



U.S. DEPARTMENT OF TRANSPORTATION

Departmental Office of Human Resource
Management

Workforce Quality

Substance Abuse Awareness and Testing Office

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DOT ORDER 3910.1C

DRUG AND ALCOHOL-FREE
DEPARTMENTAL WORKPLACE



**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

PAGE CHANGE

DOT 3910.1C

4/12/2006

Subject: DRUG AND ALCOHOL-FREE DEPARTMENTAL WORKPLACE

1. **PURPOSE.** This Page Change transmits four (4) revisions to U.S. Department of Transportation (DOT) Order 3910.1C, Drug and Alcohol-Free Departmental Workplace, dated 12-28-94.
2. **BACKGROUND.** Executive Order (E.O.) 12564 requires that the head of each Executive agency establish a program to test for the use of illegal drugs by employees in safety- or security-sensitive positions. [The Department has had such a program in place since 1987.]

The Omnibus Transportation Employee Testing Act of 1991, Public Law (Pub.L.) 102-143, Title V (“the Act”) requires that a program be established to test for use of alcohol controlled substances. This program is mandated for Federal Aviation Administration (FAA) employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a Commercial Driver’s License (CDL).

The Secretary of Transportation is responsible for developing the policies, plans, and procedures for achieving the drug- and alcohol-free workplace objective; one that is safe, with due consideration of the rights of the Government, the employee, and the general public.

3. **EXPLANATION OF CHANGE.** This change replace the existing Chapter VI, Alcohol Testing with the attached Chapter VI, Alcohol Testing, it its entirety. For a number of years, DOT 3910.1C and its relationship to the regulated industry testing program, 49 CFR Part 40, has been misinterpreted at third party hearings. The purpose for modifying three of the chapters of the Order and completely rewriting Chapter VI on alcohol testing is two-fold. First, the rewrite eliminates unnecessary references to 49 CFR Part 40 in the Order except in testing of Commercial Driver License holders, where the regulation does apply. The second reason for the change is to clarify the alcohol testing chapter to avoid misinterpretation.

Because of the changes in Chapter VI, minor revisions were required to Chapter III, Drug and Alcohol Prohibitions, Chapter VII, Rehabilitation, Chapter IX Disciplinary Action and the Table of Contents. A new paragraph was added to Chapter III, paragraph 5, Other Alcohol-Related Conduct Involving Follow-up Testing, which incorporates a change to the new Chapter VI.

The Office of Security also required a paragraph to be added concerning the disposition of security clearances if an individual receives an alcohol positive. The change in Chapter VII changes confirmed alcohol concentration levels to be in agreement with the new Chapter VI. Abstinence period failures was modified to include employees with abstinence agreements and a paragraph discussing actions of alcohol violations by employees in the follow-up testing program was included in Chapter IX. The change to the Table of Contents provides correct page numbers.

3. REFERENCES.

a. Authorities.

- (1) Drug-Free Federal Workplace, Executive Order 12564, 51 *Federal Register* 32,889 (1986).
- (2) The Omnibus Transportation Employee Testing Act of 1991, Pub. L. No. 102-143, Title V, 105 Stat. 952 (1992).
- (3) Section 503 of the Supplemental Appropriations Act, 1987, Pub.L. No. 100-71, Title V, 101 Stat. 468 (1987) (codified at 5 U.S. C. § 7301 note).
- (4) Section 802 of the Treasury, Housing and Urban Development, the Judiciary, and Independent Agencies Appropriations Act, 2006, Pub. L. 109-115, div. A, title VIII, 119 Stat. 2396, 2495, Nov. 30, 2005.
- (5) Mandatory Guidelines for Federal Workplace Drug Testing Programs, effective November 1, 2004 and published at 69 *Federal Register* 19,644 (2004), issued by the Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services (HHS), establishing mandatory scientific and technical guidelines for Federal civilian drug testing programs pursuant to E.O. 12564.
- (6) 49 U.S.C. §§ 353 and 1114(d) (formerly sections 5 and 6, respectively) of the Independent Safety Board Act Amendments of 1990, Pub. L. 101-641, 104 Stat. 4654 (1990), requiring that post-accident or post-incident drug testing of DOT employees performed

as soon as practicable after the accident or incident and allowing access by the National Transportation Safety Board in certain circumstances to verified positive post-accident drug test records pertaining to a DOT employee.

- (7) Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 42 U.S.C. § 290ee-1 et seq., as amended by the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, 42 U.S.C. § 290dd et seq., Pub.L. 102-321, 106 Stat. 323 (1992) (codified at 42 U.S.C. § 201 note).
- (8) Federal Employees' Substance Abuse Education and Treatment Act of 1986, Pub.L. 99-570, Title VI, 100 Stat. 3207-157 (1986), requiring agency programs to provide prevention, treatment, rehabilitation, and education services to Federal civilian employees with respect to drug and alcohol abuse.
- (9) Federal Employees' Health and Counseling Programs, 5 CFR Part 792.
- (10) Confidentiality of Alcohol and Drug Abuse Patient Records, 42 CFR Part 2.
- (11) Privacy Act of 1974, as amended, 5 U.S.C. § 552a.
- (12) Maintenance of and Access to Records Pertaining to Individuals, 49 CFR Part 10.
- (13) Privacy Act of 1974; Publication of Notices of Systems of Records and Proposed New Routine Uses; OPM/GOVT-5 Recruiting, Examining, and Placement Records and OPM/GOVT-10 Employee Medical File System Records, 57 *Federal Register* 35,698, 35,714, 35,722 (1992).
- (14) Federal Property Management Regulations, 41 CFR §101-20.307, stating prohibitions against individuals:
 - a. Entering upon property owned or leased by the Federal government while using or possessing any illegal drugs, or while under the influence of any illegal drugs or alcoholic beverages; or,
 - b. Operating a motor vehicle while on property owned or leased by the Federal government while under the influence of any illegal drugs or alcoholic beverages.

- (15) Controlled Substances and Alcohol Use and Testing, 49 CFR Part 382, published at 66 Federal Register 43,103 (2001), issued by the Federal Motor Carrier Safety Administration, contains the requirements applicable to drug and alcohol testing for positions requiring CDLs.

b. Guidance.

- (1) DOT Drug and Alcohol-Free Departmental Workplace Testing Guide, 2006.
- (2) Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, published at 65 *Federal Register* 79,462 (2001), issued by the Office of the Secretary, DOT, contains the technical testing procedures designed for use when testing is required pursuant to 49 CFR Part 382 as it applies to Federal employees whose positions require they hold a CDL.

4. FILING INSTRUCTIONS.

a. <u>Remove Pages</u>	<u>Dated</u>	<u>Insert Pages</u>	<u>Dated</u>
Table of Contents	12-28-94	Table of Contents	02-08-06
III-1 through III-3	12-28-94	III-1 through III-3	02-08-06
VI-1 through VI-6	12-28-94	VI-1 through VI-12	02-08-06
VII-1 through VII-3	12-28-94	VII-1 through VII-3	02-08-06
IX-1 through IX-3	12-28-94	IX-1 through IX-3	02-08-06

- b. This transmittal sheet should be filed with DOT Order 3910.1C.

FOR THE SECRETARY OF TRANSPORTATION:



Signed
4/12/2006

Linda J. Washington
Acting Assistant Secretary for Administration

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CHAPTER I

GENERAL PROGRAM PROVISIONS

1. DEFINITIONS. For the purposes of this order the following definitions apply:
 - a. Air blank. A reading by an evidential breath testing device of ambient air containing no alcohol.
 - b. Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
 - c. Alcohol concentration (or content). The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this Order.
 - d. Alcohol testing (or Urine Collection) site. The place designated by DOT where individuals are required to present themselves for the purpose of providing breath for alcohol testing, or urine for drug testing.
 - e. Alcohol use. The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
 - f. Breath Alcohol Technician (BAT). A person who instructs and assists individuals in the alcohol testing process and operates the evidential breath testing device.
 - g. Canceled or invalid test. In drug testing, a drug test that has been declared invalid by the Medical Review Officer (MRO). A canceled test is neither a positive nor a negative test. A sample that has been rejected for testing by the laboratory is treated the same as a canceled test. In alcohol testing, a test which has been declared invalid under this Order. It is neither a positive nor a negative test.
 - h. Collector. A person who instructs and assists individuals in the urine collection process and who receives and makes a screening examination of the urine specimen provided by those individuals. The collector shall also initiate the chain of custody documentation and ship the urine specimen to the laboratory.
 - i. Confirmation (or Confirmatory) test. In drug testing, a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in Order to assure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.) In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration, on an evidential breath testing device.

- j. Covered employee. Any DOT employee who occupies a safety- or security-sensitive position (also called Testing Designated Position (TDP)) as provided in the Appendix. Specific testing authority follows:
 - (1) Drug-only TDPs. E.O. 12564 requires drug testing of safety- and security-sensitive positions throughout all OAs within DOT.
 - (2) Drug and alcohol TDPs. The Act requires drug and alcohol testing for FAA employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a CDL. The Act does not mandate drug and alcohol testing for other safety-sensitive employees outside FAA, or for any security-sensitive employees within DOT.
 - (3) Non-TDPs. All positions that are not designated as TDPs are designated as non-TDPs. E.O. 12564 permits drug testing of employees in positions other than safety- and security-sensitive positions throughout the Federal government
- k. Evidential breath testing device (EBT). A breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).
- l. Not ready for duty. The status of an employee, who is not in the follow-up testing program with an abstinence agreement, with an alcohol concentration equal to or greater than 0.02, but less than 0.04, on the confirmation test.
- m. Performing a safety-sensitive function. An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.
- n. Refusal to submit to testing. An employee is considered to refuse to submit to testing if he or she:
 - (1) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for drug testing in accordance with this Order;
 - (2) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with this Order; or,
 - (3) engages in conduct that clearly obstructs the testing process, including but not limited to, failure to report to the testing or collection site, or attempts to alter, adulterate, or substitute a urine specimen.
- o. Screening test (also called Initial test). In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.

- p. Substance Abuse Professional (SAP). A licensed physician (Medical Doctor or Doctor of Osteopathy; *e.g.*, an FAA Flight Surgeon), or a licensed or certified psychologist, social worker, or employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with the knowledge of, and clinical experience in, the diagnosis and treatment of drug- and alcohol-related disorders.

2. RESPONSIBILITIES.

- a. Assistant Secretary for Administration. The Assistant Secretary for Administration is responsible for:
 - (1) assuring the consistent implementation of this Order throughout the Department;
 - (2) establishing necessary procedures to carry out this Order; and,
 - (3) designating the Department's Medical Review Officer (MRO).
- b. Heads of Operating Administrations (OAs). The Heads of OAs, including the Office of the Secretary, and the Office of the Inspector General, are responsible for implementing this Order within their organizations and appointing Drug Program Coordinators (DPC) and Employee Assistance Program (EAP) managers or coordinators.
- c. Departmental Drug Office. The Substance Abuse Awareness and Testing Office (SAATO, Workforce Quality, Departmental Office of Human Resource Management, Office of the Secretary (hereinafter referred to as the Departmental Drug Office, or DDO), is responsible for policy development and implementation and management of the drug and alcohol testing and awareness program for the Department. The DDO shall:
 - (1) serve as principal agent in administering all contracts necessary to assure effective and efficient operation of the drug and alcohol testing program;
 - (2) assure that a confidential system of records exists to properly handle and report drug and alcohol test results and retain records;
 - (3) assist the MRO in performing administrative record keeping functions, including retrieving drug testing documentation provided to the MRO by the testing laboratory contractor, collection contractor (including an Aviation Medical Examiner), and DPCs, and the assimilation of other information that the MRO would require for review and determination;
 - (4) monitor the current or pending status of an employee who has a verified positive drug-test result or a confirmed alcohol concentration of 0.04 or higher, and advise the MRO, SAP, or EAP manager or coordinator, as appropriate;
 - (5) assure that a training program is in place to explain the requirements of this Order;

- (6) maintain appropriate statistical records, including numbers of employees and applicants tested and test results, and assure that such records are free from personal identifying information; and,
 - (7) assure that the Department submits the annual report on drug testing activities as required by section 503(f) of Pub. L. 100-71, codified at 5 U.S.C. § 7301 note (1987).
- d. Departmental Medical Review Officer. The Departmental Medical Review Officer (MRO), in accordance with Department of Health and Human Services (HHS) criteria, is a licensed physician (Medical Doctor or Doctor of Osteopathy), responsible for receiving laboratory results generated by the agency's drug testing program. The MRO has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive result together with his or her medical history and any other relevant biomedical information. The MRO shall:
- (1) receive, review, and interpret all confirmed positive drug test results submitted to DOT from the drug testing laboratory, prior to release of verified positive test results to management officials or DPCs;
 - (2) examine alternative medical explanations for a confirmed positive drug test result, including conducting employee medical interviews, reviewing the employee's medical history, or reviewing other relevant biomedical factors and medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication;
 - (3) determine if there is a legitimate medical explanation for the confirmed positive drug test result, and if so, declare that the result is consistent with legal drug use and take no further action other than reporting the test result as negative;
 - (4) determine, based on review of inspection reports, quality control data, multiple samples, and other pertinent information, if the result is scientifically insufficient for further action and, if so, declare the test result as negative;
 - (5) provide oversight to assure that any DOT employee required to enter into a substance abuse rehabilitation program receives appropriate treatment;
 - (6) provide guidance, direction, and oversight to Field MROs, DPCs, and EAP managers, coordinators, and service providers in areas of recognition, diagnosis, intervention, treatment, and medical practice factors in substance abuse; and,
 - (7) advise and assist management in planning and overseeing the substance abuse program.
- e. Field MROs. In the FAA, certain physicians within the field structure are designated as "Field" MROs (FMROs). FMROs may perform many of the functions of the MRO within their assigned geographical area of responsibility.

This includes the examination of alternative medical explanations for the laboratory report of a confirmed positive drug test, by interview of the employee, review of medical history, and documentation of other relevant biomedical factors.

- (1) Upon completion of the above and consideration of the information obtained, the Departmental MRO is consulted and apprised of the results and recommendation. At that time the laboratory report shall be:
 - (a) verified as positive;
 - (b) downgraded to negative;
 - (c) canceled because of insufficient scientific evidence; or,
 - (d) held, pending receipt of additional information, *e.g.*, quantitative level of drug, split-specimen test, or special tests ordered by the Departmental MRO.
 - (2) When the drug test report is verified, the FMRO proceeds with the notification of appropriate parties, and if rehabilitation is chosen by the employee, works with the EAP manager in the formulation of a program.
 - (3) The FMRO determines when an employee has been sufficiently rehabilitated to return to regular duties, orders the return-to-duty test, approves the aftercare program, and sets the frequency of follow-up testing.
- f. Drug Program Coordinators. The Drug Program Coordinators (DPCs) are responsible for implementing this Order and managing the day-to-day operation of the drug and alcohol testing and awareness program within their OAs. DPCs shall:
- (1) serve as the principal contact with the urine collection and alcohol testing contractor(s), including Aviation Medical Examiners, to assure the effective operation of the portions of the drug and alcohol program within their OA;
 - (2) assure that supervisors and employees are notified of tests to be conducted on a random basis;
 - (3) assure that applicants for testing designated positions are identified by the personnel office and tested prior to appointment;
 - (4) arrange for reasonable suspicion, post-accident, follow-up, and voluntary testing when required;
 - (5) receive notification from the MRO or FMRO of verified positive drug test results consistent with confidentiality procedures;
 - (6) notify appropriate management officials and employees of verified positive drug test results, or alcohol misuse concentrations consistent with confidentiality procedures; and,

- (7) implement the education and awareness portion of the drug and alcohol testing program, ensuring that:
 - (a) training and education sessions, mandatory for supervisors, are scheduled and given regarding the policies and procedures of the drug and alcohol testing program, EAP, and rehabilitation, and that a method to track participation for the DDO is established;
 - (b) films, pamphlets, and promotional materials are publicized and disseminated to employees; and,
 - (c) resources required to implement all applicable parts of the testing and awareness program are identified to the OA.
- g. Employee Assistance Managers or Coordinators. The Employee Assistance Managers or Coordinators (EAP) shall be designated by the appropriate management official to participate with the MRO or FMRO, SAP, EAP contractor personnel, and/or DPC in evaluation, diagnosis, counseling, and referral of employees. EAP managers or coordinators shall:
 - (1) assist the DPC with substance abuse training provided to supervisors and with other drug- and alcohol-free workplace program training and awareness activities;
 - (2) participate with the MRO or FMRO, SAP, EAP contractor personnel, and/or DPC in evaluation, diagnosis, counseling, and referral of employees to assure that an employee entering into a substance abuse rehabilitation program receives appropriate treatment;
 - (3) assist employees with substance abuse information and referral to appropriate outside treatment programs;
 - (4) obtain progress reports and discharge summaries from treatment facilities and EAP counselors and assist the MRO or FMRO, or SAP in evaluating treatment efforts and employee progress and compliance;
 - (5) assure that EAP counselors, SAPs, and treatment facilities are aware of the nature of the safety-sensitive work of DOT to assure return-to-duty recommendations are appropriately made; and,
 - (6) assist managers and supervisors in dealing with employees found to be in violation of this Order or suspected of having substance abuse problems.
- h. Site Coordinators. The Site Coordinators (SCs) shall be designated by an appropriate management official to assist the collector or Breath Alcohol Technician (BAT) on the actual day of collection or testing at locations where the DPC is not present. The responsibilities of the SC shall include:
 - (1) coordinating the scheduling of covered employees selected for testing with the collector or BAT, appropriate supervisor, and DPC;
 - (2) assuring that employees are selected from the random testing lists in accordance with the procedures outlined in the DOT Drug-Free Departmental Drug and Alcohol Workplace Testing Guide;

- (3) assisting the collector or BAT with logistical arrangements; and,
 - (4) conveying the results of alcohol tests to the supervisor of the covered employee and to the DPC.
- i. Supervisor. The supervisor of a covered employee for whom a determination has been made that the employee has violated a drug or alcohol prohibition, or has engaged in other alcohol-related conduct, of this Order, shall:
- (1) assure that the individual is not assigned safety-sensitive duties;
 - (2) assure that appropriate disciplinary action is taken; and,
 - (3) cooperate with recommended rehabilitation efforts of the employee.

CHAPTER II

DRUG AND ALCOHOL AWARENESS

1. DRUG AND ALCOHOL AWARENESS. The Department shall establish and maintain a program to inform employees of:
 - a. the policy prohibiting illegal drug use and alcohol misuse by DOT employees;
 - b. the adverse health, family, and community implications inherent in illegal drug use and alcohol misuse;
 - c. the impact of illegal drug use and alcohol misuse on the workplace, including the relationship between such use and performance, safety, productivity, and public confidence;
 - d. the intention to assist employees through the availability of the EAP and rehabilitation resources;
 - e. the circumstances when disciplinary action shall be required for involvement with illegal drugs or alcohol misuse;
 - f. the reliability of drug and alcohol testing;
 - g. the applicable requirements to assure confidentiality of patient records for the protection of the employee's physician-patient relationship and employee's medical history;
 - h. the Privacy Act and Supplemental Appropriations Act, 1987, protections afforded test results to assure that DOT shall not improperly disseminate information derived from drug or alcohol tests; and,
 - i. the requirement and intent that OA's submit semiannual reports on the number of employees trained, dates and locations of training, and sources of training.

2. SUPERVISORY TRAINING. All supervisors shall receive drug and alcohol awareness training. At least 60 minutes of this training shall be on the physical, behavioral, speech, and performance indicators of probable illegal drug use and alcohol misuse. This training is mandatory. Training shall also cover DOT and OA policies and procedures on substance abuse, including reasonable suspicion testing procedures, and the components of DOT's employee assistance programs, and supervisor's responsibilities to the affected employee. This training must be accomplished for current supervisors no later than one year from the date of this Order. New supervisors must complete this training no later than one year after entering the supervisory position. OAs shall maintain records of the names of the supervisors trained, the date of the training, and the training program content. Semiannual reports of the activity shall be submitted to the DDO by each OA.
 - a. Additional training for CDL supervisors. All persons (i.e., supervisors) designated to determine whether reasonable suspicion exists to require an employee to be tested for alcohol or drugs is required to have at least 60

minutes of training on alcohol misuse and 60 minutes of training on drug use. This training may be taken at the same time, with the total training time totaling at least 120 minutes. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and illegal drug use.

3. EMPLOYEE EDUCATION. Educational materials shall be made available to all employees which explain the requirements of the drug and alcohol program and the Department's policies and procedures. The DPC shall assure that these materials are distributed to each covered employee within their respective OA.
4. EAP TRAINING. Supervisors have a key role in establishing and maintaining a drug- and alcohol-free workplace. EAPs shall provide training to assist supervisors and managers in recognizing, identifying, and addressing illegal drug use and alcohol misuse by employees. Where appropriate, union representatives shall also be provided comparable training. This training is different than the training that is the responsibility of the DPC, and must rely on the EAP and DPC to coordinate. Such supervisory EAP training shall cover the following topics:
 - a. DOT policies relevant to illegal drug use, alcohol misuse, and the EAP;
 - b. necessity of offering EAP services to employees, including employee's insurance constraints and limitations;
 - c. importance of recognizing and documenting employee performance and behavioral changes related to illegal drug use and alcohol misuse;
 - d. roles of the DDO, MRO, FMRO, DPC, substance abuse professionals, supervisors, the personnel office, and EAP personnel; and,
 - e. process of reintegrating employees into the work force.

CHAPTER III

DRUG AND ALCOHOL PROHIBITIONS

1. PROHIBITED DRUG- AND ALCOHOL-RELATED CONDUCT. The following specific drug- and alcohol-related conduct by U.S. Department of Transportation (DOT) employees in Testing Designated Positions (TDPs) is prohibited under this Order. In some cases, prohibitions also apply to employees in non-TDPs; those prohibitions are specified herein, as well.
 - a. Illegal drugs. An employee in a TDP is prohibited from use, whether on or off duty, possession, distribution, or trafficking of controlled substances. Employees in non-TDPs are prohibited from on duty use, on-duty impairment, possession, distribution, or trafficking of controlled substances.
 - b. Alcohol misuse concentration. A covered employee is prohibited from reporting for duty or remaining on duty while having an alcohol concentration of 0.04 or greater on a confirmation test. ***Employees in the follow-up testing program have an abstinence requirement from all substances including alcohol. If the result of a screening test is 0.01 or greater, the employee will be required to take an alcohol confirmation. If a confirmation test is greater than or equal to 0.01 and less than 0.02, the employee will be referred to EAP and an FAA Flight Surgeon for an evaluation to determine whether or not the employee has violated the abstinence requirement. A confirmation test result of 0.02 or greater is considered a violation of the abstinence agreement.***
 - c. On duty alcohol use. A covered employee is prohibited from use of alcohol while on duty. Employees in non-TDPs are prohibited from use of alcohol while on duty.
 - d. Pre-duty alcohol use. No covered employee shall use alcohol within four hours preceding performance of safety-sensitive functions or within such longer period as required by the Operating Administration (OA). This includes paid or non-paid breaks during the workday.
 - e. Use of alcohol following an accident. No covered employee required to take a post-accident test for alcohol shall use alcohol within eight hours following an accident of which the employee has actual knowledge and in which management either has not completely discounted his or her involvement as a contributing factor to the cause of the accident, or has not completed a post-accident test.
 - f. Refusal to submit to a required drug or alcohol test. No employee or applicant shall refuse to submit to a drug or alcohol test required by this Order.
2. DETERMINING DRUG AND ALCOHOL VIOLATIONS. The determination by management that an employee has engaged in conduct which constitutes a drug or alcohol violation of this Order may be made on the basis of:

- a. direct observation of drug or alcohol use;
 - b. a criminal conviction for use, possession, distribution, or trafficking of a controlled substance;
 - c. a Medical Review Officer (MRO) verified adulterated, substituted and/or positive drug test result conducted under the DOT program;
 - d. a confirmed test result having an alcohol concentration of 0.04 or greater on an alcohol test conducted under the DOT program;
 - e. ***a confirmed test result having an alcohol concentration of .01 or greater on an alcohol test conducted under the DOT follow-up testing program.***
 - f. the employee's own admission of violating a drug or alcohol prohibition by this Order;
 - g. other appropriate administrative inquiry that produces evidence of drug- or alcohol-related misconduct; or
 - h. ***The results of a breath test for the use of alcohol, conducted by Federal, State, local or tribal government officials, having independent authority for the test, shall be considered the equivalent of a breath alcohol test conducted under this Order, provided such test conforms to applicable Federal, State, local or tribal government alcohol testing requirements, and the results of the test are obtained by the employer.***
3. DISPOSITION FOLLOWING A DRUG OR ALCOHOL VIOLATION. The Department, having actual knowledge that a covered employee has engaged in conduct prohibited by this Order, shall not permit that employee to perform or continue to perform a safety- or security-sensitive function, as applicable, unless such employee has satisfied the requirements of Chapter VII, Rehabilitation. In general, DOT will offer a conditional opportunity for rehabilitation to employees committing their first violation of conduct prohibited by this Order. However, this policy does not apply in all cases. DOT will seek the immediate removal from Federal service of a covered employee engaging in on-duty illegal drug or alcohol use, possession, distribution, or trafficking of illegal drugs. DOT may take action to suspend an employee indefinitely if it has reason to believe that the employee has committed a crime involving illegal drugs or alcohol misuse for which a term of imprisonment may be imposed, prior to determining a violation of this Order. Specific disciplinary action, for both covered employees and non-TDPs, resulting from a drug or alcohol violation shall be handled in accordance with the provisions in Chapter IX, Disciplinary Action.

If an employee is found to have a verified adulterated, substituted and/or drug positive test result or a confirmed alcohol violation, the appropriate servicing security organization must be notified. This notification must be made whether or not the employee has a security clearance. The determination to reinstate an employee's security clearance, if it has been suspended, will be made by the employee's security organization in accordance with DOT M 1630.2B. Should the clearance not be restored, the employee must not perform any security-related

duties in conjunction with their TDP responsibilities. If the only TDP responsibilities available are security in nature, the employee must be reassigned to non-TDP functions, if possible.

4. **OTHER ALCOHOL-RELATED CONDUCT FOR EMPLOYEES NOT IN THE FOLLOW-UP PROGRAM.** No covered employee, tested under the provisions of this Order, who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, on a confirmation test shall perform or continue to perform safety-sensitive and/or security-sensitive duties. Such an employee is considered to be “not ready for duty” by the Department. This employee shall not return to his or her safety-or security-sensitive functions until the start of his or her next regularly scheduled shift, provided that shift occurs no sooner than eight hours after the test was conducted. A return-to-duty test is not required of an employee in this status.

5. **OTHER ALCOHOL-RELATED CONDUCT INVOLVING FOLLOW-UP TESTING.** *Employees in the follow-up testing program have an abstinence requirement from all substances including alcohol. If the result of a screening test is 0.01 or greater, the employee will be required to take an alcohol confirmation test. If a confirmation test is greater than or equal to 0.01 and less than 0.02, the employee will be referred to EAP and an FAA Flight Surgeon for an evaluation to determine whether or not the employee has violated the abstinence requirement. A confirmation test result of 0.02 or greater is considered a violation of the abstinence agreement.*

CHAPTER IV

GENERAL TESTING OVERVIEW

1. POLICY. Section 3 of E.O. 12564 and sections 3 and 5 of the Act provide the statutory authority for all drug or alcohol testing conducted by the Department under this Order. All TDPs shall be determined by the Department in accordance with the definitions of section 7(d) of E.O. 12564 and sections 3 (a) and 5 (a)(1) of the Act. A listing of TDPs is provided in the Appendix, by series and OA within the Department.
2. TESTING OF TDPs. TDPs within the Department are subject to either drug testing only (*i.e.*, TDPs covered only by the E.O.) or both drug and alcohol testing (*i.e.*, TDPs covered by the Act). Since the criteria contained in the Act for determining TDPs is different than the criteria that had been used in the E.O., there is no statutory authority that all TDPs covered by the E.O. be subjected to alcohol testing.
 - a. Reasons for testing TDPs. Any employee in a TDP is subject to the following five types of reasons-for-tests irrespective of whether that employee is eligible to be tested for drugs only, or for both drugs and alcohol. The reasons for testing an employee in a TDP are: (1) random, (2) pre-employment/pre-appointment, (3) reasonable suspicion, (4) post-accident, and (5) return-to-duty/follow-up. Likewise, all applicants for TDPs are subject to pre-employment/ pre-appointment testing, as deemed appropriate for the position.
3. TESTING OF NON-TDPs. In limited situations, employees in a non-TDP may be subject to drug testing. Employees in a non-TDP are not subject to alcohol testing requirements.
 - a. Reasons for testing non-TDPs. The reasons for testing an employee in a non-TDP are: (1) reasonable suspicion, (2) post-accident, and (3) follow-up. Voluntary testing is also provided under this Order, but is available only to non-TDPs, and is further limited only to drug testing. Employees in a non-TDP can not volunteer for alcohol testing.
4. DESCRIPTION OF TESTS. The following provides a description of each reason-for-test, along with any procedural differences that are required by statute for a TDP versus a non-TDP, or a drug test versus an alcohol test.
 - a. Random testing. Under this type of testing, all covered employees shall have an equal statistical chance of being selected for testing within a specified time frame. Random testing is unannounced and could occur on any workday; random testing shall occur during the period the employee is considered to be performing his or her safety-sensitive functions. At the time of selection, the employee, as determined by his or her TDP, shall be subject to testing for drugs, or drugs and alcohol, as appropriate (see Appendix).

- b. Pre-employment/pre-appointment testing. All applicants for covered positions are subject to pre-employment/ pre-appointment testing for drugs, or drugs and alcohol, as denoted in the recruitment announcement. Any applicant having an alcohol concentration measuring 0.02 or greater on a confirmation test, shall be refused employment or appointment. All applicants with verified positive drug test results shall be refused employment. These applicants must reapply (*i.e.*, carry out new application procedures) for subsequent recruitment announcements in order to be reconsidered.
- c. Reasonable suspicion testing. This type of testing, for drugs, or drugs and alcohol, as appropriate, may be required of any employee when management has reasonable suspicion to believe that the employee has violated the prohibitions of this Order.
 - (1) General. This type of testing shall be conducted as soon as possible following the belief that an employee, subject to this Order, has used illegal drugs or misused alcohol. This belief must be based on specific objective facts and reasonable inferences drawn by an appropriate management official from these facts in the light of experience. Reasonable suspicion does not require certainty; however, mere "hunches" are not sufficient to meet this standard. Reasonable suspicion testing shall only be ordered by a management official after receiving the concurrence of appropriate legal counsel in the OA.
 - (2) Non-TDPs. Reasonable suspicion testing may be required for an employee in a non-TDP when management believes there is evidence of on-duty drug use or on-duty drug impairment. Employees in a non-TDP shall not be tested for alcohol under this Order.
 - (3) Drugs. The determination that reasonable suspicion exists to require an employee in a TDP to undergo a drug test shall be based upon:
 - (a) observable phenomena, such as direct observation of drug use and/or the physical symptoms of being under the influence of a drug; or,
 - (b) information provided either by reliable and credible sources or independently corroborated.
 - (4) Alcohol. The determination that reasonable suspicion exists to require an appropriate TDP to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee.
 - (a) Time limitation. If an alcohol test required under paragraph 4.c. of this chapter is not conducted within two hours following a determination of reasonable suspicion, the OA shall prepare, and maintain on file, a record stating the reasons the test was not promptly conducted. If the same alcohol test required is not conducted within eight hours following the determination of reasonable suspicion, the OA shall cease attempts to conduct the

alcohol test and shall state in the record the reasons for not conducting the test.

- (b) When a test is not possible. Notwithstanding the absence of a reasonable suspicion test required under paragraph 4.c. of this chapter, no TDP shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of, or impaired by, alcohol, as shown by behavioral, speech, and performance indicators. The TDP shall not be permitted to perform safety-sensitive duties again until the start of his or her next regularly scheduled shift, but not less than 8 hours following the determination that the employee has violated the prohibitions of this Order.
 - (c) No discipline without a test. The OA shall not take disciplinary action against a covered employee, under this Order, based solely on the employee's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an OA with authority independent of this Order from taking any other appropriate action.
- (5) Documentation. Documentation shall be developed describing the circumstances which formed the basis that reasonable suspicion exists to authorize such testing. This documentation shall be maintained in accordance with Privacy Act requirements and applicable agency procedures.
- d. Post-accident testing. This type of testing may be required of any employee when management determines an accident has occurred that qualifies according to the provisions set forth in the subparagraphs below.
- (1) General. This type of testing shall be conducted as soon as practicable following an accident or incident that involves one or more of the following covered events: a fatality; a serious injury; substantial damage¹ to aircraft or vehicles, and/or, substantial damage to other property. Only employees whose job performance at or about the time of an accident or incident provides reason to believe that such performance

¹Substantial damage to aircraft means damage or failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and which would normally require major repair or replacement of the affected component. Engine failure or damage limited to an engine if only one engine fails or is damaged, bent fairings or cowlings, dented skin, small punctured holes in the skin or fabric, ground damage to rotor or propeller blades; and damage to landing gear, wheels, tires, flaps, engine accessories, brakes, or wing tips are not considered substantial damage. Substantial damage to vehicles means damage which precludes departure of any vehicle from the scene of an accident in its usual manner in daylight after simple repairs. Substantial damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the accident without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, windshield wipers that makes them inoperative.

may have contributed to the accident or incident, or cannot be completely discounted as a contributing factor to the accident or incident, shall be determined to be subject to post-accident testing.

- (2) Non-TDPs. Post-accident testing for the use of illegal drugs can be required for an employee in a non-TDP. However, post-accident testing for alcohol shall *not* be required of a non-TDP under this Order.
- (3) Mandatory steps. The determination to initiate post-accident testing shall be made in the following manner:
 - (a) The appropriate OA shall determine whether the accident meets the criteria listed above based on a review of all facts reasonably available.
 - (b) Following a determination that the accident qualifies for post-accident testing, the OA shall take all practical steps to identify employees that shall undergo post-accident testing.
 - (c) The process of determination, specified in subparagraph (a) and subparagraph (b) above, shall be completed, the proper notification shall be given to the employee, pursuant to paragraph IV.5 of this chapter, and testing must be accomplished as soon as practicable after the accident or incident.
- (4) Availability. An employee who is subject shall remain readily available for post-accident testing or may be deemed by the OA to have refused to submit to testing. Nothing in paragraph 4.d. of this chapter shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- (5) Drugs. Whenever feasible, a drug test must be completed within four hours after the accident or incident. If a required post-accident test for illegal drug use is not conducted within four hours following the accident, the OA shall submit a report to the DDO stating the reasons the test was not promptly conducted.
- (6) Alcohol time limitation. If a required post-accident test for alcohol is not conducted within two hours following the accident, the OA shall submit a report to the DDO stating the reasons the test was not promptly conducted. If a required post-accident alcohol test is not conducted within eight hours following the accident, the OA shall cease attempts to conduct an alcohol test and shall submit the same report.
- (7) National Transportation Safety Board. Whenever an accident or incident has occurred that is within the investigative jurisdiction of the National Transportation Safety Board (NTSB), and where management has determined to conduct drug or alcohol testing on an employee because

his or her performance, at or about the time of the accident, provides reason to believe that such performance may have contributed to the circumstances of such accident or incident, the head of the OA must prepare a report. The report shall discuss the circumstances concerning the amount of time required to complete such testing. This report must be submitted to the Assistant Secretary for Administration within three work days after completion of the testing process.

- e. Return-to-duty/Follow-up testing. Any employee who has been determined to have violated the prohibitions of this Order and who has accepted the opportunity to enter a substance abuse rehabilitation program shall be subject to unannounced follow-up testing, and, additionally in TDP situations, a planned return-to-duty test.
 - (1) General. Prior to an employee's return to the performance of a safety- or security-sensitive function, after engaging in conduct prohibited by this Order, the employee shall undergo a return-to-duty test. A covered employee shall be subject to follow-up testing for one year after return to safety or security duties unless it is medically determined that a longer period is required. In cases where the MRO or SAP, based on clinical evidence or the employee's history, have reason to believe that the employee may be a polysubstance abuser, the return-to-duty and subsequent follow-up tests under this Order shall, provided such testing is authorized for the particular TDP, include testing for both drugs and alcohol.
 - (2) Non-TDP. An employee in a non-TDP shall be subject to follow-up testing for one year after completion of the rehabilitation program. An employee in a non-TDP shall not be subject to alcohol testing during the follow-up period.
 - f. Voluntary testing. This type of testing is limited to drug testing, and is only provided to an employee in a non-TDP, at the employee's request. Such a request shall be submitted in writing to the DDO. The Act does not permit an employee in a non-TDP to be subjected (even through voluntary means) to alcohol testing.
5. NOTIFICATION OF TESTING TO EMPLOYEES. Employees subject to follow-up testing, reasonable suspicion testing, and post-accident testing shall receive written notice prior to testing that includes all of the following:
- a. the specific basis for the drug or alcohol test;
 - b. assurance that the quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs or alcohol misuse is highly reliable, and that test results shall be handled with maximum respect for individual privacy, consistent with safety, security, and confidentiality;
 - c. notice of the opportunity and procedures for submitting supplemental medical documentation that may support a legitimate use for a specific drug;

- d. the consequences, including disciplinary action of a verified positive drug test result, a confirmed alcohol concentration measuring 0.04 or greater, or a refusal to be tested; and,
 - e. the availability of substance abuse counseling and referral services, including the name and telephone number of the local EAP manager or coordinator, along with instructions to specify the reason for this contact (e.g., reasonable suspicion drug test).
6. NOTIFICATION OF TESTING TO APPLICANTS. Employees or applicants subject to pre-employment or pre-appointment testing shall receive notice prior to testing. Vacancy announcements for TDPs shall contain the following:
- (1) that the applicant shall be tested for illegal drug use or alcohol misuse prior to appointment;
 - (2) that the applicant shall be subject to random testing for drugs or alcohol, if appointed;
 - (3) that applicants shall be provided an opportunity to submit medical documentation to the MRO or FMRO that may support a legitimate use for a specific drug; and,
 - (4) that such information shall be reviewed only by the MRO or FMRO to determine whether the individual is using illegal drugs.

CHAPTER V

SPECIMEN COLLECTION AND DRUG TESTING

1. POLICY. All urine collections for drug testing (on employees and applicants other than those whose position requires a CDL) conducted by DOT under this Order shall be done in accordance with the policies and procedures contained in the HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs." In April 2002, the Department of Health and Human Services authorized DOT to permit donors to request the testing of split specimens when a primary specimen is determined to be substituted or adulterated.
 - a. Those DOT employees and applicants for employment with DOT who are required to possess a CDL as a condition of employment must also meet requirements of 49 CFR Part 382, in addition to those established in this Order.

2. RANGE OF DRUGS. Tests shall be conducted for the illegal use of the following drugs considered to be a controlled substance (as defined by Section 802(6) of Title 21 U.S.C., and as changed, updated, and republished from time to time, as set forth in 21 CFR Part 1308) the possession of which is unlawful under Chapter 13 of that Title:
 - a. Drugs covered. The Department shall test for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) when conducting any drug test covered by this order.
 - b. Inclusion of other drugs. Before including any additional drugs (or classes of drugs), listed in Schedule I or II of the Controlled Substances Act or regulations at 21 CFR Part 1308, in its testing program, the Department shall petition the Secretary of HHS for written approval. When conducting reasonable suspicion, post-accident, or follow-up testing in accordance with this order, the Department is authorized to test for any drug identified as a Schedule I or II controlled substance.

3. COLLECTION SITE. Management shall designate the place where employees and applicants provide urine specimens to be analyzed for illegal drug use. The site shall possess all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and transportation (shipping) of urine specimens to a drug testing laboratory. Employees shall be asked by an appropriate management official to report to a collection site.
 - a. Site security. It is the responsibility of the collector to assure that the collection site is secure during the time of each urine collection. In cases where a facility cannot be dedicated solely for the purpose of drug testing, the portion of the facility being used for testing shall be secured during drug testing operations. DOT management shall assist the collector by restricting access to the site (e.g., rest room facility) while a collection is occurring. No unauthorized

personnel shall be permitted in any part of the collection site where urine specimens are collected or stored.

4. COLLECTION METHODOLOGY. Each urine specimen shall be split into two specimen bottles (*i.e.*, the primary specimen and the "split" specimen) using the split-specimen procedure. If the test of the primary specimen bottle is verified by the MRO or FMRO as positive, and/or substituted or adulterated, the MRO or FMRO shall report the result to the agency. At that time, the donor may request, through the MRO or FMRO, that the split specimen bottle be tested in another HHS-certified laboratory. Only the donor may make such a request. The MRO or FMRO shall honor such a request if it is made within 72 hours of the donor having received notice that his or her primary specimen was verified positive, and/or substituted, or adulterated. The result of the split-specimen test for a verified drug positive shall be transmitted to the MRO or FMRO without regard to the cutoff levels used to test the primary specimen bottle.

When a split specimen is tested to reconfirm an adulterant(s) detected in the primary specimen, the laboratory must test the split using the same criteria used in testing the primary specimen (see 6.e. for the list of specific criteria).

When a split specimen is tested to reconfirm a substituted specimen, the laboratory must test the split specimen using the same criteria used in testing the primary specimen (see 6.e. for the list of specific criteria).

- a. Action on verified primary specimen. Any action taken, in addition to removal from performing a safety-or security-sensitive functions, as a result of an MRO- or FMRO-verified positive drug test, and/or substituted or adulterated specimen may proceed whether the split specimen is or is not tested.
- b. Action on a split specimen. The MRO or FMRO shall take the following actions for the appropriate split-specimen result.
 - (1) Reconfirmed: Positive Test. In the case of a reconfirmed positive test for a drug or drug metabolite, report the reconfirmation to the DDO, the OA and the employee.
 - (2) Reconfirmed: Adulteration or Substitution. In the case of a reconfirmed adulterated or substituted result, report to the DDO, OA and employee that the specimen was adulterated or substituted, either of which constitutes a refusal to test. Therefore, "refusal to test" is the final result.
 - (3) Failed to Reconfirm: Drug(s)/Drug Metabolite(s) Not Detected. Report to the DDO, OA and employee that both tests must be cancelled.
 - (4) Failed to Reconfirm: Adulteration or Substitution. (as appropriate) Criteria Not Met (*i.e.*, the same criteria used for the primary specimen, Bottle A, must be used to test Bottle B). Report to the DDO, OA and employee that both tests must be cancelled.
 - (5) Failed to Reconfirm: Specimen not Available for Testing. Report to the DDO, OA and employee that both tests must be cancelled and the reason

for cancellation. The MRO or FMRO and the OA are to ensure the immediate collection of another specimen from the employee under direct observation. No notice is given to the employee of this collection requirement until immediately before the collection. The reason for test on the custody and control form (CCF) should be the same reason for test as the original collection.

- (6) Failed to Reconfirm: Specimen Results Invalid. Report to the DDO, OA and employee that both tests must be cancelled and the reason for cancellation. The MRO, FMRO and the OA must ensure the immediate collection of another specimen from the employee under direct observation. No notice is given to the employee of this collection requirement until immediately before the collection. The reason for test on the custody and control form (CCF) should be the same reason for test as the original collection.
- (7) Failed to Reconfirm: Split Specimen Adulterated (Bottle A is positive for drugs and Bottle B is adulterated). Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated. Determine if there is a legitimate medical explanation for the laboratory finding of adulteration. If the MRO or FMRO determines that there is a legitimate medical explanation for the adulterated test result, report to the DDO, OA and employee that the test is cancelled. If the MRO or FMRO determines that the donor has not established a legitimate medical explanation for the adulterated test result, the MRO or FMRO will take the following steps:
 - (a) Report the test to the DDO, OA and employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen also is present in the primary specimen. The primary laboratory that tests the primary specimen is to reconfirm the presence of the adulterant found in the split specimen. The result is reported to the MRO or FMRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.
 - (b) If the test of the primary specimen reconfirms the adulteration finding of the split specimen, the MRO or FMRO must report the test result as a refusal to test.
 - (c) If the test of the primary specimen fails to reconfirm the adulteration finding of the split specimen, the MRO or FMRO cancels the test.

5. CHAIN OF CUSTODY. In order to assure that the urine samples taken from an individual are properly identified and not accidentally confused with any other samples, strict procedures shall be used when collecting and transferring the samples. The total of the procedures (i.e., the official transfers from the individual

providing the urine to the drug testing laboratory, including storage of confirmed positive samples at the laboratory) is known as the chain of custody.

- a. Collector control. While performing the collection part of the procedures, it is essential that the urine specimens and accompanying custody and control document be under the control of the collector. The collector shall not leave his or her work area, even momentarily, without securing the specimens and documentation, unless another collector remains in the work area. The specimens should be packaged for mailing before the collector leaves the site.
- b. Standard Form. The Federal Drug Testing Custody and Control Form shall be utilized for maintaining control and accountability from point of collection to final disposition of specimens. These forms contain a pre-printed specimen identification number and unitary seals. It is the collector's responsibility to assure that this form is properly executed in accordance with HHS Guidelines and the DOT Guide. Should another collector handle the specimen within the sight of the donor, this does not constitute a change of possession. Every effort shall be made to minimize the number of persons handling the specimens. The collector shall assure that the control form is complete and shipped with each sealed container.
 - (1) The collector must instruct the employee to read and sign the certification statement on Copy 2 (step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, the collector must note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, the collector must, as a minimum print the employee's name in the appropriate place. If the employee's failure or refusal to sign is not noted in the remarks section, the test will be cancelled unless the collector corrects it.
 - (2) If the collector fails to print and sign his or her name in Step 4 of the CCF and fails to submit a correction within 5 business days, the laboratory will reject the specimen for testing. The MRO, upon receipt of the result will cancel the test.
- c. Shipping. The specimen containers shall be tightly capped, properly labeled and securely sealed to eliminate the possibility of tampering. The collector and the individual providing the specimens shall always have the specimens within their sight prior to them being sealed and labeled. The collector shall arrange to ship the specimens to the drug testing laboratory after collection of urine specimens is complete.
- d. Balancing individual privacy and specimen control. Collection of urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Precautions shall be taken to assure that the urine specimens have not been adulterated or diluted during the collection procedure and that the information

linking the urine bottles and the control forms can be identified as belonging to a given individual.

6. LABORATORY PROCEDURES. All laboratory testing and laboratory chain of custody procedures shall be done in strict accordance with the HHS “Mandatory Guidelines for Federal Workplace Drug Testing Programs.” Additionally, the laboratory will perform the following:

a. Inspect each specimen and CCF for the following “fatal flaws:”

- (1) The specimen ID numbers on the specimen bottle and the CCF do not match;
- (2) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated;
- (3) The collector’s printed name and signature are omitted from the CCF, unless corrected;
- (4) There is an insufficient amount of urine in the primary bottle for analysis, unless the specimens can be redesignated; or
- (5) The CCF does not accompany the specimen to the laboratory.

When a specimen meeting the criteria in 6.a. above is discovered, the laboratory will stop the testing process and report the specimen as “Rejected for Testing” with remarks.

b. Inspect each specimen and CCF for the following “correctable flaws”:

- (1) Inspect each CCF for the presence of the collector’s signature on the certification statement in Step 4 of the CCF. If the signature is omitted, the flaw will be documented and the testing process will continue. The laboratory must retain the specimen for a minimum of 5 business days from the date on which action was taken to correct the flaw. The collector must supply in writing the missing information and a statement that it is true and accurate. If the flaw is not corrected, the laboratory will report the result as rejected for testing with remarks indicating that the collector signature is missing.
- (2) If the specimen temperature was not checked and the “Remarks” line did not contain an entry regarding the temperature being outside of range, the laboratory will continue testing because this error does not result in cancellation of the test. However, the laboratory must take action to correct the problem by obtaining a memorandum for the record from the collector explaining the problem and taking appropriate action to ensure the problem does not recur. The laboratory must continue efforts to correct the problem for 5 business days, before reporting the result. When the correction has been obtained, or 5 business days have elapsed, the lab will report the result.

- (3) If a collector uses a non-Federal form or an expired Federal form for the collection, the laboratory must attempt to correct the use of the improper form by obtaining a signed memorandum for the record from the collector. It must state that the incorrect form contains all the information needed for a valid DOT Federal employee drug test, and the incorrect form was used inadvertently or as the only means of conducting a test in circumstances beyond his/her control. The statement must also list the steps the collector has taken to prevent future use of non-Federal or expired Federal forms. The laboratory will retain the specimen for a minimum of 5 business days from the date when it initiated action to correct the problem. If the problem is not corrected, the laboratory will reject the test and report the result as “rejected for testing” with remarks indicating that the incorrect form was used.
- (4) If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, the laboratory must still test the primary specimen and follow appropriate procedures. If the employee requests the split to be tested due to a non-negative test result the laboratory will then report the test as “Failed to Reconfirm: split specimen unavailable”. The MRO must cancel the test.

c. Redesignation of Bottle A and B.

The primary specimen and the split specimen can be redesignated (i.e., Bottle B is redesignated as Bottle A, and vice-versa) if:

- (a) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or
- (b) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or
- (c) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing; or
- (d) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of urine exists in the split specimen to conduct all appropriate primary laboratory testing.
- (e) In these situations the laboratory shall mark through the “A” and write “B,” then initial and date the change. A corresponding change shall be made to the other bottle by marking through the “B” and writing “A,” and initialing and dating the change.

- d. CCF Annotation. A notation shall be made on Copy 1 of the CCF (Step 5a) and on any laboratory internal chain of custody documents, as appropriate, for any fatal or correctable flaw.
- e. Analysis of specimens. The test for drugs shall consist of a screening test to detect the presence of drugs and a confirmation test (when the screening test is positive). The laboratory shall assure the chain of custody procedures are adhered to from the time of its receipt of the urine samples until testing is completed and the results reported. The same chain of custody procedures shall be adhered to during the storage period.

To determine whether a specimen (primary) is adulterated, the laboratory must determine that:

- (1) A substance that is not expected to be present in human urine is identified in the specimen;
- (6) A substance that is expected to be present in human urine is identified at a concentration so high that it is not consistent with human urine; or
- (7) The physical characteristics of the specimen are outside the normal expected range for human urine.

In making the above determination, the laboratory will apply the criteria in current HHS requirements or specimen validity requirements.

To determine whether a specimen (primary) is substituted, the laboratory must determine that specimen meets the current HHS requirements or specimen validity requirements.

- f. Reporting test results to the MRO or FMRO. Test results shall be reported to a designated MRO or FMRO upon completion of the analysis of the primary specimen at the laboratory. The report shall contain the pre-printed specimen identification number, the identity of the drug testing laboratory, and results of the drug tests. The results shall be reported as follows:
 - (1) All specimens with negative results on a screening test or negative results on a confirmation test and that have satisfactorily passed validity testing shall be reported as negative.
 - (2) All specimens with negative results on a screening test or negative results on a confirmation test and which have met the HHS Mandatory Guidelines as a dilute specimen, shall be reported as a negative dilute. A negative dilute specimen is treated as negative result. No additional testing of the employee is permitted because the specimen was a dilute specimen.
 - (3) All specimens with a positive drug test result in combination with a dilute finding will be treated as a positive drug test result. No additional

testing of the employee is permitted because the specimen was a dilute specimen.

- (4) Only specimens confirmed positive for drugs or their metabolites shall be reported as positive to the MRO or FMRO.
 - (5) All specimens that are confirmed as substituted or adulterated specimens shall be reported as "Refusal to Test: Substituted or Adulterated" (as appropriate).
- g. Transmission of results. Results shall be transmitted to the MRO or FMRO in a manner designed to assure confidentiality of the information.
 - h. Primary specimen storage. Negative specimens (in the form of the primary-specimen bottle and the split-specimen bottle) shall be discarded by the laboratory. Remaining portions of urine specimens which resulted in a verified positive and/or substituted or adulterated result (both the primary-specimen bottle and the split-specimen bottle) shall be retained at the laboratory in a frozen state for at least 365 days, unless the MRO or FMRO requests a split-specimen analysis. If the laboratory does not receive a request from the MRO or FMRO or the DDO, to retain the samples before the initial 365-day period has expired, the samples may be discarded.
 - i. Split-specimen storage. If the individual requests that the MRO or FMRO have his or her split specimen analyzed by another HHS-certified laboratory (under contract to the Department), the split-specimen bottle shall be shipped to the "split laboratory." The split specimen shall be retained by that laboratory for the same 365-day period as the primary specimen, should the split specimen reconfirm the primary specimen. Within the 365-day period, the MRO or FMRO or the DDO may request that each laboratory retain the samples for an additional period of time. This assures that the urine samples (primary and split-specimen bottles) shall be available during any administrative or judicial proceeding. If the split specimen fails to reconfirm the primary specimen, both specimens shall be retained indefinitely for inspection by SAMHSA.

7. INVALID DETERMINATIONS.

- a. When the laboratory reports that the test result is an invalid result, the MRO or FMRO must do the following:
 - (1) Discuss the laboratory results with a certifying scientist to obtain more specific information.
 - (2) Contact the employee and inform the employee that the specimen was invalid or contained an unexplained interfering substance.
 - (3) Inquire as to medications the employee may have taken that may interfere with some immunoassay tests.
- b. If the employee gives an explanation that is acceptable, the MRO or FMRO must:

- (1) Place a check mark in the “Test Cancelled” box (Step 6) on Copy 2 of the CCF and enter “Invalid Result” and “direct observation collection not required” on the “Remarks” line.
 - (2) Report to the DDO and the OA that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up tests). Where a negative test result is required, the collection must be repeated.
 - c. If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, the MRO or FMRO must:
 - (1) Place a check mark in the “Test Cancelled” box (Step 6) on Copy 2 of the CCF and enter “Invalid Result” and “direct observation collection required” on the “Remarks” line.
 - (2) Report to the DDO and the OA that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation with no notice given to the employee of this collection requirement until immediately before the collection.
 - d. The MRO or FMRO may only report an invalid test result when he/she is in possession of a legible copy of Copy 1 of the CCF. The MRO or FMRO must have a legible Copy 2 of the CCF with the employee’s printed name or signature, or any other legible copy containing the employee’s printed name or signature.
 - e. If the employee admits to having adulterated or substituted the specimen, the MRO or FMRO must, on the same day, write and sign his/her own statement of what the employee told him/her. The MRO or FMRO must then report a refusal to test.
8. DOT QUALITY ASSURANCE PROGRAM. In accordance with the HHS procedures, DOT shall submit samples to the laboratory for performance testing purposes. Blind samples shall be randomly intermingled with individual DOT-specimen samples and shipped to the laboratory. All samples shall be analyzed in the same manner to assure the accuracy of the laboratory testing program. The MRO or FMRO shall report the results of any unsatisfactory performance to HHS.
9. TESTING COST FOR SPLIT SPECIMEN. The Department shall contract with an HHS-certified laboratory for the purpose of analyzing DOT split specimens. If an employee with a verified positive test result makes a timely request for split-specimen analysis, all associated costs shall be paid by the Department. If the employee requests that another HHS-certified laboratory, other than the laboratory under contract to DOT for the purposes of split-specimen analysis, be used, the employee shall pay all costs associated with shipping, analysis, reporting, and storage. Only the MRO or FMRO is authorized to order an analysis of the split specimen.

CHAPTER VI

ALCOHOL TESTING

1. POLICY. This chapter establishes the policies and procedures for conducting alcohol testing of U.S. Department of Transportation (DOT) employees and applicants under this Order (see EXCEPTION below).

EXCEPTION. DOT employees who occupy positions, or applicants who apply for positions, requiring a Commercial Driver's License (CDL) are subject to the alcohol testing requirements contained in the provisions of Title 49 of the Code of Federal Regulations (49 CFR) Part 382, and this Order.

2. ALCOHOL TESTS. Alcohol tests are conducted to detect the consumption of any substance that contains alcohol (i.e., any beverage mixture, preparation, or medication containing alcohol).
3. ALCOHOL TESTING EQUIPMENT. The DOT Departmental Drug Office (DDO) shall make exclusive use of evidential breath testing devices (EBT) approved by and placed on the National Highway Traffic Safety Administration (NHTSA) "Conforming Products List of Evidential Breath Measurement Devices" for performing alcohol testing under this Order. All EBTs used for a DOT DDO screening or confirmation test must meet the following requirements:
 - a. provide a printed result in triplicate (i.e., three consecutive identical copies);
 - b. assign a unique and sequential number for each completed test that can be read by the breath alcohol technician (BAT) and the individual before the test is conducted and is printed out on each copy of the test result;
 - c. print on each copy of the test result the manufacturer's name, model and serial number, and the date and time of the test;
 - d. distinguish alcohol from acetone at the 0.01 concentration level;
 - e. test an air blank prior to each collection of breath;
 - f. print the air blank on the breath test result; and,
 - g. perform an external calibration check.
4. QUALITY ASSURANCE PLANS FOR EBTs. The manufacturer of the EBT must have a Quality Assurance Plan (QAP). The plan must specify the inspection, maintenance, calibration requirements, procedures, and their schedules. The plan

must also specify the minimum intervals for performing external calibration checks, as well as the tolerances within which the EBT is regarded to be in proper calibration. The manufacturer must have NHTSA approval of the plan. The DOT DDO will:

- a. ensure that the alcohol testing contractor complies with the NHTSA approved QAP for each EBT used for alcohol testing subject to this Order;
 - b. ensure that the alcohol testing contractor takes any EBT out of service if any external calibration check results in a reading outside the tolerance for the EBT set forth in the QAP. The EBT will not again be used for alcohol testing under the DOT DDO program until it has been serviced and/or calibrated and has had an external calibration check resulting in a reading within the tolerances for the EBT;
 - c. ensure that the alcohol testing contractor maintains records of the external calibration checks of the EBTs; and,
 - d. ensure copies of calibration logs are provided to authorized individuals upon written request to the DOT DDO, forwarded through the appropriate OA.
5. ALCOHOL TESTING SITE. Management designates the place where employees and applicants present themselves for the purpose of breath alcohol testing. The site must possess all necessary personnel, materials, equipment, facilities, and supervision to provide for testing. Employees are directed by an appropriate management official to report to the testing site.
- a. A DOT DDO alcohol test must take place at an alcohol testing site meeting the privacy requirements of this paragraph.
 - (1) The alcohol testing site must provide visual and aural privacy to the employee or applicant being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
 - (2) The BAT must ensure that the alcohol testing site has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and a suitable clean surface for writing.
 - (3) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph 5.a(1) of this chapter is not readily available, this Order allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In these cases, the site must afford visual and aural privacy to the employee or applicant to the greatest extent practicable.
 - (4) 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. A DOT DDO alcohol test must take place at an alcohol testing site meeting the security requirements of this paragraph.
 - (1) The OA representative will ensure that all persons are under the supervision of a BAT at all times when permitted into the site.
 - (2) The only individuals authorized to be present at the alcohol testing site are:
 - employees or applicants being tested;
 - BATs;
 - employee representatives (whose presence is consistent with law and collective bargaining agreements); and,
 - DOT DDO agency representatives.
 - (3) The OA representative or BAT will ensure to remove, or cause to remove, from the testing site any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
- c. The BAT must not allow any person other than the employee or applicant, DOT DDO agency representatives, or an employee union representative at the employee's request, to witness the testing process.
- d. The BAT must ensure that when an EBT is not being used for testing, it is stored in a secure place or that no one has access to the site when an EBT is unsecured.
- e. The BAT is limited to conducting an alcohol test for only one employee at a time.
 - (1) The BAT will complete the entire screening and confirmation process on one individual before starting the screening process on another individual.
 - (2) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher (or 0.01 for individuals with abstinence agreements who are in the follow-up testing program), 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 individual before completing the confirmation test on the first employee.
 - (3) The BAT is not allowed to leave the alcohol testing site while the testing process for an employee or applicant is in progress, except to contact the drug program coordinator (DPC), site coordinator (SC), or management official for assistance in the event an employee or other person obstructs, interferes with, or unnecessarily delays the testing process.
6. BREATH ALCOHOL TECHNICIAN (BAT). To be permitted to act as a BAT in the DOT DDO alcohol testing program, the BAT must meet each of the requirements of this paragraph.

- a. Basic Information. The BAT must be knowledgeable about the alcohol testing procedures in this Order and the current DOT Drug and Alcohol Testing Guide.
- b. Approved Courses. Only courses of instruction for operation of EBTs that are equivalent to the DOT model course, as determined by NHTSA, may be used demonstrate BAT proficiency.
- c. Qualification Training. The BAT must receive qualification training meeting the following requirements.
 - (1) Qualification training must be in accordance with the BAT Training Program for the DOT Federal Employee Alcohol Testing Program.
 - (2) The training can also be provided using a course of instruction equivalent to the BAT Training Program for the DOT Federal Employee Alcohol Testing Program.
 - (3) Qualification training must include training to proficiency in using the alcohol testing procedures of this Order and in the operation of the EBT the BAT will be using.
 - (4) The training must emphasize that the BAT is responsible for maintaining the integrity of the testing process, ensuring the privacy of individuals being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
 - (5) The instructor must be an individual who has:
 - demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as a BAT for a period of at least one year;
 - conducted BAT training under this Order for at least one year; or
 - successfully completed a “BAT train the trainer” course.
- d. Initial Proficiency Demonstration. Following the completion of qualification training under paragraph 6.c. the BAT must demonstrate proficiency in alcohol testing under this Order by completing seven consecutive error-free mock tests.
 - (1) Another person must monitor and evaluate the performance of the BAT in person or by a means that provides real-time observation and interaction between the instructor and trainee. The monitor must attest in writing that the mock collections are “error free.” This person must be an individual who meets the requirements of paragraph 6.c (5) of this Chapter.
 - (2) These tests must be conducted using the alcohol testing devices (e.g., EBTs) that are used to conduct testing under this Order.

- e. Qualification Training and Initial Proficiency Demonstration.
- (1) Individuals performing services as a BAT prior to August 1, 2001, are not subject to the initial qualification training and proficiency demonstration.
 - (2) Individuals who initially performed services as a BAT commencing on or after August 1, 2001, must meet the requirements of paragraph 6.b. and c. of this Chapter prior to performing any BAT functions.
- f. Refresher Training. No less frequently than every 5 years from the date on which the BAT satisfactorily completed the requirements of paragraph 6.b and c of this Chapter, or individuals who met these requirements prior to August 1, 2001, he or she must complete refresher training 5 years from the date he or she originally met the formal training obligation. Refresher training must include 3 consecutive error-free mock tests.
- g. Error Correction Training. If the BAT makes a mistake in the alcohol testing process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), he or she must undergo error correction training. This training must occur within 30 days of the date the BAT is notified of the error.
- (1) Error correction training must be provided and documented in writing by a person who meets the requirements of paragraph 6.c.(5) of this Chapter.
 - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
 - (3) As part of the error correction training, the BAT must demonstrate proficiency in the alcohol testing procedures of this Order 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 error(s) occurred. The person providing the training must monitor and evaluate the BAT performance and attest in writing that the mock tests were error-free.
 - (4) If the error correction training has not been completed by the end of the 30-day period, the BAT responsible for committing the error must not perform any breath alcohol tests for the DOT DDO Federal employee or applicant alcohol testing program until the training has been successfully completed and documented. The BAT may perform urine collections.
- h. Documentation. The BAT must maintain documentation showing that he or she currently meets all requirements of this paragraph. Documentation will be provided to DOT OAs and union representatives upon written request to the DOT

- DDO. Training documentation should be retained for a period of five years, to include training records of BATs who are no longer employed by contractor.
7. ALCOHOL TESTS CONDUCTED BY LAW ENFORCEMENT. The results of a breath test for the use of alcohol, conducted by Federal, State, local or tribal government officials having independent authority for the test, shall be considered the equivalent of a breath alcohol test conducted under this Order, provided such test conforms to applicable Federal, State, local or tribal government alcohol testing requirements, and the results of the test are obtained by the employer.
 8. ALCOHOL TESTING FORMS (Non-CDL Testing).
 - a. The DOT, Federal Aviation Administration (FAA) Federal Employee Testing Breath Alcohol Testing Form (BATF) is used for every DOT DDO alcohol test.
 - b. If the BAT uses a non-DOT/FAA BATF for a test, the use of a non-DOT/FAA form does not in and of itself require the cancellation of the test. The BAT, however, must make the necessary corrections to the non-DOT/FAA BATF that is being used to reflect appropriate statements contained in the DOT/FAA BATF.
 9. BREATH TESTING PROCESS. The procedures contained in this Order and the DOT DDO Drug and Alcohol Testing Guide are designed to provide consideration for individual privacy in conjunction with a controlled breath alcohol-testing program. Alcohol testing applies to random, preemployment/preappointment, reasonable suspicion, post-accident and return-to-duty/follow-up testing.
 - a. If a specific time for an employee's or applicant's test has been scheduled or if the collection site is at the worksite and if in either case the donor does not appear at the collection site at the scheduled time, the BAT will notify the DPC, SC, or management official. Failure of an employee to report to the testing site within the required timeframe or not at all is categorized as a refusal to test.
 - b. If the employee requests the presence of a union representative, the supervisor must instruct the employee to be at the testing site at least 10 minutes prior to the scheduled testing time in order to confer with the union representative.
 - c. The BAT must begin the alcohol-testing process without undue delay. For example, the BAT must not wait because the donor says he or she is not ready or because an employee representative is delayed in arriving or conferring with another employee.
 - d. If the donor is also going to take a DOT DDO drug test, the alcohol test is to be completed before the urine collection process begins, to the greatest extent possible.

- e. If the employee requires 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. The two may be done concurrently, if appropriate.
- f. The employee or applicant subject to the alcohol test is required to provide the BAT with photo identification. The BAT shall not accept faxes or photocopies of identification. Positive identification by a management representative, SC, or DPC (not a co-worker or another employee being tested) is also acceptable. If the donor cannot be identified, testing of this donor will not continue. The individual must be instructed by the SC, a management official or the DPC to return to his or her work station and obtain his or her photo identification and return to the testing site. To the extent possible, a management representative should escort the individual to his or her worksite and back to the testing site. Failure to return to the testing site in a timely manner with proper identification constitutes a refusal to test.
- g. Upon request of the donor, the BAT should provide his or her identification to the employee. The BAT's identification must include his or her name and employer's name but is not required to include a picture, address, or telephone number. Copies of contractor identification shall not be made or retained at the testing facility. If the BAT cannot provide identification, testing will not take place, but will be rescheduled for another day. In case of a post accident test, the collector only needs to provide a drivers license as a source of identification.

10. **BREATH ALCOHOL SCREENING TEST PROCEDURES.** Procedures for conducting breath alcohol screening tests can be found in the DOT DDO Drug and Alcohol Testing Guide.

- a. **Screening Test Results.** If the result of the alcohol-screening test is less than 0.02, no further testing is authorized. (Except as provided in 10.c. below)
- b. **Screening Test Results of 0.02 or Greater.** If the result of the screening test is equal to 0.02 or greater, a confirmation test must be performed using the procedures outlined in the DOT DDO Drug and Alcohol Testing Guide (except as provided in 10.c. below). The donor must remain at the testing site between the screening and confirmation tests. The donor is to be under the supervision of the DPC, SC, management representative or BAT during the 15 minute wait for the confirmation test.
- c. ***Employees in a Follow-up Testing Program Subject to an Abstinence Requirement.*** *Employees in the follow-up testing program have an abstinence requirement from all substances including alcohol. If the result of a screening test is 0.01 or greater, the employee will be required to take an alcohol confirmation test. If a confirmation test is greater than or equal to 0.01 and less than 0.02, the employee will be referred to EAP and an FAA Flight*

Surgeon for an evaluation to determine whether or not the employee has violated the abstinence requirement. A confirmation test result of 0.02 or greater is considered a violation of the abstinence agreement.

- d. Declining to Sign Form. An individual's failure to complete step 2 of the BATF is not considered a refusal to test. In this event, the BAT must note the refusal to sign in the remarks section of the form.
11. BREATH ALCOHOL CONFIRMATION TEST PROCEDURES. Procedures for conducting breath alcohol confirmation tests can be found in the DOT Drug and Alcohol Testing Guide. The employee must remain at the testing site between the screening and confirmation tests.
- a. Confirmation Test Results of Less Than 0.02. If the result of the alcohol confirmation test is less than 0.02, no further testing is authorized, with exception of paragraph 10.c above.
 - b. Confirmation Test Results greater than or equal to 0.02 but less than 0.04. If the result of a confirmation test is equal to 0.02 or greater and less than 0.04 (except as noted in paragraph 10.c. of this chapter), the BAT will report to the SC or DPC that the individual is not ready for duty. The employee's supervisor must take immediate action to ensure the employee does not perform or ceases to perform safety-sensitive duties. Individuals in follow-up testing who test within this range will be found in violation of their rehabilitation treatment program.
 - c. Confirmation Test Results of 0.04 or Greater. If the result of a confirmation test is equal to or greater than 0.04, the BAT will report to the SC or DPC that the individual has failed the alcohol test (except as noted in paragraph 10.c of this chapter). The employee's supervisor must take immediate action to ensure the employee does not perform or ceases to perform safety-sensitive duties.
 - d. Applicants with Test Results of 0.02 or Greater. Applicants with confirmation results of 0.02 or greater will not be offered a safety- or security-sensitive position within DOT. In order to be reconsidered for subsequent recruitment announcements for TDPs, applicants must provide proof of successful completion of a recognized substance abuse treatment program, including successful completion of at least six follow-up tests conducted over a period of one year, and demonstration of continuous sobriety. Should no proof exist as outlined, the individual will not be considered for employment in a safety-sensitive position within DOT.
 - e. Declining to Sign Form. An individual's failure to complete step 4 of the BATF is not considered a refusal to test. In this event, the BAT must note the refusal to sign in the remarks section of the form.

- f. Final Result. Immediately following the confirmation test, the BAT shall show the test results to the individual, and the paperwork shall be completed, as appropriate. Appropriate disciplinary action shall be based on the test results of the confirmation test and not the result of the screening test.

12. ***FAILURE TO PROVIDE A SUFFICIENT AMOUNT OF BREATH. If an employee does not provide a sufficient amount of breath to permit a valid breath test, the BAT must take the steps below.***

- a. The BAT must instruct the donor to attempt again to provide a sufficient amount of breath and about the proper way to do so.
- b. ***If the donor refuses to make the attempt, the BAT must discontinue the test, note the refusal on the "Remarks" line of the BATF, and immediately notify the DPC, SC, or management official. This is a refusal to test.***
- c. If the donor again attempts and fails to provide a sufficient amount of breath, the BAT may provide another opportunity to the individual to do so if it is believed that there is a strong likelihood that it could result in providing a sufficient amount of breath.
- d. When the donor's attempts to provide a sufficient breath sample are unsuccessful, the BAT must note the fact on the "Remarks" line of the BATF and immediately notify the DPC, SC, or management official.
- e. The employee's supervisor must direct the employee to immediately contact an FAA Flight Surgeon after a failed attempt to provide a breath specimen. The FAA Flight Surgeon will evaluate the employee's medical condition as it relates to the ability to provide an adequate amount of breath. The employee must make available to the Flight Surgeon all relevant medical history and records for the evaluation.

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.

- f. If the medical judgment of the FAA Flight Surgeon determines that a medical condition has, or with a high degree of probability could have, precluded the individual from providing an adequate amount of breath, the individual's failure to provide an adequate amount of breath will not be deemed a refusal to test.
- g. If the FAA Flight Surgeon finds no medical explanation that could satisfactorily explain the inability of the individual to provide an adequate amount of breath, this inability will be regarded as a refusal to test. The FAA Flight Surgeon must

provide a written statement of this determination to the appropriate management officials.

13. BREATH ALCOHOL TESTING VIOLATIONS. An individual is considered to have refused to take an alcohol test if any one of the following situations occurs:
 - a. failure to appear for any test within a reasonable time, as determined by the supervisor;
 - b. failure to remain at the testing site until the testing process is complete;
 - c. failure to provide a sufficient breath specimen and the FAA Flight Surgeon determines through a required medical evaluation that there was no adequate medical explanation for the failure;
 - d. failure to undergo a medical examination or evaluation as part of the insufficient breath procedures;
 - e. failure to cooperate with any part of the testing process; and,
 - f. failure to return to the testing site with photo identification.

14. PROBLEM ALCOHOL TESTS. If an alcohol test is cancelled, the test shall be treated as if the test had never been conducted. A breath alcohol test is cancelled under the following circumstances:
 - a. in the case of a screening or confirmation test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result;
 - b. the BAT conducts the confirmation test before the end of the minimum 15-minute waiting period;
 - c. the BAT does not conduct an air blank before the confirmation test;
 - d. there is not a 0.00 result on the air blank conducted before the screening or confirmation test;
 - e. the EBT does not print the result;
 - f. 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 0.01 and above obtained on the EBT since the last valid external calibration check is cancelled; or
 - g. *if the BAT either prints or signs his or her name, it is considered a valid test.*

15. CANCELLED ALCOHOL TESTS UNLESS CORRECTED. *The following alcohol tests must be cancelled if any of the following problems occur unless they are corrected. These are “correctable flaws.”*

- a. The BAT fails to note on the “Remarks” line of the BATF that the donor has not signed in either step 2 or 4 of the BATF after the result is obtained.
- b. The BAT uses a non-DOT/FAA form for the test except for reasonable suspicion and post-accident testing as discussed in paragraph 8.b. of this chapter. The Department does not consider the use of non-DOT/FAA forms a fatal flaw in the event of emergency testing situations, such as reasonable suspicion or post accident. The BAT must make appropriate corrections to the form and annotate in the remarks section that use of a non-DOT/FAA form was necessary due to the emergency testing situation.

16. CORRECTING PROBLEM ALCOHOL TESTS. If a BAT, DPC, or other management official becomes aware of a “correctable flaw” that has not already been corrected, all practicable action must be taken to correct the problem so that the test is not cancelled.

- a. If during or shortly after the testing process the BAT, SC, DPC, or management official becomes aware of any event that will cause the test to be cancelled, the BAT must try to correct the problem promptly and consistent with this Order and the DOT Drug and Alcohol Testing Guide, if practicable. The testing process may be repeated as part of this effort.
- b. If repeating the testing process is necessary, the BAT must begin a new test as soon as possible. The BAT must use a new BATF, a new sequential test number, and, if needed, a new EBT.
- c. If repeating the testing process is necessary, the BAT is not limited in the number of attempts to complete the test, provided that the donor is making a good faith effort to comply with the testing process.
- d. If the problem resulted from the omission of required information, the BAT must, as the person responsible for providing that information, provide the missing information and a signed statement to the DOT DDO that it is true and accurate. For example, if the BAT forgot to make a notation on the “Remarks” line of the BATF that the donor did not sign the certification, the BAT when notified of the problem, should provide a signed statement that the donor failed or refused to sign the certification after the result was obtained and that the BAT signed statement is true and accurate.

- e. If the problem is the use of a non-DOT/FAA form, the BAT 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 DDO alcohol test. The BAT 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 his or her control and state the steps he or she took to prevent future use of non-DOT/FAA forms for DOT DDO tests. This information must be faxed or sent via overnight courier to the DOT DDO on the same business day the BAT is able to correct the flaw.
- f. If the problem is not corrected, the test must be cancelled.

17. CANCELLED ALCOHOL TESTS.

- a. A cancelled alcohol test is neither positive nor negative.
- b. No action may be initiated against an employee or applicant as a result of a cancelled test.
- c. Those employees with an abstinence requirement that requires a negative test must have a second test in the event the first test is cancelled.
- d. The DPC, SC, or management official must not require retesting of an individual except in the situations cited in paragraph 17.c. above.

18. **PROCEDURAL PROBLEMS IN ALCOHOL TESTING.** *A test may not be cancelled as a result of a minor procedural error in the testing process where such an error does not prejudice the right of the employee or applicant to a fair and accurate test. For example, it is inconsistent with this Order to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial, not affixing tamper evident tape to an alcohol test result, failure of an employee to sign the BATF or a claim by an employee that he or she was improperly selected for testing) or an error that does not materially affect accorded protections under this Order. In the case of a positive alcohol test result, if the BAT fails to affix tamper evident tape to the test result, he/she must immediately notify the contract Program Manager who will notify the DDO. The contract Program Manager will provide the DDO a printed copy of the result that resides in equipment used to perform the breath alcohol test. If the BAT prints his or name but does not sign the form it is not considered a fatal flaw. Also, if the BAT signs his or her name but does not print it, it is also not considered a fatal flaw.*

19. **NOTIFICATION TO EMPLOYEE'S SERVICING SECURITY ORGANIZATION.** *If an employee in a safety- or security-sensitive position is found to have violated the Department's testing program, the appropriate servicing security organization will be notified. The determination to reinstate*

the employee's security clearance will be made by the employee's security organization in accordance with DOT M 1630.2B. Should the clearance not be restored, the employee must not perform any security-related duties, if possible.

CHAPTER VII

REHABILITATION

1. POLICY. The Department shall establish and maintain a rehabilitation program that provides the opportunity for treatment of its employees. In particular, the rehabilitation program shall focus on employees within the Department whose duties include safety- and security-sensitive functions, and who are in need of assistance in resolving problems with the use of drugs and alcohol. The rehabilitation program shall be managed by the Employee Assistance Program (EAP) managers and coordinators within each OA.
2. OPPORTUNITY FOR REHABILITATION. When it has been determined, for the first time, that an employee has violated a prohibition of off-duty illegal drug use or off-duty alcohol misuse covered by this Order, it is the responsibility of management to direct the employee to the EAP. Following initial counseling, the employee must be given an opportunity to enter an agency recommended substance abuse rehabilitation program by the EAP manager or coordinator with the agreement of the Medical Review Officer (MRO), Field Medical Review Officer (FMRO), or Substance Abuse Provider (SAP).
 - a. Testing conditions. Upon successful completion of the initial phase of the rehabilitation program, a covered employee shall be subject to a scheduled return-to-duty test and unannounced follow-up testing. An employee in a non-TDP shall only be subject to unannounced follow-up drug testing.
 - (1) Return-to-duty testing. Before a covered employee returns to duty requiring the performance of a safety- or security-sensitive function, the employee shall undergo a return-to-duty test. Return-to-duty drug test results must be negative and return-to-duty alcohol tests must result in a confirmed alcohol concentration measuring less than **0.01**. The MRO, FMRO, or SAP is responsible for ordering all return-to-duty tests, as appropriate.
 - (2) Follow-up testing. Follow-up testing shall begin after a negative return-to-duty test and shall continue for at least one year from the first follow-up test after resuming safety- or security-sensitive duties. The follow-up program may be extended at the discretion of the Departmental MRO in consultation with the FMRO, SAP, or EAP Manager and may be extended when follow-up testing is incomplete or interrupted. During the first 12 months of follow-up testing for alcohol, a covered employee must complete a minimum of 6 follow-up tests. This same minimum may be applied to follow-up testing for drugs, however follow-up drug testing typically exceeds 6 follow-up tests per year. Follow-up drug and alcohol test results must be negative. All recommended plans for follow-up testing of employees must be reviewed and approved by the MRO, FMRO, EAP Manager, or SAP, as appropriate. The DDO is

responsible for implementing the individual testing plan for all follow-up tests.

- b. Successful completion. An employee shall not be subject to disciplinary action for a first determination of an off-duty drug use or off-duty alcohol misuse if he or she successfully completes a rehabilitation program. If an employee refuses to enter a rehabilitation program or fails to successfully complete a rehabilitation program, the provisions of Chapter IX (Disciplinary Action) shall be used for guidance.
3. EAP RESPONSIBILITIES. EAP managers or coordinators must maintain or have readily available a current list of substance abuse rehabilitation organizations which provide counseling and rehabilitative programs for substance abuse, including the use of illegal drugs and alcohol. The following information must be included for each rehabilitation organization: (a) name, address, and telephone number; (b) the type of services provided; (c) hours of operation, including emergency hours; (d) name and telephone number of a contact person to provide information regarding items such as fee structure and insurance coverage; and (e) client specialization.
 - a. Assessing rehabilitative services. EAP personnel shall periodically research and assess rehabilitative organizations to:
 - (1) ascertain the experience, certification, and educational level of staff;
 - (2) verify licensing and accreditation of organizations; and,
 - (3) ascertain each organization's policy concerning progress reports on clients, return-to-duty, and post-treatment follow-up.
 - b. Assessment and referrals. An employee directed to an EAP shall receive short-term diagnostic counseling and, as appropriate, referral to a substance abuse rehabilitation program. Information shall be provided to management in accordance with the requirements of Chapter VIII (Confidentiality). In the case of an employee who has failed to pass an alcohol test conducted under the Department's program, the EAP manager or coordinator shall assure that all evaluation and treatment is performed in accordance with SAP requirements.
 - (1) Rehabilitation selection. The determination of the type of rehabilitation assistance required by an employee shall be made by the EAP manager or coordinator, in consultation with the MRO, FMRO, EAP Manager, or SAP, regarding the treatment and availability of services in the rehabilitation organization tentatively selected. As a minimum, the employee shall be assessed by a substance abuse professional who shall submit a written report with recommendations to the EAP manager or coordinator.
4. COST. The services provided under existing EAPs are provided at no cost to the employee. Cost for further diagnostic or rehabilitative services, or treatment is the responsibility of the employee.

5. SELF-REFERRAL. An employee who voluntarily identifies himself or herself as someone who uses illegal drugs or misuses alcohol, prior to being identified through other means, shall not be identified to the Agency or the respective OA, on the first occurrence of such self-referral, for the purposes of taking disciplinary action.
 - a. Conditions. An employee who voluntarily self-refers for substance abuse shall not be subject to disciplinary action based only on illegal drug use or alcohol misuse provided that he or she:
 - (1) obtains counseling through an agency approved employee assistance program and completes an agency EAP-recommended rehabilitation; and,
 - (2) thereafter refrains from any further instance of use of illegal drugs or alcohol misuse in accordance with the policy of this Order.
 - b. Monitoring. The OA, at its discretion, may develop a policy to require return-to-duty and follow-up drug or drug and alcohol testing of employees returning to security- or safety-sensitive duties. Any proposed policy must be consistent with the intent and purpose of this Order and any testing must be accomplished under the program established by this Order. Proposed policies must be submitted for review and approval by the Assistant Secretary for Administration prior to implementation.
 - c. Exception. If the employee makes an attempt to self-refer at the time when he or she is called to take a drug or alcohol test, conducted under the Department's testing program, the information provided by the employee shall be used by the appropriate OA officials to make a determination of illegal drug use or alcohol misuse against that employee. Additionally, an employee may not self-refer after an arrest and conviction of a DUI/DWI charge, it will be considered a first determination, or second, as applicable.
6. REASSIGNMENT TO OTHER DUTIES. Covered employees may be assigned non-safety- or non-security-sensitive duties, if such duties are available, when they are identified as having used illegal drugs or misused alcohol. An employee assigned to non-safety- or non-security-sensitive duties may be returned to safety-sensitive duties when an appropriate DOT authority determines such action would not pose a danger to public health, safety and national security.

The determination to reinstate an employee's security clearance, if it has been suspended, will be made by the employee's security organization in accordance with DOT M 1630.2B. Should the clearance not be restored, the employee must not perform any security related duties in conjunction with their TDP responsibilities. If the only TDP responsibilities available are security in nature, the employee must be reassigned to non-TDP functions.

CHAPTER VIII
CONFIDENTIALITY

1. POLICY. DOT's drug testing laboratory, split-specimen testing laboratory, urine collection contractor, alcohol testing contractor, FAA Aviation Medical Examiners, EAP and SAP personnel, and DOT employees involved in any aspect of the departmental drug and alcohol testing program are required to maintain strict standards of confidentiality in carrying out responsibilities. This includes:
 - a. maintaining maximum respect for individual privacy consistent with safety and security issues;
 - b. handling of test results; and,
 - c. controlling all contacts with medical and health personnel, counselors, DPCs, EAP managers and coordinators, and SAP personnel.

2. PROVISIONS TO PROTECT CONFIDENTIALITY. Test results shall be disclosed to the employee and a limited number of officials within the agency. The following provisions are designed to protect the confidentiality of negative, confirmed and verified positive drug test results, measured alcohol concentrations, and not-ready-for-duty determinations, pre-duty or on-duty use records, and related medical and rehabilitation records.
 - a. Notification to employees. Employees shall receive written notification of drug and alcohol test results.
 - b. Authorized disclosure. The results of drug and alcohol tests of a DOT employee shall not be disclosed without the prior written consent of the employee, unless the disclosure would be:
 - (1) to the employee's MRO (applies only to drug test results);
 - (2) to the administrator of any EAP in which the employee is receiving counseling or treatment or is otherwise participating;
 - (3) to the supervisory or management official having authority to take adverse personnel action against such employee; and/or,
 - (4) pursuant to an order of a court of competent jurisdiction where required by the United States to defend an adverse personnel action.
 - c. Access by NTSB. The Department has a responsibility to the NTSB (under the Independent Safety Board Act Amendments of 1990) to report the results of a post-accident or reasonable suspicion confirmed positive drug test, if a written request to the Secretary for such information is made. The request for information must be made in the course of investigating an accident or incident that is within the jurisdiction of the NTSB. Subsequent to such a request, the NTSB shall be furnished any report of a confirmed positive test result for such tests(s) verified by the MRO or a FMRO and any underlying laboratory records

documenting the confirmed positive test result. Until statutes are developed specifically for the release and reporting of alcohol test results, alcohol test results shall be disclosed to the NTSB in the same manner as drug test results. The Office of the Assistant Secretary for Administration shall be responsible for complying with any request from the NTSB for this information.

- d. Notification to management. Notification concerning drug and alcohol test results shall ordinarily be made by the DPC to appropriate management officials, EAP manager or coordinator, and the servicing personnel office (in the case of applicants).
 - e. Employee Treatment Records. Records of the identity, diagnosis, prognosis, or treatment of any employee who enters a substance abuse rehabilitation program, which are maintained in connection with this program, are patient records that must be kept confidential and shall be disclosed only by consent of the patient or under limited circumstances and specific purposes established by 42 CFR Section 2.1, et seq.
 - (1) Treatment records for illegal drug use and alcohol abuse may be disclosed without the consent of the employee only:
 - (a) to medical personnel to the extent necessary to meet a genuine medical emergency, or for assessment for appropriate treatment;
 - (b) to qualified personnel for conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify any individual employee in any report of such research, audit, or evaluation, or otherwise disclose employee identities in any manner; and/or,
 - (c) when authorized by an appropriate court order granted after application showing good cause.
 - (2) Any other disclosure may be made only with the written consent of the employee. Disclosure without such consent is strictly prohibited. Such consensual disclosure may be made for verification of treatment or a general evaluation of treatment progress.
3. RECORDS CONCERNING EBTs AND BATs. The breath testing contractor shall maintain records of the inspection, maintenance, and calibration of EBTs, compliance with the manufacturer's QAP, and records of the training and proficiency of BATs.
- a. Three-year records. The following records shall be maintained for three years:
 - (1) records of the inspection and maintenance of each EBT used in employee or applicant testing;
 - (2) documentation of the contractor's compliance with the QAP of the manufacturer of each EBT it uses for alcohol testing of DOT employees and applicants; and,

- (3) records of the training and proficiency testing of each BAT used in testing of DOT employees and applicants.
- b. Five-year records. Records pertaining to the calibration of each EBT used in alcohol testing, including records of the results of external calibration checks, shall be maintained for five years.
- c. Employee access. Records maintained under this provision shall be disclosed upon the request of any DOT employee or applicant who has been tested to the extent any such record relates to a test which the employee or applicant has

CHAPTER IX

DISCIPLINARY ACTION

1. VIOLATION OF PROHIBITED CONDUCT. The Department is committed to its policy of maintaining a drug- and alcohol-free workplace. Disciplinary action for prohibited drug- and alcohol-related misconduct shall be taken under each of the circumstances described below.
 - a. On-duty use or possession of illegal drugs. The agency shall initiate action to remove a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of on-duty use or possession of illegal drugs.
 - b. Drug trafficking. The agency shall initiate action to remove a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, where it has been determined that the employee has engaged in illegal drug trafficking; e.g., sale, manufacture, growth, distribution, or transportation.
 - c. On-duty use of alcohol. The agency shall initiate action to remove a covered employee from Federal service, or may initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of any on-duty use of alcohol.
 - d. Off-duty use of illegal drugs. The agency shall initiate action to remove a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, in the case of off-duty use of illegal drugs as determined by a verified positive drug-test conducted under the Department's program. On the first determination of this violation, the removal action or other discipline, in case of an employee in a non-TDP, shall be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter VII, Rehabilitation).
 - e. Alcohol misuse concentration. The agency shall initiate action to remove a covered employee from Federal service in the case of off-duty misuse of alcohol as measured by an alcohol concentration of 0.04 or greater on a confirmation test (*except as noted in paragraphs f. and g. below*). On the first determination of this violation, the removal action shall be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter VII, Rehabilitation).
 - f. Abstinence period failures. The agency shall initiate action to remove a covered employee from Federal service who fails to maintain abstinence from alcohol during a required period. An abstinence period shall include either the pre-duty or post-accident period of restriction for alcohol use. On the first determination of this violation, the removal action shall be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter VII, Rehabilitation). *Abstinence period failures also include those*

employees who are in the follow-up testing program and are subject to abstinence requirements.

- g. **Employees in the Follow-up Testing Program with Abstinence Requirements.** *Employees in the follow-up testing program have an abstinence requirement from all substances including alcohol. If the result of a screening test is 0.01 or greater, the employee will be required to take an alcohol confirmation test. If a confirmation test is greater than or equal to 0.01 and less than 0.02, the employee will be referred to EAP and an FAA Flight Surgeon for an evaluation to determine whether or not the employee has violated the abstinence requirement. A confirmation test result of 0.02 or greater is considered a violation of the abstinence agreement.*
- h. **Repeated misconduct.** The agency shall initiate action to remove an employee from Federal service who has a second violation of conduct prohibited by this order. After a first determination of an off-duty drug or alcohol violation, a verified positive drug-test result, or a confirmed alcohol concentration of 0.04 or greater, or a failure to maintain a required abstinence shall qualify as repeated misconduct.
- i. **Refusal to comply with procedures during collection or testing.** The agency shall initiate action to remove a covered employee from Federal service, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, who fails to report to the designated testing site, refuses to provide a urine specimen or an adequate amount of breath for testing, attempts to alter, adulterate, or substitute the specimen provided, or engages in conduct that clearly obstructs the collection or testing process.
- j. **Refusal to enter or successfully complete a substance abuse rehabilitation program.** The agency shall initiate action to remove a covered employee, or initiate appropriate disciplinary action against an employee in a non-TDP, up to and including removal, who refuses to enter or fails to successfully complete counseling or a rehabilitation program under the EAP. A determination that the employee has failed rehabilitation, may be made on the basis of off-duty drug or alcohol-related misconduct, or the employee not adhering to the terms of the rehabilitation plan.
2. **OTHER ALCOHOL-RELATED CONDUCT.** The Department must depend on its workforce to be able and available when scheduled for duty. Testing not-ready-for-duty is inconsistent with this requirement. Disciplinary action for other alcohol-related conduct (*i.e.*, testing not-ready-for-duty) is set forth below and shall be taken under the described circumstances.
- k. **Not ready for duty.** A covered employee subject to alcohol testing must be removed from safety-sensitive functions if the result of any agency alcohol test produces an alcohol concentration equal to or greater than 0.02 but less than 0.04 on a confirmation test (*except as noted in paragraph g. above*). Any employee testing in a not-ready-for-duty status shall not perform his or her safety-sensitive functions for the remainder of the shift. This employee

shall not return to his or her safety-sensitive functions until the start of his or her next regularly scheduled shift, provided that shift occurs no sooner than eight hours after the alcohol test was conducted.

- i. First occurrence. An employee who engages in this misconduct shall be placed in non-safety-sensitive work for the remainder of the shift. In addition, the employee shall be issued a letter of warning which includes an explanation of the consequences of any subsequent determination of a not-ready-for-duty status.
 - ii. Subsequent occurrence. An employee who engages in this misconduct (*i.e.*, repeated occurrences of a not-ready-for-duty status) shall be dismissed from the worksite and shall be charged Absent Without Leave (AWOL) for the remainder of the shift, since the employee, although physically present at the worksite, is not able and available for his or her assigned duties. Appropriate disciplinary action shall be initiated as necessary.
3. DISCIPLINARY PROCEDURES. Any disciplinary action under this chapter shall be taken in accordance with law, regulation *and collective bargaining agreement*.

CATEGORIZATION OF EMPLOYEES FOR TESTING

Testing Designated Positions (TDPs). - Safety/Security Critical - These are positions characterized as critical safety or security responsibilities, related to the mission of the Department. The job functions associated with these positions have a direct and immediate impact on public health and safety, the protection of life and property, law enforcement, or national security. These positions require the highest degree of trust and confidence. Positions occupied by individuals which require the possession of a security clearance are included as TDPs regardless of their organization or occupation.

Drug-only TDPs. E.O. 12564 requires drug testing of safety- and security-sensitive positions in DOT.

Drug and alcohol TDPs. The Act mandates drug and alcohol testing for FAA employees whose duties include responsibility for safety-sensitive functions and for any other DOT employee whose position requires a CDL. The Act does not mandate drug and alcohol testing for other safety-sensitive employees outside FAA, or for any security-sensitive employees within DOT. Since the requirement for a CDL is not specific to a particular occupational series, this appendix does not identify every position in DOT which requires this licensure. The Operating Administrations must maintain the CDL employee listing and coordinate updates with the DDO.

Non-TDPs. All positions that are not designated as TDPs are designated as non-TDPs

Position Coverage By Occupation. The categorization of all other DOT positions is accomplished within the context of their departmental element and their job duties within that organization. To assure overall consistency, category determinations for including or excluding positions as either a TDP or a non-TDP will be made by the Assistant Secretary for Administration in consultation with the departmental organization. References to a given job, occupational series or family include all supervisors and employees in the occupation regardless of pay plan, unless otherwise noted.

Justification Statements for TDPs. With the exception of positions requiring a CDL, each determination by the departmental element to include a particular job occupation as a TDP shall be supported by a justification statement clearly describing why the job is safety/security critical and specifying the adverse consequences that would likely occur if an incumbent in that position were to use illegal drugs, or where appropriate, misuse alcohol. A current justification statement for each job or occupation included

as a TDP shall remain on file with the Assistant Secretary for Administration, who reserves the right to review each justification statement to assure overall consistency with the DOT drug program and among varying occupations throughout the Department and make appropriate recommendations.

TDPs BY DOT OPERATING ADMINISTRATION

Office of the Secretary--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Motor Vehicle Dispatcher	GS-2151	x	x ^a
Motor Vehicle Operators	WG-5703	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Office of Inspector General--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Highway Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Transportation Equipment Operation Family	WG-57XX	x	x ^a

a Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Motor Carrier Administration -TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Highway Safety Specialists	GS-2125 ^a	x	
Motor Carrier Safety Specialists	GS-2123 ^a	x	

a Includes only those GS-2123 and GS-2125 positions with day-to-day responsibilities for field operations of inspection and enforcement.

Federal Aviation Administration – TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Misc Titles for Program Manager/Director			
of Flight Inspection Programs	FG/FV-301/340 b		x
Program Support Specialists	FG/FV-301 c		x
Computer Operators/Specialists (in Airway Facilities in ARTCCs)	FG/FV-332/334		x
Engineering Technicians (in Airway Facilities)	FG/FV-802 c		x
Aerospace Engineering Technicians Electronics/Systems Engineers	FG/FV-802 b		x
(in Airway Facilities) Electronics Technicians	FG/FV-855 b		x
(in Airway Facilities) Electronics Technicians	FG/FV-856 e		x
Electronics Technicians	FG/FV-856 b		x
Civil Aviation Security Specialists	FG/FV-1801 f		x
Criminal Investigators	FG/FV-1811 f		x
Aviation Safety Inspectors	FG/FV-1825 f		x
Quality Assurance Specialist (Aerospace & Electrical)	FG/FV-1910 b		x
Airway Transportation System Specialists (in Airway Facilities)	FG/FV-2101 e		x
Airway Transportation System Specialists (in Airway Facilities)	FG/FV-2101 c		x
Air Traffic Control Specialists	FG/FV-2152 f		x
Air Traffic Assistants	FG/FV-2154 g		x
Airspace Systems Inspection/ Flight Test Pilots	FG/FV-2181		x
Aviation Technical System Specialist Maintenance Mechanics	FG/FV-2186 b		x
(in Airway Facilities) Transportation Equipment	WG-4749 h		x
Operation Family	WG-57XX	x	x ^a

- a Positions requiring CDL's are subject to both drug and alcohol, testing.
- b Only those positions in TOW, Technical Operations Service Unit (Aviation systems Standards), assigned to the Aeronautical Center that have certification responsibilities and their first level supervisors, except for those positions associated with the former AOS-200, National Airway Systems Engineering Division.
- c Only those individuals assigned certification responsibilities and their first level supervisors.
- d Except FG/FV-802 employees assigned to Field Maintenance Party staff and Facilities and Equipment Staff

- e Except those FG/FV-856 and FG/FV-2101 employees assigned Facilities and Equipment staff and regional office staff.
- f Only FG/FV-1801, FG/FV-1811, FG/FV-1825, and FG/FV-2152 employees who to take periodic physical exams to retain medical clearances.
- g Except Traffic Assistant (Simulation), FG/FV-2154, positions at the Technical Center, Atlantic City, NJ.
- h Except those individuals who are not targeted for safety related positions (will never certify equipment) and/or are assigned to Field Maintenance Party staff positions.

Federal Railroad Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Program Manager (HQ – RRS)	ES-340	x	
Engineers (HQ-RRS)	ES-801	x	
Railroad Safety Series (HQ-RRS)	ES-2121	x	
Supervisory Transportation Specialist (RRS)	GS-2101 ^a	x	
Transportation Specialist (HQ – RRS)	GS-2101 ^a	x	
Railroad Safety Series (Field – RRS)	GS-2121 ^c	x	
Regional Administrator (Field – RRS)	GS-2101	x	
Deputy Regional Administrator (Field – RRS)	GS-2101	x	
Safety-related Specialist and Manager Positions (Field – RRS)	GS-2101 ^b	x	

- a** Office of Safety (RRS), Immediate Office of the Associate Administrator only.
- b** Includes those safety-related positions with day-to-day responsibilities for field operations, inspections and/or enforcement.
- c** Subject to random drug testing at the GS-9 level and above

National Highway Traffic Safety Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Auto Enforcement Investigators	GS-1801	x	
Criminal Investigators	GS-1811	x	
Motor Vehicle Operators	WG-5703	x	x ^a

- a** Positions requiring CDL's are subject to both drug and alcohol testing.

Federal Transit Administration-TDPs

	<u>Drug Only</u>	<u>Drug & Alcohol</u>
Motor Vehicle Operators	WG-5703	x
x^a		

- a** Positions requiring CDL's are subject to both drug and alcohol testing.

Saint Lawrence Seaway Development Corporation-TDPs

	<u>Drug Only</u>	<u>Drug & Alcohol</u>
Lock and Dam Operators	WG-5426 ^b	x
Vessel Traffic Controllers	GS-2150 ^b	x
Transportation Equipment Operation Family	WG-57XX ^b	x
x^a		

- a** Positions requiring CDL's are subject to both drug and alcohol testing.
b Employees in other series who periodically perform the duties of Vessel Traffic Controllers, Lock and Dam Operators and Heavy Transportation or Marine Equipment Operators are also included as TDPs.

Maritime Administration-TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Engineers (Watchstander)	WM-5352	x	
Marine General Utility Maintenance Mechanics (Deck/Engine)	WM-5352	x	
Transportation Equipment Operation Family	WG-57XX	x	x^a

- a** Positions requiring CDL's are subject to both drug and alcohol testing.

Pipeline and Hazardous Materials Safety Administration -TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
General Engineers (Pipeline)	GS-801 ^a	x	
Petroleum Engineers	GS-881 ^a	x	
Transportation Specialists	GS-2101 ^a	x	

- a** Includes only those GS-801, GS-881, and GS-2101 positions with responsibilities for field operations of inspection and enforcement.

DEPARTMENT OF HOMELAND SECURITY (DHS) TDPs

United States Coast Guard--TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Firefighters	GS-0081	x	x ^a
Search and Rescue Specialists/Controllers	GS-0301	x	
Medical Officer	GS-0602 ^b	x	
Nurses	GS-0610	x	
Marine Science Technician	GS-1311	x	
Criminal Investigators	GS-1811	x	
Vessel Traffic Controllers	GS-2150	x	
Marine Traffic Controllers (Pilot)	GS-2150	x	
Electronics Mechanics	WG-2604	x	
Integrated Systems Mechanic	WG-2610	x	
Aircraft Electricians	WG-2892 ^c	x	
Instrument Mechanics	WG-3359 ^c	x	
Metals Inspectors	WG-3801 ^c	x	
Sheet Metal Mechanics (Aircraft)	WG-3806 ^c	x	
Sheet Metal Workers	WG-3806 ^c	x	
Shipwright Foremen	WS-5220	x	
Transportation Equipment Operation Family	WG-57XX	x	x ^a
Aircraft Oxygen Equipment Mechanics	WG-8201 ^c	x	
Aircraft Pneudraulic Systems Mechanics	WG-8268 ^c	x	
Aircraft Engine Mechanics	WG-8602 ^c	x	
Aircraft Overhaul Leader/Supervisor	WI/WS-8801	x	
Aircraft Mechanical Parts Repairers	WG-8840 ^c	x	
Aircraft Mechanics	WG-8852 ^c	x	
Deckhands	WM-9901	x	
Master Pilots, Ferryboat	WM-9902	x	
Chiefs, Engineers & Ferryboat	WM-9931	x	
Oilers, Ferryboat & Diesel	WM-9961	x	

Personnel with "competent person" collateral duties at the Coast Guard Yard, Curtis Bay, Maryland, are included as a TDP. These individuals have responsibility for certifying areas as "safe" for performing work.

a Positions requiring CDL's are subject to both drug and alcohol testing.

b Coast Guard Training Center, Petaluma, CA

- c Only those individuals located at the Aircraft Repair and Supply Center.

Transportation Security Administration – TDPs

		<u>Drug Only</u>	<u>Drug & Alcohol</u>
Transportation Security			
Screeners	SV-0019		x a
Intelligence Operations			
Specialist	SV-0132	x	
Stakeholder Liaisons	SV-0301		x
Federal Security Directors	SV-0340	x b	
Industrial Engineers	SV-0896		x
Civil Aviation Security			
Specialists	SV-1801		x c
Criminal Investigators	SV-1811		x d
Aviation Safety Inspectors	SV-1825		x
Transportation Specialists	SV-2101		x
Transportation Assistants	SV-2102		x
Transportation Equipment			
Operation Family	SV-57XX		x e

a Includes Lead and Supervisory Transportation Security Screeners.

b Includes executive Federal Security Directors and Deputy Federal Security Directors.

c Includes Supervisory and non-supervisory Civil Aviation Security Specialists, Federal

Air Marshals, Transportation Security Specialists, Law Enforcement Officers, and, all

employees in this series employed in such positions as Screening Manager, Assistant

Federal Security Director for Screening, and Scheduling Operations Officer.

d Includes Supervisory Criminal Investigator (Assistant Federal Security Director for

Law Enforcement)

e Positions requiring CDL's are subject to both drug and alcohol testing.

Note: All employees in positions requiring a top secret clearance are automatically covered for drug testing. All employees in positions not listed or not included in the foot notes above (a-e) on this page and whose duties include responsibilities for safety-sensitive functions, i.e. functions having a

direct and immediate impact on the safety of members of the public or other Federal employees, are covered for drug testing.
