

# **ANTI-DRUG AND ALCOHOL MISUSE PREVENTION PLAN**

U.S. DEPARTMENT OF TRANSPORTATION  
PIPELINE & HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA)  
PREPARED IN ACCORDANCE WITH THE REQUIREMENTS OF:  
49 CFR PART 199  
49 CFR PART 40

## **3B INSPECTION**

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## **I. INTRODUCTION**

### **1. Development of “Combined” Plan**

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is the agency within the Department of Transportation (DOT) that regulates operators in the natural gas and hazardous liquid pipeline industry. PHMSA’s Drug and Alcohol Testing Regulation, 49 CFR Part 199<sup>1</sup>, requires each operator to develop, maintain, and follow an Anti-Drug Plan and an Alcohol Misuse Prevention Plan. Historically, companies have produced these plans as two separate documents. This “combined” Anti-Drug and Alcohol Misuse Prevention Plan,” merges both PHMSA-required plans into a single document.

Authorization for a combined plan was granted by PHMSA’s Office of Pipeline Safety stating: “PHMSA will allow the combining of the two plans into one written plan, as long as all requirements of each regulation are met.” The “requirements of each regulation” means the requirements of Part 199 and the requirements of DOT’s “Procedures for Transportation Workplace Drug and Alcohol Testing,” 49 CFR Part 40<sup>2</sup>.

The Anti-Drug and Alcohol Misuse Prevention Plan, henceforth referred to as the “Plan,” meets all the requirements of Part 199 and Part 40.

### **2. Approach**

The Plan will use the generic word “*Company*” in reference to the operator or contractor, as applicable, for which it is written. PHMSA’s requirement for plan development and implementation applies equally to each operator and contractor that performs safety-sensitive operations, maintenance, or emergency-response functions on a pipeline or LNG facility within the natural gas and hazardous liquid pipeline industry. The Plan will describe how the Company will comply with government requirements. In any case where there is a discrepancy between the requirements of Part 40 with that of Part 199, Part 40 will prevail.

The Plan will identify “Company-additional” requirements – those that go beyond the minimum requirements of DOT. Company-additional requirements will be underscored. Therefore, consider anything that is not underscored a requirement of DOT or a process put in place by the Company to meet a DOT requirement. Appendix D outlines the Company disciplinary actions and additional procedures.

The Plan is written in “plain language” and follows the requirements of each rule. However, the Plan does not repeat the language of either Part 40 or Part 199. Doing so would require the Company to produce a new plan every time DOT or PHMSA issued a change to their respective rule. The goal of DOT is to know that the Company understands the requirements of the rules and how the Company will go about achieving compliance. The Plan makes use of existing DOT language in places where summaries are used to explain a more detailed process (e.g., specimen collection and alcohol test procedures are extracted from DOT’s “Employee Guide”<sup>3</sup>).

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<sup>1</sup> Title 49 Code of Federal Regulations (CFR), Part 199, “Drug and Alcohol Testing Requirements,” Pipeline and Hazardous Materials Safety Administration, Department of Transportation, 53 FR 47096, Nov. 21, 1988 as amended.

<sup>2</sup> Title 49, Code of Federal Regulations (CFR), Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” Office of the Secretary, Department of Transportation, 65 FR 79462, Dec. 19, 2000 as amended.

<sup>3</sup> “What Employees Need To Know About DOT Drug & Alcohol Testing,” ODAPC, DOT, October, 2010.

Cross references are made linking the Plan to the PHMSA Inspection Form<sup>4</sup> for the purpose of assisting inspectors with specific areas of Plan compliance. The cross references will appear in the Plan as superscripted “endnotes”. Each endnote matches an inspection number and description from the PHMSA Inspection Form. The Inspection Form cross references is found in Appendix E.

### 3. Background

**Safety.** The DOT requires transportation employers to develop and implement drug and alcohol testing programs in the interest of public safety. Safety is the highest priority for DOT. One of the means by which the DOT helps ensure safety is by subjecting those workers responsible for transportation safety to drug and alcohol testing. Workers tested under the DOT program have direct impact on the safety of the traveling public or the safety of those potentially affected by the transportation of hazardous products, such as natural gas, liquefied natural gas (LNG) and hazardous liquids.

**Test Procedures.** The overall responsibility for management and coordination of the DOT program resides within the Office of the Secretary of Transportation’s (OST), Office of Drug and Alcohol Policy and Compliance (ODAPC). ODAPC issues Part 40. Whether the transportation employee is a pipeline worker, truck driver, or airline pilot, their drug and alcohol tests are conducted using the same Part 40 procedures. This consistency benefits all employees affected by DOT regulations in that each agency’s regulations must adhere to DOT’s testing procedures. Better known simply as “Part 40,” this rule has become the standard for workplace testing in the United States.

**Compliance Enforcement.** Regulation and enforcement within the different transportation industries is the responsibility of the DOT agency that has authority over the particular industry. The regulatory authority requiring drug and alcohol testing of safety-sensitive employees in aviation, trucking, railroads, and mass transit industries is the Omnibus Transportation Employee Testing Act of 1991<sup>5</sup> (OTETA). The OTETA did not specifically address the pipeline industry. PHMSA has regulatory authority over the pipeline industry and conveyed their authority, for drug and alcohol testing, through the issuance of their regulation -- Part 199. Part 199 spells out *who* is subject to testing, *when* and in *what* situations. Operators, and in turn, their associated contractors, implement the regulations.

## II. GENERAL

### 1. Scope

Operators of pipeline facilities subject to 49 CFR Parts 192<sup>6</sup>, 193<sup>7</sup>, or 195<sup>8</sup> are required to test covered employees for the presence of prohibited drugs and alcohol. Contractors doing similar work on the behalf of their operators are subject to the same requirements. Part 199 requires of each operator the assurance that any contractor performing any DOT safety-sensitive work for that operator, under Parts 192, 193, or 195, is in full compliance with the provisions of the DOT’s drug and alcohol program, as applicable.

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<sup>4</sup> “Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Programs, Form No.: 3.1.11, January 29, 2010” Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety.

<sup>5</sup> Public Law 102-143, October 28, 1991, Title V – Omnibus Transportation Employee Testing, 105 Stat. 952-965; 49 U.S.C. 45104(2).

<sup>6</sup> Part 192 – Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards

<sup>7</sup> Part 193 – Liquefied Natural Gas Facilities: Federal Safety Standards

<sup>8</sup> Part 195 – Transportation of Hazardous Liquids by Pipeline

## 2. Applicability

Part 199, and the provisions of the Plan, applies to operators and contractors only with respect to their employees located within the territory of the United States, including those employees located within the limits of the “Outer Continental Shelf.” Part 199 and the provisions of the Plan do not apply to covered functions performed on master meter systems or pipeline systems that transport only petroleum gas or petroleum gas/air mixtures.

## 3. Compliance<sup>1 2</sup>

**Plan Development.** The Plan meets the requirement of Part 199, paragraphs §199.101 and §199.202, respectively, to develop a written anti-drug plan and a written alcohol misuse prevention plan. The Plan describes the methods and procedures for compliance with the drug and alcohol program requirements of the DOT, including the employee assistance program. The Plan covers the operational, day-to-day requirements that are found in Part 199, and the procedural, testing requirements that are found in Part 40. The Plan provides appendices for the name and address of each laboratory that analyzes specimens for the Company, the Company’s Medical Review Officer, and Substance Abuse Professionals. The Plan communicates to employees, Company officials, and DOT officials the path that the Company will follow in order to comply with the requirements for a successful DOT drug and alcohol program.

**Plan Availability.** The Plan will be posted in a common place, selected by the Company, for employee review and feedback. A copy of the Plan will be made available to all covered employees. Any covered employee desiring a copy of Part 40 and/or Part 199 must contact the Designated Employer Representative (see Appendic B). The Plan provides a basic description of the rules and testing requirements, and shows how the Company implements and follows them. The Plan is not meant as a substitute for the detail provided in either rule. If there is any difference in instruction or interpretation between the Plan and the rules, the rules prevail. The Plan will be updated at any time its language, or the intent of its language, differs from that of either Part 40 or Part 199. Employees are encouraged to obtain and read Part 40 and Part 199 on their own.

## 4. “DOT” vs. “PHMSA”

All DOT workplace testing procedures will follow Part 40 requirements. All DOT procedural responsibilities for pipeline operators and contractors will follow Part 199. In the Plan, the term “DOT” will be used for references to general requirements (e.g., testing procedures) placed on all transportation employers, including operators and contractors. The use of the term “PHMSA” will be to distinguish specific, unique administration requirements versus general, DOT requirements (e.g., random alcohol testing is not authorized by PHMSA).

## 5. DOT Procedures

The Company will assure that the procedures of Part 40 are followed for drug and alcohol testing conducted under the requirements and authority of Part 199; a violation of Part 40 is a violation of Part 199. If the Company employs a Consortium/Third-Party Administrator (C/TPA) to assist in program development, implementation, and management, the C/TPA will, likewise, follow all the requirements of Part 40 and Part 199. It is the Company’s goal to establish and maintain compliance with the DOT drug and alcohol program.

## 6. Stand-down Waiver<sup>3</sup>

DOT “stand-down” is not in effect for this Company. The Company does not hold a stand-down waiver under Part 40, and has not applied for one. Should this status change, the Company will notify all covered employees and Company officials, in accordance with Part 40 requirements.

## 7. Preemption of State and Local Laws

Part 40 and Part 199 are Federal laws. Federal law preempts any state or local law, rule, regulation, or order to the extent that: (a) compliance with both the state or local requirement and Part 40 or 199

is not possible; or, (b) compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement of Part 40 or 199; or, (c) the state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities. This provision does not 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.

## 8. Definitions

Definitions from Parts 40, 191, 195, and 199 have been combined in alphabetical order and are provided in a single listing. For purposes of the Plan the following definitions apply:

**Accident** - An incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.

a) (§191.3) – An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:

- (1) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:
  - (a) A death, or personal injury necessitating inpatient hospitalization; or
  - (b) Estimated property damage of \$50,000 or more (\$5,000 or more for intrastate operators/contractors in Oklahoma and New Mexico), including loss to the operator and others, or both, but excluding cost of gas lost;
  - (c) Unintentional estimated gas loss of three million cubic feet or more;
- (2) An event that results in an emergency shutdown of an LNG 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 paragraphs (1) or (2).

b) (§195.50) – An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:

- (1) Explosion or fire not intentionally set by the operator.
- (2) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if this release is:
  - (a) Not otherwise reportable under this section;
  - (b) Not one described in §195.52(a)(4);
  - (c) Confined to Company property or pipeline right-of-way; and
  - (d) Cleaned up promptly;
- (3) Death of any person.
- (4) Personal injury necessitating hospitalization;
- (5) Estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

**Administrator** - The Administrator of the Pipeline and Hazardous Materials Safety Administration (PHMSA) or any person to whom authority in the matter concerned has been delegated by the Secretary of Transportation.

**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 (PIE), an organization having the same or similar management, ownership, or principal employees as the service agent concerning who public interest exclusion is in effect is



regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Part 40, Subpart R.

**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, that 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 placed on a conforming products list (CPL) for such devices.

**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.

**Blind Sample or Blind Performance Test Specimen** - A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

**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 Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

**Chain-of-Custody or Custody and Control Form (CCF)** - 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).

**Collection Container** - A container into which the employee urinates to provide the specimen for a drug test.

**Collection Site** - A place selected by the employer where employees present themselves for the purpose of providing a urine 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.

**Confirmatory Drug Test** - A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmation (or 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 Part 40.

**Continuing Education** - Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.

**Covered Function (or Safety-Sensitive Function)** - An operations, maintenance, or emergency-response function regulated by 49 CFR Part 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

**DOT Procedures (or Part 40)** - The Procedures for Transportation Workplace Drug and Alcohol Testing Program published by the Office of the Secretary of Transportation in 49 CFR Part 40.

**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 Part 40. Service agents cannot act as DERs.

**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). These terms include any designee of a DOT agency.

**Drugs** - The drugs for which tests are required under Part 40 and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

**Employee (Covered 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 Part 40, 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. For the purposes of regulation under Part 199, the term employee means a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors. This includes full-time, part-time and temporary employees. It also includes any applicant for a covered function.

**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 Part 40. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of Part 40.

**Error Correction Training** - Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error 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 approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for "Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

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

**Initial Drug Test (also known as a "Screening Drug Test")** - The 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 urine specimen is adulterated, diluted, substituted, or invalid.

**Invalid Drug Test** - The result reported by an HHS-certified laboratory in accordance with the criteria established by HHS Mandatory Guidelines 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 of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

**Limit of Detection (LOD)** - The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

**Limit of Quantitation** - For quantitative assays, the lowest concentration at which the identity and concentration of the measurand 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.

**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 urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/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 Part 40.

**Operator** - A person who owns or operates pipeline facilities subject to 49 CFR Part 192, 193, or 195.

**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.

**Performs a Covered Function** - Actually performing, ready to perform, or immediately available to perform a covered function.

**Pipeline** - All parts of those physical facilities through which gas, hazardous liquids or carbon dioxide moves in transportation, including, but limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, pumping units, breakout tanks and fabricated assemblies.

**Pipeline Facility** - New and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas, or transportation of hazardous liquids or carbon dioxide during the course of transportation.

**Positive Rate for Random Drug Testing** - The number of verified positive results for random drug tests conducted under Part 199, plus the number of refusals of random drug tests required by Part 199, divided by the total number of random drug tests conducted plus the number of refusals of random tests under Part 199.

**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.

**Primary Specimen** - In drug testing, the urine 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 validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

**Prohibited Drug** - Any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act (21 U.S.C. 812): marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

**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 specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

**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.

**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 Part 40 and DOT agency drug and alcohol testing regulations (e.g., Part 199). Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

**Refusal to Submit, Refuse, or Refuse to Take** - Behavior consistent with Part 40 concerning refusal to take a drug test or refusal to take an alcohol test.

**Screening Drug Test** - See Initial drug test definition above.

**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 specified under Part 40 to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of Part 40. Service agents are not employers for purposes of Parts 199 and 40.

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

**Specimen Bottle** - The bottle that, after being sealed and labeled according to the procedures in Part 40, is used to hold the urine specimen during transportation to the laboratory.

**Split Specimen** - In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**Split Specimen Collection** - A collection in which the urine collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

**State Agency** - An agency of any of the several states, the District of Columbia, and the Commonwealth of Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.)

**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.

**Substituted Specimen** - A specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

**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.

### **III. POLICY AND RESPONSIBILITIES**

#### **1. Company Policy**

**Policy Statement.** The Company has a long-standing commitment to maintain the highest standards for employee safety and health. The use of controlled substances and the misuse of alcohol are contrary to these high standards. The use or possession of illegal controlled substances or alcoholic beverages while on Company property, or in any Company vehicle, or on Company time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.

**DOT Compliance.** The Company is aware that it is ultimately responsible for meeting the requirements of Parts 40 and 199. The DOT authorizes transportation employers to use a service agent(s) to perform tasks necessary to comply with the Plan. The Company understands that, under the DOT regulations, it is responsible for the actions of its service agents. The Company is responsible for developing and implementing a successful and comprehensive DOT workplace drug and alcohol program. Components of the Company's program include clear policies, provisions for education and training, drug and alcohol testing, and when needed, referral for evaluation, education, and treatment. The Company shall ensure that all covered employees are aware of the provisions and coverage of the Plan.

#### **2. Responsibilities of Key Personnel**

The Company will convey to responsible individuals - the Designated Employer Representative(s) and affected supervisors - that, to the best of their ability, the privacy and confidentiality of any covered employee subject to the Plan must be maintained at all times.

**Designated Employer Representative (DER)** . Appendix B contains the name, address, and phone number of the DER(s). The DER is:

- a. the key employee for the Company's drug and alcohol program functions, and has the knowledge and authority to make decisions about the testing process and answer questions about it.
- b. **not** a service agent.
- c. one or more employees of the Company assigned to ensure adequate coverage on all shifts and at all locations.
- d. responsible for the preparation of the Plan, as well as providing oversight and evaluation on the Plan.
- e. responsible to review all adverse personnel action or discipline applied under the Plan for consistency and conformance to human resources policies and procedures.
- f. responsible for scheduling random, return-to-duty and follow-up testing, as applicable, and is authorized to receive and maintain, in a secure file system, all drug and alcohol testing results.

- g. responsible for providing answers to employee questions regarding the testing program, and information on the resources available for drug and alcohol counseling.
- h. responsible for overseeing the employee assistance program (EAP).

**Supervisor.** A Company individual(s) responsible for observing the performance and behavior of employees that is suggestive enough to lead to reasonable suspicion/cause drug and/or alcohol testing. Supervisors who will determine whether an employee must be drug tested and/or alcohol tested based on reasonable suspicion/cause will be trained in the “signs and symptoms” of each substance. The supervisor is required to document a reasonable suspicion/cause event. The supervisor may also be responsible for requests as the second supervisor for substantiation and concurrence for reasonable suspicion/cause drug test, if applicable.

### 3. Responsibility of Covered Employees<sup>4</sup>

**Compliance.** Each covered employee must comply with the requirements of the Plan, and the DOT drug and alcohol rules it pertains to, in order to remain eligible to work in a DOT safety-sensitive position. Each covered employee has the responsibility to read, be knowledgeable of, and comply with, the requirements of the Plan, and Parts 40 and 199. Committing a DOT violation will result in the employee's immediate removal from the covered function, and remain so until successfully completing the DOT return-to-duty conditions of Part 40. The Plan describes circumstances for being tested, violations, prohibited conduct, and their subsequent consequences. The Plan describes what is available to each covered employee as services (e.g., EAP) in such cases where the employee has a potential problem with drugs or alcohol prior to a drug or alcohol test. It is a condition of employment for all covered employees to sign the Acknowledgement/Receipt Form (Appendix A). In doing so, the employee attests to comply with the drug and alcohol program requirements of the Company and the requirements of the Plan. Failure to comply with this condition may result in disciplinary action up to and including termination.

### 4. Use of Service Agents<sup>5 6</sup>

**Compliance.** The Company will contract with service agents to accomplish many of the requirements of Parts 40 and 199. Appendix B (Designated Personnel and Service Agents) provides the names and addresses of service agents that are under contract. Contracts will contain a provision that the service agent will comply with Parts 40 and 199 in the services provided. The work of any service agent providing services to the Company will be open to inspection by the Company. The service agent must allow access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of Part 199. No service agent will serve as DER for this Company.

**Public Interest Exclusion.** The Company will not use a service agent against whom a Public Interest Exclusion (PIE) has been issued. The Company will stop using the services of a service agent no later than 90 days after the DOT has published the decision in the *Federal Register* or posted it on its web site that a PIE has been issued. The Company may apply to the ODAPC Director for an extension of 30 days if it is demonstrated that a substitute service agent cannot be found within 90 days.

**Consortium/Third Party Administrator.** The Company may employ the service of a Consortium/Third Party Administrator (C/TPA) to assist the DER with overall program management and consultation on any program issue. While the C/TPA will not serve as the DER, the C/TPA may support the DER by explaining the regulations and offering guidance on program-compliance issues.

### 5. Critical Service Agent Positions<sup>7 8</sup>

**Compliance.** The Company recognizes the significance of critical service agent positions within the DOT drug and alcohol program. The Company understands the importance of each service agent meeting their initial qualifications, as applicable, and then maintaining compliance throughout the conduct of their program functions, all in accordance with Part 40 and Part 199 requirements. The Company will ensure that the following critical positions meet DOT rule requirements:

- a) Medical Review Officer (MRO) (§40.121 and §199.109(b));



- b) Substance Abuse Professional (SAP) (§40.281);
- c) Urine Specimen Collector (§40.33);
- d) Screening test Technician (§40.213); and,
- e) Breath Alcohol Technician (§40.213)

## 6. "Non-DOT" Testing Program<sup>9 10</sup>

**Compliance.** The Company may implement an additional drug and/or alcohol testing program, referred to as a "non-DOT program." Any additional testing program would be completely independent of the DOT testing program. Such a testing program would be developed under the Company's own authority and kept separate from the DOT program. All DOT testing would be accomplished first; the Company's non-DOT program would commence afterwards. The non-DOT program would use different forms and not use the Federal Custody and Control Form or the DOT Alcohol Testing Form. The non-DOT program could test different people, for different drugs, and different reasons-for-testing. If the Company implements its own non-DOT testing program, the Company will define the program and notify all employees through a Non-DOT Program Plan.

## IV. DOT PROGRAM REQUIREMENTS

### 1. Employees Subject to Testing<sup>11 12</sup>

**Compliance.** Any employee who would perform an operations, maintenance, or emergency-response function, regulated by Part 192, 193, or 195, on a pipeline or LNG facility, is subject to mandatory DOT drug and alcohol testing under this program. Such individuals are subject to DOT testing because their job functions have been determined by PHMSA to be a covered, or safety-sensitive, transportation function. Appendix C (Covered Positions) provides specific employee titles, for this Company, of those subject to testing under this program. However, it is the work that an individual performs, not the title of their job, which determines whether their work is covered and therefore subject to drug and alcohol testing.

**Operator or Contractor .** Covered employees may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor; this includes full-time, part-time and temporary employees and includes any applicant for a covered function.

### 2. Acknowledgement/Receipt Form

The "Acknowledgement/Receipt Form," (Appendix A), applies to all drug and/or alcohol tests, or related foregoing or subsequent DOT procedures, while the employee is in a covered function with the Company. The signed form will be maintained by the Company. For any test, the expectations placed on the employee by the Company are to "follow all instructions" in order to accomplish the test.

### 3. History-check Requirement<sup>13 14</sup>

**Compliance.** Prior to the first time that the Company uses an employee to perform safety-sensitive duties (i.e., a new hire or an employee transferring into a safety-sensitive position) the Company will require a "history check" of the employee. The history check will look back into the employee's past two years of DOT employment for DOT violations. History checks are conducted only after obtaining the employee's written authorization to do so. Any employee refusing to provide written consent will not be permitted to perform safety-sensitive functions. The Company will not allow the covered employee to perform their functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless the Company has obtained or made and documented a good faith effort to obtain alcohol and drug testing information from previous DOT-regulated employers.

**Information request.** The Company will request the following information about the employee.

- a) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- b) Verified positive drug tests;
- c) Refusals to be tested (including verified adulterated or substituted drug test results);
- d) Other violations of DOT agency drug and alcohol testing regulations; and

- e) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty and follow-up testing requirements.

The Company will make at least one attempt by telephone, e-mail or fax, and maintain documentation associated with the attempt to obtain history-check information (e.g., date and time of the attempt, person contacted). If the Company finds evidence of past DOT violations, those violations may be used as the sole reason for not hiring the individual or for termination.

**Violation Consequences.** The Company will not use any employee in a DOT safety-sensitive position that has had a past DOT violation and has not complied with DOT eligibility standards for returning to safety-sensitive work. The Company will also ask the employee if they had any pre-employment test that was positive for which the previous employer did not hire them. The employee's answer to this question will be maintained as part of the employee's history-check information.

#### 4. Employee Notification of Tests

Employees will be notified directly when a test must be conducted. While the circumstances for a test will differ by its reason-for-test, the Company will endeavor to conduct all tests with only a limited number of Company personnel having knowledge of the reason for the test.

All testing will be unannounced until the last possible moment. The timing will vary in conjunction with the reason-for-test. For example, a pre-employment test will be announced during the job application; a random test is announced within the test period, but just prior to the test, to maintain the element of surprise; and, announcements of post-accident or reasonable suspicion tests are controlled by the circumstances that come to light around the time of the event (e.g., accident). All alcohol test will be conducted just prior to, during, or just after the performance of safety-sensitive duties. Drug tests may be conducted anytime the employee is at work.

The DER and Company supervisors will be responsible for notifications and to help maintain the element of confidentiality. When an employee is notified for a test, the employee must proceed to the collection site immediately. Immediately means that after notification, all the employee's actions must lead to an immediate specimen collection (or test). The Company considers "travel time to the collection site, plus 30 minutes" as the maximum acceptable interval of time between notification and testing.

In test situations such as post-accident and reasonable suspicion/cause, where the employee's job performance is called into possible question, supervisors will use their discretion and training to minimize further confrontation. A reasonable attempt will be made by the supervisor to isolate and inform the employee of the decision to test, the steps that must be taken to accomplish the test, and the consequences of refusing the test. If possible, for post-accident and reasonable suspicion tests, the Company will have the DER or a supervisor accompany the employee to the collection site.

#### 5. DOT Drug Violations

**Drug Violations.** The following provides a listing of DOT drug violations prohibited of covered employees:

- a) A verified positive drug test result;
- b) A refusal to be tested, determined by:
  - (1) Having a verified adulterated or substituted drug test result;
  - (2) Failing to appear for any drug test (except a pre-employment test) within a reasonable time, as determined by the Company, after being directed to do so by the Company;
  - (3) Failing to remain at the drug testing site until the testing process is complete;
  - (4) Failing to provide a urine specimen for any drug test;
  - (5) Failing to allow a directly observed or monitored collection in a drug test that requires such a collection procedure;



- (6) Failing to provide a sufficient amount of urine for a drug test when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- (7) Failing or declining to take an additional drug test the Company or collector has directed the employee to take;
- (8) Failing to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER; or,
- (9) Failing to cooperate with any part of the testing process (e.g., refuse to empty pockets or failure to wash hands when so directed by the collector, behave in a confrontational way that disrupts the collection process, tampering with a specimen).
- (10) For an observed collection, fail to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.
- (11) Possess or wear a prosthetic or other device that could interfere with the collection process.
- (12) Admit to the collector or MRO that a specimen has been adulterated or substituted.

## 6. DOT Alcohol Violations and Prohibited Conduct<sup>15 16</sup>

**Alcohol Violations.** The following provides a listing of DOT alcohol violations prohibited of covered employees:

- a) A test result of 0.04 or higher alcohol concentration;
- b) A refusal to be tested, determined by:
  - (1) Failing to appear for any alcohol test (except a pre-employment test) within a reasonable time, as determined by the Company, after being directed to do so by the Company;
  - (2) Failing to remain at the alcohol testing site until the testing process is complete;
  - (3) Failing to provide an adequate amount of saliva or breath for an alcohol test;
  - (4) Failing to provide a sufficient amount of breath for an alcohol test when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
  - (5) Failing to undergo a medical examination or evaluation, as directed by the DER;
  - (6) Failing to sign the certification statement on the Alcohol Testing Form; or,
  - (7) Failing to cooperate with any part of the testing process.
- c) On-duty use of alcohol while performing covered functions.
- d) Pre-duty use of alcohol within four (4) hours prior to performing covered functions, or if the employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty.
- e) Use of alcohol within eight (8) hours following an accident in which the performance of covered functions has not been discounted by the Company as a contributing factor to the accident, unless the employee has already been given a post-accident alcohol test.

**Alcohol Prohibited Conduct.** The following is prohibited conduct of DOT covered employees:

- a) A test result of 0.02 or greater alcohol concentration, but less than 0.04.

## 7. Violation Consequences and Company Actions<sup>16 17</sup>

**After DOT Rule Violations.** The Company will not allow any covered employee who has a DOT drug or alcohol violation to perform safety-sensitive duties for the Company. Immediately upon learning of the violation, the DER shall assure the removal of the employee from all safety-sensitive duties. That employee will be ineligible to work in any DOT safety-sensitive function for the Company until the employee has successfully completed the DOT return-to-duty process. The Company will refer the

employee to a Substance Abuse Professional (SAP) as soon as practicable after the verified violation report.

**After DOT Alcohol Prohibited Conduct.** The Company will not allow any covered employee to perform, or continue to perform, any function covered by Part 199 when the employee is found to have an alcohol concentration of 0.02, or higher, but less than 0.04. The Company may continue testing the employee until the alcohol concentration is less than 0.02, or the Company may not use the employee in a safety-sensitive function until the start of the employee's next regularly scheduled shift, which must be not less than eight hours following the test that indicated "prohibited conduct."

## **V. ANTI-DRUG PROGRAM**

### **1. DOT-Required Drug Tests**

**Compliance.** The Company will ensure that each employee who performs a DOT-covered function will be drug tested for the following reasons when called for by Part 199: All drug tests will be conducted following the procedures of Part 40.

**Pre-Employment.**<sup>18</sup> A pre-employment drug test will be conducted before an individual is hired or contracted into a covered position and when an individual is transferred or promoted from a non-covered to a covered position. This includes when an individual switches back and forth from a covered position to a non-covered position and back again. This also applies to employees returning from a leave of absence greater than 30 days who have not been participating in the Company's drug program and subsequently subject to the random selection process. A negative DOT urine drug test result is required prior to performing covered functions. DOT does not allow the use of a "quick test" (e.g., a urine test that produces an immediate test result) or any other methodology other than urine. Pre-employment tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action.

**Post-Accident Testing.**<sup>19</sup> The Company will conduct both a drug test and an alcohol test after an accident, or incident on each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision whether to test or not to test any employee shall be based on the Company's determination, using the best available information immediately following the accident, that the covered employee's performance could or could not have contributed to the accident. The Company will explain to each employee to be tested there is reason to believe their performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The Company will document the decisions that support the determination to conduct a post-accident test. Refer to the *Post Accident or Reasonable Cause/Suspicion Supervisor Written Record*.

A post-accident drug test shall be conducted on each employee as soon as possible but no later than 32 hours after the accident. The Company must take all reasonable steps to obtain a urine specimen from an employee after an accident, but any injury should be treated first. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, 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.

The affected employee will not be allowed to proceed alone to or from the collection site. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the Company or Company's representative of their location if they leave the scene of the accident prior to submission to such test, may be deemed by the Company to have refused to submit to testing. Post accident tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action. Depending on the circumstances of the accident, and if feasible, the employee will not be allowed to perform covered functions pending the results of the drug test.

**Random Drug Testing.**<sup>20 21 22 23</sup> The Company will conduct a number of random tests each calendar year that meets or exceeds the current minimum annual percentage random testing rate. The

minimum rate for random drug testing, set by the PHMSA regulation, is 25 percent of the Company's covered employees. If the industry random drug testing positive rate is above 1 percent, PHMSA will raise the annual percentage rate for random drug testing to 50 percent of the Company's covered employees. The Company may use the services of the C/TPA to manage all aspects of the Company's random testing program. If the Company conducts random testing through a C/TPA, the number of employees to be tested may be calculated for each individual Company or may be based on the total number of covered employees covered by the C/TPA who are subject to random testing (e.g., consortium random testing pool).

All covered employees will be immediately placed in the random pool after obtaining a negative result on their pre-employment test. Covered employees will remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing. The selection of employees shall be made by using a computer-based, scientifically valid method (e.g., random number generator or equivalent random selection method) that is matched with an employee's social security number or employee ID number. The DER will assure the pool contains employee social security numbers or employee identification numbers that are current, complete, and correct. Employees will have an equal chance of being selected for testing.

Random testing will occur on a quarterly basis. Prior to selection, the DER shall ensure that the random testing pool has been updated to include all current covered employees in the Company's workforce. The number of tests to be conducted will be based on the number of covered employees at the beginning of each quarter's test cycle. The DER, or C/TPA, shall use the random selection procedures to compile a list of covered employees selected for testing in each testing cycle. The number of employees selected shall be sufficient to assure that the minimum number of required tests can be achieved. The list of employees selected will be retained by the DER in a secure location until the time of testing when the list will then be provided to the appropriate division manager, department head, or supervisor who will, in turn, notify the employee(s) to report for testing.

Random testing is unannounced, with employees being notified that they have been selected for testing after they have reported for duty on the day of collection. Specimen collection will be conducted on different days of the week throughout each test cycle to prevent employees from matching their drug use patterns to the schedule for collection. Random tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action.

Once notified by the appropriate Company official, employees will be instructed to report immediately to the collection site.

**Reasonable Suspicion/Cause Testing.**<sup>24</sup> The Company will conduct reasonable suspicion testing, also known as reasonable cause testing, based on the Company's observation of "signs and symptoms" of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. At least two Company supervisors, one of whom is trained in detection of the possible signs and 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. If the Company has 50 or fewer employees subject to testing under PHMSA regulations, only one supervisor, trained in detecting possible drug use signs and symptoms, is needed to make the decision to test.

The supervisor making the determination to test shall document, in writing, the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion/cause test. This documentation of the employee's conduct shall be prepared and signed within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier. Refer to the *Post Accident or Reasonable Cause/Suspicion Supervisor Written Record*. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity in route to the collection site for the employee to compromise the test through any method of tampering that could affect the outcome of the test result. Reasonable suspicion/cause tests are normally unobserved by the collector. However, provisions will be available at the collection site for a directly observed collection to take place should circumstances require such action.

The employee shall not perform a covered function pending the receipt of the drug test results. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable belief that the employee may be under the influence of a drug. If the employee insists on driving, a supervisor should notify the proper local law enforcement authority that an employee believed to be under the influence of a drug is leaving the Company premises driving a motor vehicle.

**Return-to-Duty Testing.**<sup>25</sup> The Company will conduct a return-to-duty test prior to an employee returning to safety-sensitive duty following a DOT violation. When an employee has a DOT violation the employee cannot work again in any DOT safety-sensitive function until successfully completing the Substance Abuse Professional (SAP) return-to-duty requirements. Only after the SAP has reported to the Company that the employee is eligible to return to safety-sensitive duties is the Company authorized to return the employee to a covered function. However, whether or not to do so is a business decision of the Company, not the DOT. When the Company makes the decision to return the employee to safety-sensitive duty, the Company will initiate the order for the return-to-duty test. All return-to-duty tests will be conducted using direct-observation collection procedures.

A return-to-duty test, as a minimum, will be for the substance associated with the violation. A return-to-duty test may, however, be for both drugs and alcohol. The decision belongs solely to the SAP from information gained during the SAP-evaluation/treatment processes. The results of a return-to-duty drug test must be negative in order “to count” and allow the employee to return to work. A cancelled test must be recollected; a positive test or refusal-to-test will be considered as a new, separate violation. When the employee “passes” his return-to-duty test, their name is immediately placed into the Company’s random testing pool.

**Follow-up Testing.**<sup>26 27</sup> The Company will conduct follow-up testing, as a series of tests that occur after an employee returns to safety-sensitive work, following a negative result on the return-to-duty drug and/or alcohol tests. Follow-up testing, as a minimum, will be for the substance associated with the violation. In addition, follow-up testing may be for both drugs and alcohol, as directed by the SAP’s written follow-up testing plan.

Follow-up testing is the Company’s responsibility to conduct. Follow-up testing will run concurrently with random testing. All follow-up tests will be conducted using direct-observation collection procedures.

The number and frequency of the follow-up tests will be determined by the SAP, but shall consist of at least six tests in the first 12 months following the covered employee’s return to duty. The follow-up plan will give both the number of tests and their frequency; the Company will select the actual day and time of the test and the tests are unannounced. Follow-up testing shall not exceed 60 months from the date of the covered employee’s return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines that such testing is no longer necessary.

## **2. Drug Tests That Require Direct Observation Procedures<sup>28</sup>**

**Compliance.** The Company will conduct all return-to-duty and follow-up drug tests using the direct observation collection procedures specified by Part 40. Pre-employment, post-accident, reasonable suspicion/cause and random drug tests are normally conducted by giving the employee the privilege of privacy when providing the urine specimen. However, should it be required that these collections be conducted under direct observation procedures, the Company will convey instructions to the collector to ensure that this is done. Direct observation procedures will also be used for collections when a specimen is provided and the temperature is out of range, when the specimen appears to have been tampered with or when a previous specimen has been reported as invalid, adulterated, substituted or negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, as defined in Part 40.



### 3. Specimen Collection Procedures

**Compliance.** The Company will follow the requirements of Part 40 for its DOT collections. A full description of DOT collection requirements that collectors will follow can be found in Part 40, Subpart C (“Urine Collection Personnel”), Subpart D (“Collection Sites, Forms, Equipment and Supplies Used in a DOT Urine Collection”), and Subpart E (“Urine Specimen Collections”).

**Collection Site Personnel.**<sup>29 30</sup> The Company will ensure that collection sites, utilized by its employees, are aware of their responsibilities with regard to the DOT specimen collection process. These responsibilities are to collect urine specimens using Part 40 procedures, ship the specimens to a Department of Health and Human Services (HHS) certified laboratory for analysis, and distribute copies of the Federal Drug Testing Custody and Control Form (CCF) to the laboratory, Medical Review Officer, employer or employer’s C/TPA, and employee in a confidential manner. All attempts are made to use collectors who have been trained in accordance with Part 40. The Company, or the Company’s C/TPA, will ask the collection sites conducting DOT collections to attest to the fact that they comply with DOT standards of practice. The direct supervisor of a covered employee shall not serve as a collector in conducting any required drug test unless it is otherwise impracticable.

**Collection Site, Forms, and Specimen.** The Company will provide the employee with the specific location of the collection site where the drug test will take place. In most cases, the Company will provide the employee with a drug testing kit, which includes the CCF, to present to the collector. The only specimen that will be collected for any DOT collection is urine; the only form that will be used is the Federal CCF.

**Collections.** The Company will inform every employee that they are required to carry and present a current valid photo ID, such as a driver’s license, passport, or employer-issued picture ID to the collection site. The employee will be advised that the collector will ask them to empty their pockets, remove any unnecessary garments (the employee may retain their wallet), and wash and dry their hands prior to the collection. The employee will be instructed to follow the collector’s instructions throughout the collection process. Normally, the employee will be afforded privacy to provide a urine specimen. Exceptions to the rule generally surround issues of attempted adulteration or substitution of a specimen or any situation where questions of specimen validity arise, like an unusual specimen temperature.

After the employee has provided the specimen (a minimum of 45 mL) of their urine into a collection container, the collector will check the temperature and color of the urine. All DOT collections are “split specimen collections.” The collector will pour the urine into two separate bottles (bottle “A” as the primary specimen and bottle “B” as split specimen), seal them with tamper-evident tape, and then ask the employee to initial the seals after they have been placed on the bottles. (Remember: Neither the employee nor the collector should let the specimen out of their sight until it has been poured into two separate bottles and sealed.) Next, the employee will write their name, date of birth, and daytime and evening phone numbers on the MRO Copy (Copy 2) of the CCF. This is so the MRO can contact the employee directly if any questions arise about their test.

Lastly, the collector will complete the necessary documentation on Copy 1 of the CCF and package the CCF and the two specimen bottles in the plastic bag and seal the bag for shipment to the laboratory. Copies of the CCF will be distributed: Copy 2 to the MRO and Copy 4 to the employer or the employer’s C/TPA; the collector keeps Copy 3; and, the employee gets Copy 5. The employee may list any prescription and over-the-counter medications they may be taking on the back of their copy of the CCF (this may serve as a reminder for the employee in the event the MRO calls to discuss their test results).

**Possible collection issues.** If the employee is unable to provide 45 mL of urine on the first attempt, the time will be noted, and they will be required to remain in the testing area under the supervision of the collection site personnel, their supervisor, or a representative from their Company (e.g., supervisor accompanying the employee). Leaving the testing area without authorization may be considered a refusal to test. The employee will be urged to drink up to 40 oz. of fluid, distributed reasonably over a period of up to three hours, and asked to provide a new specimen (into a new collection container). If the DER is contacted, the DER should instruct the employee to remain at the collection site to complete the collection process. If the employee does not provide a sufficient

specimen within three hours, the DER, in consultation with the MRO, will direct the employee to obtain a medical evaluation within five days to determine if there is an acceptable medical reason for not being able to provide a specimen. If it is determined that there is no acceptable physiological or pre-existing psychological reason for not providing a urine specimen, it will be considered a refusal to test.

**Directly observed collections** . If a direct observation collection is required of the employee, the Company will ensure that the DOT requirements (i.e., direct observation by same-sex collector, observation of body-to-bottle urination, and use of full turn-around observation) procedures are followed.

#### 4. PHMSA Inspection Protocol for Specimen Collection Sites

**Compliance.** PHMSA's Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Prevention Programs, Form No.: 3.1.11, dated January 29, 2010, provides a separate inspection protocol for Specimen Collection Sites. The Company provides this protocol to correspond with the detail found in the PHMSA Inspection Form. As previously stated, the Company will ensure that all DOT drug tests comply with Part 40 requirements.

**Collection Personnel.** The Company will ensure that only qualified collectors are used to conduct Company DOT tests. An immediate supervisor of an employee may be used in cases where there are no qualified collectors available, and where their use is the only way to get the test conducted. Collectors will maintain documentation to verify they meet training requirements and will make that documentation available to the Company on request.<sup>31</sup> If an error occurs causing a test to be canceled and the error is directly attributed to the collector, the collector will undergo error-correction training within 30 days of the date of notification of the error that led to the need for training.<sup>32</sup>

**Collection Sites, Forms and Supplies.** The Company will use designated collection sites that meet DOT requirements.<sup>33</sup> If the collection site uses a facility normally used for other purposes, the collector will ensure that it meets DOT standards before continuing the collection.<sup>34</sup> Access to collection materials and specimens will be restricted, and the facility will be secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs will be posted as necessary. The collector will maintain personal control over each specimen and CCF throughout the collection process and will prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.<sup>35</sup> The current CCF and a collection kit, that meets the requirements of Appendix A to Part 40, will be used for DOT collections.<sup>36 37</sup>

**Specimen Collections.** Collectors will explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.<sup>38</sup> In most all collections, the Company will provide the employee with a kit and CCF to carry to the collection site. In other collections, collectors will provide the employee with an individually wrapped or sealed collection container from the collection kit materials.<sup>39</sup> Precautions will be taken to ensure that unadulterated specimens are obtained and correctly identified. Specimen integrity will be maintained by: bluing agents being added in the toilet tank and all water sources secured; positive photo identification of the employee for collection; notification of the DER if employee fails to arrive at the assigned time; having the employee remove any unnecessary outer garments (purses or briefcases will remain with outer garments); having employees wash and dry their hands; and, to the greatest extent possible, the collector will keep an employee's collection container within view of both the collector and the employee between the time the employee has urinated and the specimen is sealed. Any unusual behavior will be noted on the CCF.<sup>40</sup>

Following the collection, the specimen will be checked for sufficient volume (i.e., 45 mL), acceptable temperature range (i.e., between 90-100 degrees F), and shows no signs of tampering (e.g., color, odor).<sup>41</sup> Having problematic issues with specimen volume, the collector will follow DOT's "shy bladder" procedures<sup>42</sup>; problems with temperature or tampering will result in the collector conducting a second collection under direct observation (see Section V.2, "Drug Tests That Require Direct Observation Procedures").<sup>43</sup> Direct observation procedures will be used for all collections where the reason-for-test is either return-to-duty or follow-up. Direct observation procedures will also be used for collections when a specimen is provided and the temperature is out of range, when the specimen

appears to have been tampered with or when a previous specimen has been reported as invalid, adulterated, substituted or negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, as defined in Part 40. If the collector does a monitored collection, same gender monitors will be used if the monitors are non-medical personnel.<sup>44</sup> All collections are completed by the specimens being sealed and labeled, the CCF being properly executed, and the specimens and the CCF being sealed in a plastic bag for shipment to the laboratory.<sup>45</sup>

## 5. Drug Testing Laboratory

**Compliance.** The Company will employ a laboratory that will follow the requirements of Part 40 for the Company's DOT drug tests. A full explanation of DOT drug testing requirements that the laboratory will follow is found in Part 40, Subpart F ("Drug Testing Laboratories").

**Laboratory.**<sup>46 47</sup> The Company shall ensure that all DOT testing is conducted only by a laboratory that is certified by the Department of Health and Human Services (HHS) under the National Laboratory Certification Program (NLCP). Doing so ensures that the Company complies with the requirements of Part 40 and with all applicable requirements of HHS in testing DOT specimens, whether or not those requirements are explicitly stated in the Plan. The laboratory used by this Company is specified in Appendix B. The laboratory will report the certified results to the MRO and only to the MRO, at the address provided on the Federal CCF. Results will not be reported directly to the Company or to or through another service agent, such as the C/TPA.

**Specimen.** Urine is the only specimen that is authorized for DOT drug testing. The Company will not use any other specimen (e.g., hair or saliva) for a DOT-required drug test. A "quick test" (e.g., a urine test that produces an immediate test result) is also prohibited by DOT.

**Drug Testing.**<sup>48</sup> The laboratory will ensure that, on each DOT test, each specimen is tested for **marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP)**. (See Table 1, pg 23) The testing is a "two step" process: all presumptive positive results on the initial test must be confirmed by a confirmation test. The initial and the confirmation tests use different chemical principles, and separate portions of the original specimen, for testing. DOT specimens will not be tested for any other drugs. DOT specimens will not be subjected to DNA testing.

**Validity Testing.** The laboratory will ensure that, on each DOT test, each specimen is also subjected to "validity testing." The purpose of validity testing is to determine if the employee tampered with their specimen during the collection process. Validity testing measures the creatinine concentration and specific gravity to detect a diluted or substituted specimen; pH is measured as one criterion established to detect an adulterated specimen. Validity testing also incorporates HHS criteria (used by DOT) in testing for specific adulterants such as nitrites, chromates, surfactants, and other active chemical compounds.

**Laboratory specimen handling and reporting.** When the laboratory receives a DOT specimen they will unpack and enter it into the testing process. Part of that process is to examine the condition of the specimen bottles and accompanying CCF. The laboratory will look closely for any specific reason to stop the testing process (i.e., "fatal flaws"). If the laboratory determines a fatal flaw exists, the specimen is rejected for testing. If a fatal flaw does not exist, the specimen will be tested. DOT specimens are limited to four fatal flaws. They are:

- a) Specimen ID numbers on the CCF and the bottles do not match.
- b) Not enough urine and the bottles cannot be re-designated.
- c) Signs of tampering and the bottles cannot be re-designated.
- d) Collector's printed name and signature are missing.

The laboratory will open only the primary specimen (Bottle "A") to conduct the two tests (initial and confirmatory). If the specimen tests negative in either test and does not have any specimen validity issues, the result will be reported to the MRO as a negative. Only if the specimen test results are positive, adulterated, substituted, and/or invalid under both tests will the specimen be reported to the MRO as a positive, adulterated, substituted, and/or invalid, respectively. These results are also referred to as "non-negative" results.



### Required DOT Drug Tests & Cutoffs

| TYPE OF DRUG<br>Initial Test Analyte           | INITIAL TEST<br>Cutoff Concentration | CONFIRMATORY TEST<br>Analyte                                  | CONFIRMATORY TEST<br>Cutoff Concentration |
|--|--------------------------------------|---|---|
| <b>Marijuana metabolites</b>                   | 50 ng/mL                             | THCA <sup>9</sup>   | 15 ng/mL                                  |
| <b>Cocaine metabolites</b>                     | 150 ng/mL                            | Benzoyllecgonine  | 100 ng/mL                                 |
| <b>Opiate metabolites:</b><br>Codeine/Morphine | 2000 ng/mL                           | Codeine<br>Morphine   | 2000 ng/mL<br>2000 ng/mL                  |
| 6-acetylmorphine (6-AM)                        | 10 ng/mL                             | 6-acetylmorphine (6-AM)                                       | 10 ng/mL                                  |
| <b>Phencyclidine (PCP)</b>                     | 25 ng/mL                             | Phencyclidine   | 25 ng/mL                                  |
| <b>Amphetamines:</b><br>AMP/MAMP               | 500 ng/mL                            | Amphetamine<br>Methamphetamine                                | 250 ng/mL<br>250 ng/mL <sup>13</sup>      |
| MDMA   | 500 ng/mL                            | MDMA <sup>10</sup><br>MDA <sup>11</sup><br>MDEA <sup>12</sup> | 250 ng/mL<br>250 ng/ml<br>250 ng/mL       |

Table 1

<sup>9</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.

<sup>10</sup> Methylenedioxymethamphetamine (MDMA).

<sup>11</sup> Methylenedioxyamphetamine (MDA).

<sup>12</sup> Methylenedioxyethylamphetamine (MDEA).

<sup>13</sup> Specimen must also contain amphetamine at a concentration of greater than or equal to 100 ng/mL.

## 6. Laboratory Retention Periods and Reports

**Specimen retention.**<sup>49</sup> Specimens that are confirmed by the laboratory to be positive, adulterated, substituted, or invalid will be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days. Within this 365 day period, the MRO, the employee, the Company, PHMSA or other state agencies with jurisdiction, may request in writing that the specimens be retained for an additional period. If the laboratory does not receive the request to retain the specimen within the 365-day period, the specimen will be discarded.

**Record retention.**<sup>50</sup> All laboratory records pertaining to any test for this Company on its covered employees will be retained for two years. The employer-specific data that is created by the laboratory for the laboratory statistical summary will be retained for two years.

**Semi-annual reports.**<sup>51</sup> The laboratory will prepare and send to the Company the aggregate employer-specific summary on a semi-annual basis. The format for this report is found in Part 40, Appendix B.

## 7. Laboratory Quality Control

**Inspections.** The laboratory shall permit inspections by the Company, the PHMSA Administrator, or if the Company is subject to the jurisdiction of a state agency, a representative of the state agency. Additionally, if the Company uses a C/TPA, that C/TPA may conduct a periodic inspection of the laboratory on the behalf of the companies that are clients of the C/TPA.

**Quality control.**<sup>52</sup> If the Company, or any C/TPA employed by the Company, has 2000 or more covered employees, the Company, or C/TPA, will submit quality control specimens to any laboratory where they have more than 100 specimens tested each year. The rate of quality control specimens is 1% with a cap at 50 per quarter. At any time that the Company, or any C/TPA employed by the Company, reaches the 2000-employee threshold, quality control specimen will be submitted following the specifications of Part 40. Quality control specimens, known as “blind” specimens, submitted to the laboratory, will appear to be real, employee specimens. The MRO will be informed of each test result and expected outcome.

**Reporting discrepancies.** The MRO will inform the Company or its C/TPA of any discrepancy in the expected result of any blind specimen. The MRO and C/TPA will resolve any discrepancies in the expected outcomes with this testing. If the unexpected outcome is positive, adulterated, or substituted where the expected outcome was to be negative, the MRO will report this result directly to DOT/ODAPC, in accordance with Part 40.

## 8. MRO Review of Drug Test Results

**Compliance.**<sup>53</sup> The Company will have, on staff or contract for the services of, an MRO who is a licensed physician with knowledge of drug abuse and is qualified under Part 40. The MRO will follow the requirements of Part 40 in carrying out the functions of the “independent and impartial gatekeeper of the drug testing process.” A full description of DOT MRO requirements can be found in Part 40, Subpart G (“Medical Review Officers and the Verification Process”), and Subpart H (Split Specimen Testing).

**Duties.**<sup>54</sup> All confirmed drug test results for the Company are received by the MRO directly from the laboratory. The MRO is responsible for the review of both negative and non-negative test results, review of the CCFs associated with each test, and to conduct quality control reviews of the MRO staff. The MRO will review and interpret confirmed positive, adulterated, substituted, and invalid test results. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive, adulterated, substituted, or invalid test result. This action would include conducting a medical interview with the employee and review of the employee's medical history, or review of any other relevant biomedical factors, such as the results of a physical examination following an opiate positive. The MRO shall review medical records made available by the tested employee when the source of the confirmed result could have been from legally prescribed medication. The MRO shall not, however, consider the results of urine or other specimens that are not obtained or processed in accordance with DOT regulations.

**Results.**<sup>55 56</sup> The MRO will use staff under his direct supervision to handle administrative processes for negative test results including receiving the result from the laboratory, reviewing the paperwork for

accuracy, and reporting of the result to the DER.

The MRO staff may make the initial contact with employees having confirmed positive, adulterated, substituted, and invalid test results, for the purposes of setting up an interview for the MRO. The MRO will personally conduct the interview with the employee to determine whether there is a legitimate medical explanation for these results. This interview will be conducted, in most cases, before the Company is notified. If the result is confirmed positive by the laboratory, and a legitimate medical explanation is established, the MRO will report the result to the DER as negative. If not, the MRO will report the result to the DER as positive. If the confirmed result is adulterated or substituted, and a legitimate medical explanation is established, the MRO will report the result to the DER as cancelled and notify ODAPC, in accordance with Part 40 procedures. If not, the MRO will report the result to the DER as a refusal to test. If the result is invalid, and an acceptable reason is established, the MRO will report the result to the DER as cancelled and the process will stop, unless a negative test result is needed (e.g., pre-employment, return-to-duty and follow-up). If an acceptable reason is not established, the MRO will report the result to the DER as cancelled and order an immediate recollection under direct observation.

**Reports.**<sup>57</sup> All drug test results will be reported to the Company DER in a confidential and timely manner. Before reporting any results, the MRO will have received a copy of the CCF showing where the employee has signed the form. The time period from collecting the specimen to reporting the verified test result is generally shorter for negatives than for non-negatives. Non-negatives will not be reported to the DER until all information required for the employee interview is received and approved by the MRO. The Company may use a C/TPA as its intermediary in receiving drug test results. If so, those reports will be handled in accordance with Part 40 requirements. If the MRO does not use Copy 2 of the CCF for reporting results, the MRO will maintain a copy of the signed or stamped report in addition to the signed or stamped and dated Copy 2. If the MRO uses an electronic data file to report negatives, the MRO will maintain a retrievable copy of that report in a format suitable for inspection and auditing by a DOT representative.

## 9. Split Specimen Testing

**Split Specimen.**<sup>58</sup> When the MRO has verified a result as positive, adulterated, or substituted, the MRO will notify the employee of their right to have the split specimen tested. The employee must notify the MRO within 72 hours of the result being verified in order to have this testing conducted. If the employee requests that the split specimen be tested within the 72-hour period, the MRO will ensure that the split specimen is tested. Testing of the split specimen is only conducted at the request of the employee, and then only after using the MRO as the requesting agent for the employee.

The Company is responsible for making sure that the MRO, first laboratory, and second laboratory perform the functions noted in Part 40 in a timely manner, once the employee has made a timely request for a test of the split specimen (e.g., by establishing appropriate accounts with laboratories for testing split specimens).

The Company must not condition compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement for reimbursement of the costs of testing. For example, if the Company's asks the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, the Company must ensure that the test takes place in a timely manner, which means that the Company will pay for the split testing. The Company may seek payment or reimbursement of all or part of the cost of the split specimen from the employee. Part 40 takes no position on who ultimately pays the cost of the test, so long as the Company ensures that the testing is conducted as required and the results released appropriately.

**Laboratory.**<sup>59</sup> The testing of the split specimen will be conducted at another HHS-certified

laboratory, different from the original laboratory. The Company will select the second laboratory. The split specimen will be tested for the same substance or condition that was found in the primary specimen. The MRO will report back to the DER and the employee whether the split reconfirms the primary. If the test of the split does not reconfirm the primary, both tests will be cancelled as if they never occurred.

## 10. Medical Marijuana

The DOT and the Company does not accommodate the use of medical marijuana by DOT-covered employees.

## VI. ALCOHOL MISUSE PREVENTION PROGRAM

### 1. DOT-Required Alcohol Tests

**Compliance.** The Company will ensure that each employee who performs a DOT-covered function will be alcohol tested for the following reasons when called for by Part 199. All alcohol tests will be conducted following the procedures of Part 40.

**Pre-Employment.**<sup>60</sup> PHMSA does not mandate a pre-employment alcohol test for covered employees in the pipeline industry. PHMSA does give operators and contractors who wish to conduct a pre-employment alcohol test the authority to do so. If the Company decides to conduct pre-employment alcohol testing, all applicants will be advised of the test prior to the test occurring, and all tests will be conducted 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). The Company will treat all covered employees the same for the purpose of pre-employment alcohol testing; the Company will not test some covered employees and not others. The Company will conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test. A result of less than 0.02 alcohol concentration is required prior to performing covered functions.

**Post-Accident Testing.**<sup>61</sup> The Company will conduct both a drug test and an alcohol test, after an accident, or incident, on each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision whether to test or not to test any employee shall be based on the Company's determination, using the best available information immediately following the accident, that the covered employee's performance could or could not have contributed to the accident. The Company will explain to each employee to be tested there is reason to believe their performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The Company will document the decisions that support the determination to conduct a post-accident test. Refer to the *Post Accident or Reasonable Cause/Suspicion Supervisor Written Record*.

A post-accident alcohol test shall be conducted on each employee as soon as possible but no later than 8 hours after the accident. If the test is not completed within 2 hours the Company will prepare and maintain a written statement documenting the reason the test was not conducted. If the test is not completed within 8 hours the Company shall cease attempts to do so. The Company will take all reasonable steps to obtain a breath test from an employee after an accident, but any injury should be treated first. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, 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.

The affected employee will not be allowed to proceed alone to the testing site. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the Company or Company's representative of their location if they leave the scene of the accident prior to submission to such test, may be deemed by the Company to have refused to submit to testing.

**Random Testing.** PHMSA does not authorize random alcohol testing of covered employees within the natural gas and hazardous liquids pipeline industry. The Company will not conduct DOT random alcohol testing of their PHMSA-regulated employees.

**Reasonable Suspicion/Cause Testing.**<sup>62 63 64</sup> The Company will conduct reasonable suspicion testing, also known as reasonable cause testing, based on the Company's observation of "signs and symptoms" of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A supervisor trained in detection of the possible signs and symptoms of alcohol use shall make the decision to test an employee. The decision to test will only be made on an employee during, just before, or just after his performance of DOT functions. The supervisor making the determination to test shall document, in writing, the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion/cause test. This documentation of the employee's conduct should be prepared and signed within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier. Refer to the *Post Accident or Reasonable Cause/Suspicion Supervisor Written Record*. The potentially affected employee should not be allowed to proceed alone to or from the test site.

If the reasonable suspicion test is not administered within 2 hours following the determination, the Company will prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within 8 hours, the Company will cease attempts to administer an alcohol test and record the reasons for not testing.

If the test results are 0.02 or greater, the employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable belief that he may be under the influence of alcohol. If the employee insists on driving, a supervisor should notify the proper local law enforcement authority that an employee believed to be under the influence of alcohol is leaving the Company premises driving a motor vehicle.

**Return-to-Duty Testing.**<sup>65</sup> The Company will conduct a return-to-duty test prior to an employee returning to safety-sensitive duty following a DOT violation. When an employee has a DOT violation the employee cannot work again in any DOT safety-sensitive function until successfully completing the SAP/return-to-duty requirements. Only after the SAP has reported to the Company that the employee is eligible to return to safety-sensitive duties is the Company authorized to return the employee to a covered function. However, whether or not to do so is a business decision of the Company, not the DOT. When the Company makes the decision to return the employee to safety-sensitive duty, the Company will initiate the order for the return-to-duty test.

A return-to-duty test, as a minimum, will be for the substance associated with the violation. A return-to-duty test may, however, be for both drugs and alcohol. The decision belongs solely to the SAP from information gained during the SAP-evaluation/treatment processes. The results of a return-to-duty alcohol test must be less than 0.02 in order "to count" and allow the employee to return to work. A cancelled test does not meet this criterion and requires a retest; a result greater than 0.02 but less than 0.04 must be retested until the result is less than 0.02; a result of 0.04 or greater is a new, separate violation.

**Follow-up Testing.**<sup>66 67</sup> The Company will conduct follow-up testing, as a series of tests that occur after an employee returns to safety-sensitive work, following a negative result on the return-to-duty drug and/or alcohol tests. Follow-up testing, as a minimum, will be for the substance associated with the violation. In addition, follow-up testing may be for both drugs and alcohol, as directed by the SAP's written follow-up testing plan.

Follow-up testing is the Company's responsibility to conduct. The number and frequency of the follow-up tests will be determined by the SAP, but shall consist of at least six tests in the first 12 months following the covered employee's return to duty. The follow-up plan will give both the number of tests and their frequency; the Company will select the actual day and time of the test and the tests are unannounced. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines that such testing is no longer necessary.

## **2. Alcohol Test**

**Compliance.** The Company will follow Part 40 procedures for alcohol testing. A full description of DOT alcohol testing requirements can be found in Part 40, Subpart J ("Alcohol Testing Personnel");



Subpart K ("Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing"); Subpart L ("Alcohol Screening Tests"); Subpart M ("Alcohol Confirmation Tests"); and, Subpart N ("Problems in Alcohol Testing"). These procedures apply to all DOT alcohol tests regardless of the reason for the test.

**Personnel and Testing Devices.**<sup>68 69</sup> The Company will only use qualified Screening Test Technicians (STT) or Breath Alcohol Technicians (BAT) for DOT alcohol tests. These technicians will only conduct the test using DOT-approved devices. Devices are approved by the National Highway Traffic Safety Administration (NHTSA), an agency of DOT, and placed on the Conforming Products List (CPL).<sup>14</sup> The devices used by the Company will be maintained according to the particular manufacturer's specifications in the Quality Assurance Plan (QAP). External calibration checks will be performed at the intervals specified in the manufacturer's instructions for any EBT used for DOT-required alcohol confirmation testing.

**Testing Site, Forms, and Specimen.** The Company will provide the employee with the specific location where the test will take place. Tests will be conducted in an area to prevent unauthorized people from hearing or seeing the employee's test result. The Company will remind the employee that failure to sign the DOT Alcohol Testing Form (ATF) at the instruction of the testing technician will be viewed as a refusal to test. The alcohol screening test may be conducted with breath or saliva, as applicable for the device used by the testing technician. Only breath will be used for the confirmation test, which is conducted by a BAT using an EBT.

**Test.** The Company will inform the employee that they are required to carry and present a current valid picture ID, such as a driver's license, passport, or employer-issued picture ID to the testing site. The testing technician will perform a screening test and show the employee the test result. If the screening test result is an alcohol concentration of less than 0.02, no further testing is authorized, and there is no DOT action to be taken. The technician will document the result on the ATF, provide the employee a copy and also provide the Company and/or the Company's C/TPA a copy. If the screening test result is 0.02 or greater, the employee will be required to take a confirmation test, which can only be administered by a BAT using an EBT. The BAT will wait at least 15-minutes, but not more than 30 minutes, before conducting the confirmation test. During that time, the employee will not be allowed to eat, drink, smoke, belch, put anything in their mouth or leave the testing area. Leaving the testing area without authorization may be considered a refusal to test. The BAT will perform an "air blank" (which must read 0.00) on the EBT device to ensure that there is no residual alcohol in the EBT or in the air around it. The confirmation test result is the final result of the test, and the will be shown to the employee and on the printout from the EBT. If the result is less than 0.02, no action is taken under Part 199. Any result of 0.02 or greater will be immediately reported to the Company.

### 3. PHMSA Inspection Protocol for Alcohol Testing Sites

**Compliance.** PHMSA's Substance Abuse Program: Comprehensive Audit and Inspection Protocol Form, Combined Anti-Drug and Alcohol Misuse Prevention Programs, Form No.: 3.1.11, dated January 29, 2010, provides a separate inspection protocol for Alcohol Testing Sites. The Company provides this protocol to correspond with the detail found in the PHMSA Inspection Form. As previously stated, the Company will ensure that all DOT alcohol tests comply with Part 40 requirements.

**Alcohol Testing Personnel.** The Company will ensure that only qualified STTs and BATs are used to conduct Company DOT tests. STTs and BATs are responsible to maintain their own verification documentation and will make it available to the Company on request.<sup>70</sup> A supervisor of an employee may not be used to conduct a reasonable suspicion/cause test if that supervisor was the one who made the determination to test.<sup>71</sup>

<sup>14</sup> National Highway Traffic Safety Administration, Conforming Products List for Evidential Breath Measurement Devices, March 11, 2010, and addendums.

**Alcohol Testing Sites, Forms and Supplies.** The testing site will ensure visual and aural privacy to the employee being tested to prevent unauthorized persons from seeing or hearing test results. The site will have the needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing. The site will be able to prevent unauthorized personnel from entering the testing site, and ensure no unauthorized employee has access to an unsecured EBT, and that when an EBT or ASD is not being used for testing, it is stored in a secure place. Tests will be conducted on only one employee at a time.<sup>72</sup>

Only EBTs and ASDs listed on the NHTSA CPL will be used for DOT alcohol testing, and only an EBT must be used for conducting the confirmation tests.<sup>73</sup> The QAP and associated manufacturer's instructions will be followed for all EBTs and ASDs used by the Company.<sup>74</sup> It is the responsibility of the testing sites used by the Company to carry out this responsibility for the Company.<sup>75</sup>

**Alcohol Screening Tests.** Only the DOT-approved ATF will be used for all Company alcohol tests.<sup>76</sup> The employee will provide a positive identification through the use of photo ID or by employer representative prior to the test.<sup>77</sup> The BAT or STT shall explain the testing process to the employee, including showing the employee the instructions on the back of the ATF.<sup>78</sup> If the employee has a designated testing time and does not appear, the BAT or STT will notify the DER. Testing will begin without undue delay. An alcohol test will be given prior to a drug test and medical attention, if it is required, will not be delayed in order to conduct a test. The testing technician will explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF. The ATF will be completed and the employee will be asked to sign the ATF. Failure to sign is a refusal to test. The BAT or STT will select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials and insert it into the device in accordance with the manufacturer's instructions. The employee will be instructed to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained. The employee will be shown the displayed test result. The device will print a label with, or the technician will write, the result and pertinent information on the ATF.<sup>79</sup>

**Alcohol Screening with an ASD.**<sup>80</sup> It is not the intent of the Company to use an ASD for an alcohol test. However, it is possible that, when necessary, one may have to be used to conduct the test. In those cases the STT or BAT will follow the manufacturer's instructions, and only use a device that has been under their control. The ASD may be either a saliva device or a breath tube. The expiration date will be shown to the employee. A device will not be used after its expiration date. The device will be opened in the presence of the employee, and the employee will be offered the opportunity to use the device, according to instructions. In any case where the technician uses the device, the device will be inserted into the employee's mouth and gather saliva, with the technician wearing single-use examination gloves while doing so and change them following each test. Assurance will be made that the device has properly activated and that the correct amount of time will be allowed to elapse before reading the result. If problems occur (e.g., the device does not activate, it is dropped on the floor), it will be discarded and a new test will be conducted using a new device. The STT or BAT will note on the ATF the reason for the new test. If efforts to get the ASD to work properly fail, the technician will direct the employee to take a new test immediately, using an EBT for the screening test. Devices, swabs, gloves or other materials used in the prior saliva or breath tube testing will not be used in subsequent tests.

**Alcohol Screening Results.**<sup>81</sup> A result with an alcohol concentration of less than 0.02 will be recorded on the ATF; the result will be transmitted to the DER, with the test concluded without consequence. A result with an alcohol concentration of 0.02 or higher requires the employee to take a confirmation test. If the same BAT who conducted the alcohol screening test will also conduct the confirmation test, the test will begin immediately. If a different BAT will conduct the confirmation test, the technician conducting the screening test will direct the employee to the site where the test will take place. The technician will also advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into the employee's mouth, or belch, during the 15-minute waiting period until the test occurs. The employee will be observed by the technician or an employer representative on the way to the confirmation testing site. The employee will be directed not to attempt to drive a motor vehicle to the confirmation testing site.



**Alcohol Confirmation Test.**<sup>82 83</sup> All alcohol confirmation tests will be conducted by BATs using EBTs. The BAT will ensure that the time since the screening test has been at least 15 minutes, and the employee has been advised not to eat, drink, put anything (e.g., cigarette, chewing gum) into the employee's mouth, or belch. The BAT will conduct an air blank on the EBT in the presence of the employee. The reading must be 0.00 for the test to proceed. If the reading is greater than 0.00, another air blank must be conducted; the EBT must not be used (taken out of service) if the second reading is greater than 0.00. The EBT cannot be used for testing until it is found to be within tolerance limits on an external check of calibration. A new sealed mouthpiece will be opened, in view of the employee, and used for the test. The employee will be instructed to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained. The results will be shown to the employee and printed for application to the ATF.

**Alcohol Confirmation Results.** If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. If the alcohol confirmation test result is 0.02 or higher, the BAT will immediately transmit the result directly to the DER in a confidential manner.

**Problems in Alcohol Testing.**<sup>84 85 86</sup> The Plan addresses the situations in which an employee has refused to take an alcohol test. See Section IV.6, "DOT Alcohol Violations and Prohibited Conduct." In situations where an employee is unable to provide sufficient saliva to complete a screening test, the Company will ensure that the employee takes a breath test immediately. In situations where an employee is unable to provide sufficient breath to complete a test, the employee will be sent for an evaluation, by a licensed physician who is acceptable to the Company. The physician will have expertise in the medical issues raised by the employee's failure to provide a breath specimen, as well as be apprised of the consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test. The physician will provide the Company with a signed statement of their conclusions. If it is the reasonable medical judgment of the physician, that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath, the test will be canceled by the Company. If there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath, this constitutes a refusal to test.

**Canceling an Alcohol Test.**<sup>87</sup> The Company will ensure that an alcohol test is canceled if a fatal flaw occurs. Fatal flaws are: 1) in the case of a screening test conducted on a saliva ASD or a breath tube ASD, the STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer; the saliva ASD does not activate; the device is used for a test after its expiration date; or, in the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result; 2) in the case of a confirmation test the BAT conducts the confirmation test before the end of the minimum 15-minute waiting period; the BAT does not conduct an air blank before the confirmation test; there is not a 0.00 result on the air blank conducted before the confirmation test; the EBT does not print the result; or, the next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is canceled.

The Company will ensure that an alcohol test is canceled if a correctable flaw occurs and is not corrected. Correctable flaws are: the BAT or STT does not sign the ATF; the BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained; and, the BAT or STT uses a non-DOT form for the test.

**Correcting Alcohol Problems.**<sup>88</sup> The Company will ensure that BATs and STTs will try to successfully complete each alcohol test for an employee. If they become aware of a problem that will cause the test to be canceled, they will try to correct the problem promptly, if practicable. Repeating the test is an acceptable part of this process. If repeating the testing process is necessary, a new test (new ATF, new device) must begin as soon as possible. If repeating the testing process is necessary, the technician is not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process. If another testing device is not available for the new test at the testing site, the technician will immediately notify the DER and

advise the DER that the test could not be completed. The DER will make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible. If the Company or its service agent administering the testing process becomes aware of a correctable flaw that has not been corrected, all practicable action will be taken to correct the problem so that the test is not cancelled. If the problem resulted from the omission of required information, the person responsible for providing the information must supply in writing the missing information and a signed statement that it is true and accurate.

If the problem is the use of a non-DOT form, the technician must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. The technician must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond the technician's control, and the steps the technician has taken to prevent future use of non-DOT forms for DOT tests. The technician must supply this information on the same business day on which the collector was notified of the problem, transmitting it by fax, e-mail or courier. If the technician cannot correct the problem, the technician must cancel the test.

## **VII. PROGRAM ELEMENTS COMMON TO DRUG AND ALCOHOL**

### **1. Substance Abuse Professional**

**Compliance.** The Company will follow the requirements of Part 40 for its Substance Abuse Professional (SAP) obligations. A full description of the SAP requirements is in Part 40, Subpart O ("Substance Abuse Professionals and the Return-to-Duty Process").

**Qualifications.**<sup>89</sup> The Company will refer employees only to SAP's who have the credentials, basic knowledge, and qualification training, including fulfilling obligations for continuing education courses, for DOT violations. The SAP will not be an advocate for the Company or the employee. The SAP's function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

**SAP Referral.**<sup>90</sup> The Company will provide to each employee who violates a DOT drug and alcohol regulation a listing of SAP's readily available to the employee and acceptable to the Company. The list will include SAP names, addresses, and telephone numbers. There will not be a charge to the employee for compiling or providing this list. The Company may use its C/TPA or other service agent to provide this information. Any covered employee who has violated DOT drug and alcohol regulations cannot again perform any DOT safety-sensitive duties for this Company until and unless the employee successfully completes the SAP evaluation, referral, and education/treatment process.

**Payment.** The Company is not required to pay for a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.

**Company Responsibility.** The Company is only bound by DOT to ensure that if the employee is provided an opportunity to return to a DOT safety-sensitive duty following a violation, that the Company ensure that the employee receives an evaluation by a SAP meeting the requirements of Part 40 and that the employee successfully complies with the SAP's evaluation recommendations before returning to the safety-sensitive job. Even if a SAP believes that the employee is ready to return to safety-sensitive work, the Company is under no obligation to return the employee to work. Under the DOT regulations, hiring and reinstatement decisions are left to the employer. The DOT leaves all payment issues for SAP evaluations and services to the Company and the employee to resolve.

**SAP Process.** The SAP will make a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. The SAP will refer the employee to an appropriate education and/or treatment program. At the completion of the education and/or treatment, the SAP will conduct a face-to-face follow-up evaluation to determine if the employee actively participated in the education and/or treatment program and demonstrated successful compliance with the initial assessment and evaluation recommendations. Reports will be provided to the Company on both the initial requirements and the outcome of the follow-up evaluation. The report will be specific and will include all of the Part 40 requirements of a written SAP report. The SAP will provide the DER with a written follow-up drug and/or alcohol testing plan for the employee and, if deemed necessary, will also provide the

employee and the Company with recommendations for continuing education and/or treatment.

## 2. Employee Assistance Program<sup>91 92</sup>

The Company will provide an Employee Assistance Program (EAP) for its employees and supervisors. The EAP may be established "in house," as part of internal personnel service or may be contracted to an entity that provides EAP services at other locations. The function of the EAP will be to provide employees with informational material on the awareness and danger of drug and alcohol use. General EAP-information material, such as the availability of brochures or videos, and community service "hotline" telephone numbers will be displayed in common areas and distributed to employees. Employees will be encouraged to call the hotline if needed. Additionally, this Plan will be displayed and made available to all employees. The Plan contains the employer's policy regarding the use of prohibited drugs and alcohol misuse. The areas and places in which the above material will be displayed include employee bulletin boards, break rooms, locker rooms, or other areas designated by the Company.

## 3. Supervisor Training<sup>93 94 95</sup>

Each supervisor who will determine whether an employee must be drug tested and/or alcohol tested based on reasonable suspicion/cause will be trained in the "signs and symptoms" of each substance. Each supervisor will receive one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable *drug* use and one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable *alcohol* use. The two 60-minute training periods may run concurrently.

## 4. Contractor Monitoring<sup>96 97</sup>

**Compliance.** Operators are responsible for ensuring that contractors and contractor employees working for, and/or on the properties of, the operator are in compliance with the requirements of Part 40 and 199. With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that all requirements of Part 40 and 199 will be carried out by the contractor.

To assure that the contractor is in full compliance, the contractor will allow access to property and records by the operator, the operator designee, 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 Part 40 and 199. The operator will ensure that all contractors are qualified prior to commencing, as well as during the performance of, covered functions for the operator.

**Qualifying Potential Contractor.** Qualifications of the potential contractor as it pertains to drug and alcohol testing policies and procedures are assured by requesting the potential contractor to submit a copy of its Plan for review and compliance with PHMSA regulations. After review of the Plan is completed, written correspondence to the contractor will advise whether or not it is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor Plan shall be completed utilizing the criteria established by PHMSA.

**Monitoring Contractor's Compliance.** The contractor may be required to provide information on their employees who will perform covered functions for the operator. This information will include, as a minimum, the name, type of test and test date of the employees who will perform any work or functions covered by Part 199 under that contract. A list of each contractor's covered employees may be distributed to appropriate Company field management. All contractors will be required to submit drug and alcohol testing statistical information on a periodic basis, which may be based on the duration of the contract. Typically, this requirement will be on a semi-annual basis. The Company may require a more frequent schedule for submission of drug and alcohol testing data should they determine a need for such statistics. The Company shall maintain a complete file on each contractor's statistical drug and alcohol testing reports. The Company shall make these reports available when requested by a PHMSA agency-designated representative, or representatives of

those state agencies under which jurisdiction the Company operates. The operator will also submit contractor Management Information System (MIS) reports to PHMSA by March 15<sup>th</sup> each year.

The contractor will cooperate with the operator, or the operator's designee, if additional information is requested to further verify compliance of the regulations.

## 5. Recordkeeping<sup>98 99 100</sup>

**Compliance.** The Company will ensure that all records required by the DOT are maintained. The Company is not required to keep records related to a program requirement that does not apply to Part 40 or 199. The Company or its C/TPA will maintain the records in a locked file system and will be accessed only on a strict "need to know" basis. The Company or its C/TPA will not release an employee's drug and alcohol records to third parties without the employee's specific written consent. A "third party" is any person or organization to whom Parts 40 or 199 do not explicitly authorize or require the transmission of information in the course of the drug and alcohol testing process. "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time.

The Company or its C/TPA will release the employee's information without consent to DOT, PHMSA, or other government agency having regulatory authority over the Company or employee without consent. The Company or its C/TPA will release the employee's information without consent as a part of an accident investigation by the National Transportation Safety Board. The Company or its C/TPA will release the employee's information without consent in certain legal proceedings. These proceedings include a lawsuit, grievance, administrative proceeding (e.g., an unemployment compensation hearing brought by or on behalf of an employee resulting from a positive drug or alcohol test or refusal to test), a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the Company to produce the information. In such a proceeding the information will be released to the decision maker in the proceeding with a binding stipulation that the decision maker to whom it is released will make it available only to parties to the proceeding. After releasing the information, the Company or its C/TPA will notify the employee.

If the Company uses a C/TPA to maintain the records, the Company will ensure that the C/TPA can produce these records at the Company's principal place of business in the time required by the DOT agency for an inspection. The records will be provided within two business days after receipt of the request. Most records will be stored electronically, where permitted by Part 40 and 199. The Company will ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria for the DOT inspector, the Company will convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

**Records and Retention Periods.** The Company or its C/TPA will maintain the following records for the noted time periods, as a minimum:

- a) Records kept for **five** years:
  - (1) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
  - (2) Records of the inspection, maintenance, and calibration of EBTs;
  - (3) Records of verified positive drug test results;
  - (4) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
  - (5) SAP reports;
  - (6) Follow-up tests and schedules for follow-up tests; and,
  - (7) Statistical data related to the Company's testing program, entitled "Management Information System," will be available to a representative of DOT, PHMSA, or a state agency having regulatory authority over the Company upon request.

- b) Records kept for **three** years:
  - (1) Records of information obtained from previous employers under Part 40 concerning drug and alcohol test results of employees;
  - (2) Records that demonstrate the drug-testing collection process; and,
  - (3) Records related to “signs and symptoms” alcohol and drug training for supervisors.
- c) Records kept for **two** years:
  - (1) Records related to the alcohol collection process (i.e., calibration documentation for evidential breath testing devices, documentation of breath alcohol technician training, documents generated in connection with decisions to administer reasonable suspicion alcohol tests, documents generated in connection with decisions on post-accident tests, and documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing); and,
- d) Records kept for **one** year:
  - (1) Negative drug test results.
  - (2) Alcohol results less than 0.02.

**Employee Request for Records.** All employees have the right to request and obtain copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests, and copies of SAP reports. Requests for records must be made in writing to the DER. A laboratory must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). Service agents providing records may charge no more than the cost of preparation and reproduction for copies of these records. SAPs must redact follow-up testing information from the report before providing it to the employee.

## 6. Management Information System <sup>101 102 103</sup>

**Compliance.** The Company will prepare and maintain the DOT Management Information System (MIS) report for its drug and alcohol testing program. This report will be submitted to PHMSA in accordance with annual submission requirements. If the Company uses a C/TPA then the C/TPA may prepare and maintain the MIS, reporting the MIS as the Company requires. The DER will certify each report submitted by a C/TPA for accuracy and completeness.

**Contractor Reporting for MIS.** If the Company is an operator, it will verify and identify all contractors who performed covered functions, as defined under Part 199, for this Company in a given calendar year. If required, by either mandated annual or PHMSA written request, the Company will submit an MIS report for each of these contractors on or before March 15<sup>th</sup>.



### **VIII. Appendix A - Acknowledgement/Receipt Form**

I acknowledge, by signing this form, that my full compliance with the Anti-Drug and Alcohol Misuse Prevention Plan (the "Plan") and DOT drug and alcohol regulation requirements is a condition of my initial and continued employment with the Company. I understand and agree that I may be discharged or otherwise disciplined for any drug and/or alcohol violation, committed by me, as cited in the Plan and/or in the DOT drug and alcohol regulatory requirements.

I also acknowledge, by signing this form, that a copy of the Plan has been made available to me and that I have read and understand the requirements of the Company and DOT drug and alcohol program. I have also been provided with informational material on the dangers and problems of drug abuse and alcohol misuse.

Signed, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

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**Employee Name (Please Print)**

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**Employee Signature**

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**Company Representative Name (Please Print)**

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**Company Representative Signature**

## **IX. Appendix B - Designated Personnel and Service Agents**

### **CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)**

Name: Pipeline Testing Consortium, Inc. (PTC)

Address: 9 Compound Drive, Hutchinson, Kansas 67502

Phone Number: (800) 294-8758

### **DESIGNATED EMPLOYER REPRESENTATIVE (DER)/ALCOHOL & DRUG PROGRAM MANAGER**

Name: ROBERT BEALL

Address: 11133 BROOK GREEN LANE HASLET, TX 76052

Phone Number: 334-803-5319

### **MEDICAL REVIEW OFFICER (MRO)**

Name: David Paine, M.D. – American Medical Review Officers, LLC

Address: 7 Compound Drive, Hutchinson, Kansas 67502

Phone Number: (866) 359-0414

### **SUBSTANCE ABUSE & MENTAL HEALTH ADMINISTRATION (SAMHSA/HHS) LABORATORY**

Name: Clinical Reference Laboratory

Address: 8433 Quivira Road, Lenexa, Kansas 66215

Phone Number: (800) 445-6917

### **COLLECTION SITE(s) - DRUG AND BREATH ALCOHOL**

Name: Pipeline Testing Consortium, Inc.-www.pipelinetesting.com for a current list of collection sites.

Address: 9 Compound Drive, Hutchinson, KS 67502

Phone Number: (800) 294-8758

### **LIST OF APPROVED EVIDENTIAL BREATH TESTING DEVICES (EBTS) UTILIZED:**

Draeger Breathalyzer 7410; Intoximeters Alcohol Sensor IV; Intoxilyzer 200D

### **SUBSTANCE ABUSE PROFESSIONAL (SAP)**

Name: Lee Mauk, Saplist.com

Address: 9 Compound Drive, Hutchinson, Kansas 67502

Phone Number: (800) 294-8758

### **EMPLOYEE ASSISTANCE PROGRAM (EAP)**

Name: Pipeline Testing Consortium, Inc.

Address: 9 Compound Drive, Hutchinson, Kansas 67502

Phone Number: (800) 294-8758



## **X. Appendix C – Covered Positions**

**EMPLOYEE/SUPERVISOR POSITIONS SUBJECT TO ALCOHOL & DRUG TESTING**  
**(JOB CLASSIFICATIONS/TITLES)**

SUPERVISOR POSITIONS THAT HAVE RECEIVED ALCOHOL AND DRUG TRAINING (60 MINUTES DRUG, 60 MINUTES ALCOHOL)

[illegible]

## **XI. Appendix D - Company Disciplinary Actions and Additional Procedures**

### **1. Company Discipline**

Under the Anti-Drug and Alcohol Misuse Prevention Plan, the Company is committed to a drug and alcohol free workplace. Violations to this Plan include:

- a) The presence in the body, possession, use, distribution, dispensing, and/or unlawful manufacture of prohibited drugs and the misuse of alcohol is not condoned while conducting Company business, or while in work areas or Company vehicles on or off Company premises. No employee will work under the influence of prohibited drugs and alcohol.
- b) An employee or applicant who tests positive for drugs, has an alcohol concentration of 0.04 or higher, or refuses to take any drug or alcohol test as directed by the Company.
- c) The prohibited use of alcohol with a test result of 0.02 or greater, but less than 0.04.

Employees violating this Plan will be subject to disciplinary actions up to and including termination. Disciplinary action may include, but is not limited to: removal from working in a covered position, suspension, loss of pay, and termination of employment.

### **2. Additional Company Procedures**

Reservation of Rights. The Company reserves the right to interpret, modify, or revise this policy statement in whole or in part without notice. Nothing in this policy statement is to be construed as an employment contract nor does this alter an employee's employment at-will status. The employee remains free to resign his/her employment at any time for any or no reason, without notice. Similarly, the Company reserves the right to terminate any employee's employment, for any or no reason, without notice.

Compliance with All Laws. This policy statement will be amended from time to time to comply with changes in Federal and State laws.

The Company reserves the right to revise or amend this policy with or without notice at any time.

**THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK TO ADD ADDITIONAL COMPANY DISCIPLINARY ACTIONS AND PROCEDURES IF NEEDED.**

## **XII. Appendix E – PHMSA Inspection Plan Cross-Reference Endnotes**

**1 A.01.a.** Verify that the operator maintains and follows a written Anti-Drug Plan that conforms to Part 199 and Part 40 and that the plan contains the following [§199.101]: 1) Methods and procedures for compliance with all the requirements of Part 199, 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 Procedures for notifying employees of the coverage and provisions of the plan.

**2 H.01.a.** Verify that the operator maintains and follows a written Alcohol Misuse Plan that conforms to Part 199 and Part 40 and that the plan contains methods and procedures for compliance with required testing, recordkeeping, reporting, education and training elements [§199.202].

**3 A.02.a.** Verify that "stand-down" is prohibited before the MRO has completed the drug test verification process or that an approved waiver is granted per the requirements of [§40.21] and [§199.7].

**4 H.02.e.** Verify that the educational materials made available to covered employees includes detailed discussion of at least the following [§199.239(b)]: 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 work day 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; and 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.

**5 B.01.b.** Verify that a service agent is not used to fulfill the function of a DER [§40.15(d)].

**6 N.01.a.** Verify that an employer who is using a service agent concerning whom a PIE is issued stops using the services of the service agent no later than 90 days after the Department has published the decision in the Federal Register or posted it on its web site. The employer may apply to the ODAPC Director for an extension of 30 days if it is demonstrated that a substitute service agent cannot be found within 90 days [§40.409(b)].

**7 B.01.a.** Verify that critical positions meet the applicable qualifications of Part 40 and 199; 1) Medical Review Officer (MRO), (§40.121 and §199.109(b)); 2) Substance Abuse Professionals (SAP), (§40.81) 3); 3) Urine Specimen Collectors (§40.33).

**8 I.01.a.** Verify that Alcohol Misuse Prevention Program positions meet the applicable qualification requirements of Part 40 and Part 199 as follows: 1) Screening Test Technician (§40.213); 2) Breath Alcohol Technician (§40.213); and, 3) Substance Abuse Professional (SAP) (§40.281).

**9 A.01.d.** Verify that DOT tests are completely separate from non-DOT tests in all respects [§40.13].

**10 H.01.d.** Verify that the Alcohol Misuse Prevention Program ensures that the DOT tests are completely separate from non-DOT tests in all respects [§40.13].

**11 A.01.b.** Verify that the Plan identifies covered employees (as defined in §199.3), required to be tested for drugs, are identified [§199.1].

**12 H.01.b.** Verify that the Alcohol Misuse Prevention Program identifies the covered employees (as defined in §199.3) that are required to be tested for the presence of alcohol [§199.1].

**13 C.01.a.** Verify drug testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)]. Covered employee must not perform their functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless a good faith effort to obtain the information has been made and documented.

**14 J.01.a.** Verify that alcohol testing information [§40.25(b)] is requested from previous DOT-regulated employers for any employee seeking to begin covered functions for the first time (i.e., a new hire or an employee transfer) [§40.25(a)]. In addition, verify that a covered employee must not perform their functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain alcohol testing information from previous DOT-regulated employers.

**15 H.02.a.** Verify that the Alcohol Misuse Plan ensures that a covered employee is not permitted to perform covered functions if the employee has engaged in violations of §§199.215 through 199.223 (see below) or an alcohol misuse rule of another DOT agency [§199.233]. 1) Having an alcohol concentration of 0.04 or greater [§40.23(c), §40.285 and §199.215]; 2) Using alcohol while performing covered functions [§199.217, On-duty use]; 3) Using alcohol within 4 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 [§199.219, Pre-duty use]; 4) 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, is prohibited from using alcohol for 8 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 [§199.221, Use following an accident]; and, 5) Upon refusal of 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) [§40.285 and §199.223, Refusal to submit to a required alcohol test].

**16 H.02.c.** Verify that the Alcohol Misuse Prevention Program assures that a covered employee is prohibited from performing or continuing to perform covered functions when found to have an alcohol concentration of 0.02 or greater but less than 0.04, until: The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under §199.225(e); or The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test [§40.23(c) and §199.237(a)].

**17 A.02.b.** Verify that a covered employee that violates DOT drug regulations is removed from performing safety-sensitive functions [§40.23 and §199.7]. A verified positive DOT drug test result or a refusal to test (including by adulterating or substituting a urine specimen) constitutes a violation of DOT drug regulations [§40.285(b) and §199.103(a)]. If a covered employee violates a DOT drug regulation, a listing of SAPs that are readily available is provided to the employee [§40.287].

**18 C.01.b.** Verify no new personnel (new hire, contracted, or transferred employees) are used to perform covered functions unless that person receives a negative drug test and or is covered by the Plan that conforms to Part 199 [§199.105(a)]. Procedures are in place for direct observation when required under §§40.67(a), (b) and (d).

**19 C.02.a.** Verify post-accident drug testing is performed, as soon as possible but no later than 32 hours after an accident (§ 195.50) or incident (§ 191.3), for each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident [§199.105(b)]. In addition, procedures are in place for direct observation when required under §§40.67(a), (b) and (d).

**20 C.03.a.** Verify the minimum annual percentage rate used for random drug testing of covered employees complies with §199.105(c)(1) through (4).

**21 C.03.b.** Verify the selection of employees for random drug testing is based on a scientifically valid method, such as a random number table or a computer-based random number generator matched with employee identification data [199.105(c)(5)].

**22 C.03.c.** Verify a sufficient number of covered employees will be selected for random testing during each calendar year to equal an annual rate not less than the required minimum annual percentage rate (see Protocol C.03.a.) [199.105(c)(6)]. The total number of covered employees eligible for random testing throughout the year will be calculated by adding the total number of covered employees eligible for testing during each random testing period for the year and dividing that total by the number of random testing periods [199.119(c)].

**23 C.03.d.** Verify random drug tests are unannounced and that the dates for administering the tests are spread reasonably throughout the calendar year [199.105(c)(7)].

**24 C.04.a.** Verify decisions to test are reasonable and articulable, and based on specific contemporaneous physical, behavioral or performance indicators of probable drug use. At least two supervisors, one of whom is trained in detection of the symptoms of drug use, substantiate and concur in the decision to test an employee who is reasonably suspected of drug use [§199.105(d)].

**25 C.05.a.** Verify a covered employee that violates DOT drug regulations does not return to duty for a covered function until the employee: 1) Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), and §199.105(e)]; 2) After completion of the SAP process above, successfully completes a return-to-duty drug test [§40.305(a) and §199.105(e)]; and 3) All return-to-duty testing will be performed under direct observation [§40.67(b)].

**26 C.06.a.** Verify SAP will establish a written follow-up testing plan for a covered employee that violates DOT drug regulations and seeks to return to the performance of a covered function [§40.307(a)]. All follow-up testing will be performed under direct observation [§40.67(b)].

**27 C.06.b.** Verify follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months. At least six tests must be conducted within the first 12 months following the covered employee's return to duty. [§40.307, §40.309, and §199.105(f)].

**28 C.07.a.** Verify procedures are in place for direct observation when required under §§40.67(a), (b) and (d).

**29 B.01.a.** Urine Specimen Collector (§40.33) meet the applicable qualification requirements of Part 40 and Part 199.

**30 O.01.a.** Does the operator ensure that, unless no other collector is available, an immediate supervisor of an employee does not serve as a collection site person [§40.31(c)]?

**31 O.01.b.** Do collectors meet the training requirements of §40.33 and is documentation available showing that currently all requirements are met [§40.33(g)]?

**32 O.01.c.** Does the operator provide error correction training as required by §40.33(f) and does the training occur within 30 days of the date of notification of the error that led to the need for training?

**33 O.02.a.** Has the employer designated a collection site that meets the requirements of §40.41.

**34 O.02.b.** If the collection site uses a facility normally used for other purposes, are procedures in place to ensure before the collection that: (1) access to collection materials and specimens is effectively restricted; and (2) the facility is secured against access



during the procedure to ensure privacy to the employee and prevent distraction of the collector? Also, are limited-access signs posted [§40.43(c)]?

**35 O.02.c.** Are procedures in place to assure the collector maintains personal control over each specimen and CCF throughout the collection process and to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored [§40.43(d)(5) and §40.43(e)]?

**36 O.02.d.** Is the current Federal Drug Testing Custody and Control Form (CCF) or equivalent being used [§40.45]?

**37 O.02.e.** Is a collection kit used that meets the requirements of Appendix A to Part 40 [§40.49]?

**38 O.03.a.** Do collection site personnel explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF [§40.61(e)]?

**39 O.03.b.** Do collection site personnel provide the donor with an individually wrapped or sealed collection container from the collection kit materials [§40.63(c)]?

**40 O.03.c.** Are precautions taken to ensure that unadulterated specimens are obtained and correctly identified that meet the following requirements: 1) Bluing agents in toilet tank and all water sources secure [§40.43(b)(1) and (2)]; 2) Individual positively identified (photo ID, etc.) [§40.61(c)]; 3) Proper authority contacted if individual fails to arrive at the assigned time [§40.61(a)]; 4) The donor shall remove any unnecessary outer garments. Purses or briefcases shall remain with outer garments [§40.61(f)]; 5) Donor shall wash and dry his/her hands [§40.63(b)]; 6) To the greatest extent possible, the collector must keep an employee's collection container within view of both himself/herself and the employee between the time the employee has urinated and the specimen is sealed [§40.43(d)(2)]; and, 7) Any unusual behavior noted on the CCF [§40.63(e)]

**41 O.03.d.** Are procedures being followed at the collection site after the specimen has been provided in compliance with the requirements of §40.65

**42 O.03.e.** Have provisions been made if the donor is unable to provide at least 45 milliliters of urine [§40.65(a)]?

**43 O.03.f.** Are procedures in place for immediately collecting urine specimens under direct observation for the situations identified in §40.67(c). As of August 31, 2009, verify that all collections for return-to-duty and follow-up testing were performed under DER directed direct observation [§40.67(b)]

**44 O.03.g.** Are same gender collection personnel used if a collection is monitored under direct observation by non-medical personnel [§40.69(g)]

**45 O.03.h.** Is the CCF properly executed by authorized collection site personnel upon receipt and transfer of a urine specimen [§40.73(a)]

**46 D.01.a.** Verify drug testing laboratory used for all testing required by Part 40 and Part 199 is certified by the Department of Health and Human Services (HHS) [§40.81(a) and §199.107(a)].

**47 D.01.c.** Verify laboratory results are reported directly, and only, to the MRO at his or her place of business. Results must not be reported to or through the DER or a service agent (e.g., C/TPA) [§40.97(b)].

**48 D.01.b.** Verify drug testing laboratory only tests for the following five drugs or classes of drugs in a DOT drug test. (The laboratories must not test "DOT specimens" for any other drugs): (a) Marijuana metabolites; (b) Cocaine metabolites; (c) Amphetamines; (d) Opiate metabolites; and (e) Phencyclidine (PCP) [§40.3, §40.85 and §199.3].

**49 D.01.d.** Verify laboratory testing the primary specimen will retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year. The specimen must be kept in secure, long-term, frozen storage in accordance with HHS requirements [§40.99 and §199.111(a)].

**50 D.03.a.** Verify laboratory retains all records pertaining to each employee urine specimen for a minimum of two years and also keeps for two years employer-specific data required in §40.111 [§40.109].

**51 D.03.b.** Verify laboratory transmits an aggregate statistical summary to the Company per Part 40, Appendix B, on a semi-annual basis.

**52 D.02.a.** If the Company or C/TPA, used by the Company, has an aggregate of 2000 or more DOT-covered employees, blind specimens are submitted to the laboratories used. If the Company or C/TPA has an aggregate of fewer than 2000 DOT-covered employees, DOT does not require them to provide blind specimens [§40.103(a)].

**53 E.01.a.** Verify that an MRO is designated or appointed by the Anti-Drug Plan [§199.109(a)].

**54 E.01.b.** Verify that the MRO provides quality assurance reviews of the drug testing process, including ensuring the review of the Custody and Control Form (CCF) on all specimen collections [§40.123(b)].

**55 E.01.c.** Verify that the MRO performs the review functions required by §40.127 for negative drug test results received from a laboratory, prior to verifying the result and releasing it to the Designated Employer Representative (DER).

**56 E.01.d.** Verify that the MRO performs the review functions required by §40.129 for confirmed positive, adulterated, substituted, or invalid drug test results received from a laboratory, prior to verifying the result and releasing it to the DER. In addition, the MRO must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid drug test results from the laboratory [§40.123(c)].

## 3B INSPECTION

### PHMSA DRUG/ALCOHOL PLAN

**57 F.02.a.** Verify that the MRO reports all drug test results to the operator [§40.163(a) and §199.109(d)] in accordance with the requirements in §40.163, §40.165 and §40.167. These requirements include: Reporting all drug test results to the DER, except in the circumstances provided for in §40.345, when a C/TPA may act as an intermediary [§40.165(a)]; reporting the results in a confidential manner [§40.167(a)]; and reporting the results within the required time constraints [§40.167(b) and (c)].

**58 E.01.e.** Verify that when the MRO has verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, and the MRO must notify the employee of his or her right to have the split specimen tested. The MRO must also notify the employee of the procedures for requesting a test of the split specimen, and Inform the employee that he or she has 72 hours from the time of this notification to him or her to request a test of the split specimen [§40.153].

**59 E.01.f.** If additional testing is requested by the employee, verify that the split specimen is tested. The split testing laboratory must be certified by HHS. (Note: Correction made to inspection language.) [§199.111(b) and (c)].

**60 J.01.b.** If the operator chooses to conduct pre-employment alcohol testing, verify that the operator: 1) Conducts 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) [§199.209(b)(1)]; 2) Treats 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) [§199.209(b)(2)]; and, 3) Conducts the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test [§199.209(b)(3)].

**61 J.02.a.** Verify that post-accident alcohol testing is performed: 1) As soon as practicable following an accident (§195.50) or incident (§191.3) for each surviving covered employee 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 [§199.225(a)(1)]; and, 2) Within two hours following the accident (§195.50) or incident (§191.3), otherwise, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a post-accident test is not administered within eight 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 [§199.225(a)(2)].

**62 J.03.a.** Verify that decisions to test are 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 [§199.225(b)(2)].

**63 J.03.b.** Verify that a covered employee is 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. [§199.225(b)(3)].

**64 J.03.c.** Verify that if a reasonable suspicion test is required and is not administered within 2 hours following the determination under §199.225(b)(2), the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test is not administered within 8 hours, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test [§199.225(b)(4)(i)].

**65 J.04.a.** Verify that a covered employee that engages in conduct prohibited by §§199.215 through 199.223 does not return to duty for a covered function until the employee: 1) Completes a SAP evaluation, referral, and education/treatment process [§40.285(a), §40.289(b), §199.235, and §199.243(b)]; and, 2) After completion of the SAP process above, undergoes a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 [§40.305(a), §199.225(c), and §199.243(c)].

**66 J.05.a.** Verify that the SAP establishes a written follow-up testing plan for a covered employee that engages in conduct prohibited by §§199.215 through 199.223 and seeks to return to the performance of a covered function [§40.307(a)].

**67 J.05.b.** Verify that follow-up testing is performed on an unannounced basis, at a frequency established by the SAP, for a period of not more than 60 months. At least six tests must be conducted within the first 12 months following the covered employee's return to duty [§40.307, §40.309, §199.225(d) and §199.243(c)(2)(ii)].

**68 K.01.a.** Verify that any Evidential Breath Testing Device (EBT) or Alcohol Screening Device (ASD) used for DOT required alcohol testing is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a Conforming Products List (CPL) [§40.229 and §40.231]

**69 K.01.b.** Verify that external calibration checks are performed at the intervals specified in the manufacturer's instructions for any EBT used for DOT required alcohol confirmation testing [§40.231 and §40.233].

**70 P.01.a.** Does the operator's plan specify training for BATs and STTs that is in compliance with §40.213 and does the documentation certify that all requirements are met [§40.213(g)]

- 71 P.01.b.** Does the plan specify that a supervisor shall not serve as the BAT or STT if that supervisor makes the reasonable cause determination [§40.211(c) and §199.225(b)(2)]?
- 72 P.02.a.** Does the alcohol testing site comply with the applicable physical and security requirements of §40.221 and §40.223?
- 73 P.02.b.** Does the plan specify that only EBTs and ASDs listed on the NHTSA CPL will be used for DOT alcohol testing [§40.229]? Also, does the plan specify that an EBT must be used for conducting the confirmation tests [§40.231(a)]?
- 74 P.02.c.** Does the operator follow the Quality Assurance Plan (QAP) for the EBT that is used [§40.233(c)(1)]? If this service is contracted out does the operator ensure that the QAP is being followed [§40.233(c)]?
- 75 P.02.d.** Does the plan specify that the operator or its agents shall comply with the QAP and manufacturer's instructions and does the operator follow the QAP for the ASD that is used [§40.235 and §40.235(c)]?
- 76 P.03.a.** Does the plan prescribe that only the DOT-approved Alcohol Testing Form (ATF) shall be utilized [§40.225(a)]?
- 77 P.03.b.** Does the plan specify that the employee shall provide a positive identification through use of photo ID or by employer representative [§40.241(c)]?
- 78 P.03.c.** Does the plan indicate that the BAT or STT shall explain the testing process to the employee [§40.241(e)]?
- 79 P.03.d.** Does the plan contain specific instructions for conducting alcohol screening tests in compliance with §40.241 and §40.243 requirements?
- 80 P.03.e.** Does the plan contain specific instructions for conducting alcohol screening tests using a saliva ASD in compliance with §40.245 requirements?
- 81 P.03.f.** Does the plan specify actions that are taken after receipt of alcohol screening test results that are in compliance with §40.247?
- 82 P.04.a.** Does the plan provide guidance for the actions a new BAT must complete to conduct a confirmation test in compliance with §40.251(b)?
- 83 P.04.b.** Does the plan specify procedures to be followed in conducting a confirmation test that are in compliance with §40.253 and §40.255?
- 84 P.05.a.** Does the plan address the situations for which the employee is considered to have refused to take an alcohol test [§40.261(a)(1) to (7)]?
- 85 P.05.b.** Does the plan specify procedures concerning an employee's inability to provide an adequate amount of saliva for testing and instructions for requiring the employee to attempt again to provide adequate amount of saliva for testing [§40.263]?
- 86 P.05.c.** Does the plan specify procedures concerning an employee's inability to provide an adequate amount of breath for testing in compliance with §40.265?
- 87 P.05.d.** Does the plan specify under what conditions that an alcohol test shall be cancelled [§40.267 and §40.269]?
- 88 P.05.e.** Does the plan specify procedures concerning the potential inability to complete an alcohol test and trying to successfully complete the test [§40.271]?
- 89 B.01.a.** Substance Abuse Professionals (SAP) meet the applicable qualification requirements of Part 40 (§40.81) and Part 199.
- 90 H.02.b.** Verify that the Alcohol Misuse Prevention Program assures that each covered employee who has engaged in conduct prohibited by §§199.215 through 199.223 shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol. This includes the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs [§40.285(b) and §199.243(a)]
- 91 G.01.b.** Verify that education under the EAP includes 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 [§199.113(b)].
- 92 H.02.d.** Verify that the Alcohol Misuse Prevention Program assures for providing educational materials that explain alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements [§199.239(a)]. 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 [§199.239(a)(1)]. Each operator shall provide written notice to representatives of employee organizations of the availability of this information [§199.239(a)(2)].

**93 G.01.a.** Verify that an EAP is provided for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. Each EAP must include education and training on drug use (see Protocols G.01.b. and G.01.c.) [§199.113(a)].

**94 G.01.c.** Verify that training under the 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 [§199.113(c)].

**95 I.01.b.** Verify that supervisors 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. [§199.241].

**96 A.01.c.** If an employer contracts drug testing, education and training [§199.115], there is a process in place and implemented to ensure compliance with Part 199 and Part 40. The contractor must allow access to property and records by the operator, the Administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance [§199.115(b)].

**97 H.01.c.** If an employer contracts alcohol testing, education and training [§199.245], there is a process in place and implemented to ensure compliance with Part 199 and Part 40. The contractor must allow 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 Part 199 and Part 40 [§199.245(c)].

**98 L.01.a.** Verify that the following records are retained as required by Part 40 and Part 199 and that the records are maintained in a secure location with controlled access [§40.333(c) and §199.227(a)]. 5 years: Records of alcohol test results indicating an alcohol concentration of 0.02 or greater [§40.333(a)(1) and §199.227(b)(1)]; Documentation of refusals to take required alcohol tests [§40.333(a)(1) and §199.227(b)(1)]; SAP reports [§40.333(a)(1) and §199.227(b)(1)]; All follow-up tests and schedules for follow-up tests [§40.333(a)(1)]; MIS annual report data [§199.227(b)(1)]; and, Calibration Documentation [§199.227(b)(1)]. 3 years: Information obtained from previous employers under §40.25 concerning alcohol test results of employees [§40.333(a)(2)]. 2 years: Records of the inspection, maintenance, and calibration of EBTs [§40.333(a)(3)].

**99 M.02.a.** Verify that upon written request from an employee, records of drug and alcohol use, testing results, and rehabilitation are provided to the employee [§199.117(b) and §199.231(b)].

**100 F.01.a.** Verify that records are retained as required by Part 40 and Part 199 and that the records are maintained in a location with controlled access [§40.333(c)]

**101 M.01.a.** Verify if this operator has more than 50 covered employees and submits an annual MIS report in accordance with the form and instruction requirements of §40.26 and Appendix H to Part 40, not later than March 15 of each year for the prior calendar year (January 1 through December 31) [§40.26, §199.119(a) and §199.229(a)]. Beginning with the March 15, 2010 MIS submission date, also verify if this operator identifies all contractors who performed covered functions, as defined under § 199.3, for this operator in a given calendar year; and, if required by either mandated annual or PHMSA written request, is or has submitted an MIS report for each of these contractors?

**102 M.01.b.** Verify if this operator has 50 or less covered employees and has either a compilation of data or statistical information regarding drug and alcohol testing which, upon written request, could have been used to submit a MIS report in accordance with the form and instruction requirements of §40.26 and Appendix H to Part 40, not later than March 15 of each year for the prior calendar year (January 1 through December 31) [§40.26, §199.119(a) and §199.229(a)]. Beginning with the March 15, 2010 MIS submission date, verify that this operator identifies all contractors who performed covered functions, as defined under § 199.3, for this operator and received a compilation of data or statistical information from these contractors which, upon written request, could be used for submitting an MIS report for each of these contractors.

**103 M.01.c.** If a service agent (e.g., Consortium/Third Party Administrator) prepares the MIS report on behalf of an operator, verify that each report is certified by the operator's anti-drug manager/alcohol misuse prevention manager or designated representative for accuracy and completeness [§199.119(f) and §199.229(d)].