NATIONAL TRANSPORTATION SAFETY BOARD
Investigative Hearing
UPS flight 2976
Boeing MD-11F, N259UP
Crash During Takeoff in Louisville, Kentucky
November 4, 2025

EXHIBIT

18D

Medical Specialist's Factual Report Attachment 3 – DOT Order 3910.1D, Drug and Alcohol-Free Departmental Workplace Program

(94 Pages)

U.S. DEPARTMENT OF TRANSPORTATION
Office of the Secretary of Transportation
Departmental Office of Human Resource Management
Workforce Quality Division
Substance Abuse Awareness and Testing Office
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DOT ORDER 3910.1D

DRUG AND ALCOHOL-FREE DEPARTMENTAL WORKPLACE PROGRAM

Effective: October 1, 2010
Page Revisons: 12/01/2013 and 01/30/2018
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CHAPTER I

GENERAL PROGRAM PROVISIONS

1. DEFINITIONS. For the purposes of this order the following definitions apply:

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

Air blank. A reading by an evidential breath testing device (EBT) of ambient air containing no alcohol.

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

Alcohol concentration (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 testing device.

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.

Alcohol use. The consumption of any beverage, mixture, or preparation, including any prescription or non-prescription medication, containing alcohol.

Breath Alcohol Technician (BAT). A person who instructs and assists individuals in the alcohol testing process and operates the EBT.

Canceled test.

(1) *Drug Testing.* The result reported by the Medical Review Officer (MRO) when a specimen has been reported to the MRO as invalid result (and the donor has no legitimate explanation) or rejected for testing, when a split specimen fails to reconfirm, or when the MRO determines that a fatal flaw or unrecovered correctable error exists in the forensic records, or which this Order otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test. A retest is only authorized if a negative test is required (i.e., a return-to-duty, follow-up tests and pre-employment tests).

(2) *Alcohol Testing.* An alcohol test that has a problem identified that cannot be or has not been corrected, or which this Order otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test. A retest is only authorized if a negative test is required (i.e., a return-to-duty, follow-up tests and pre-employment tests).

Chain of Custody Document. A form used to document the security of the specimen and all aliquots of a specimen. The document, which may account for an individual specimen, aliquot, or batch, must include the names and signatures of all individuals who handled the specimen or aliquots and the date and purpose of the access.

Collector. A person who instructs and assists donors at a collection site and receives the specimen provided by the donor.

Confirmation test.

(1) *Drug confirmation test*. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

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

a. *Confirmed alcohol positive test* – a confirmation alcohol measurement of 0.04 or greater.

b. *Not-ready-for-duty* – a confirmation alcohol measurement of greater than or equal to 0.02 and less than or equal to 0.039 for pre-employment, random, post-accident and/or post incident and reasonable suspicion tests.

c. *Return-to-duty or follow-up alcohol test* – a confirmation alcohol measurement of 0.02 or greater is considered noncompliance with the Treatment/Rehabilitation Plan. A level of 0.01 to 0.02 requires a medical review to determine non-compliance.

Cutoff. The decision point or value used to establish and report a specimen as negative, positive, adulterated, substituted, or invalid.

Departmental Medical Review Officer (DMRO). A licensed physician (Medical Doctor or Doctor of Osteopathy) responsible for receiving the laboratory results generated by the Department's drug testing program. The DMRO is appointed by the DOT/OST Assistant Secretary for Administration and may be on the staff of another Operating Administration) OA. See Chapter VII for DMRO responsibilities. For purposes of this Order when the term MRO is used, it refers to either the DMRO or Field Medical Review Officer (FMRO).

Dilute specimen. A urine specimen with creatinine and specific gravity values that are lower than expected but are still within the physiologically producible ranges of human urine.

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).

Field Medical Review Officer (FMRO). In the FAA, physicians in the field are designated as FMRO. FMROs may perform many of the functions of the DMRO within his or her assigned geographical area of responsibility. See Chapter VII for FMRO responsibilities.

Illegal drug use. The use of substances prohibited by law and as described in this Order, including the misuse of prescription or non-prescription drugs, and the use of prescriptions prescribed to another individual. The use of medical marijuana, even if obtained by prescription, is strictly prohibited under this Order.

Incident. An event as defined by OA Orders or Regulations, including, but not limited to, operational deviations, operational errors, runway incursions, or significant events involving a prominent person, or an action that has or may become newsworthy.

Invalid result. The result reported by an HHS-certified laboratory in accordance with the criteria established in Section 3.8 of the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

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

Performing a safety-sensitive and or security-sensitive function. An employee is considered to be performing a safety- and/or security-sensitive function during any period in which he or she is actually performing, ready to perform, immediately available to perform, just completed performing such functions, or until released from a post-accident or post-incident period or otherwise are in a paid duty status.

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

Reconfirmed. The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Refusal to submit to testing. An action on the part of an employee that has resulted in a failure to successfully complete a drug or alcohol test without a valid medical explanation.

Rejected for Testing. The result reported by an HHS-Certified laboratory when no tests are performed for a specimen because of a fatal flaw or an unrecovered correctable error.

Screening test (also called an 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.

Specimen. Fluid or material collected from a donor at the collection site for the purpose of a drug test. Urine is the only specimen allowed for under the HHS Mandatory Guidelines.

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

Substance Abuse Provider (SAP). Individuals who are authorized to perform SAP functions include:

(1) a licensed physician (Medical Doctor or Doctor of Osteopathy, *e.g.*, an FAA Flight Surgeon);

(2) a licensed or certified psychologist, social worker;

(3) state-licensed or certified marriage and family therapist;

(4) employee assistance professional with clinical credentials; or,

(5) addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC); or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC); or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

The above must have knowledge of, and clinical experience in, the diagnosis and treatment of drug- and alcohol-related disorders.

Substituted specimen. A specimen that has been submitted in place of the donor's urine, as evidenced by creatinine and specific gravity values that are outside the physiologically producible ranges of human urine.

Testing Designated Position (TDP). A position with critical safety or security-sensitive responsibilities that is categorized as a safety- or security-sensitive position as provided in Appendix A. Specific testing authority follows:

(1) Drug-only testing designated positions (TDPs). Executive Order (E.O.) 12564, "Drug-Free Federal Workplace," September 15, 1986, requires drug testing of safety- and security-sensitive positions throughout all Operating Administrations (OAs) within DOT.

(2) Drug and alcohol TDPs. The Omnibus Transportation Employee Testing Act of 1991 (the Omnibus Act), Pub.L. No. 102-143, Title V, 105 Stat. 952, requires drug and alcohol testing for FAA employees whose duties include responsibility for safety-sensitive functions and for any DOT employee whose position requires a commercial driver's license (CDL). The Omnibus 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. Position functions are not categorized as safety- or security-sensitive. E.O. 12564 permits drug testing of employees in positions other than safety- and security-sensitive positions throughout the Federal government

TDP determination. E.O. 12564 defines as an "employee in a sensitive position as:

(1) An employee in a position that an agency head designates as Special Sensitive, Critical-Sensitive, or Non-critical Sensitive.

(2) An employee who has been granted access to classified information or may be granted access to classified information (confidential, secret, top secret).

(3) Employees serving under Presidential Appointments.
(4) Law enforcement officers as defined in Title 5 U.S.C. 8331(20).

(5) Other positions that the agency determines involve a high degree of public trust and confidence, such as law enforcement, national security, the protection of life and property, public health or safety.

Verified positive drug test. A confirmed drug test result from a HHS certified laboratory that has undergone review and final determination by the DMRO and/or FMRO. The DMRO must concur with the FMRO final determination prior to release of the result.

2. RESPONSIBILITIES.

a. Assistant Secretary for Administration. The Assistant Secretary for Administration is responsible for:

(1) ensuring the consistent implementation of this Order throughout the Department of Transportation (DOT);

(2) establishing necessary procedures to carry out this Order; and,

(3) designating the DOT 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 organization and appointing Drug Program Coordinators (DPC) and Employee Assistance Program (EAP) managers or coordinators.

c. Departmental Drug Office (DDO). The DDO is responsible for policy development and implementation and management of the drug and alcohol testing and awareness programs within DOT. The DDO will:

(1) serve as principal agent in administering all contracting functions necessary to ensure effective and efficient operation of the drug and alcohol testing program (this includes obtaining statements from collectors and BATS);

(2) conduct announced or unannounced site visits to ensure adherence to DOT drug and alcohol testing policy and procedures;

(3) ensure that records related to drug and alcohol test results are handled in a confidential manner, consistent with prevailing and other legal requirements;

(4) assist the MRO in performing administrative record keeping functions;

(5) monitor the current or pending status of an employee who has a verified positive drug test result or has violated confirmed alcohol concentration of 0.04 or higher, and advise the MRO, SAP, or EAP manager or coordinator, as appropriate;

(6) monitor the current or pending status of return-to-duty and/or follow-up tests who has a confirmed alcohol concentration of 0.01 to ensure appropriate action is taken;

(7) ensure OAs have conducted supervisory training program to explain the requirements of this Order;

(8) maintain appropriate statistical records at the Departmental level (OAs should maintain their own statistics), including numbers of employees and applicants tested and test results, and assure that such records are free from personal identifying information, and

(9) provide training/briefings to OA unions and/or DPCs relating to new drug and/or alcohol testing requirements.

d. Departmental Medical Review Officer (DMRO). The DMRO, in accordance with HHS criteria, is a licensed physician (Medical Doctor or Doctor of Osteopathy), responsible for receiving laboratory results generated by the Department's drug testing program. The DMRO has knowledge of substance abuse disorders and has 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. (See Chapter VII, Medical Review Officer). As of October 1, 2011 all DOT non-negative drug cases should be handled by a MRO who is certified by a HHS approved training organization.

e. Drug Program Coordinators (DPC). The Drug Program Coordinators 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 do not arrange for collection contractor statements, this is a function performed by the DDO. All urine collection contractor or BAT testing issues must be brought to the immediate attention of the DDO for resolution. DPCs:

(1) serve as the principal contact with the urine collection and alcohol testing contractor(s), including Aviation Medical Examiners (AME), to ensure the effective operation of the drug and alcohol program within their OA or FAA regional office. DPCs must utilize collection contractors and BATs that are assigned to their regions and are not permitted to arrange for other collection or alcohol testing teams without the approval of the DDO;

(2) ensure supervisors and employees are notified of random testing;

(3) ensure that applicants for TDPs 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) serve as the testing site coordinator, as necessary;

(6) receive notification from the DMRO, FMRO or DDO of verified positive and/or substituted or adulterated drug test results consistent with confidentiality procedures;

(7) notify appropriate management officials and employees of verified positive and/or substituted or adulterated drug test results, or alcohol misuse concentrations consistent with confidentiality procedures;

(8) 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 training participation for the DDO is established;

b. films, pamphlets and promotional materials are publicized and disseminated to all employees;

c. resources required to implement all applicable parts of testing and awareness program are identified to the OA; and

d. conduct site coordinator training/refresher training at all facilities/locations at least yearly as resources allow;

(9) develop and maintain OA drug and/or alcohol testing statistical reports concerning drug and/or alcohol testing numbers, follow-up program, supervisory and employee training and education; and

(10) conduct site visits of facilities (HQ and/or field offices) where random testing is occurring to ensure management is in compliance with this Order. Any collection contractor or breath alcohol testing issues identified during the site visit will be reported to and resolved by the DDO. Site audits are not limited to DPCs and may include DDO staff and management officials of OAs where testing is being performed.

f. Employee Assistance Program (EAP) Managers or Coordinators. The Employee Assistance Program Managers or Coordinators shall be designated by the appropriate management official to participate with the MRO, SAP and EAP contractor personnel in evaluation and diagnosis under the Diagnostic Statistical Manual IV-TR (and subsequent editions), counseling, and referral of employees. All progress reports must contain sufficient information which allows the MRO to:

(1) determine whether an individual is ready to return to his or her safety- and/or security-sensitive position. (Note: Employees in security-sensitive positions cannot be returned to duty without the approval of their security servicing organization.) EAP managers or coordinators will:

(2) assist the DPC with substance abuse training provided to supervisors and with other drug- and alcohol-free workplace program training and awareness activities, as applicable;

(3) participate with the DMRO, 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;

(4) assist employees, as required, with substance abuse information and referral to appropriate outside treatment programs;

(5) obtain progress reports and discharge summaries from treatment facilities and EAP counselors and assist the DMRO, or SAP in evaluating treatment efforts and employee progress and compliance;

(6) ensure that EAP counselors, SAPs, and treatment facilities are aware of the nature of the safety- and security-sensitive work of DOT to assure return-to-duty recommendations are appropriately made; and

(7) assist managers and supervisors in dealing with employees found to be in violation of this Order or suspected of having substance abuse problems.

g. OA Human Resource (HR) Offices. The HR Offices will ensure all vacancy announcements for TDPs state that prior to being selected for the position, the individual must pass a drug and/or alcohol test. The vacancy announcement should also state the position is subject to random drug and/or alcohol testing. If the applicant is conditionally selected for the position, he or she must pass a drug and/or alcohol test. Prior to offering a TDP to an applicant, the HR office must have received confirmation of a negative drug test result from the DPC. This information must be provided without using the individual's personally identifiable information, except via secure fax, electronically or in person. Any information provided electronically must be encrypted. See Chapter III-10, paragraph 8 for additional HR information regarding applicants.

h. Site Coordinator (SC). The Site Coordinator is designated by an appropriate management official to assist the collector or BAT on the actual day of collection or testing at locations where the DPC is not present. The SC will:

(1) coordinate the scheduling and testing of employees selected for testing with the collector or BAT, appropriate supervisor, and DPC;

(2) ensure employees are selected from the random test lists in accordance with the procedures outlined in the DOT Drug and Alcohol Drug Testing Guide;

(3) assist the collector or BAT with logistical arrangements;

(4) convey the results of alcohol tests to the supervisor of the employee and to the DPC; and

(5) convey any problems that occurred during testing to the DPC. Problems concerning collectors or BATs must be reported to the DDO for resolution.

i. Supervisor. The supervisor of an employee who has violated a drug or alcohol prohibition, or has engaged in other alcohol-related misconduct, as prescribed by this Order, shall:

(1) ensure the employee is not assigned safety-sensitive and/or security-sensitive duties;

(2) ensure that appropriate disciplinary action is initiated;

(3) cooperate with recommended rehabilitation efforts of the employee; and

(4) ensure adherence to all policies and procedures contained in this Order.

Failure of a supervisor/manager to adhere to these procedures will be documented in writing and provided to the DDO through appropriate chain of command. The supervisor/manager will be subject to OA disciplinary action for failure to adhere to policies and procedures contained in this Order.

j. Contractual Services. Urine collection, laboratory analysis and breath alcohol testing will be provided through contractors.

CHAPTER II

DRUG AND ALCOHOL AWARENESS

1. DRUG AND ALCOHOL AWARENESS. E.O. 12564 and the Omnibus Act require the Department to 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 in 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 must be initiated for violation of this Order pertaining to 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. protections afforded test results provided by the Privacy Act of 1974, as amended, 5 U.S.C. §552a and Section 503 of the Supplemental Appropriations Act, 1987, Pub.L. No. 100-71 assure that DOT does not improperly disseminate information derived from drug or alcohol tests; and

   i. the requirement and intent that OAs submit annual reports on the number of employees trained, dates and locations of training, and sources of training.

2. SUPERVISORY TRAINING. All supervisors, whether they supervise TDPs or not, must receive mandatory drug and alcohol awareness training. At least 60 minutes of this training must be on the physical, behavioral, speech, and performance indicators of probable illegal drug use and alcohol misuse. Training must also cover DOT and OA policies and procedures on substance abuse, including reasonable suspicion testing procedures, and the components of DOT's EAP, and supervisor's responsibilities to the affected employee. New supervisors must complete this training no later than one year after entering a supervisory position. OAs must maintain records of the names of the supervisors trained, the date of the training, and the training program content. An annual report of training activity must be submitted to the DDO by each OA by the end of each fiscal year.

a. Additional Training for Supervisors with employees that have a Commercial Drivers License (CDL). All supervisors of CDL holders are 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 training time totaling at least 120 minutes. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and illegal drug use.

b. Current supervisors must be provided training on any changes made to this Order and the DOT Drug and Alcohol Testing Guide within one year of the date of the changes. DPCs must maintain a record of this training to be reported to the DDO for inclusion in required annual reports.

3. EMPLOYEE EDUCATION. It is the responsibility of each OA to maintain a budget sufficient to cover costs associated with employee education and awareness materials. These materials must be made available to all employees explaining the requirements of the Department's drug and alcohol testing policies and procedures. The DPC must assure that these materials are distributed to each covered employee within their respective OA. DPCs should maintain records of when employees were given education and awareness materials for purposes of reporting to the DDO for inclusion in required annual reports. The DDO should be provided the number of employees who received the education and awareness.

4. EAP TRAINING. Supervisors have a key role in establishing and maintaining a drug- and alcohol-free workplace. EAPs may assist DPCs when providing supervisory training in recognizing, identifying, and addressing illegal drug use and alcohol misuse by employees. Where appropriate, union representatives must also be provided comparable training. Such supervisory EAP training must 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, DMRO, FMRO, DPC, SAP, supervisors, the personnel office, and EAP personnel; and

e. process of reintegrating employees into the workforce.

CHAPTER III

GENERAL TESTING OVERVIEW

1. POLICY. Section 3 of E.O. 12564 and sections 3 and 5 of the Omnibus Act provide authority for all drug or alcohol testing conducted by DOT or other entities operating under this Order. All TDPs must be determined in accordance with the definitions of section 7(d) of E.O. 12564 and sections 3(a) and 5(a)(1) of the Omnibus Act. Refer to the definitions (Chapter I.) section of this Order for information on TDP determinations. A list of TDPs is provided in Appendix A of this Order. An authorized management official, within the affected line of business, may add or delete TDPs as appropriate, subject to DOT approval. Requests to add or remove positions from/to TDPs must be submitted in writing to the DDO through the OA. The DDO will review the OA documentation to ensure it meets necessary criteria. If the OA supplied documentation meets requirements, the DDO will submit the request to HHS who will review and forward to the Department of Justice (DOJ) for review and approval. The request must include written justification(s) and a copy of the position description(s). The authority to drug and/or alcohol test Federal employees is as follows:

   a. All federal employees are subject to reasonable suspicion, post-accident and follow-up drug testing under E.O. 12564.

   b. Federal employees in safety- or security-sensitive positions (i.e., TDPs) are subject to drug testing only under E.O. 12564

   c. Federal employees in the Federal Aviation Administration (FAA) who are in safety-sensitive TDPs are subject to drug and alcohol testing under the Omnibus Act. This includes employees on detail or assigned to perform other duties but still occupy a TDP. Air Traffic Control Specialists (ATCS) who are medically restricted or incapacitated who have requested and are assigned administrative duties are still subject to drug and alcohol testing.

   d. Federal employees whose positions require a CDL are subject to drug and alcohol testing under the Omnibus Act and this Order for purposes of employment actions. CDL holders are also subject to drug and alcohol testing under the Federal Motor Carrier Safety Administration (FMCSA) regulated industry testing rules 49 CFR Part 382 and 49 CFR Part 40 for purposes of industry qualification standards. See Chapter V, CDL Testing, for additional information.

2. GRANTING LEAVE WHEN TESTING IS IN PROGRESS. Leave shall not be granted to employees prior to completing their drug or alcohol test once the collectors/BATS arrive at the facility for testing. If an employee needs to take leave and they have been identified for testing he/she must be tested prior to leaving the facility.

The exception to this is emergency leave (i.e., family or medical emergency), which may be granted prior to receiving documentation concerning the emergency. The reason for leave must be documented using the appropriate leave request forms and the supervisor is responsible for verifying the validity of the employee's leave request. Failure to provide acceptable documentation to verify a bona fide emergency will result in the charge of absent without leave (AWOL) and a refusal to submit to testing.

3. REASONS FOR TESTING TDPs. All employees in TDPs are subject to the following reasons for testing.

   a. Random

   b. Pre-employment/pre-appointment

   c. Reasonable suspicion

   d. Post-accident or post-incident

   e. Return-to-duty/follow-up

   All applicants tentatively selected for TDPs are subject to pre-employment/pre-appointment testing as appropriate for the position.

4. REASONS FOR TESTING NON-TDPs. Employees in non-TDPs are subject to post-accident, reasonable suspicion, and follow-up drug testing. Employees in non-TDPs are not subject to alcohol testing requirements.

   EXCEPTION. If an employee in a non-TDP is being considered for a position classified as a TDP (including security-sensitive positions), he or she is subject to pre-appointment testing.

   Voluntary testing is also provided under this Order, but is available only to non-TDPs, and is limited to drug testing. Employees in non-TDPs cannot volunteer for alcohol testing.

5. ADMINISTRATIVE TESTING ERRORS. Considering the volume and variety of testing in the DOT Federal employee drug and alcohol testing program, there is the possibility of employees being tested in error. This may occur through working the test list or the employee is no longer in a TDP, but the personnel action to move the employee into a non-TDP occurred after the random selection process was completed and test lists were distributed for testing. If an employee is tested as a result of an administrative error, and the outcome of the testing event is a verified positive, substituted and/or adulterated result, appropriate action must be taken consistent with the DOT Drug- and Alcohol-Free Workplace Program and the employee tested in error is subject to the requirements contained in this Order.

6. DESCRIPTION OF REASONS FOR TESTING. The following provides a description of each reason for testing 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. All employees in TDPs shall have an equal statistical chance of being selected for testing within a specified timeframe. Random testing is unannounced and could occur on any workday. Random testing will occur during any period the employee is actually performing, ready to perform, immediately available to perform, just completed performing his or her safety- or security-sensitive functions, or are otherwise in a paid duty status. At the time of selection, the employee, as determined by his or her TDP, will be subject to testing for drugs, or drugs and/or alcohol, as appropriate.

b. Pre-employment (PE) testing. All applicants tentatively selected for TDPs are subject to PE testing for drugs, or drugs and alcohol, as appropriate. All applicants with a verified positive, substituted and/or adulterated drug test result and/or an alcohol concentration measuring 0.02 or greater on a confirmation test must be refused employment. PE test must be repeated if an individual is not hired within six months of the initial negative test result.

c. Reapplication. If an applicant failed a drug and/or alcohol PE test, they may reapply for other recruitment announcements for TDPs. The applicant must provide proof of successful completion of a recognized substance abuse treatment program, including successful completion of at least six follow-up drug and/or alcohol tests, conducted over a period of one year and under direct observation. They must also demonstrate continuous sobriety for 2 years prior to reconsideration of employment if otherwise qualified. Should insufficient proof, as outlined exist, the individual will not be considered for employment in a safety- or security-sensitive position within DOT. The DMRO or FMRO will determine whether the applicant has met the rehabilitation requirements.

d. Pre-appointment testing. Employees in non-TDP positions who have been tentatively selected for reassignment to a safety- or security-sensitive, will be subject to a drug pre-appointment test. A negative test result must be received prior to reassignment to the TDP. The DPC is responsible for notifying HR of a negative test result. If the result is positive the employee is referred to the DMRO or FMRO for verification or downgrade. If the result is verified as positive, the employee is subject to disciplinary actions as specified in Chapter XI.

e. Failure to appear for PE or Pre-appointment test. If an applicant fails to appear for a scheduled PE test or, an employee fails to appear for a scheduled Pre-appointment test, the OA HR office is responsible for determining if the reason for the no-show is valid prior to scheduling a make-up test. No more than 3 opportunities will be provided for make-up test. If an employee fails to appear for a scheduled pre-appointment test and the reason is not acceptable, the offer of reassignment to a TDP will be rescinded.

f. Official or unofficial details. TDP Employees who are officially or unofficially detailed to non-TDP duties are subject to pre-appointment testing prior to returning to their TDP if the detail is 90 days or more. An unofficial detail is considered to be any temporary assignment taken without the appropriate

personnel action. Employees in non-TDPs who are officially or unofficially detailed or assigned collateral TDP duties (90 days or more) are subject to pre-appointment testing prior to appointment into the position or performance of the assigned collateral duties.

g. Pre-employment/Pre-appointment alcohol testing. The Department currently does not conduct pre-employment/pre-appointment alcohol testing. However, the Department, at its discretion, may implement pre-employment/pre-appointment alcohol testing.

h. Reasonable suspicion testing. Reasonable suspicion testing may be required of any employee in a position which is designated for random testing when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. Employees in non-TDPs will only be tested for reasonable suspicion use of drugs when on-duty use is suspected.

General. Reasonable suspicion testing must 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 evidence and reasonable inferences determined by an appropriate management official. Reasonable suspicion does not require certainty; however, mere "hunches" are not sufficient to meet this standard. Reasonable suspicion testing must only be ordered by a management official after receiving the concurrence of appropriate legal counsel in the OA or at the Departmental level. The DDO must be notified within 2 hours of the decision to conduct a reasonable suspicion test. Within 24 hours of the decision, the OA will also provide a memorandum to the DDO stating the reason for the test and why the test was conducted or why the test was not conducted.

(1) Non-TDP reasonable suspicion testing. Reasonable suspicion drug 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 non-TDP must not be tested for alcohol under this Order.

(2) TDP reasonable suspicion drug testing. Reasonable suspicion drug testing may be required of any employee in a TDP when there is a reasonable suspicion that the employee uses illegal drugs whether on or off duty. The determination that reasonable suspicion exists to require an employee in a TDP to undergo a drug test must be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, and/or body odors of the employee, or information provided by either a reliable and credible source (independently corroborated) or by the employee's own admission.

(3) TDP reasonable suspicion alcohol testing. The determination that reasonable suspicion exists to require an appropriate TDP to undergo an alcohol test must be based on specific, contemporaneous, articulable

observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion alcohol testing may only be conducted on FAA employees in safety-sensitive positions and CDL holders.

(4) Alcohol-testing time limitation. If an alcohol test required under paragraph 6.h.(4) of this chapter is not conducted within 2 hours following a determination to perform a reasonable suspicion test, the OA must prepare a memorandum to the Assistant Secretary for Administration, routed through the DDO, stating the reasons the test was not promptly conducted. If the same alcohol test required is not conducted within 8 hours following the determination to perform a reasonable suspicion test, the OA must stop all attempts to conduct the alcohol test and must also state in the memorandum to the Assistant Secretary for Administration the reasons for not conducting the test. The memorandum must be provided to the DDO within five business days after the scheduled test.

(5) When an alcohol test is not possible. Despite the absence of a reasonable suspicion test required under paragraph 6.h.(4) of this chapter, an employee will not 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, body odors and/or performance indicators. The employee will 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. If the employee is scheduled to return to work in less than 8 hours, he/she will be placed in AWOL status until the 8 hours has elapsed.

(6) Disciplinary action without a test. This Order is not the exclusive authority for disciplinary action in alcohol-related misconduct situations. If alcohol testing is either not performed or the test results are negative, an OA or other entity may take any action that is otherwise appropriate based on specific objective evidence and reasonable inferences as indicated in this subparagraph.

(7) Documenting Reasonable Suspicion Tests. Documentation must be developed describing the circumstances which formed the basis that reasonable suspicion exists to authorize such testing. This documentation must be maintained in accordance with Privacy Act requirements and applicable agency procedures.

i. Post-Accident or Post-Incident Testing. Post-accident or post-incident testing may be required of any employee when management determines an accident or incident (as defined in Chapter I, Definitions) has occurred that qualifies according to the provisions in the subparagraphs below.

(1) Post-Accident or Post-Incident Testing Determination. Post-accident or post-incident testing must be conducted as soon as possible following an accident or incident that involves one or more of the following covered events:

- A fatality;
- Requiring medical treatment away from the accident site;
- Substantial damage[1] to aircraft or vehicles, and/or, substantial damage to other property; or,
- Other unsafe practices as defined by OA orders or regulations, such as operational errors, runway incursions, etc.

(2) Determining Who Will Be Post-Accident or Post-Incident Tested. Employees are subject to post-accident or post-incident testing when their performance at or about the time of an accident or incident provides reason to believe that such performance may have contributed to the accident or incident, or their job performance cannot be completely discounted as a contributing factor to the accident or incident.

(3) Post-Accident or Post-Incident Testing of Non-TDPs. Post-accident or post-incident testing for the use of illegal drugs can be required for an employee in a non-TDP. However, post-accident or post-incident testing for alcohol is not permitted of an employee in a non-TDP under this Order.

(4) Mandatory Steps for Post-Accident or Post-Incident Testing. Employees will not be subject to post-accident or post-incident testing until the steps

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[1] Substantial 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 puncture 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.
[2] 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 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.

outlined in this paragraph are satisfied. The determination to initiate post-accident or post-incident testing must be made as follows:

(a) First the appropriate OA will determine, based on a review of all facts reasonably available, whether the accident or incident meets the criteria listed in paragraphs 6.i.(1) and 6.i.(2) of this chapter.

(b) Second, the OA will take all practical steps to identify employees who must undergo post-accident or post-incident testing.

(c) Third, proper notification must be given to the employee in accordance with paragraph 7 of this chapter. Testing must be accomplished as soon as practicable after the accident or incident.

(5) Availability of Employee for Post-Accident or Post-Incident Testing. An employee who is subject to post-accident or post-incident testing must remain readily available for testing. If an employee obtains emergency treatment and is released prior to post-accident/post-incident testing, the accompanying manager must direct the employee to return to the testing site. Nothing in paragraph 6.i. of this chapter shall be construed to:

(a) require the delay of necessary medical attention for injured people following an accident;

(b) prohibit an employee from leaving the scene of an accident or incident for the period necessary to obtain assistance in responding to the accident; or

(c) to obtain necessary emergency medical care.

(6) Post-Accident or Post-Incident Drug Testing. Whenever possible, a drug test must be completed within four hours after the accident or incident. If a post-accident or post-incident drug test has not been completed within five calendar days following the accident or incident, the OA must stop all attempts to conduct a drug test.

(7) Post-Accident or Post-Incident Alcohol Testing. Whenever possible, an alcohol test must be completed within 2 hours following the accident or incident. If a required post-accident or post-incident alcohol test is not conducted within 8 hours following the accident or incident, the OA must cease all attempts to conduct an alcohol test.

(8) Post-Accident or Post-Incident Testing at an Employee's Residence. Drug and/or alcohol tests must be conducted at the employee's facility or a collection contractor office. Testing must not be conducted at an employee's residence. When the DDO receives notification that testing occurred at an employee's residence, the laboratory will be notified to cancel the test. If the specimen is processed prior to DDO notification, the test result will be canceled. If an alcohol test is conducted at an employee's residence, it will be canceled.

(9) Post-Accident or Post-Incident Testing at a Hospital. The Department generally does not collect post-accident urine specimens or conduct breath alcohol testing while the employee is at the hospital. It may only be done under the following conditions:

(a) the donor is aware of his or her surroundings, as determined by hospital staff;

(b) testing is conducted by DOT contractor personnel prior to the employee's release from the hospital;

(c) hospital medical personnel must not object to the specimen collection and/or breath alcohol testing procedure;

(d) a management official from the facility involved is present at the hospital for the collection/testing procedure;

(e) a collector of the same gender is present for the urine collection (or a same gender monitor is available), and

(f) split-specimen testing procedures are adhered to as specified in the DOT Drug and Alcohol Testing Guide.

If these conditions cannot be met, the collection must not occur until the donor returns to his or her workplace or is able to go to an authorized collection contractor facility.

(10) National Transportation Safety Board (NTSB). See Chapter X of this Order, Confidentiality, for requests for information from NTSB.

(11) Post-accident or post-incident reporting requirements.

(a) All OAs must notify the DDO within 2 hours of all drug and/or alcohol related incidences. Notification must be made via e-mail or telephone.

(b) The OA DPCs must submit a written post-accident/post-incident report to the DDO within 24 hours of the accident/incident. The report should include a time line of all notifications that occurred and any reasons why testing did not occur during the required timeframes. In the case of FAA, the report will be provided by FAA HQ Internal Substance Abuse Program to the DDO within 48 hours.

(c) If testing is not accomplished within the appropriate timeframe, a memorandum is to be prepared with an explanation as to why the test was not accomplished in a timely manner. The memorandum must be addressed to the Office of the Secretary, Assistant Secretary for Administration, and sent to the DDO. The memorandum must be provided to the DDO within 72 hours of the post-accident or post incident.

j. General - return-to-duty/follow-up testing. Any employee determined to have violated the prohibitions of this Order, who has accepted the opportunity to enter a substance abuse rehabilitation program, will be subject to unannounced

follow-up testing; and for those in TDPs, a return-to-duty test is required. See Chapter IX, Rehabilitation, for procedures pertaining to safety-sensitive TDP employees with medical standards who are unable to submit to a return-to-duty test or enter the follow-up testing program after completion of Phase 1 rehabilitation.

(1) Return-to-duty testing. Prior to an employee's return to the performance of safety- or security-sensitive functions, after engaging in conduct prohibited by this Order, the employee must undergo a return-to-duty test. Return-to-duty tests are conducted using direct observation procedures.

(2) TDP follow-up testing. All employees in a TDP are subject to follow-up testing for a period of one year (365 calendar days) unless it is medically determined that a longer period is required. The one-year period for follow-up testing begins with the first follow-up test after the return to duty test. If the employees security clearance is not reinstated the employee will follow the non-TDP process for follow-up testing. In cases where the DMRO, FMRO 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. Follow-up drug tests are conducted using direct observation procedures.

(3) Follow-up alcohol testing. Employees who are in the follow-up alcohol testing program are required to undergo a confirmation test if their breath alcohol screening test registers 0.01 or greater. FAA employees and employees whose positions require they hold a CDL in the follow-up testing program are under a requirement to refrain from alcohol use while employed by DOT. Any measurement of alcohol in their system, regardless of source or cause, is a violation of their rehabilitation agreement. An employee in a non-TDP is not subject to alcohol follow-up testing.

(4) Non-TDP follow-up drug testing. An employee in a non-TDP is subject to follow-up testing for one year (365 calendar days) after successfully completing phase I of a rehabilitation program.

(5) Completion of the follow-up drug and alcohol testing process. Under no circumstances will an employee be allowed to depart the testing site until all phases of the follow-up testing process have been completed. Failure to complete the follow-up testing process is considered a refusal to test and the employee is subject to immediate removal from federal service.

k. Voluntary Testing. Voluntary testing is limited to drug testing, and is only provided to an employee in a non-TDP at the employee's written request. Such a request must be submitted in writing to the DDO. The Omnibus Act does not permit an employee in a non-TDP to be tested for alcohol.

7. NOTIFICATION OF TESTING TO EMPLOYEES. Employees who are subject to follow-up testing, reasonable suspicion testing, and post-accident or post-incident

testing must receive written notice prior to testing that includes all of the following information:

a. The specific reason for the drug and/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 will 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, substituted and/or adulterated test result, a confirmed alcohol concentration measuring 0.04 or greater, or a refusal to be tested (except as noted in paragraph 6.j.(3) of this chapter).

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).

8. NOTIFICATION OF TESTING TO APPLICANTS. Applicants who are subject to pre-employment or pre-appointment testing must receive notice prior to testing. Vacancy announcements for TDPs must state that prior to being selected for the position, the individual must pass a drug and/or alcohol test. The vacancy announcement should also state the position is subject to random drug and/or alcohol testing. If the applicant is conditionally selected for the position, he or she must pass a drug and/or alcohol test. The applicant's OA HR is responsible for ensuring written notice is provided to the applicant prior to testing. The Department currently does not conduct pre-employment alcohol tests, but has the option to do so. Therefore, this Order is written to include such testing if and when alcohol pre-employment testing is incorporated into the Department's Drug and Alcohol Testing program. Currently, the only DOT OA that has authority to alcohol test is the FAA, as well as applicants applying for positions requiring a Commercial Drivers License. If an applicant undergoes a drug and/or alcohol test they will be provided the following information.

a. The applicant will be tested for illegal drug use and may be tested for alcohol misuse prior to appointment.

b. The applicant is subject to random testing for drugs and/or alcohol if appointed.

c. Applicants will be provided an opportunity to submit medical documentation to the DMRO or FMRO that may support a legitimate use for a specific drug.

d. Only the DMRO and/or FMRO will have access to the medical information submitted for review by the applicant.

e. Applicants submitting to pre-employment tests with previous substance abuse history must provide proof of successful completion of a rehabilitation and follow-up testing program in order to be considered for a TDP within DOT.

f. The applicant will be provided written documentation relating to the conduct of testing and the disciplinary actions for violating DOT drug and alcohol prohibitions contained in this Order. This document must be signed by the applicant and retained on the permanent side of their electronic Official Personnel Folder (e-OPF) if he/she is hired.

9. 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 shall be notified. The determination to reinstate the employee's security clearance will be made by the employee's security organization in accordance with DOT Order 1630.2B and any OA directive. The determination should be reported to the DDO and the DPC within 2 weeks of the appropriate servicing security organization being notified. Should the clearance not be restored, the employee must not perform any security-related duties. Until a suspended security clearance is reinstated, the employee may not perform security related duties that would require access to classified national security information. If the clearance is revoked, managers must contact their servicing Human Resource Office to determine an appropriate course of action. The DDO will notify the Office of Secretary Security Office for all non-FAA verified positives, substitutions and/or adulterated test results. FAA DPCs are responsible for notifying the FAA Security Office for all FAA verified positives, substitutions and/or adulterated test results.

CHAPTER IV

SPECIMEN COLLECTION

1. POLICY. All urine collections for drug testing under this Order shall be performed in accordance with the policies and procedures contained as indicated in paragraphs 1.a. through 1.b. below:

   a. Drug testing, with the exception of CDL drug testing, will be performed in accordance with the policies and procedures contained in E.O. 12564, the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs, this Order and the DOT Drug and Alcohol Testing Guide.

      DOT employees and applicants for employment with DOT who are required to possess a CDL as a condition of employment will be tested in accordance with 49 CFR Part 382 and 49 CFR Part 40, in addition to procedures set forth in this Order (See Chapter V, of this Order, CDL Testing).

      When conducting reasonable suspicion, post accident/post incident, 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 in accordance with the HHS Mandatory Guidelines.

      In April 2002, the Department of Health and Human Services (HHS) authorized DOT to permit donors to request the testing of split specimens when a primary specimen is determined to be substituted or adulterated.

   b. Urine collections shall not be conducted at an employee's residence under any condition and for any type of test. If testing does occur at an employee's residence it will be canceled.

2. SITE AUDITS. In accordance with the HHS Mandatory Guidelines, the DDO must conduct site audits of 5 percent of collection sites, but no more than 50 DOT collection sites. Additionally, the DDO is required to investigate reported collection site deficiencies and take appropriate action that may include inspecting the collection site. The number of collection sites inspected as a result of "rejected for testing" results are not included in the 5 percent or maximum of 50 site audit requirement.

3. COLLECTION SITE. Management, or a designated representative, will designate the location where employees and applicants provide urine specimens. The collection site must meet the requirements stated in the HHS mandatory guidelines. Employees will be directed by an appropriate management official to report to a collection site.

   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 will be secured during drug testing operations. DOT management will assist the collector by restricting

access to the site (e.g., rest room facility) while a collection is occurring. No unauthorized personnel will be permitted in any part of the collection site where urine specimens are collected or stored.

4. UNION REPRESENTATION DURING THE URINE COLLECTION PROCESS. A union representative is allowed in the testing area ***only*** if there is a labor-management agreement and the donor has requested the presence of a union representative. In all other circumstances, ***only*** the employee and the contractor shall be in the testing area. If a union representative "shows up" at the testing site without a request from the donor, they must be refused entry into the testing area.

   EXCEPTION: FAA and DDO Drug and Alcohol Testing Program representatives are allowed in the testing area.

5. COLLECTION CONTRACTORS. DOT urine collections are performed by contract collectors. DOT employee shall not perform urine collections related to the DOT Drug- and Alcohol-Free Workplace Program. EXCEPTION: In emergency situations only, a DOT nurse, DOT Physicians or an Aviation Medical Examiner (AME), technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place can perform a urine collection. Urine collections performed by a DOT employee during emergency situations are under the following conditions:

   a. Post-accident/post-incident and reasonable suspicion tests when it has been determined that a collection contractor cannot be at the site within the allotted time frame.

   b. Performing pre-employment urine collections when it has been determined that a same gender contract collector is not readily available.

6. SAME GENDER COLLECTOR. The same gender contract collector must be used during all urine collection events except in the case of pre-employment, pre-appointment, post-accident or reasonable suspicion tests where a same gender collector is not available. A monitor of the same gender may be used if a same gender collector is not available for pre-employment, pre-appointment, post-accident, post incident and reasonable suspicion tests only.

7. COLLECTION METHODOLOGY. The Department will adhere to the split-specimen collection procedures as stated in the HHS Mandatory Guidelines and detailed in the DOT Drug and Alcohol Testing Guide.

8. WHEN TO CONDUCT A MONITORED COLLECTION.

   a. In the event that a collection site is not available, and there is an immediate requirement to collect a specimen (e.g., a post accident or incident), a public restroom may be used for the collection, using the procedures for a monitored collection and the collector is not the same gender as the donor.

b. If the enclosure used by the donor to provide a specimen has a source of water that cannot be disabled or secured (or is a multi-stall bathroom), a monitored collection must be conducted.

c. If the donor declines to permit a collection to be monitored when required, the collector reports a refusal to test.

9. CONDUCTING MONITORED COLLECTIONS. A monitored collection is the same as that for a routine collection, except that a monitor, who may also be a collector, accompanies the donor into the restroom to check for signs that the donor may be tampering with the specimen. The monitor remains in the restroom, but outside the stall while the donor is providing the specimen.

a. The collector must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.

b. The collector must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor need not be a qualified collector. The monitor can not be a DOT employee who is not a medical professional and is not the same gender as the employee.

c. The collector must verbally instruct the monitor to follow the collection procedures outlined in the DOT Drug and Alcohol Testing Guide.

d. The monitor must not watch the employee urinate into the collection container. If the monitor hears sounds or makes other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation. The monitor must notify the collector who will annotate the Federal Drug Testing Custody and Control Form (CCF), both the monitor and collector will initial the statement.

e. The monitor must ensure the employee takes the collection container directly to the collector as soon as the employee leaves the bathroom.

f. When someone else has acted as the monitor, the collector must note that person's name in the “Remarks” line of the CCF (Step 2).

g. If anything occurs during the collection process requiring an observed collection, the collection process will not resume until a same gender collector is available.

h. If the individual refuses to provide a specimen under the monitored process it is considered a refusal to test.

10. COLLECTION CONTRACTOR TRAINING. To be permitted to act as a collector in the DOT DDO drug testing program, the collector must meet each of the requirements of this paragraph.

a. Basic Information. The collector must be knowledgeable about this Order and the DOT Drug and Alcohol Testing Guide and the HHS Mandatory Guidelines.

b. Qualification Training. The collector must receive qualification training that provides the following knowledge and skills.

(1) Ability to perform all steps necessary to complete a collection correctly and including the proper completion and transmission of the CCF;

(2) Understanding of "Problem" collections (e.g., situations like "shy bladder" and attempts to tamper with a specimen) and appropriate procedures for handling them;

(3) Knowledge of fatal flaws, correctable flaws, and how to fix correctable flaws; and

(4) Knowledge of the collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

c. Initial Proficiency Demonstration. Following the completion of qualification training under paragraph (b) of this section, the collector must demonstrate proficiency in collections under this Order by completing five consecutive error-free mock collections.

(1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

(2) Another person must monitor and evaluate the collector's performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by:

- Regularly conducting DOT drug test collections for a period of at least one year;
- Conducting collector training under this part for one year; or
- Successfully completing a "train the trainer" course.

d. Refresher training. No less frequently than every five years from the date on which collectors satisfactorily complete the training requirements outlined in this chapter, collectors must complete refresher training that meets all the requirements of paragraphs 5. (b) and 5. (c) of this chapter.

e. Error correction training. If a collector makes a mistake in the collection process that causes a test to be canceled (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 collector is notified of the error that led to the need for retraining.

(1) Error correction training must be provided and proficiency testing documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be canceled occurred.

(3) As part of the error correction training, the collector must demonstrate proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which the error(s) occurred. The person providing the training must monitor and evaluate the collector's performance and attest in writing that the mock collections were "error-free."

(4) If the error correction training is not completed within 30 days of the date the collector is notified, that collector may not serve as a collector for the DOT Federal Workplace Testing Program until it has been completed and furnished the DDO a copy of the training documents.

f. Documentation. The collector will maintain documentation showing that he or she currently meets all requirements of this Order. Documentation will be provided to authorized individuals upon written request to the DDO through the OA. Training documentation should be retained for a period of five years, including training records of collectors who are no longer employed by the contractor.

11. CHAIN OF CUSTODY. Strict procedures, as outlined in the DOT Drug and Alcohol Testing Guide, shall be used when collecting, completion of the CCF, and transferring urine samples taken from an individual to assure proper sample identification. The document reflecting the transfer of possession from one person to another, or to and from storage, of a urine sample 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 CCF will 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 will be made to minimize the number of persons handling the specimens. The collector will ensure that the CCF is complete and shipped with each sealed container.

(1) The collector must instruct the donor 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 donor refuses to sign the CCF or to provide required information, the collector must at a minimum print the employee's name in the appropriate space, note the refusal to complete any part or all of this section in the "Remarks" line (step 2) of the CCF, and complete the collection. If

the employee's failure or refusal to sign is not noted in the remarks section, the test will be canceled unless the collector corrects it. The correction must be made within five business days of the testing event.

(2) If the collector fails to print and/or sign his or her name (i.e., both signature and printed name are blank on the CCF) in Step 4 of the CCF the specimen will be rejected by the laboratory and canceled by the DMRO.

(3) If the collector fails to sign his or her name (but the printed name is present) in Step 4 of the CCF and fails to submit a memorandum for the record within five business days, the laboratory will reject the specimen for testing. The DMRO, upon receipt of the result, will cancel the test.

c. Shipping. The specimen containers must be tightly capped, properly labeled and securely sealed to eliminate the possibility of tampering. The collector and the donor must always have the specimens within their sight prior to them being sealed and labeled. The collector will arrange to ship the specimens to the drug testing laboratory after collection of all urine specimens is complete.

d. Balancing donor privacy and specimen control. Collection of urine specimens will allow donor privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Precautions will 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 CCF can be identified as belonging to the appropriate donor.

12. DONOR RESPONSIBILITY. It is the responsibility of the donor to adhere to the instructions provided by the urine collection contractor and breath alcohol testing contractor including accurately completing and signing the CCF and breath alcohol testing form. Failure to do so may result in disciplinary action as determined by the OA.

13. DONOR INABILITY TO PROVIDE SUFFICIENT VOLUME. In the event the donor states he or she is unable to provide a specimen after reporting to the collection site for a scheduled collection, the collector requests that the donor enter the restroom or stall and attempt to provide a specimen. The donor demonstrates his or her inability to provide a specimen when he or she comes out of the restroom or stall with an empty collection container. A donor cannot verbally state that he or she is unable to provide a specimen. He or she must make an attempt. The collector will note the time of the first attempt on the CCF and notifies the SC. If the donor states that he or she could provide a specimen after drinking some fluids, the donor may drink up to 40 ounces of fluid distributed reasonably through a period of up to 3 hours. For example, an 8 ounce glass of water every 30 minutes, but not to exceed a maximum of 40 ounces over a period of 3 hours. However, the donor is not required to drink any fluids during this waiting time. If the donor has not provided a sufficient specimen, i.e. at least 45 milliliters, within 3 hours of the first unsuccessful attempt, the collector stops the collection process, notes the time of the final attempt and that the donor has not provided sufficient urine for a drug test on the CCF, and notifies the

SC and the DPC. The donor should be immediately referred to the MRO who will make a determination concerning the donor's inability to provide a specimen. The MRO may require the donor to be evaluated by another physician as soon as practical after the attempted collections. The MRO must provide a list of physicians so the employee may select one that uses his or her insurance. The cost of the evaluation is the responsibility of the donor. However, this does not preclude an OA from providing payment for these services should they so decide.

If the MRO determines there is not a valid medical reason for the donor's inability to provide a sufficient volume of urine for a drug test, it will be regarded as a refusal to test and action will be initiated to remove the employee from Federal service. If the MRO determines there was a valid medical reason for the donor's inability to provide a sufficient volume of urine for a drug test, there will be no further attempts to collect a specimen for this test.

EXCEPTION: If a negative test result is required due to the type of test (pre-employment, pre-appointment, return-to-duty, follow-up, post accident and reasonable suspicion), another collection will be scheduled by the DPC.

14. MANAGEMENT RESPONSIBILITY. It is the responsibility of management to ensure that individuals involved with the testing process adhere to DOT policy and procedures. Failure to do so may result in disciplinary action.

CHAPTER V

COMMERCIAL DRIVERS LICENSE (CDL) HOLDER TESTING

1. POLICY. All urine collection and breath alcohol testing of CDL holders will be performed in accordance with the following:

    - Omnibus Transportation Employee Testing Act of 1991;
    - Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40;
    - FMCSA, Controlled Substances and Alcohol Use and Testing, 49 CFR Part 382; and
    - Other applicable procedures set forth in this Order.

2. APPLICABILITY. This section applies only to DOT employees whose position requires they maintain a CDL. The following chapters and paragraphs of this Order apply to CDL holders.

    - Chapters I – III in their entirety
    - Chapter IV, paragraphs 1.a paragraph 2 , 1.b, 2, 3, 4, 6, 7 and 8
    - Chapters V through XI in their entirety.

3. DRUG AND ALCOHOL AWARENESS. All supervisors and managers designated to determine whether reasonable suspicion exists to require an employee to be tested for alcohol or drugs are 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 total training time totaling at least 120 minutes. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and illegal drug use.

4. REQUIREMENTS FOR AN OBSERVER FOR A DIRECT OBSERVATION COLLECTION. A direct observation collection procedure is the same as that for a routine collection, except an observer watches the donor urinate into the collection container. An individual may serve as an observer for a direct observation collection when the individual has satisfied the following requirements and the same gender collector is not available:

    a. Is knowledgeable about the direct observation collection procedures outlined in the 49 CFR part 40, HHS Mandatory Guidelines, this Order and the DOT Drug and Alcohol Testing Guide;

    b. Has received training on the following subjects:

(1) All steps necessary to perform a direct observation collection correctly; and

(2) The observer's responsibility for maintaining the integrity of the collection process, ensuring the privacy of individuals being tested, ensuring that the observation is done in a professional manner that minimizes the discomfort to the employee so observed, ensuring the security of the specimen by maintaining visual contact with the collection container until it is delivered to the collector, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

c. The observer must be the same gender as the donor.

d. The observer is not required to be trained collector.

5. DIRECT OBSERVATION PROCEDURES. In accordance with 49 CFR Part 40 the following procedures will be followed for Federal employees whose position requires they maintain a CDL for a direct observation collection.

a. The employer must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported there was not an adequate medical explanation for the result;

(2) The MRO reported that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed;

(3) The laboratory reported to the MRO that the specimen was a negative dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO report the specimen to the employee as negative dilute and that a second collection must take place under direct observation;

(4) The collector observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen, or

(5) The temperature on the original specimen was out of range; or the original specimen appeared to have been tampered with.

b. Direct observation collection of an employee must be conducted if the drug test is a return to duty or a follow-up test.

c. A management official must explain to the employee the reason for a directly observed collection under this section.

d. The collector must complete a new CCF for the directly observed collection.

(1) The "reason for test" block (Step 1) must be marked the same as for the first collection.

(2) You must check the "Observed, (Enter Remark)" box and enter the reason in the "Remarks" line (Step 2).

e. In a case where two sets of specimens are being sent to the laboratory because of suspected tampering, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (e.g., collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.

f. If an observer is used to monitor the collection (e.g., in order to ensure a same gender observer), the collector must verbally instruct that person to follow procedures at h. and i. of this section.

g. The observer must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show, by turning around, that they do not have a prosthetic device. After it has been determined that the employee does not have such a device, the observer may permit the employee to return clothing to its proper position for the observed urination.

h. The observer must watch the employee urinate into the collection container. Specifically, they are to watch the urine go from the employee's body into the collection container.

i. If an observer is used he or she must not take the specimen to the collector, but must observe the specimen as the employee takes it to the collector.

j. If an observer is used as part of the collection process, his or her name must be included in the remarks section of the CCF.

k. If an employee refuses to allow a directly observed collection required or permitted under this section to occur, it is a refusal to test.

l. The collector must notify the DPC or Site Coordinator if a direct observation test should have been conducted but was not. The DPC or Site Coordinator will take appropriate action to ensure a collection under direct observation is immediately accomplished.

CHAPTER VI

LABORATORY REVIEW AND TESTING

1. POLICY. All laboratory testing will be conducted in accordance with the HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs." The Department will contract with a primary laboratory for the purposes of analyzing Bottle A, a split-specimen laboratory for the purposes of analyzing Bottle B and a third laboratory for the purposes of analyzing an aliquot of Bottle A when an oxidizing adulterant is present and the DMRO and laboratory determine that another laboratory may be able to determine the adulterant that is present in the specimen.

2. 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 (i.e., errors requiring the laboratory to reject the specimen for testing)

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

   b. When a specimen meeting any of the criteria in paragraph 2. a. is discovered, the laboratory will stop the testing process and report the specimen as "Rejected for Testing" with remarks.

   c. Inspect each specimen and CCF for the following correctable flaws (i.e., errors requiring correction prior to the laboratory processing the specimen):

      (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, but the collector's printed name is present, the flaw will be documented and the testing process will continue. The laboratory must retain the specimen for a minimum of five 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 five business days, before reporting the result. When the correction has been obtained, or five business days have elapsed, the laboratory 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 five 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 test will be canceled. The DMRO or FMRO will direct the immediate collection of another specimen using direct observation procedures.

d. 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:

(1) 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

(2) the primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or

(3) 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

(4) 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.

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.

e. 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.

f. 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.

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

(a) A substance that is not expected to be present in human urine is identified in the specimen;

(b) 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

(c) The physical characteristics of the specimen are outside the normal expected range for human urine.

(2) In making the above determination, the laboratory adhere to requirements contained in the HHS Mandatory Guidelines.

(3) To determine whether a specimen (primary) is substituted, the laboratory must adhere to the HHS Mandatory Guidelines.

g. Reporting test results to the DMRO and FMRO. Upon completion of the analysis of the primary specimen at the laboratory, test results will be reported to the DMRO via the DDO and to the FMRO via the FAA DPC. The DDO will provide results to the non-FAA Operating Administrations. The report will contain the pre-printed specimen identification number from the CCF, the identity of the drug testing laboratory, and results of the drug tests. The results will 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. The OA will immediately collect another specimen from the donor unless the MRO deems it not required.

(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 DMRO or FMRO.

Results shall be transmitted to the DMRO 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 within HHS established guidelines. 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 DMRO or FMRO requests a split-specimen analysis. If the laboratory does not receive a request from the DMRO 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 DMRO 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 DMRO 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 Substance Abuse and Mental Health Services Administration (SAMHSA).

If the donor requested that Bottle B be sent to another HHS certified laboratory for testing, the requested laboratory will retain Bottle B for 365 days. If the primary specimens retention date is extended by the MRO, the DDO will notify the laboratory that tested Bottle B to retain the specimen for the additional time requested by the MRO.

3. 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 DMRO shall report the results of any unsatisfactory performance to HHS via the DDO.

4. CUTOFF CONCENTRATIONS FOR DRUG TESTS.

Initial test analyte concentration	Initial test cutoff 1	Confirmatory test analyte	Confirmatory test cutoff
Marijuana metabolites (THCA) 2	50 ng/mL 3	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine).	150 ng/mL 3	Benzoylecgonine	100 ng/mL.
Codeine/Morphine	2,000 ng/mL	Codeine	2,000 ng/mL.
		Morphine	2,000 ng/mL.
Hydrocodone/Hydromorphone	300 ng/mL	Hydrocodone	100 ng/mL.
		Hydromorphone	100 ng/mL.
Oxycodone/Oxymorphone	100 ng/mL	Oxycodone	100 ng/mL.
		Oxymorphone	100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/Methamphetamine	500 ng/mL	Amphetamine	250 ng/mL.
		Methamphetamine	250 ng/mL.
MDMA 4/MDA 5	500 ng/mL	MDMA	250 ng/mL.
		MDA	250 ng/mL.

1 For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):
Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.
Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.
2 An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).
3 Alternate technology (THCA and benzoylecgonine): The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (i.e., 15 ng/mL for THCA, 100 ng/mL for benzoylecgonine).
4 Methylenedioxymethamphetamine (MDMA).
5 Methylenedioxyamphetamine (MDA).

CHAPTER VII

MEDICAL REVIEW OFFICER

1. POLICY. The Departmental Medical Review Officer (DMRO) and the Field Medical Review Officers (FMRO), in accordance with HHS criteria, are licensed physicians (Medical Doctor or Doctor of Osteopathy) responsible for receiving the laboratory results generated by the Department's drug testing program. The DMRO is appointed by the DOT/OST Assistant Secretary for Administration and may be on the staff of another OA.

2. MRO QUALIFICATIONS. The HHS Mandatory Guidelines define an MRO as a licensed physician holding a either a Doctor of Medicine (M.D.) or Doctor of Osteopathy (D.O.) degree who has:

   a. knowledge regarding the pharmacology and toxicology of illicit drugs;

   b. satisfactorily passed an examination administered by an approved HHS organization that certifies MROs or subspecialty board for physicians performing review of Federal employee drug test results; and

   c. training in the following areas necessary to serve as a MRO:

      (1) the collection procedures used to collect Federal agency specimens;

      (2) how to interpret test results reported by laboratories;

      (3) chain of custody, reporting, and recordkeeping requirements for Federal agency specimens;

      (4) the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; and

      (5) procedures for interpretation, review and reporting of results specified by any federal agency for which the individual may serves as MRO.

3. DEPARTMENTAL MEDICAL REVIEW OFFICER (DMRO) ROLE IN THE VERIFCATION PROCESS.

   a. Review all positive, adulterated, substituted, rejected for testing, and invalid test results. The MRO must review at least 5 percent of all negative results to ensure that the MRO staff is properly performing the review process.

   b. Examine alternative medical explanations for a verified 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 verified positive test could have resulted from legally prescribed medication.

   c. If there is a legitimate medical explanation for the positive drug test result, declare that the result is consistent with legal drug use and take no further action other than downgrading to negative.

d. Provide oversight to assure that any DOT employee required to enter into a substance abuse rehabilitation program receives appropriate treatment.

e. Ensure the timely flow of test results and other information to the DDO.

f. Provide guidance, direction, and oversight to FMROs, DPCs, and EAP managers, coordinators, and service providers in areas of recognition, diagnosis, intervention, treatment, and medical practice factors in substance abuse.

g. Perform all functions in compliance with this Order, the DOT Drug and Alcohol Testing Guide, HHS Mandatory Guidelines and the HHS Medical Review Offices Manual.

h. Ensure all tests results that have been verified positive have a signed copy of the CCF within 5 business days of the verification. If the CCF is not signed the day the verification is completed the MRO will annotate in this in the remarks section of the CCF.

4. FIELD MROs (FMRO). In the FAA, certain physicians in the field are designated as FMRO. FMROs may perform many of the functions of the DMRO within his or her 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.

   a. Upon completion of the above and in consideration of the information obtained, the DMRO or FMRO will act on the laboratory report as follows:

      (1) verify as positive;

      (2) downgrade to negative;

      (3) cancel because of insufficient scientific evidence; or,

      (4) hold, pending receipt of additional information, *e.g.*, quantitative level of drug, or special tests ordered by the DMRO (this is optional, the DMRO or FMRO may verify a specimen as positive, substituted and/or adulterated without waiting for results of Bottle B).

   b. The FMRO must fully document the case and provide the documentation to the DMRO the same day as verifying or downgrading the test result. The CCF is completed and signed by the DMRO.

c. In the FAA, once the determination of a laboratory result is made by the FMRO, the DMRO is notified of the results in writing. If necessary, the decision of the FMRO may be overridden by the DMRO.

d. When the drug test report is verified, the MRO will proceed with the notification of appropriate parties, and if the employee chooses rehabilitation, will work with the EAP manager/coordinator in the formulation of a rehabilitation program.

e. The FMRO, in conjunction with the DMRO, determines when an employee has been sufficiently rehabilitated to return to his or her safety or security-sensitive duties, orders the return-to-duty test, approves the aftercare program, and sets the frequency of follow-up testing. The return-to-duty test is conducted using direct observation procedures.

NOTE: Even though the MRO has indicated the employee may return to security-sensitive duties, the appropriate OA Security Office makes the final determination of whether the employee's security clearance will be reinstated. If the clearance is not reinstated, the employee must still enter and successfully complete the Department's follow-up testing program. If the OA Security Office has not reinstated the clearance because it is still under review, the employee will be required to submit to a return-to-duty test prior to entering the follow-up testing program. If the OA Security Office has permanently revoked the employee's security clearance, the employee is not subject to a return-to-duty test, but must enter the follow-up testing program. An employee who is in a TDP as the result of a security-sensitive position cannot be entered into the Department's alcohol testing follow-up program. The Omnibus Testing Act does not provide the authority to test FAA employees in security-sensitive positions for alcohol.

5. MRO PROHIBITIONS AS PART OF THE VERIFICATION PROCESS. The MRO is prohibited from doing the following as part of the verification process:

a. Consider any evidence from tests that are not collected or tested in accordance with this Order.

b. Make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open urine containers where other people could access them).

c. Determine whether the employee should have been directed to take a test. For example, if an employee tells you that they were misidentified as the subject of a random test, or directed to take a reasonable suspicion or post-accident/post-incident test without proper grounds, you must inform the employee that you cannot play a role in deciding these issues.

d. Consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell you that someone slipped amphetamines into his or her drink at a party, that he or she unknowingly ingested a marijuana brownie, or that he or she traveled in a closed car with several people smoking crack. The MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do no present a

legitimate medical explanation. Consequently, the MRO should not declare a test as negative based on an explanation of this kind.

e. Verifying a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act (e.g. under a state law that purports to authorize such recommendations, such as the "medical marijuana" laws that some states have adopted).

f. Accept an assertion of consumption or other use of hemp or non-prescription marijuana-related products as a basis for verifying a marijuana test negative. All federal employees are prohibited from using Schedule I federally controlled substances for any reason (including medical purposes). Under federal law marijuana is still considered illegal. Medical or recreational marijuana is not a legitimate medical explanation for a positive test result.

g. Accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.

h. Accept an assertion that there is a legitimate medical explanation for the presence of PCP or 6-AM in a specimen. There are no legitimate medical explanations for the presence of these substances.

i. Accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.

j. Accept as a legitimate medical explanation for a substituted specimen an assertion that an employee can produce urine with no detectable creatinine. There are no physiological means through which a person can produce a urine specimen having this characteristic.

6. INVALID DETERMINATIONS.

a. When the laboratory reports that the test result is an invalid result, the MRO 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 acceptable explanation the MRO must:

(1) Place a check mark in the "Test Canceled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line. Report to the DDO and the OA that the test is canceled, 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. If the individual provides another invalid the result, the MRO may refer the individual to a physician in order to rule out drug abuse. The cost of this examination will be the responsibility of the employee.

c. If the employee does not provide an acceptable explanation, and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, the MRO must:

(1) Place a check mark in the "Test Canceled" 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 canceled, 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 may only report an invalid test result when he/she is in possession of a legible copy of Copy 1 of the CCF. The DMRO 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 must, on the same day, write and sign his/her own statement of what the employee told him/her. The MRO must then report a refusal to test.

7. ACTION ON A VERIFIED PRIMARY SPECIMEN. Any action taken as a result of a verified positive drug test, and/or substituted or adulterated specimen may proceed whether or not the split specimen is tested. At a minimum, the employee will not be permitted to perform safety- or security-sensitive functions.

8. ACTION ON A SPLIT SPECIMEN. If an employee with a verified positive, and/or substituted or adulterated test result makes a timely (within 72 hours) request for split-specimen analysis, all associated costs shall be paid by the Department. If the employee requests that another HHS certified laboratory be used, other than the laboratory under contract to DOT for the purposes split-specimen analysis, the employee shall pay all costs associated with shipping, analysis, reporting, and storage. The test results from the donor selected lab will be reported directly to the

MRO. Only the DMRO is authorized to order an analysis of the split specimen. The DMRO will take the following actions for the appropriate split-specimen result.

a. Reconfirmed: positive test. In the case of a reconfirmed positive test for a drug or drug metabolite, report the reconfirmation to the DDO, DPC and the employee.

b. Reconfirmed: adulteration or substitution. In the case of a reconfirmed adulterated or substituted result, report to the DDO, DPC 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.

c. Failed to reconfirm: drug(s)/drug metabolite(s) not detected. Report to the DDO, DPC and employee that both tests must be canceled.

d. 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, DPC and employee that both tests must be canceled.

e. Failed to reconfirm: specimen not available for testing. Report to the DDO, DPC and employee that both tests must be canceled and the reason for cancellation. The MRO and the DPC 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 CCF should be marked with the same reason for test as the original collection.

f. Failed to reconfirm: specimen results invalid. Report to the DDO, DPC and employee that both tests must be canceled and the reason for cancellation. The MRO and the DPC 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 CCF should be marked with the same reason for test as the original collection.

g. 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 determines that there is a legitimate medical explanation for the adulterated test result, report to the DDO, DPC and employee that the test is canceled. If the MRO determines that the donor has not established a legitimate medical explanation for the adulterated test result, the MRO will take the following steps:

(1) Report the test to the DDO, DPC 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 on a photocopy (faxed, mailed, scanned, or couriered) of Copy 1 of the CCF.

(2) If the test of the primary specimen reconfirms the adulteration finding of the split specimen, the MRO must report the test result as a refusal to test.

(3) If the test of the primary specimen fails to reconfirm the adulteration finding of the split specimen, the MRO must cancel the test.

9. ACTION IF THE LABORATORY REPORTS A NEGATIVE DILUTE SPECIMEN. A negative dilute specimen recollections shall not be conducted under direct observation unless the first collection was collected under direct observation.

a. If the laboratory reports an initial test as a negative dilute specimen-a MRO interview is not required and an immediate recollection shall be conducted.

b. If the laboratory reports a second negative dilute specimen for the first recollection-The MRO will conduct an MRO donor interview. If the employee has a legitimate medical reason for the dilute specimen the MRO will report a negative result. If the MRO determines there is not a legitimate medical reason for the dilute specimen, the MRO and the DPC will ensure an immediate second recollection is conducted.

c. If the laboratory reports a third negative dilute specimen for the second recollection-The MRO can determine that the donor will be subject to direct observation collection procedures for any further collections.

10. ACTION ON POSITIVE DILUTE SPECIMENS. A dilute positive specimen is to be treated as a positive with no action taken on the dilute.

11. ACTION ON AN INSUFFICIENT AMOUNT OF URINE.

a. For purposes of this section, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration. Permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genitor-urinary matters. Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in the previous sentence.

b. When the collector reports that the donor did not provide a sufficient amount of urine, the MRO immediately directs the donor to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the donor's failure to provide a specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.)

(1) If another physician will perform the evaluation, the MRO must provide the other physician with the following information and instructions:

(2) That the donor was required to take a federally regulated drug test, but was unable to provide a sufficient amount of urine to complete the test;

(3) The consequences of refusing to take the required drug test; and

(4) That the referral physician must agree to follow the requirements of paragraphs (c) through (e) of this section.

c. The referral physician conducting this evaluation must recommend that the MRO make one of the following determinations:

(1) A medical condition as defined in paragraph (a) of this section has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must report a test cancelled result to the DDO.

(2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. As the MRO, if you accept this recommendation, you must report a refusal to test to the DDO.

d. The referral physician making the evaluation must provide a written statement of recommendations and the basis for them to the MRO. The referral physician must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain the conclusion.

e. If the referral physician determines that the employee's medical condition is a serious and permanent or long-term disability (as defined in paragraph a of this section) that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, they must set forth their determination and the reasons for it in the written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of Section 11 of this chapter, where applicable.

f. The MRO seriously considers and assesses the referral physician's recommendations in making a determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. The MRO must report the findings to the DDO in writing as soon as the decision is made.

g. When the DDO receives a report from the MRO indicating that a test is cancelled as provided in paragraph (c)(1) of this section, there is no further action with respect to the donor. The donor remains in the random testing pool.

12. MRO ACTION ON INSUFFICIENT AMOUNT OF URINE APPLICANT/PRE-EMPLOYMENT TEST, A FOLLOW-UP TEST, OR A RETURN-TO-DUTY TEST AS A RESULT OF A PERMANENT OR LONG-TERM MEDICAL CONDITION.

a. This section concerns a situation in which the donor has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment test, a follow-up test, or a return-to-duty test; and the condition involves a permanent or long-term disability as described in Section 11 of this chapter. The MRO must:

(1) Determine if there is clinical evidence that the individual is an illicit drug user. The MRO must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the donor's physician and/or the physician who conducted evaluation under Section 11 of this chapter.

(2) The MRO must ensure that the medical evaluation is conducted by an acceptable licensed physician.

b. If the medical evaluation reveals no clinical evidence of drug use, the MRO, must report the result as a negative test with written notations regarding results of both the evaluation conducted under Section 11 of this chapter and any further medical examination. The report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.

c. If the medical evaluation reveals clinical evidence of drug use, the MRO must report the result as a cancelled test with written notations regarding results of both the evaluation conducted under Section 11 of this chapter and any further medical examination. The report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test. The donor is not authorized to return to safety- or security-sensitive functions until a negative test is obtained.

13. MRO ACTION ON EMPLOYEE REHABILITATION FAILURES. Based on progress reports provided by EAP, the DMRO is responsible for determining whether an employee is adhering to his/her rehabilitation plan. Based on discussions with the employee and the EAP provider, the determination may be made to either extend the employees rehabilitation plan or that a violation of the rehabilitation has occurred. If the DMRO determines the employee violated his/her plan, the employee may be subject to disciplinary action up to and including removal from Federal service.

CHAPTER VIII

ALCOHOL TESTING

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

   EXCEPTION. DOT employees who occupy positions requiring a CDL, or applicants for such positions, after receiving an offer of employment contingent on compliance with alcohol testing requirements, are subject to the alcohol testing requirements contained in 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 DDO shall make exclusive use of EBTs 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 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. The calibration logs may be shown to authorized management personnel such as the DPC, site coordinator or the facility manager prior to the start of alcohol testing. Union representatives are not considered authorized management personnel, their requests for copies of the log must be submitted in writing as stated above.

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) 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.

(4) 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.

b. Breath alcohol testing will not be conducted at an employee's residence under any condition and for any type of test. If this does occur the test will be canceled.

c. 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 removal, or cause removal of, any person who obstructs, interferes with, or causes unnecessary delay in the testing process.

d. 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.

e. 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.

f. 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 who are in the follow-up testing program), 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 DPC, 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 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 (i.e., 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 because they were required to meet the requirements in this section.

(2) Individuals who initially performed services as a BAT commencing on or after August 1, 2001, must meet the requirements of paragraph 6.c. and d. 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.c. and d. 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 canceled (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.(4) 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 canceled 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, if qualified.

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 through the OA. Training documentation should be retained for a period of five years including training records of BATs who are no longer employed by contractor.

7. ALCOHOL TESTS CONDUCTED BY LAW ENFORCEMENT. The results of an alcohol test, 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 if the employee is on duty when the test occurs, the test conforms to applicable Federal, State, local or tribal government alcohol testing requirements, and the results of the test are obtained by the employer. If the employee is on duty and it is found through contact with the law enforcement agency the employee refused the breath alcohol test, the employee's removal from Federal service will be initiated. If the employee refuses to enter rehabilitation (or it is a second violation of this Order), he or she may be subject to disciplinary action up to and including removal from Federal service. Refer to Chapter XI, Drug and Alcohol Prohibitions and Disciplinary Action paragraph 6 h. and i.

Should the employee be tested off-duty by law enforcement, the results of an alcohol test conducted by Federal, State, local or tribal government officials having independent authority for the test, will be used to determine whether the employee violated an abstinence requirement governed by this Order. Otherwise, refer to Chapter XI, paragraph 10. In initiating any action, the OA must show that there is a nexus between the employee's conduct and their employment.

NOTE: Paragraph 7. above, applies only to FAA employees in safety-sensitive positions and CDL holders.

8. ALCOHOL TESTING FORMS (Non-CDL Testing).

   a. The DOT/FAA Federal Employee Testing Breath Alcohol Testing Form (BATF) is used for every DOT DDO alcohol test.

   b. The use of a non-DOT/FAA BATF for a test it is not cause for canceling 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 and the donor does not appear at the testing 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 considered 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 (except as noted in paragraph 9.e. below). 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/post incident 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 by 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, post incident or reasonable suspicion test, the collector only needs to provide a drivers license as a source of identification.

h. Prior to the initial screening test, BATs are required to ask the employee if he/she has consumed any food or drink (other than water) or smoked in the past 15 minutes. If the employee has, then a 15 minute wait will be observed and the BAT will direct the employee not to eat, drink (other than water), smoke, belch or put any substance in their mouth during this waiting period. The BAT should tell the employee this is for their benefit. The BAT may begin testing the next scheduled donor if they are readily available.

Employees who fail to follow these instructions will be considered to have refused to cooperate with testing procedures and will be removed from Federal service. There is no opportunity for rehabilitation for failing to cooperate with testing procedures (See Chapter XI, Drug and Alcohol Prohibitions and Disciplinary Action).

i. If a confirmation test is required, the employee must remain at the testing site within view of the BAT.

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 within view of the BAT. 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. FAA Employees and CDL holders 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 a 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 and this Order.

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. If the BAT fails to annotate the BATF and does not provide a memorandum for the record explaining why he/she failed to annotate the form and how this error will be avoided in the future within 5 working days from the date of the test, the test will be canceled.

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 within view of the BAT until the confirmation testing process has been completed, failure to do so is a refusal to test.

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 greater than or equal to 0.02 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. The tentative offer of a safety- or security-sensitive position within DOT will be withdrawn if an applicant has a confirmation result of 0.02 or greater. 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 for a period of 2 years. Should no proof exist as outlined, the individual will not be considered for employment in a safety-sensitive position within DOT. The OA HR is responsible for referring the applicant to the DPC who will explain rehabilitation and follow-up testing requirements. The costs associated with rehabilitation and follow-up testing is the responsibility of the applicant.

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.

g. Should the BAT start the confirmation test procedures prior to prompting from the EBT equipment, the entire testing process must begin again with the screening test and a new BATF.

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 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. The donor may be allowed up to 3 attempts to provide a sufficient volume 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 a FAA Flight Surgeon after a failed attempt to provide a sufficient amount of breath. The FAA Flight Surgeon will evaluate the employee's medical condition as it relates to the ability to provide a sufficient 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 canceled, the test shall be treated as if the test had never been conducted. A breath alcohol test is canceled 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 canceled; or

g. The BAT does not print and sign his or her name on the BATF. However, if the BAT either prints or signs his or her name, it is considered a valid test.

15. CANCELED ALCOHOL TESTS UNLESS CORRECTED. The following alcohol tests must be canceled 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 either his or her name 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 canceled.

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 canceled, 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. If repeating the testing process is necessary, the donor may make up to three attempts to provide a sufficient volume of breath.

c. 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.

d. If the problem is the use of a non-DOT/FAA form, except as noted in paragraph 15.b. of this chapter, 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.

e. If the problem is not corrected within five business days of the initial test date, the test must be canceled.

17. CANCELED ALCOHOL TESTS.

a. A canceled alcohol test is neither positive nor negative.

b. No action may be initiated against an employee or applicant as a result of a canceled 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 canceled.

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 canceled 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 DDO a printed copy of the result that resides in the equipment used to perform the breath alcohol test within five days of the initial test date. If the BAT prints his or her name but does not sign the form, it is not considered a fatal flaw, or if the BAT signs his or her name but does not print it, it is also not considered a fatal flaw.

19. RADIO FREQUENCY INTERFERENCE (RFI) DURING ALCOHOL TESTING. A reading of RFI on the breath alcohol machine is not a flaw. The breath alcohol machine has a device to detect RFI from affecting the machine. If a RFI occurs more than once the collector should move away from the source of the RFI, this may involve moving to another room for testing.

20. 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 shall be notified. The determination to reinstate the employee's security clearance will be made by the employee's security organization in accordance with DOT Order 1630.2B and any OA directive. The determination should be reported to the DDO and the DPC within 2 weeks of the appropriate servicing security organization being notified. Until a suspended security clearance is reinstated, the employee may not perform security related duties that would require access to classified national security information. If the clearance is revoked, managers must contact their servicing Human Resource Office to determine an appropriate course of action.

CHAPTER IX

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 EAP managers and coordinators within each OA. All employees are subject to the requirements of their OA Last Chance Agreement (LCA) and Treatment and Rehabilitation Plan (TRP), as applicable.

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. The employee is no longer eligible to self-refer. Following initial counseling, the employee must be given an opportunity to enter an agency approved substance abuse rehabilitation program by the EAP manager and DMRO. The recommendation shall be made with the agreement of the DMRO or FMRO.

   EXCEPTION: Probationary employees who have violated any part of this Order may be subject to immediate removal with no opportunity for rehabilitation.

   a. Testing conditions. Upon successful completion of the initial phase of the rehabilitation program, a TDP 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.

   b. Medical Standards and Testing Issues. When an employee, subject to medical standards, is unable to have his/her medical clearance returned as a result of an unrelated medical reason, the employee will be allowed to take a return-to-duty test and any subsequent follow-up tests. These tests will be conducted using direct observation procedures. During this period if an employee is absent from work for 15 days or more and the cause is unrelated to his or her rehabilitation program, the employee's follow-up testing program will be extended to ensure their follow-up testing program encompasses a full one-year period (365 days).

   c. Security Clearance and Testing Issues. When employees with security clearances are unable to have their security clearance returned, the employee will be allowed to take a return-to-duty test and any subsequent follow-up tests. These tests will be conducted using direct observation procedures. During this period if an employee is absent from work for 15 days or more and the cause is unrelated to his or her rehabilitation program, the employee's follow-up testing program will be extended to ensure their follow-up testing program encompasses a full one-year period (365 days).

d. Return-to-duty testing. Before a TDP 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 DMRO or FMRO, is responsible for ordering all return-to-duty tests, as appropriate. Non-TDP will not need subject to a return-to-duty test.

e. Follow-up testing. TDP employees 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. Non-TDP employees follow-up testing shall begin with the first follow-up test and will continue for at least one year. The follow-up program may be extended at the discretion of the DMRO or FMRO and may be extended when follow-up testing is incomplete or interrupted. During the first 12 months of follow-up testing for alcohol, a TDP 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 test results must be negative, alcohol test result must be less than 0.01. All recommended plans for follow-up testing of employees must be reviewed and approved by the DMRO and FMRO, EAP manager, or SAP, as appropriate. The DDO is responsible for implementing the individual testing plan for all follow-up tests.

   If an employee is in the follow-up program and is absent from work for 15 days or more and the cause is unrelated to his or her rehabilitation program, the employee's follow-up testing program will be extended to ensure their follow-up testing program encompasses a full one-year period (365 days) while performing covered duties.

f. Successful completion. An employee shall not be subject to disciplinary action for a first determination of self-referral, 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 XI (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:

- ascertain the experience, certification, and educational level of staff;
- verify licensing and accreditation of organizations; and
- 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 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 X (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 OA and DMRO requirements.

c. 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 DMRO or FMRO, 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 provider who shall submit a written report with recommendations to the EAP manager and DMRO.

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. 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:

- obtains counseling through an agency approved EAP and completes an agency EAP-recommended rehabilitation; and
- thereafter refrains from any further instance of use of illegal drugs or alcohol misuse in accordance with the policy of this Order.

Exception. If the employee makes an attempt to self-refer once the DOT collectors/BATs arrive at the testing site, for any reason, 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 on a DUI/DWI charge and is subject to OA Table of Penalties or OA disciplinary action, as appropriate.

6. REASSIGNMENT TO OTHER DUTIES. TDP 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 Order 1630.2B and any OA directives. The determination should be reported to the DDO and the DPC within 2 weeks of the appropriate servicing security organization being notified. Until a suspended security clearance is reinstated, the employee may not perform security related duties that would require access to classified national security information. If the clearance is revoked, managers must contact their servicing Human Resource Office to determine an appropriate course of action.

CHAPTER X

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 will receive written notification of verified positive, adulterated and/or substituted drug test results. Employees who are subject to alcohol testing will continue to receive copies of their alcohol test result at the conclusion of the breath alcohol test.

   b. Negative drug test results. Negative drug test results will be released to employees by the DPC.

   c. Authorized disclosure. 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). 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 to the:

      - employee's DMRO, FMRO and non-DOT physician in the event the individual was directed to obtain an evaluation;

      - administrator and provider of any EAP in which the employee is receiving counseling or treatment or is otherwise participating;
        to the supervisory or management official having authority to initiate a personnel action against such employee; and/or pursuant to an order of a court of competent jurisdiction where required by the United States to defend an adverse personnel action.

- Federal Air Surgeon or Designee for the purpose of reviewing the eligibility to hold a medical certificate or clearance determination to perform any safety related function within the National Air Space.

d. Access by the National Transportation Safety Board (NTSB). The Department has a responsibility to the NTSB (under the Independent Safety Board Act Amendments of 1990, Pub.L. 101-641, 104 Stat. 4654 (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 drug test result for such tests(s) verified by the DMRO and any underlying laboratory records documenting the confirmed positive drug test result. Until procedures are developed specifically for the release and reporting of alcohol violations, 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. Requests received by OAs should be immediately forwarded to the DDO for response.

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 Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records.

Treatment records for illegal drug use and alcohol abuse may be disclosed without the consent of the employee only:

- to medical personnel to the extent necessary to meet a genuine medical emergency;
- 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
- when authorized by an appropriate court order granted after application showing good cause.

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 Quality Assurance Plan (QAP), and records of the training and proficiency of BATs.

   a. Three-year records. The following records shall be maintained for three years:

      - records of the inspection and maintenance of each EBT used in employee or applicant testing;
      - 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,
      - 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 taken.

CHAPTER XI
DRUG AND ALCOHOL PROHIBITIONS AND DISCIPLINARY ACTION

1. PROHIBITED DRUG-RELATED CONDUCT. All employees are prohibited from on or off duty use, possession, distribution, or trafficking of controlled substances (as defined in 21 U.S.C. §802(6)).

2. DETERMINING DRUG VIOLATIONS. The determination by management that an employee has engaged in conduct which constitutes a drug violation of this Order or OA policy may be made on the basis of:

   a. direct observation of illegal drug use (to include prescription abuse) while on duty;

   b. a criminal conviction for use, possession, distribution, or trafficking of a controlled substance;

   c. a Medical Review Officer verified positive;

   d. the employee's own admission of violating a drug prohibition by this Order;

   e. an administrative inquiry may disclose credible evidence that the person engaged in behaviors that violate the Order or OA policy; despite no criminal conviction; or

   f. an employee or applicant who interferes, obstructs, substitutes, adulterates or causes undue delay in the completion of a drug test shall be considered a refusal to test.

3. DISPOSITION FOLLOWING A DRUG VIOLATION. The Department, having actual knowledge that an employee has engaged in conduct prohibited by this Order or OA policy, will not be permitted to perform a safety- or security-sensitive function unless such employee has satisfied the requirements of Chapter IX of this Order.

4. DISCIPLINARY ACTION. The Department is committed to its policy of maintaining a drug-free workplace. Disciplinary action for prohibited drug-related misconduct will be taken as described below

   a. On-duty use or possession of illegal drugs. The agency will initiate action to remove all employees from Federal service in the case of on-duty use or possession of illegal drugs. There is no opportunity to enter a rehabilitation program for this offense.

   b. Drug trafficking. The agency will initiate action to remove all employees from Federal service where it has been determined that the employee has engaged in illegal drug trafficking; *e.g.*, sale, manufacture, growth, distribution, or transportation. DOT may take action to suspend an employee indefinitely if it

has reason to believe that the employee has committed a crime involving illegal drug misuse for which a term of imprisonment may be imposed, prior to determining a violation of this Order. There is no opportunity to enter a rehabilitation program for this offense.

c. Off-duty use of illegal drugs. The agency will initiate action to remove a TDP employee from Federal service in the case of off-duty use of illegal drugs as determined by a verified positive under the Department's program. On the first determination of this violation, the initiated action to remove a TDP employee will be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter IX, Rehabilitation). The agency will initiate action to remove a non-TDP employee from Federal Service or initiate appropriate disciplinary action up to and including removal, in the case of off-duty use of illegal drugs as determined by a verified positive under the Department's program. On the first determination of this violation, the initiated action to remove a non-TDP employee will be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter IX, Rehabilitation).

d. Repeated misconduct. The agency will initiate action to remove an employee from Federal service who has a second drug violation of conduct prohibited by this Order. The second determination of an off-duty drug violation or a verified positive result will qualify as repeated misconduct. OAs will also initiate action to remove an employee from Federal service who has a second violation of conduct prohibited by this Order. The second violation does not have to be the same as the first violation. Additionally, OAs that can establish a nexus between off-duty behaviors and the employee's occupation may consider any action taken under FAA's Table of Penalties or OA disciplinary action, as appropriate, as a first or second offense. There is no opportunity to enter a rehabilitation program for this offense.

e. Refusal to test. An OA shall initiate action to remove an employee from Federal service, if the employee refuses to submit to a drug test. There is no opportunity for rehabilitation for these prohibitions. Refusal to test is defined as:

(1) Fails to report to the designated testing site within a reasonable time, as determined by the site coordinator after being directed to do so by OA management (except for a pre-employment test for a non-federal donor only).

(2) Fails to remain at the testing site until the collection process is completed (with the exception of a non-federal donor who leaves the collection site before the collection process begins for a pre-employment test).

(3) Fails to provide a urine specimen when required.

(4) Attempts to substitute or adulterate the specimen provided.

(5) Fails to cooperate with the collection process (e.g., disrupt the collection process, fail to wash hands after being directed to do so, refuse to empty the contents of pockets when directed to do so by the collector).

(6) Cause an undue delay of the collection process.

(7) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

(8) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process.

(9) Fails to permit the observation or monitoring of a direct observation urine collection.

(10) Fails to provide a sufficient amount when directed to do so, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.

(11) Fails to take an additional drug test as directed.

(12) Fails to follow the instructions for a direct observation collection.

f. Refusal to enter or successfully complete a substance abuse rehabilitation program. The agency will initiate action to remove a TDP 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 all components of the rehabilitation program under the EAP. A determination that the employee has failed rehabilitation may be made on the basis of off-duty drug-related misconduct, or the employee not adhering to the terms of the rehabilitation plan. There is no opportunity to enter a rehabilitation program for this offense.

EXCEPTION: Probationary employees who have violated any part of this Order may be subject to immediate termination with no opportunity for rehabilitation.

EXCEPTION: FAA employees who have engaged in prohibited drug use during the performance of a safety-sensitive function after September 19, 1994, and have been removed from Federal service, are permanently precluded from performing that safety-sensitive function as a Federal employee. This permanent bar includes performance of the same function in the regulated industry.

5. PROHIBITED ALCOHOL-RELATED CONDUCT.

a. Alcohol misuse concentration. Employees in a TDP are prohibited from reporting for duty or remaining on-duty while having an alcohol concentration of 0.04 or greater on a confirmation test or off-duty concentrations that result in an arrest. All employees in the follow-up testing program are prohibited from reporting for duty or remaining on duty while having an alcohol concentration of 0.01 or greater on a confirmation test.

b. On-duty alcohol use. Employees in a TDP are prohibited from use of alcohol while on-duty (as specified in 41 CFR § 102-74.405). This includes paid or non-paid breaks during the workday. There is no opportunity to enter a rehabilitation program for this offense.

c. Pre-duty alcohol use. Employees in a TDP are prohibited from using alcohol within eight hours preceding performance of safety-sensitive functions or within such longer period as required by the OA. This includes paid or non-paid breaks during the workday.

d. Use of alcohol following an accident or incident. Employees in a TDP are prohibited from using alcohol within eight hours following an accident/incident of which the employee has actual knowledge and in which management either has not completely discounted the employee's involvement as a contributing factor to the cause of the accident, or has not completed a post-accident test.

e. Refusal to submit to a required alcohol test. Employees in a TDP or tentative selectees for TDPs shall not refuse to submit to an alcohol test required by this Order. Any action by the employee or applicant that is determined to be interference with, obstructing or causing undue delay in completion of such test may be considered a refusal to test. There is no opportunity to enter a rehabilitation program for this offense.

6. DETERMINING ALCOHOL VIOLATIONS. Determination by management that an employee has engaged in conduct which constitutes an alcohol violation of this Order or OA policy may be made on the basis of:

a. Direct observation of alcohol use while on duty.

b. DOT suspend an FAA employee indefinitely if it has reason to believe that the employee has committed a crime involving alcohol misuse for which a term of imprisonment may be imposed, prior to determining a violation of this Order.

c. A confirmed test result having an alcohol concentration of 0.04 or greater on an alcohol test conducted under the DOT program.

d. A confirmed test result having an alcohol concentration of 0.01 or greater on an alcohol test conducted under the DOT follow-up testing program.

e. An employee's own admission of violating an alcohol prohibition under this Order.

f. Other appropriate administrative inquiry that produces evidence of alcohol-related misconduct.

g. An employee receives a positive alcohol test result, 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 if the employee is on duty when the test occurs, 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. If the employee is on duty and it is found through contact with the law enforcement agency the employee refused the breathalyzer test, the employee's removal from Federal service will be initiated. If the employee refuses to enter rehabilitation (or it is a second violation of this Order), he or she will be removed from Federal service.

h. An employee receiving an alcohol test result, conducted by Federal, State, Local or tribal government officials having independent authority for the test, shall be used to determine whether the employee violated an abstinence requirement governed by this Order. Otherwise, the OA's Table of Penalties, any written guidance or past practice applies. The results of such a test or refusal to test may be used as one factor by the OA in making a decision concerning the employee and whether there is credible evidence that the employee may have misused alcohol. In initiating any action, the OA must show there is a nexus between the employee's conduct and their employment.

7. DISPOSITION FOLLOWING AN ALCOHOL VIOLATION. The Department, having actual knowledge that an employee has engaged in conduct prohibited by this Order, will not permit that employee to perform or continue to perform a safety-sensitive function, as applicable, unless such employee has satisfied the requirements of Chapter IX, Rehabilitation of this Order.

8. ALCOHOL–RELATED DISCIPLINARY ACTION.
   a. On-duty use of alcohol. The agency will 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. On duty use includes when an individual is ready to perform, or immediately available to perform such functions or otherwise are in a paid duty status. There is no opportunity to enter a rehabilitation program for this offense.

   b. Alcohol misuse concentration. The agency will 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, or an off duty concentration that results in an arrest, on a confirmation test. On the first determination of this violation, the removal action will be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter IX, Rehabilitation).

   c. Abstinence period failures. The agency will initiate action to remove a covered employee from Federal service who fails to maintain abstinence from

alcohol during a required period. An abstinence period will include either the pre-duty or post-accident period of restriction for alcohol use. On the first determination of this violation, the removal action will be held in abeyance while the employee is offered a conditional opportunity for rehabilitation (see Chapter IX, Rehabilitation). Abstinence period failures also include those employees who are in the follow-up testing program and are subject to abstinence requirements.

d. Employees in the Follow-up Testing Program. 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 MRO for an evaluation to determine whether or not the employee has violated the abstinence requirement. A confirmation result of 0.02 or greater is considered a violation of the abstinence agreement and the employee will be removed from Federal service.

e. Repeated alcohol-related misconduct. The agency will 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 alcohol violation, a confirmed alcohol concentration of 0.04 or greater, or a failure to maintain a required abstinence will qualify as repeated misconduct. Exception: All employees who have previously been in the DOT Alcohol follow-up Testing Program will be considered in violation of this Order if the result of an alcohol confirmation test is greater than 0.01. The second violation does not have to be the same as the first violation. Additionally, OAs that can establish a nexus between off-duty behaviors and the employee's occupation may consider any action taken under OA's Table of Penalties as a first or second offense.

f. Refusal to comply with procedures during alcohol testing. An OA shall initiate action to remove an employee from Federal service, who refuses to submit to an alcohol test. There is no opportunity for rehabilitation for these prohibitions. Refusal to test is defined as below:

(1) Fails to report to the designated testing site within a reasonable time, as determined by the site coordinator after being directed to do so by OA management (except for a pre-employment test for a non-federal donor only).

(2) Fails to remain at the testing site until the testing process is completed.

(3) Fails to provide an alcohol test when required.

(4) Fails to cooperate with the testing process.

(5) Causes an undue delay of the testing process.

(6) Fails to undergo a medical examination or evaluation, as directed by the MRO.

(7) Fails to provide a sufficient amount of breath when directed to do so, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.

(8) Fails to take an additional alcohol test as directed.

g. Refusal to enter or successfully complete an alcohol-related substance abuse rehabilitation program. The agency will 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 alcohol-related misconduct, or the employee not adhering to the terms of the rehabilitation plan. There is no opportunity to enter a rehabilitation program for this offense.

9. 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 will be taken under the described circumstances.

a. Not Ready for Duty. Employees in TDPs, who have undergone alcohol testing under the provisions of this Order, with an alcohol concentration of 0.02 or greater, but less than 0.04, on a confirmation test (except as noted in paragraph 8. d. above) shall not perform or continue to perform safety-sensitive duties. These employees are considered to be "not ready for duty" by DOT. Employees who have been found to be "not ready for duty" will not return to his or her safety-sensitive functions until the start of their next regularly scheduled shift, provided that shift occurs no sooner than 8 hours after the test was conducted. If the employee is scheduled to return to work in less than 8 hours, he/she will be placed in an AWOL status until the 8 hours has elapsed. A return-to-duty test is not required of an employee in this status.

b. First Occurrence. An employee who engages in this misconduct will be dismissed from the worksite and charged AWOL status for the remainder of the shift. In addition, the employee will be issued a letter of admonishment which includes an explanation of the consequences of any subsequent determination of a not-ready-for-duty status.

c. Subsequent Occurrence. An employee who engages in this misconduct (*i.e.*, repeated occurrences of a not-ready-for-duty status) will be dismissed from the worksite and will be charged 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 will be initiated as necessary.

10. OFF-DUTY ALCOHOL-RELATED CONDUCT. The actions described below pertain to off-duty misconduct only. If a TDP is involved in an off-duty event, such as an arrest for a DWI/DUI, etc., and the employee was previously found to have already violated this Order based on a positive drug or alcohol test, conducted under this Order, the DWI/DUI is considered a second violation and the employee is not eligible to enter into a treatment rehabilitation program.

    a. First Off-Duty Offense. If a TDP has a single off-duty incident, such as an arrest for an alcohol-related driving infraction, shall notify his/her manager before the start of his/her next regularly scheduled work shift, but in an event no later than 48 hours after the arrest. The employee must also contact either the Departmental or Field MRO within 48 hours. The DMRO or FMRO will ensure that an assessment is conducted by a Substance Abuse Professional to determine whether the employee is a candidate for rehabilitation. A TDP employee must be temporarily assigned to non-TDP duties, if available, pending action by DMRO or FMRO. If such duties are not available, and the employee fails to request leave, then action shall be initiated to place the employee on enforced leave.

        (1) If a determination is made that the employee is not at risk and rehabilitation is not necessary, the employee will be issued appropriate corrective action that warns the employee that the conduct is unacceptable and not compatible with the behavior expected for an employee occupying a safety- or security-sensitive TDP. The employee must attend, at a minimum, an approved alcohol awareness education program. The programs approved by the EAP manager or under a court order will be acceptable. The admonishment informs the employee that any similar misconduct in the future will result in the issuance of a proposed removal notice.

        (2) If a determination is made that the employee is at risk and rehabilitation is advisable, then the employee will be offered a TRP. If however, the employee declines this offer, then the OA will issue a proposed removal letter informing the employee of an one-time opportunity for a TRP. A decision notice is issued informing the employee of the disciplinary/ adverse action to be imposed. If the employee accepts the offer of the TRP, the decision notice informs the employee that the implementation of the disciplinary/adverse action is held in abeyance pending successful completion of the TRP. If the employee declines the offer of a TRP, then the disciplinary/adverse action shall be implemented.

    b. Two or More Off-Duty Offenses. An employee who has a single off-duty incident, such as an arrest for an alcohol-related driving infraction, shall notify his/her manager before the start of his/her next regularly scheduled work shift, but in an event no later than 48 hours after the arrest. The employee must also contact either the Departmental or Field MRO within 48 hours. A TDP employee will be temporarily assigned to non-TDP duties, if available,

pending a decision on the proposed removal. If non-TDP duties are unavailable, and the employee fails to request leave, then action shall be initiated to place the employee on enforced leave. If it is determined that the event is a second or more off-duty violation, and the employee has already been through rehabilitation and the follow-up testing program, there is no opportunity to enter a rehabilitation program and the employee will be issued a proposed removal from Federal service. If a diagnosis was not made on the first occurrence, and the employee was not required to enter rehabilitation or the follow-up testing program, the second occurrence of this offense will require that the individual enter and successfully complete a rehabilitation program and the follow-up testing program.

The OA must notify the DDO within 2 days of receipt of notification of all DWI/DUI incidences.

11. OFF-DUTY DRUG- AND ALCOHOL-RELATED CONDUCT AND SELF-REFERRAL.

a. When an OA learns of an off-duty drug and/or alcohol misconduct event covered under this paragraph, the employee is no longer eligible to self-refer to the EAP. Such misconduct includes, but is not limited to:

(1) driving while intoxicated (DWI);

(2) driving under the influence (DUI);

(3) misuse of prescription drugs and/or over-the-counter medicine at any time (OAs must use the reasonable suspicion testing standard in making the determination for this offense);

(4) any other police matter where the use of drugs or alcohol is noted in any police report or court documents, etc., or

(5) refusal to submit to a alcohol test and/or a field sobriety test conducted by Federal, State, local or tribal government officials having independent authority for the test.

b. The OA may learn about an off-duty situation through any available means. Misconduct may come to the attention of management because of:

(1) a Report of Investigation (ROI),

(2) newspaper article,

(3) information or inquiry from a police source,

(4) information obtained as a result of periodic medical examination, or

(5) an illness related medical examination.

For the purpose of these offenses, a plea of no contest or other plea arrangement is not cause for drug or alcohol misconduct to be excused under this Order. Appropriate action may be taken in accordance with the OAs Table of Penalties.

12. DISCIPLINARY PROCEDURES. Any disciplinary action under this chapter will be taken in accordance with law, regulation and collective bargaining. If an employee is found to have a confirmed alcohol or drug 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 1630.2B and OA directives. Until a suspended security clearance is reinstated, the employee may not perform security related duties that would require access to classified national security information. If the clearance is revoked, managers must contact their servicing Human Resource Office to determine an appropriate course of action. If the only TDP responsibilities available are security in nature, managers must contact their servicing HR office to determine appropriate course of action.

APPENDIX A

CATEGORIZATION OF EMPLOYEES FOR TESTING

CATEGORIZATION OF EMPLOYEES FOR TESTING

Testing Designated Positions (TDPs). - Safety/Security Critical - These are positions characterized as having 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, national security or serving under a Presidential Appointment. These positions require the highest degree of trust and confidence. ***Employees whose position requires access to Confidential, Secret, Top Secret information 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. The Omnibus 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 Omnibus 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

OA- *Office of the Secretary*	**Series**	**Drug Only**	**Drug &Alcohol**
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			

OA- *Office of Inspector General*	**Series**	**Drug Only**	**Drug &Alcohol**
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			

OA- *Federal Highway Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
Transportation Equipment Operation Family	**WG-57XX**	**X**	**X[a]**
a Positions requiring CDL's are subject to both drug and alcohol testing.			

OA- *Federal Motor Carrier Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
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.			

OA-*Federal Aviation Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
Misc title for Program Manager/Director of Flight Inspection Programs	**FV301/340**[b]		**X**
Program Support Specialist	**FV301**[c]		**X**
Computer Specialists in Technical Operations in ARTCC	**FV334**[e]		**X**
Engineering Technicians in ATO Technical Operations	**FV802**[e]		**X**
Aerospace Engineering Technicians	**FV802**[b]		**X**
Engineers in ATO Technical Operations	**FV8XX**[e]		**X**
Electronics Technicians in ATO Technical Operations	**FV856**[e]		**X**
Aerospace Engineers	**FV861**[f]		**X**
Civil Aviation Security Specialists in Office of Airports	**FV1801**[f]		**X**
Certification Safety Inspectors	**FV1801**[i]		**X**
Criminal Investigators	**FV1811**[f]		**X**
Aviation Safety Inspectors	**FV1825**[f]		**X**
Quality Assurance Specialist (Aerospace and Electrical)	**FV1910**[b]		**X**
Airway Transportation System Specialist in ATO Technical Operations	**FV2101**[e]		**X**
Engineering Research Psychologist in Aircraft Certification Service	**FV180**[f]		**X**
Air Traffic Control Specialists	**FV2152**[f]		**X**
Air Traffic Assistants	**FV2154**[g]		**X**
Airspace Systems Inspection/Flight Test Pilots	**FV2181**		**X**
Aviation Technical System Specialist	**FV2186**[b]		**X**
All wage grade employees in ATO Technical Operations	**FW-XXXX**[e]		**X**
Transportation Equipment Operation Family	**FW-57XX**[e]		**X**

a Positions requiring CDLs 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 posi 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 Positions provide direct support for the NAS and their first level managers.

f Only FG/FV-1801, FG/FV-1811, FG/FV-1825, FG/FV-861, FG/FV-189 and FG/FV-2152 employees who are required 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 a assigned to Field Maintenance Party staff positions.

i Only those Office of Airports employees who are responsible for conducting safety and certification inspections i compliance with safety requirements in 14 CFR Part 139

OA-*Federal Railroad Administration*	**Series**	**Drug Only**	**Drugs & Alcohol**
RSS HQ			
Program Manager	**ES-0340**	X	
Railroad Safety Series	**ES-2121**	X	
RSS HQ &FIELD			
Drug & Alcohol Program Specialist	**GS-0301**	X	
Industrial Hygienists	**GS-0690**	X	
General Engineers	**GS-0801[a]**	X	
Civil & Structural Engineers	**GS-0810[a]**	X	
Mechanical Engineers	**GS-0830[a]**	X	
Electronic Engineers	**GS-0855[a]**	X	
Railroad Safety Series	**GS-2121**	X	
RSS FIELD			
Transportation Specialist Series	**GS-2101**	X	
The term "FIELD" is defined as any position with a duty station outside of Washington, DC.			
a Includes only Headquarter RRS positions assigned to work in the discipline specific areas of: Hazardous Materials, Motive Power & Equipment, Operating Practices, Signals & Train Control, Track and Structures. Also includes Positive Train Control (PTC), and Passenger Safety.			

OA- *National Highway Traffic Safety Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
Auto Enforcement Investigators	**GS-1801**	**X**	**X[a]**
Criminal Investigator	**GS-1811**	**X**	
Motor Vehicle Operators	**WG-5703**	**X**	
a Positions requiring CDL's are subject to both drug and alcohol testing			

OA- *Federal Transit Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
Motor Vehicle Operators	**WG-5703**	**X**	**X[a]**
a Positions requiring CDL's are subject to both drug and alcohol testing			

OA- *Saint Lawrence Seaway Development Corporation*	**Series**	**Drug Only**	**Drug &Alcohol**
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.			

OA- *Maritime Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
Engineers (Watchstander)	**WM-5352**	**X**	
Marine General Utility Maintenance Mechanics (Deck/Engine)	**WM-5352**	**X**	
Transportation Equipment Operations Family	**WG-57XX**	**X**	
a Positions requiring CDL's are subject to both drug and alcohol testing			

OA- *Pipeline and Hazardous Materials Safety Administration*	**Series**	**Drug Only**	**Drug &Alcohol**
General Engineers (Pipeline)	**GS-801[a]**	**X**	
Petroleum Engineers	**GS-881[a]**	**X**	
Transportation Specialists	**GS-2101[a]**	**X**	
Compliance Investigator	**GS-1801[a]**	**X**	
a Includes only those GS-801, GS-881, and GS-2101 positions with responsibilities for field operations of inspection and enforcement.			

OA-*United States Coast Guard*	**Series**	**Drug Only**	**Drug &Alcohol**
Firefighters	**GS-0081**	**X**	**X[a]**
Search and Rescue Specialists/Controllers	**GS-0301**	**X**	
Lead Command Center Controller	**GS-0301**	**X**	
District Command Center Operations & Training Specialist	**GS-0301**	**X**	
Search and Rescue Controller (COP)	**GS-0301**	**X**	
Medical Officer	**GS-0602[b]**	**X**	
Nurse	**GS-0610**	**X**	
Marine Science Technician	**GS-1311**	**X**	
Criminal Investigators	**GS-1811**	**X**	

Vessel Traffic Controllers	**GS-2150**	**X**	
Vessel Traffic Control Specialist	**GS-2150**	**X**	
Vessel Traffic Service Training Coordinator	**GS-2150**	**X**	
Vessel Traffic Management Specialist	**GS-2150**	**X**	
Vessel Traffic Control Instructor	**GS-2150**	**X**	
Marine Traffic Controllers (Pilots)	**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 Foreman	**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	**Wl/WS-8801**	**X**	
Aircraft Mechanical Parts Repairers	**WG-8840[c]**	**X**	
Aircraft Mechanics	**WG-8852[c]**	**X**	

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 Aviation Logistics Center.

OA-*Transportation Security Administration*	**Series**	**Drug Only**	**Drugs & Alcohol**
Transportation Security	SV-0019		X[a]

Screeners			
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-801		X**c**
Criminal Investigators	SV-811		X**d**
Aviation Safety Inspectors	SV-825		X
Transportation Specialists	SV-101		X
Transportation Assistants	SV-102		X
Transportation Equipment Operation Family	SV-7XX		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.