



**Pipeline & Hazardous Materials
Safety Administration
PHMSA/DOT ANTI-DRUG AND
ALCOHOL MISUSE PLAN
49 CFR Part 199
49 CFR Part 40**

Revised April 2024

City of Gulf Breeze
DOT DRUG AND ALCOHOL TESTING ANTI-DRUG AND ALCOHOL MISUSE PLAN
Pipeline & Hazardous Material Safety Administration
PHMSA 49 CFR Part 199
&
49 CFR Part 40

I. GENERAL

City of Gulf Breeze, also referred to as "the company" has a firm commitment to provide all employees with a safe and drug/alcohol-free work environment. In order to accomplish this goal, the company has implemented this anti-drug and alcohol misuse plan, which will provide the necessary guidelines and procedures to augment measures taken in the past to achieve a drug/alcohol-free workplace.

Within this context, a drug and alcohol testing program, designed to help prevent accidents and injuries resulting from the misuse of drugs and alcohol, will be inaugurated on the effective date of this anti-drug and alcohol misuse plan. All safety sensitive employees are subject to the provisions of this anti-drug and alcohol misuse plan and will be alcohol and drug tested, accordingly.

All employees (and applicants for employment) that perform duties covered by DOT regulations are covered by these policies and procedures IN ADDITION TO any and all other company policies and procedures related to alcohol and drug use.

Anti-Drug and Alcohol Plan

Each PHMSA employer is responsible for implementing a written anti-drug plan, to include: (1) methods and procedures for compliance with regulations, including the employee assistance program; (2) the name and address of each laboratory used to analyze specimens for drug testing; (3) the name and address of the Medical Review Officer and Substance Abuse Professional; and (4) procedures for notifying employees of the coverage and provisions of the plan.

§ 199.2 Applicability.

- (a) This part 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) This part does not apply to any person for whom compliance with this part would violate the domestic laws or policies of another country.
- (c) This part does not apply to covered functions performed on—
 - (1) Master meter systems, as defined in [§ 191.3 of this chapter](#); or
 - (2) Pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

Each employer 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/she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his/her duties. Employers may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

§ 199.3 Definitions.

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

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Covered employee, employee, or individual to be tested means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Covered function means an operations, maintenance, or emergency-response function regulated by part 192, 193, or 195 of this chapter that is performed on a pipeline or on an LNG facility.

DOT Procedures means the Procedures for Transportation Workplace Drug and Alcohol Testing Programs published by the Office of the Secretary of Transportation in part 40 of this title.

Fail a drug test means that the confirmation test result shows positive evidence of the presence under DOT Procedures of a prohibited drug in an employee's system.

Operator means a person who owns or operates pipeline facilities subject to part 192, 193, or 195 of this chapter.

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.

Performs a covered function includes actually performing, ready to perform, or immediately available to perform a covered function.

Positive rate for random drug testing means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

Prohibited drug means any of the substances specified in 49 CFR part 40.

Refuse 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.

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.*)

§ 199.5 DOT procedures.

The anti-drug and alcohol programs mandated by these regulations must be conducted in accordance with the requirements outlined herein and the procedures established by the Department of Transportation (DOT). The terms and concepts employed in these regulations hold the same significance as defined in DOT Procedures. Any violations of DOT Procedures pertaining to the mandatory anti-drug and alcohol programs specified in these regulations shall be considered violations of these regulations.

§ 199.7 Stand-down waivers.

(a) Each operator who seeks a waiver under [§ 40.21 of this title](#) from the stand-down restriction must submit an application for waiver in duplicate to the Associate Administrator for Pipeline

Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001.

(b) Each application must—

- (1) Identify [§ 40.21 of this title](#) as the rule from which the waiver is sought;
- (2) Explain why the waiver is requested and describe the employees to be covered by the waiver;
- (3) Contain the information required by [§ 40.21 of this title](#) and any other information or arguments available to support the waiver requested; and
- (4) Unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver.

(c) No public hearing or other proceeding is held directly on an application before its disposition under this section. If the Associate Administrator determines that the application contains adequate justification, he or she grants the waiver. If the Associate Administrator determines that the application does not justify granting the waiver, he or she denies the application. The Associate Administrator notifies each applicant of the decision to grant or deny an application.

§ 199.9 Preemption of State and local laws.

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

- (1) Compliance with both the State or local requirement and this part is not possible.
- (2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this part; or
- (3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

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

§191.3 Definitions.

As used in this part and the PHMSA Forms referenced in this part—

Administrator means the Administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Confirmed Discovery means when it can be reasonably determined, based on information available to the operator at the time a reportable event has occurred, even if only based on a preliminary evaluation.

Gas means natural gas, flammable gas, or gas which is toxic or corrosive.

Incident means any of the following events:

- (1) An event that involves a release of gas from a pipeline, gas from an underground natural gas storage facility, liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
 - (i) A death, or personal injury necessitating in-patient hospitalization.
 - (ii) Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost; or
 - (iii) Unintentional estimated gas loss of three million cubic feet or more.

(2) An event that results in an emergency shutdown of an LNG facility or an underground natural gas storage facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.

(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraph (1) or (2) of this definition.

LNG facility means a liquefied natural gas facility as defined in §193.2007 of part 193 of this chapter.

Master Meter System means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

Municipality means a city, county, or any other political subdivision of a State.

Offshore means beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

Operator means a person who engages in the transportation of gas.

Outer Continental Shelf means all submerged lands lying seaward and outside the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, joint venture, partnership, corporation, association, State, municipality, cooperative association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

Pipeline or Pipeline System means all parts of those physical facilities through which gas moves in transportation, including, but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

State includes each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

Transportation of gas means the gathering, transmission, or distribution of gas by pipeline, or the storage of gas in or affecting interstate or foreign commerce.

Underground natural gas storage facility means an underground natural gas storage facility as defined in §192.3 of this chapter.

§195.50 Reporting accidents.

An accident report is required for each failure in a pipeline system subject to this part in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

(a) Explosion or fire not intentionally set by the operator.

(b) 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 the release is:

- (1) Not otherwise reportable under this section.
- (2) Not one described in §195.52(a)(4);
- (3) Confined to company property or pipeline right-of-way; and
- (4) Cleaned up promptly.

(c) Death of any person.

(d) Personal injury necessitating hospitalization.

(e) 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.

DOT Rule 49 CFR Part 40 Section 40.3 – Definitions

§ 40.3 What do the terms used in this part mean?

In this part, the terms listed in this section have the following meanings:

Adulterated specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

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, 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 [Subpart R of this part](#).

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.

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

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

Alcohol confirmation test. A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, provides quantitative data about the alcohol concentration.

Alcohol screening device (ASD). A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

Alcohol screening test. An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol testing site. A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

Alcohol use. The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Aliquot. A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Alternate specimen. An authorized specimen, other than the type of specimen previously collected or attempted to be collected.

Breath Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

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.

Chain of custody. The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.

Collection container. A container used to collect a specimen.

Collection site. A place selected by the employer where employees present themselves for the purpose of providing a specimen for a drug test.

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.

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). A database, administered by the Federal Motor Carrier Safety Administration, containing records of commercial motor vehicle drivers' violations of controlled substances and alcohol testing program requirements, as set forth in [part 382 of this title](#), as well as their return-to-duty status.

Confirmatory drug test. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify a specific drug or drug metabolite.

Confirmatory validity test. A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed drug test. A confirmation test result received by an MRO from a laboratory.

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, 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 this part. For the Employer's current C/TPA, see Appendix B.

Continuing education. Training for substance abuse professionals (SAPs) who have completed qualification training and are performing SAP functions, designed to keep SAPs current on changes and developments in the DOT drug and alcohol testing program.

Cutoff. The analytical value (e.g., drug or drug metabolite concentration) used as the decision point to determine a result (e.g., negative, positive, adulterated, invalid, or substituted) or the need for further testing.

Designated employer representative (DER). An employee authorized by the employer 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 this part. Service agents cannot act as DERs. For the Employer's current DER, see Appendix B.

Dilute specimen. A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT, The Department, DOT Agency. These terms encompass all DOT agencies, including, but not limited to, 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 Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of this part, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes only since the USCG regulation does not incorporate Part 40 for its alcohol testing program. These terms include any designee of a DOT agency.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.

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.

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.

Error Correction Training. Training was provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

Evidential Breath Testing Device (EBT). A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations and appears on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" because it conforms with the model specifications available from NHTSA.

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

Initial drug test. The first test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test. The first test used to determine if a specimen is adulterated, diluted, substituted, or invalid.

Invalid result. The result reported by an HHS-certified in accordance with the criteria established by HHS when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards set by HHS; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part. For the Employer's current Laboratory, see Appendix B.

Limit of Detection (LOD). The lowest concentration at which the analyte (e.g., drug or drug metabolite) can be identified.

Limit of Quantitation (LOQ). For quantitative assays, the lowest concentration at which the identity and concentration of the analyte (e.g., drug or drug metabolite) can be accurately established.

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. For the Employer's current MRO, see Appendix B.

Negative result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative specimen. A specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), or invalid.

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.

Oral fluid specimen. A specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. An oral fluid specimen is considered to be a direct observation collection for all purposes of this part.

Oxidizing adulterant. A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Primary specimen. In drug testing, the specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of specimen validity testing. The primary specimen is the portion of the donor's subdivided specimen designated as the primary ("A") specimen by the collector to distinguish it from the split ("B") specimen, as defined in this section.

Positive result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

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).

Reconfirmed. The result reported for a split (Bottle B) specimen when the second HHS-certified laboratory corroborates the original result reported for the primary (Bottle A) specimen.

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).

Rejected for testing. The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Screening Test Technician (STT). A person who instructs and assists employees in the alcohol testing process and operates an ASD.

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

Service agent. Any person or entity, other than an employee of the employer, who provides services 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 DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Shipping container. A container that is used for transporting and protecting specimen bottles and associated documents from the collection site to the laboratory.

Specimen. Fluid, breath, or other material collected from an employee at the collection site for the purpose of a drug or alcohol test.

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold a primary ("A") or split ("B") specimen during transportation to the laboratory. In the context of oral fluid testing, it may be referred to as a "vial," "tube," or "bottle."

Split specimen. In drug testing, the specimen that is sent to a first laboratory and stored with its original seal intact, and which is transported to a second laboratory for retesting at the employee's request following MRO verification of the primary specimen as positive, adulterated or substituted.

Split specimen collection. A collection in which the single specimen collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

SSN or Employee ID No. This number serves as a unique identifier that must be used on the Federal Drug Testing Custody and Control Form (CCF) or Alcohol Testing Form (ATF) for a donor, on the MRO's reports, on SAP reports, or on other documents that are required under this part. For all purposes of this part, this term means: only the Commercial Driver's License (CDL) Number and State of issuance for drivers tested under the authority of the Federal Motor Carrier Safety Administration (FMCSA); and, for all drivers and other safety-sensitive employees tested under the authority of the other DOT agencies, this can be the individual's actual Social Security Number, a unique identifier issued by the employer, a State-issued identification card number, a State-issued driver's license number (including a CDL number) or any other State-issued or federally-issued identification number.

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.

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. For the Employer's current SAP, see Appendix B.

Substituted specimen. An employee's specimen not consistent with a normal human specimen, as determined by HHS (e.g., a urine specimen, with creatinine and specific gravity values that are so diminished, or so divergent that they are not consistent with normal human urine).

Undiluted (neat) oral fluid. An oral fluid specimen to which no other solid or liquid has been added. For example: A collection device that uses a diluent (or other component, process, or method that modifies the volume of the testable specimen) must collect at least 1 mL of undiluted (neat) oral fluid.

Urine specimen. Urine collected from an employee at the collection site for the purpose of a drug test.

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.

Employee Stand Down:

Employers are prohibited from standing employees down before the MRO has completed the verification process, except with a waiver from the PHMSA.

§ 199.113 Employee assistance program.

- (a) Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation.
- (b) Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs.
- (c) Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use.

§ 199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under [§ 199.225\(b\)](#) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Referral, Evaluation, and Treatment:

The PHMSA/DOT drug testing rules, following the Omnibus Act of 1991, require employees be provided with an opportunity for alcohol or drug abuse treatment. The rules, however, do not require that the employer pay for rehabilitation or hold a job open for an employee.

Specifically, the alcohol and drug ruling require:

1. That the employee who violates alcohol or drug prohibitions be advised of the resources available to evaluate and resolve the problem.
2. That the employee be evaluated by a substance abuse professional (SAP) to determine what assistance is necessary.
3. That before returning to safety-sensitive duties an employee must:
 - a. produces a return-to-duty alcohol test of 0.02 alcohol concentration or less if violation was alcohol related; and/or produce a verified negative return-to-duty drug test if the violation was drug related.
 - a. if assistance was recommended, the driver must be follow-up evaluated by a Substance Abuse Professional (SAP) to determine if treatment recommendations were followed.
 - b. be subject to a minimum of six (6) unannounced follow-up tests within the first year back to work.

NOTE: Follow-up testing can be required for up to five (5) years after return to work.

Contractor Employees

Operators utilizing contractor employees may provide the drug and alcohol testing, education and training requirements to be carried out by the contractor, but the operator remains responsible for ensuring the requirements of the rule are followed.

§ 199.245 Contractor employees.

- (a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:
- (b) The operator remains responsible for ensuring that the requirements of this subpart and [part 40 of this title](#) are complied with; and
- (c) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and [part 40 of this title](#).

§ 199.117 Recordkeeping.

- (a) Each operator shall keep the following records for the periods specified and permit access to the records as provided by [paragraph \(b\)](#) of this section:
 - (1) Records that demonstrate the collection process conforms to this part must be kept for at least 3 years.

- (2) Records of employee drug test that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional, and MIS annual report data shall be maintained for a minimum of five years.
- (3) Records of employee drug test results that show employees passed a drug test must be kept for at least 1 year.
- (4) Records confirming that supervisors and employees have been trained as required by this part must be kept for at least 3 years.
- (5) Records of decisions not to administer post-accident employee drug tests must be kept for at least 3 years.
- (b) 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. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the Administrator or the representative of a state agency upon request.

Management Information System (MIS)

Operators with more than 50 covered employees must submit a detailed MIS Report to PHMSA no later than March 15 for the prior calendar year. Operators with less than 50 must submit MIS Report upon written notice by PHMSA.

II. DRUG TESTING:

§ 199.100 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions for operators of certain pipeline facilities subject to [part 192](#), [193](#), or [195 of this chapter](#).

§ 199.101 Anti-drug plan.

- (a) Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this part and the DOT Procedures. The plan must contain—
 - (1) Methods and procedures for compliance with all the requirements of this part, including the employee assistance program;
 - (2) The name and address of each laboratory that analyzes the specimens collected for drug testing;
 - (3) The name and address of the operator's Medical Review Officer, and Substance Abuse Professional; and
 - (4) Procedures for notifying employees of the coverage and provisions of the plan.
- (b) The Associate Administrator or 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 190.206](#) or the relevant State procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety.

Prohibitions:

§ 199.103 Use of persons who fail or refuse a drug test.

- (a) An operator may not knowingly use as an employee any person who—
 - (1) Fails a drug test required by this part and the medical review officer makes a determination under DOT Procedures; or
 - (2) Refuses to take a drug test required by this part.
- (b) [Paragraph \(a\)\(1\)](#) of this section does not apply to a person who has—
 - (1) Passed a 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 required education or treatment; and
- (3) Not failed a drug test required by this part after returning to duty.

Drugs, Controlled Substances:

For purposes of this anti-drug and alcohol misuse plan, the terms "drugs" and "controlled substances" are interchangeable and have the same meaning unless otherwise specified. The following five drugs or classes of drugs are in a DOT drug test. These terms refer to:

- * Marijuana (THC)
- * Cocaine
- * Opioids
- * Phencyclidine (PCP)
- * Amphetamines, including methamphetamine

§ 199.105 Drug tests required.

Each operator shall conduct the following drug tests for the presence of a prohibited drug:

(a) ***Pre-employment testing.*** No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this part.

(b) ***Post-accident testing.***

(1) As soon as possible but no later than 32 hours after an accident, an operator must drug test each surviving covered employee whose performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this paragraph, but such a decision must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident.

(2) If a test required by this section is not administered within the 32 hours following the accident, the operator must prepare and maintain its decision stating the reasons why the test was not promptly administered. If a test required by [paragraph \(b\)\(1\)](#) of this section is not administered within 32 hours following the accident, the operator must cease attempts to administer a drug test and must state in the record the reasons for not administering the test.

(c) ***Random testing.***

(1) Except as provided in [paragraphs \(c\)\(2\)](#) through [\(4\)](#) of this section, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees.

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

(3) When the minimum annual percentage rate for random drug testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of [§ 199.119](#) for two consecutive calendar years indicate that the reported positive rate is less than 1.0 percent.

(4) When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of [§ 199.119](#) for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees.

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

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

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

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

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

- (i) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or
- (ii) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject.

(d) **Testing based on reasonable cause.** Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable 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 between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this part, only one supervisor of the employees trained in detecting possible drug use symptoms shall substantiate the decision to test.

(e) **Return-to-duty testing.** A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with applicable provisions of DOT Procedures concerning substance abuse professionals and the return-to-duty process.

(f) **Follow-up testing.** A covered employee who refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator 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 tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with [49 CFR part 40](#). Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

Drug Testing Laboratory

Operators must use HHS-certified laboratories to perform drug tests pursuant to the DOT procedures. The laboratory must allow unannounced inspections by the Operator, the Administrator, and by state agency, if the Operator is subject to that state's jurisdiction.

Sample Retention and Additional Testing: Positive results are retained for one year, or longer if requested in writing by the employee or Operator. A split specimen must be tested if the employee makes a written request after notification of a positive result. The employee may request the original or another HHS certified laboratory to perform the test. The MRO will report the results of the second test to the employee and designated employer representative.

LabCorp of America #0082
1912 Alexander Drive
Research Triangle Park, NC 27701
800-833-3984

§ 199.109 Review of drug testing results.

- (a) ***MRO appointment.*** Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program.
- (b) ***MRO qualifications.*** Each MRO must be a licensed physician who has the qualifications required by DOT Procedures.
- (c) ***MRO duties.*** The MRO must perform functions for the operator as required by DOT Procedures.
- (d) ***MRO reports.*** The MRO must report all drug test results to the operator in accordance with DOT Procedures.
- (e) Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies.
- (f) The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems with drug abuse, does not refer the covered employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring a covered employee for assistance provided through:
 - (1) A public agency, such as a State, county, or municipality;
 - (2) The operator or a person under contract to provide treatment for drug problems on behalf of the operator;
 - (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

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

MRO: Dr. Richard Weaver, M. D. AAMRO
Drug Free Workplaces, LLC
4300 Bayou Blvd., Suite 13
Pensacola, FL 32503
800-430-3782

Website: <https://drugfreeworkplaces.com/>

Email: info@drugfreeworkplaces.com

§ 40.33 What training requirements must a collector meet for urine collection?

To be permitted to act as a urine collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) **Basic information.** You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, the DOT Urine Specimen Collection Procedures Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590, 202–366–3784, or on the ODAPC Web site (<https://www.transportation.gov/odapc>)). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.

(b) **Qualification training.** You 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 your completion of qualification training under [paragraph \(b\)](#) of this section, you 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 scenario, 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.
- (2) Another person must monitor and evaluate your 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—
 - (i) Regularly conducting DOT drug test collections for a period of at least a year;
 - (ii) Conducting collector training under this part for a year; or
 - (iii) Successfully completing a “train the trainer” course.

(d) You must meet the requirements of [paragraphs \(b\)](#) and [\(c\)](#) of this section before you begin to perform collector functions.

(e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of [paragraphs \(b\)](#) and [\(c\)](#) of this section, you must complete refresher training that meets all the requirements of [paragraphs \(b\)](#) and [\(c\)](#) of this section.

(f) **Error correction training.** If you make a mistake in the collection process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you 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 retraining. Errors that cause cancellation but occur outside the collection process (*e.g.*, when a specimen is crushed or otherwise damaged during the transportation process, or is lost in transit), the cancellation would not be the result of an error by the collector during the collection process and does not require the collector to be retrained.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of [paragraph \(c\)\(2\)](#) 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, you 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 your 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.** You must maintain documentation showing that you currently meet all requirements of this section. You 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.

§ 40.35 What training requirements must a collector meet for oral fluid collection?

To be permitted to act as an oral fluid collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) **Basic information.** You must be knowledgeable about this part, the current “DOT Oral Fluid Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington DC, 20590, 202–366–3784, or on the ODAPC website (<https://www.transportation.gov/odapc>)). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at:

<https://www.transportation.gov/odapc/get-odapc-email-updates>.

(b) **Qualification training.** You must receive qualification training meeting the requirements of this [paragraph \(b\)](#). Qualification training must provide instruction on the following subjects:

(1) Training on the testing procedures of this part;

(2) Training to proficiency in the operation of the particular oral fluid collection device(s) you will be using.

(3) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;

(4) “Problem” collections (*e.g.*, situations like “dry mouth” and attempts to tamper with a specimen);

(5) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(6) 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 your completion of qualification training under [paragraph \(b\)](#) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections for each device you will use.

(1) The five mock collections for each device must include one uneventful collection scenario, one insufficient specimen quantity scenario; one scenario in which the employee has something in their mouth that might interfere with the collection; one scenario in which the employee attempts to tamper with the specimen; and one scenario in which the employee refuses to sign the CCF. For each of the five mock collections, the collector must check the expiration date of the device, show it to the employee, and record the date on the CCF used. The collector must ensure, when applying the labels, they do not cover the expiration dates.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must 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—

(i) Regularly conducting DOT drug test collections for a period of at least one year;

(ii) Conducting collector training under this part for at least one year; or

(iii) Successfully completing a “train the trainer” course.

(d) **Schedule for qualification training and initial proficiency demonstration.** You must meet the requirements of [paragraphs \(b\)](#) and [\(c\)](#) of this section before you begin to perform collector functions.

(e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of [paragraphs \(b\)](#) and [\(c\)](#) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c).

(f) **Error correction training.** If you make a mistake in the collection process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you 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 retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of [paragraph \(c\)\(2\)](#) 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, you 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 your 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.** You must maintain documentation showing that you currently meet all the requirements of this section. You 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.

§ 40.36 What information about the DER must employers provide to collectors?

As an employer, you must provide collectors with the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact them about any problems or issues that may arise during the testing process.

Drug Testing Procedures and Employee Safeguards

Chain of Custody (C.O.C.):

The company employee drug testing program will utilize a clear and well-documented procedure for collection, shipment, and accession of urine specimens from the specimen collection site to the laboratory. For this purpose, a Federal Drug Testing Custody and Control Form (C.O.C.) will be used.

Definition of Chain of Custody (C.O.C.):

Federal regulations define "chain of custody" in the following way:

"Procedures to account for the integrity of each urine, blood or oral fluid specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen."

The C.O.C. Form:

The drug testing custody and control form (C.O.C.) is used to document the chain of custody to the laboratory. These forms are multiple-part carbonless forms to allow for copies to be retained by the laboratory, to be shared by the MRO, the employee, and the company designated representatives. These forms will be maintained as a permanent record on which all necessary identifying data and the collection process are retained.

Preparation for Urine Testing:

In addition to using a custody and control form, other safeguard procedures, in preparation of testing, include:

1. Use of clean, single use specimen kit.
2. Use of a tamper proof seal system.
3. Use of a shipping container that can be sealed and initialed after depositing both specimen and C.O.C. documentation.
4. Written procedures and instructions for collection site person.

Preparation for Oral Fluid Testing:

In addition to using a custody and control form, other safeguard procedures, in preparation of testing, include:

1. Use of clean, single use specimen device.
3. Use of a tamper proof seal system.
3. Use of a shipping container that can be sealed and initialed after depositing both specimen and C.O.C. documentation.
4. Written procedures and instructions for collection site person.

Written Procedures:

The written procedures for the collection site person emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process.

Unless it is impractical for any other individual to perform this function, a direct supervisor of an employee will not serve as the collection site persons for testing purposes.

In any case, where a collection is monitored or directly observed, the collection site person will be of the same gender as the employee/donor. If a same gender collector cannot be found or in circumstances of nonbinary or transgender employees:

- (i) If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order;
- (ii) If there is no standing order from the employer, the collector must contact the DER and either conduct an oral fluid test if the collection site is able to do so or send the employee to a collection site acceptable to the employer for the oral fluid test.

Specimen Collection: Security Procedures

The collection site will be in a secure location, closed to allow for maximum privacy. Security procedures require restricted access to collection materials and specimens. No unauthorized personnel will be permitted access to the collection site. No one other than the collection site person may handle specimens prior to their being placed securely in the mailing container.

To minimize the chance of error, the collection site person will collect only one specimen at any given time. The collection procedure for each specimen is completed when the specimen has been sealed and initialed, the custody and control form has been executed, and the employee has departed the collection site.

Laboratory Analysis:

§ 40.87 What validity tests must laboratories conduct on primary urine specimens?

As a laboratory, when you conduct validity testing under [§ 40.86](#), you must conduct it in accordance with the requirements of this section.

- (a) You must determine the creatinine concentration on each primary specimen. You must also determine its specific gravity if you find the creatinine concentration to be less than 20 mg/dL.
- (b) You must determine the pH of each primary specimen.
- (c) You must perform one or more validity tests for oxidizing adulterants on each primary specimen.
- (d) You must perform additional validity tests on the primary specimen when the following conditions are observed:
 - (1) Abnormal physical characteristics;
 - (2) Reactions or responses characteristic of an adulterant obtained during initial or confirmatory drug tests (*e.g.*, non-recovery of internal standards, unusual response); or
 - (3) Possible unidentified interfering substance or adulterant.
- (e) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS certified laboratory would be useful in being able to report a positive or adulterated test result.

§ 40.93 What validity tests must laboratories conduct on primary oral fluid specimens?

As a laboratory, if you conduct validity testing under [§ 40.92](#), you must conduct it in accordance with the requirements of this section.

- (a) You may test for a biomarker such as albumin or immunoglobulin G (IgG) or a test for a specific adulterant.
- (b) You must follow the applicable HHS requirements for any additional validity testing.

NOTE: See Appendix A for more information on initial screening and confirmation testing.

Reporting of Results:

The certified laboratory, chosen by the company to analyze specimens of covered employees, will report the test results directly to the company designated Medical Review Officer (MRO). Both positive and negative results will be reported in a secure and confidential manner, and never verbally.

The report, as certified by the responsible laboratory individual, will indicate the drug/metabolites tested for, whether the results are positive or negative, the specimen number signed by the company and the drug testing laboratory identification number. Only specimens confirmed by GC/MS testing as positive are reported as positive.

The laboratory will also transmit to the MRO the original or certified copy of the chain-of-custody and control form and will identify the individual at the laboratory responsible for the day-to-day management of the laboratory process.

Review of Results / MRO:

The Medical Review Officer (MRO), designated by the company to review drug test results, will be a fully licensed physician and possess knowledge of drug abuse disorders. It is the primary responsibility of the MRO to review and interpret positive results obtained from the laboratory. The MRO will assess and determine whether alternate medical explanations could account for the positive test results.

To accomplish this task, the MRO may conduct medical interviews of the individual, review the individual's medical history, and review any other relevant bio-medical factors. Additionally, the MRO will examine all medical records and data made available by the tested individual, such as evidence of prescribed medications. The MRO will not consider any drug test results that arise from specimen collection or analysis which do not comport with DOT regulations.

The MRO will give the individual testing positive an opportunity to discuss the test results prior to making a final decision. After the final decision is made, the MRO will notify the company.

Testing of Split Sample:

The MRO will notify each employee who has a confirmed positive test that the employee has seventy-two (72) hours in which to request a test of the split specimen. If the employee makes such a request, the MRO will direct, in writing, the laboratory to provide the split specimen to another certified laboratory for analysis. If the analysis of the split specimen fails to reconfirm the presence of the drug(s) or metabolite(s) found in the primary specimen, or if the split specimen is unavailable, inadequate for testing or unsuitable, the MRO will cancel the test and report cancellation and the reason for it to the DOT, the company, and the employee.

MRO Unable to Contact Employee:

If the company's designated MRO, after making and documenting all reasonable efforts is unable to contact a tested employee, the MRO will contact a designated management official of the company to arrange for the individual to contact the MRO prior to going on duty. The MRO may verify a positive test without having communicated with the employee about the results of the test if:

1. The employee expressly declines the opportunity to discuss the results of the test, or
2. Within five (5) days after a documented contact by a designated management official of the company instructing the employee to contact the MRO, and the employee has not done so.

III. ALCOHOL TESTING PROGRAM

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to [parts 192, 193, or 195 of this chapter](#).

§ 199.202 Alcohol misuse plan.

Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT Procedures concerning alcohol testing programs. The plan

shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

§ 199.209 Other requirements imposed by operators.

(a) Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

(b) Operators may, but are not required to, conduct pre-employment alcohol testing under this subpart. Each operator that conducts pre-employment alcohol testing must—

(1) 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);

(2) Treat all covered employees the same for the purpose of pre-employment alcohol testing (*i.e.*, you must not test some covered employees and not others);

(3) Conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test;

(4) Conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT Procedures; and

(5) 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.

§ 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

§ 199.215 Alcohol concentration.

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

§ 199.217 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

§ 199.219 Pre-duty use.

Each operator 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. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

§ 199.221 Use following an accident.

Each operator 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 operator as a contributing factor to the accident from using alcohol for eight hours following the accident,

unless he or she has been given a post-accident test under [§ 199.225\(a\)](#), or the operator has determined that the employee's performance could not have contributed to the accident.

§ 199.223 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a post-accident alcohol test required under [§ 199.225\(a\)](#), a reasonable suspicion alcohol test required under [§ 199.225\(b\)](#), or a follow-up alcohol test required under [§ 199.225\(d\)](#). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

§ 199.225 Alcohol tests required.

Each operator must conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.*

(1) As soon as practicable following an accident, each operator must test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident.

(2)

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

(ii) [Reserved]

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) *Reasonable suspicion testing.*

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

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

(3) Alcohol testing is authorized by this section only if the observations required by [paragraph \(b\)\(2\)](#) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

(4)

(i) If a test required by this section is not administered within 2 hours following the determination under [paragraph \(b\)\(2\)](#) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under [paragraph \(b\)\(2\)](#) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to PHMSA upon request of the Administrator.

(ii) [Reserved]

(iii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(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 under [paragraph \(b\)\(2\)](#) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

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

(c) ***Return-to-duty testing.*** Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by [§§ 199.215](#) through [199.223](#), the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) ***Follow-up testing.***

(1) Following a determination under [§ 199.243\(b\)](#) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of [§ 199.243\(c\)\(2\)\(ii\)](#).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) ***Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.*** Each operator shall retest a covered employee to ensure compliance with the provisions of [§ 199.237](#), if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

Alcohol between 0.02 – 0.04: employees may not return to work within 8 hours or alcohol test of less than 0.02.

Recording and Reporting:

Operators must maintain alcohol program records for one to five years. Operators with more

than 50 covered employees must submit the annual MIS Report to PHMSA no later than March 15 for the prior calendar year. Smaller Operators must submit reports upon written notice.

§ 199.231 Access to facilities and records.

(a) Except as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in [§ 199.227](#).

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

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator 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.

(g) An operator may disclose information without employee consent as provided by DOT Procedures concerning certain legal proceedings.

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

§ 199.233 Removal from covered function.

Except as provided in [§§ 199.239](#) through [199.243](#), no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by [§§ 199.215](#) through [199.223](#) or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by [§§ 199.215](#) through [199.223](#) to perform covered functions unless the employee has met the requirements of [§ 199.243](#).

§ 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) **General requirements.** Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

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

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

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the workday the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

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

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under [§ 199.243](#).

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

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

(c) **Optional provisions.** The materials supplied to covered employees may also include information on additional operator 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 operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly described as being based on independent authority.

Evidential Breath Testing (EBT) Device:

EBT's used to perform alcohol tests on the company employees are approved by the National Highway Traffic Safety Administration (NHTSA) and are placed on the "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

An EBT used for a screening test of a company employee will be capable of printing out results and numbering each result sequentially. A logbook may also be kept.

The EBT used will have a Quality Assurance Plan (QAP) developed by the manufacturer and approved by NHTSA. The company will remove from service any EBT that fails a calibration check as set forth in the QAP.

Breath Alcohol Testing Form/Logbook:

An alcohol testing form, published by the Department of Transportation (DOT) will be used to ensure the integrity of the test result, properly identify the employee with the test result, and

serve as a documented record of the testing event.

The logbook, if used, will become additional documentation of the testing event by providing a sequential test number, date, name of BAT, location of test, quantified test result and initials of the employee each test.

Preparation for Testing:

Alcohol testing will be conducted in a location that affords, to the greatest extent practicable, visual, and aural privacy to the company employee being tested.

The employee is required to show positive identification (picture I.D.) to the BAT and may request the BAT to also show positive identification. The BAT must supervise only one employee's use of the EBT at a time and must not leave the testing site while the test is in progress.

Screening Test Procedure:

After the employee has been positively identified, the alcohol screening test procedure will be conducted, as follows:

1. The employee will provide the STT or BAT with identifying information and employer information to be entered on the Breath or Saliva Alcohol Testing Form. The employee will be asked to certify, by signature, that the information provided is correct. A refusal by an employee to sign the certification will be regarded as a refusal to take the test.
2. An individually sealed mouthpiece will be opened in view of the employee and attached to the EBT or ASD.
3. The BAT will instruct the employee to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
4. After showing the employee the quantitative alcohol concentration results printed out by the EBT or ASD, the BAT will enter the results, test number, testing device, serial number of the EBT, time, and date on the proper section of the Breath or Saliva Alcohol Testing Form. The BAT may also record the test number, date, name of BAT, location, and quantified test result in the logbook. The employee will then initial the logbook.
5. Depending on whether the result is less than 0.02 or greater, the following procedures will be done:
 - a. If the result is less than 0.02, the BAT or STT will date the form and sign the certification to the effect that all procedures were followed as required by DOT regulations. No further testing is required. The BAT will transmit the result of less than 0.02 to the company designated official in a confidential manner, and the company official will receive and store the information so as to ensure that confidentiality is maintained. The employee will receive a copy of the alcohol form.

NOTE: Failure of the employee to sign the alcohol test form or initial the logbook after a test has been conducted will be noted by the BAT in the remarks section of the alcohol form.

NOTE: If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section, both BAT and employee will initial the remarks. The test result will be considered invalid, and the employee and the company will be so

notified.

- b. If the result is 0.02 or greater, a confirmation test will be performed. If the confirmation test will be performed by a different BAT, the BAT who conducted the screening test will complete and sign the form and logbook entry. The BAT will give the employee a copy of the alcohol form.

Confirmation Testing Procedures:

If a different BAT is conducting the confirmation test, the new BAT will require positive identification of the employee, explain the testing procedure, and initiate a new Breath Alcohol Testing Form, requiring a repetition of information and certification by signature. In addition, the following instructions must be followed:

1. The BAT will instruct the employee not to eat, drink, or put any object or substance in his or her mouth for at least fifteen (15) minutes. The BAT will explain that the reason for these instructions is to ensure against an artificially high reading. The BAT will note in the "Remarks" section of the form any non-compliance with instructions.
2. The confirmation test will be conducted within twenty (20) minutes of the completion of the screening test.
3. A new mouthpiece will be opened and used for the confirmation test.
4. Before the confirmation test is administered for each employee, the BAT will ensure that the EBT registers 0.00 on an air blank. If the reading is greater than 0.00, after two attempts, that EBT will not be used for testing.
NOTE: Any EBT taken out of service because of failure to register 0.00 on an air blank will not be returned to service until an external calibration is conducted and the EBT is, once again, to be found within tolerance limits.
5. In the event that the screening and confirmation test results are not identical, the confirmation test result is to be deemed to be the final result upon which any action will be taken in compliance with federal rules or the company authority.
6. The BAT will affix the confirmation test printout to the alcohol test form using tamper-evident tape.
7. Following completion of the test, the BAT will date and sign the form. The employee will also sign the certification statement at the designated place.
NOTE: The refusal of the employee to sign the alcohol form will not defeat the test result but will be noted by the BAT in the "Remarks" section.
NOTE: Disparity between the displayed result and the printed result will be "noted", signed by employee and BAT, and will be considered an invalid test.
8. The BAT will conduct an air blank. If the reading is greater than 0.00, the test is invalid.
9. The BAT will transmit all results to the company in a confidential manner. The BAT will ensure immediate transmission to the company of results that require the company to prevent an employee from performing a safety-sensitive function.
10. The company will designate one or more representatives for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BATs to the company concerning the alcohol testing results of employees will be to a designated company representative.

Employee Test Information:

The company will maintain employee test information records in a secure manner, so that disclosure of information to unauthorized persons does not occur. Employee test information will only be released as required by law or as expressly authorized. The release of employee test information is allowed in the following instances:

1. An employee will have access to any of his/her alcohol testing records upon written request.
2. The company will allow any DOT-authorized agency access to facilities and records in connection with the company alcohol misuse prevention program.
3. When requested, the company will disclose post-accident testing information to the National Transportation Safety Board (NTSB) as part of an accident investigation.
4. The company may disclose information to the employee or to a decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.
5. The company will release information regarding an employee's alcohol testing records as directed by the specific, written consent of the employee authorizing release of the information to an identified person.

Saliva Alcohol Test (initial test only):

In alcohol testing: the Screening Test Technician may use the saliva ASD in the initial test, if positive, the confirmation must be a breath alcohol test.

Screening Test (initial test):

In alcohol testing: a procedure to determine if an employee has a prohibited concentration of alcohol in his or her system by a saliva ASD or a breath test.

PROHIBITIONS:

The Department of Transportation (DOT) defines the restrictions for the use of both alcohol and controlled substances.

A. Alcohol Use

Since alcohol is a legal substance, the prohibitions for its use are closely tied to the performance of safety-sensitive functions. The DOT regulations prohibit an employee with an alcohol concentration of 0.04 or greater to perform any safety-sensitive functions until the employee has been evaluated by a SAP, completed the counseling program, follow-up evaluation and has passed a return-to-duty test.

An employee with an alcohol concentration of 0.02 or greater but less than 0.04, must be removed from duty for 8 hours. If an alcohol testing device is unavailable, the employer is required to remove the employ from performing safety sensitive functions until 8 hours have elapsed. The employer is prohibited from taking additional action under PHMSA authority against an employee based solely on the employee's behavior and appearance. The company may have, however, additional policies under the company's own authority.

Prohibitions for Alcohol:

1. An employee may not report to duty or stay on safety-sensitive duty (a) with an alcohol concentration of 0.02 or greater, (b) while in possession of alcohol (c) if using alcohol; or (d) within four (4) hours of using alcohol.

An employee may not perform a safety-sensitive function who has a concentration of 0.04 or greater for any DOT employer until an evaluation by a SAP and has completed the recommended treatment.

2. An employee who has had an accident may not use alcohol until post-accident testing is done or for a period of eight (8) hours, whichever comes first.
3. Employees cannot refuse to submit to alcohol testing. The company reserves the right to take disciplinary action against any employee who refuses to be tested.

B. Drug Use

The PHMSA bans the use of controlled substances by covered employees. Employees who use drugs are considered medically unqualified to perform safety-sensitive functions.

Prohibitions for drugs, controlled substances:

1. Employees may not report for duty or stay on safety-sensitive duty while using any controlled substance. The exception to this prohibition is if a physician has prescribed the substance and has advised the employee that it does not interfere the performance of safety-sensitive duties.
2. Employees may not report for duty or stay on safety-sensitive duty if they have tested positive for a controlled substance.
3. The company reserves the right to require employees to report the use of any therapeutic drugs. Also, the company reserves the right to remove employees from safety-sensitive duties until a physician's opinion can justify safe resumption of safety-sensitive functions.

Consequences:

An employee who has violated any of the prohibitions concerning alcohol misuse with a concentration of 0.04 or greater or a positive drug test, including a refusal to be tested, will be removed from any safety-sensitive function and will not be allowed to return to a safety-sensitive function with the company until an evaluation by a Substance Abuse Professional (SAP) has been done and any recommended treatment has been completed. The company reserves the right to take disciplinary action against an employee who violates these alcohol/drug prohibitions.

An employee found to have an alcohol concentration of 0.02, but less than 0.04, will not be allowed to return to a safety-sensitive position for 8 hours or the BAC retest is below 0.02.

Drug & Alcohol Test Results, Treatment Records, and Refusal to Test History

As an employer, when hiring or transferring employees into safety-sensitive positions, you must obtain written consent from the employee to request specific information from their previous employers. This information includes:

Alcohol tests with results of 0.04 or higher, positive drug tests, refusals to be tested, and other violations of DOT drug and alcohol testing regulations.

Documentation of successful completion of DOT return-to-duty requirements for employees who violated DOT drug and alcohol regulations in their previous positions.

This information must be obtained from DOT-regulated employers who employed the applicant within the two years preceding their application or transfer. If the previous employer lacks information on the return-to-duty process, the employer must seek it from the employee.

It's crucial to review this information before the employee begins safety-sensitive duties, or as

soon as possible thereafter. If not feasible initially, it must be done within 30 days. If the employee is found to have violated DOT regulations, they cannot perform safety-sensitive functions until they have complied with return-to-duty requirements.

Written consent must be provided to the previous employers for the release of this information, ensuring confidentiality. Employers must maintain records of the information obtained or the efforts made to obtain it, keeping them confidential for three years from the employee's initial safety-sensitive duties.

Additionally, employers must inquire whether the employee had any positive tests or refusals to test on pre-employment drug or alcohol tests from previous employers within the past two years. If so, the employee cannot perform safety-sensitive functions until they document successful completion of the return-to-duty process.

Required Testing:

Each employer 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. Employers may have to explain the testing data for these employees in the even of a DOT agency inspection or audit. A service agent, (e.g., Consortia/Third Party Administrator may prepare the MIS report. However, each report shall be certified by the employer's anti-drug manager or designated employee representative for accuracy and completeness.

199.225 Alcohol tests required. Each operator must conduct the following types of alcohol

Each operator must conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.* (1) As soon as practicable following an accident, each operator must test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section must be based on specific information that the covered employee's performance had no role in the cause(s) or severity of the accident.

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

(ii) [Reserved]

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) *Reasonable suspicion testing.* (1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

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

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination under paragraph (b)(2) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under paragraph (b)(2) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to PHMSA upon request of the Administrator.

(ii) [Reserved]

(iii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(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 under paragraph (b)(2) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

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

(c) *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§199.215 through 199.223, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) *Follow-up testing.* (1) Following a determination under §199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall

ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of §199.243(c)(2)(ii).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each operator shall retest a covered employee to ensure compliance with the provisions of §199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended at 59 FR 62239, 62246, Dec. 2, 1994; Redesignated by Amdt. 199-19, 66 FR 47119, Sept. 11, 2001; 70 FR 11140, March 8, 2005; Amdt. 199-27, 82 FR 8001, Jan. 23, 2017]

Refusal to Be Tested:

A refusal to be tested for alcohol or controlled substances constitutes a violation and the company reserves the right to take additional disciplinary action against an employee who refuses to be tested.

Alcohol Testing Procedures and Employee Safeguards

Breath Alcohol Technician (BAT):

A "breath alcohol technician" is an individual who instructs and assists individuals in the alcohol testing process and operates an "evidentiary breath testing" device (EBT). The BAT is required to be properly trained, as follows:

1. Proficiency shall be demonstrated by successful completion of a course of instruction which, at a minimum, provides training in the principals of EBT methodology, operation, and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required in this part for obtaining a breath sample, and interpreting and recording EBT results.
2. Only courses of instruction for operation of EBT's that are equivalent to the Department of Transportation (DOT) model course, as determined by the National Highway Traffic Safety Administration (NHTSA), may be used to train BATs to proficiency.
3. The course of instruction shall provide documentation that the BAT has demonstrated competence in the operation of the specific EBT(s) he/she will use.
4. Any BAT who will perform an external calibration check of an EBT shall be trained to proficiency in conducting the check on the particular model of EBT.
5. The BAT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.
6. The company will establish documentation of the training and proficiency test of each BAT it uses to test the Company employees.

NOTE: A BAT-qualified supervisor of an employee may conduct the alcohol test for that employee only if another BAT is unavailable.

**For a Full Version see: Title 14 Chapter I Subchapter G Part 120
Subpart R - Public Interest Exclusions**

§ 40.361 What is the purpose of a public interest exclusion (PIE)?

- (a) To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.
- (b) The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.
- (c) A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.
- (d) Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

The Employer will not use the services of any service agent on the Federal Register listed under the Public Interest Exclusions and will stop using any services no later than 90 days after the Department has published the decision in the Federal Register.

APPENDIX A

§ 40.85 What are the cutoff concentrations for drug tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

CUTOFF CONCENTRATIONS FOR DRUG TESTS			
Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

¹For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

²An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

³Alternate technology (THCA and Benzoylecgonine): When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).

⁴Methylenedioxyamphetamine (MDMA).

⁵Methylenedioxyamphetamine (MDA).

(b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

(d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, August 16, 2010; 77 FR 26473, May 4, 2012; 82 FR 52244, November 13, 2017]

§ 40.91 What are the cutoff concentrations for oral fluid drug tests?

As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests for oral fluid specimens. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Table 1 to § 40.91—Oral Fluid Testing Cutoff Concentrations

INITIAL TEST ANALYTE	INITIAL TEST CUTOFF ¹	CONFIRMATORY TEST ANALYTE	CONFIRMATORY TEST CUTOFF CONCENTRATION
Marijuana (THC) ²	4 ng/mL ³	THC	2 ng/mL.
Cocaine/Benzoylecgonine	15 ng/mL	Cocaine Benzoylecgonine	8 ng/mL. 8 ng/mL.
Codeine/Morphine	30 ng/mL	Codeine Morphine	15 ng/mL. 15 ng/mL.
Hydrocodone/Hydromorphone	30 ng/mL	Hydrocodone Hydromorphone	15 ng/mL. 15 ng/mL.
Oxycodone/Oxymorphone	30 ng/mL	Oxycodone Oxymorphone	15 ng/mL. 15 ng/mL.
6-Acetylmorphine	4 ng/mL ³	6-Acetylmorphine	2 ng/mL.
Phencyclidine	10 ng/mL	Phencyclidine	10 ng/mL.
Amphetamine/Methamphetamine	50 ng/mL	Amphetamine Methamphetamine	25 ng/mL. 25 ng/mL.
MDMA ⁴ /MDA ⁵	50 ng/mL	MDMA MDA	25 ng/mL. 25 ng/mL.

¹ For grouped analytes (*i.e.*, two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (*i.e.*, with concentrations equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

² An immunoassay must be calibrated with the target analyte.

³ *Alternate technology (THC and 6-AM):* The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (*i.e.*, 2 ng/mL for THC, 2 ng/mL for 6-AM).

⁴ Methylenedioxyamphetamine (MDMA).

⁵ Methylenedioxyamphetamine (MDA).

Updated: April 2024

APPENDIX B

DRUG AND ALCOHOL PERSONNEL, SERVICE AGENTS, AND SERVICES

1. Consortium/Third-Party Administrator
Drug Free Workplaces
4300 Bayou Boulevard
Pensacola, FL 32503
(800) 430-3782
Website: <https://drugfreeworkplaces.com/>
Email: info@drugfreeworkplaces.com

2. Designated Employer Representative (DER)
Stephanie D. Lucas, Administrative Services Director
1070 Shoreline Drive
Gulf Breeze, FL 32561
(850) 934-5115 (office)
(850) 261-0089 (cell)
Email: SLucas@gulfbreezefl.gov

3. Laboratory
LabCorp of America #0082
1912 Alexander Drive
Research Triangle Park, NC 27701
800-833-3984

4. Medical Review Officer
Dr. Richard Weaver, M. D. AAMRO
Drug Free Workplaces, LLC
4300 Bayou Blvd., Suite 13
Pensacola, FL 32503
800-430-3782
Website: <https://drugfreeworkplaces.com/>
Email: info@drugfreeworkplaces.com

5. Substance Abuse Professional (SAP)
Patricia Vanderpool
EAP Lifestyle Management, LLC
25369 US-98 Ste F
Daphne, AL 36526
(800) 788-2077
Website: www.EAPLifestyle.com
Email: eaplifestyle@eaplifestyle.com

APPENDIX C

Educational materials about the effects of substance abuse, including alcohol, are available to all company employees at the following locations:

All City Building locations including:

1. Gulf Breeze City Hall, 1070 Shoreline Dr, Gulf Breeze, FL 32561
2. Community Center
3. Water Reclamation Facility
4. Field Operations
5. Police Department

NOTE: A copy of the company Substance Abuse and Alcohol Misuse Plan is available to representatives of employee organizations. Specifically, this Appendix will serve as written notification to such representatives regarding the availability of educational materials for employees.

APPENDIX D

HELP FOR SUBSTANCE ABUSE PROBLEMS:

Employees who want help with a substance abuse problem (self or other) can begin the helping process by calling the following telephone numbers:

- * EAP Lifestyle Management Services: 800-788-2077 eap@eaplifestyle.com
www.EAPLifestyle.com
- * Resources for Living: 800-272-3626
www.resourcesforliving.com Username: PRM Password: 8002723626

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