

## I. INTRODUCTION

A. Alcohol Misuse Prevention Policy	4
B. Implementation of Alcohol Misuse Prevention Plan	4
C. Background	4
D. Preemption Provisions	5
E. Definitions	5
F. Company Responsibilities	9
G. Background Procedures	9
H. DOT Testing versus Non-DOT Testing Provisions	11
I. Company's Use of Service Agent to Meet DOT Drug and Alcohol Testing Requirements	11
J. Company's Responsibility for Obtaining Information from Service Agents	11

## II. ROLES & RESPONSIBILITIES OF SERVICE AGENTS

A. General Provisions for Service Agents	12
B. Tasks and Functions of Service Agents	12
C. Recordkeeping Requirements of Service Agents	13
D. Confidentiality Requirements of Service Agents	13
E. Service Agent Limitations	14

## III. EMPLOYEE/SUPERVISOR ALCOHOL TESTING PROVISIONS

A. Individuals Subject to Alcohol Testing	16
B. Procedures for Notifying Covered Employees	17
C. Criteria for Employee Notification	17

## IV. ALCOHOL TESTS REQUIRED

A. Pre-Employment (Optional)	18
B. Post Accident Testing	18
C. Random Testing	20
D. Reasonable Suspicion Testing	21
E. Return-to-Duty Testing	23
F. Follow-up Testing	24
G. Stand Down Procedures	24
H. Provisions Governing Retesting of Covered Employees	26

## V. SUBSTANCE ABUSE PROFESSIONALS & RETURN-TO-DUTY PROCESS

A. SAP Evaluation	26
B. SAP Requirements	28
C. SAP Evaluation, Referral & Treatment	29
D. SAP Role and Limitations	31
E. SAP Functions in Evaluation, Treatment & Aftercare or Support Group Service	31
F. Completion to the Return-to-Duty Process	33
G. SAP's Functions in Prescribing the Employee's Follow-up Tests	33
H. Company's Responsibilities on SAP's Directions for Follow-up Tests	34
I. Requirements of SAP's Reports	34
J. Additional Information on SAP Functions & Return-to-duty Process	35

## VI. ALCOHOL PROHIBITED CONDUCT

A. General	36
B. Alcohol Concentration	36
C. Pre-Duty Use	36
D. On-Duty Use	36
E. On-Call Employees	36

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

A. Refusal Criteria and Consequences	37
B. Consequences for Inability to Provide Sufficient Saliva for Alcohol Screening Test	37
C. Criteria for Inability to Provide Sufficient Breath for Alcohol Test	38
D. Problems Associated with Cancelled Alcohol Tests	39
E. Problems Associated with Cancelled Tests and Corrective Action	40
F. Correction of Alcohol Testing Procedures	40
G. Effects of Cancelled Alcohol Test	41
H. Effects of Procedural Problems that are not Sufficient to Cancel an Alcohol Test	41
I. Criteria for Acceptable Alcohol Tests	41

## VIII. EMPLOYEE WHO REFUSES ALCOHOL TEST

A. General	42
B. Additional Requirements	42

## IX. DISCIPLINARY ACTIONS

A. General	42
B. Required Referrals and Evaluations	42
C. Evaluation, Treatment and Rehabilitation	43

## X. DISCLOSURE OF ALCOHOL INFORMATION / RECORDS

A. General	43
B. Disclosure Provisions	43
C. Drug And Alcohol Testing Information C/TPAs May Transmit the Company	44

## XI. CONFIDENTIALITY & RELEASE OF INFORMATION (49 CFR PART 40 SUBPART P)

A. General Confidentiality Requirements	45
B. Release of Medical Information in Verification Process	46
C. Release of Information to Employees and Other Parties	46
D. Recordkeeping Requirements for the Company	48

## XII. EMPLOYEE ASSISTANCE PROGRAM (EAP)

A. Scope of Program	49
B. Supervisor Training	49

## XIII. RECORDKEEPING PROCEDURES

A. General	50
B. Record Retention Provisions	50
C. Maintenance of Specific Types of Records	50
D. Maintenance and Disclosure of Records Concerning EBTs and BAT/STTs	52

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#### **XIV. CONTRACTOR/SUB-CONTRACTOR MONITORING**

A. General	52
B. Contractor/Sub-Contractor Records	52
C. Contractor/Sub-Contractor Monitoring	52
D. Procedures for Determining Compliance	52

#### **APPENDICES**

<b>Appendix A</b> ALCOHOL PERSONNEL AND SERVICES CONTACTS	54
<b>Appendix B</b> EMPLOYEE/SUPERVISORY POSITIONS SUBJECT TO ALCOHOL TESTING	56
<b>Appendix C</b> ALCOHOL TESTING PERSONNEL (SUBPART J) TESTING SITES, FORMS, EQUIPMENT & SUPPLIES USED IN ALCOHOL TESTING (SUBPART K) ALCOHOL SCREENING TESTS (SUBPART L) ALCOHOL CONFIRMATION TESTS (SUBPART M)	59 61 65 69
<b>Appendix D</b> SUPERVISOR DRUG AND ALCOHOL CHECKLIST	72
<b>Appendix E</b> ALCOHOL SUPPLEMENT	75
<b>Appendix F</b> ACKNOWLEDGMENT AND RECEIPT NOTIFICATION	77

## INTRODUCTION

### A. Alcohol Misuse Prevention Policy (AMPP).

1. The Company has a long-standing commitment to maintain the highest standards for employee safety and health and to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions.
2. In addition, the company must comply with all DOT regulations and other regulations, which require affirmative actions to eliminate the impact of the misuse of alcohol in the workplace. The purpose of the alcohol misuse prevention plan is to reduce accidents that result from the misuse of alcohol, thereby reducing fatalities, injuries, and property damage.
3. The company will maintain and follow a written alcohol misuse prevention plan that conforms to the requirements of 49 CFR Part 199 & 382 and DOT procedures 49 CFR Part 40 concerning alcohol testing programs.
4. The use or possession of alcoholic beverages while on company property, or in any company vehicle, or on company time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited. Nothing in Part 199 & 382 shall be construed to affect the company's independent authority, or the rights of their employees with respect to the use or possession of alcohol when conducting alcohol testing and rehabilitation.
5. **Refer to City of Mesa Personnel Rule Section 510.B.4.b for internal policies and standards.**

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

1. The company has implemented the Federal Motor Carrier Safety Administration (FMCSA) and Pipeline and Hazardous Material Safety Administration (PHMSA), Alcohol and Drug Testing Regulations as set forth in 49 CFR Part 199 & 382 and the Department of Transportation, Procedures for Transportation Workplace Alcohol and Drug Testing Programs as set forth in 49 CFR Part 40.
2. Alcohol materials supplied to covered employees may also include information on additional company mandated policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the company's authority independent of the federal regulations under 49 CFR Part 199, 382, and 40.
3. **Compliance with DOT Regulations §40.1** - DOT Part 40 regulations provide that all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use. DOT Part 40 concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.
4. **The alcohol misuse prevention plan herein sets forth the requirements of 49 CFR Parts 199, 382, and 40. Those areas of the plan that appears in bold and underlined print reflect this company's independent authority to require additional provisions with regard to the alcohol testing procedures.**

### C. Background.

1. The catalyst for the alcohol misuse plan is Title 49 Code of Federal Regulations (CFR) Part 199 which requires pipeline operators subject to 49 CFR Parts 192, 193, and 195, and their contractors, and those employees who have commercial driver's licenses subject to 49 CFR Part 382, to test their employees for misuse of alcohol under the following work-related conditions:
  - a. Pre-Employment (Optional)
  - b. Post-Accident
  - c. Reasonable Suspicion

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- d. Return-to-duty
  - e. Follow-up
2. Title 49 CFR Part 40 specifies procedures, which must be followed by the company when conducting alcohol misuse testing pursuant to regulations issued by agencies of the Department of Transportation.
  3. Authoritative interpretations – The DOT Office of Drug and Alcohol Policy Compliance (ODAPC) and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of 49 CFR Part 40. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters.

### D. Preemption Provisions.

1. Except as provided in paragraph 2 of this section, Part 199 & 382 preempts any state or local law, rule, regulation, or order to the extent that:
  - A. Compliance with both state or local requirement and this regulation is not possible;
  - b. Compliance with state or local requirement is an obstacle to the accomplishment and execution of any requirement as set forth in 49 CFR Part 199 & 382.
  - c. The state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.
2. This provision shall not be construed to preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.
3. Other requirements imposed by the City of Mesa, except as expressly provided in this part, nothing in this part shall be construed to affect the authority of employers, or the rights of drivers, with respect to the use of alcohol, or the use of controlled substances, including authority and rights with respect to testing and rehabilitation.

### E. Definitions - For purposes of this AMPP the following definitions apply:

1. Accident - means an incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.
  - a. § 191.3 - An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:
    - (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
      - (a) A death, or personal injury necessitating inpatient hospitalization; or
      - (b) Estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more.
    - (2) An event that results in an emergency shutdown of an LNG facility.
    - (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).

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- 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) Loss of 50 or more barrels of hazardous liquid or carbon dioxide.
  - (3) Escape to the atmosphere of more than five barrels a day of highly volatile liquids.
  - (4) Death of any person.
  - (5) Bodily harm to any person resulting in one or more of the following:
    - (a) Loss of consciousness.
    - (b) Necessity to carry the person from the scene.
    - (c) Necessity for medical treatment.
    - (d) Disability, which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.
  - (6) Caused estimated property damage, including cost of clean-up and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.
2. 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.
3. Alcohol - means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol's including methyl or isopropyl alcohol.
4. Alcohol concentration - means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test conducted under the federal regulations.
5. Alcohol Screening Device - A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.
6. Alcohol Use - means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
7. Breath Alcohol Technician (BAT) - means an individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
8. Cancelled test – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
9. Confirmation Test - means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.
10. 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.
11. Covered employee, employee, or individual to be tested - means any person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

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12. Covered Function (safety-sensitive function) - means an operations, maintenance, or emergency-response function regulated by Part 192, 193, or 195 of 49 CFR that is performed on a pipeline or on an LNG facility or any employee who has a commercial driver's license and operates a commercial motor vehicle regulated by Part 382.
13. 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 49 CFR Part 40. Service agents cannot act as DERs.
14. DOT Procedures – means the Procedures for Transportation Workplace Drug and Alcohol Testing Program published by the Office of the Secretary of Transportation in 49 CFR Part 40.
15. DOT, The Department, DOT agency – These terms encompass all DOT agencies, including, but not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline & Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.
16. EBT (or evidential breath testing device) - means an EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) of evidential breath measurement devices.
17. Employer - A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.
18. 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.
19. Missed Tests - means any test that is not administered within 8 hour time period.
20. Office of Drug and Alcohol Policy and Compliance (ODAPC) -The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.
21. Operator - is defined as an owner or operator of pipeline facilities or has employees utilizing commercial driver's licenses to operate commercial motor vehicles.
22. Performing a Covered Function – includes actually performing, ready to perform, or immediately available to perform a covered function.
23. Pipeline - means all parts of the physical facilities through which product moves in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.
24. Pipeline Facilities - include new and existing pipeline, rights-of-way, and any equipment, facility, or building used in the transportation of product.
25. Prohibited Conduct - means anyone who has an alcohol concentration of 0.04 or greater, who has used alcohol within 4 hours of reporting for duty and anyone who has used alcohol on-duty.

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26. 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).
27. Refresher Training - The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).
28. Refusal to Submit, Refuse, or Refuse to take - means behavior consistent with DOT Procedures concerning refusal to take a drug test or refusal to take an alcohol test. See Section VII of this plan for additional information.
29. Screening test (or initial test) - means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
30. Screening Test Technician (STT) means an individual who has successfully completed an approved Department of Transportation non-evidential training course and who will conduct alcohol-screening tests in accordance with Part 199, 382, and Part 40.
31. Secretary - The Secretary of Transportation or the Secretary's designee.
32. Service agent - Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR Part 199, 382, and Part 40. Service agents are not employers for purposes of 49 CFR Part 199, 382, and 40.
33. 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.
34. State Agency - means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).
35. 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.

## F. Company Responsibilities.

1. Alcohol Program Manager (APM) or Designated Employer Representative (DER). Appendix A contains the name, address, and phone number of the responsible individual(s). The APM or DER shall be responsible for the preparation of an alcohol misuse plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR Parts 199, 382, and 49 CFR Part 40. The APM or DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (post-accident, reasonable suspicion, etc.); maintaining a locked file system on all alcohol test results; and overseeing the referral of employees for evaluation and treatment. The company shall ensure that all covered employees are aware of the provisions and coverage of the company's AMPP and that all employees are notified prior to testing that such a test is required by Part 199 & 382. The company shall not falsely represent that an alcohol test is being conducted under the provisions of Part 199 & 382.
2. Supervisor(s). Any Company individuals responsible for observing the performance and behavior of employees; observation/documentation of events suggestive of reasonable suspicion; and post-accident testing if determined that it is applicable.
3. Employees. The company shall ensure that each employee is notified and aware of the provisions of the company AMPP and has knowledgeable of the requirements of the company's AMPP and to fully comply with the provisions of the plan.
4. The company shall be responsible for compliance with all applicable requirements and procedures of 49 CFR Part 40.
5. The company is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
6. All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of 49 CFR Part 40 and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

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

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

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

#### **H. DOT Testing versus Non-DOT Testing Provisions.**

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

#### **I. Company's Use of Service Agent for DOT Drug & Alcohol Testing Requirements.**

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

#### **J. Company's Responsibility For Obtaining Information From Its Service Agents.**

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

## II. ROLES AND RESPONSIBILITIES OF SERVICE AGENTS

### A. General Provisions for Service Agents.

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

### B. Tasks and Functions of Service Agents.

1. Tasks that a service agent may perform for the company (§40.343) – The service agent may perform for the company the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.
2. Circumstances in which a C/TPA may act as an intermediary in the transmission of drug and alcohol testing information to the company (§40.345).
  - a. The C/TPA or other service agent, may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the company chooses to have the C/TPA do so. Each company makes the decision about whether to receive some or all of this information from the C/TPA, acting as an intermediary, rather than directly from the service agent who originates the information (e. g., an MRO or BAT).
  - b. The specific provisions of 49 CFR Part 40 concerning which services C/TPAs may act as an intermediary are listed in Appendix F to 49 CFR Part 40.
  - c. In every case, the C/TPA must ensure that, in transmitting information to the company, the C/TPA must meet all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the company. For example, if the C/TPA transmits drug test results from MROs to DERs, the C/TPA must transmit each drug test result to the DER in compliance with the MRO requirements set forth in §40.167.
3. Functions that C/TPAs may perform with respect to administering testing (§40.347) -The C/TPA, except as otherwise specified in this part, may perform the following functions for the company concerning random selection and other selections for testing.
  - a. The C/TPA may operate random testing programs for the company and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) the company with other types of testing (e. g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
  - b. The C/TPA may combine employees from more than one company or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
    - (1) If the C/TPA combines employees from more than one transportation industry, the C/TPA must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.

- (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
- c. The C/TPA may assist the company in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither the C/TPA nor the company are permitted to randomly select employees from a " follow-up pool" for follow-up testing.

### C. Recordkeeping Requirements for Service Agents.

- 1. Records that a service agent may receive and maintain (§40.349).
  - a. Except where otherwise specified in 49 CFR Part 40 a service agent may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. The C/TPA does not need the employee's consent to receive and maintain these records.
  - b. The C/TPA may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to the company of selected employees) on behalf of the company.
  - c. A service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to the C/TPA or other service agent who maintains this information for the company.
  - d. If the C/TPA is serving as an intermediary in transmitting information that is required to be provided to the company, the C/TPA must ensure that it reaches the company in the same time periods required elsewhere in this part.
  - e. The C/TPA must ensure that he/she can make available to the company within two days any information the company is asked to produce by a DOT agency representative.
  - f. At the request of the company, the C/TPA must transfer immediately all records pertaining to the company and its employees to the company or to any other service agent the company designates. The C/TPA must carry out this transfer as soon as the company requests it. The C/TPA is not required to obtain employee consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.
  - g. If the C/TPA is planning to go out of business or the organization will be bought by or merged with another organization, the C/TPA must immediately notify all companies and offer to transfer all records pertaining to the company and its employees to the company or to any other service agent the company designates. The C/TPA must carry out this transfer as soon as the company requests it. The C/TPA is not required to obtain employee consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.

### D. Confidentiality Requirements for Service Agents.

- 1. Confidentiality requirements that apply to service agents (§40.351) – Except where otherwise specified in 49 CFR Part 40 the confidentiality requirements apply to the C/TPA and shall include the following:

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**Alcohol Misuse Prevention Plan**

U.S. Department of Transportation  
<http://www.dot.gov/ost/dapc>  
Federal Motor Carrier Safety Administration  
<http://www.fmcsa.dot.gov>  
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- a. When the C/TPA receives or maintains confidential information about employees (e. g., individual test results), the C/TPA must follow the same confidentiality regulations as the company with respect to the use and release of this information.
  - b. The C/TPA must follow all confidentiality and records retention requirements applicable to the company.
  - c. The C/TPA may not provide individual test results or other confidential information to another company without a specific, written consent from the employee. For example, suppose a C/TPA that has employers X and Y as clients. Employee Jones works for X, and the C/TPA maintains Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. The C/TPA may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, the C/TPA may not provide this information to employer Z, who is not a C/TPA member, without this consent.
  - d. The C/TPA must not use blanket consent forms authorizing the release of employee testing information.
  - e. The C/TPA must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic databases.
2. Principles that govern the interaction between MROs and other service agents (§40.353) – The service agent other than an MRO (e.g., a C/TPA) is subject to the following principles that govern the interaction with MROs:
- a. The service agent may provide MRO services to the company, directly or through contract, if the service agent meets all applicable provisions of 49 CFR Part 40.
  - b. If the service agent employs or contracts for an MRO, the MRO must perform duties independently and confidentially. When the service agent has a relationship with an MRO, the service agent must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
  - c. Only the service agents staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of the service agent's staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. The service agent must ensure that MRO staff operates under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
  - d. Like other MROs, an MRO the service agent employs or contracts with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, the service agent staff cannot perform these functions.

**E. Service Agent Limitations.**

1. Limitations that apply to the activities of service agents (§40.355) – The service agent is subject to the following limitations concerning the service agent's activities in the DOT drug and alcohol-testing program.
  - a. The service agent must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol

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testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.

- b. The service agent must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to the service agent with the service agent in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to the service agent's computer system, and the service agent then assigns the results to a particular MRO, is not permitted.
- c. The service agent must not transmit drug test results directly from the laboratory to the company (by electronic or other means) or to a service agent who forwards them to the company. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
- d. The service agent must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
- e. Except as provided in paragraph 1.f. of this section, the service agent must not act as an intermediary in the transmission of individual SAP reports to the company. That is, the SAP may not send such reports to the service agent and then in turn send them to the company. However, the service agent may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to the service agent simultaneously with sending them to the DER.
- f. As an exception to paragraph 1.e. of this section, the service agent may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.
- g. Except as provided in paragraph 1.h. of this section, the service agent must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the company cannot delegate to a C/TPA. The service agent may, however, provide advice and information to the company regarding these testing issues and how the company should schedule required testing.
- h. As an exception to paragraph 1.g. of this section, the service agent may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- i. Except as provided in paragraph 1.j. of this section, the service agent must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the company. The service agent may, however, provide advice and information to the company regarding refusal-to-test issues.
- j. As an exception to paragraph 1.i. of this section, the service agent may make a determination that an employee has refused a drug or alcohol test, if:
  - (1) The service agent schedules a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
  - (2) The MRO determines that an individual has refused to test on the basis of adulteration or substitution.

- k. The service agent must not act as a DER. For example, while the service agent may be responsible for transmitting information to the company about test results, the service agent must not act on behalf of the company in actions to remove employees from safety-sensitive duties.
- l. In transmitting documents to laboratories, the service agent must ensure that the service agent sends to the laboratory that conducts testing only the laboratory copy of the CCF. The service agent is not to transmit other copies of the CCF or any ATFs to the laboratory.
- m. The service agent must not impose conditions or requirements on the company that DOT regulations do not authorize. For example, as a C/TPA serving companies in the pipeline or motor carrier industry the service agent must not require companies to have provisions in their DOT plans that PHMSA or FMCSA regulations do not require.
- n. The service agent must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions the service agent has performed, because of a payment dispute or other reasons.

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

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

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

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

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

### III. EMPLOYEE/SUPERVISOR ALCOHOL TESTING REQUIREMENTS

#### A. Individuals Subject to Alcohol Testing.

1. Any applicant/employee who would perform on a pipeline, an operating, maintenance, or emergency response function regulated by Part 192, 193, or 195, or has a commercial driver's license and operates a commercial motor vehicle would be subject to alcohol testing under this program. A covered employee, employee, or individual to be tested - means any person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.
2. Refer to Appendix B for specific employee titles/job classifications subject to testing under this program.

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**B. Procedure for Notifying Employees.**

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

**C. Criteria For Employee Notification.**

1. General Criteria. The company shall provide written educational materials explaining the alcohol misuse requirements and the company's policies and procedures on how they will comply with those requirements.
  - a. The company will distribute to each covered employee prior to the start of alcohol testing and to each person subsequently hired/transferred to perform covered functions.
  - b. The company shall provide written notice to representatives of employee organizations on the availability of this written educational information.
2. Required Information. The company shall provide written materials to all covered employees that shall include detailed information and discussion of the following elements:
  - a. Name of company representative designated to answer questions for covered employees about the alcohol regulations. See Appendix A.
  - b. List of categories of covered employees who are subject to the alcohol regulations. See Appendix B for listing of employee/supervisor job classifications/titles.
  - c. Information about covered functions, which provides sufficient guidance on which portions of the workday the covered employee is required to be in compliance with the AMPP
  - d. Information concerning covered employee conduct that specifies what is prohibited by the AMPP.
  - e. Circumstances under which a covered employee will be tested for alcohol under the AMPP.
  - f. Procedures that cover:
    - (1) Testing for presence of alcohol
    - (2) Protection of employee rights
    - (3) Integrity of breath testing process
    - (4) Safeguarding validity of test results
    - (5) Assignment of test results to proper employee
  - g. Information concerning requirement for covered employee to submit to various types of alcohol tests.
  - h. Information which detailing what constitutes a refusal and consequences of such refusal.
  - i. Information detailing consequences of covered employees who violate the prohibitions as set forth in the AMPP. It must address removal from performing covered functions and guidance on referral for evaluation and/or treatment.
  - j. Information detailing consequences of covered employees who test at an alcohol concentration of 0.02 or greater but less than 0.04.
  - k. Information detailing alcohol misuse and how it impacts on:

- (1) Individual's health, work and personal life
- (2) Detecting signs and symptoms of alcohol problem
- (3) Intervening evaluation and resolving problems associated with alcohol misuse (suspicions, confrontation, referral to EAP and referral to management official)

#### IV. **ALCOHOL TESTS REQUIRED**

##### A. **Pre-Employment (Optional).**

1. The company may, but is not required to, conduct pre-employment alcohol testing under 49 CFR Part 199 & 382. If the company conducts pre-employment alcohol testing the company must:
  - a. **Conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions);**
  - A. **Treat all employees the same for the purpose of pre-employment alcohol testing (i.e., company must not test some covered employees and not others);**
  - B. **Conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test;**
  - C. **Conduct all pre-employment alcohol tests using the alcohol testing procedures in the DOT procedures in 49 CFR Part 40; and**
  - D. **Not allow any covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.**

##### B. **Post-Accident Testing.**

1. The company shall promptly determine and test each surviving covered employee for alcohol if that employee's performance contributed to the "accident" or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test under this section shall be based on the company's determination, using the best available information at the time of the determination that the employee's performance could not have contributed to the accident.
2. Each employee shall be required to submit to an alcohol test within 2 hours of the accident. If a test is not administered within two hours following the accident the company shall prepare and maintain on file a record stating the reasons why the test was not administered. If a test is not administered within 8 hours following the accident the company shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted.
3. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the company or company representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the company to have refused to submit to testing.
4. The employee must remain available for alcohol testing and may not consume any alcohol for 8 hours following the accident or until the alcohol test has been conducted. Notwithstanding the previous statement, employees shall not be delayed in seeking necessary medical attention for injured people. An employee shall not be prohibited from leaving the scene of an accident for a period of time necessary to obtain assistance in responding to the accident or to obtain necessary medical personnel to administer medical care to any injured people.

**Supervisors will have mandatory training by a Substance Abuse Professional as required by**

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Revised: November 19, 2018

**the Department of Transportation federal regulations. In addition, training by DRE-HGN (Drug Recognition Expert – Horizontal Gaze Nystagmus) certified police officers will be made available to supervisors. Supervisors having a reasonable belief that a City employee is under the influence following a motor vehicle accident, may request assistance from the Mesa Police Department in determining whether the employee is actually under the influence of alcohol and/or drugs by calling the Police Department dispatch at Extension 2211.**

5. The following steps will be used to guide supervisor to a satisfactory outcome in a post-accident situation.
  - a. Verify the post-accident decision. Does the definition of accident in Section I apply to the current situation? Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a factor, which contributed to the accident? Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? Before proceeding further, individual may need to obtain approval from the division manager/department head or designee to proceed with post-accident testing.
  - b. Isolate and inform the employee. Remove the employee from the work place. Explain that you have reason to believe his/her performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident and therefore, they will be required to submit to an alcohol test.
  - c. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity enroute to the collection site for the employee to ingest anything that could affect the outcome of the alcohol test.
  - d. Document the events. Record the activity performed that support the determination to conduct a post-accident alcohol test. This documentation of the employee's activity should be prepared and signed by the supervisor and remain on file. See Appendix E for documentation format if test is not administered within prescribed time frames.
  - e. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid submission to an alcohol test. If he/she is not under the influence of alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request for an alcohol test is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.
  - f. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur.

- g. Employee Responsibility. As soon as practicable following an accident as defined in this plan, the employee shall make every attempt to contact his/her supervisor and the APM.
  - (1) The employee will be given instructions for obtaining alcohol and substance abuse testing.
  - (2) An employee who is subject to post-accident testing must remain available for testing, or the company may consider the employee to have refused to submit to an alcohol test.
  - (3) The employee subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.
- h. Company Responsibility.
  - (1) Upon receiving a report of an accident the company shall test the employee (if not a fatality) for alcohol and controlled substance as soon as practicable.
  - (2) The DER will instruct the employee in obtaining the required drug and alcohol test.

### C. Random Testing

- 1. The primary purposes of random testing are to deter prohibited alcohol use and to ensure an alcohol free workforce. DOT regulations require that covered employees shall be subject to alcohol testing on an unannounced and random basis. The company shall conduct a number of tests equal to at least 10 percent for FMCSA covered employees each calendar year, spread reasonably over a 12-month period. Random testing will be conducted monthly. Random alcohol testing is not required by PHMSA.
- 2. The following is a discussion of the key aspects of the random testing selection process.
  - a. Employees remain in the random selection pool at all times, regardless of whether or not they have been previously selected for testing.
  - b. Employees shall be selected for testing by using a computer-based random number generator or equivalent random selection method that is matched with an employee's social security number or employee ID number.
  - c. The process will be unannounced as well as random. Employees will be notified that they have been selected for testing after they have reported for duty on the day of collection.
  - d. Employees will be selected for random testing based on the number of covered employees at the time and the necessary testing rate.
  - e. Specimen collection will be conducted on different days of the week throughout the annual cycle to prevent employees from matching their alcohol use patterns to the schedule for collection.
- 3. Steps for random testing:
  - a. The company, on a pre-determined date, shall use the random selection procedures to compile a list of covered employees selected for random testing during that testing cycle.
  - b. The company shall ensure that the list of social security numbers or employee identification numbers will identify the correct employees who are to be randomly tested during the testing cycle.

- c. It is the intent of this plan to notify employees of their selection for random testing after they have reported for duty.
  - (1) The list of employees to be tested will be provided to the appropriate DER.
  - (2) The list of employees who have been selected for random alcohol testing will be retained by the DER (or designee) in a secure location.
- 4. Notification of employees:
  - a. The appropriate manager/supervisor will notify the employee to be tested to report to the manager/supervisor's office at a specified time.
  - b. The employee will not be notified of the test until after reporting for duty.
  - c. Employees shall report immediately to the collection site or to the collection site within 30 minutes, plus travel time, once notified by the appropriate company official.

**D. Reasonable Suspicion Testing.**

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

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- e. The company will direct a covered employee to undergo reasonable suspicion testing only while the employee is performing, just before performing or just after ceasing to perform a covered function. The test must be conducted within 2 hours of the reasonable suspicion determination and the company shall continue to attempt for up to 8 hours and then shall cease all attempts to conduct the test.
4. The following steps will be used to guide the supervisor to a satisfactory outcome in a reasonable suspicion situation.
    - a. Verify the reasonable suspicion decision. Anonymous tips must be taken seriously, but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable suspicion referral. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was alcohol related? On what basis did they reach their conclusion? Before proceeding further, obtain concurrence or approval from the manager/department head or designee to proceed with reasonable suspicion alcohol testing.
    - b. Isolate and inform the employee. Remove the employee from the work location. Explain that there is reasonable suspicion to believe the employee's performance is being affected by alcohol. Ask the employee to explain the suspected behavior and to describe the events that took place from his/her perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may or may not deter you from asking for the employee to submit to an alcohol test. If there is still a reasonable belief that alcohol is a factor in the situation/ incident, a request for testing should be made; if no reasonable belief is determined then no request for testing should be made. If the decision to test is made, inform the employee that they are being requested to accompany the appropriate company official or representative to the specimen collection site to conduct an alcohol test. Inform the employee of the consequences of refusal to submit to alcohol testing.
    - c. Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In all cases, a reasonable suspicion decision to test must be made by a supervisor who has received the required supervisor training. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable cause determination.
    - d. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity enroute to the collection site for the employee to ingest anything that could affect the alcohol test result.
    - e. Document the events. Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion alcohol test. This documentation (See Appendix D for guidance) of the employee's conduct should be prepared and maintained on file to document the request for reasonable suspicion alcohol testing. See Appendix E for documentation format if test is not administered within prescribed time frames.
    - f. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid alcohol testing. If he/she is not under the influence or affected by alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to submit to an alcohol test is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so it is important to stress that this is merely a request for additional data.

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## Alcohol Misuse Prevention Plan

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<http://www.dot.gov/ost/dapc>  
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- g. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable suspicion belief that he/she may be under the influence of alcohol. If the employee insists on driving, the proper local enforcement authority may be notified that an employee who the company believes may be under the influence of alcohol is leaving the company premises driving a motor vehicle.

**Supervisors will have mandatory training by a Substance Abuse Professional as required by the Department of Transportation federal regulations. In addition, training by DRE-HGN (Drug Recognition Expert – Horizontal Gaze Nystagmus) certified police officers will be made available to supervisors. Supervisors having a reasonable belief that a City employee is under the influence following a motor vehicle accident, may request assistance from the Mesa Police Department in determining whether the employee is actually under the influence of alcohol and/or drugs by calling the Police Department dispatch at Extension 2211.**

5. The company shall conduct an alcohol test within two hours of a determination to test under reasonable suspicion. If a reasonable suspicion test is not administered within two hours following the determination, the company shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. If the required test is not administered within eight hours of the determination, the company shall cease all attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Upon request such records shall be made available to the agency administrator or any person who has been delegated authority in the matter concerned.
6. The company shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:
- a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
- b. The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP.
7. Except as provided above, the company shall not take any action under 49 CFR Part 199 & 382 against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. However, this does not prohibit the company from taking any disciplinary action otherwise consistent with Management Policies, local and/or state laws.

### E. Return-to-Duty Testing.

1. The company shall ensure that before an employee may return-to-duty to perform covered functions after engaging in prohibited conduct, as set forth in Section IV of this plan, that the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The company shall not permit an employee who refuses to submit to an alcohol test to perform or continue to perform covered functions.
2. If the substance abuse professional makes a determination that some form of evaluation and/or treatment is required then the employee must comply with the recommended provisions in order to be considered eligible for consideration in being allowed to return-to-duty.

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3. To ensure the individual is fit for duty, any employee with a violation of the alcohol testing rule who has been removed from safety-sensitive functions as indicated by a positive alcohol test result of 0.02 to 0.039 must comply with a return to duty alcohol test. This test must occur following a removal from safety-sensitive duties and prior to resuming covered functions. Per DOT the test result must be below 0.02 in order to resume safety-sensitive duties; however per Management Policy 316 the result must not show the presence of any alcohol. Refusal to cooperate will be viewed as insubordination and the employee would be subject to disciplinary action up to and including discharge.

**F. Follow-up Testing.**

1. Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee will be subject to unannounced follow-up alcohol testing as directed by a substance abuse professional. An employee who returns to duty shall be subject to a reasonable program of follow-up alcohol testing, without prior notice, for up to 60 months after his or her return to duty.
2. The employee shall be subject to at least six, unannounced alcohol follow-up tests during the first 12-months following his/her return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the initial six tests have been completed, if the substance abuse professional makes the determination that such testing is no longer warranted.
3. The company may require a covered employee to submit to drug follow-up testing when the substance abuse professional has reason to suspect drug involvement. The drug testing must comply with the requirements contained in 49 CFR Part 40, Subpart A. The same procedures would apply should it be determined that an employee had tested positive for drugs and the substance abuse professional had reason to suspect alcohol misuse.
4. Follow-up testing will only be conducted when the covered employee is performing, just before performing, or just after ceasing to perform covered functions.

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

1. The company is prohibited from standing employees down, except consistent with a waiver a DOT agency grants under 49 CFR Part 40.
2. The company may make a request to the concerned DOT agency for a waiver from the prohibition of the above paragraph in this section. Such a waiver, if granted, permits the company to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.
  - a. For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.
  - b. Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the company's other covered employees.
  - c. The concerned DOT agency provides a written response to each company that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.
3. The company request for a waiver must include, at a minimum, the following elements:
  - a. Information about the company's organization:

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- (1) The company's determination that standing employees down is necessary for safety in the company's organization and a statement of the company's basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;
  - (2) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for the company's employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;
  - (3) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and
  - (4) A statement of which DOT agencies regulate the company's employees.
- b. The company's proposed written company policy concerning stand-down, which must include the following elements:
- (1) The company's assurance that they will distribute copies of the company's written policy to all employees that it covers;
  - (2) The company's means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in the company's organization (or subsequently to another company) other than the employee, the MRO and the DER;
  - (3) The company's means of ensuring that all covered employees in a particular job category in the company's organization are treated the same way with respect to stand-down;
  - (4) The company's means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;
  - (5) The company's means of ensuring that the company will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;
  - (6) The company's means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless the company is informed in writing by the MRO that a longer period is needed to complete the verification process; and
  - (7) The company's means of ensuring that, in the event that the MRO verifies the test negative or cancels it --
    - (a) The company returns the employee immediately to the performance of safety-sensitive duties;
    - (b) The employee suffers no adverse personnel or financial consequences

as a result; and

- (c) The company maintains no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (i.e., the company maintains a record of the test only as a negative or cancelled test).
- 4. The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of the company's organization, there is a high probability that the procedures the company proposes will effectively enhance safety and protect the interests of employees in fairness and confidentiality.
    - a. The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
    - b. The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that the company has failed to protect effectively the interests of employees in fairness and confidentiality, that the company has failed to comply with the requirements of this section, or that the company has failed to comply with any other conditions the DOT agency has attached to the waiver.
  - 5. The company must not stand employees down in the absence of a waiver, or inconsistent with the terms of the waiver. The company shall be in violation of 49 CFR Part 40 and DOT agency drug testing regulations, and the company is subject to enforcement action by the DOT agency just as the company is for other violations of this 49 CFR Part 40 and DOT agency rules.

#### H. Provisions Governing Retesting of Covered Employee.

- 1. A covered employee tested and found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform or continue to perform covered functions until:
  - a. The employee's alcohol concentration measures less than 0.02 in another alcohol test administered in compliance with this plan; or
  - b. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the alcohol test.
- 2. Except as provided above, the company shall not take any action under 49 CFR Part 199 & 382 against a covered employee based solely on test results showing an alcohol concentration less than 0.04. However, this does not prohibit the company from taking any disciplinary action otherwise consistent with management policies, local and/or state law.  
**Refer to Personnel Rule Section 550.D.1.**

#### V. SUBSTANCE ABUSE PROFESSIONALS AND THE RETURN-TO-DUTY PROCESS

##### A. SAP Evaluation.

- 1. Qualifications to act as a SAP (§40.281) - To be permitted to act as a SAP in the DOT alcohol and drug testing program, the SAP must meet each of the requirements of this section:
  - a. The SAP Credentials. The SAP must have one of the following credentials:
    - (1) A licensed physician (Doctor of Medicine or Osteopathy);
    - (2) A licensed or certified social worker;
    - (3) A licensed or certified psychologist;
    - (4) A licensed or certified employee assistance professional; or

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- (5) A drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Certification Reciprocity Consortium/ Alcohol and Other Drug Abuse (ICRC).
- b. SAP Basic Knowledge. The SAP must be knowledgeable in the following areas:
- (1) The SAP must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
  - (2) The SAP must be knowledgeable about the SAP function as it relates to company interests in safety-sensitive duties.
  - (3) The SAP must be knowledgeable about this part, the DOT agency regulations applicable to the companies for whom the SAP evaluates employees, and the DOT SAP Guidelines, and the SAP must keep current on any changes to these materials.
- c. SAP Qualification Training. The SAP must receive qualification training meeting the requirements of this paragraph.
- (1) Qualification training must provide instruction on the following subjects:
    - (a) Background, rationale, and coverage of the Department's drug and alcohol testing program;
    - (b) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;
    - (c) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
    - (d) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
    - (e) SAP qualifications and prohibitions;
    - (f) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/ or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
    - (g) SAP consultation and communication with companies, MROs, and treatment providers;
    - (h) Reporting and recordkeeping requirements;
    - (i) Issues that SAPs confront in carrying out their duties under the program.
  - (2) Following the SAP completion of qualification training under paragraph 1.c.(1) of this section, the SAP must satisfactorily complete an examination administered by a nationally recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph 1.c.(1) of this section.
  - (3) The following is the schedule for qualification training the SAP must meet:
    - (a) If the individual became a SAP before August 1, 2001, the SAP must meet the qualifications training requirement no later than December 31, 2003.
    - (b) If the individual becomes a SAP between August 1, 2001, and December 31, 2003, the SAP must meet the qualification training requirements no later than December 31, 2003.

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- (c) If the individual becomes a SAP on or after January 1, 2004, the SAP must meet the qualification training requirements before the SAP begins to perform SAP functions.
  - (4) SAP Continuing Education. During each three-year period from the date on which the SAP satisfactorily complete the examination under paragraph 1.c.(2) of this section, the SAP must complete continuing education consisting of at least 12 professional development hours (e.g. ,CEUs) relevant to performing SAP functions.
    - (a) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time the SAP met the qualification training requirements of this section.
    - (b) The SAP continuing education activities must include documentable assessment tools to assist the SAP in determining whether the SAP has adequately learned the material.
  - (5) SAP Documentation. The SAP must maintain documentation showing that he/she currently meet all requirements of this section. The SAP must provide this documentation on request to DOT agency representatives and to the company and C/TPAs who are using or contemplating using the SAPs services.
2. Criteria for a certification organization to obtain recognition for its members as SAPs (§40.283).
- a. If the SAP represents a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281(a)(5), the SAP may submit a written petition to DOT requesting a review of the SAPs petition for inclusion.
  - b. The SAP must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on the SAPs petition.
  - c. The SAP must also meet the minimum requirements of 49 CFR Part 40, Appendix E before DOT will act on the SAPs petition.

**B. SAP Requirements.**

- 1. Requirements for conducting a SAP evaluation (§40.285).
  - a. When an employee violates the DOT drug and alcohol regulations the employee cannot again perform any DOT safety-sensitive duties for the company until and unless the employee has completed the SAP evaluation, referral, and education/ treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
  - b. A verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.
- 2. Information the company is required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation (§40.287).
  - a. The company must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the

employee and acceptable to the company, with names, addresses, and telephone numbers. The company cannot charge the employee any fee for compiling or providing this list.

- b. The company may provide this list or through a C/TPA or other service agent.
3. Company requirements regarding SAP evaluation and treatment services to employees (§ 40.289).
    - a. The company is not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
    - b. However, if the company offers the employee an opportunity to return to a DOT safety-sensitive duty following a violation, the company must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
    - c. Payment for SAP evaluations and services is left for the company and employees to decide and may be governed by existing management-labor agreements and health care benefits.

### **C. SAP Evaluation, Referral, and Treatment.**

1. The role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations (§ 40.291).
  - a. The SAP is charged with:
    - (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/ or drug use;
    - (2) Referring the employee to an appropriate education and/ or treatment program;
    - (3) Conducting a face-to-face follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations;
    - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
    - (5) Providing the employee and company with recommendations for continuing education and/or treatment.
  - b. The SAP is not an advocate for the company or employee. The SAP function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/ treatment, follow-up tests, and aftercare.
2. The SAP's functions in conducting the initial evaluation of an employee (§ 40.293) – The SAP must for every employee who comes to the SAP following a DOT drug and alcohol regulation violation the SAP must accomplish the following:
  - a. Provide a comprehensive face-to-face assessment and clinical evaluation.
  - b. Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.

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

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

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

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

**E. SAP Functions in Evaluation, Treatment, and Aftercare or Support Group Services.**

1. The SAP's functions in the follow-up evaluation of an employee (§40.301).
  - a. The SAP, once the prescribed assistance under §40.293 is complete, must re-evaluate the employee to determine if the employee has successfully carried out the SAP's education and/or treatment recommendations.
    - (1) This is the SAP's way to gauge for the company the employee's ability to demonstrate successful compliance with the education and/ or treatment plan.
    - (2) The SAP evaluation may serve as one of the reasons the company decides to return the employee to safety-sensitive duty.
  - b. The SAP must make the follow-up evaluation determination:
    - (1) The SAP must confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and



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

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

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

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

**Example 1 to Paragraph e:** The employee returns to duty with Employer A. Two months afterward,

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Revised: November 19, 2018

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

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

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

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

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

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

1. The SAP conducting the required evaluations must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in §40.355(e)). The SAP may, however, forward the document simultaneously to the DER and to a C/TPA.
2. The SAP must ensure that the company receives written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
3. The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/ or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
  - a. Employee's name and SSN;
  - b. Employer's name and address;
  - c. Reason for the assessment (specific violation of DOT regulations and violation date);
  - d. Date(s) of the assessment;
  - e. SAP's education and/ or treatment recommendation; and
  - f. SAP's telephone number.

**City of Mesa**

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Revised: November 19, 2018

4. The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
  - a. Employee's name and SSN;
  - b. Employer's name and address;
  - c. Reason for the initial assessment (specific violation of DOT regulations and violation date);
  - d. Date(s) of the initial assessment and synopsis of the treatment plan;
  - e. Name of practice(s) or service(s) providing the recommended education and/or treatment;
  - f. Inclusive dates of employee's program participation;
  - g. Clinical characterization of employee's program participation;
  - h. SAP's clinical determination as to whether the employee has demonstrated successful compliance;
  - i. Follow-up testing plan;
  - j. Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
  - k. SAP's telephone number.
5. The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
  - a. Employee's name and SSN;
  - b. Employer's name and address;
  - c. Reason for the initial assessment (specific DOT violation and date);
  - d. Date(s) of initial assessment and synopsis of treatment plan;
  - e. Name of practice(s) or service(s) providing the recommended education and/ or treatment;
  - f. Inclusive dates of employee's program participation;
  - g. Clinical characterization of employee's program participation;
  - h. Date(s) of the first follow-up evaluation;
  - i. Date(s) of any further follow-up evaluation the SAP has scheduled;
  - j. SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
  - k. SAP's telephone number.
6. The SAP must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
7. The SAP is to maintain copies of the employer's reports to employers for 5 years, and the employer's employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. The SAP must make these records available, on request, to DOT agency representatives (e. g., inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.
8. The company must maintain the reports from SAP's for 5 years from the date the company receives the reports.

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

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

§ 40.3-Definition.

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

§ 40.355-Transmission of SAP reports.

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

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

## VI. ALCOHOL PROHIBITED CONDUCT

- A. **General.** The company shall provide guidance to all covered employees regarding the various types of alcohol-prohibited conducts.
- B. **Alcohol Concentration.** A covered employee shall be prohibited from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. If a company representative has actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater, the employee shall not be permitted to perform or continue to perform covered functions.
- C. **Pre-Duty Use.** The company shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty, the employee shall not be permitted to perform or continue to perform covered functions.
- D. **On-Duty Use.** The company shall prohibit a covered employee from using alcohol while performing covered functions. If a company representative has actual knowledge that a covered employee is using alcohol while performing covered functions, the employee shall not be permitted to perform or continue to perform covered functions.
- E. **On-Call Employees.**
1. Employees who are not at work, but who could be called at any time to perform covered functions is subject to the pre-duty alcohol prohibition. An employee, who has been notified to report for duty to respond to an emergency, may not use alcohol after being notified to report. If company personnel determine that an employee has used alcohol within the time period after the employee has been notified to report for duty, the company shall not permit the covered employee to perform or continue to perform covered functions.
  2. **Employees who are not at work, but who could be called out are expected to be fit for duty upon reporting for work. If an employee is under the influence of alcohol, the employee must notify company personnel when contacted. Failure to advise the company of alcohol consumption may result in disciplinary action. If a covered employee is perceived to be under the influence of alcohol when reporting to work after being called in, the employees supervisor must be notified.**
  3. **The supervisor must objectively observe the employee's behavior and if possible, substantiate the behavior with a second supervisor. Supervisors must have received training in alcohol and/or substance abuse detection. The supervisor must follow procedures outlined in the AMPP. If a determination to test for reasonable suspicion is made, the employee is immediately removed from safety-sensitive duties and the alcohol program manager is contacted. An alcohol test site location is identified to conduct the test. The supervisor will accompany the individual to the test site and remain at the location for results of the test. If the results are positive, the individual is removed from safety-sensitive duties and may be subject to disciplinary action up to and including termination. Refer to Personnel Rule Section 550.**

## VII. **PROBLEMS ASSOCIATED WITH ALCOHOL TESTING (PART 40 – SUBPART N)**

### A. **Refusal Criteria and Consequences** - Criteria for refusal to take an alcohol test and the consequences (§40.261). **Refer to Personnel Rule Section 550.C.4**

1. The employee is considered to have refused to take an alcohol test if he/she
  - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the company, consistent with applicable DOT agency regulations, after being directed to do so by the company. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.241(b)(1));
  - b. Fail to remain at the testing site until the testing process is complete; Provided, that an employee who leaves the testing site before the testing process commences (see Section 40.243(a)) for a pre-employment test is not deemed to have refused to test;
  - c. Fail to attempt to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT Agency regulations; provided, that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see Section 40.243(a)) for a pre-employment test is not deemed to have refused to test;
  - d. Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.265(c));
  - e. Fail to undergo a medical examination or evaluation, as directed by the company as part of the insufficient breath procedures outlined at §40.265(c);
  - f. Fail to sign the certification at Step 2 of the ATF (see §40.241(g) and §40.251(d));
  - g. Fail to cooperate with any part of the testing process.
2. Any employee who refuses to take an alcohol test will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.
3. As a BAT or an STT, or as the physician evaluating a " shy lung" situation, when an employee refuses to test as provided in paragraph (a) of this section, the collector must terminate the portion of the testing process in which they are involved, document the refusal on the ATF (or in a separate document which should be attached to the form), immediately notify the DER by any means (e. g., telephone or secure fax machine) that ensures the refusal notification is immediately received. The collector must make this notification directly to the DER (not using a C/TPA as an intermediary).
4. An employee who refuses to take a non-DOT test or to sign a non-DOT form, has not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

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

1. The STT must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device). §40.265.
  - a. The STT must conduct a new screening test using a new screening device.

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Revised: November 19, 2018

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

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

1. If an employee does not provide a sufficient amount of breath to permit a valid breath test, the BAT must take the steps listed in this section.
2. The BAT must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
  - a. If the employee refuses to make the attempt the BAT must discontinue the test, note the fact on the " Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
  - b. If the employee again attempts and fails to provide a sufficient amount of breath, the BAT may provide another opportunity to the employee to do so if they believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.
  - c. When the employee's attempts under paragraph C.2.b. of this section have failed to produce a sufficient amount of breath, the BAT must note the fact on the " Remarks" line of the ATF and immediately notify the DER.
  - d. If the BAT is using an EBT that has the capability of operating manually, he/she may attempt to conduct the test in manual mode.
  - e. If the collector is qualified to use an saliva ASD and the collector is in the screening test stage, the collector may change to a saliva ASD only to complete the screening test.
3. The company shall when notified by the BAT that the employee has not provided a sufficient amount of breath, the BAT must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to the company and the physician has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
  - a. The company is required to provide the physician who will conduct the evaluation with the following information and instructions:
    - (1) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
    - (2) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;
    - (3) That the physician must provide the company with a signed statement of his or her conclusions; and
    - (4) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:

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- (a) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.
  - (b) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.
  - (c) For purposes of paragraphs C.3.a.(4)(a) and (b) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.
- b. The physician who makes evaluation must provide a written statement of his/her conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). The physician must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain his/her conclusion.
  - c. Upon receipt of the report from the examining physician the DER must immediately inform the employee and take appropriate action based upon the appropriate DOT agency regulations.

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

- 1. The company, a BAT, or an STT, must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." He/she must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:
  - a. In the case of a screening test conducted on an saliva ASD:
    - (1) The STT reads the result either sooner than or later than the time allotted by the manufacturer (see §40.245(h));
    - (2) The device does not activate (see §40.245(g)); or
    - (3) The device is used for a test after the expiration date printed on its package (see §40.245(a)).
  - b. In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see § 40.253(c), (e) and (f)).
  - c. In the case of a confirmation test:
    - (1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see §40.251(a)(1));
    - (2) The BAT does not conduct an air blank before the confirmation test (see §40.253(a));
    - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (see §40.253(a)(1) and (2));
    - (4) The EBT does not print the result (see §40.253(f)); or

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- (5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see §40.233(a)(1) and (d)).

**E. Problems Associated with Cancelled Test & Corrective Action** - Problems that cause an alcohol test to be cancelled unless they are corrected (§40.267).

1. The BAT or STT, or company must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:
  - a. The BAT or STT does not sign the ATF (see §40.247(a)(1) and 40.255(a)(1)).
  - b. The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (see §40.255(a)(2)).
  - c. The BAT or STT uses a non-DOT form for the test (see §40.225(a)).

**F. Correction of Alcohol Testing Problems (§40.271).**

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

a test, in circumstances beyond the BAT or STT control, and the steps taken to prevent future use of non-DOT forms for DOT tests. The BAT or STT must supply this information on the same business day on which notified of the problem, transmitting it by fax or courier.

3. If the BAT or STT cannot correct the problem they must cancel the test.

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

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

**H. Effects of Procedural Problems that are not Sufficient to Cancel an Alcohol Test (§40.275).**

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

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

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

## VIII. EMPLOYEE WHO REFUSES ALCOHOL TEST

### A. General.

1. Compliance with this AMPP is a condition of employment.
2. Refusal to submit to a post-accident, reasonable suspicion or follow-up alcohol test shall result in the covered employee not being allowed to perform or to continue to perform any covered functions.

### B. Additional Requirements.

1. The company may impose additional disciplinary actions, as they deem appropriate. This may include removal from performing covered functions, suspension (with or without pay), and even termination. Some examples of various types of disciplinary action are outlined in Section IX. Refer to Personnel Rule Section 550.

## IX. DISCIPLINARY ACTIONS

### A. General.

1. A covered employee who has an alcohol test administered and the alcohol concentration is greater than 0.02 shall not be permitted to perform covered functions or not allowed to continue to perform covered functions. An employee who engages in prohibited conduct as outlined in the AMPP shall be advised of available resources to evaluate and resolve problems associated with alcohol misuse.

### B. Required Referrals and Evaluations.

1. The company shall ensure that employees who engage in prohibited conduct are made aware of potential resources to assist in the evaluation of their problems and to help resolve any problems associated with the misuse of alcohol. Employees who engage in prohibited conduct must be referred to a substance abuse professional for evaluation and/or treatment.
2. No covered employee who has violated the rules on alcohol misuse or refuses to submit to testing can perform any covered function unless and until that employee has:
  - a. Been evaluated by a SAP to determine whether the employee is in need of assistance in resolving problems related to alcohol use.
  - b. Completed any treatment recommended by the SAP.
  - c. Been evaluated by a SAP to ensure that the employee has properly followed the treatment program.
  - d. Entered into a company sponsored rehabilitation program and successfully completed the treatment and/or program.
  - e. Undergone a return-to-duty alcohol test with resulting alcohol concentration of less than 0.02.
  - f. Been advised of the follow-up testing provisions as specified in section III of this plan.

### C. Evaluation, Treatment and Rehabilitation.

1. A Substance Abuse Professional (SAP) is a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse

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Revised: November 19, 2018

Counselors Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

2. The company shall not permit an employee to return to duty requiring the performance of a covered function after engaging in conduct prohibited in Section VI of this plan until the employee has undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
3. The company shall ensure that a SAP who determines that a covered employee requires assistance in resolving problems associated with alcohol misuse does not refer the employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or has a financial interest. This does not prohibit a SAP from referring an employee for assistance to a public agency (State, county, or municipality); a person under contract with the company to provide treatment for alcohol on behalf of the company; the sole source of therapeutic treatment under the employee's health insurance policy; or sole source of therapeutic treatment reasonably accessible to the employee.
4. The employee's evaluation and rehabilitation may be provided by the company; a SAP under contract; or a SAP not affiliated with the company.

**X. DISCLOSURE OF ALCOHOL INFORMATION / RECORDS****A. General.**

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

**B. Disclosure Provisions.**

1. The company shall not release covered employee information that is contained in records as required to be maintained by the provisions of the AMPP and in accordance with federal requirements except as required by law or when expressly authorized or required by 49 CFR Parts 199, 382, and 40.
2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his/her alcohol tests. The company shall promptly provide the requested records. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
3. The company shall permit access to all facilities utilized in complying with the requirements of 49 CFR Parts 199, 382, and 40 to the Secretary of Transportation or any DOT or state agency with regulatory authority over the company.
4. The company shall make available copies of all results for alcohol testing conducted under the AMPP as required by 49 CFR Parts 199, 382, and 40 when requested by the Secretary of Transportation or any DOT or state agency with regulatory authority over the company. When specified by the agency the information shall include name-specific alcohol test results, records, and reports.

5. When requested by the National Transportation Safety Board as part of an accident investigation, the company shall disclose information related to its administration of any post-accident alcohol tests administered following the accident under investigation.
6. The company shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
7. The company may disclose required information pertaining to a covered employee to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered as required by the AMPP and the regulations set forth in 49 CFR Parts 199, 382, and 40 or from the company's determination that the covered employee engaged in prohibited alcohol conduct including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.
6. The company shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

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

1. The C/TPA may, acting as an intermediary, transmit the information in the following sections of 49 CFR Part 40 to the DER for the company, if the company chooses to do so. These are the only items that the C/TPA is permitted to transmit to the company as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to the company, the transmission of SAP reports to the company, the transmission of positive alcohol test results, and the transmission of medical information from MROs to the company.
2. In every case, the C/TPA must ensure that, in transmitting the information, the C/TPA meets all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the company. For example, if the C/TPA transmitted MROs' drug testing results to DERs, the C/TPA must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in §40.167.
3. Drug Testing Information
  - Sec. 40.25: Previous two years' test results
  - Sec. 40.35: Notice to collectors of contact information for DER
  - Sec. 40.61(a): Notification to DER that an employee is a "no show" for a drug test
  - Sec. 40.63(e): Notification to DER of a collection under direct observation
  - Sec. 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen
  - Sec. 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)
  - Sec. 40.111(a): Transmission of laboratory statistical report to the company
  - Sec. 40.127(f): Report of test results to DER
  - Secs. 40.127(g), 40.129(d); 40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled
  - Sec. 40.129 (d): Report of test results to DER
  - Sec. 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation
  - Secs. 40.149(b): Report to DER of changed test result
  - Sec. 40.155(a): Report to DER of dilute specimen
  - Sec. 40.167(b) and (c): Reports of test results to DER
  - Sec. 40.187(a)-(f) Reports to DER concerning the reconfirmation of tests
  - Sec. 40.191(d): Notice to DER concerning refusals to test

Sec. 40.193(b)(3): Notification to DER of refusal in shy bladder situation  
Sec. 40.193(b)(4): Notification to DER of insufficient specimen  
Sec. 40.193(b)(5): Transmission of CCF copies to DER (not to MRO)  
Sec. 40.199: Report to DER of cancelled test and direction to DER for additional collection  
Sec. 40.201: Report to DER of cancelled test

4. Alcohol testing information

§40.215: Notice to BATs and STTs of contact information for DER  
§40.241(b)(1): Notification to DER that an employee is a "no show" for an alcohol test  
§40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02  
§40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02  
§40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

## **XI. CONFIDENTIALITY AND RELEASE OF INFORMATION (PART 40 - SUBPART P)**

### **A. General Confidentiality Requirements.**

1. General confidentiality rules for drug and alcohol test information (§40.321) - Except as otherwise provided in this subpart the service agent or company participating in the DOT drug or alcohol testing process is prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.
  - a. A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
  - b. "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e. g., all test results) or to release information to a category of parties (e. g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.
2. Criteria for program participant's release of drug or alcohol test information in connection with legal proceedings (§40.323).
  - a. The company may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
    - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the company), or administrative proceeding (e. g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
    - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the company to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The

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**Alcohol Misuse Prevention Plan**

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Revised: November 19, 2018

company is authorized to respond to the court's order to produce the records.

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

**B. Release of Medical Information in Verification Process.**

- 1. MRO procedures regarding release of medical information gathered in the verification process (§40.327).
  - a. The MRO must, except as provided in paragraph 1.c of this section, report drug test results and medical information learned as part of the verification process to third parties without the employee's consent if the MRO determines in their reasonable medical judgment, that:
    - (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
    - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.
  - b. The third parties to whom the MRO is authorized to provide information by this section include the company, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
  - c. If the law of a foreign country (e.g., Canada) prohibits the MRO from providing medical information to the company, the MRO may comply with that prohibition.

**C. Release of Information to Employees & Other Parties.**

- 1. Information that laboratories, MROs, and other service agents must release to employees (§40.329).
  - a. The MRO or service agent must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/ or drugs, including records of the employee's DOT-mandated drug and/ or alcohol tests. The MRO or service agent may charge no more than the cost of preparation and reproduction for copies of these records.
  - b. The laboratory must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). The laboratory may charge no more than the cost of preparation and reproduction for copies of these records.
  - c. The SAP must make available to an employee, on request, a copy of all SAP reports (see § 40.311). However, the SAP must redact follow-up testing information before providing it

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to the employee.

2. Additional parties that the company and service agent must release information (§ 40.331) - The company or service agent must release information under the following circumstances:
  - a. If the company or service agent receives a specific written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, the company or service agent must provide the information to the identified person. For example, as an company, when you receive a written request from a former employee to provide information to a subsequent company the company or service agent must do so. In providing the information the company or service agent must comply with the terms of the employee's consent.
  - b. The company must, upon request of DOT agency representatives must provide the following:
    - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
    - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by 49 CFR part 40 and DOT agency regulations. The company must provide this information at the company's principal place of business in the time required by the DOT agency.
    - (3) All items in paragraph 2.b.(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
  - c. The service agent must, upon request of DOT agency representatives, provide the following:
    - (1) Access to the service agent's facilities used for 49 CFR Part 40 and all DOT agency drug and alcohol program functions.
    - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by 49 CFR Part 40 and DOT agency regulations. The company must provide this information at the company's principal place of business in the time required by the DOT agency.
    - (3) All items in paragraph 2.c. (2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
  - d. If requested by the National Transportation Safety Board as part of an accident investigation the service agent must provide information concerning post-accident tests administered after the accident.
  - e. If requested by a Federal, state or local safety agency with regulatory authority over the company or service agent or the employee, company or service agent must provide drug and alcohol test records concerning the employee.
  - f. Except as otherwise provided in 49 CFR Part 40, the laboratory must not release or provide

a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. If a party seeks a court order directing the release of a specimen or part of a specimen contrary to any provision of 49 CFR Part 40 the laboratory must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of § 40.13. The requirement of 49 CFR Part 40 does not require the laboratory to disobey a court order, however.

#### D. Recordkeeping Requirements for the Company.

1. Records that are maintained by the company (§40.333).
  - a. The company must keep the following records for the following periods of time:
    - (1) The company must keep the following records for five years:
      - (a) Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;
      - (b) Records of employee verified positive drug test results;
      - (c) Documentation of refusals to take required alcohol and/ or drug tests (including substituted or adulterated drug test results);
      - (d) SAP reports; and
      - (e) All follow-up tests and schedules for follow-up tests.
    - (2) The company must keep records for three years of information obtained from previous employers under § 40.25 concerning drug and alcohol test results of employees.
    - (3) The company must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
    - (4) The company must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.
  - b. The company does not have to keep records related to a program requirement that does not apply to the company (e.g., a maritime company who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
  - c. The company must maintain the records in a location with controlled access.
  - d. A service agent may maintain these records for the company. However, the service agent must ensure that the service agent can produce these records at the company's principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records the company must ensure that the service agent can provide them within two working days.
  - e. If the company stores records electronically, where permitted by 49 CFR Part 40, the company must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, the company must convert them to printed documentation in a rapid and readily auditable manner, at the request of the DOT agency.

## XII. EMPLOYEE ASSISTANCE PROGRAM (EAP)

**A. Scope of Program.**

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

**B. Supervisor Training.**

1. Supervisory personnel responsible for those employees covered under Part 199, 382, and 40 will receive training under the alcohol misuse prevention plan.
2. The training shall include at least one 60-minute period of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
3. The supervisory alcohol training materials should address the specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, and body odors of the employee who may be subjected to reasonable suspicion alcohol testing. It shall also address the physical and performance indicators of probable alcohol misuse.
4. The required reasonable suspicion observations shall be made by a company supervisor who is trained in detecting the symptoms of alcohol misuse.

**III. RECORDKEEPING PROCEDURES**

**A. General.**

1. The company APM or designee shall maintain the alcohol testing records in accordance with the provisions set out in the AMPP. The APM shall maintain all records under lock and key for the company.
2. Records shall be maintained for the specified periods of time as required in 49 CFR Parts 199, 382, and 40.

**B. Record Retention Provisions.**

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

**C. Maintenance of Specific Types of Records.**

1. The following types of records related to the collection process shall be maintained:
  - a. Collection log books, if used.
  - b. Calibration documentation for EBT devices.
  - c. Documentation of BAT/STT training.
  - d. Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
  - e. Documents generated in connection with decisions to administer post-accident alcohol tests.
  - f. Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.
2. The following types of records related to test results:
  - a. Company's copy of the alcohol test form, including the test results.
  - b. Documents related to the refusal of any covered employee to submit to a required alcohol test.
  - c. Documents presented by a covered employee to dispute the result of an alcohol test

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Revised: November 19, 2018

administered under the AMPP.

3. Records related to other violations of Part 199 & 382 as outlined in the AMPP.
4. The following types of records related to referrals and evaluations:
  - a. Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
  - b. Records concerning a covered employee's compliance with the recommendations of the SAP.
5. Records related to the company's MIS annual alcohol misuse testing data. The company shall submit the required alcohol misuse MIS testing data to the pipeline operator or to PHMSA and FMCSA as prescribed by the regulations. The report shall contain the following informational elements:
  - a. Number of covered employees
  - b. Number of covered employees subject to testing under the alcohol misuse rule of another DOT agency.
  - c. Number of screening tests.
  - d. Number of confirmation tests.
  - e. Number of confirmation tests indicating an alcohol concentration of 0.02 or greater, but less than 0.04, by type of test.
  - f. Number of alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test.
  - g. Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions that were returned to duty in a covered position.
  - h. Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.
  - i. Number of covered employees who were found to have violated other provisions of Section IV of the plan, and any action taken in response to the violation.
  - j. Number of covered employees who refuse to submit to an alcohol test required by Part 199 and any action taken in response to the refusal.
  - k. Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.
6. The following types of records related to education and training of employees and supervisors:
  - a. Materials on alcohol misuse awareness, including a copy of the company's policy on alcohol misuse.
  - b. Documentation of compliance with the requirements for access to all company facilities and records.
  - c. Documentation of training provided to supervisors for the purposes of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
  - d. Certification that any training conducted under the AMPP compliance with the requirements of 40 CFR Part 199, 382, and 40.

**D. Maintenance and Disclosure of Records Concerning EBTs and BAT/STTs.**

1. The company or its designated agent shall maintain the following records for a minimum period of two years.

- a. All records pertaining to the inspection and maintenance of each EBT used in alcohol testing for its employees.
  - b. Documentation of the company's compliance with the QAP for each EBT it uses for testing employees under the alcohol testing regulations as set forth in Part 199, 382, and 40.
  - c. All records pertaining to the training and proficiency testing of each BAT/STT used by the company or its designated alcohol testing sites for alcohol testing its employees.
  - d. All log books, if applicable, used in conjunction with the alcohol testing provisions.
2. The company or its designated agent shall maintain for a minimum of five years records pertaining to the calibration procedures for each EBT used in conjunction with the alcohol testing as set forth in Part 199 and 40. These records shall also include documentation concerning the results of all external calibration checks conducted on each EBT.
  3. The company shall maintain all records required by this section and shall release this information only under the terms as specified in Section XI of this plan. The company will ensure that records regarding the EBTs and BAT/STTs are maintained in a confidential manner and are released only in accordance with applicable federal regulations as outlined in this plan.

#### **XIV. CONTRACTOR/SUB-CONTRACTOR MONITORING**

**A. General.** The contractor company will include a clause in the contracts that alcohol breath testing, education, and training may be addressed by the contractor/sub-contractor in accordance with Part 199, 382, and Part 40 for covered functions. The company shall be responsible for ensuring compliance with the provisions of Part 199, 382, and 40.

#### **B. Contractor/Sub-Contractor Records.**

1. Contractor/Sub-Contractors shall retain copies of appropriate alcohol testing records as required by 49 CFR Part 199, 382, and Part 40.
2. The records and access to the contractor/sub-contractor's property shall be readily accessible for inspection by the pipeline operator, contractor, PHMSA, FMCSA and representatives of those state agencies under which jurisdiction the company operates.

#### **C. Contractor/Sub-Contractor Monitoring.**

1. Confirmation of contractor/sub-contractor compliance/monitoring - Specific guidance on how to develop an effective contractor compliance and monitoring program is outlined herein.
2. The company can, as an alternative to the above guidance provide coverage for the contractor/sub-contractors employees by including them in the company's alcohol testing program for the duration of the contract or work project. When contractor employees are covered under the company's AMPP, the contractor shall ensure that their employees comply with all the provisions contained in the company's AMPP, unless some provisions for exemptions are authorized.

#### **D. Procedures for Determining Compliance.**

1. Qualifying Potential Contractor/Sub-Contractor(s). Qualifications of a potential contractor as it pertains to alcohol testing policies/procedures is assured by requesting the potential contractor/sub-contractor to submit a copy of its AMPP for review and compliance with FMCSA/PHMSA/DOT regulations. After review of the AMPP is completed, written correspondence to the contractor/sub-contractor will advise it whether or not the AMPP plan is acceptable or in need of further additions, deletions, revisions or clarifying language. The review of the contractor/sub-contractor plan shall be completed utilizing the criteria established in the FMCSA/PHMSA Alcohol Misuse Inspection form. Addendum's made to the contractor's plan shall be attached to the previously submitted AMPP plan. Upon approval of the addendum, a letter of acceptance is then sent to the contractor. The contractor/sub-contractor is now eligible to bid on company contract work that would be covered

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under Parts 199, 382, and 40.

2. Monitoring Contractor/Sub-Contractor's Compliance. The contractor/sub-contractor may be required to provide information on their employees who will perform covered functions for the operator. This information may include the name and job title of its employees who will perform any work or functions covered by Part 199 & 382 under that contract. A list of each contractor's/sub-contractor's covered employees may be distributed to appropriate company field management personnel and job sites.
3. Statistical Submission. All contractors will be required to submit AMPP testing statistical information on a periodical basis that may be based on the duration of the contract. Typically this requirement will be conducted on a monthly or quarterly basis. The company may require a more frequent schedule for submission of data should they determine a need for such statistics.
4. Statistical Record Retention. The company shall maintain a complete file on each contractor/sub-contractor's statistical alcohol testing data reports. The company shall make available these reports when requested by the FMCSA/PHMSA Administrator, designated representative, or representatives of those state agencies under which jurisdiction the company operates.
5. Access to Records/Property. The company, contractor/sub-contractor will allow access to property and records by the operator, the Administrator, contractor, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of the regulations.

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## **APPENDIX A**

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

#### **City of Mesa's Designated Employer Representative (DER)**

Da'Shira Craig, Personnel Office  
Sr. HR Specialist  
(480) 644-4414 Office Phone  
(480) 243-6542 Cell Phone

#### **Backup to DER**

Holly Nelson, Personnel Office  
Human Resources Specialist II  
(480) 644-3393 Office Phone

#### **City of Mesa's Personnel Office**

Mesa City Plaza Building  
20 E. Main Street, Suite 130  
Mesa, AZ 85201

#### **City of Mesa's Mailing Address**

City of Mesa Personnel Office  
PO Box 1466  
Mesa, AZ 85211-1466

### **BREATH ANALYSIS TECHNICIANS (BAT/STT)**

The following are Collection Sites and Technicians that provide breath alcohol testing for the City of Mesa:

#### **Collection Site Location:**

Banner Gateway Clinic  
1920 N. Higley Road  
Gilbert, AZ 85234  
(480) 543-3300

#### **Random On-Site Location:**

City of Mesa Utilities Building  
640 N. Mesa Drive  
Mesa, AZ 85201

**Technicians:** Lori Casterline, Sergio Ordaz, Claudia Verdugo, Mercedes Quinones, Cami Parker, Deana Koehler, Elizabeth Abernathy, Julie Dunn, Marcus Mendoza

#### **After Hours Collection:**

911DrugTesting.com  
2323 E Magnolia Street #116  
Phoenix, AZ 85034  
(623) 227-2027

**Technicians:** Christopher Catalanotte, Janet Brush, Ulysses Dominguez, Elizabeth Miller, Vicki Coyle, Victoria Delgado, Joe Hernandez, Julio Domnguez, Joshua Lynch

### **THE APPROVED EVIDENTIAL BREATH TESTING DEVICES (EBTS) UTILIZED**

CMI 400 Intox  
CMI 240 Intox  
CMI SD5  
Intoximeter AlcoSensor IV

**City of Mesa**  
Human Resources Department  
P. O. Box 1466  
Mesa, AZ 85211-1466  
[www.cityofmesa.org](http://www.cityofmesa.org)

Orig. Date of Implementation: April 1, 1990  
New Effective Date: October, 1, 2001

**Alcohol Misuse Prevention Plan**  
U.S. Department of Transportation  
<http://www.dot.gov/ost/dapc>  
Federal Motor Carrier Safety Administration  
<http://www.fmcsa.dot.gov>  
Pipeline & Hazardous Materials Safety Administration  
<http://www.phmsa.dot.gov>

Revised: November 19, 2018

**SUBSTANCE ABUSE PROFESSIONAL (SAP)**

**Provider:** **ComPsych Corporation**  
Worldwide Headquarters  
NBC Tower  
455 N. Cityfront Plaza Drive  
Chicago, IL 60611-5322 Phone (312) 595-4000  
[www.compsych.com](http://www.compsych.com)

**Telephone:** (312) 595-4000

**EMPLOYEE ASSISTANCE PROGRAM (EAP)**

**The Employee Assistant Program offers employees and their family members counseling and referral services at no charge. This program applies to mental health and counseling services only.**

**Provider:** ComPsych Guidance Resources

**Telephone:** (866) 519-7415

**Website:** [www.guidanceresources.com](http://www.guidanceresources.com)

**Web ID:** MESA

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**APPENDIX B  
 EMPLOYEES/SUPERVISORY POSTIONS SUBJECT TO DRUG TESTING**

<b>Position Title</b>	<b>Job Code</b>	<b>Applicable DOT Program</b> <a href="#">(click here for Legend)</a>
Aquatics Maintenance Foreman*	4706	FMCSA (2)
Aquatics Maintenance Assistant – Full-time Assignment *	3797	FMCSA (2)
Aquatics Maintenance Leader*	4120	FMCSA (2)
Aquatics Maintenance Worker I/II*	4026/4107	FMCSA (2)
Container Repair Worker*	3834	FMCSA (2)
Electrical Controls Specialist *	4664	PHMSA (1)
Electrical Controls Supervisor*	5214	PHMSA (1)
Electric Utility Equipment Operator*	4348	FMCSA (2)
Energy Resources Compliance Administrator*	5509	PHMSA (1)
Energy Resources Compliance Coordinator*	4979	PHMSA (1)
Energy Resources Compliance Specialist*	4754	PHMSA (1)
Energy Resources Construction Equipment/Supply Specialist*	4002	PHMSA (3)/FMCSA
Energy Resources Construction and Technical Services*	5507	PHMSA (1)
Energy Resources Material Management Supervisor*	5017	PHMSA (1)
Energy Services Administrator*	5045	PHMSA (1)
<b>Environmental Management &amp; Sustainability Safety Education Coordinator**</b>	<b>4674</b>	<b>FMCSA (2)</b>
<b>Equipment Mechanic I**</b>	<b>4020</b>	<b>FMCSA (2A-ba)</b>
<b>Equipment Mechanic II**</b>	<b>4228</b>	<b>FMCSA (2A-ba)</b>
<b>Equipment Mechanic III (CNG)**</b>	<b>4821</b>	<b>FMCSA (2A-ba)</b>
Equipment Operator I/II*	4201/4306	FMCSA (2)
Equipment Operator III	4406	FMCSA (2)
<b>Equipment Repair Assistant**</b>	<b>3316</b>	<b>FMCSA (2A-ba)</b>
Field Coordinator -Customer Service (CS)*	4567	PHMSA (1)
Field Supervisor – CS*	4441	PHMSA (1)
Field Utility Service Specialist – CS*	4315	PHMSA (1)
Field Utility Service Spec Trainee – CS*	4029	PHMSA (1)
Field Worker I/II*	3922/4113	FMCSA (2)
Field Worker II–Road Hazard Response*	4220	FMCSA (2)
<b>Fuel System Specialist**</b>	<b>4460</b>	<b>PHMSA (3A)/FMCSA (ba)</b>
Gas Cathodic Protection Tech*	4103	PHMSA (1)
Gas Construction Coordinator*	5022	PHMSA (1)
Gas Leak Survey Specialist*	4240	PHMSA (1)
Gas Measurement Specialist*	4211	PHMSA (1)
Gas Measurement Trainee*	4043	PHMSA (1)
Gas Meter Technician	3905	PHMSA (1)
Gas System Crew Leader*	4508	PHMSA (3)/FMCSA
Gas System Inspector*	4401	PHMSA
<b>Gas System Supervisor*/**</b>	<b>4731</b>	<b>PHMSA (3A)/FMCSA (ba)</b>
Gas System Welder*	4101	PHMSA (3)/FMCSA

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Gas Tech Services Supervisor*	4801	PHMSA (1)
Intelligent Transportation System (ITS) Tech I*	4573	FMCSA (2)
Intelligent Transportation System (ITS) Tech II**	4753	FMCSA (2)
Lead Controls Engineering Specialist*	4908	PHMSA (1)
Lead Utility Locator*	4742	PHMSA (1)
<b>Lead Welder*</b>	<b>4429</b>	<b>FMCSA (2A-ba)</b>
Line Foreman*	4876	FMCSA (2)
Lineman*	4442	FMCSA (2)
Lineman Apprentice I/II*	4182/4296	FMCSA (2)
Lineman Apprentice III/IV*	4311/4492	FMCSA (2)
Meter Maintenance/Irrigation Technician*	3808	PHMSA (1)
Meter Reader*	3720	PHMSA (1)
Parks Equipment Mechanic*	4122	FMCSA (2)
<b>Parks Maintenance Leader**</b>	<b>4007</b>	<b>FMCSA (2A-ba)</b>
<b>Parks Maintenance Worker II*</b>	<b>3842</b>	<b>FMCSA (2A-ba)</b>
<b>Preventative Maintenance Technician**</b>	<b>3629</b>	<b>FMCSA (2A-ba)</b>
<b>Sr Equipment Mechanic I/II**</b>	<b>4310/4695</b>	<b>FMCSA (2A-ba)</b>
<b>Shop Foreman**</b>	<b>4404</b>	<b>FMCSA (2A-ba)</b>
<b>Shop Supervisor**</b>	<b>4601</b>	<b>FMCSA (2A-ba)</b>
<b>Solid Waste Operations Administrator*/**</b>	<b>4834</b>	<b>FMCSA (2A-ba)</b>
<b>Solid Waste Equipment Service Assistant**</b>	<b>3213</b>	<b>FMCSA (2A-ba)</b>
Solid Waste Foreman*	4143	FMCSA (2)
<b>Solid Waste Routing Specialist**</b>	<b>4173</b>	<b>FMCSA (2A-ba)</b>
Streetlight Technician I/II*	4258/4507	FMCSA (2)
Streetlight Worker*	3739	FMCSA (2)
Traffic Operations Foreman I*	4178	FMCSA (2)
Transportation Field Operations Foreman – Street Sweeper*	4362	FMCSA (2)
<b>Transportation Field Operations Supervisor*/**</b>	<b>4604</b>	<b>FMCSA (2A-ba)</b>
Utilities Control Center Operator*	3755	PHMSA (1)
Utilities Control Center Supervisor*	4627	PHMSA (1)
Utilities Distribution Controller*	4135	PHMSA (1)
Utilities Distribution Shift Leader*	4496	PHMSA (1)
Utility Locator*	4039	PHMSA (1)
Utility Locator Supervisor*	4402	PHMSA (1)
Utility Service Field Supervisor*	4780	PHMSA (1)
Utility Service Specialist*	4261	PHMSA (1)
Utility Service Worker*	4018	PHMSA (1)
Wastewater Collection System Television (TV) Technician*	3981	FMCSA (2)
<b>Water/Wastewater Field Coordinator**</b>	<b>4615</b>	<b>FMCSA (2A-ba)</b>
Water/Wastewater Utility System Crew Leader*	4514	FMCSA (2)
Water Distribution Crew Leader*	4344	FMCSA (2)
<b>Water Plant (WP) Maintenance Specialist I (WW &amp; WS)**</b>	<b>3886</b>	<b>FMCSA (2A-ba)</b>

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Position Title	Job Code	Applicable DOT Program <a href="#">(click here for Legend)</a>
Water Leak Survey Specialist*	4299	FMCSA (2)
Water Meter Repair and Calibration Supervisor*	4619	FMCSA (2)
<b>WP Maintenance Specialist II (WW &amp; WS)**</b>	<b>4119</b>	<b>FMCSA (2A-ba)</b>
<b>WP Maintenance Specialist III (WW &amp; WS)**</b>	<b>4343</b>	<b>FMCSA (2A-ba)</b>
Water Resources Construction Equipment/Supply Specialist*	4212	FMCSA (2)
<b>Water Resources Maintenance Specialist I/II**</b>	<b>4003/4303</b>	<b>FMCSA (2A-ba)</b>
<b>Welder-Fabricator**</b>	<b>4395</b>	<b>FMCSA (2A-ba)</b>

\*Incumbents are required to receive 60 minutes of training on alcohol misuse & 60 minutes of training on controlled substance use.

\*\***Classification does not require CDL**; however, employee(s) has chosen to maintain CDL for work purposes.

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## APPENDIX C

### Alcohol Testing Personnel (49 CFR PART 40 – SUBPART J)

#### **A. Conducting DOT alcohol tests (§40.211).**

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

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

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

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

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

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

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

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

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

- § 40.3-Definitions.
- § 40.223-Responsibility for supervising employees being tested.
- § 40.225-40.227-Use of the alcohol testing form.
- § 40.241-40.245-Screening test procedures with ASDs and EBTs.
- § 40.251-40.255-Confirmation test procedures.
- § 40.261-Refusals to test.
- § 40.263-40.265-Insufficient saliva or breath.
- § 40.267-Problems requiring cancellation of tests.
- § 40.269-40.271-Correcting problems in tests.

**Subpart K-Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing**

**A. Procedure for conducting an alcohol test and location (§40.221).**

- 1. A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.
- 2. A collector operating an alcohol testing site must ensure that it meets the security requirements of §40.223.
- 3. A collector operating an alcohol testing site must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
- 4. A collector operating an alcohol testing site must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.
- 5. If an alcohol testing site fully meeting all the visual and aural privacy requirements is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.

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- 6. An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

**B. Steps that must be taken to protect the security of alcohol testing sites (§40.223).**

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

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**C. Form to be used for an alcohol test (§40.225).**

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

**D. Company's use of ATF for non-DOT tests or non-DOT forms for DOT tests (§40.227).**

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

**E. Devices to be used to conduct alcohol screening tests (§40.229).**

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

**F. Devices to be used to conduct alcohol confirmation tests (§40.231).**

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

**G. Requirements for proper use and care of EBTs (§40.233).**

1. An EBT manufacturer must submit, for NHTSA approval, a quality assurance plan (QAP) for the EBT before NHTSA places the EBT on the CPL.
  - a. The manufacturer's QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals the manufacturer's QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).
  - b. The manufacturer's QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
2. The manufacturer must include, with each EBT, instructions for its use and care consistent with the QAP.
3. The user of the EBT (e.g., company, service agent) must do the following:
  - a. The user must follow the manufacturer's instructions, including performance of

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external calibration checks at the intervals the instructions specify.

- b. In conducting external calibration checks, the user must use only calibration devices appearing on NHTSA's CPL for " Calibrating Units for Breath Alcohol Tests. "
- c. If an EBT fails an external check of calibration, the user must take the EBT out of service. The user may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.
- d. The user must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a)(2).
- e. The user must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

**H. Requirements for proper use and care of ASDs (§40.235).**

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

**Subpart L-Alcohol Screening Tests**

**A. First steps in alcohol screening test (§40.241).**

- 1. The BAT or STT will take the following steps to begin all alcohol screening tests, regardless of the type of testing device the BAT or STT is using:
  - a. When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, the DER must be notified that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.
  - b. Ensure that, when the employee enters the alcohol-testing site, the alcohol testing

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process begins without undue delay. For example, do not wait because the employee says he or she is not ready or because an authorized company or employee representative is delayed in arriving.

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

**B. Procedure for alcohol screening test using EBT or non-evidential breath ASD (§40.243).**

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

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number, time and result, but on a separate printout rather than directly onto the ATF, affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

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

**C. Procedure for an alcohol screening test using a saliva ASD (§40.245) - The STT must take the following steps:**

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

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STT must place the device into the employee's mouth to collect saliva for the new test.

8. The STT must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. The STT must then show the device and its reading to the employee and enter the result on the ATF.
9. The STT must never re-use devices, swabs, gloves or other materials used in saliva testing.
10. The STT must note the fact that a saliva ASD was used in Step 3 of the ATF.

**D. Procedures the BAT or STT is to follow after a screening test result (§40.247).**

1. If the test result is an alcohol concentration of less than 0.02, the BAT or STT must do the following:
  - a. Sign and date Step 3 of the ATF; and
  - b. Transmit the result to the DER in a confidential manner, as provided in §40.255
2. If the test result is an alcohol concentration of 0.02 or higher the BAT or STT must direct the employee to take a confirmation test.
  - a. The BAT who will conducts the confirmation test must then conduct the test using the procedures beginning at §40.251.
  - b. If a different BAT will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.
  - c. If the confirmation test will be performed at a different site from the screening test the BAT must take the following additional steps:
    - (1) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
    - (2) Tell the employee the reason for the waiting period required by § 40.251(a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
    - (3) Explain that following the BAT instructions concerning the waiting period is to the employee's benefit;
    - (4) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;
    - (5) Note on the " Remarks" line of the ATF that the waiting period instructions were provided;
    - (6) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
    - (7) Ensure that the BAT or another BAT, STT, or company representative observe the employee as he or she is transported to the confirmation testing site. The BAT or STT must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.

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3. If the screening test is invalid the BAT or STT must tell the employee the test is cancelled and note the problem on the " Remarks" line of the ATF. If practicable, repeat the testing process (see § 40.271).

**Subpart M-Alcohol Confirmation Tests**

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

1. The BAT must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
  - a. The BAT must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, the BAT should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
    - (1) If the confirmation test is taking place at a different location from the screening test (see § 40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.
    - (2) if the BAT cannot verify, through review of the ATF, that waiting period instructions were provided, then the BAT must carry out the waiting period requirement.
    - (3) The BAT or another BAT or STT, or a company representative, must observe the employee during the waiting period.
  - b. Concerning the waiting period, the BAT must tell the employee:
    - (1) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
    - (2) The reason for the waiting period (i. e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
    - (3) That following the BAT's instructions concerning the waiting period is to the employee's benefit; and
    - (4) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
  - c. If the BAT becomes aware that the employee has not followed the instructions, the BAT must note this on the " Remarks" line of the ATF.
2. If the BAT did not conduct the screening test for the employee the BAT must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. The BAT must note on the " Remarks" line of the ATF that a different BAT or STT conducted the screening test.
3. Complete Step 1 of the ATF.
4. Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification the BAT must document this refusal on the " Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

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5. Even if more than 30 minutes have passed since the screening test result was obtained the BAT must begin the confirmation test procedures in § 40.253, not another screening test.
6. The BAT must note on the " Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.
7. Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

**B. Procedures for conducting an alcohol confirmation test (§40.253) -** The BAT conducting an alcohol confirmation test must follow these steps in order to complete the confirmation test process:

1. In the presence of the employee the BAT must conduct an air blank on the EBT the BAT is using before beginning the confirmation test and show the reading to the employee.
  - (1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must conduct another air blank.
  - (2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must take the EBT out of service.
  - (3) If the BAT takes an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.
  - (4) The BAT must proceed with the test of the employee using another EBT, if one is available.
2. The BAT must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
3. The BAT must ensure that both the BAT and the employee read the unique test number displayed on the EBT.
4. The BAT must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
5. The BAT must show the employee the result displayed on the EBT.
6. The BAT must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
7. If the EBT provides a separate printout of the result, the BAT must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

**C. Procedure to follow after the next alcohol confirmation test result (§40.255).**

1. After the EBT has printed the result of an alcohol confirmation test the BAT must take the following additional steps:

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

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### Alcohol Misuse Prevention Plan

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## APPENDIX D



### City of Mesa Observed Behavior – Reasonable Cause Form

Employee Name: \_\_\_\_\_ Employee ID Number: \_\_\_\_\_

Date of Observation: \_\_\_\_\_ Time From \_\_\_\_\_ am/pm Time To \_\_\_\_\_ am/pm

Location: \_\_\_\_\_

Department / Accounting Information: Fund _____ Subfund _____ Appropriation Code _____	
Dept _____ Unit _____ Activity _____	SubActivity _____ Object Code _____

Presence of Drug Odor and/or Paraphernalia (specify) \_\_\_\_\_

Presence of Alcohol Odor and/or Alcohol Itself or Containers (specify) \_\_\_\_\_

- Appearance:**
- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Normal                     | <input type="checkbox"/> Flushed            | <input type="checkbox"/> Puncture Marks/Tracks               |
| <input type="checkbox"/> Disheveled                 | <input type="checkbox"/> Bloodshot Eyes     | <input type="checkbox"/> Inappropriate Wearing of Sunglasses |
| <input type="checkbox"/> Dilated/Constricted Pupils | <input type="checkbox"/> Profuse Sweating   | <input type="checkbox"/> Runny Nose/Sores                    |
| <input type="checkbox"/> Tremors                    | <input type="checkbox"/> Dry-Mouth Symptoms | <input type="checkbox"/> Other _____                         |

- Behavior/ Speech:**
- |                                      |                                     |                                     |
|--------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Normal      | <input type="checkbox"/> Incoherent | <input type="checkbox"/> Slurred    |
| <input type="checkbox"/> Confused    | <input type="checkbox"/> Slowed     | <input type="checkbox"/> Whispering |
| <input type="checkbox"/> Other _____ |                                     |                                     |

- Awareness:**
- |                                      |   |                                      |                                      |
|--------------------------------------|---|--------------------------------------|--------------------------------------|
| <input type="checkbox"/> Normal      | <input type="checkbox"/> Confused             | <input type="checkbox"/> Mood Swings | <input type="checkbox"/> Euphoria    |
| <input type="checkbox"/> Lethargic   | <input type="checkbox"/> Lack of Coordination | <input type="checkbox"/> Paranoid    | <input type="checkbox"/> Disoriented |
| <input type="checkbox"/> Other _____ |   |                                      |                                      |

- Motor Skills/ Balance:**
- |                                      |                                  |                                  |                                     |
|--------------------------------------|----------------------------------|----------------------------------|-------------------------------------|
| <input type="checkbox"/> Normal      | <input type="checkbox"/> Swaying | <input type="checkbox"/> Falling | <input type="checkbox"/> Staggering |
| <input type="checkbox"/> Other _____ |                                  |                                  |                                     |

- Walking/ Turning:**
- |                                      |                                  |  |
|--------------------------------------|----------------------------------|--|
| <input type="checkbox"/> Normal      | <input type="checkbox"/> Swaying | <input type="checkbox"/> Arms raised for Balance |
| <input type="checkbox"/> Stumbling   | <input type="checkbox"/> Falling | <input type="checkbox"/> Reaching for Support    |
| <input type="checkbox"/> Other _____ |                                  |  |

Other Observed Actions/Behavior (specify): \_\_\_\_\_

I certify that I have had training in recognition of alcohol and controlled substance misuse and that to the best of my judgment adequate reasonable suspicion exists sufficient to require the above employee to undergo testing for alcohol and controlled substances. The observations, as documented above were made and witnessed by:

_____ Trained Supervisor's Name (printed)	_____ Signature	_____ Date
_____ Second Trained Supervisor's Name (printed)	_____ Signature	_____ Date

Employee transported to collection site by: \_\_\_\_\_ Time transported: \_\_\_\_\_ am/pm

This document must be presented and signed by the witnesses within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier. (49 CFR 382.307[F])

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## APPENDIX E

### ALCOHOL SUPPLEMENT

#### A. Why You Should Get Involved.

1. Although (company) has not had a history of substance abuse problems, we recognize that alcoholism and alcohol misuse are problems throughout America.
2. There are three good reasons why you should be concerned if any of your coworkers is using drugs or alcohol on the job.
  - a. Your health and safety may be at risk.
  - b. Alcohol misuse costs you money.
  - c. Alcohol creates a negative work environment.
3. According to the National Institute on Alcohol Abuse and Alcoholism, drug and alcohol use on the job costs society an estimated \$102 billion a year. Since most of this cost is passed on to you in the form of higher health insurance rates or in consumer prices, drug and alcohol use on the job costs you and your fellow workers a significant amount of money.
4. Absenteeism among problem drinkers or alcoholics is 3.8 to 8.3 times greater than normal. If your fellow workers don't come to work, you may have to do their jobs in addition to your own.
5. Workers who misuse alcohol don't function at their full potential. Not only is absenteeism a problem, when they are at work these employees may have reduced capabilities and productivity. Since our product is the safe transportation of hazardous liquid (or natural gas), alcohol misuse is an especially serious issue.
6. No matter what your position is in the organization, there is something you can do to ensure that drug and alcohol use on the job never becomes a problem at the company. Acceptance of any misuse puts you, this company, and the public, at risk.

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

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

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

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

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

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

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

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**APPENDIX F**

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

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

- 1. The designated person to answer questions about the materials.
- 2. The employees subject to these rules.
- 3. Specific information concerning prohibited employee conduct.
- 4. Circumstances under which an employee will be tested.
- 5. Test procedures, employee protection and integrity of the testing processes, and safeguarding the validity of the test.
- 6. The requirement that tests are administered in accordance with the rules.
- 7. An explanation of what will be considered a refusal to submit to a test and the consequences.
- 8. Sufficient information about the safety-sensitive functions and period of the workday that compliance is required.
- 9. The consequences for violating these rules and procedures including removal from safety-sensitive functions.
- 10. The consequences for employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- 11. Information on the affects of alcohol and controlled substances use.
- 12. City of Mesa’s DUI Discipline Policy – Management Policy #347

If Applicable:

- 13. Certified Medical Examiner and CDL Medical exam.
- 14. CDL Regulations/Statutes/Policy & Procedures

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

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

\_\_\_\_\_  
**Employee Name (Please Print)**

\_\_\_\_\_  
**Employee ID or Social Security No.**

\_\_\_\_\_  
**Employee Signature**

Added to DOT Random Pool: FMCSA Session \_\_\_\_\_ / PHMSA Session \_\_\_\_\_

Initials/Date: \_\_\_\_\_ Dept#: