see §40.163) to the employer and keep a copy for your records. Transmit the document as provided in §40.167.

10. Additional Information Concerning Split Specimens Can Be Found in This Regulation (§40.189).

You can find more information concerning split specimens in several sections of this part:

§40.3 – Definition.

§40.65 – Quantity of split specimen.

§40.67 – Directly observed test when split specimen is unavailable.

§40.71—40.73 – Collection process for split specimens.

§40.83 – Laboratory accessioning of split specimens.

§40.99 – Laboratory retention of split specimens.

§40.103 – Blind split specimens.

§40.153 – MRO notice to employees on test of split specimens.

§40.193 and 40.201 – MRO actions on insufficient or unavailable split specimens.

Appendix D to Part 40 – Report format for split specimen failure to reconfirm.

E. 49 CFR Part 40 – Report Format – Appendix D – Split Specimen Failure to Reconfirm.

Fax or mail to:

Department of Transportation
Office of Drug and Alcohol Policy and Compliance
400 7th Street, SW, Room 10403
Washington, DC 20590
(Fax) 202-366-3897

1. MRO name, address, phone number, and fax number.
2. Collection site name, address, and phone number.
3. Date of collection.
4. Specimen ID number.
5. Laboratory accession number.
6. Primary specimen laboratory name, address, and phone number.
7. Date result reported or certified by primary laboratory.
8. Split specimen laboratory name, address, and phone number.
9. Date split specimen result reported or certified by split specimen laboratory.

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10. Primary specimen results (e.g., name of drug, adulterant) in the primary specimen.
11. Reason for split specimen failure-to-reconfirm result (e.g., drug or adulterant not present, specimen invalid, split not collected, insufficient volume).
12. Actions taken by the MRO (e.g., notified employer of failure to reconfirm and requirement for recollection).
13. Additional information explaining the reason for cancellation.
14. Name of individual submitting the report (if not the MRO),

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**APPENDIX D
DRUG TESTING LABORATORY GUIDANCE**

A. Drug Testing Laboratories – 49 CFR Part 40 – Subpart H

1. Type of Laboratories That May Be Used For DOT Drug Testing (§40.81).

- a. A drug testing laboratory located in the U.S. is permitted to participate in DOT drug testing only if they are certified by HHS under the National Laboratory Certification Program (NLCP) for all testing required under this part.
- b. A drug testing laboratory located in Canada or Mexico which is not certified by HHS under the NLCP, may be permitted to participate in DOT drug testing only if:
 - (1) The DOT, based on a written recommendation from HHS, has approved the laboratory as meeting HHS laboratory certification standards or deemed the laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards for all testing required under this part; or
 - (2) The DOT, based on a written recommendation from HHS, has recognized a Canadian or Mexican certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the Canadian or Mexican certifying organization has certified your laboratory under those equivalent standards and procedures.
- c. A laboratory in the DOT drug testing program must comply with the requirements of this part. They must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.
- d. If DOT determines that the laboratory is in noncompliance with this part, they could be subject to PIE proceedings under Subpart R of this part. If the Department issues a PIE with respect to the laboratory, then they are ineligible to participate in the DOT drug testing program even if they continue to meet the requirements of paragraph a or b of this section.

2. Laboratories Processing of Income Specimens (§40.83) – The laboratory must do the following:

- a. The laboratory is authorized to receive only the laboratory copy of the CCF. The laboratory is not authorized to receive other copies of the CCF nor any copies of the alcohol testing form.
- b. The laboratory must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing urine drug specimens.
- c. The laboratory must inspect each specimen and CCF for the following "fatal flaws":
 - (1) The specimen ID numbers on the specimen bottle and the CCF do not match;
 - (2) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be re-designated (see paragraph (g) of this section);
 - (3) The collector's printed name and signature are omitted from the CCF; and
 - (4) There is an insufficient amount of urine in the primary bottle for analysis, unless the specimens can be re-designated (see paragraph (g) of this section).

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- d. When the laboratory finds a specimen meeting the criteria of paragraph © of this section, they must document the findings and stop the testing process. Report the result in accordance with §40.97(a)(3).
- e. The laboratory must inspect each CCF for the presence of the collector's signature on the certification statement in Step 4 of the CCF. Upon finding that the signature is omitted, document the flaw and continue the testing process.
 - (1) In such a case, the laboratory must retain the specimen for a minimum of 5 business days from the date on which the laboratory initiated action to correct the flaw.
 - (2) The laboratory must then attempt to correct the flaw by following the procedures of §40.205(b)(1).
 - (3) If the flaw is not corrected, report the result as rejected for testing in accordance with §40.97(a)(3).
- f. If the laboratory determines that the specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range, the laboratory must then attempt to correct the problem by following the procedures of §40.208.
 - (1) In such a case, the laboratory must continue efforts to correct the problem for five business days, before reporting the result.
 - (2) When the laboratory has obtained the correction, or five business days have elapsed, report the result in accordance with §40.97(a).
- g. If the laboratory determines that a CCF that fails to meet the requirements of §40.45(a) (e.g., a non-Federal form or an expired Federal form) was used for the collection, the laboratory must attempt to correct the use of the improper form by following the procedures of §40.205(b)(2).
 - (1) In such a case, the laboratory must retain the specimen for a minimum of 5 business days from the date on which the laboratory initiated action to correct the problem.
 - (2) During the period August 1 – October 31, 2002, the laboratory is not required to reject a test conducted on an expired Federal CCF because this problem is not corrected. Beginning November 1, 2001, if the problem(s) is not corrected, the laboratory must reject the test and report the result in accordance with §40.97(a)(3).
- h. If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, the laboratory must still test the primary specimen and follow appropriate procedures outlined in §40.175(b) regarding the unavailability of the split specimen for testing.
 - (1) The primary specimen and the split specimen can be re-designated (i.e., Bottle B is re-designated as Bottle A, and vice-versa) if:
 - (a) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or
 - (b) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or

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- (c) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or
- (d) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing.

(2) In situations outlined in paragraph 1.g. of this section, the laboratory shall mark through the "A" and write "B", then initial and date the change. A corresponding change shall be made to the other bottle by marking through the "B" and writing "A" and initialing and dating the change.

i. A notation shall be made on Copy 1 of the CCF (Step 5a) and on any laboratory internal chain of custody documents, as appropriate, for any fatal or correctable flaw.

3. Drugs That the Laboratories May Test For Under DOT (§40.85) – The laboratory must test for the following five drugs or classes of drugs in a DOT drug test. The laboratory must not test "DOT specimens" for any other drugs.

- a. Marijuana metabolites
- b. Cocaine metabolites
- c. Amphetamines
- d. Opiate metabolites
- e. Phencyclidine (PCP)

4. Cutoff Concentrations or Initial and Confirmation Tests (§40.87).

a. The laboratory must use the cutoff concentrations displayed in the following table for initial and confirmation drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL).

The table follows:

| Type of drug or metabolite | Initial Test | Confirmation Test |
|--|--------------|-------------------|
| (1) Marijuana metabolites..... | 50..... | 15 |
| Delta -9-tetrahydrocanna-binol-9-carboxylic acid (THC)..... | | 15 |
| (2) Cocaine metabolites (Benzoylcgoni)..... | 300..... | 150 |
| (3) Phencyclidine (PCP)..... | 25..... | 25 |
| (4) Amphetamines..... | 1000 | |
| Amphetamine..... | | 500 |
| Methamphetamine..... | | 500 |
| (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.) | | |
| (5) Opiate metabolites..... | 2000 | |
| Codeine..... | | 2000 |
| Morphine..... | | 2000 |
| 6-acetylmorphone (6-A)..... | | 10 |

(Test for 6-AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.)

- b. On an initial drug test, the laboratory must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, the laboratory must conduct a confirmation test.
- c. On a confirmation drug test, the laboratory must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

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d. The laboratory must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

5. Validity Testing and Requirements of Laboratories Required to Conduct Such Testing (§40.89).

a. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

b. The laboratory is authorized to conduct validity testing.

6. Types of Validity Tests That Laboratories Must Conduct on Primary Specimens (§40.91) – When the laboratory conducts validity testing under (§40.89, the laboratory must conduct it in accordance with the regulations of this section.

a. The laboratory must test each primary specimen for creatinine. The laboratory must also determine its specific gravity if you find that the creatinine concentration is less than 20 ng/mL.

b. The laboratory must measure the pH of each primary specimen.

c. The laboratory must test each primary specimen to determine if it contains substances that may be used to adulterate the specimen. The laboratory tests must have the capability of determining whether any substance identified in current HHS requirements or specimen validity guidance is present in the specimen.

d. If the laboratory suspects the presence of an interfering substance/adulterant that could make a test result invalid, but are unable to identify it (e.g., a new adulterant), the laboratory must, as the first laboratory, send the specimen to another HHS certified laboratory that has the capability of doing so.

e. If the laboratory identifies a substance in a specimen that appears to be an adulterant, but which is not listed in current HHS requirements or guidance, the laboratory must report the finding in writing to ODAPC and the Division of Workplace Programs, HHS, within three business days. The laboratory must also complete testing of the specimen for drugs, to the extent technically feasible.

f. The laboratory must conserve as much as possible of the specimen for possible future testing.

7. Criteria for Laboratories to Establish That a Specimen is Dilute or Substituted (§40.93).

a. The laboratory must consider the primary specimen to be dilute if the creatinine concentration is less than 20 mg/dL and the specific gravity is less than 1.003, unless the criteria for a substituted specimen are met.

b. The laboratory must consider the primary specimen to be substituted if the creatinine concentration is less than or equal to 5 ng/mL and the specific gravity is less than or equal to 1.001 or greater than or equal 1.020.

8. Criteria for Laboratories to Establish That a Specimen is Adulterated (§40.95).

a. The laboratory must consider the primary specimen to be adulterated if you determine that

(1) A substance that is not expected to be present in human urine is identified in the specimen;

(2) A substance that is expected to be present in human urine is identified at a concentration so high that it is not consistent with human urine; or

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(3) The physical characteristics of the specimen are outside the normal expected range for human urine.

b. In making the determination under paragraph (a) of this section, the laboratory apply the criteria in current HHS requirements or specimen validity guidance.

9. Laboratories Reporting Format and Information (§40.97).

a. The laboratory must report the results for each primary specimen tested as one or more of the following:

- (1) Negative;
- (2) Negative-dilute;
- (3) Rejected for testing, with remark(s);
- (4) Positive, with drug(s)/metabolite(s) noted;
- (5) Positive, with drug(s)/metabolite(s) noted-dilute;
- (6) Adulterated, with remark(s);
- (7) Substituted, with remark(s); or
- (8) Invalid result, with remark(s).

b. The laboratory must report laboratory results directly, and only, to the MRO at his or her place of business. The laboratory must not report results to or through the DER or a service agent (e.g., C/TPA).

(1) Negative results: lab must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF which has been signed by the certifying scientist, or they may provide the laboratory results report electronically (i.e., computer data file).

(a) If the laboratory elects to provide the laboratory results report, they must include the following elements, as a minimum, in the report format:

- (A) Laboratory name and address;
- (B) Employer's name (you may include I.D. or account number);
- (C) Medical review officer's name;
- (D) Specimen I.D. number.
- (E) Donor's SSN or employee I.D. number, if provided;
- (F) Reason for test, if provided;
- (G) Collector's name and telephone number;
- (H) Date of the collection;
- (I) Date received at the laboratory;
- (J) Date certifying scientist released the results;
- (K) Certifying scientist's name;
- (L) Results (e.g., positive, adulterated) as listed in paragraph 9.a. of this section; and
- (M) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.

(b) The laboratory results report may be released only after review and approval by the certifying scientist. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report may not contain information that does not appear on the CCF.

(c) The results report may be transmitted through any means that ensures accuracy and confidentiality. The laboratory, together with the MRO, must ensure that the information is

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adequately protected from unauthorized access or release, both during transmission and in storage.

- (2) Non-negative results: must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, the laboratory may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (b)(1)(a) and (b) of this section.
- c. In transmitting laboratory results to the MRO, the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax, the fax connection must have a fixed telephone number accessible only to authorized individuals.
- d. The laboratory must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.
- e. Quantitative Values:
- (1) The laboratory must provide quantitative values for confirmed positive drug and adulterated test results to the MRO when the MRO requests you to do so in writing. The MRO's request may either be a general request covering all such results you send to the MRO or a specific case-by-case request.
- (2) You must also provide to the MRO quantitative values for creatinine and specific gravity for all substituted test results when the result is above your detection limit. If the result is not above your detection limit, you must report "creatinine not detected" to the MRO. You must make these reports in all cases of substituted tests, without a request from the MRO.
- f. The laboratory must provide quantitative values for confirmed opiate results for morphine or codeine at 15,000 ng/mL, even if the MRO has not requested quantitative values for the test result.

10. Criteria for Laboratory Retention of Specimens After Testing (\$40.99).

- a. The laboratory testing the primary specimen must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.
- b. The laboratory must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.
- c. Within the one-year period, the MRO, the employee, the company, or a DOT agency may request in writing that the laboratory retain a specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If the laboratory receives such a request, they must comply with it. If the laboratory does not receive such a request, they may discard the specimen at the end of the year.
- d. If the laboratory has not sent the split specimen to another laboratory for testing, they must retain the split specimen for an employee's test for the same period of time that the laboratory retains the primary specimen and under the same storage conditions.
- e. The laboratory testing the split specimen must meet the requirements of paragraphs 10.a. through 10.d. of this section with respect to the split specimen.

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11. Criteria for Laboratory and MRO Relationship (§40.101).

- a. The laboratory may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for the employer. The laboratory may not derive any financial benefit by having an employer use a specific MRO.
- b. The following are examples of relationships between laboratories and MROs that the Department regards as creating conflicts of interest, or the appearance of such conflicts. This following list of examples is not intended to be exclusive or exhaustive:
 - (1) The laboratory employs an MRO who reviews test results produced by the laboratory;
 - (2) The laboratory has a contract or retainer with the MRO for the review of test results produced by the laboratory;
 - (3) The laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or recommends certain MROs;
 - (4) The laboratory gives the employer a discount or other incentive to use a particular MRO;
 - (5) The laboratory has its place of business co-located with that of an MRO or MRO staff who review test results produced by the laboratory; or
 - (6) The laboratory permits an MRO, or an MRO's organization, to have a financial interest in the laboratory.

12. Requirements for Submitting Blind Specimens to a Laboratory (§40.103).

- a. The company of C/TPA with an aggregate of 2000 or more DOT-covered employees must send blind specimens to laboratories utilized. If the company has an aggregate of fewer than 2000 DOT-covered employees, the company is not required to provide blind specimens.
- b. To each laboratory to which the C/TPA sends at least 100 specimens in a year, the company must transmit a number of blind specimens equivalent to one percent of the specimens the company of C/TPA sends to that laboratory, up to a maximum of 50 blind specimens in each quarter (i.e., January-March, April-June, July-September, October-December). C/TPA must apply this percent-age to the total number of DOT-covered employees' specimens sent to the laboratory. Blind specimen submissions must be evenly spread throughout the year. The following examples illustrate how this requirement works:

Example 1 to Paragraph b. You send 2500 specimens to Lab X in Year 1. In this case, you would send 25 blind specimens to Lab X in Year 1. To meet the even distribution requirement, you would send 6 in each of three quarters and 7 in the other.

Example 2 to Paragraph b. You send 2000 specimens to Lab X and 1000 specimens to Lab Y in Year 1. In this case you would send 20 blind specimens to Lab X and 10 to Lab Y in Year 1. The even distribution requirement would apply in a similar way to that described in Example 1.

Example 3 to Paragraph b. Same as example 2, except that you also send 20 specimens to Lab Z. In this case you would send blind specimens to Lab X and Y as in Example 2. You would not have to send any blind specimens to Lab Z, because you sent fewer than 100 specimens to Lab Z.

Example 4 to Paragraph b. You are a C/TPA sending 2000 specimens to Lab X in Year 1. These 2000 specimens represent 200 small employers who have an average of 10 covered employees each.

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In this case you—not the individual employers—send 20 blind specimens to Lab X in Year 1, again ensuring even distribution. The individual employers you represent are not required to provide any blind specimens on their own.

Example 5 to Paragraph b. You are a large C/TPA that sends 40,000 specimens to Lab Y in Year 1. One percent of that figure is 400. However, the 50 blind specimen per quarter “cap” means that you need send only 50 blind specimens per quarter, rather than the 100 per quarter you would have to send to meet the one percent rate. Your annual total would be 200, rather than 400, blind specimens.

- c. Approximately 75 percent of the specimens submitted must be blank (i.e., containing no drugs, nor adulterated or substituted). Approximately 15 percent must be positive for one or more of the five drugs involved in DOT tests, and approximately 10 percent must either be adulterated with a substance cited in HHS guidance or substituted (i.e., having specific gravity and creatinine meeting the criteria of §40.93(b).

(1) The blind specimens that the company submits contain drugs, that are adulterated with a substance cited in HHS guidance, or that are substituted must be validated as to their contents by the supplier using initial and confirmatory tests.

(2) The supplier must provide information regarding the shelf life of the blind specimens.

(3) If the blind specimen is drug positive, the concentration of drug it contains must be between 1.5 and 2 times the initial drug test cutoff concentration.

(4) If the blind specimen is adulterated with nitrite, the concentration of nitrite it contains must be between 1.5 and 2 times the initial validity test cutoff concentration.

(5) If the blind specimen is adulterated by alter pH, the pH must be less than or equal to 2, or greater than or equal to 12.

(6) If the blind specimen is substituted, the creatinine must be less than or equal to 2, and the specific gravity must be 1.000.

- d. The company must ensure that each blind specimen is indistinguishable to the laboratory from a normal specimen.

(1) The company must submit blind specimens to the laboratory using the same channels (e.g., via a regular collection site) through which employees' specimens are sent to the laboratory.

(2) The company must ensure that the collector uses a CCF, places fictional initials on the specimen bottle label/seal, indicates for the MRO on Copy 2 that the specimen is a blind specimen, and discards Copies 4 and 5 (employer and employee copies).

(3) The company must ensure that all blind specimens include split specimens.

13. Criteria for Laboratory That Reports Result Different From That Expected for a Blind Specimen (§40.105).

- a. If you are the employer, MRO, or C/TPA who submits a blind specimen, and if the result reported to the MRO is different from the result expected, you must investigate the discrepancy.

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- b. If the unexpected result is a false negative, you must provide the laboratory with the expected results (obtained from the supplier of the blind specimen), and direct the laboratory to determine the reason for the discrepancy.
- c. If the unexpected result is a false positive, you must provide the laboratory with the expected results (obtained from the supplier of the blind specimen), and direct the laboratory to determine the reason for the discrepancy. You must also notify ODAPC of the discrepancy. ODAPC will notify HHS who will take appropriate action.

14. Criteria for Laboratory Inspections (§40.107).

- a. The laboratory must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT-regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program, or the designee of such an employer.

15. Documentation the Laboratory Shall Maintain and Length of Retention (§40.109).

- a. The laboratory must retain all records pertaining to each employee urine specimen for a minimum of two years.
- b. The laboratory must also keep for two years company-specific data required in §40.111.
- c. Within the two-year period, the MRO, the employee, the company, or a DOT agency may request in writing that you retain the records for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If the laboratory receives such a request, the laboratory must comply with it. If the laboratory does not receive such a request, the laboratory may discard the records at the end of the two-year period.

16. Criteria for When and How a Laboratory May Disclose Statistical Summaries and Other Information It Maintains (§40.111).

- a. The laboratory must transmit an aggregate statistical summary, by company, of the data listed in paragraph 18 of this part to the company on a semi-annual basis.
 - (1) The summary must not reveal the identity of any employee.
 - (2) In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, the laboratory must not send a summary if the company has fewer than five aggregate test results.
 - (3) The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.
 - (4) The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.
- b. When the company requests a summary in response to an inspection, audit, or review by a DOT agency, the laboratory must provide it unless the company had fewer than five aggregate test results. In that case, the laboratory must send the company a report indicating that not enough testing was conducted to warrant a summary. The laboratory may transmit the summary or report by hard copy, fax, or other electronic means.
- c. The laboratory must also release information to appropriate parties as provided in §40.329 and §40.331.

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17. Information Concerning Laboratories May Be Found in 49 CFR Part 40 Regulations (§40.113).

a. More information concerning laboratories is in several sections of this part:

§40.3 – Definition.

§40.13 – Prohibition on making specimens available for other purposes.

§40.31 – Conflicts of interest concerning collectors.

§40.47 – Laboratory rejections of test for improper form.

§40.125 – Conflicts of interest concerning MROs.

§40.175 – Role of first laboratory in split specimen tests.

§40.177 – Role of second laboratory in split specimen tests (drugs).

§40.179 – Role of second laboratory in split specimen tests (adulterants).

§40.181 – Role of second laboratory in split specimen tests (substitution).

§40.183-- 40.185 – Transmission of split specimen test results to MRO.

§40.201-- 40.205 – Role in correcting errors.

§40.329 – Release of information to employees.

§40.331 – Limits on release of information.

§40.355 – Role with respect to other service agents.

B. DOT Drug Testing Semi-Annual Laboratory Report – 49 CFR Part 40 – Appendix B

The following items are required on each report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

Employer Identification: (name; may include billing code of ID code)

C/TPA Identification: (where applicable; name and address)

1. Number of specimen results reported: (total number) by test types:

- a. Pre-employment testing: (number)
- b. Post-Accident testing: (number)
- c. Random testing: (number)
- d. Reasonable suspicion/cause testing: (number)
- e. Return-to-duty testing: (number)
- f. Follow-up testing: (number)
- g. Type not noted on CCF: (number)

2. Number of specimens reported as (a) Negative: (total number)
(b) Negative-dilute: (number)

3. Number of specimens reported as rejected for testing: (total number) by reason:

- (a) Fatal flaw: (number)
- (b) Uncorrected flaw: (number)

4. Number of specimens reported as positive: (total number) by drug:

- (a) Marijuana Metabolite: (number)
- (b) Cocaine Metabolite: (number)
- (c) Opiates:
 - (1) Codeine: (number)
 - (2) Morphine: (number)

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U. S. Department of Transportation
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- (3) 6-AM: (number)
- (d) Phencyclidine: (number)
- (e) Amphetamines: (number)
 - (1) Amphetamine: (number)
 - (2) Methamphetamine: (number)
- 5. Adulterated: (number)
- 6. Substituted: (number)
- 7. Invalid results: (number)

Company Name: ATHENA CONSTRUCTION, L.L.C.

Address: P. O. Drawer O
Morgan City, La. 70381

Original Date of Implementation: 7/19/90

New Effective Date: 4/1/04

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APPENDIX E
SUPERVISORS DRUG AND/OR ALCOHOL CHECKLIST

| | YES | NO |
|--|-------|-------|
| 1. Small of alcohol on breath of person? | _____ | _____ |
| 2. Speech: Slurred? | _____ | _____ |
| Confused? | _____ | _____ |
| Fragmented? | _____ | _____ |
| Slow? | _____ | _____ |
| Unusually soft? | _____ | _____ |
| Unusually Loud? | _____ | _____ |
| 3. Disorientation: Is Employee confused about; Where he or she is? | _____ | _____ |
| What day it is? | _____ | _____ |
| What time it is | _____ | _____ |
| 4. Apparent inability to focus o work? | _____ | _____ |
| 5. Unusual or unexplained resistance to authority or refusal to follow reasonable directions? | _____ | _____ |
| 6. Lack of motor coordination? | _____ | _____ |
| 7. Mood: Belligerent? | _____ | _____ |
| Moody? | _____ | _____ |
| Ecstatic? | _____ | _____ |
| More nervous than usual? | _____ | _____ |
| Giddy? | _____ | _____ |
| Talkative? | _____ | _____ |
| Drowsy? | _____ | _____ |
| 8. Skin color: Pale? | _____ | _____ |
| Flushed? | _____ | _____ |
| 9. Excessive perspiration? | _____ | _____ |
| 10. Excessive trips to the restroom? | _____ | _____ |
| 11. Bloodshot eyes? | _____ | _____ |
| 12. Dilated pupils? | _____ | _____ |
| 13. Pinpoint pupils? | _____ | _____ |
| 14. Traces of alcohol in containers? | _____ | _____ |
| 15. Confession by employee that he/she was drinking alcohol? | _____ | _____ |
| Ingesting drugs? | _____ | _____ |
| 16. Confirmation by other employees? | _____ | _____ |
| 17. Presence of substances with the appearance of drugs? | _____ | _____ |
| 18. Presence of drug paraphernalia? | _____ | _____ |
| 19. Smell of marijuana? | _____ | _____ |
| 20. Congregation of employees in remote areas of the company's facilities or in areas not usually frequented by employees? | _____ | _____ |
| 21. Weariness, fatigue, or exhaustion? | _____ | _____ |
| 22. Deteriorating physical appearance? | _____ | _____ |
| 23. Yawning excessively? | _____ | _____ |
| 24. Blank stare or expression? | _____ | _____ |
| 25. Sudden and/or unpredictable change in energy level? | _____ | _____ |
| 26. Unusually energetic? | _____ | _____ |
| 27. Shaking or trembling of hands? | _____ | _____ |
| 28. Sunglasses worn at inappropriate times? | _____ | _____ |
| 29. Changes in appearance after lunch break? | _____ | _____ |
| 30. Withdrawal and avoidance of peers? | _____ | _____ |
| 31. Complaints from co-workers? | _____ | _____ |
| 32. Excessive absenteeism, especially Mondays, Fridays and days before or after holidays or paydays? | _____ | _____ |
| 33. Unusually high incidence of colds, flu, upset stomach, and/or headaches? | _____ | _____ |
| 34. Unauthorized or unscheduled absences? | _____ | _____ |
| 35. Breathing or swallowing difficulties? | _____ | _____ |
| 36. Unusual sneezing/nasal congestion? | _____ | _____ |
| 37. Needle marks on arms? | _____ | _____ |
| 38. Prolonged lunch hours? | _____ | _____ |
| 39. Tardiness? | _____ | _____ |
| 40. Unexplained departures from work or disappearance from the job area? | _____ | _____ |
| 41. More than average number of job-related mistakes, injuries or accidents? | _____ | _____ |
| 42. Decrease in efficiency or productivity? | _____ | _____ |
| 43. Careless operation of equipment? | _____ | _____ |
| 44. Careless performance of job? | _____ | _____ |

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 U. S. Department of Transportation
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APPENDIX F
REASONABLE CAUSE OBSERVATION CHECKLIST
 (STRICTLY CONFIDENTIAL)

EMPLOYEE: _____ PERIOD OF EVALUATION: _____

SUPERVISOR #1, NAME & TELEPHONE: _____

SUPERVISOR #2, NAME & TELEPHONE: _____

This checklist is intended to assist a supervisor in referring a person for drug testing. Has the employee manifested any of the following behaviors? Indicate (D) if documentation exists.

1. QUALITY AND QUANTITY OF WORK

| YES | NO | |
|-------|-------|---|
| _____ | _____ | 1. Clear refusal to do assigned tasks |
| _____ | _____ | 2. Significant increase in errors |
| _____ | _____ | 3. Repeated errors in spite of increased guidance |
| _____ | _____ | 4. Reduced quantity of work |
| _____ | _____ | 5. Inconsistent, "up and down" quantity/quality of work |
| _____ | _____ | 6. Behavior that disrupts workflow |
| _____ | _____ | 7. Procrastination on significant decisions or task |
| _____ | _____ | 8. More than usual supervision necessary |
| _____ | _____ | 9. Frequent, unsupported explanations for poor work performance |
| _____ | _____ | 10. Noticeable change in written or verbal communication |
| _____ | _____ | 11. Other (please specify) _____ |

2. INTERPERSONAL WORK RELATIONSHIPS

| YES | NO | |
|-------|-------|--|
| _____ | _____ | 1. Significant change in relations with co-workers, supervisors |
| _____ | _____ | 2. Frequent or intense arguments |
| _____ | _____ | 3. Verbal/Physical abusiveness |
| _____ | _____ | 4. Persistently withdrawn or less involved with people |
| _____ | _____ | 5. Intentional avoidance of supervisor |
| _____ | _____ | 6. Expressions of frustration or discontent |
| _____ | _____ | 7. Change in frequency or nature of complaints |
| _____ | _____ | 8. Complaints by co-workers or subordinates |
| _____ | _____ | 9. Cynical, "distrustful or human nature" comments |
| _____ | _____ | 10. Unusual sensitivity to advice or critique of work |
| _____ | _____ | 11. Unpredictable response to supervision |
| _____ | _____ | 12. Passive-aggressive attitude or behavior, doing things "behind your back" |

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3. GENERAL JOB PERFORMANCE

| YES | NO | |
|-----|-----|--|
| ___ | ___ | 1. Excessive unauthorized absences-number in last 12 months |
| ___ | ___ | 2. Excessive authorized absences-number in last 12 months |
| ___ | ___ | 3. Excessive use of sick leave in last 12 months |
| ___ | ___ | 4. Frequent Monday/Friday absence or other pattern |
| ___ | ___ | 5. Frequent unexplained disappearances |
| ___ | ___ | 6. Excessive "extension" of breaks or lunch |
| ___ | ___ | 7. Frequently leaves work early-number of days per week or month |
| ___ | ___ | 8. Increased concern about (actual incidents) safety offenses involving the employee |
| ___ | ___ | 9. Experiences or causes job accidents |
| ___ | ___ | 10. Major change in duties or responsibilities |
| ___ | ___ | 11. Interferes with or ignores established procedures |
| ___ | ___ | 12. Inability to follow through on job performance recommendation |

4. PERSONAL MATTERS

| YES | NO | |
|-----|-----|--|
| ___ | ___ | 1. changes in or unusual personal appearance (dress, hygiene) |
| ___ | ___ | 2. Changes in or unusual speech (incoherent, stuttering, loud) |
| ___ | ___ | 3. Changes in or unusual physical mannerisms (gesture, posture) |
| ___ | ___ | 4. Changes in or unusual facial expressions |
| ___ | ___ | 5. Changes in or unusual level of activity-much reduced/increased |
| ___ | ___ | 6. Changes in or unusual topics of conversation |
| ___ | ___ | 7. Engages in detailed discussions about death, suicide, harming others |
| ___ | ___ | 8. Increasingly irritable or tearful |
| ___ | ___ | 9. Persistently boisterous or rambunctious |
| ___ | ___ | 10. Unpredictable or out-of-context display of emotion |
| ___ | ___ | 11. Unusual fears or lacks appropriate caution |
| ___ | ___ | 12. Engages in detailed discussion about obtaining/using drugs/alcohol |
| ___ | ___ | 13. Has personal relationship problems (spouse, girl/boyfriend, children, in-laws) |
| ___ | ___ | 14. Has received professional assistance for emotional or physical problems |
| ___ | ___ | 15. Makes unfounded accusations toward others, i.e., has feelings of persecution |
| ___ | ___ | 16. Secretive or furtive |
| ___ | ___ | 17. Memory problems (difficulty recalling instructions, data, past behaviors) |
| ___ | ___ | 18. Frequent colds, flu, excessive fatigue, or other illnesses |
| ___ | ___ | 19. Makes unreliable or false statements |
| ___ | ___ | 20. Unrealistic self-appraisal or grandiose statements |
| ___ | ___ | 21. Temper tantrums or angry outbursts |
| ___ | ___ | 22. Demanding, rigid, inflexible |
| ___ | ___ | 23. Major change in physical health |
| ___ | ___ | 24. Concerns about sexual behavior or sexual harassment |

Other information/observations (Please be specific, attach additional sheet as needed).

SUPERVISOR #1 – DATE

SUPERVISOR #2 – DATE

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APPENDIX G
ACKNOWLEDGMENT AND AGREEMENT
WITH RESPECT TO DRUG AND ALCOHOL TESTING

I, the undersigned employee hereby certify that I have been furnished with a copy of the DOT Drug/Alcohol Testing Program, including its Employee Assistance Program, and that I have read and understand that I am responsible for same. I further certify that I have been provided with informational material, education and training on the dangers and problems of drug and alcohol misuse.

I am fully aware, and agree that I may be discharged or otherwise disciplined for any violation by me of said DOT Alcohol and Drug Policy, for any failure or refusal to provide urine and/or breath specimens when requested by the Company, for the failure or refusal to identify and certify same, for the failure to cooperate with the forms and other documents, and/or for any other Alcohol and Drug Testing Program.

Executed this _____ day of _____, 20_____.

Employee Name (Please Print)

Employee Signature

Social Security Number

ATHENA CONSTRUCTION, L.L.C.

(COMPANY NAME)

ALCOHOL, DRUG AND CONTRABAND POLICY

ADDENDUM NUMBER 1

EFFECTIVE DATE : January 20, 2000

REVISED DATE : January 20, 2000

NOTE...IN ORDER FOR ADDENDUM TO BE RECOGNIZED AS PART OF WRITTEN PLAN, THE FOLLOWING ITEMS MUST BE INCLUDED :

- 1) COVER SHEET
- 2) ADDENDUM NUMBER 1 - ALCOHOL, DRUG AND CONTRABAND POLICY
- 3) ATTACHMENT A - ALCOHOL, DRUG AND CONTRABAND PROGRAM TESTING INFORMATION
- 4) WORDING WITHIN PRIMARY WRITTEN PLAN NOTING ADDENDUM NUMBER 1 WILL APPLY WHILE WORKING FOR EXXON

ADDENDUM NUMBER 1
ALCOHOL, DRUG AND CONTRABAND POLICY

ADDENDUM NUMBER 1
ALCOHOL, DRUG AND CONTRABAND POLICY

1. Purpose

To insure a safe, healthy, and productive work environment for the employees of our company and Exxon and others on Exxon property, to protect Exxon property and assets, and to ensure efficient operations, we have and enforce a written policy on drugs, alcohol, and other prohibited items that, at a minimum, meets Exxon requirements.

2. Definitions

A. *Personnel* -- any of our company's employees, agents, subcontractors or subcontractors' employees working on Exxon Property.

B. *Exxon Property* -- All real or tangible personal property, including facilities, buildings, vehicles, products and equipment either owned or controlled by Exxon.

C. *Prohibited Substances* -- (1) illicit or unprescribed drugs, controlled substances and mood or mind altering substances, (2) prescribed drugs used in a manner inconsistent with the prescription, and (3) alcoholic beverages.

D. *Reasonable Suspicion* - A belief based on objective and articulable facts sufficient to lead a supervisor to suspect.

E. *Under the Influence* -- (1) the presence of a Prohibited Substance, or metabolites of a Prohibited Substance in body fluids above the cut-off level established by our company's policy, or other commonly accepted cut-off level and/or (2) the presence of a Prohibited Substance that affects an individual in any detectable manner. The symptoms of influence may be, but are not limited to, slurred speech or difficulty in maintaining balance.

3. Prohibitions

Unless specifically authorized in writing by Exxon, our company's policy and its implementation shall prohibit our company and company personnel from the following:

A. Using, possessing, selling, manufacturing, distributing, concealing, or transporting on Exxon Property any of the following items:

i. Any Prohibited Substance;

ii. Contraband, including firearms, ammunition, explosives, and weapons;

iii. Illicit drug equipment or paraphernalia.

B. While on *Exxon Property* possessing or using prescription drugs or over-the-counter medication that may cause impairment except when all of the following conditions have been met:

i. Prescription drugs have been prescribed by a licensed physician for the person in possession of the drugs.

ADDENDUM NUMBER 1
ALCOHOL, DRUG AND CONTRABAND POLICY

- ii. The prescription was filled by a licensed pharmacist for the person possessing the drugs.
- iii. The individual notifies his supervisor, if he will be in possession of, or using, impairment-causing prescription drugs or over-the-counter medication and appropriate steps are taken to accommodate the possibility of impairment, including but not limited to, removal from work for the period of possible impairment.

C. Being Under the Influence of Prohibited Substances while performing any work for Exxon.

D. Switching or adulterating any urine, blood or other sample used for testing.

E. Performing work for Exxon if that person has tested positive, or refused testing, in any employment-related test except personnel seeking access to Exxon Property may be considered if the positive employment-related test in question was an initial pre-employment test administered more than twelve months before and the employee will not perform in a designated-like position. The prohibition in part 3(E) will not apply to personnel seeking access to Exxon Property for low-exposure positions whose employment-related positive test did not occur during employment on Exxon Property, or work.

F. Upon request our company will certify in writing that it has enforced all provisions of Paragraph 3.

4. Searches and Inspections

On Exxon Property Exxon may, at any time, have Exxon supervisors, our company supervisors and/or authorized search and inspection specialists, including scent-trained animals, conduct unannounced searches and inspections of our company and/or personnel and their property; that property may include, but is not limited to, the following: wallets, purses, lockers, baggage, offices, desks, tool boxes, clothing, and vehicles.

5. Testing

A. Categories

All personnel shall be assigned to one of the following categories based on the individual's job function:

Comparable-to-Designated: Has a high exposure to a catastrophic operational incident; has a direct role in operations where failure could result in serious harm to public or employee well-being, company assets, or the environment; and has no direct or very limited supervision available to provide operational checks.

Safety-Sensitive: Has a high exposure to catastrophic operational incident and has access to operations where failure could result in serious harm to public or employee well-being, company assets, or the environment.

ADDENDUM NUMBER 1
ALCOHOL, DRUG AND CONTRABAND POLICY

Low-Exposure: Has an indirect role and no access to operations where failure could result in serious harm to public or employee well-being, company assets or the environment.

All positions are "safety-sensitive" unless a position, or positions, is/are identified as "low-exposure" or "comparable-to-designated" in Attachment 1 of Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements. If during the course of this contract, Exxon determines that additional positions require treatment as "low-exposure" or "comparable-to-designated," Exxon may at its sole discretion, after notifying our company of a change, or changes, modify Attachment 1 of Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements. Exxon must confirm the modification in writing.

Our company shall ensure that alcohol and drug tests are conducted according to the following requirements as defined in Paragraph B below:

| <u>Job Category</u> | <u>Reasonable Suspicion</u> | <u>Post-Incident</u> | <u>Pre-Access</u> | <u>Random</u> |
|--------------------------|-----------------------------|----------------------|-------------------|---------------|
| Comparable-to-Designated | X | X | X | X |
| Safety-Sensitive | X | X | X | |
| Low-Exposure | X | X | | |

In addition, executives of our company are encouraged to be subject to the same random alcohol and drug-testing program that they require of their employees to demonstrate commitment to a substance-free workplace.

B. Requirements

i. Pre-Access Testing:

- a. Personnel requiring pre-access testing must have received a negative result on a comprehensive alcohol and drug test within the 12 months preceding that personnel's first access to Exxon property. In addition personnel requiring pre-access testing must have received a negative result on a comprehensive alcohol and drug test in any calendar year in which our company personnel performs work on Exxon Property. Upon Exxon's request our company shall so certify in writing. Our company shall not send laboratory test results to Exxon.
- b. A single letter certifying negative test results for all personnel requiring site access is preferred.
- c. Our company will provide no information to Exxon identifying individuals who have positive pre-access tests.

ii. Random Testing:

- a. Personnel requiring random testing will be subject to unannounced and continuous random selection and testing for Prohibited Substances while performing work for Exxon.

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- b. The number of tests randomly conducted during each calendar year must be at least the current DOT required percentage or, where testing is not required by DOT, at least fifty percent (50%) of the number of personnel in the random selection pool.

iii. Post-Incident Testing:

- a. If our company or Exxon determines from the best information available immediately after a work-related incident that performance of one or more of our personnel contributed to the incident, or cannot be completely discounted as a contributing factor to the incident, our company shall remove that/those individual(s) from Exxon Property and surrender his/her/their site credentials to Exxon. For purposes of this part "incident" means an incident that caused personal injury requiring medical treatment beyond first aid administered at the work site, or property damage of more than \$1000, or an incident that carried the potential for serious personal injury or significant property damage,
- b. An individual so removed will be allowed to return to work on Exxon Property only after our company conducts alcohol and drug testing on the individual as soon as possible following the individual's removal from the site, and our company certifies in writing the test identification number, the individual's social security number, the test date and time, and a negative test result. On that written certification our company will include a consent signed by the individual permitting disclosure to Exxon of the test result. See Attachment 2 of Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements.

iv. Reasonable Suspicion Testing:

- a. Upon Reasonable Suspicion of our company or Exxon that personnel is Under the Influence of a Prohibited Substance while on Exxon Property, our company shall remove the individual from Exxon Property and surrender his/her site credentials to Exxon.
 - b. An individual removed from Exxon Property for Reasonable Suspicion will be allowed to return to work on Exxon Property only after our company conducts alcohol and drug testing on the individual as soon as possible following the individual's removal from the site, and our company certifies in writing the test identification number, the individual's social security number, the test date and time, and a negative test result. On that written certification our company will include a consent signed by the individual permitting disclosure to Exxon of the test result. See Attachment 2 of Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements.
- C. Our company's policy specifies substances, and threshold levels that comply, at a minimum, with the Department of Transportation (DOT) alcohol and drug testing regulations. Our company's collection, chain-of-custody and other related procedures are consistent with sound industry practice. Our company will include alcohol in any test panel regardless of any lesser DOT requirement.
- D. Our company uses only testing laboratories that are properly certified under a recognized state or national program.

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6. Non-Compliance

Any personnel found in violation of our company's policy or who refuse to cooperate with the searches and tests included in our company's policy shall be permanently removed by our company from Exxon Property and from performing work for Exxon. Our company will immediately notify Exxon that the individual has become "disqualified under Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements ". Our company will immediately review with Exxon the nature of the work previously performed by the individual. At Exxon's request our company shall, at its sole cost and risk, inspect all work in which the individual may have participated, and submit a written report to Exxon that documents the inspection, any findings, and the actions taken to assure all deficiencies have been corrected.

7. Drug Awareness

Our company warrants that personnel performing work have each been fully informed of the requirements of Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements and our company's policy, and that before beginning work each has signed a written certification that he has been so informed and agrees to be bound by those requirements.

8. Exemptions

Local Exxon management may, at its sole discretion, grant certain exemptions to our company from the requirements of Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements. Exemptions are valid only if in writing. No exemption will be construed by our company as a promise of any future exemptions. Any exemption granted to our company may be revoked by local Exxon management at any time.

9. Special Provisions -- Exxon-Approved Consortium

Enrollment in, and maintenance of, "active status" in an Exxon-approved consortium that requires pre-enrollment testing and continuously subjects active members to random drug and alcohol testing at an annual effective rate of at least 50% will be recognized as satisfying Exxon's pre-access and random testing requirements. Upon request, Exxon will provide our company with a list of all approved consortiums. Our company may request approval by Exxon of other consortiums.

10. Applicable Laws

Our company shall comply with all applicable federal, state, and local drug and alcohol related laws and regulations (e.g., DOT regulations, Department of Defense (DOD) Drug-Free Workforce Policy, Drug-Free Workplace Act of 1988).

11. Audit

- A. Our company shall keep records required by Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements available for inspection by Exxon during the term of this agreement and for a period of three (3) years after its termination.
- B. Exxon shall have the right, at its discretion, to perform unannounced audits of our company's alcohol and drug program to verify that our company's policy and its enforcement comply with Exxon's Exhibit H - Contractor Drug, Alcohol and Contraband Policy Requirements.

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C. At Exxon's request our company will provide separate lists of Personnel (including name and Social Security Number) who were eligible for Exxon work on a date specified by Exxon in Safety-Sensitive Positions or Jobs Comparable to Designated Positions. Upon further request, our company will provide Exxon with the following information on each alcohol and drug test conducted for each personnel identified by Exxon from those lists:

- 1) date of and type of test (e.g. random, pre-access)
- 2) laboratory chain-of-custody identification number and/or test number.

Our company will obtain an agreement from any consortium, specimen collection service, laboratory and/or Medical Review Officer providing drug/alcohol testing services under this agreement that upon submission by Exxon of a list, or lists, of Social Security Numbers, chain-of-custody ID numbers and test dates: 1) the laboratory will verify that the tests were conducted as represented; and 2) the laboratory and/or our company's Medical Review Officer will provide a sworn statement that each of the tests identified by Exxon were confirmed as negative or that it/he cannot so swear.

ATTACHMENT A

ALCOHOL, DRUG AND CONTRABAND TESTING INFORMATION

| | | |
|----------------------------|--------------------------------|--|
| COLLECTION FACILITY | NAME | Industrial Medical Clinic |
| | ADDRESS | 1124 7th St. Morgan City, la. 70380 |
| | PHONE NUMBER | 504-384-1562 |
| | CONTACT PERSON | William Johnson (Dr.) |
| | STATE CERTIFIED? (YES/NO) | Yes |
| | NATIONALLY CERTIFIED? (YES/NO) | No |

| | | |
|---------------------------|--------------------------------|---|
| TESTING LABORATORY | NAME | Quest Diagnostics, Inc. |
| | ADDRESS | 3175 Presidential Dr. Atlanta, Ga. 30340 |
| | PHONE NUMBER | 800-877-7484 |
| | CONTACT PERSON | Unknown |
| | STATE CERTIFIED? (YES/NO) | Yes |
| | NATIONALLY CERTIFIED? (YES/NO) | Yes |

| SUBSTANCE | | SCREEN LEVEL | CONFIRMATION LEVEL |
|-----------------------------|-------------------------------|--------------|--------------------|
| EXXON MINIMUMS (DOT) | ALCOHOL | 0.02 | 0.02 |
| | COCAINE | 300 ng | 150 ng |
| | PHENCYLCIDINE (PCP) | 25 ng | 25 ng |
| | MARIJUANA (THC) | 50 ng | 15 ng |
| | OPIATES | 2000 ng | 2000 ng |
| | AMPHETAMINES/METHAMPHETAMINES | 1000 ng | 500 ng |
| OTHER DRUGS TESTED | None | | |
| | | | |
| | | | |
| | | | |
| | | | |

ADDENDUM NUMBER 1
ALCOHOL, DRUG AND CONTRABAND POLICY

| ALCOHOL TESTING METHOD USED : | SCREEN | CONFIRMATION |
|-------------------------------|--------|----------------|
| | | Breath Alcohol |