

**CSC RECEIPT STAMP**

Table of Contents  
PSC Submissions

**New**

DHRPSC0005312 v 0.01	City Administrator	1
DHRPSC0005923 v 0.01	City Administrator	5
DHRPSC0005868 v 0.01	City Administrator	9
DHRPSC0005784 v 0.01	Airport Commission	17
DHRPSC0005926 v 0.01	Airport Commission	22
DHRPSC0005914 v 0.01	Public Health	25
DHRPSC0005887 v 0.01	Human Service Agency	30
DHRPSC0005772 v 0.01	Municipal Transportation Agency	35
DHRPSC0005950 v 0.01	Municipal Transportation Agency	49
DHRPSC0005942 v 0.01	Municipal Transportation Agency	213
DHRPSC0005710 v 0.01	Public Utilities Commission	216
DHRPSC0005879 v 0.01	Public Utilities Commission	220
DHRPSC0005883 v 0.01	Public Utilities Commission	224
DHRPSC0005873 v 0.01	Public Utilities Commission	228
DHRPSC0005104 v 0.01	Public Utilities Commission	234
DHRPSC0005984 v 0.01	Public Utilities Commission	237
DHRPSC0005739 v 0.01	Public Utilities Commission	242

**Amendment**

DHRPSC0002548 v 2.01	Early Childhood	245
DHRPSC0004810 v 1.01	Public Health	256
DHRPSC0005164 v 1.01	Public Health	266
DHRPSC0004741 v 1.01	Police	271
DHRPSC0003558 v 1.01	Public Utilities Commission	280
DHRPSC0005565 v 1.01	Public Utilities Commission	287



## PSC Requests Scheduled for Hearing - 1/26/2026

SC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
DHRPSC0005312 - v0.01	ADM	New	\$1,570,000.00	\$1,570,000.00	The vendor will provide as-needed, ADA-compliant shuttle buses and an appropriately licensed driver to shuttle City employees or the public on an as-needed basis, via specialized routes based on the specific need. Shuttle drivers may assist riders in loading and unloading personal and work-related items. These are intermittent services, utilized for short-term engagements, with transport provided generally one to two times to/from a location each day, or multiple times on the same route during special events. As examples of past use, the City has utilized these services to provide transportation: for SFPD officers, to and from special event locations to support with public safety during large-scale special events, such as was done during the APEC conference, and for SHF clients, from county jails to court appointments. The service may also be utilized in the event of emergencies to move individuals out of harms way or to specific locations to access emergency public services when public transit and other transportation options do not suffice.	60	60	2026-01-26 09:00:00	Lynn Khaw
DHRPSC0005923 - v0.01	ADM	New	\$3,500,000.00	\$3,500,000.00	TIDA is seeking a supplier to provide financial consulting and reimbursement management for eligible requests from TICD against the various governing documents. The selected contractor will perform the following services: Review documentation related to the Development Agreements between the TIDA, the City, and the Master Developer, to identify parameters for reimbursement for qualified project costs; Review submitted reimbursement documentation from the Master Developer; upon receipt of complete documentation, prepare a comprehensive reimbursement report for each developer payment request; review bid documentation and change orders for accuracy and eligibility; track and report on the status of all reimbursements and payments.	60	60	2026-01-26 09:00:00	Amanda Wentworth

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
DHRPSC0005868 - v0.01	ADM	New	\$2,500,000.00	\$2,500,000.00	<p>For furnishing and maintaining parts washer equipment, including:</p> <ul style="list-style-type: none"> <li>• Providing rental units and servicing for parts washer equipment, including both rented and City-owned units;</li> <li>• Performing regular exchange and replenishment of cleaning solutions/solvents used in the equipment;</li> <li>• Ensuring proper recycling and/or disposal of used cleaning solutions/solvents, and automotive fluids in full compliance with applicable Local, State of California, and Federal regulations.</li> </ul>	60	60	2026-01-26 09:00:00	Lynn Khaw
DHRPSC0005784 - v0.01	AIR	New	\$500,000.00	\$500,000.00	San Francisco International Airport (SFO) will participate in the contractor's Airport Service Quality (ASQ) survey programs. The contractor is the sole source provider of the ASQ survey programs, and they will support SFO by designing survey sampling plans, supplying survey tools, analyzing survey results, and delivering quarterly and annual performance reports, including industry ASQ benchmarking. In addition, SFO will participate in the contractor's airport accreditation assessment for the industry recognized ACI Airport Customer Experience Accreditation. Fieldwork surveys will be conducted by a separate party.	60	60	2026-01-26 09:00:00	Sung Kim
DHRPSC0005926 - v0.01	AIR	New	\$10,000,000.00	\$10,000,000.00	<p>The San Francisco International Airport (Airport) has multiple staff that are involved in the administration and management of procurement activities across various Airport divisions. The Airport is in the process of restructuring its procurement team and adding multiple new positions to centralize procurement staff and standardize processes. The Contractor will use specialized procurement industry expertise and knowledge to provide the following services on an as-needed basis:</p> <p>1) review and assess the Airport procurement practice and processes and provide</p>	60	60	2026-01-26 09:00:00	Sung Kim

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					<p>recommendations,</p> <p>2) audit, analysis and reporting on various procurement projects and related services,</p> <p>3) create and provide training to staff on various procurement related topics,</p> <p>4) assist with compliance with applicable government and Federal Aviation Administration regulations,</p> <p>5) assist with the development and implementation of the Airport's procurement strategic plan, and</p> <p>6) provide support services including, but not limited to, assisting with gathering and analysis of technical specification and requirements, assisting with administration and management of procurement activities.</p>				
DHRPSC0005914 - v0.01	DPH	New	\$850,000.00	\$850,000.00	<p>The contractor will deliver consulting and project-management services that supplement City staff during implementation. Key tasks include:</p> <p>Regulatory alignment with CalAIM, the Managed Care Final Rule, and Proposition 1 (2024) behavioral-health reforms.</p> <p>Systems integration among BHS, JHS, ECM providers, and MCPs to establish Justice-Involved Behavioral Health Links and pre-release Medi-Cal services.</p> <p>Payment-model support for capitation and other value-based reimbursement designs. (Capitation means a fixed per-person payment to manage care within defined quality and outcome standards.)</p>	30	30	2026-01-26 09:00:00	Reanna Albert

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					<p>Training and knowledge transfer through development of standard operating procedures, process maps, and toolkits.</p> <p>Project management for scheduling, milestone tracking, and inter-agency coordination, primarily through virtual meetings.</p>				
DHRPSC0005887 - v0.01	HSA	New	\$900,000.00	\$900,000.00	<p>Contractor shall be responsible for monitoring alcohol and substance use among parents and guardians involved with Child Welfare Services through a comprehensive and randomized testing program. The Contractor will conduct direct observation of urine sample collections to ensure accuracy and integrity and will test for a wide range of substances as specified by the agency. All verified test results will be promptly provided to the assigned Protective Services Worker (PSW). The Contractor will maintain complete and accurate records of all scheduled, completed, and missed testing appointments, and will provide timely data summaries and reports to PSWs. A structured referral process will be established to manage testing frequency requirements, including schedules ranging from one to two times per week or four to six times per month, as determined by case needs. The Contractor will work directly with clients to coordinate randomized testing schedules and provide clear instructions regarding procedures and compliance expectations. Additionally, the Contractor will implement a secure, web-based tracking and notification system to manage scheduling, ensure accountability, and deliver confidential test results and reports efficiently and accurately.</p>	48	48	2026-01-26 09:00:00	Elizabeth Leone
DHRPSC0005772 - v0.01	MTA	New	\$500,000.00	\$500,000.00	The consultant will provide independent project management oversight services for the Potrero Yard Modernization Project. Services will include reviewing project plans, schedules, and budgets; monitoring progress against milestones; assessing risk management and project controls; and providing recommendations to improve delivery efficiency. The consultant will also evaluate	54	54	2026-01-26 09:00:00	Amy Nuque

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					compliance with applicable City and funding requirements, prepare oversight reports, and present findings to project leadership. All services will be advisory in nature and will remain independent from internal project management functions.				
DHRPSC0005950 - v0.01	MTA	New	\$260,000.00	\$260,000.00	The consultant will provide oversight-monitoring assistance to the San Francisco Municipal Transportation Agency (SFMTA) to review a designated contractor's drug and alcohol testing policies and procedures for compliance. The consultant will conduct an annual on-site review of the selected collection and testing contractor's drug and alcohol testing policy, record keeping, testing reports, education, and training attendance rosters, and any other documents pertaining to compliance with the Department of Transportation/Federal Transit Administration (DOT/FTA) Drug and Alcohol Testing Rules and Regulations. Also conduct audits of service agents (Specimen Collector, Medical Review Officer, laboratory, Sub-Recipients, etc) that assist the SFMTA in maintaining compliance with the drug and alcohol testing guidelines.	60	60	2026-01-26 09:00:00	Amy Nuque
DHRPSC0005942 - v0.01	MTA	New	\$700,000.00	\$700,000.00	The scope is to install complex vendor-specific hardware/software solutions designed to detect unauthorized parking in designated transit or bus lanes, automatically read license plates, and create evidence packages for our PCOs (Parking Control Officer) to review and approve as valid citations.	24	24	2026-01-26 09:00:00	Amy Nuque
DHRPSC0005710 - v0.01	PUC	New	\$800,000.00	\$800,000.00	Inventory Count Services consisting of a full count for three enterprises. Work includes observing, performing, and/or validating physical inventory counts of various inventory items and comparing them to the SFPUC's Inventory Tracking System. The analysis, findings and recommendations will be provided in a written report for each warehouse location. Format for the content of such reports shall be determined by the Financial Reporting and Analysis group (FR&A). The timely submission of all reports is a necessary and material term and condition of this Agreement. Full counts are	120	120	2026-01-26 09:00:00	Shawndrea Hale

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					required at each location. Inventories include but not limited to the following items: water pipes, valves, fittings, meters and meter boxes, safety gear, electrical supplies, switches, power poles, fittings, safety gear, and sewage treatment inventory supplies, chains, rotors, valves, switches, tubes, etc. It is expected 1. March to plan of the count days in June. 2. June is the physical inventory count. 3. July, draft report regarding results of the count. 4. August, issuance of the inventory report 5. Sept/Oct presentation to Commissioner by the audit bureau team.				
DHRPSC0005879 - v0.01	PUC	New	\$24,000,000.00	\$24,000,000.00	Scope of Work/Services to be Contracted Out: The San Francisco Public Utilities Commission (SFPUC) intends to award one (1) contract for \$24 million over 10 years to provide services to support the planning and engineering design for Southeast Water Pollution Control Plant, Oceanside Water Pollution Control Plant, and Northpoint Facility. SFPUC is seeking a comprehensive phased process engineering master plan and the related designs for construction that will include the rehabilitation, repair, replacement or upgrade of wastewater treatment systems and their components. Systems include primary treatment, secondary treatment, tertiary treatment, and related sidestream systems. Current systems conditions will be reviewed and analyzed with respect to the currently available industry technologies while considering increased process reliability and efficiencies.  Systems components to be incorporated as part this phased approach include grit classification and removal, screening conveyers, scum removal and compaction, digested sludge dewatering capability increases by centrifuge and screw press, primary and aeration tank rehabilitation, primary odor controls, secondary odor controls, solids handling capacity increases, secondary system capacity increases through load removal by primary filtration, primary sedimentation tank upgrades, secondary sedimentation tank upgrades, sludge transfer pumping, metering upgrades, variable frequency driven fans, feasibility for digestion	120	120	2026-01-26 09:00:00	Shawndrea Hale

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					capacity increase through incorporating recuperative thickening or thermal hydrolysis, electrical system and emergency generator evaluation and upgrades.  The systems have special safety consideration of the OSHA hazardous classified locations as defined by NFPA 70 NEC, including Class 1 Division 1 and Division 2 ignitable concentrations of gases. Also, flow pattern optimizations for fluid systems with the boundary condition interactions between liquids and gasses will require the development of Computational Fluid Dynamics (CFD) models.  City Staff will be managing and overseeing the work of the consultants on these multiple related projects to assure that the project deliverables achieve the goals within the defined constraints.  Spending totals for this project will vary from year to year, so an even distribution of funds by year is not expected.				
DHRPSC0005883 - v0.01	PUC	New	\$5,000,000.00	\$5,000,000.00	The San Francisco Public Utilities Commission (SFPUC) intends to award an approximately \$44 million (\$5 million design and \$39 million construction) Fixed Budget Limit Design-Build construction contract (DB-140) for design and construction services to upgrade and increase operational reliability for eight (8) of sixteen (16) clarifiers at the Southeast Water Pollution Control Plant (SEP).  The \$5,000,000 design portion of the D-B procurement will complete the detailed design utilizing the bridging documents (~10+% design level) to be provided in the Request for Proposal. The duration of the design portion is approximately 1 year, and the duration of engineering supporting	59	59	2026-01-26 09:00:00	Shawndrea Hale

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					during construction is approximately 2 years.				
DHRPSC0005873 - v0.01	PUC	New	\$5,000,000.00	\$5,000,000.00	<p>The San Francisco Public Utilities Commission (SFPUC) intends to award an approximately \$40 million (\$5 million design and \$35 million construction) Progressive Design Build (PDB) construction contract (DB-136) to support SFPUC civil and electrical engineering staff with specialized security design services to upgrade physical security across SFPUC's wastewater facilities. Locations include Southeast and Oceanside wastewater treatment plants, Northpoint wet-weather facility, and other facilities adjacent to these three major facilities.</p> <p>Progressive Design Build is a delivery system, where design and construction professionals are integrated as one team in order to deliver complex, high risk and security sensitive projects such as DB-136. Because of how rapidly security infrastructure and technologies are advancing, the bifurcation of design and construction accountability is not conducive to security innovations necessary for this Project. As such, failure to procure specialty design-build security system design services as a part of the DB-136 contract may result in very significant delays and may jeopardize our efforts to implement security at SFPUC's critical/vulnerable facilities.</p> <p>The \$5,000,000 design portion of the DB procurement will complete the detailed design utilizing the planning documents (~10% design level) to be provided in the Request for Proposal. The duration of the design portion is approximately 1.5 years, and the duration of engineering supporting during construction is approximately 2 years.</p>	59	59	2026-01-26 09:00:00	Shawndrea Hale
DHRPSC0005104 - v0.01	PUC	New	\$9,000,000.00	\$9,000,000.00	The San Francisco Public Utilities Commission (SFPUC), a department of the City and County of San Francisco ("City"), seeks to retain the services of a qualified Proposer to provide support to the	96	96	2026-01-26 09:00:00	Shawndrea Hale



PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					<p>Regional Water System's (RWS'S) Pipeline and Tunnel Inspection and Repair Renewal and Replacement (R&amp;R) Program. The SFPUC has developed the RWS's R&amp;R Program to manage and document the Department's aging infrastructure, i.e., life extension of existing capital assets. The RWS comprises of pipelines and tunnels that range greatly in terms of diameter, installation date, pipeline material, pipeline condition, and operational importance.</p> <p>The scope of work is to analyze the water transmission system to understand operations, failure mechanisms, and how to inspect/assess, maintain, and perform work on the asset, which must remain partially in service to meet water level of service goals defined by SFPUC Water System Improvement Program (WSIP). It is also to support the Water Supply and Treatment Division (WSTD) staff efforts to understand failure mechanisms, perform comprehensive condition assessments, recommend monitoring programs, and create repair and replacement strategies. Additionally, the proposed work is to also provide technical support for pipeline and tunnel condition assessment services of steel pipe, non-steel pipe, and tunnels utilizing current and available inspection technologies.</p>				
DHRPSC0005984 - v0.01	PUC	New	\$925,000.00	\$925,000.00	<p>The scope covers the hosting, maintenance and upgrade of a proprietary conservation database and software system the SFPUC Water Conservation Section uses to process and track water customer participation in the SFPUC's conservation assistance programs and allows customers to apply for programs online and track the status of their applications online.</p>	48	48	2026-01-26 09:00:00	Shawndrea Hale
DHRPSC0005739 - v0.01	PUC	New	\$8,000,000.00	\$8,000,000.00	<p>engineering design, engineering support during construction, and surveying for curb ramps to support water conveyance, water distribution, wastewater collection, and power projects</p>	60	60	2026-01-26 09:00:00	Shawndrea Hale
<b>TOTALS:</b>			<b>\$74,005,000.00</b>	<b>\$74,005,000.00</b>					

Department Summary

Department	New Count	Amendment Count	Total New Amount	Total Cumulative Amount
ADM	3	0	\$7,570,000.00	\$7,570,000.00
AIR	2	0	\$10,500,000.00	\$10,500,000.00
DPH	1	0	\$850,000.00	\$850,000.00
HSA	1	0	\$900,000.00	\$900,000.00
MTA	3	0	\$1,460,000.00	\$1,460,000.00
PUC	7	0	\$52,725,000.00	\$52,725,000.00
Column Total	17	0	\$74,005,000.00	\$74,005,000.00

## PSC Requests Scheduled for Hearing - 1/26/2026

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
DHRPSC0002548 - v2.01	DEC	Amendment	\$3,000,000.00	\$4,900,000.00	<p>The contractor will continue to help plan and increase the communications capacity for the Department of Early Childhood (DEC), formed by the San Francisco Children and Families First Commission, dba First 5 San Francisco (F5SF) and the San Francisco Office of Early Care &amp; Education (OECE). As DEC increased its staffing, it anticipates that the consultant will play a more direct role with the implementation during the initial phase of this project, and DEC staff members will increase their responsibilities for the communications plan implementation accordingly. Key deliverables include, but are not limited to:</p> <ol style="list-style-type: none"> <li>1. Planning, designing, implementing, and evaluating digital and place-based advertising campaigns to raise awareness of DEC programs and services to the public.</li> <li>2. Support for the planning, design, and implementation of digital collateral, including photography and videography, editing, and publication.</li> <li>3. Writing, design, and publication support for DEC print collateral, such as annual reports, briefing materials, and program brochures.</li> <li>4. Support for media and community outreach events, including program planning, and design, creation, and acquisition of materials, supplies, and equipment to increase public engagement with DEC.</li> <li>5. Market research support, to assist DEC in reaching its intended audiences and understanding how to serve them more effectively.</li> </ol>	72	120	2026-01-26 09:00:00	Matthew Ahn
DHRPSC0004810 - v1.01	DPH	Amendment	\$280,000,000.00	\$647,880,000.00	<p>There is no substantive change to the scope of work. Instead, the purpose of the change is to reflect that this PSC supports continuing these services at existing funding levels.</p> <p>These services are provided by contractors to continue San Francisco's Drug Medi-Cal Organized Delivery System (DMC-ODS). Initially, the proposed PSC authorized the implementation of ODS programming in San Francisco, following a solicitation utilized to bring existing services up to the new Federal standards. This organized delivery system ensures that the full continuum of health care services continues to be accessible to Medicaid eligible individuals with substance use disorders. Its purpose is to provide the appropriate level of care to meet the needs of Drug/MediCal (DMC) beneficiaries while decreasing other system health</p>	0	144	2026-01-26 09:00:00	Reanna Albert

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					<p>care costs. Critical ongoing elements include:</p> <ol style="list-style-type: none"> <li>1. Continue to deliver a full continuum of care including Opioid Treatment Program, Outpatient Program, Intensive Outpatient, and Residential SUD Services, including Withdrawal Management and Residential Step Down services.</li> <li>2. Continue to deliver evidence-based practices and improve coordination with other health systems, including primary care and mental health.</li> <li>3. Sustain services reaching broad range of San Franciscans in need of substance use services, including justice-involved populations, youth, those who are under-housed or homeless.</li> </ol> <p>Services will continue to prioritize the following:</p> <ul style="list-style-type: none"> <li>-Services to specific underserved and priority populations, including persons who are Black/African American, homeless, incarcerated or involved with the criminal/juvenile justice systems/Drug Court, adolescents aged 10-18 years old, Transitional Aged Youth (TAY) aged 18-24 years old, Lesbian/Gay/Bisexual/Transgender/Queer/Questioning/Intersex/Ally/Two-Spirit, and Pregnant/Parenting women with children.</li> <li>-Under resourced geographic areas, including Hayes Valley/Tenderloin/North of Market, South of Market, Bernal Heights/Inner Mission/94110, Bayview Hunter's Point/94124, and Southeast/Visitacion Valley/Sunnydale/94134.</li> <li>-Opportunities to enhance patient engagement, peer support, medication assisted treatment, case management, and recovery services and supports ancillary treatment and outreach services.</li> </ul>				
DHRPSC0005164 - v1.01	DPH	Amendment	\$13,981,169.00	\$18,781,169.00	Contractor will provide general program administration services, financial management and reporting, performance and quality management, management of subcontractor agreements, and as-needed recruitment, onboarding and human resource management. Contractor will also staff	72	120	2026-01-26 09:00:00	Reanna Albert

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					public health positions specific to achieving the goals of the Community Health Equity and Promotion (CHEP) programs.				
DHRPSC0004741 - v1.01	POL	Amendment	\$840,250.00	\$1,340,250.00	The O2X Human Performance program is designed to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands. Along with on-site specialists, virtual resources included in the O2X program are able to extend the bandwidth of the on-site specialists and incorporate resources and education in the areas of nutrition and energy management, mental health, resiliency, and sleep. The O2X Human Performance targets increasing readiness, enhancing resilience, improving retention and extending career longevity for members at every department level.	24	48	2026-01-26 09:00:00	Vincent Lee
DHRPSC0003558 - v1.01	PUC	Amendment	\$1,636,512.00	\$2,524,512.00	Original coordinator's email: shale@sftwater.org. CleanPowerSF (CPSF) currently has contracts with two large battery storage systems as part of its renewable energy compliance requirements. The contract amount for this contract will go towards software licensing and overhead costs. The batteries are operated by two different vendors and charge during solar energy producing hours so they can provide energy when solar is not available. The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CPSF to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements, CPSF must procure a battery optimization tool for both projects and other future battery installations.	0	48	2026-01-26 09:00:00	Shawndrea Hale
DHRPSC0005565 - v1.01	PUC	Amendment	\$1,962,770.90	\$3,462,770.90	Crane inspections and repair in accordance with CalOSHA ANSI standards in compliance with Plate V title 8 Federal code including OSHA 1810.179, ASME, and ANSI.  Scope of services will include, but is not limited to the following main services on equipment located within SFPUC-WWE system wide:  <ul style="list-style-type: none"> <li>Quarterly Maintenance and Inspections</li> <li>Mandatory Partial Load Testing,</li> <li>Proof Load and Operational Testing,</li> <li>Mandatory Annual Inspection, Maintenance, Certification</li> <li>Quadrennial Inspection, Maintenance, Certification,</li> </ul>	0	84	2026-01-26 09:00:00	Shawndrea Hale

PSC Number	Department	Approval Type	New Amount	Cumulative Amount	Description	New Duration	Cumulative Duration	Hearing Date	Dept. PSC Coordinator
					<ul style="list-style-type: none"><li>Troubleshooting and</li><li>"As-needed Repairs"</li></ul>				
TOTALS:			\$301,420,701.90	\$678,888,701.90					

Department Summary

Department	New Count	Amendment Count	Total New Amount	Total Cumulative Amount
DEC	0	1	\$3,000,000.00	\$4,900,000.00
DPH	0	2	\$293,981,169.00	\$666,661,169.00
POL	0	1	\$840,250.00	\$1,340,250.00
PUC	0	2	\$3,599,282.90	\$5,987,282.90
Column Total	0	6	\$301,420,701.90	\$678,888,701.90

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** ADM

**Submitted By:** Wilton Alderman

**Department Coordinator:** Lynn Khaw,  
lynn.khaw@sfgov.org

**Project Manager:** Wilton Alderman

**ServiceNow Number:** DHRPSC0005312

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** As-needed Shuttle Services.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$1,570,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The vendor will provide as-needed, ADA-compliant shuttle buses and an appropriately licensed driver to shuttle City employees or the public on an as-needed basis, via specialized routes based on the specific need. Shuttle drivers may assist riders in loading and unloading personal and work-related items. These are intermittent services, utilized for short-term engagements, with transport provided generally one to two times to/from a location each day, or multiple times on the same route during special events. As examples of past use, the City has utilized these services to provide transportation: for SFPD officers, to and from special event locations to support with public safety during large-scale special events, such as was done during the APEC conference, and for SHF clients, from county jails to court appointments. The service may also be utilized in the event

of emergencies to move individuals out of harms way or to specific locations to access emergency public services when public transit and other transportation options do not suffice.

**Why are these services required and what are the consequences of denial?:** If this request is denied, City departments will be unable to provide on-demand transport, via ADA-compliant vehicles, to groups of City employees, clients, and members of the public in times of need, when standard transit routes and timings do not suffice. Without this as-needed shuttle services contract, the City will be prevented from providing timely public services to residents and from rapidly deploying City staff to critical locations and during urgent situations, including special events and emergencies.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The only civil service class that provides transit services is Class 9163 Transit Operator. This contract will be used to support when the 9163 Transit Operators are unable to meet the demand through the City's regular transit systems and routes. Further, given that the services are as-needed, short-term engagements, intermittent in nature, and may be needed on an urgent basis, it would not be feasible to employ City staff full-time to perform this work. Finally, 9163 Transit Operators are not classified to perform all of the needed services, such as assisting with loading and unloading items.

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** Yes

**Q4a) What facilities or equipment does the City lack that contractor possesses?:** The City would need to have ADA-compliant shuttles and buses available on an as-needed basis to cover events and/or provide fast-turnaround support to get City staff and/or the public to and from events or in emergency situations.

**Does the dept plan to acquire the facilities/equipment to perform the services?:** No

**Explain why:** These are as-needed, intermittent and short-term services, running on special



routes as determined by each department for their specific short-term need. Often, these will run one to two times to/from a location each day or may run back and forth the same route multiple times during a special event.

**Additional information to support your request (Optional):**

**Union Notifications**

**Job Class(es):** 7355 - Truck Driver, 9163 - Transit Operator

**Labor Unions:** 253 - TWU, Local 250-A, TransitOpr, 216 - Teamsters, Local 853

**Labor Union Email Addresses:** [president@twusf.org](mailto:president@twusf.org), [mhenneberry@teamsters853.org](mailto:mhenneberry@teamsters853.org)

**Union Review Sent On:** 11/10/2025

**Union Review End Date:** 12/10/2025

**Union Review Duration Met On:** 12/10/2025

## List of Previously Approved Contracts for Similar Services (Measured 3 years from the PSC Submission Date)

### Instructions:

Step 1: Download and save this template to your desktop.

Step 2: Complete the fields below.

Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

### Document Content:

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Dept Acronym:	ADM
Dept Name:	Office Of Contract Administration
PSC Coordinator Name:	Lynn Khaw
PSC Coordinator Email:	<a href="mailto:Lynn.Khaw@sfgov.org">Lynn.Khaw@sfgov.org</a>
PSC ServiceNow Record No.:	DHRPSC0005312

PS Contract ID	Contract Start Date	Contract End Date	Contract Not to Exceed Amount	PSC ServiceNow Record Number (if PSC approval was obtained)	Brief Description of Services Rendered
1000012546	2/4/2019	2/3/2026	\$ 1,500,000	DHRPSC0001696	As-Needed Mini Shuttle Services

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** ADM

**Submitted By:** Amanda Wentworth

**Department Coordinator:** Amanda Wentworth,  
Amanda.Wentworth@sfgov.org

**Project Manager:** Weihua Zhang

**ServiceNow Number:** DHRPSC0005923

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** The Treasurer Island Development Agency (TIDA) is creating a new San Francisco neighborhood on Treasure Island/Yerba Buena Island, including affordable housing, public transportation connections, extensive parks and open space, public art, hotels, restaurants and more. To achieve this extensive undertaking, TIDA, in conjunction with the San Francisco Department of Public Works (SFDPW) is working with Treasure Island Community Development, LLC ("TICD"), the Master Developer for the project. This project has a complicated financing structure that involves various tax districts and debt financing tools, all of which are governed by multiple different agreements. TIDA is seeking a supplier to provide financial consulting and reimbursement management for eligible requests from TICD against the various governing documents.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$3,500,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** TIDA is seeking a supplier to provide financial consulting and reimbursement management for eligible requests from TICD

## Post Union Notification

against the various governing documents. The selected contractor will perform the following services: Review documentation related to the Development Agreements between the TIDA, the City, and the Master Developer, to identify parameters for reimbursement for qualified project costs; Review submitted reimbursement documentation from the Master Developer; upon receipt of complete documentation, prepare a comprehensive reimbursement report for each developer payment request; review bid documentation and change orders for accuracy and eligibility; track and report on the status of all reimbursements and payments.

**Why are these services required and what are the consequences of denial?:** The services are required to fulfill a critical City obligation under the development agreement for reimbursing the Master Developer for constructing the public infrastructure on Treasure Island and Yerba Buena Island. Consequences of denial of the contract will include delay and suspension of the ongoing public infrastructure construction and planned affordable housing delivery on Treasure Island and Yerba Buena Island.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** Reimbursements are submitted sporadically, and the volume of work and level of review for each submission varies so greatly, that City staff cannot realistically balance this unpredictable workload.

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** TIDA has a Board that must review and approve all contracts.

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:** The

services are required to fulfill a critical City obligation under the development agreement for reimbursing the Master Developer for constructing the public infrastructure on Treasure Island and Yerba Buena Island. Invoices from the Master Developer are submitted on an intermittent basis and the volume can vary dramatically, creating unpredictable peaks in workload. Additionally, depending on the dollar amount of the reimbursement submitted and the complexities of the specific work, review and approval timelines can also vary dramatically.

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:**

Services require expertise in managing complex financing strategies, including Community Facilities District (CFD), Infrastructure and Revitalization Financing District (IRFD) and Certificates of Participation (COPs). Additionally, services require expertise in public financing reimbursement and associated accounting and auditing knowledge.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** The dramatic peaks in workload and various levels of review and approval required to ensure accurate reimbursement make it unrealistic that a single classification could perform the required work.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** The dramatic peaks in workload and various levels of review and approval required to ensure accurate reimbursement make it unrealistic for City staff to perform the work.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** The dramatic peaks in workload and various levels of review and approval required to ensure accurate reimbursement make it unrealistic for City staff to perform the work.

### **Additional information to support your request (Optional):**

#### **Union Notifications**

**Job Class(es):** 5241 - Engineer, 1657 - Accountant IV, 1654 - Accountant III

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

**Union Review Sent On:** 11/26/2025

**Union Review End Date:** 12/6/2025

**Union Review Duration Met On:** 12/6/2025

**Instructions:**

- Step 1: Download and save this template to your desktop.
- Step 2: Complete the fields below.
- Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

[illegible]

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** ADM

**Submitted By:** Gloria Yuen

**Department Coordinator:** Lynn Khaw,  
lynn.khaw@sfgov.org

**Project Manager:** Gloria Yuen

**ServiceNow Number:** DHRPSC0005868

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** Closed Loop Recycling and Disposal of Automotive Fluids Services (Resubmission of Previously Approved PSC Due to Expiration After 18 Months)

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$2,500,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** For furnishing and maintaining parts washer equipment, including:

- Providing rental units and servicing for parts washer equipment, including both rented and City-owned units;
- Performing regular exchange and replenishment of cleaning solutions/solvents used in the equipment;
- Ensuring proper recycling and/or disposal of used cleaning solutions/solvents, and automotive fluids in full compliance with applicable Local, State of California, and Federal regulations.

**Why are these services required and what are the consequences of denial?:** Fleet

Management Division provides vehicle and equipment repair and /or maintenance to cover thirty departments to operate their City vehicles, while MTA shops perform repair and /or maintenance services to their bus coaches and vehicles. The maintenance or repair of Citywide vehicles often involves changing oils/coolants/lubricants, and debris from the work is also a source of contamination. Proper hazardous waste disposal and maintenance of waste storage containers/sites are highly important, as they directly impact employees' health and the work environment. The aforementioned are also required by regulatory authorities. The City must manage its hazardous waste in a manner that protects the environment and the health of its residents and employees. The City must comply with State and Federal laws and regulations regarding the management of hazardous waste. Denial of the services will have negative safety, environmental, and legal consequences.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The contracted work requires specialized and skilled labor and equipment, as well as other supporting activities such as record keeping and regulatory reporting to associated authorities. There are no civil service classes related to the required processes.

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** Yes

**Q4a) What facilities or equipment does the City lack that contractor possesses?:** Special vehicles to collect and transport clean and used cleaning solutions/solvents.

**Does the dept plan to acquire the facilities/equipment to perform the services?:** No

**Explain why:** City currently has no specialized vehicles to perform these services.

**Additional information to support your request (Optional):** This is a resubmission of previously approved PSC (see attachment) due to expiration after 18 months.

### Union Notifications

#### Post Union Notification



**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, jvarga@ibt856.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, president@sfsheriffsmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org, administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org, WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org, President@sanfranciscodsa.com, staff@sfmea.com, mleach@ibt856.org, ibew6@ibew6.org, oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 12/10/2025

**Union Review End Date:** 12/17/2025

**Union Review Duration Met On:** 12/17/2025

## PSC Management

Brief description of proposed work:		
Hazardous Waste Management Services.		
Reason for the Request for Amendment:		
Withdraw Reason:		
Reason for Cancellation:		
Retire Reason/Comments:		
Has this record ever gone through CSC Approval?:	Yes	Conditional Approval Edit Invoked By:

## Amount

PSC Amount:	\$0.00	Does contract include items other than services?:	
Previously Approved Amount:	\$0.00		
Increase Amount:	\$0.00	1 - Commodities & Equipment:	false
Why are you requesting the PSC amount to be increased?:		Estimated NTE Amount (1):	\$0.00
		2 - On-premise Software Licenses:	false
Total Amended Amount:	\$0.00	Estimated NTE Amount (2):	\$0.00
Current Cumulative Approved Amount (Digitized Only):	\$5,000,000.00	3 - On-Premise Software Support (w/out Prof Services):	false
Last Cumulative CSC Approved Amount (Digitized Only):	\$5,000,000.00	Estimated NTE Amount (3):	\$0.00
Last CSC Approved Amount:	\$0.00	4 - Cloud-Based Software Licenses and Support (w/out Prof Services):	false
Total Non-CSC Approved Amount :	\$0.00	Estimated NTE Amount (4):	\$0.00

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Hazardous Waste Management Services

Funding Source: General Fund

PSC Duration: 5 years

PSC Amount: \$5,000,000

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

The Fleet Management Division of the General Services Agency requires comprehensive services for emergency and non-emergency hazardous waste management. These services include collecting various used motor oils and industrial wastes and transporting and delivering them for proper recycling, reuse, or disposal at permitted facilities. Services also include responding to hazardous waste emergency spills on an intermittent and as-needed basis.

B. Explain why this service is necessary and the consequence of denial:

The Fleet Management Division is responsible for providing vehicle and equipment maintenance to over thirty city departments. This maintenance includes tasks such as changing oils, coolants, and lubricants, which can generate hazardous waste. Proper disposal of this waste and maintenance of waste storage sites is crucial for the health and safety of employees and to comply with regulatory requirements. It is essential for the City to manage its hazardous waste to protect the environment and the well-being of its residents and employees. Failure to do so can result in negative safety, environmental, and legal consequences.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past under PSC #49016 - 18/19, attached.

D. Will the contract(s) be renewed?

Yes, services are needed by Fleet Management.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

**2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The contracted work requires specialized and skilled labor and equipment and other supporting activities such as record keeping and regulatory reporting to associated authorities. There are no Civil Service classes related to the required processes.

**3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: The proposed work requires expertise in managing chemical hazards and a thorough knowledge of federal and state requirements regarding the transportation and disposal of hazardous waste. Those performing the work must meet Occupational Safety and Health Act (OSHA) training and medical monitoring requirements. Additionally, vehicle drivers must hold a license with hazardous materials certification.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:  
Yes, the contractor will utilize authorized and specialized equipment in their possession to effectively carry out all contractual work.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The requested service involves handling hazardous materials, requiring employees to be certified in OSHA training and medical monitoring. Vehicle drivers must also hold a license with hazardous materials certification.

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
The contracted work requires specialized and skilled labor and equipment and other supporting activities such as record keeping and regulatory reporting to associated authorities. There are no Civil Service classes related to the required processes.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, because the Civil Service class must meet OSHA training and medical monitoring requirements, and vehicle drivers must possess a license with a hazardous materials certification.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 05/29/2024, the Department notified the following employee organizations of this  
PSC/RFP request:  
all unions were notified

☐ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO  
THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430 San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 43388 - 23/24

DHR Analysis/Recommendation:

action date: 07/15/2024

Commission Approval Required

Approved by Civil Service Commission

07/15/2024 DHR Approved for 07/15/2024

# List of Previously Approved Contracts for Similar Services (Measured 3 years from the

**Instructions:**

Step 1: Download and save this template to your desktop.

Step 2: Complete the fields below.

Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Dept Acronym:	OCA
Dept Name:	Office of Contract Administration
PSC Coordinator Name:	Lynn Khaw
PSC Coordinator Email:	<a href="mailto:lynn.khaw@sfgov.org">lynn.khaw@sfgov.org</a>
PSC ServiceNow Record No.:	DHRPSC0005868

PS Contract ID	Contract Start Date	Contract End Date	Contract Not to Exceed Amount	PSC ServiceNow Record Number (if PSC approval was obtained)	Brief Description of Services Rendered
1000017526	2/1/2020	12/31/2024	\$ 5,000,000	DHRPSC0002050 v 1.0	Closed loop solvents, materials, and maintenance services for machines used for cleaning industrial parts.

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** AIR

**Submitted By:** Alfy Wong

**Department Coordinator:** Sung Kim,  
Sung.Kim@flysfo.com

**Project Manager:** Stephanie Francisco

**ServiceNow Number:** DHRPSC0005784

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** Airport Service Quality Customer Experience Survey

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$500,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** San Francisco International Airport (SFO) will participate in the contractor's Airport Service Quality (ASQ) survey programs. The contractor is the sole source provider of the ASQ survey programs, and they will support SFO by designing survey sampling plans, supplying survey tools, analyzing survey results, and delivering quarterly and annual performance reports, including industry ASQ benchmarking. In addition, SFO will participate in the contractor's airport accreditation assessment for the industry recognized ACI Airport Customer Experience Accreditation. Fieldwork surveys will be conducted by a separate party.

**Why are these services required and what are the consequences of denial?:** SFO has been a

participant of the ASQ survey process since 2011 and denial of this service would cause an interruption in the year-to-year benchmark comparison data and losing the globally recognized ACI's Airport Customer Experience Accreditation. SFO would risk losing touch with its passenger user base, risking a reduction in passenger satisfaction and a loss in revenue.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The contractor is the sole entity with access to the survey results database, which includes data from hundreds of participating airports worldwide and the associated benchmarking methodology. They also serve as the exclusive accreditation body for the Airport Customer Experience Accreditation.

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** All Airport contracts at or above the Minimum Competitive Amount require Airport Commission approval.

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** Yes. See attached letter from the manufacturer confirming these services must be performed by the manufacturer or an authorized reseller/distributor.

**Additional information to support your request (Optional):** The contractor has full ownership and control the Airport Service Quality (ASQ) Programs. On behalf of participating airports, the contractor analyzes survey results, conducts benchmarking exercises, and issues the industry-recognized accreditation. The City's Office of Contract Administration has approved the sole source waiver for this contract. The contractor's sole source letter is attached.

### Union Notifications

**Job Class(es):** 1823 - Senior Administrative Analyst, 1824 - Pr Administrative Analyst, 0922 - Manager I

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 351 - Municipal Exec Assoc-Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, staff@sfmea.com

### Post Union Notification



**Union Review Sent On:** 12/2/2025  
**Union Review End Date:** 1/1/2026  
**Union Review Duration Met On:** 1/1/2026



Montreal, 06 October 2025

## **ACI Airport Service Quality Program-Sole source**

*To whom it may concern*

Airports Council International (ACI), the trade association of the world's airports, is a federated organization comprising ACI World, ACI Africa, ACI Asia-Pacific, ACI EUROPE, ACI Latin America-Caribbean and ACI North America. In representing the best interests of airports during key phases of policy development, ACI makes a significant contribution toward ensuring a global air transport system that is safe, secure, efficient, and environmentally sustainable. ACI serves 830 members, operating 2,181 airports in 170 countries.

Amongst other membership services ACI is offering to its members the Airport Service Quality (ASQ) Survey program, with total 435 participants across the world and 61 in North America as of Q3 2025. The ASQ Survey is an ACI customer satisfaction measurement and analysis program based on passenger surveys conducted at worldwide airports year-round. ASQ helps the airports to understand their customers and to communicate with them. ASQ provides airports with relevant information on their peers and competitors.

ASQ is a membership service first and foremost designed to meet the needs of ACI's members, thus, it is only available to members of ACI. San Francisco Airport Commission is a member of Airports Council International and is entitled to benefit from the participation to the ASQ program and Airport Customer Experience Accreditation.

ACI has full ownership and control of the Airport Service Quality Program *on behalf* of the *airport industry* and is positioned to offer a unique program to its members, consisting of face-to-face surveys, using statistical sampling methodology necessary to get representative results and meaningful benchmarking. ACI is responsible for the day-to-day management and the administration of the program including administration, customer service, invoicing and collection of program participation fees. Some of the market research related aspects of the program are subcontracted to TNS Canada (since January 1st, 2015) and are conducted by TNS Canada on behalf of ACI.

Yours sincerely,

Dimitri Coll

Senior Vice President & Chief Products and Services Officer

ACI World

**Instructions:**

- Document Content:**

Other than completing the blank fields below, do not change or alter this template.

[illegible]

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** AIR

**Submitted By:** Quoc Truong

**Department Coordinator:** Sung Kim,  
Sung.Kim@flysfo.com

**Project Manager:** Yen Pang

**ServiceNow Number:** DHRPSC0005926

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** As-Needed Procurement Advisory, Training, and Support Services

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$10,000,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The San Francisco International Airport (Airport) has multiple staff that are involved in the administration and management of procurement activities across various Airport divisions. The Airport is in the process of restructuring its procurement team and adding multiple new positions to centralize procurement staff and standardize processes. The Contractor will use specialized procurement industry expertise and knowledge to provide the following services on an as-needed basis:

- 1) review and assess the Airport procurement practice and processes and provide recommendations,
- 2) audit, analysis and reporting on various procurement projects and related services,

- 3) create and provide training to staff on various procurement related topics,
- 4) assist with compliance with applicable government and Federal Aviation Administration regulations,
- 5) assist with the development and implementation of the Airport's procurement strategic plan, and
- 6) provide support services including, but not limited to, assisting with gathering and analysis of technical specification and requirements, assisting with administration and management of procurement activities.

**Why are these services required and what are the consequences of denial?:** To support the restructuring of its procurement operations, the Airport requires additional support and training for its procurement staff and procurement activities. As-needed temporary resources are needed to provide support services while the Airport fills multiple new positions and have them trained.

The consequences of denial may include a lack of training opportunities and procurement related guidance and resources for the Airport which may delay various procurements impacting operation, safety, and compliance with government regulations.

**Has your department contracted out these services in the last three years?:** No

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** All professional services contracts in excess of the Minimum Competitive Amount are submitted to the Airport Commission for approval.

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Temporary Basis

**Q5a) Explain the Temporary basis of the services:** Services needed to address a transitional or short-term situation

**Q5b) Why do you believe this to be a transitional or short-term situation?:** The Airport is in the process of restructuring its procurement team by centralizing staff and processes. Contractor support services will be temporary until the Airport fills the new positions and they are trained.

The Airport anticipates filling the new positions and standardizing procurement practices and processes during the PSC duration.

**Q5c) How will you ensure the services aren't needed once this PSC request has ended?:** The support services are temporary until the Airport fills the new positions and have them trained. The Airport anticipates filling these positions during the PSC duration. The other services are as-needed short-term projects.

**Q5d) Describe the required skills and expertise needed to perform the services:** Expertise and knowledge with public procurement in accordance with applicable government regulations and policy requirements. Expertise with strategic planning related to procurement that outlines long-term goals and establishing standardized processes. The ability to review and analyze technical specifications and requirements to a variety of different procurements. The ability to provide technical training on various procurement subjects.

**Q5e) Does the Department have employees with the required skills and expertise?:** Yes

**Q5f) Explain why the employees are not able to perform these services:** Employees can provide some of the services, but additional resources are needed to support the Airport's procurement team during the transition with centralizing staff and processes. Contractors with industry expertise can provide assessment, recommendation, and training services to train staff and standardize best practices and processes.

**Q5g) Will the services terminate upon resolution of the situation?:** No

**Q5h) Explain why:** Although support services may end after the new positions are filled and they are trained, the Airport requires the short-term projects/services for the duration of the PSC to assist with audits and analysis of projects, implementation of the strategic plan and standardization processes related to procurement.

### **Additional information to support your request (Optional):**

#### **Union Notifications**

**Job Class(es):** 1823 - Senior Administrative Analyst, 1232 - Training Officer, 0931 - Manager III, 1825 - Prnpl Admin Analyst II, 0923 - Manager II, 1824 - Pr Administrative Analyst

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 351 - Municipal Exec Assoc-Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, staff@sfmea.com

**Union Review Sent On:** 11/21/2025

**Union Review End Date:** 12/21/2025

**Union Review Duration Met On:** 12/21/2025

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** DPH

**Submitted By:** Reanna Albert

**Department Coordinator:** Reanna Albert,  
reanna.albert@sfdph.org

**Project Manager:** David Nish

**ServiceNow Number:** DHRPSC0005914

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** Provide strategic decision-making and project-management support to implement California Advancing and Innovating Medi-Cal (CalAIM) reforms within the Department of Public Health's (DPH) Behavioral Health Services (BHS). The work includes payment-model redesign, managed-care compliance, and implementation of Providing Access and Transforming Health (PATH) initiatives, particularly the Justice-Involved Behavioral Health Links component. Services include technical assistance, inter-agency coordination, and staff training to operationalize new Medi-Cal and State requirements across BHS, Jail Health Services (JHS), Enhanced Care Management (ECM) providers, and Medi-Cal Managed Care Plans (MCPs).

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$850,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 30

## Funding

**Funding Source:** Federal Funds, State Funds

**Special circumstances related to funding:** Yes

**Explain the special circumstances:** The Providing Access and Transforming Health (PATH) initiative, administered by the California Department of Health Care Services (DHCS), provides time-limited funding to help counties implement the California Advancing and Innovating Medi-Cal (CalAIM) reforms. Within CalAIM, the Justice-Involved Behavioral Health Links component supports continuity of Medi-Cal behavioral-health coverage and care for people who are justice-

involved.

PATH funds are designed to help counties plan, coordinate, and train staff to meet State implementation requirements and to build long-term local capacity. DPH's Behavioral Health Services (BHS) division received PATH funding for these activities. One third of the award is allocated for short-term consulting and project-management services to design workflows, coordinate with Jail Health Services (JHS), Enhanced Care Management (ECM) providers, and Medi-Cal Managed Care Plans (MCPs), and to train City staff to sustain operations after implementation.

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The contractor will deliver consulting and project-management services that supplement City staff during implementation. Key tasks include:

Regulatory alignment with CalAIM, the Managed Care Final Rule, and Proposition 1 (2024) behavioral-health reforms.

Systems integration among BHS, JHS, ECM providers, and MCPs to establish Justice-Involved Behavioral Health Links and pre-release Medi-Cal services.

Payment-model support for capitation and other value-based reimbursement designs. (Capitation means a fixed per-person payment to manage care within defined quality and outcome standards.)

Training and knowledge transfer through development of standard operating procedures, process maps, and toolkits.

Project management for scheduling, milestone tracking, and inter-agency coordination, primarily through virtual meetings.

**Why are these services required and what are the consequences of denial?:** Services are required because DPH's Behavioral Health Services (BHS) division must implement State and federal initiatives, including CalAIM, the Managed Care Final Rule, and Proposition 1, that introduce new payment structures, reporting standards, and coordination requirements for Medi-Cal and behavioral-health programs. The work requires detailed technical and regulatory planning such as managed-care rate modeling, value-based reimbursement design, and multi-agency coordination among Medi-Cal plans, Jail Health Services, and community providers. These are highly specialized, implementation-focused tasks with defined timelines tied to State and federal mandates.

Engaging an external contractor for this limited period will ensure that DPH meets compliance



deadlines, protects Medi-Cal and PATH funding, and completes the transition to new payment and service models. The contractor will also produce templates, documentation, and training materials so DPH staff can maintain and manage the redesigned systems once implementation is complete. The engagement is temporary, targeted, and capacity building. Without this contract, DPH risks delays, missed milestones, and potential loss of external funding that supports critical behavioral-health services.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The consulting expertise required for CalAIM and PATH implementation, such as Medicaid rate-model design, managed-care contracting, and cross-agency financing alignment, is project-specific and time-limited. Contracting provides access to specialized subject-matter experts who can guide implementation and train staff, ensuring the knowledge and tools remain within DPH after the project ends.

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
Yes

**Q1a) Clearly describe & site the regulatory/legal requirements to support outsourcing:** The CalAIM and PATH initiatives require counties to meet specific implementation and reporting milestones established by the State and federal government. Specialized external support is needed to meet these requirements on schedule and maintain compliance.

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Temporary Basis

**Q5a) Explain the Temporary basis of the services:** Services needed to address a transitional or short-term situation

**Q5b) Why do you believe this to be a transitional or short-term situation?:** The services are temporary and transitional. The work is limited to a 30-month implementation period associated with CalAIM and PATH deliverables. Once training is complete and systems are in place, DPH staff will assume full responsibility for ongoing management.

**Q5c) How will you ensure the services aren't needed once this PSC request has ended?:**

After training is completed and systems are put in place, DPH staff will take over full responsibility for managing operations.

**Q5d) Describe the required skills and expertise needed to perform the services:** Expertise in strategic planning, regulatory compliance, and financial transformation under California's Medical and behavioral health systems. The work requires advanced knowledge of CalAIM and the PATH initiative, including the Justice-Involved Behavioral Health Links component.

Extensive experience developing and implementing capitation and value-based payment models, in which providers or managed care plans receive a fixed per-person amount to coordinate care within defined quality and outcome measures, and a thorough understanding of DHCS and CMS managed care regulatory requirements. Expertise in aligning behavioral health, correctional, and managed care systems is essential to ensure coordinated and compliant service delivery.

The ability to train and advise public-sector staff, translating complex regulatory and financial concepts into practical tools, procedures, and documentation that enable DPH employees to manage and sustain these functions after implementation.

**Q5e) Does the Department have employees with the required skills and expertise?:** No

**Q5f) not needed**

**Q5g) Will the services terminate upon resolution of the situation?:** No

**Q5h) Explain why:** DPH plans to transition all operational responsibilities to DPH staff as employees gain knowledge and experience through the training and documentation developed during this engagement. The contract is structured to build internal capacity and ensure that staff are prepared to manage compliance, payment reform, and program coordination independently.

**Additional information to support your request (Optional):** This PSC is time-limited, specialized, and focused on building long-term capacity within DPH. The services are implementation-specific and non-recurring, allowing DPH to meet State and federal mandates on schedule while training DPH employees to sustain the new systems going forward. Approval will ensure regulatory compliance, protect public funding, and strengthen DPH's ability to serve San Francisco's residents.

## Union Notifications

**Job Class(es):** 1823 - Senior Administrative Analyst, 2593 - Health Program Coordinator 3, 1824 - Pr Administrative Analyst

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

**Union Review Sent On:** 11/18/2025

**Union Review End Date:** 11/28/2025

**Union Review Duration Met On:** 11/28/2025

## List of Previously Approved Contracts for Similar Services (Measured 3 years from the PSC Submission Date)

### Instructions:

Step 1: Download and save this template to your desktop.

Step 2: Complete the fields below.

Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

### Document Content:

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

Dept Acronym:	DPH
Dept Name:	Department of Public Health
PSC Coordinator Name:	Reanna Albert
PSC Coordinator Email:	<a href="mailto:reanna.albert@sfdph.org">reanna.albert@sfdph.org</a>
PSC ServiceNow Record No.:	DHRPSC0005914

PS Contract ID	Contract Start Date	Contract End Date	Contract Not to Exceed Amount	PSC ServiceNow Record Number (if PSC approval was obtained)	Brief Description of Services Rendered
1000009128	12/31/2017	12/31/2025	\$ 6,187,809	PSC 2000-07/08	As-needed project based support services - category I program administration and support services

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** HSA

**Submitted By:** Krystal Rogers

**Department Coordinator:** Elizabeth Leone,  
elizabeth.leone@sfgov.org

**Project Manager:** Elena Wong

**ServiceNow Number:** DHRPSC0005887

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** Substance Abuse Testing Services are necessary to monitor alcohol and drug usage for parents of foster children involved in Child Protection Services by performing randomized drug testing. These services support reunification within the families. The administration of substance abuse testing services includes direct observation of drug testing on a variety of substances, providing data collection and test results to appropriate City Staff and maintaining records. Processes will be developed for: referrals, testing, scheduling, tracking and notifications and reporting.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$900,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 48

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** Contractor shall be responsible for monitoring alcohol and substance use among parents and guardians involved with Child Welfare Services through a comprehensive and randomized testing program. The Contractor will conduct direct observation of urine sample collections to ensure accuracy and integrity and will test for a wide range of substances as specified by the agency. All verified test

results will be promptly provided to the assigned Protective Services Worker (PSW). The Contractor will maintain complete and accurate records of all scheduled, completed, and missed testing appointments, and will provide timely data summaries and reports to PSWs. A structured referral process will be established to manage testing frequency requirements, including schedules ranging from one to two times per week or four to six times per month, as determined by case needs. The Contractor will work directly with clients to coordinate randomized testing schedules and provide clear instructions regarding procedures and compliance expectations. Additionally, the Contractor will implement a secure, web-based tracking and notification system to manage scheduling, ensure accountability, and deliver confidential test results and reports efficiently and accurately.

**Why are these services required and what are the consequences of denial?:** Family Children Services (FCS) relies on comprehensive substance abuse testing services to ensure the safety and well-being of children prior to reunification with their parents. These services provide critical, evidence-based information that enables caseworkers to verify that parents have made meaningful behavioral changes and no longer pose a risk to their children's safety. Substance abuse testing is often ordered by the court, and the program is obligated to provide parents with the opportunity to complete these tests. By facilitating informed decision-making, substance abuse testing supports timely case resolution, expedites family reunification, and contributes to higher rates of long-term positive outcomes. The absence or denial of this service would significantly jeopardize child welfare outcomes, delay permanency planning, not follow court orders and prolong family dependency within the child welfare system.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** Civil service employees do not conduct observed or monitored substance testing and lack the specialized knowledge, resources, equipment and space required to work within court dependency and child welfare service systems. Furthermore, existing staff do not have the capacity or resources to collect specimens outside the county, which is occasionally necessary based on a client's residence or place of employment. Laboratory test results obtained through this service play a critical role in the reunification process and are often utilized as evidence in court proceedings. Furthermore, we have contacted San Francisco General Hospital (SFGH) and Department of Public Health (DPH) clinics throughout the city to secure this service locally; however, this option is not available, as no DPH clinics or SFGH perform the required observed and monitored substance abuse testing. Therefore, the civil service classes in the city and county do not have the capacity to perform observed laboratory services.

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** This contract will be submitted for approval by Human Services Commission.

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:** The services are needed on a long-term basis as Family Children Services (FCS) relies on comprehensive substance abuse testing services to ensure the safety and well-being of children prior to reunification with their parents.

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:**

Experience with administering drug and alcohol laboratory testing and collaborating with social service agencies to support child welfare and family reunification efforts. All staff are required to complete specialized hair follicle collector training and an urine specimen collector training to ensure adherence to industry standards, accuracy in testing procedures, and compliance with all applicable regulations. This high level of training and experience ensures the integrity of test results and the reliability of the services provided to both the agency and the families served.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** These services are provided on an as-needed basis, taking into consideration the need to recruit for the identified roles.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** Observed testing is not conducted by city employees because it requires specialized training and compliance beyond their job scope, and HSA facilities do not have the appropriate facilities to collect or store specimens, making City employee training unnecessary.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** There are no current plans to transition this work to the city because of the lack of specialized training, observed urinalysis and out of county testing services that are needed.



## Additional information to support your request (Optional):

### Union Notifications

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, jvarga@ibt856.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, president@sfsherriffmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org, administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org, WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org, President@sanfranciscodsa.com, staff@sfmea.com, mleach@ibt856.org, ibew6@ibew6.org, oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 12/5/2025

**Union Review End Date:** 12/12/2025

**Union Review Duration Met On:** 12/12/2025

**Instructions:**

- Step 1: Download and save this template to your desktop.
- Step 2: Complete the fields below.
- Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

[illegible]



# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** MTA

**Submitted By:** Steffi Octaviano

**Department Coordinator:** Amy Nuque,  
Amy.Nuque@sfmta.com

**Project Manager:** Chris Lazaro

**ServiceNow Number:** DHRPSC0005772

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** The San Francisco Municipal Transportation Agency seeks professional project management oversight services for the Potrero Yard Modernization Project. The consultant will provide independent review, analysis, and advisory support to ensure compliance with federal requirements, monitor project delivery performance, and assess risk management practices. Services will include evaluating cost, schedule, and project controls, as well as providing recommendations to improve delivery efficiency. The oversight role will supplement but remain independent from internal project management functions.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$500,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 54

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The consultant will provide independent project management oversight services for the Potrero Yard Modernization Project. Services will include reviewing project plans, schedules, and budgets; monitoring progress against milestones; assessing risk management and project controls; and providing recommendations to improve delivery efficiency. The consultant will also evaluate compliance

with applicable City and funding requirements, prepare oversight reports, and present findings to project leadership. All services will be advisory in nature and will remain independent from internal project management functions.

**Why are these services required and what are the consequences of denial?:** These services are required to ensure the Potrero Yard Modernization Project is delivered effectively and in alignment with City and funding requirements. The project is a major capital initiative with significant financial and operational impacts, and independent oversight is necessary to provide objective review, early identification of risks, and accountability in project delivery. Without these services, the project may face increased exposure to delays, cost overruns, and compliance issues, which could jeopardize successful completion and public trust.

**Has your department contracted out these services in the last three years?:** No

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Temporary Basis

**Q5a) Explain the Temporary basis of the services:** Services needed to address a transitional or short-term situation

**Q5b) Why do you believe this to be a transitional or short-term situation?:** The need for independent project management oversight is tied specifically to the implementation phase of the Potrero Yard Modernization Project. Once major design and construction milestones are complete, the oversight role will no longer be needed. This is a temporary need created by the project's size, complexity, and funding requirements.

**Q5c) How will you ensure the services aren't needed once this PSC request has ended?:** The consultant's scope is limited to providing advisory oversight during project delivery. Internal San Francisco Municipal Transportation Agency (SFMTA) staff will continue to manage day-to-day project activities and will assume full responsibility for monitoring and reporting after the consultant's engagement concludes. No ongoing consultant support is anticipated beyond the project's oversight period.

**Q5d) Describe the required skills and expertise needed to perform the services:** The services require expertise in large-scale capital program management, construction oversight, cost and

schedule analysis, and risk management. The consultant must have experience with design-build and other alternative delivery methods, as well as familiarity with public agency processes, capital funding compliance, and performance monitoring.

**Q5e) Does the Department have employees with the required skills and expertise?:** No  
**Q5f) not needed**

**Q5g) Will the services terminate upon resolution of the situation?:** Yes

**Additional information to support your request (Optional):**

#### Union Notifications

**Job Class(es):** 1823 - Senior Administrative Analyst, 5508 - Project Manager 4, 1824 - Pr  
Administrative Analyst, 5207 - Assoc Engineer

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

**Union Review Sent On:** 10/16/2025

**Union Review End Date:** 10/26/2025

**Union Review Duration Met On:** 10/26/2025

## Nuque, Amy

---

**From:** Abulencia, Simon  
**Sent:** Monday, December 8, 2025 9:36 AM  
**To:** Nuque, Amy  
**Subject:** FW: PSC 5772 and 5828 TPSC Pilot Meeting - Nov 6, 2025

Hi Amy,

Forwarding you Tim Kempf (Project Manager for DHRPSC0005772) RFI response to Local 21. (It looks like he originally CC'd you onto the communication as well)

### Timeline:

- 11/06/2025 - ELR/ Project Managers met with Local 21 about two separate contracts (5772 & 5828).
- 11/06/2025 – David sends follow up email after meeting with everyone involved.
- 11/07/2025 – Local 21 has follow up RFIs for both PSCs.
- 11/25/2025 – Tim Kempf provides RFI response for 5772.
- Currently – ELR has not heard back from Local 21. We are considering this contract ready to move forward to DHR review since we have fulfilled the Union review period/ met with the Union/ and answered all of their questions.

Please let me know if you need anything else.

Best,

Simon Abulencia  
Human Resources Analyst  
Employee and Labor Relations Unit  
(He/Him/His)



[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)

Office: 415-646-2366

1 South Van Ness Ave. 6<sup>th</sup> Floor #6212

San Francisco, CA 94103



---

**From:** Kempf, Tim <Tim.Kempf@sfmta.com>  
**Sent:** Tuesday, November 25, 2025 10:54 AM  
**To:** Jessica Nuti <jnuti@ifpte21.org>; Garcia, David <David.Garcia@sfmta.com>; Emily Wallace <ewallace@ifpte21.org>; Lee, Wallis (DPW) <wallis.lee@sfdpw.org>; Sum, Jeanne (PUC) <JSum@sfgwater.org>  
**Cc:** Dines, Shana <Shana.Dines@sfmta.com>; Stalfa, Gregory (HRD) <gregory.stalfa@sfgov.org>; Wright, Jonathan (HRD) <jonathan.wright@sfgov.org>; Chu, Amanda (HRD) <amanda.l.chu@sfgov.org>; Abulencia, Simon

<Simon.Abulencia@sfmta.com>; Maleki, Parand <Parand.Maleki@sfmta.com>; Kalinowski, Christian <Christian.Kalinowski@sfmta.com>; Octaviano, Steffi <Steffi.Octaviano@sfmta.com>; Nuque, Amy <Amy.Nuque@sfmta.com>

**Subject:** RE: PSC 5772 and 5828 TPSC Pilot Meeting - Nov 6, 2025

Hello Jessica,

In regard to **PSC 5772**, the in-house work to be performed throughout design and construction includes an SFMTA team comprised of project management and construction management individuals to manage and administer the design and construction work. This core PM/CM team is further supported by SFMTA engineers who will be reviewing their respective design deliverables for compliance. The third party consultant selected to perform the PMO scope would work alongside this SFMTA team as the PMO performs their respective oversight role.

Thanks,  
Tim

---

**From:** Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>

**Sent:** Friday, November 7, 2025 4:01 PM

**To:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>; Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfgwater.org](mailto:JSum@sfgwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>

**Cc:** Dines, Shana <[Shana.Dines@sfmta.com](mailto:Shana.Dines@sfmta.com)>; Stalfa, Gregory (HRD) <[gregory.stalfa@sfgov.org](mailto:gregory.stalfa@sfgov.org)>; Wright, Jonathan (HRD) <[jonathan.wright@sfgov.org](mailto:jonathan.wright@sfgov.org)>; Chu, Amanda (HRD) <[amanda.l.chu@sfgov.org](mailto:amanda.l.chu@sfgov.org)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Maleki, Parand <[Parand.Maleki@sfmta.com](mailto:Parand.Maleki@sfmta.com)>; Kalinowski, Christian <[Christian.Kalinowski@sfmta.com](mailto:Christian.Kalinowski@sfmta.com)>; Octaviano, Steffi <[Steffi.Octaviano@sfmta.com](mailto:Steffi.Octaviano@sfmta.com)>; Nuque, Amy <[Amy.Nuque@sfmta.com](mailto:Amy.Nuque@sfmta.com)>

**Subject:** Re: PSC 5772 and 5828 TPSC Pilot Meeting - Nov 6, 2025

**Importance:** High

EXT

Hi David and all,

We appreciate the overall insight you all provided. It was helpful but we have some remaining information to request for each PSC.

- **PSC 5772**

- Please provide the workplan for the in-house work that will be supporting this project to ensure that MTA-specific design standards are being adhered to during the planning and design stages and subsequent construction support.

- **PSC 5828**

- Based on what you shared about the current SFMTA financial situation, if \$15M has been an allocated amount based on previous financial boom periods, how is it with the current lean periods you described, SFMTA is still able to maintain another \$15M of as-needed consultant work. Please walk us through how the \$15 million amount came to be. We want to have a deeper understanding on how this number was budgeted and why. We understand that not all \$15M may be used because it depends on what work comes up but given SFMTA's current budget constraints that you described and the fact that we have a current SFMTA engineer layoff and many other SFMTA engineers work

ordered to other departments, we want to ensure the department is being fiscally responsible especially to our engineering colleagues.

- In the last 5 years, how much did MTA actually use on the existing As-Needed contract?
- If there are no funds for some of the projects anticipated, how can the contract be certified?

Please provide this information no later than end of day, Monday, November 10th.

Thank you,



Jessica Nuti (she/her)

**Organizer, IFPTE Local 21**

**Main:** (415) 864-2100

**Direct:** (415) 914-7367

**Join Us:** [www.ifpte21.org/join/](http://www.ifpte21.org/join/)

---

**From:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>

**Sent:** Thursday, November 6, 2025 4:42 PM

**To:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfgov.org](mailto:JSum@sfgov.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>

**Cc:** Dines, Shana <[Shana.Dines@sfmta.com](mailto:Shana.Dines@sfmta.com)>; Stalfa, Gregory (HRD) <[gregory.stalfa@sfgov.org](mailto:gregory.stalfa@sfgov.org)>; Wright, Jonathan (HRD) <[jonathan.wright@sfgov.org](mailto:jonathan.wright@sfgov.org)>; Chu, Amanda (HRD) <[amanda.l.chu@sfgov.org](mailto:amanda.l.chu@sfgov.org)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Stalfa, Gregory (HRD) <[gregory.stalfa@sfgov.org](mailto:gregory.stalfa@sfgov.org)>; Maleki, Parand <[Parand.Maleki@sfmta.com](mailto:Parand.Maleki@sfmta.com)>; Kalinowski, Christian <[Christian.Kalinowski@sfmta.com](mailto:Christian.Kalinowski@sfmta.com)>; Octaviano, Steffi <[Steffi.Octaviano@sfmta.com](mailto:Steffi.Octaviano@sfmta.com)>; Nuque, Amy <[Amy.Nuque@sfmta.com](mailto:Amy.Nuque@sfmta.com)>

**Subject:** RE: PSC 5772 and 5828 TPSC Pilot Meeting - Nov 6, 2025

Dear Jessica, Jeanne, and Wallis (Local 21),

Thank you for the thoughtful discussion today and for engaging with us under the PSC Pilot Program framework. We value your partnership and the clarity of your questions.

Below is a brief recap of the commitments we covered as we discussed vacancies, expertise, and alternative suggestions:

- First right of refusal to other department managers: Before issuing consultant task order, we shared our current practices and commitments for handling task orders by seeking delivery by SFMTA in-house teams when technically and operationally feasible with other departments (e.g., DPW, PUC).

- Documented outreach: The team described how PM/Contract Admin keeps task order records in terms of confirmations/denials from the applicable City teams and can make those available upon request with each task order.
- Task-order transparency (upon request): We will provide the outreach record and scope rationale for specific task orders you inquire about, so you can verify that in-house options were fairly considered.
- Job preservation: We have a commitment for attempting to place staff (including inter-department loans) and avoiding separations wherever feasible.
- Capital vs. operating: We described how we believe the PSCs relate to capital work and do not diminish our commitment to preserving positions.
- Potrero Yard delivery: For PSC 7552, we shared that the MTA Board requested an independent PMO/oversight function because the project is a DBF “mega-project”; core PM/CM roles remain primarily internal and will be supplemented by DPW CM were helpful.

Considering these commitments—and our shared intent to keep work in-house whenever it’s possible and prudent—we respectfully request that Local 21 not object to PSCs 7552 and 5828. These authorizations give us a limited, as-needed safety valve to keep schedule-critical, specialized tasks moving when in-house capacity or expertise is unavailable.

Thank you again for the constructive dialogue and for your continued partnership. Please let us know if you need anything further as you finalize your position.

Sincerely,

David Garcia  
Employee & Labor Relations  
San Francisco Municipal Transportation Agency

---

**From:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>  
**Sent:** Tuesday, November 4, 2025 11:25 AM  
**To:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfgwater.org](mailto:JSum@sfgwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>; Chu, Amanda (HRD) <[amanda.l.chu@sfgov.org](mailto:amanda.l.chu@sfgov.org)>  
**Subject:** Re: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

EXT

Hi David,

I think we should have enough time to meet about both PSCs from 3:00pm-4:30pm, and we can discuss each for 45 minutes. Appreciate the flexibility.

Amanda, can you kindly update Local 21’s release time request for Jeanne and Wallis to reflect 2:30-5:00pm on 11/6 and remove the release time for 11/7?

Kindly respond to confirm receipt.

Thanks,  
Emily

Get [Outlook for iOS](#)



---

**From:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>

**Sent:** Tuesday, November 4, 2025 9:14:38 AM

**To:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfgwater.org](mailto:JSum@sfgwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>; Chu, Amanda (HRD) <[amanda.l.chu@sfgov.org](mailto:amanda.l.chu@sfgov.org)>

**Subject:** RE: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

Thank you Emily? Any chance you can meet from 2-3pm on 5828? If not, could we make the meeting 45 minutes on each topic so we would meet from 3pm-430?

Simon is reaching out today to firm up all the meeting details directly with you.

Thank you,

David

---

**From:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>

**Sent:** Monday, November 3, 2025 4:36 PM

**To:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfgwater.org](mailto:JSum@sfgwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>; Chu, Amanda (HRD) <[amanda.l.chu@sfgov.org](mailto:amanda.l.chu@sfgov.org)>

**Subject:** Re: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

EXT

Hi David,

Reaching out to see if the Agency would be willing to meet about both PSC 5828 and PSC 5772 **from 3:00pm-5:00pm on Thursday 11/6/25?** After coordinating availability with my Local 21 colleague, Jessica, and our 2 members who will be attending these meetings, we believe holding both of these PSC review meetings on the same date would be the most efficient use of everyone's time.

You suggested this option during our conversation this morning, but just wanted to confirm if this would still work on the Agency's side to hold both of these PSC reviews on Thursday 11/6?

Amanda, if this change works for the Agency, we'd need DHR to update the release time to reflect 2:30pm-5:00pm on Thursday 11/6, (instead of 9:00am on 11/7). While we're planning to meet about PSC 5772 starting at 3:00pm, we are requesting release time to start at 2:30pm that day, so that we have time to caucus with our members beforehand.

If there's someone else within DHR and/or SFMTA that I should submit the updated release time request to, or if you need any additional information to process this request for release time, please let us know.

Kindly respond to confirm receipt.

Thanks,  
Emily

---

**From:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>

**Date:** Monday, November 3, 2025 at 11:31 AM

**To:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>, Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>, Lee,



Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>, Sum, Jeanne (PUC) <[JSum@sfwater.org](mailto:JSum@sfwater.org)>, Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>, Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>, Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>  
**Subject:** RE: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

I guess its clown day today at MTA. Sorry

ELR is confirmed for 11/6 at 3PM

---

**From:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>  
**Sent:** Monday, November 3, 2025 11:27 AM  
**To:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfwater.org](mailto:JSum@sfwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>  
**Subject:** Re: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

EXT

David,

Thanks, but Thursday is 11/6, not 11/3.

Emily

Get [Outlook for iOS](#)

---

**From:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>  
**Sent:** Monday, November 3, 2025 11:26:07 AM  
**To:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfwater.org](mailto:JSum@sfwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>  
**Subject:** RE: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

Yes. Typo below – sorry for that. We are set for Thursday 11/3 at 3pm.

---

**From:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>  
**Sent:** Monday, November 3, 2025 10:20 AM  
**To:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>; Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>; Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>; Sum, Jeanne (PUC) <[JSum@sfwater.org](mailto:JSum@sfwater.org)>; Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>; Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>; Jessica Nuti <[jnuti@ifpte21.org](mailto:jnuti@ifpte21.org)>  
**Subject:** Re: PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

EXT

Hi David,

Just making sure that you meant to say you will extend the PSC 5772 meeting timeline to 11/6, not 11/4.

Thanks,

Emily

---

**From:** Garcia, David <[David.Garcia@sfmta.com](mailto:David.Garcia@sfmta.com)>

**Date:** Monday, November 3, 2025 at 10:19 AM

**To:** Emily Wallace <[ewallace@ifpte21.org](mailto:ewallace@ifpte21.org)>, Abulencia, Simon <[Simon.Abulencia@sfmta.com](mailto:Simon.Abulencia@sfmta.com)>, Lee, Wallis (DPW) <[wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)>, Sum, Jeanne (PUC) <[JSum@sflower.org](mailto:JSum@sflower.org)>, Kempf, Tim <[Tim.Kempf@sfmta.com](mailto:Tim.Kempf@sfmta.com)>, Chan, Maggie <[Maggie.Chan@sfmta.com](mailto:Maggie.Chan@sfmta.com)>

**Subject:** PSC 5772 - Tentative Meeting - Pending Release Time Requests (Pilot Program 10-day meeting Timeline)

We are to confirm in writing that we will extend meeting date from 11/3 to 11/4.

Thanks all,

David

---

## Microsoft Teams [Need help?](#)

### [Join the meeting now](#)

Meeting ID: 265 470 566 480 5

Passcode: FM3R8Kj7

---

### Dial in by phone

[+1 415-523-2709,,739593138#](tel:+14155232709739593138) United States, San Francisco

[Find a local number](#)

Phone conference ID: 739 593 138#

For organizers: [Meeting options](#) | [Reset dial-in PIN](#)

---

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

## Nuque, Amy

---

**From:** Emily Wallace <ewallace@ifpte21.org>  
**Sent:** Saturday, October 25, 2025 3:00 PM  
**To:** Nuque, Amy  
**Cc:** DT Service Now (TIS); DHR-PersonalServicesContracts@sfgov.org; Nguyen, Trinh; L21PSC Review; Lazaro, Chris; Lim, Michelle; Chan, Maggie; Octaviano, Steffi; Park, Joon; Garcia, David; Abulencia, Simon; Isen, Carol (HRD); Lee, Wallis (DPW); Sum, Jeanne (PUC); Audrey Garza; Jessica Nuti  
**Subject:** Re: MTA [DHRPSC0005772] submitted for Union Review

EXT

Dear Amy,

IFPTE Local 21 objects to this PSC and requests to meet within 10 days and discuss alternatives to contracting out. Local 21 is available to meet virtually with the Agency on **Monday November 3 at 2:00pm**.

Prior to this meeting, please provide the following information:

- If applicable, what city classifications, departments or entities performed this service in the past;
- Any department documents including strategic plans, department policies and procedures, legal and funding requirements, audits, etc. that led to the decision to contract out said services;
- A list of department decision makers who determined the need to contract out this service;
- Any feasibility studies and department assessments that may have been done to confirm that services cannot be performed by civil service employees in the past, now or future;
- Timeline for hiring the city positions needed to carry out this work at the conclusion of the PSC, if these positions have been budgeted and approved for hiring, and the status of the positions being posted; and
- Timeline for knowledge transfer of work to city employees, including specifically what employees or positions would receive it and how.

Prior to this meeting, please provide responses to the following list of questions:

- Our understanding is that at least 1 engineer recently received a lay-off notice at MTA. If there are such needs, why are in-house employees being laid off?
- We're aware that some engineers have recently been loaned out to other departments such as DPW and SFO on a temporary basis due to a lack of work at MTA. Why can't this PSC's scope of work be supported by existing in-house staff or positions filled to meet this need?
- In the PSC submission, "City Funds" are identified as the Funding Source. Where is confirmation that those funds have been secured? Is this project really moving forward if it is being publicized in the media that MTA is lacking funding for the next few years?
- What outreach did MTA do with other City departments to seek support services for this project prior to submitting PSC5772? Please identify the Departments that MTA contacted and what the Department's response was regarding the Agency's request for support for this scope of work.

Please provide the information within 5 working days and prior to our meeting.

Please provide release time to the following employees as representatives and subject matter experts of the union: Wallis Lee ([wallis.lee@sfdpw.org](mailto:wallis.lee@sfdpw.org)) Jeanne Sum ([jsum@sfgwater.org](mailto:jsum@sfgwater.org)).

Sincerely,

Emily Wallace  
Representative/Organizer, IFPTE Local 21

---

**From:** CCSF IT Service Desk <ccsfidt@service-now.com>

**Sent:** Thursday, October 16, 2025 7:56 AM

**To:** DHR-PersonalServicesContracts@sfgov.org <DHR-PersonalServicesContracts@sfgov.org>; Amy.Nuque@sfmta.com <Amy.Nuque@sfmta.com>; trinh.nguyen@sfmta.com <trinh.nguyen@sfmta.com>; L21PSC Review <L21PSCReview@ifpte21.org>; Chris.Lazaro@sfmta.com <Chris.Lazaro@sfmta.com>; Michelle.Lim@sfmta.com <Michelle.Lim@sfmta.com>; Maggie.Chan@sfmta.com <Maggie.Chan@sfmta.com>; Steffi.Gines@sfmta.com <Steffi.Gines@sfmta.com>; joon.park@sfmta.com <joon.park@sfmta.com>; David.Garcia@sfmta.com <David.Garcia@sfmta.com>; Simon.Abulencia@sfmta.com <Simon.Abulencia@sfmta.com>

**Subject:** MTA [DHRPSC0005772] submitted for Union Review

Hello union representatives,

MTA is requesting your review of PSC [DHRPSC0005772]. Please see relevant details of this request below and in the attached document(s). **Should you have any questions or objections, please state them by replying all to this email by 2025-10-26. If you would like to request a factfinder review for this PSC, please submit the [PSC factfinder review request form](#) within 5 days of your initial meeting with the department.**

#### PSC Summary

=====

**Record Number:** DHRPSC0005772 v 0.01

**Description of Proposed Work:** The San Francisco Municipal Transportation Agency seeks professional project management oversight services for the Potrero Yard Modernization Project. The consultant will provide independent review, analysis, and advisory support to ensure compliance with federal requirements, monitor project delivery performance, and assess risk management practices. Services will include evaluating cost, schedule, and project controls, as well as providing recommendations to improve delivery efficiency. The oversight role will supplement but remain independent from internal project management functions.

**Request Type:** New

**Approval Type:** CSC Approval

**CSC Review Reason(s):**

 CSC Approval by Amount

**Submitting Department:** MTA

**Dept PSC Coordinator:** Amy Nuque

**Dept PSC Coordinator Email:** Amy.Nuque@sfmta.com

**PSC Amount:** \$500,000.00

**PSC Duration (months):** 54

**Funding Source(s):** City Funds

**Scope of Work:** The consultant will provide independent project management oversight services for the Potrero Yard Modernization Project. Services will include reviewing project plans, schedules, and budgets; monitoring progress against milestones; assessing risk management and project controls; and providing recommendations to improve delivery efficiency. The consultant will also evaluate compliance with applicable City and funding requirements, prepare oversight reports, and present findings to project leadership. All services will be advisory in nature and will remain independent from internal project management functions.

**Job Class(es):** 5508 - Project Manager 4, 1824 - Pr Administrative Analyst, 1823 - Senior Administrative Analyst, 5207 - Assoc Engineer

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**PSC Justification(s)**

=====

🟢 Temporary services needed to address a transitional or short-term situation

Ref:TIS6208474\_TtZNWKa6rykyt7qTmm5l

This message is from outside of the SFMTA email system. Please review the email carefully before responding, clicking links, or opening attachments.

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** MTA

**Submitted By:** Connie Yan

**Department Coordinator:** Amy Nuque,  
Amy.Nuque@sfmta.com

**Project Manager:** Beverly Tilson

**ServiceNow Number:** DHRPSC0005950

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** The consultant will provide oversight monitoring assistance to the San Francisco Municipal Transportation Agency (SFMTA) to review a designated contractor's drug and alcohol testing policies and procedures for compliance. The consultant will conduct an annual on-site review of the selected collection and testing contractor's drug and alcohol testing policy, record keeping, testing reports, education, and training attendance rosters, and any other documents pertaining to compliance with the Department of Transportation/Federal Transit Administration (DOT/FTA) Drug and Alcohol Testing Rules and Regulations. Also conduct audits of service agents (Specimen Collector, Medical Review Officer, laboratory, Sub-Recipients, etc) that assist the SFMTA in maintaining compliance with the drug and alcohol testing guidelines.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$260,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The consultant will provide oversight-monitoring assistance to the San Francisco Municipal Transportation Agency (SFMTA)

## Post Union Notification

to review a designated contractor's drug and alcohol testing policies and procedures for compliance. The consultant will conduct an annual on-site review of the selected collection and testing contractor's drug and alcohol testing policy, record keeping, testing reports, education, and training attendance rosters, and any other documents pertaining to compliance with the Department of Transportation/Federal Transit Administration (DOT/FTA) Drug and Alcohol Testing Rules and Regulations. Also conduct audits of service agents (Specimen Collector, Medical Review Officer, laboratory, Sub-Recipients, etc) that assist the SFMTA in maintaining compliance with the drug and alcohol testing guidelines.

**Why are these services required and what are the consequences of denial?:** This service is necessary to ensure SFMTA's compliance with the requirements as outlined in 49 Code of Federal Regulations (CFR) Parts 40 and 655; the federal regulations mandate the monitoring of service agents that assist the SFMTA in meeting the federal guidelines and contractors who are contracted to perform safety-sensitive testing services. Denial of this service will jeopardize continued federal funding eligibility for the SFMTA.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** Civil Service Classifications and City Employees are not applicable due to the specialized knowledge and experience of the DOT/FTA Regulations that are required of the consultant.

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** No

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes



**Q5b1) Describe the specialized skills and expertise required to perform the services:** The consultant must possess expert knowledge and experience monitoring services providers who provide drug and alcohol testing services in compliance with the DOT/FTA regulations - 49 CFR Part 40 and 655.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** Civil Service Classifications are not applicable due to the specialized knowledge and experience of the DOT/FTA Regulations that are required of the consultant.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** Training of City Employees are not applicable due to the specialized knowledge and experience of the DOT/FTA Regulations that are required of the consultant.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** The work is not applicable and requires a consultant to possess expert knowledge and experience monitoring services providers who provide drug and alcohol testing services in compliance with the DOT/FTA regulations. This service is necessary to ensure SFMTA's compliance with the requirements as outlined in 49 Code of Federal Regulations (CFR) Parts 40 and 655; the federal regulations mandate the monitoring of service agents that assist the SFMTA in meeting the federal guidelines and contractors who are contracted to perform safety-sensitive testing services.

### **Additional information to support your request (Optional):**

#### **Union Notifications**

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, jvarga@ibt856.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, president@sfsheriffmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org, administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org,

WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org,  
President@sanfranciscodsa.com, staff@sfmea.com, mleach@ibt856.org, ibew6@ibew6.org,  
oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 12/4/2025

**Union Review End Date:** 12/11/2025

**Union Review Duration Met On:** 12/11/2025

## List of Previously Approved Contracts for Similar Services (Measured 3 years from the PSC Submission Date)

### Instructions:

Step 1: Download and save this template to your desktop.

Step 2: Complete the fields below.

Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

### Document Content:

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below, do not change or alter this template.

Dept Acronym:	SFMTA
Dept Name:	HR-ELR
PSC Coordinator Name:	Amy Nuque
PSC Coordinator Email:	<a href="mailto:amy.nuque@sfmta.com">amy.nuque@sfmta.com</a>
PSC ServiceNow Record Number:	DHRPSC0001593
	PSC #41001 - 21/22

PS Contract ID	Contract Start Date	Contract End Date	Contract Not to Exceed Amount	PSC ServiceNow Record Number (if PSC approval was obtained)	Brief Description of Services Rendered
1000024185	12/10/2021	12/10/2025	\$210,000	PSC# 41001 - 21-22	Conduct on-site reviews of selected contractors drug and alcohol testing program policy, procedures, record keeping, testing reports, education and training attendance rosters, and any other documents pertaining to compliance with the Regulations. Conduct audits of service agents (e.g., specimen collector, Medical Review Officer, laboratory) which provide services to assist the SFMTA in the administration of the drug and alcohol testing program.

---

This content is from the eCFR and is authoritative but unofficial.

---

## Title 49 —Transportation

### Subtitle A —Office of the Secretary of Transportation

#### Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing Programs

##### Subpart A Administrative Provisions

- § 40.1 Who does this regulation cover?
- § 40.3 What do the terms used in this part mean?
- § 40.5 Who issues authoritative interpretations of this regulation?
- § 40.7 How can you get an exemption from a requirement in this regulation?

##### Subpart B Employer Responsibilities

- § 40.11 What are the general responsibilities of employers under this regulation?
- § 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?
- § 40.14 What collection information must employers provide to collectors?
- § 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?
- § 40.17 Is an employer responsible for obtaining information from its service agents?
- § 40.19 *[Reserved]*
- § 40.21 May an employer stand down an employee before the MRO has completed the verification process?
- § 40.23 What actions do employers take after receiving verified test results?
- § 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?
- § 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?
- § 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?

##### Subpart C Specimen Collection Personnel

- § 40.31 Who may collect specimens for DOT drug testing?
- § 40.33 What training requirements must a collector meet for urine collection?
- § 40.35 What training requirements must a collector meet for oral fluid collection?
- § 40.36 What information about the DER must employers provide to collectors?

##### Subpart D Collection Sites, Forms, Equipment and Supplies Used in DOT Urine and Oral Fluid Collections

- § 40.40 What form is used to document a DOT collection?
- § 40.41 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?

§ 40.42 Where does a urine collection for a DOT drug test take place?

§ 40.43 What steps must operators of collection sites and collectors take to protect the security and integrity of urine collections?

§ 40.44 What materials are used to collect urine specimens?

§ 40.45 What materials are used to send urine specimens to the laboratory?

§ 40.47 Where does an oral fluid collection for a DOT drug test take place?

§ 40.48 What steps must operators of collection sites and collectors take to protect the security and integrity of oral fluid collections?

§ 40.49 What materials are used to collect oral fluid specimens?

§ 40.51 What materials are used to send oral fluid specimens to the laboratory?

#### Subpart E Specimen Collections

§ 40.61 What are the preliminary steps in the drug testing collection process?

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

§ 40.65 What does the collector check for when the employee presents a urine specimen?

§ 40.67 When and how is a directly observed urine collection conducted?

§ 40.69 How is a monitored urine collection conducted?

§ 40.71 How does the collector prepare the urine specimen?

§ 40.72 What steps does the collector take in the collection process before the employee provides an oral fluid specimen?

§ 40.73 How is an oral fluid specimen collected?

§ 40.74 How does the collector prepare the oral fluid specimens?

§§ 40.75-40.78 [Reserved]

§ 40.79 How is the collection process completed?

#### Subpart F Drug Testing Laboratories

§ 40.81 What laboratories may be used for DOT drug testing?

§ 40.82 What drugs do laboratories test for?

§ 40.83 How do laboratories process incoming specimens?

§ 40.84 How long does the laboratory retain specimens after testing?

§ 40.85 What are the cutoff concentrations for urine drug tests?

§ 40.86 What is urine validity testing, and are laboratories required to conduct it?

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

§ 40.88 What criteria do laboratories use to establish that a urine specimen is dilute or substituted?

§ 40.89 What are the adulterant cutoff concentrations for initial and confirmation urine tests?

§ 40.90 What criteria do laboratories use to establish that a urine specimen is invalid?

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

§ 40.92 What is oral fluid validity testing, and are laboratories required to conduct it?

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

- § 40.97 What do laboratories report and how do they report it?
- § 40.101 What relationship may a laboratory have with an MRO?
- § 40.107 Who may inspect laboratories?
- § 40.109 What documentation must the laboratory keep, and for how long?
- § 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

#### Subpart G Medical Review Officers and the Verification Process

- § 40.121 Who is qualified to act as an MRO?
- § 40.123 What are the MRO's responsibilities in the DOT drug testing program?
- § 40.125 What relationship may an MRO have with a laboratory?
- § 40.127 What are the MRO's functions in reviewing negative test results?
- § 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?
- § 40.131 How does the MRO or DER notify an employee of the verification process after receiving laboratory confirmed non-negative drug test results?
- § 40.133 Without interviewing the employee, under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid?
- § 40.135 What does the MRO tell the employee at the beginning of the verification interview?
- § 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, semi-synthetic opioids, or PCP?
- § 40.139 On what basis does the MRO verify test results involving 6-acetylmorphine, codeine, and morphine?
- § 40.141 How does the MRO obtain information for the verification decision?
- § 40.143 *[Reserved]*
- § 40.145 On what basis does the MRO verify test results involving adulteration or substitution?
- § 40.147 *[Reserved]*
- § 40.149 May the MRO change a verified drug test result?
- § 40.151 What are MROs prohibited from doing as part of the verification process?
- § 40.153 How does the MRO notify employees of their right to a test of the split specimen?
- § 40.155 What does the MRO do when a negative or positive test result is also dilute?
- § 40.157 *[Reserved]*
- § 40.159 What does the MRO do when a drug test result is invalid?
- § 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?
- § 40.161 What does the MRO do when a drug test specimen is rejected for testing?
- § 40.162 What must MROs do with multiple verified results for the same testing event?
- § 40.163 How does the MRO report drug test results?
- § 40.165 To whom does the MRO transmit reports of drug test results?



§ 40.167 How are MRO reports of drug results transmitted to the employer?

#### Subpart H Split Specimen Tests

§ 40.171 How does an employee request a test of a split specimen?

§ 40.173 Who is responsible for paying for the test of a split specimen?

§ 40.175 What steps does the first laboratory take with a split specimen?

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

§ 40.181 What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?

§ 40.183 What information do laboratories report to MROs regarding split specimen results?

§ 40.185 Through what methods and to whom must a laboratory report split specimen results?

§ 40.187 What does the MRO do with split specimen laboratory results?

#### Subpart I Problems in Drug Tests

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

§ 40.193 What happens when an employee does not provide a sufficient amount of specimen for a drug test?

§ 40.195 What happens when an individual is unable to provide a sufficient amount of specimen for a pre-employment, follow-up, or return-to-duty test because of a permanent or long-term medical condition?

§ 40.197 What happens when an employer receives a report of a dilute urine specimen?

§ 40.199 What problems always cause a drug test to be cancelled?

§ 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?

§ 40.205 How are drug test problems corrected?

§ 40.207 What is the effect of a cancelled drug test?

§ 40.208 What problems require corrective action but do not result in the cancellation of a test?

§ 40.209 What procedural problems do not result in the cancellation of a test and do not require correction?

§ 40.210 What kinds of drug tests are permitted under the regulations?

#### Subpart J Alcohol Testing Personnel

§ 40.211 Who conducts DOT alcohol tests?

§ 40.213 What training requirements must STTs and BATs meet?

§ 40.215 What information about the DER do employers have to provide to BATs and STTs?

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

§ 40.221 Where does an alcohol test take place?

§ 40.223 What steps must be taken to protect the security of alcohol testing sites?

§ 40.225 What form is used for an alcohol test?

§ 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

§ 40.229 What devices are used to conduct alcohol screening tests?

§ 40.231 What devices are used to conduct alcohol confirmation tests?

§ 40.233 What are the requirements for proper use and care of EBTs?

§ 40.235 What are the requirements for proper use and care of ASDs?

#### Subpart L Alcohol Screening Tests

§ 40.241 What are the first steps in any alcohol screening test?

§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

§ 40.247 What procedures does the BAT or STT follow after a screening test result?

#### Subpart M Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

§ 40.255 What happens next after the alcohol confirmation test result?

#### Subpart N Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

§ 40.267 What problems always cause an alcohol test to be cancelled?

§ 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

§ 40.271 How are alcohol testing problems corrected?

§ 40.273 What is the effect of a cancelled alcohol test?

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

§ 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

#### Subpart O Substance Abuse Professionals and the Return-to-Duty Process

§ 40.281 Who is qualified to act as a SAP?

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

§ 40.285 When is a SAP evaluation required?

§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

§ 40.289 Are employers required to provide SAP and treatment services to employees?

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an



employee who has violated DOT agency drug and alcohol testing regulations?

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

§ 40.303 What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

§ 40.305 How does the return-to-duty process conclude?

§ 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

§ 40.311 What are the requirements concerning SAP reports?

#### **Subpart P** Confidentiality and Release of Information

§ 40.321 What is the general confidentiality rule for drug and alcohol test information?

§ 40.323 May program participants release drug or alcohol test information in connection with legal proceedings?

§ 40.325 *[Reserved]*

§ 40.327 When must the MRO report medical information gathered in the verification process?

§ 40.329 What information must laboratories, MROs, and other service agents release to employees?

§ 40.331 To what additional parties must employers and service agents release information?

§ 40.333 What records must employers keep?

#### **Subpart Q** Roles and Responsibilities of Service Agents

§ 40.341 Must service agents comply with DOT drug and alcohol testing requirements?

§ 40.343 What tasks may a service agent perform for an employer?

§ 40.345 In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

§ 40.347 What functions may C/TPAs perform with respect to administering testing?

§ 40.349 What records may a service agent receive and maintain?

§ 40.351 What confidentiality requirements apply to service agents?

§ 40.353 What principles govern the interaction between MROs and other service agents?

§ 40.355 What limitations apply to the activities of service agents?

#### **Subpart R** Public Interest Exclusions

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

§ 40.363 On what basis may the Department issue a PIE?

- § 40.365 What is the Department's policy concerning starting a PIE proceeding?
- § 40.367 Who initiates a PIE proceeding?
- § 40.369 What is the discretion of an initiating official in starting a PIE proceeding?
- § 40.371 On what information does an initiating official rely in deciding whether to start a PIE proceeding?
- § 40.373 Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?
- § 40.375 How does the initiating official start a PIE proceeding?
- § 40.377 Who decides whether to issue a PIE?
- § 40.379 How do you contest the issuance of a PIE?
- § 40.381 What information do you present to contest the proposed issuance of a PIE?
- § 40.383 What procedures apply if you contest the issuance of a PIE?
- § 40.385 Who bears the burden of proof in a PIE proceeding?
- § 40.387 What matters does the Director decide concerning a proposed PIE?
- § 40.389 What factors may the Director consider?
- § 40.391 What is the scope of a PIE?
- § 40.393 How long does a PIE stay in effect?
- § 40.395 Can you settle a PIE proceeding?
- § 40.397 When does the Director make a PIE decision?
- § 40.399 How does the Department notify service agents of its decision?
- § 40.401 How does the Department notify employers and the public about a PIE?
- § 40.403 Must a service agent notify its clients when the Department issues a PIE?
- § 40.405 May the Federal courts review PIE decisions?
- § 40.407 May a service agent ask to have a PIE reduced or terminated?
- § 40.409 What does the issuance of a PIE mean to transportation employers?
- § 40.411 What is the role of the DOT Inspector General's office?
- § 40.413 How are notices sent to service agents?

## **Appendix A to Part 40**

DOT Standards for Urine Collection Kits

## **Appendix B to Part 40**

Oral Fluid Collection Kit Contents

*Appendix C to Part 40 [Reserved]*

## **Appendix D to Part 40**

DOT Drug Testing Semi-Annual Laboratory Report to Employers

## **Appendix E to Part 40**

Drug Testing Semi-Annual Laboratory Report to DOT

## **Appendix F to Part 40**

Report Format: Split Specimen Failure To Reconfirm

## Appendix G to Part 40

SAP Equivalency Requirements for Certification Organizations

## Appendix H to Part 40

Drug and Alcohol Testing Information that C/TPAs May Transmit  
to Employers

## Appendix I to Part 40

Alcohol Testing Form

## Appendix J to Part 40

DOT Drug and Alcohol Testing Management Information System  
(MIS) Data Collection Form

# PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

**Authority:** 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 et seq.

**Source:** 65 FR 79526, Dec. 19, 2000, unless otherwise noted.

**Editorial Note:** Nomenclature changes to part 40 appear at 73 FR 33329, June 12, 2008.

## Subpart A—Administrative Provisions

### § 40.1 Who does this regulation cover?

- (a) This part tells all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use.
- (b) This part concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.
- (c) Nothing in this part is intended to supersede or conflict with the implementation of the Federal Railroad Administration's post-accident testing program (see 49 CFR 219.200).

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

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

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

**Affiliate.** Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a public interest exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.

**Air blank.** In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

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

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

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

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

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

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

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

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

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

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

**Cancelled test.** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

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

**Collection container.** A container used to collect a specimen.

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

**Collector.** A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

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

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

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

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

**Consortium/Third-party administrator (C/TPA).** A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of this part.

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

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

**Designated employer representative (DER).** An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

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

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

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



**Employee.** Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term "donor" as found on CCF and related guidance materials produced by the Department of Health and Human Services.

**Employer.** A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.

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

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

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

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

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

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

**Laboratory.** Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards set by HHS; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

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

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

**Medical Review Officer (MRO).** A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

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

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

**Office of Drug and Alcohol Policy and Compliance (ODAPC).** The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.

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

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

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

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

**Qualification Training.** The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

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

**Refresher Training.** The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

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

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

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

**Service agent.** Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

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

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

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

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

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

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

**Stand-down.** The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

**Substance Abuse Professional (SAP).** A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

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

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

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

**Verified test.** A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 73 FR 35969, June 25, 2008; 75 FR 49861, Aug. 16, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 81 FR 52365, Aug. 8, 2016; 82 FR 52243, Nov. 13, 2017; 88 FR 27636, May 2, 2023]



## § 40.5 Who issues authoritative interpretations of this regulation?

ODAPC and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters. Only Part 40 interpretations issued after August 1, 2001, are considered valid.

## § 40.7 How can you get an exemption from a requirement in this regulation?

- (a) If you want an exemption from any provision of this part, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR part 5. You must send requests for an exemption to the following address: Department of Transportation, Deputy Assistant General Counsel for Regulation and Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- (b) Under the standards of 49 CFR part 5, we will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impracticable.
- (c) If we grant you an exemption, you must agree to take steps we specify to comply with the intent of the provision from which an exemption is granted.
- (d) We will issue written responses to all exemption requests.

## Subpart B—Employer Responsibilities

### § 40.11 What are the general responsibilities of employers under this regulation?

- (a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part.
- (b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
- (c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

### § 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?

- (a) DOT tests must be completely separate from non-DOT tests in all respects.
- (b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. When conducting a urine DOT drug test, you must discard any excess urine left over from a DOT test and collect a separate urine void for the subsequent non-DOT test.
- (c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT specimens other than those tests specifically authorized by this part or DOT agency regulations. For example, you must not test a DOT specimen for additional drugs. In addition, a laboratory is prohibited from making a DOT specimen available for a DNA test or other types of specimen identity testing.

- (d) When a DOT urine drug test collection is conducted as part of a physical examination required by DOT agency regulations, it is permissible to conduct medical tests related to this physical examination (e.g., for glucose) on any specimen remaining in the collection container after the DOT portion has been sealed into the specimen bottles.
- (e) A non-DOT drug or alcohol test administered, as part of a physical examination, is not a DOT drug or alcohol test for purposes of this part and/or related DOT agency drug and alcohol testing rules, if that test was performed to determine if an employee is medically qualified for a license or certificate. Consequently, the results of such a test do not have consequences under this part.
- (f) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
- (g) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.
- (h) No one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee, as defined by the DOT agency regulations.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

## § 40.14 What collection information must employers provide to collectors?

As an employer, or an employer's service agent—for example a C/TPA, you must ensure the collector has the following information when conducting a specimen collection for you:

- (a) Full name of the employee being tested.
- (b) SSN or Employee ID No.
- (c) Laboratory name and address (can be pre-printed on the CCF).
- (d) Employer name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-A).
- (e) DER information required at § 40.36.
- (f) MRO name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1-B).
- (g) The DOT Agency which regulates the employee's safety-sensitive duties (the checkmark can pre-printed in the appropriate box on the CCF at Step 1-D).
- (h) Test reason, as appropriate: Pre-employment; Random; Reasonable Suspicion/Reasonable Cause; Post-Accident; Return-to-Duty; and Follow-up.
- (i) Whether the test is to be observed or not (see § 40.67 of this part).
- (j) (Optional) C/TPA name, address, phone, and fax number (can be pre-printed on the CCF).
- (k) Specimen type to be collected (i.e., oral fluid or urine).

[75 FR 59107, Sept. 27, 2010, as amended at 88 FR 27637, May 2, 2023; 89 FR 51983, June 21, 2024]

### **§ 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?**

- (a) As an employer, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of this part.
- (b) As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part (e.g., § 40.121 for MROs). You may require service agents to show you documentation that they meet the requirements of this part (e.g., documentation of MRO qualifications required by § 40.121(e)).
- (c) You remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require, a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
- (d) As an employer, you must not permit a service agent to act as your DER.

### **§ 40.17 Is an employer responsible for obtaining information from its service agents?**

Yes, as an employer, you are responsible for obtaining information required by this part from your service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that “no news is good news” and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations.

### **§ 40.19 [Reserved]**

### **§ 40.21 May an employer stand down an employee before the MRO has completed the verification process?**

- (a) As an employer, you are prohibited from standing employees down, except consistent with a waiver a DOT agency grants under this section.
- (b) You may make a request to the concerned DOT agency for a waiver from the prohibition of paragraph (a) of this section. Such a waiver, if granted, permits you to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.
  - (1) For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.
  - (2) Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the employer's other covered employees.

(3) The concerned DOT agency provides a written response to each employer that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.

(c) Your request for a waiver must include, as a minimum, the following elements:

(1) Information about your organization:

- (i) Your determination that standing employees down is necessary for safety in your organization and a statement of your basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;
- (ii) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for your employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;
- (iii) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and
- (iv) A statement of which DOT agencies regulate your employees.

(2) Your proposed written company policy concerning stand-down, which must include the following elements:

- (i) Your assurance that you will distribute copies of your written policy to all employees that it covers;
- (ii) Your means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in your organization (or subsequently to another employer) other than the employee, the MRO and the DER;
- (iii) Your means of ensuring that all covered employees in a particular job category in your organization are treated the same way with respect to stand-down;
- (iv) Your means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;
- (v) Your means of ensuring that you will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;
- (vi) Your means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless you are informed in writing by the MRO that a longer period is needed to complete the verification process; and
- (vii) Your means of ensuring that, in the event that the MRO verifies the test negative or cancels it—
  - (A) You return the employee immediately to the performance of safety-sensitive duties;



- (B) The employee suffers no adverse personnel or financial consequences as a result;
  - (C) For a verified negative result, the employee will not be required to submit an alternate specimen for the same testing action. For a cancelled result, the employee could be required to submit an alternate specimen on a re-collection; and
  - (D) You maintain no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (*i.e.*, you maintain a record of the test only as a negative or cancelled test).
- (d) The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of your organization, there is a high probability that the procedures you propose will effectively enhance safety and protect the interests of employees in fairness and confidentiality.
- (1) The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
  - (2) The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that you have failed to protect effectively the interests of employees in fairness and confidentiality, that you have failed to comply with the requirements of this section, or that you have failed to comply with any other conditions the DOT agency has attached to the waiver.
- (e) You must not stand employees down in the absence of a waiver, or inconsistent with the terms of your waiver. If you do, you are in violation of this part and DOT agency drug testing regulations, and you are subject to enforcement action by the DOT agency just as you are for other violations of this part and DOT agency rules.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

## § 40.23 What actions do employers take after receiving verified test results?

- (a) As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test.
- (b) As an employer who receives a verified adulterated or substituted drug test result, you must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. You must take this action on receiving the initial report of the verified adulterated or substituted test result. Do not wait to receive the written report or the result of a split specimen test.
- (c) As an employer who receives an alcohol test result of 0.04 or higher, you must immediately remove the employee involved from performing safety-sensitive functions. If you receive an alcohol test result of 0.02-0.039, you must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.
- (d) As an employer, when an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, you must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process of Subpart O of this part.

- (e) As an employer who receives a drug test result indicating that the employee's specimen was dilute, take action as provided in § 40.197.
- (f) As an employer who receives a drug test result indicating that the employee's test was cancelled because it was invalid and that a second collection must take place under direct observation—
  - (1) You must immediately direct the employee to provide a new specimen under direct observation (either an oral fluid specimen or a urine specimen under direct observation).
  - (2) You must not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.
  - (3) You must not give any advance notice of this test requirement to the employee.
  - (4) You must instruct the collector to note on the CCF the same reason (e.g., random test, post-accident test) and DOT Agency (e.g., check DOT and FMCSA) as for the original collection.
  - (5) You must ensure that the collector conducts the collection under direct observation (either an oral fluid specimen or a urine specimen under direct observation).
- (g) As an employer who receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen immediately.
- (h) As an employer, you may also be required to take additional actions required by DOT agency regulations (e.g., FAA rules require some positive drug tests to be reported to the Federal Air Surgeon).
- (i) As an employer, you must not alter a drug or alcohol test result transmitted to you by an MRO, BAT, or C/TPA.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 73 FR 35970, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 88 FR 27637, May 2, 2023]

## **§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?**

- (a)
  - (1) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraphs (b) through (j) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (i.e., a new hire, an employee transferring into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.
  - (2) If you are an employer regulated by FMCSA, you must comply with the requirements of this section by using the FMCSA's Drug and Alcohol Clearinghouse in accordance with 49 CFR 382.71(a). In addition, you must continue to comply with the requirements of this § 40.25 when checking an employee's testing history with employers regulated by a DOT operating administration other than FMCSA.
  - (3) If you are an employer regulated by FMCSA, with a prospective employee subject to drug and alcohol testing with a DOT agency other than FMCSA, you must continue to request the information about the employee listed in paragraphs (b) through (j) of this section. For example, if you are an employer

regulated by both FMCSA and PHMSA, and you are hiring an employee to perform functions regulated by both DOT agencies, then you must query FMCSA's Clearinghouse to satisfy FMCSA's requirements and you must request the information listed in paragraphs (b) through (j) of this section to satisfy PHMSA's requirements.

- (b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:
  - (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
  - (2) Verified positive drug tests;
  - (3) Refusals to be tested (including verified adulterated or substituted drug test results);
  - (4) Other violations of DOT agency drug and alcohol testing regulations; and
  - (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (e.g., an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.
- (c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.
- (d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.
- (e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.
- (f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.
- (g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.
- (h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.
- (i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

- (j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

## **§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?**

As an employer, when you are required to report MIS data to a DOT agency, you must use the U.S. Department of Transportation Drug and Alcohol Testing MIS Data Collection Form to report that data. You must use the form and instructions referenced at appendix J to part 40. You must submit the MIS report in accordance with rule requirements (e.g., dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

[84 FR 16773, Apr. 23, 2019, as amended at 88 FR 27638, May 2, 2023]

## **§ 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?**

No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

[66 FR 41950, Aug. 9, 2001]

## **Subpart C—Specimen Collection Personnel**

### **§ 40.31 Who may collect specimens for DOT drug testing?**

- (a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
- (b) A urine collector must meet training requirements of § 40.33.
- (c) An oral fluid collector must meet the training requirements of § 40.35.
- (d) To avoid the appearance of a conflict of interest, if you are the immediate supervisor of the employee being tested, you must not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.
- (e) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.
- (f) Employees are not permitted to be their own collector.



- (1) An employee who is a qualified collector is not permitted to be their own collector; another qualified collector must perform the collection in accordance with this part.
- (2) To avoid a potential conflict of interest, a collector must not be related to the employee being tested (e.g., spouse, ex-spouse, relative) or a close personal friend.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

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

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

- (a) **Basic information.** You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, the DOT Urine Specimen Collection Procedures Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590, 202-366-3784, or on the ODAPC Web site (<https://www.transportation.gov/odapc>)). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
  - (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
  - (2) “Problem” collections (e.g., situations like “shy bladder” and attempts to tamper with a specimen);
  - (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
  - (4) The collector’s responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.
  - (1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.
  - (2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified urine collector who has demonstrated necessary knowledge, skills, and abilities by—
    - (i) Regularly conducting DOT urine drug test collections for a period of at least one year;
    - (ii) Conducting urine collector training under this part for at least one year; or
    - (iii) Successfully completing a urine “train the trainer” course.

- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.
- (f) **Error correction training.** If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining. Errors that cause cancellation but occur outside the collection process (e.g., when a specimen is crushed or otherwise damaged during the transportation process, or is lost in transit), the cancellation would not be the result of an error by the collector during the collection process and does not require the collector to be retrained.
  - (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.
  - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
  - (3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were “error-free.”
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000; 66 FR 3885, Jan. 17, 2001, as amended at 66 FR 41950, Aug. 9, 2001; 82 FR 52244, Nov. 13, 2017; 88 FR 27638, May 2, 2023; 89 FR 87798, Nov. 5, 2024]

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

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

- (a) **Basic information.** You must be knowledgeable about this part, the current “DOT Oral Fluid Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington DC, 20590, 202-366-3784, or on the ODAPC website (<https://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (b). Qualification training must provide instruction on the following subjects:
  - (1) Training on the testing procedures of this part;

- (2) Training to proficiency in the operation of the particular oral fluid collection device(s) you will be using.
  - (3) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
  - (4) "Problem" collections (e.g., situations like "dry mouth" and attempts to tamper with a specimen);
  - (5) Fatal flaws, correctable flaws, and how to correct problems in collections; and
  - (6) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
- (c) **Initial proficiency demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections for each device you will use.
- (1) The five mock collections for each device must include one uneventful collection scenario, one insufficient specimen quantity scenario; one scenario in which the employee has something in their mouth that might interfere with the collection; one scenario in which the employee attempts to tamper with the specimen; and one scenario in which the employee refuses to sign the CCF. For each of the five mock collections, the collector must check the expiration date of the device, show it to the employee, and record the date on the CCF used. The collector must ensure, when applying the labels, they do not cover the expiration dates.
  - (2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must attest in writing that the mock collections are "error-free." Except as provided in paragraph (c)(3) of this section, this person must be a qualified oral fluid collector who has demonstrated necessary knowledge, skills, and abilities by—
    - (i) Regularly conducting DOT oral fluid drug test collections for a period of at least one year;
    - (ii) Conducting oral fluid collector training under this part for at least one year; or
    - (iii) Successfully completing an oral fluid "train the trainer" course.
  - (3) As the person monitoring and evaluating the collector's five mock collections pursuant to paragraphs (c)(1) and (2) of this section, you need not be a qualified oral fluid collector to do so if you meet the necessary knowledge, skills, and abilities in paragraph (c)(2)(ii) or (iii) until otherwise specified (one year after HHS publishes a FEDERAL REGISTER notification of the first certified oral fluid drug testing laboratory (HHS notification)). Furthermore, the one-year requirement in paragraph (c)(2)(ii) is not applicable until otherwise specified (one year after the HHS notification).
- (d) **Schedule for qualification training and initial proficiency demonstration.** You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c).

- (f) **Error correction training.** If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.
- (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.
  - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
  - (3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were “error-free.”
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[88 FR 27638, May 2, 2023, as amended at 89 FR 87798, Nov. 5, 2024]

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

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

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

## Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine and Oral Fluid Collections

### § 40.40 What form is used to document a DOT collection?

- (a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every collection required by the DOT drug testing program. You may view this form on the Department's website (<https://www.transportation.gov/odapc>) or the HHS website (<https://www.workplace.samhsa.gov>).
- (b) You must not use a non-Federal form or an expired CCF to conduct a DOT collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.
- (c) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:
  - (1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.
  - (2) The CCF must include the names, addresses, telephone numbers and any other appropriate contact information (e.g., an email address of the employer and the MRO), including the DER's name and contact information. All of this information must be preprinted, typed, or handwritten. Fax numbers



may be included but are not required. The MRO information must include the physician's name and address, as opposed to only a generic clinic, health care organization, company name, or post office box. This information is required, and an employer, collector, service agent or any other party is prohibited from omitting it. In addition, a C/TPA's name, address, telephone and fax numbers, and any other appropriate contact information should be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone and fax numbers, and any other appropriate contact information.

- (3) As an employer you may preprint the box in Step 1-D of the CCF for the DOT agency under whose authority the test will occur.
- (4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event. If a collection takes place at a clinic, the actual address of the clinic should be used, not a corporate address of the collection company. If the collection takes place onsite at the employer, the employer's address must be noted as the collection site address. If the collection takes place in a "mobile unit" or at an accident site, the collector must enter the actual location address of the collection or as near an approximation as possible. The collector must ensure that the required collector telephone number is the number that the laboratory, MRO, or employer may use to directly contact the individual collector and/or the collector's supervisor during the collection site's business hours. The collector must not provide a number for a call center.
- (5) When using an electronic CCF, you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.
- (d) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a SSN or Employee ID No.) to a laboratory.
- (e) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.
- (f) An employer who uses an electronic CCF must ensure that the collection site, the primary and split laboratories, and MRO have compatible systems, and that the employee and any other program participants in the testing process will receive a legible copy of the CCF.

*[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 75 FR 59107, Sept. 27, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 82 FR 52244, Nov. 13, 2017. Redesignated and amended at 88 FR 27639, May 2, 2023]*

#### **§ 40.41 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?**

- (a) No, as an employer, you are prohibited from using the CCF for non-Federal collections. You are also prohibited from using non-Federal forms for DOT collections. Doing either subjects you to enforcement action under DOT agency regulations.
- (b)

- (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.
- (2) The use of the non-Federal form is a “correctable flaw.” As an MRO, to correct the problem you must follow the procedures of § 40.205(b)(2).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001. Redesignated and amended at 88 FR 27639, June 1, 2023]

## § 40.42 Where does a urine collection for a DOT drug test take place?

- (a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- (b) If you are operating a collection site, you must ensure that it meets the security requirements of § 40.43.
- (c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.
- (d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.
- (e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.
  - (1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.
  - (2) You must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and providing moist towelettes outside the closed room.
- (f) The second type of facility for urination that a collection site may include is a multistall restroom.
  - (1) Such a site must provide substantial visual privacy (e.g., a toilet stall with a partial-length door) and meet all other applicable requirements of this section.
  - (2) If you use a multi-stall restroom, you must either—
    - (i) Secure all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or
    - (ii) Conduct all collections in the facility as monitored collections (see § 40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.
  - (3) No one but the employee may be present in the multistall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.

- (g) A collection site may 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.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

#### **§ 40.43 What steps must operators of collection sites and collectors take to protect the security and integrity of urine collections?**

- (a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
- (b) As a collector, you must do the following before each collection to deter tampering with specimens:
  - (1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);
  - (2) Ensure that the water in the toilet is blue;
  - (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
  - (4) Inspect the site to ensure that no foreign or unauthorized substances are present;
  - (5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;
  - (6) Ensure that undetected access (e.g., through a door not in your view) is not possible;
  - (7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
  - (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.
- (c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:
  - (1) Access to collection materials and specimens is effectively restricted; and
  - (2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
- (d) As a collector, you must take the following additional steps to ensure security during the collection process:
  - (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy bladder" situation (see § 40.193(b)), you may conduct a collection for another employee.
  - (2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.
  - (3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.
  - (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.

- (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.
  - (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).
  - (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
  - (3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
  - (4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (f) If you are operating a collection site, you must minimize the number of persons handling specimens.

#### § 40.44 What materials are used to collect urine specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

#### § 40.45 What materials are used to send urine specimens to the laboratory?

- (a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.
- (b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

#### § 40.47 Where does an oral fluid collection for a DOT drug test take place?

- (a) An oral fluid collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- (b) If you are operating an oral fluid collection site:
  - (1) You must ensure that it meets the security requirements of § 40.48;
  - (2) The site may be a permanent or temporary facility located either at the work site or at a remote site;
  - (3) The site may 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; and



- (4) You must have all necessary personnel, materials, equipment, and facilities that include privacy and supervision to provide for the collection, temporary storage, and shipping of specimens to a laboratory, and a suitable clean surface for writing.
- (c) If a collection site is not accessible and there is an immediate requirement to collect an oral fluid specimen (e.g., an accident investigation), another site may be used for the collection, if the collection is performed by a collector who has been trained to collect oral fluid specimens in accordance with this part and the manufacturer's procedures for the collection device.

[88 FR 27640, May 2, 2023]

#### **§ 40.48 What steps must operators of collection sites and collectors take to protect the security and integrity of oral fluid collections?**

- (a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
- (b) As a collector, you must do the following before each collection to deter tampering with specimens:
  - (1) Ensure that access to collection materials and specimens is effectively restricted;
  - (2) Ensure that undetected access (e.g., through a door not in your view) is not possible; and
  - (3) Ensure the security of the facility during the collection process to maintain privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
- (c) As a collector, you must take the following additional steps to ensure security during the collection process:
  - (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "dry mouth" situation (see § 40.72(b)(1)), you may conduct a collection for another employee as long as the employee with "dry mouth" remains supervised.
  - (2) To the greatest extent practicable, keep an employee's collection container within view of both you and the employee between the time the employee has provided the oral fluid specimen and the specimen is sealed.
  - (3) Ensure you are the only person in addition to the employee who handles the specimen before it is sealed with tamper-evident seals.
  - (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
  - (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (d) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which oral fluid specimens are collected or stored.
  - (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (d).

- (2) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
- (3) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (e) If you are operating a collection site, you must minimize the number of persons handling specimens.

[88 FR 27640, May 2, 2023]

## § 40.49 What materials are used to collect oral fluid specimens?

For each DOT drug test, you must use a collection device meeting the requirements of appendix B of this part.

[88 FR 27640, May 2, 2023]

## § 40.51 What materials are used to send oral fluid specimens to the laboratory?

- (a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from damage in the transport of specimens from the collection site to the laboratory.
- (b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

[88 FR 27640, May 2, 2023]

## Subpart E—Specimen Collections

### § 40.61 What are the preliminary steps in the drug testing collection process?

As the collector, you must take the following steps before actually beginning a collection:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing, the DER must determine whether the employee has refused to test (see §§ 40.191(a)(1) and 40.355(i)). In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing (other than for a pre-employment test) and the employee does not appear, the C/TPA must determine whether the employee has refused to test (see §§ 40.191(a)(1) and 40.355(j)).
- (b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.
  - (1) If the employee is also going to take a DOT alcohol test, you must ensure, to the greatest extent practicable, that the alcohol test is completed before the drug testing collection process begins.

*Example to paragraph (b)(1):* An employee enters the test site for both a drug and an alcohol test.

Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

- (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.
  - (3) You must not collect a specimen from an unconscious employee to conduct a drug test under this part.
  - (4) You must not catheterize a conscious employee for purposes of a urine test. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner. If an employee normally voids through self-catheterization, but declines to do so for the urine test, the collector should notify the DER of the circumstances, so that the actual employer can determine whether the situation constitutes a refusal to test by the employee.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
  - (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.
  - (e) Explain the basic collection procedure to the employee, and notify the employee that instructions for completing the CCF can be found at the HHS (<https://www.samhsa.gov/workplace>) and DOT (<https://www.transportation.gov/odapc>) websites.
  - (f) Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.
- (1) If the employee asks for a receipt for any belongings left with you, you must provide one.
  - (2) You must allow the employee to keep his or her wallet.
  - (3) You must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).

- (4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. As the employee, you must allow the collector to make this observation.
- (5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:
  - (i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, either conduct a directly observed urine collection using direct observation procedures (see § 40.67) or an oral fluid specimen collection, make a note on the CCF and continue with collection process; or
  - (ii) Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.
- (g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27640, May 2, 2023]

### **§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?**

As the collector, you must take the following steps before the employee provides the urine specimen:

- (a) Ensure all items under Step 1 of the CCF are complete and accurate (e.g., if Step 1.D is not checked, put a check mark for the "Specify DOT Agency" under the authority of which the test will take place; if the address where the collection is actually taking place is not in Step 1.G, update that.)
- (b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.
- (c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.
- (d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.
  - (1) Except in the case of an observed or a monitored collection (see §§ 40.67 and 40.69), neither you nor anyone else may go into the room with the employee.
  - (2) As the collector, you may set a reasonable time limit for voiding.
- (e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you

must require that a collection take place immediately under direct observation (see § 40.67) and complete Step 2 by noting the conduct in the “Remarks” line of the CCF and the fact that the collection was observed by checking the “Observed” box. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 59107, Sept. 27, 2010; 88 FR 27641, May 2, 2023]

## § 40.65 What does the collector check for when the employee presents a urine specimen?

As a collector, you must check the following when the employee gives the collection container to you:

- (a) **Sufficiency of specimen.** You must check to ensure that the specimen contains at least 45 mL of urine.
  - (1) If it does not, you must follow “shy bladder” procedures (see § 40.193(b)).
  - (2) When you follow “shy bladder” procedures, you must discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.
  - (3) You are never permitted to combine urine collected from separate voids to create a specimen.
  - (4) You must discard any excess urine.
- (b) **Temperature.** You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.
  - (1) The acceptable temperature range is 32-38 °C/90-100 °F.
  - (2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.
  - (3) If the specimen temperature is within the acceptable range, you must mark the “Yes” box on the CCF (Step 2).
  - (4) If the specimen temperature is outside the acceptable range, you must mark the “No” box and enter in the “Remarks” line (Step 2) your findings about the temperature.
  - (5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new urine collection using direct observation procedures (see § 40.67) or an oral fluid collection.
  - (6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation (including oral fluid) and send the two sets of specimens to their respective laboratories. This is true even in a case in which the original specimen has insufficient volume and the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.
  - (7) In a case where the employee refuses to provide another specimen (see § 40.191(a)(3)) or refuses to provide another specimen under direct observation (see § 40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.
- (c) **Signs of tampering.** You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if you notice any unusual odor).



- (1) If it is apparent from this inspection that the employee has tampered with the specimen (e.g., blue dye in the specimen, excessive foaming when shaken, or smell of bleach), you must immediately conduct a new urine collection using direct observation procedures (see § 40.67) or an oral fluid collection.
- (2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.
- (3) In a case where the employee refuses to provide a specimen under direct observation (see § 40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then you must notify the DER as soon as practicable.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 88 FR 27641, May 2, 2023]

### § 40.67 When and how is a directly observed urine collection conducted?

- (a) As an employer, you 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 to you that there was not an adequate medical explanation for the result;
  - (2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or
  - (3) The laboratory reported to the MRO that the specimen was 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 reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see § 40.197(b)(1)).
  - (4) You realize a collection under direct observation was required but was not conducted or the service agent informs you that a direct observation should have been collected but was not (see paragraph (n) of this section).
- (b) As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.
- (c) As a collector, you must immediately conduct a collection under direct observation if:
  - (1) You are directed by the DER to do so (see paragraph (a) of this section); or
  - (2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see §§ 40.61(f)(5)(i) and 40.63(e)); or
  - (3) The temperature on the original specimen was out of range (see § 40.65(b)(5));
  - (4) The original specimen appeared to have been tampered with (see § 40.65(c)(1)); or
  - (5) The test reason is return-to-duty or follow-up.
- (d)

- (1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.
- (2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection.
- (e) As the collector, you must complete a new CCF for the directly observed collection.
  - (1) You must mark the “reason for test” block (Step 1) the same as for the first collection.
  - (2) You must check the “Observed, (Enter Remark)” box and enter the reason (see paragraphs (c)(2) through (4) of this section) in the “Remarks” line (Step 2).
- (f) In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, 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.
- (g) As the collector, you must ensure that the observer is the same gender as the employee.
  - (1) You must never permit an opposite gender person to act as the observer.
  - (2) The observer can be a different person from the collector and need not be a qualified collector.
  - (3) If a same gender collector cannot be found or in circumstances of nonbinary or transgender employees:
    - (i) If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order;
    - (ii) If there is no standing order from the employer, the collector must contact the DER and either conduct an oral fluid test if the collection site is able to do so, or send the employee to a collection site acceptable to the employer for the oral fluid test.
- (h) As the collector, if someone else is to observe the collection (e.g., in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.
- (i) As the observer, you 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 you, by turning around, that they do not have a prosthetic device. After you have determined that the employee does not have such a device, you may permit the employee to return clothing to its proper position for observed urination.
- (j) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.
- (k) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.
- (l) As the collector, when someone else has acted as the observer, you must include the observer's name in the “Remarks” line of the CCF (Step 2).
- (m) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.



- (n) As a service agent, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35970, June 25, 2008; 73 FR 50223, Aug. 26, 2008; 73 FR 62910, Oct. 22, 2008; 73 FR 70284, Nov. 20, 2008; 74 FR 37952, July 30, 2009; 82 FR 52244, Nov. 13, 2017; 88 FR 27641, May 2, 2023]

## § 40.69 How is a monitored urine collection conducted?

- (a) As stated in § 40.42(f)(2), if you are conducting a urine collection in a multi-stall restroom and you cannot secure all sources of water and other substances that could be used for adulteration and substitution, you must conduct a monitored collection. This is the only circumstance in which you must conduct a monitored collection.
- (b) As the collector, you 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.
- (c) As the collector, you 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 can be a different person from the collector and need not be a qualified collector.
- (d) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same-gender monitor), you must verbally instruct that person to follow the procedures of paragraphs (d) and (e) of this section. If you, the collector, are the monitor, you must follow these procedures.
- (e) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation. See §§ 40.63(e), 40.65(c), and 40.67(c)(2)(3)).
- (f) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.
- (g) As the collector, when someone else has acted as the monitor, you must note that person's name in the "Remarks" line of the CCF (Step 2).
- (h) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 88 FR 27641, May 2, 2023]

## § 40.71 How does the collector prepare the urine specimen?

- (a) All collections under DOT agency drug testing regulations must be split specimen collections.
- (b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.
  - (1) After the collection, check the box on the CCF (Step 2) indicating that this was a "Urine" and "Split" specimen collection.

- (2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.
- (3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.
- (4) You, not the employee, must place and secure (*i.e.*, tighten or snap) the lids/caps on the bottles.
- (5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.
- (6) You, not the employee, must then write the date on the tamper-evident bottle seals.
- (7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.
- (8) You must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: you may use excess urine to conduct clinical tests (*e.g.*, protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither you nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

*[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 88 FR 27641, May 2, 2023]*

#### **§ 40.72 What steps does the collector take in the collection process before the employee provides an oral fluid specimen?**

- (a) The collector requests that the employee open the employee's mouth, and the collector inspects the oral cavity to ensure that it is free of any items that could impede or interfere with the collection of an oral fluid specimen (*e.g.*, candy, gum, food, or tobacco) or could be used to adulterate, substitute, or alter the specimen.
  - (1) If the collector finds indication(s) of anything identified above, the collector will ask the employee to lift their tongue and/or separate their cheek from their gum to permit full inspection. If this occurs, the employee may cleanse his or her hands, but must not decline the collector's request for further inspection.
  - (2) If the employee claims that he or she has a medical condition that prevents opening his or her mouth for inspection, the collector follows the procedure described in § 40.193(a).
  - (3) If the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to adulterate, substitute, or alter the specimen, the collector must terminate the collection, note the circumstances in the Remarks section of the CCF, and report the circumstances to the DER, so that the employer can decide whether to deem the situation a refusal in accordance with § 40.191(a).
- (b) If an item is present that might impede or interfere with the collection of an oral fluid specimen, the collector must request the employee remove the item.

- (1) If the employee removes any item that could impede or interfere with the collection of an oral fluid specimen, the employee has abnormally colored saliva, or the employee claims to have “dry mouth,” then the collector must give the employee water, up to 8 ounces, to rinse their mouth. The employee may drink the water. The collector must then wait 10 minutes before beginning the specimen collection.
- (2) If the employee refuses to remove the item or rinse, the collector must terminate the collection, note the circumstances in the Remarks section of the CCF, and report the information to the DER to test as described in § 40.191(a)(8) (failure to cooperate), so that the employer can decide whether to deem the situation a refusal.
- (c) If there is nothing of concern in the oral cavity and no “dry mouth” condition, the collector starts a 10-minute wait period and proceeds with the steps below before beginning the specimen collection as described in § 40.73.
- (d) During the 10-minute wait period:
  - (1) Review with the employee the procedures required for a successful oral fluid specimen collection as stated in the manufacturer's instructions for the specimen collection device.
  - (2) Complete all items under Step 1 of the CCF, and for clarification:
    - (i) In Step 1.D of the CCF, the collector must put a check mark for the “Specify DOT Agency” under whose authority the test will take place.
    - (ii) In Step 1.G of the CCF for the “Collection Site Address”, the collector must provide the address where the collection took place.
  - (3) The collector will provide, or the employee may select, a specimen collection device that is clean, unused, and wrapped/sealed in original packaging.
    - (i) The collector will check the expiration date on the device or the package containing the device and show it to the employee.
    - (ii) The collector must not use the device after its expiration date.
    - (iii) The collector must open the specimen collection device in view of the employee.
  - (4) The collector will complete Step 2 of the CCF.
    - (i) Check “Oral Fluid”,
    - (ii) For “Oral Fluid: Split Type” check “Subdivided”, and
    - (iii) Check “Each Device Within Expiration Date?” after ensuring the device is within its expiration date.
  - (5) The collector will enter the Split Specimen Device Expiration Date in Step 4 of the CCF. Since the collector will use one oral fluid device that will collect a single specimen, which is then subdivided in the presence of the donor, only one entry in Step 4 is to be made for the device expiration date.
  - (6) The collector must instruct the employee to use hand sanitizer or wash and dry his or her hands.
- (e) To the greatest extent practicable, the collector must keep the employee's unwrapped collection device within view of both the collector and the employee, between the time the employee has provided a specimen and the specimen is sealed.

[88 FR 27642, May 2, 2023]

## § 40.73 How is an oral fluid specimen collected?

- (a) The collector must be present and maintain visual contact with the employee during the procedures outlined in this section.
  - (1) As the oral fluid collector, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process.
  - (2) [Reserved]
- (b) The collector must note any unusual behavior or appearance of the employee on the CCF. If the collector detects any conduct that clearly indicates an attempt to tamper with a specimen (e.g., an attempt to bring into the collection site an adulterant or oral fluid substitute), the collector must terminate the collection and report the information to the DER so that the employer can decide whether to deem the situation a refusal.
- (c) The employee and collector must complete the specimen collection in accordance with the manufacturer's instructions for the collection device.
  - (1) Under the observation of the collector, the employee is responsible for positioning the specimen collection device for collection.
  - (2) The collector must ensure the collection is performed correctly (i.e., using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected. After the employee provides a sufficient specimen, check the "Volume Indicator(s) Observed" box in Step 2 of the Federal CCF to document that you observed the volume indicator(s) during the collection.
  - (3) If the employee states that he or she is unable to provide an oral fluid specimen or provides an insufficient specimen during the collection process, the collector must continue to make one attempt to collect, after an insufficient specimen, the collector follows the procedure in § 40.193.
  - (4) The collector must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering. If it is apparent from this inspection that the employee has tampered with the specimen, the collector must conduct a new collection.
    - (i) Document any unusual characteristics referenced above in the Remarks section of the CCF.
    - (ii) Proceed with obtaining the new oral fluid specimen from the donor. Note on the new CCF that this is another collection for the same testing event (i.e., Document in the remarks section that this is Specimen 2 of 2 and include the Specimen ID number of the other specimen). Make the same notation on the CCF of the suspect specimen.

[88 FR 27642, May 2, 2023, as amended at 89 FR 87798, Nov. 5, 2024]

## § 40.74 How does the collector prepare the oral fluid specimens?

- (a) The collector follows the manufacturer's instructions to package the split specimen collections.

- (b) A volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Bottle A", and a volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Bottle B", or an otherwise sufficient amount of oral fluid is collected to permit an HHS-certified laboratory to analyze the specimen(s).
- (c) In the presence of the employee, the collector places a tamper-evident seal from the CCF over the cap of each specimen container, taking care not to obstruct the expiration date on the collection containers. The collector must record the date of the collection on the tamper-evident seals, after they are affixed to the specimen containers.
- (d) The collector instructs the employee to initial the tamper-evident seals on each specimen container. If the employee declines to do so, the collector must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

[88 FR 27642, May 2, 2023]

## §§ 40.75-40.78 [Reserved]

### § 40.79 How is the collection process completed?

- (a) As the collector, when using the paper CCF, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (7) of this section in the employee's presence.
  - (1) Direct the employee to read and sign the certification statement on Copy 2 of the CCF and provide all information required in Step 5. If the employee declines to sign the CCF or to provide any of the required information, you must note this in the "Remarks" line (Step 2) of the CCF and complete the collection. If the employee declines to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.
  - (2) Complete the chain of custody on the CCF (Step 4) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,
  - (3) Ensure that all copies of the CCF are legible and complete.
  - (4) Remove Copy 5 of the CCF and give it to the employee.
  - (5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.
  - (6) Secure both pouches of the plastic bag.
  - (7) Advise the employee that he or she may leave the collection site.
  - (8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:
    - (i) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)
    - (ii) Seal the container as appropriate.
    - (iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.



- (9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.
- (b) As a collector, when using other forms of the CCF as approved by the Office of Management and Budget, you must follow the procedures approved for that form.
- (c) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case, within 24 hours or during the next business day.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 80 FR 19553, Apr. 13, 2015. Redesignated and amended at 88 FR 27641, 27643, May 2, 2023]

## Subpart F—Drug Testing Laboratories

### § 40.81 What laboratories may be used for DOT drug testing?

- (a) As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for each specimen testing methodology performed under this part.
- (b) As a drug testing laboratory located in Canada or Mexico which is not certified by HHS under the NLCP, you are permitted to participate in DOT drug testing only if:
  - (1) The DOT, based on a written recommendation from HHS, has approved your laboratory as meeting HHS laboratory certification standards or deemed your laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards for all testing required under this part; or
  - (2) The DOT, based on a written recommendation from HHS, has recognized a Canadian or Mexican certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the Canadian or Mexican certifying organization has certified your laboratory under those equivalent standards and procedures.
- (c) As a laboratory participating in the DOT drug testing program, you must comply with the requirements of this part. You must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.
- (d) If DOT determines that you are in noncompliance with this part, you could be subject to PIE proceedings under Subpart R of this part. If the Department issues a PIE with respect to you, you are ineligible to participate in the DOT drug testing program even if you continue to meet the requirements of paragraph (a) or (b) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27643, May 2, 2023; 89 FR 51983, June 21, 2024]

### § 40.82 What drugs do laboratories test for?

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test "DOT specimens" for any other drugs.

- (a) Marijuana metabolites.
- (b) Cocaine metabolites.



- (c) Amphetamines.
- (d) Opioids.
- (e) Phencyclidine (PCP).

[82 FR 52244, Nov. 13, 2017. Redesignated at 88 FR 27643, May 2, 2023]

## § 40.83 How do laboratories process incoming specimens?

As the laboratory, you must do the following when you receive a DOT specimen:

- (a) You are authorized to receive only Copy 1 of the CCF. You are not authorized to receive other copies of the CCF or any copies of the alcohol testing form.
- (b) You must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing drug specimens.
- (c) You must inspect each specimen and CCF for the following “fatal flaws”:
  - (1) There is no CCF;
  - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;
  - (3) There is no printed collector's name and no collector's signature;
  - (4) Two separate collections are performed using one CCF;
  - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;
  - (6) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated (see paragraph (h) of this section);
  - (7) There is an insufficient amount of specimen in the primary bottle for analysis, unless the specimens can be redesignated (see paragraph (h) of this section).
  - (8) For an oral fluid collection, the collector used an expired device at the time of collection.
  - (9) For an oral fluid collection, if the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory is unable to determine the expiration date by inspecting Bottles A and B.
- (d) When you find a specimen meeting the criteria of paragraph (c) of this section, you must document your findings and stop the testing process. Report the result in accordance with § 40.97(b)(3) .
- (e) You must inspect each CCF for the presence of the collector's signature on the certification statement in Step 4 of the CCF. Upon finding that the signature is omitted, document the flaw and continue the testing process.
  - (1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the flaw.
  - (2) You must then attempt to correct the flaw by following the procedures of § 40.205(b)(1).
  - (3) If the flaw is not corrected, report the result as rejected for testing in accordance with § 40.97(b)(3).

- (f) If you determine that the urine specimen temperature was not checked and the “Remarks” line did not contain an entry regarding the temperature being outside of range, you must then attempt to correct the problem by following the procedures of § 40.208.
  - (1) In such a case, you must continue your efforts to correct the problem for five business days, before you report the result.
  - (2) When you have obtained the correction, or five business days have elapsed, report the result in accordance with § 40.97(b).
- (g) If you determine that a CCF that fails to meet the requirements of § 40.40(a) (e.g., a non-Federal form or an expired Federal form was used for the collection), you must attempt to correct the use of the improper form by following the procedures of § 40.205(b)(2).
  - (1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the problem.
  - (2) If the problem(s) is not corrected, you must reject the test and report the result in accordance with § 40.97(b)(3).
- (h) 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, you must still test the primary specimen and follow appropriate procedures outlined in § 40.175(b) regarding the unavailability of the split specimen for testing.
  - (1) The primary specimen and the split specimen can be redesignated (i.e., Bottle B is redesignated as Bottle A, and vice-versa) if:
    - (i) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of specimen exists in the split specimen to conduct all appropriate primary laboratory testing; or
    - (ii) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or
    - (iii) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of specimen exists in the split specimen to conduct all appropriate primary laboratory testing; or
    - (iv) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of specimen exists in the split specimen to conduct all appropriate primary laboratory testing.
  - (2) In situations outlined in paragraph (h)(1) of this section, 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.
- (i) 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.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 73 FR 35970, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 82 FR 52244, Nov 13, 2017; 88 FR 27643, May 2, 2023; 89 FR 51983, June 21, 2024]

## § 40.84 How long does the laboratory retain specimens after testing?

- (a) As a laboratory testing the primary specimen, you must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.
- (b) You must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.
- (c) Within the one-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain a specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the specimen at the end of the year.
- (d) If you have not sent the split specimen to another laboratory for testing, you must retain the split specimen for an employee's test for the same period of time that you retain the primary specimen and under the same storage conditions.
- (e) As the laboratory testing the split specimen, you must meet the requirements of paragraphs (a) through (d) of this section with respect to the split specimen.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27643, May 2, 2023]

## § 40.85 What are the cutoff concentrations for urine drug tests?

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

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

<sup>1</sup> 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.

<sup>2</sup> An immunoassay must be calibrated with a target analyte.

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

<sup>4</sup> Methylenedioxymethamphetamine (MDMA).

<sup>5</sup> Methylenedioxyamphetamine (MDA).

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
		MDA	250 ng/mL.

<sup>1</sup> 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.

<sup>2</sup> An immunoassay must be calibrated with a target analyte.

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

<sup>4</sup> Methylenedioxymethamphetamine (MDMA).

<sup>5</sup> Methylenedioxyamphetamine (MDA).

- (b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.
- (c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.
- (d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, Aug. 16, 2010; 77 FR 26473, May 4, 2012; 82 FR 52244, Nov. 13, 2017. Redesignated and amended at 88 FR 27643, May 2, 2023]

## § 40.86 What is urine validity testing, and are laboratories required to conduct it?

- (a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (b) As a laboratory, you must conduct validity testing.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 73 FR 35970, June 25, 2008. Redesignated at 88 FR 27643, May 2, 2023]

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

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

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

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 64867, Nov. 9, 2004. Redesignated and amended at 88 FR 27643, May 2, 2023]

**§ 40.88 What criteria do laboratories use to establish that a urine specimen is dilute or substituted?**

- (a) As a laboratory, you must consider the primary specimen to be dilute when:
  - (1) The creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL, and
  - (2) The specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.
- (b) As a laboratory, you must consider the primary specimen to be substituted when the creatinine concentration is less than 2 mg/dL and the specific gravity is less than or equal to 1.0010 or greater than or equal to 1.0200 on both the initial and confirmatory creatinine tests and on both the initial and confirmatory specific gravity tests on two separate aliquots.

[69 FR 64867, Nov. 9, 2004. Redesignated at 88 FR 27643, May 2, 2023]

**§ 40.89 What are the adulterant cutoff concentrations for initial and confirmation urine tests?**

- (a) As a laboratory, you must use the cutoff concentrations for the initial and confirmation adulterant testing as required by the HHS Mandatory Guidelines and you must use two separate aliquots—one for the initial test and another for the confirmation test.
- (b) As a laboratory, you must report results at or above the cutoffs (or for pH, at or above or below the values, as appropriate) as adulterated and provide the numerical value that supports the adulterated result.

[73 FR 35970, June 25, 2008. Redesignated at 88 FR 27643, May 2, 2023]



## § 40.90 What criteria do laboratories use to establish that a urine specimen is invalid?

- (a) As a laboratory, you must use the invalid test result criteria for the initial and confirmation testing as required by the HHS Mandatory Guidelines, and you must use two separate aliquots—one for the initial test and another for the confirmation test.
- (b) As a laboratory, for a specimen having an invalid result for one of the reasons outlined in the HHS Mandatory Guidelines, you must contact the MRO to discuss whether sending the specimen to another HHS certified laboratory for testing would be useful in being able to report a positive or adulterated result.
- (c) As a laboratory, you must report invalid results in accordance with the invalid test result criteria as required by the HHS Guidelines and provide the numerical value that supports the invalid result, where appropriate, such as pH.
- (d) As a laboratory, you must report the reason a test result is invalid.

[73 FR 35970, June 25, 2008. Redesignated at 88 FR 27643, May 2, 2023]

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

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

**TABLE 1 TO § 40.91—ORAL FLUID TESTING CUTOFF CONCENTRATIONS**

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana (THC) <sup>2</sup>	4 ng/mL	THC	2 ng/mL.

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

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

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

<sup>2</sup> An immunoassay must be calibrated with the target analyte.

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

<sup>4</sup> Methylenedioxymethamphetamine (MDMA).

<sup>5</sup> Methylenedioxyamphetamine (MDA).

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Cocaine/Benzoyllecgonine	<sup>3</sup> 15 ng/mL	Cocaine Benzoyllecgonine	8 ng/mL. 8 ng/mL.
Codeine/Morphine	30 ng/mL	Codeine Morphine	15 ng/mL. 15 ng/mL.
Hydrocodone/ Hydromorphone	30 ng/mL	Hydrocodone Hydromorphone	15 ng/mL. 15 ng/mL.
Oxycodone/Oxymorphone	30 ng/mL	Oxycodone Oxymorphone	15 ng/mL. 15 ng/mL.
6-Acetylmorphine	4 ng/mL <sup>3</sup>	6-Acetylmorphine	2 ng/mL.
Phencyclidine	10 ng/mL	Phencyclidine	10 ng/mL.
Amphetamine/ Methamphetamine	50 ng/mL	Amphetamine Methamphetamine	25 ng/mL. 25 ng/mL.
MDMA <sup>4</sup> /MDA <sup>5</sup>	50 ng/mL	MDMA MDA	25 ng/mL. 25 ng/mL.

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

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

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

<sup>2</sup> An immunoassay must be calibrated with the target analyte.

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

<sup>4</sup> Methylenedioxymethamphetamine (MDMA).

<sup>5</sup> Methylenedioxyamphetamine (MDA).

[88 FR 27643, May 2, 2023]

## § 40.92 What is oral fluid validity testing, and are laboratories required to conduct it?

- (a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human oral fluid. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the oral fluid, if the oral fluid was altered.

- (b) If a specimen exhibits abnormal characteristics (e.g., unusual odor or color), causes reactions or responses characteristic of an adulterant during initial or confirmatory drug tests (e.g., non-recovery of internal standard, unusual response), or contains an unidentified substance that interferes with the confirmatory analysis, then you may conduct validity testing.
- (c) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS-certified laboratory would be useful in being able to report a positive or adulterated test result.

[88 FR 27643, May 2, 2023]

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

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

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

[88 FR 27643, May 2, 2023]

### § 40.97 What do laboratories report and how do they report it?

- (a) As a laboratory, when reporting a result of any kind, you must report the specimen type.
- (b) You must also report the results for each primary specimen, which will fall into one of the following three categories. As a laboratory, you must report the actual results (and not the categories):
  - (1) **Category 1: Negative results.** As a laboratory, when you find a specimen to be negative, you must report the test result as being one of the following, as applicable:
    - (i) Negative, or
    - (ii) For urine only, negative-dilute, with numerical values for creatinine and specific gravity.
  - (2) **Category 2: Non-negative results.** As a laboratory, when you find a specimen to be non-negative, you must report the test result as being one or more of the following, as applicable:
    - (i) Positive, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s).
    - (ii) Adulterated, with adulterant(s) noted, with confirmatory test values (when applicable), and with remarks(s);
    - (iii) For urine only, positive-dilute, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s) and with numerical values for creatinine and specific gravity;
    - (iv) For urine only, substituted, with confirmatory test values for creatinine and specific gravity; or
    - (v) For urine only, invalid result, with remark(s). Laboratories will report actual values for pH results.

(vi) For oral fluid only, invalid result, with remark(s). Laboratories must report numerical values of the specimen validity test results that support a specimen reported as invalid.

(3) **Category 3: Rejected for testing.** As a laboratory, when you reject a specimen for testing, you must report the result as being Rejected for Testing, with remark(s).

(c) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (e.g., a C/TPA).

(1) Negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory results report electronically (i.e., computer data file).

(i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format:

(A) Laboratory name and address;

(B) Employer's name (you may include I.D. or account number);

(C) Medical review officer's name;

(D) Specimen I.D. number;

(E) SSN or Employee ID from Step 1C of the CCF, if provided;

(F) Reason for test, if provided;

(G) Collector's name and telephone number;

(H) Date of the collection;

(I) For oral fluid only, collection device expiration date;

(J) Date received at the laboratory;

(K) Date certifying scientist released the results;

(L) Certifying scientist's name;

(M) Results (e.g., positive, adulterated) as listed in paragraph (b) of this section; and

(N) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.

(ii) You may release the laboratory results report only after review and approval by the certifying scientist. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report must not contain information that does not appear on the CCF.

(iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. You, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage (e.g., see § 40.351).

- (2) Non-negative and Rejected for Testing results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (c)(1)(i) and (ii) of this section.
- (d) In transmitting laboratory results to the MRO, you, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax or other electronic means, the electronic communication must be accessible only to authorized individuals.
- (e) You must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.
- (f)
  - (1) You must provide quantitative values for confirmed positive drug test results to the MRO.
  - (2) You must provide numerical values that support the adulterated (when applicable) or substituted result, without a request from the MRO.
  - (3) You must also provide the MRO numerical values for creatinine and specific gravity for the negative-dilute urine test result, without a request from the MRO.
- (g) You must provide quantitative values for confirmed positive morphine and/or codeine urine results at or below 15,000 ng/mL, and for confirmed positive morphine or codeine oral fluid results at or below 150 ng/mL.

[88 FR 27644, May 2, 2023, as amended at 89 FR 51983, June 21, 2024]

#### § 40.101 What relationship may a laboratory have with an MRO?

- (a) As a laboratory, you may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for the employer. You may not derive any financial benefit by having an employer use a specific MRO.
- (b) The following are examples of relationships between laboratories and MROs that the Department regards as creating conflicts of interest, or the appearance of such conflicts. This following list of examples is not intended to be exclusive or exhaustive:
  - (1) The laboratory employs an MRO who reviews test results produced by the laboratory;
  - (2) The laboratory has a contract or retainer with the MRO for the review of test results produced by the laboratory;
  - (3) The laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or recommends certain MROs;
  - (4) The laboratory gives the employer a discount or other incentive to use a particular MRO;
  - (5) The laboratory has its place of business co-located with that of an MRO or MRO staff who review test results produced by the laboratory; or
  - (6) The laboratory permits an MRO, or an MRO's organization, to have a financial interest in the laboratory.



### § 40.107 Who may inspect laboratories?

As a laboratory, you must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT-regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program, or the designee of such an employer.

### § 40.109 What documentation must the laboratory keep, and for how long?

- (a) As a laboratory, you must retain all records pertaining to each employee urine specimen for a minimum of two years.
- (b) As a laboratory, you must also keep for two years employer-specific data required in § 40.111.
- (c) Within the two-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain the records for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the records at the end of the two-year period.

### § 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

- (a) As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data listed in appendix D of this part with respect to each specimen type for which you conduct tests to the employer on a semi-annual basis.
  - (1) The summary must not reveal the identity of any employee.
  - (2) In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.
  - (3) The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.
  - (4) The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.
- (b) When the employer requests a summary in response to an inspection, audit, or review by a DOT agency, you must provide it unless the employer had fewer than five aggregate test results. In that case, you must send the employer a report indicating that not enough testing was conducted to warrant a summary. You may transmit the summary or report by hard copy, fax, or other electronic means.
- (c) You must also release information to appropriate parties as provided in §§ 40.329 and 40.331.
- (d) As a laboratory, you must transmit an aggregate statistical summary listed in appendix E of this part for each specimen type for which you conduct testing to DOT on a semi-annual basis. The summary must be sent by January 31 of each year for July 1 through December 31 of the prior year. It must be sent by July 31 of each year for January 1 through June 30 of the current year. If you withdraw or are removed from NLCP's laboratory certification during a reporting period, you must provide the aggregate statistical summary to the DOT-regulated employers and to ODAPC for the last reporting period in which you conducted DOT-regulated testing.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35971, June 25, 2008; 88 FR 27645, May 2, 2023]



## Subpart G—Medical Review Officers and the Verification Process

### § 40.121 Who is qualified to act as an MRO?

To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

- (a) **Credentials.** You must be a licensed physician (Doctor of Medicine or Osteopathy). If you are a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, you are authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if you are licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, you are not limited to performing MRO functions in that state or province, and you may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
  - (1) You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
  - (2) You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.
  - (3) You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT MRO Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
  - (1) Qualification training must provide instruction on the following subjects:
    - (i) Collection procedures for specimens;
    - (ii) Chain of custody, reporting, and recordkeeping;
    - (iii) Interpretation of drug and validity tests results;
    - (iv) The role and responsibilities of the MRO in the DOT drug testing program;
    - (v) The interaction with other participants in the program (e.g., DERs, SAPs); and
    - (vi) Provisions of this part and DOT agency rules applying to employers for whom you review test results, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.

- (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform MRO functions.
- (d) **Requalification training.** During each five-year period from the date on which you satisfactorily completed the examination under paragraph (c)(2) of this section, you must complete requalification training.
  - (1) This requalification training must meet the requirements of the qualification training under paragraph (c)(1) of this section.
  - (2) Following your completion of requalification training, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 75 FR 49862, Aug. 16, 2010; 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

## § 40.123 What are the MRO's responsibilities in the DOT drug testing program?

As an MRO, you have the following basic responsibilities:

- (a) Acting as an independent and impartial “gatekeeper” and advocate for the accuracy and integrity of the drug testing process.
- (b) Providing a quality assurance review of the drug testing process for the specimens under your purview. This includes, but is not limited to:
  - (1) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled (see §§ 40.199-40.203). As an MRO, you are not required to review laboratory internal chain of custody documentation. No one is permitted to cancel a test because you have not reviewed this documentation;
  - (2) Providing feedback to employers, collection sites and laboratories regarding performance issues where necessary; and
  - (3) Reporting to and consulting with the ODAPC or a relevant DOT agency when you wish DOT assistance in resolving any program issue. As an employer or service agent, you are prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug testing issues with DOT.
- (c) You must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid results from the laboratory.

- (d) While you provide medical review of employees' test results, this part does not deem that you have established a doctor-patient relationship with the employees whose tests you review.
- (e) You must act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed, (e.g., cancelled or problematic tests, incorrect results).
- (f) You must ensure the timely flow of test results and other information to employers.
- (g) You must protect the confidentiality of the drug testing information.
- (h) You must perform all your functions in compliance with this part and other DOT agency regulations.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

### **§ 40.125 What relationship may an MRO have with a laboratory?**

As an MRO, you may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with your responsibilities to that employer. You may not derive any financial benefit by having an employer use a specific laboratory. For examples of relationships between laboratories and MROs that the Department views as creating a conflict of interest or the appearance of such a conflict, see § 40.101(b).

### **§ 40.127 What are the MRO's functions in reviewing negative test results?**

As the MRO, you must do the following with respect to negative drug test results you receive from a laboratory, prior to verifying the result and releasing it to the DER:

- (a) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to initiate corrective action or to cancel the test (see §§ 40.199 and 40.203).
- (b) Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.
- (c) Before you report a negative test result, you must have in your possession the following documents:
  - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
  - (2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.
- (d) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.
- (e) On Copy 2 of the CCF, place a check mark in the "Negative" box (Step 6), provide your name, and sign, initial, or stamp and date the verification statement.
- (f) Report the result in a confidential manner (see §§ 40.163-40.167).
- (g) Staff under your direct, personal supervision may perform the administrative functions of this section for you, but only you can cancel a test. If you cancel a laboratory-confirmed negative result, check the "Test Cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, provide your name, and sign, initial or stamp and date the verification statement.

- (1) On specimen results that are reviewed by your staff, you are responsible for assuring the quality of their work.
- (2) You are required to personally review at least 5 percent of all CCFs reviewed by your staff on a quarterly basis, including all results that required a corrective action. However, you need not review more than 500 negative results of all specimen types combined in any quarter.
- (3) Your review must, as a minimum, include the CCF, negative laboratory test result, any accompanying corrective documents, and the report sent to the employer. You must correct any errors that you discover. You must take action as necessary to ensure compliance by your staff with this part and document your corrective action. You must attest to the quality assurance review by initialing the CCFs that you review.
- (4) You must make these CCFs easily identifiable and retrievable by you for review by DOT agencies.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 88 FR 27645, May 2, 2023]

### **§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?**

- (a) As the MRO, you must do the following with respect to confirmed positive, adulterated, substituted, or invalid results you receive from a laboratory, before you verify the result and release it to the DER:
  - (1) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to cancel the test (see §§ 40.199 and 40.203). Staff under your direct, personal supervision may conduct this administrative review for you, but only you may verify or cancel a test.
  - (2) Review Copy 1 of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form. You are not required to review any other documentation generated by the laboratory during their analysis or handling of the specimen (e.g., the laboratory internal chain of custody).
  - (3) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.
  - (4) Except in the circumstances spelled out in § 40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between you and the employee. You may initiate the verification process based on the laboratory results report.
  - (5) Verify the test result, consistent with the requirements of §§ 40.135 through 40.145, 40.159, and 40.160, as:
    - (i) Negative; or
    - (ii) Cancelled; or
    - (iii) Positive, and/or refusal to test because of adulteration or substitution.
- (b) Before you report a verified negative, positive, refusal to test because of adulteration or substitution, you must have in your possession the following documents:
  - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and

- (2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF, containing the certifying scientist's signature.
- (c) With respect to verified positive test results, place a checkmark in the "Positive" box in Step 6 on Copy 2 of the CCF, indicate the drug(s)/metabolite(s) verified positive, and sign and date the verification statement.
- (d) If you cancel a laboratory confirmed positive, adulterated, substituted, or invalid result, check the "test cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, sign, provide your name, and date the verification statement.
- (e) Report the result in a confidential manner (see §§ 40.163-40.167).
- (f) With respect to adulteration or substitution test results, check the "refusal to test because:" box (Step 6) on Copy 2 of the CCF, check the "Adulterated" or "Substituted" box, as appropriate, make appropriate annotation in the "Remarks" line, sign and date the verification statement.
- (g) As the MRO, your actions concerning reporting confirmed positive, adulterated, or substituted results to the employer before you have completed the verification process are also governed by the stand-down provisions of § 40.21 .
  - (1) If an employer has a stand-down policy that meets the requirements of § 40.21 , you may report to the DER that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result, consistent with the terms of the waiver the employer received. You must not provide any further details about the test result (e.g., the name of the drug involved).
  - (2) If the employer does not have a stand-down policy that meets the requirements of § 40.21, you must not inform the employer that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result until you verify the test result. For example, as an MRO employed directly by a company, you must not tell anyone on the company's staff or management that you have received an employee's laboratory confirmed test result.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 88 FR 27645, May 2, 2023]

### **§ 40.131 How does the MRO or DER notify an employee of the verification process after receiving laboratory confirmed non-negative drug test results?**

- (a) When, as the MRO, you receive a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, you must contact the employee directly (*i.e.*, actually talk to the employee), on a confidential basis, to determine whether the employee wants to discuss the test result. In making this contact, you must explain to the employee that, if he or she declines to discuss the result, you will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.
- (b) As the MRO, staff under your personal supervision may conduct this initial contact for you.
  - (1) This staff contact must be limited to scheduling the discussion between you and the employee and explaining the consequences of the employee's declining to speak with you (*i.e.*, that the MRO will verify the test without input from the employee). If the employee declines to speak with you, the staff person must document the employee's decision, including the date and time.
  - (2) A staff person must not gather any medical information or information concerning possible explanations for the test result.



- (3) A staff person may advise an employee to have medical information (e.g., prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.
- (4) Since you are required to speak personally with the employee, face-to-face or on the phone, your staff must not inquire if the employee wishes to speak with you.
- (c) As the MRO, you or your staff must make reasonable efforts to reach the employee at the day and evening telephone numbers listed on the CCF. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If you or your staff cannot reach the employee directly after making these efforts, you or your staff must take the following steps:
  - (1) Document the efforts you made to contact the employee, including dates and times. If both phone numbers are incorrect (e.g., disconnected, wrong number), you may take the actions listed in paragraph (c)(2) of this section without waiting the full 24-hour period.
  - (2) Contact the DER, instructing the DER to contact the employee.
    - (i) You must simply direct the DER to inform the employee to contact you.
    - (ii) You must not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.
    - (iii) You must document the dates and times of your attempts to contact the DER, and you must document the name of the DER you contacted and the date and time of the contact.
- (d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you successfully contact the employee (i.e., actually talk to the employee), you must document the date and time of the contact, and inform the MRO. You must inform the employee that he or she should contact the MRO immediately. You must also inform the employee of the consequences of failing to contact the MRO within the next 72 hours (see § 40.133(a)(2)).
  - (1) As the DER, you must not inform anyone else working for the employer that you are seeking to contact the employee on behalf of the MRO.
  - (2) If, as the DER, you have made all reasonable efforts to contact the employee but failed to do so, you may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.
    - (i) As the DER, you must document the dates and times of these efforts.
    - (ii) If, as the DER, you are unable to contact the employee within this 24-hour period, you must leave a message for the employee by any practicable means (e.g., voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004]



**§ 40.133 Without interviewing the employee, under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid?**

- (a) As the MRO, you normally may verify a confirmed positive test (for any drug or drug metabolite, including opiates), or as a refusal to test because of adulteration or substitution, only after interviewing the employee as provided in §§ 40.135-40.145 . However, there are three circumstances in which you may verify such a result without an interview:
  - (1) You may verify a test result as a positive or refusal to test, as applicable, if the employee expressly declines the opportunity to discuss the test with you. You must maintain complete documentation of this occurrence, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the you.
  - (2) You may verify a test result as a positive or refusal to test, as applicable, if the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee.
  - (3) You may verify a test result as a positive or refusal to test, as applicable, if neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory.
- (b) As the MRO, you may verify an invalid test result as cancelled (with instructions to recollect immediately under direct observation) without interviewing the employee, as provided at § 40.159:
  - (1) If the employee expressly declines the opportunity to discuss the test with you;
  - (2) If the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee; or
  - (3) If neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which you received the confirmed invalid test result from the laboratory.
- (c) As the MRO, after you verify a test result as a positive or as a refusal to test under this section, you must document the date and time and reason, following the instructions in § 40.163. For a cancelled test due to an invalid result under this section, you must follow the instructions in § 40.159(a)(5).
- (d) As the MRO, after you have verified a test result under this section and reported the result to the DER, you must allow the employee to present information to you within 60 days of the verification to document that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis of such information, you may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation of the confirmed test result.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35971, June 25, 2008]

**§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?**

- (a) As the MRO, you must tell the employee that the laboratory has determined that the employee's test result was positive, adulterated, substituted, or invalid, as applicable. You must also tell the employee of the drugs for which his or her specimen tested positive, or the basis for the finding of adulteration or substitution.
- (b) You must explain the verification interview process to the employee and inform the employee that your decision will be based on information the employee provides in the interview.
- (c) You must explain that, if further medical evaluation is needed for the verification process, the employee must comply with your request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.
- (d) As the MRO, you must warn an employee who has a confirmed positive, adulterated, substituted or invalid result that you are required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives you in the verification process without the employee's consent (see § 40.327).
  - (1) You must give this warning to the employee before obtaining any medical information as part of the verification process.
  - (2) For purposes of this paragraph (d), medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.
  - (3) For purposes of this paragraph (d), the persons to whom this information may be provided include the employer, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), DOT, another Federal safety agency (e.g., the NTSB), or any state safety agency as required by state law.
- (e) You must also advise the employee that, before informing any third party about any medication the employee is using pursuant to a legally valid prescription consistent with the Controlled Substances Act, you will allow 5 business days from the date you report the verified negative result for the employee to have the prescribing physician contact you to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If, in your reasonable medical judgment, a medical qualification issue or a significant safety risk remains after you communicate with the employee's prescribing physician or after 5 business days, whichever is shorter, you must follow § 40.327. If, as the MRO, you receive information that eliminates the medical qualification issue or significant safety risk, you must transmit this information to any third party to whom you previously provided information under § 40.327.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

**§ 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, semi-synthetic opioids, or PCP?**

- (a) As the MRO, you must verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (i.e., hydrocodone, hydromorphone, oxycodone, and oxymorphone), and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in

his or her system. In determining whether an employee's legally valid prescription consistent with the Controlled Substances Act for a substance in these categories constitutes a legitimate medical explanation, you must not question whether the prescribing physician should have prescribed the substance.

- (b) You must offer the employee an opportunity to present a legitimate medical explanation in all cases.
- (c) The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the test result, if you determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence concerning a legitimate medical explanation within that time.
- (d) If you determine that there is a legitimate medical explanation, you must verify the test result as negative. Otherwise, you must verify the test result as positive.
- (e) In determining whether a legitimate medical explanation exists, you may consider the employee's use of a medication from a foreign country. You must exercise your professional judgment consistently with the following principles:
  - (1) There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.
  - (2) There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use. Use of a drug of abuse (e.g., heroin, PCP, marijuana) or any other substance (see § 40.151(f) and (g)) that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the substance is obtained legally in a foreign country.
  - (3) Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.
  - (4) Even if you find that there is a legitimate medical explanation under this paragraph (e) and verify a test negative, you may have a responsibility to raise fitness-for-duty considerations with the employer (see § 40.327).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

### **§ 40.139 On what basis does the MRO verify test results involving 6-acetylmorphine, codeine, and morphine?**

As the MRO, you must proceed as follows when you receive a laboratory confirmed positive opiate result:

- (a) If the laboratory confirms the presence of 6-acetylmorphine (6-AM) in the specimen, you must verify the test result positive.
- (b) In the absence of 6-AM, if the laboratory confirms the presence of either morphine or codeine equal to or above 15,000 ng/mL (in urine) or equal to or above 150 ng/mL (in oral fluid), you must verify the test result as positive, unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.

- (c) For all other codeine and morphine positive results, you must verify a confirmed positive test result only if you determine that there is clinical evidence, in addition to the test, of unauthorized use of any opium, opiate, or opium derivative (*i.e.*, morphine, codeine, or heroin).
- (1) As an MRO, it is your responsibility to use your best professional and ethical judgement and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgement include, but are not limited to, the following:
- (i) Recent needle tracks;
  - (ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;
  - (iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result;
  - (iv) Use of a medication from a foreign country. See § 40.137(e) for guidance on how to make this determination.
- (2) In order to establish the clinical evidence referenced in paragraphs (c)(1)(i) and (ii) of this section, personal observation of the employee is essential.
- (i) Therefore, you, as the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.
  - (ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (c)(1)(iii) or (iv) of this section.
- (3) To be the basis of a verified positive result for codeine or morphine, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you must not verify the test positive for codeine. The admission must be for the substance that was found through the actual drug test.)
- (4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph (c). If you cannot make this determination (*e.g.*, there is not sufficient clinical evidence or history), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

[77 FR 26473, May 4, 2012, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

#### **§ 40.141 How does the MRO obtain information for the verification decision?**

As the MRO, you must do the following as you make the determinations needed for a verification decision:

- (a) You must conduct a medical interview. You must review the employee's medical history and any other relevant biomedical factors presented to you by the employee. You may direct the employee to undergo further medical evaluation by you or another physician.
- (b) If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication (*i.e.*, a legally valid prescription consistent with the Controlled Substances Act), you must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides.



- (1) You may contact the employee's physician or other relevant medical personnel for further information.
  - (i) If you decide to contact the employee's pharmacy to authenticate whether the prescription offered by the employee was filled by the pharmacy, you or staff under your operational control can contact the pharmacy.
  - (ii) If you utilize staff to perform the inquiry in paragraph (b)(1)(i) of this section, you must ensure operational control over the hiring, firing, evaluation of the staff and you must oversee the performance of the function of contacting a pharmacy to authenticate specific prescription(s) (e.g., outline or script what the staff will ask the pharmacy; occasionally monitor calls to assure quality control; or other methods to ensure the staff are properly conducting the calls with the pharmacies).
- (2) You may request an HHS-certified laboratory with validated protocols (see § 40.81(c)) to conduct testing for D,L stereoisomers of amphetamine and methamphetamine or testing for tetrahydrocannabivarin (THC-V) when verifying lab results, as you determine necessary.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

## § 40.143 [Reserved]

### § 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

- (a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive for a drug or drug metabolite.
- (b) You must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite (see §§ 40.129-40.135, 40.141, 40.151), except as otherwise provided in this section.
- (c) In the verification interview, you must explain the laboratory findings to the employee and address technical questions or issues the employee may raise.
- (d) You must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the creatinine and specific gravity findings for, the specimen.
- (e) The employee has the burden of proof that there is a legitimate medical explanation.
  - (1) To meet this burden in the case of an adulterated specimen, the employee must demonstrate that the adulterant found by the laboratory entered the specimen through physiological means.
  - (2) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine through physiological means, meeting the creatinine concentration criterion of less than 2 mg/dL and the specific gravity criteria of less than or equal to 1.0010 or greater than or equal to 1.0200 (see § 40.88(b)).
  - (3) The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the specimen, if you determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence supporting a legitimate medical explanation within that time.

- (f) As the MRO or the employer, you are not responsible for arranging, conducting, or paying for any studies, examinations or analyses to determine whether a legitimate medical explanation exists.
- (g) As the MRO, you must exercise your best professional judgment in deciding whether the employee has established a legitimate medical explanation.
  - (1) If you determine that the employee's explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.
  - (2) If you believe that the employee's explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, you must direct the employee to obtain, within the five-day period set forth in paragraph (e)(3) of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to you, with expertise in the medical issues raised by the employee's explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
    - (i) As the MRO or employer, you are not responsible for finding or paying a referral physician. However, on request of the employee, you must provide reasonable assistance to the employee's efforts to find such a physician. The final choice of the referral physician is the employee's, as long as the physician is acceptable to you.
    - (ii) As the MRO, you must consult with the referral physician, providing guidance to him or her concerning his or her responsibilities under this section. As part of this consultation, you must provide the following information to the referral physician:
      - (A) That the employee was required to take a DOT drug test, but the laboratory reported that the specimen was adulterated or substituted, which is treated as a refusal to test;
      - (B) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
      - (C) That the referral physician must agree to follow the requirements of paragraphs (g)(3) through (g)(4) of this section; and
      - (D) That the referral physician must provide you with a signed statement of his or her recommendations.
  - (3) As the referral physician, you must evaluate the employee and consider any evidence the employee presents concerning the employee's medical explanation. You may conduct additional tests to determine whether there is a legitimate medical explanation. Any additional drug tests must be performed in an HHS-certified laboratory.
  - (4) As the referral physician, you must then make a written recommendation to the MRO about whether the MRO should determine that there is a legitimate medical explanation. As the MRO, you must seriously consider and assess the referral physician's recommendation in deciding whether there is a legitimate medical explanation.
  - (5) As the MRO, if you determine that there is a legitimate medical explanation, you must cancel the test and inform ODAPC in writing of the determination and the basis for it (e.g., referral physician's findings, evidence produced by the employee).
  - (6) As the MRO, if you determine that there is not a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution.



- (h) The following are examples of types of evidence an employee could present to support an assertion of a legitimate medical explanation for a substituted urine result.
  - (1) Medically valid evidence demonstrating that the employee is capable of physiologically producing urine meeting the creatinine and specific gravity criteria of § 40.88(b).
    - (i) To be regarded as medically valid, the evidence must have been gathered using appropriate methodology and controls to ensure its accuracy and reliability.
    - (ii) Assertion by the employee that his or her personal characteristics (e.g., with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of § 40.88(b).
  - (2) Information from a medical evaluation under paragraph (g) of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of § 40.88(b).
    - (i) A finding or diagnosis by the physician that an employee has a medical condition, in itself, does not constitute a legitimate medical explanation.
    - (ii) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of § 40.88(b).

[65 FR 79526, Dec. 19, 2000, as amended at 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 88 FR 27646, May 2, 2023; 89 FR 51983, June 21, 2024]

## § 40.147 [Reserved]

## § 40.149 May the MRO change a verified drug test result?

- (a) As the MRO, you may change a verified test result only in the following situations:
  - (1) When you have reopened a verification that was done without an interview with an employee (see § 40.133(d)).
  - (2) If you receive information, not available to you at the time of the original verification, demonstrating that the laboratory made an error in identifying (e.g., a paperwork mistake) or testing (e.g., a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. You verified the test results as reported to you. Then the laboratory notifies you that it mixed up the two test results, and X was really negative and Y was really positive. You would change X's test result from positive to negative and contact Y to conduct a verification interview.
  - (3) If, within 60 days of the original verification decision—
    - (i) You receive information that could not reasonably have been provided to you at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/metabolite(s) in the employee's specimen; or

- (ii) You receive credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists.

*Example to paragraph (a)(3):* If the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, you may change the test result from positive to negative if you conclude that the prescription provides a legitimate medical explanation for the drug(s)/ metabolite(s) in the employee's specimen.

- (4) If you receive the information in paragraph (a)(3) of this section after the 60-day period, you must consult with ODAPC prior to changing the result.
- (5) When you have made an administrative error and reported an incorrect result.
- (b) If you change the result, you must immediately notify the DER in writing, as provided in §§ 40.163-40.165.
- (c) You are the only person permitted to change a verified test result, such as a verified positive test result or a determination that an individual has refused to test because of adulteration or substitution. This is because, as the MRO, you have the sole authority under this part to make medical determinations leading to a verified test (e.g., a determination that there was or was not a legitimate medical explanation for a laboratory test result). For example, an arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008]

## § 40.151 What are MROs prohibited from doing as part of the verification process?

As an MRO, you are prohibited from doing the following as part of the verification process:

- (a) You must not consider any evidence (verbal or written information) from any drug tests that are not collected or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result, you are required to ignore this test result.
- (b) It is not your function to 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 collection containers where other people could access them.)
- (c) It is not your function to determine whether the employer should have directed that a test occur. For example, if an employee tells you that the employer misidentified her as the subject of a random test, or directed her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, you must inform the employee that you cannot play a role in deciding these issues.
- (d) It is not your function to 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 her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, you must not declare a test as negative based on an explanation of this kind.

- (e) You must not verify 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) You must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. You also must not 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.
- (g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP, 6-AM, MDMA, or MDA in a specimen.
- (h) You must not 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.
- (i) You must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce a urine specimen for which the creatinine level is below the laboratory's limit of detection. There are no physiological means through which a person can produce a urine specimen having this characteristic.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 75 FR 49863, Aug. 16, 2010; 88 FR 27646, May 2, 2023]

### **§ 40.153 How does the MRO notify employees of their right to a test of the split specimen?**

- (a) As the MRO, when you have verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, you must notify the employee of his or her right to have the split specimen tested. You must also notify the employee of the procedures for requesting a test of the split specimen.
- (b) You must inform the employee that he or she has 72 hours from the time you provide this notification to him or her to request a test of the split specimen.
- (c) You must tell the employee how to contact you to make this request. You must provide telephone numbers or other information that will allow the employee to make this request. As the MRO, you must have the ability to receive the employee's calls at all times during the 72 hour period (e.g., by use of an answering machine with a “time stamp” feature when there is no one in your office to answer the phone).
- (d) You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see § 40.173).
- (e) You must tell the employee that additional tests of the specimen e.g., DNA tests) are not authorized.

### **§ 40.155 What does the MRO do when a negative or positive test result is also dilute?**

- (a) When the laboratory reports that a specimen is dilute, you must, as the MRO, report to the DER that the specimen, in addition to being negative or positive, is dilute.
- (b) You must check the “dilute” box (Step 6) on Copy 2 of the CCF.

- (c) When you report a dilute specimen to the DER, you must explain to the DER the employer's obligations and choices under § 40.197, to include the requirement for an immediate recollection under direct observation if the creatinine concentration of a negative-dilute specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/dL.
- (d) If the employee's recollection under direct observation, in paragraph (c) of this section, results in another negative-dilute, as the MRO, you must:
  - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
  - (2) If the CCF documentation shows that the recollection was directly observed as required, report this result to the DER as a negative-dilute result.
  - (3) If CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35971, June 25, 2008]

## § 40.157 [Reserved]

## § 40.159 What does the MRO do when a drug test result is invalid?

- (a) As the MRO, when the laboratory reports that the test result is an invalid result, you must do the following:
  - (1) Discuss the laboratory results with a certifying scientist to determine if the primary specimen should be tested at another HHS-certified laboratory. If the laboratory did not contact you as required by §§ 40.87(e) and 40.90(b), you must contact the laboratory.
  - (2) If you and the laboratory have determined that no further testing is necessary, contact the employee and inform the employee that the specimen was invalid. In contacting the employee, use the procedures set forth in § 40.131.
  - (3) After explaining the limits of disclosure (see §§ 40.135(d) and 40.327), you must determine if the employee has a medical explanation for the invalid result. You must inquire about the medications the employee may have taken.
  - (4) If the employee gives an explanation that is acceptable, you must:
    - (i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line.
    - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (i.e., pre-employment, return-to-duty, or follow-up tests).
    - (iii) If a negative test result is required and the medical explanation concerns a situation in which the employee has a permanent or long-term medical condition that precludes him or her from providing a valid specimen, as the MRO, you must follow the procedures outlined at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.
  - (5) If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, you must:



- (i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection required" on the "Remarks" line.
  - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation. Recommend to the employer that an alternate specimen should be collected if practicable (e.g., oral fluid, if the specimen was urine).
  - (iii) Instruct the employer to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.
- (6) When the test result is invalid because pH is greater than or equal to 9.0 but less than or equal to 9.5 and the employee has no other medical explanation for the pH, you should consider whether there is evidence of elapsed time and increased temperature that could account for the pH value.
- (i) You are authorized to consider the temperature conditions that were likely to have existed between the time of collection and transportation of the specimen to the laboratory, and the length of time between the specimen collection and arrival at the laboratory.
  - (ii) You may talk with the collection site and laboratory to discuss time and temperature issues, including any pertinent information regarding specimen storage.
  - (iii) If you determine that time and temperature account for the pH value, you must cancel the test and take no further action, as provided at paragraph (a)(4) of this section.
  - (iv) If you determine that time and temperature fail to account for the pH value, you must cancel the test and direct another collection under direct observation, as provided at paragraph (a)(5) of this section.
- (b) You may only report an invalid test result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.
- (c) If the employee admits to having adulterated or substituted the specimen, you must, on the same day, write and sign your own statement of what the employee told you. You must then report a refusal to test in accordance with § 40.163.
- (d) If the employee admits to using a drug, you must, on the same day, write and sign your own statement of what the employee told you. You must then report that admission to the DER for appropriate action under DOT Agency regulations. This test will be reported as cancelled with the reason noted.
- (e) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for the same reason as reported for the first specimen, as the MRO, you must:
- (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
  - (2) If the CCF review indicates that the recollection was directly observed as required, document that the employee had another specimen with an invalid result for the same reason.
  - (3) Follow the recording and reporting procedures at (a)(4)(i) and (ii) of this section.
  - (4) If a negative result is required (i.e., pre-employment, return-to-duty, or follow-up tests), follow the procedures at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.

- (5) If the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.
- (f) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for a different reason than that reported for the first specimen, as the MRO, you must:
  - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
  - (2) If the CCF review indicates that the recollection was directly observed as required, document that the employee had another specimen with an invalid result for a different reason.
  - (3) As the MRO, you should not contact the employee to discuss the result, but rather direct the DER to conduct an immediate recollection under direct observation without prior notification to the employee.
  - (4) If the CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.
- (g) If, as the MRO, you receive a laboratory invalid result in conjunction with a positive, adulterated, and/or substituted result and you verify any of those results as being a positive and/or refusal to test, you do not report the invalid result unless the split specimen fails to reconfirm the result(s) of the primary specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008; 75 FR 49863, Aug. 16, 2010; 88 FR 27646, May 2, 2023; 89 FR 51983, June 21, 2024]

#### **§ 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?**

- (a) If a valid test result cannot be produced and a negative result is required, (under § 40.159 (a)(5)(iii) and (e)(4)), as the MRO, you must determine if there is clinical evidence that the individual is currently an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation. In addition, if appropriate, you may also consult with the employee's physician to gather information you need to reach this determination.
- (b) If you do not personally conduct the medical evaluation, as the MRO, you must ensure that one is conducted by a licensed physician acceptable to you.
- (c) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (d) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report this to the employer as a negative test result with written notations regarding the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and for the determination that no signs and symptoms of drug use exist.
  - (1) Check "Negative" (Step 6) on the CCF.
  - (2) Sign and date the CCF.



- (e) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding the results of the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) 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 purpose of an actual negative test result (i.e., the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test result is needed for that purpose).

[73 FR 35972, June 25, 2008]

### § 40.161 What does the MRO do when a drug test specimen is rejected for testing?

As the MRO, when the laboratory reports that the specimen is rejected for testing (e.g., because of a fatal or uncorrected flaw), you must do the following:

- (a) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 (or a legible copy of Copy 3-5) of the CCF and enter the reason on the "Remarks" line. If you do not have Copy 2 (or a legible copy of Copy 3-5), then enter "Test Cancelled" and the reason for the cancellation on a report in the format required under § 40.163(c).
- (b) Report to the DER that the test is cancelled and the reason for cancellation, and that no further action is required unless a negative test is required (e.g., in the case of a pre-employment, return-to-duty, or follow-up test).
- (c) You may only report a test cancelled because of a "rejected for testing" laboratory result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature. If you do not have Copy 2 (or a legible copy of Copy 3-5), then enter "Test Cancelled" and the reason for the cancellation on a report in the format required under § 40.163(c).

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27646, May 2, 2023]

### § 40.162 What must MROs do with multiple verified results for the same testing event?

- (a) If the testing event is one in which there was one specimen collection with multiple verified non-negative results, as the MRO, you must report them all to the DER. For example, if you verified the specimen as being positive for marijuana and cocaine and as being a refusal to test because the specimen was also adulterated, as the MRO, you should report the positives and the refusal to the DER.
- (b) If the testing event was one in which two separate specimen collections (e.g., a specimen out of temperature range and the subsequent observed collection) were sent to the laboratory, as the MRO, you must:
  - (1) If both specimens were verified negative, report the result as negative.
  - (2) If either of the specimens was verified negative and the other was verified as one or more non-negative(s), report the non-negative result(s) only. For example, if you verified one specimen as negative and the other as a refusal to test because the second specimen was substituted, as the MRO you should report only the refusal to the DER.

- (i) If the first specimen is reported as negative, but the result of the second specimen has not been reported by the laboratory, as the MRO, you should hold—not report—the result of the first specimen until the result of the second specimen is received.
- (ii) If the first specimen is reported as non-negative, as the MRO, you should report the result immediately and not wait to receive the result of the second specimen.
- (3) If both specimens were verified non-negative, report all of the non-negative results. For example, if you verified one specimen as positive and the other as a refusal to test because the specimen was adulterated, as the MRO, you should report the positive and the refusal results to the DER.
- (c) As an exception to paragraphs (a) and (b) of this section, as the MRO, you must follow procedures at § 40.159(g) when any verified non-negative result is also invalid.

[73 FR 35972, June 25, 2008, as amended at 82 FR 52245, Nov. 13, 2017]

### § 40.163 How does the MRO report drug test results?

- (a) As the MRO, it is your responsibility to report all drug test results to the employer.
- (b) You may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.
- (c) If you do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information:
  - (1) Full name, as indicated on the CCF, of the employee tested;
  - (2) Specimen ID number from the CCF and the SSN or employee ID No.;
  - (3) Reason for the test, if indicated on the CCF (e.g., random, post-accident);
  - (4) Date of the collection;
  - (5) Date you received Copy 2 of the CCF;
  - (6) Result of the test (i.e., positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;
  - (7) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;
  - (8) For cancelled tests, the reason for cancellation; and
  - (9) For refusals to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).
- (d) As an exception to the reporting requirements of paragraph (b) and (c) of this section, the MRO may report negative results using an electronic data file.
  - (1) If you report negatives using an electronic data file, the report must contain, as a minimum, the information specified in paragraph (c) of this section, as applicable for negative test results.
  - (2) In addition, the report must contain your name, address, and phone number, the name of any person other than you reporting the results, and the date the electronic results report is released.
- (e) If you use a written report as provided in paragraph (c) of this section to report results, you must retain a copy of the written report. If you use the electronic data file to report negatives, as provided in paragraph (d) of this section, you must retain a retrievable copy of that report in a format suitable for inspection and

audit by a DOT representative. In either case, you must keep the completed Copy 2 of the CCF. When completing Copy 2, either the MRO must sign and date it (for both negatives and non-negatives) or MRO staff must stamp and date it (for negatives only).

- (f) You must not use Copy 1 of the CCF to report drug test results.
- (g) You must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, you must provide the test information in your possession to a SAP who consults with you (see § 40.293(g)).
- (h) You must maintain reports and records related to negatives and cancelled results for one year; you must maintain reports and records related to positives and refusals for five years, unless otherwise specified by applicable DOT agency regulations.

[66 FR 41952, Aug. 9, 2001, as amended at 75 FR 49863, Aug. 16, 2010; 75 FR 59107, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011; 88 FR 27646, May 2, 2023]

### **§ 40.165 To whom does the MRO transmit reports of drug test results?**

- (a) As the MRO, you must report all drug test results to the DER, except in the circumstances provided for in § 40.345 .
- (b) If the employer elects to receive reports of results through a C/TPA, acting as an intermediary as provided in § 40.345 , you must report the results through the designated C/TPA.

### **§ 40.167 How are MRO reports of drug results transmitted to the employer?**

As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:

- (a) You must report the results in a confidential manner.
- (b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.
  - (1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see § 40.163).
  - (2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.
  - (3) The MRO's report that you transmit to the employer must contain all of the information required by § 40.163 .
- (c) You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.
  - (1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see § 40.163(b) and (c)).
  - (2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.

- (d) In transmitting test results, you or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.
- (e) MRO reports are not subject to modification or change by anyone other than the MRO, as provided in § 40.149(c).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

## Subpart H—Split Specimen Tests

### § 40.171 How does an employee request a test of a split specimen?

- (a) As an employee, when the MRO has notified you that you have a verified positive drug test and/or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen. There is no split specimen testing for an invalid result.
- (b)
  - (1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.
  - (2) As the MRO, if you conclude from the employee's information that there was a legitimate reason for the employee's failure to contact you within 72 hours, you must direct that the test of the split specimen take place, just as you would when there is a timely request.
- (c) When the employee makes a timely request for a test of the split specimen under paragraphs (a) and (b) of this section, you must, as the MRO, immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. You must also document the date and time of the employee's request.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

### § 40.173 Who is responsible for paying for the test of a split specimen?

- (a) As the employer, you are responsible for making sure (e.g., by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §§ 40.175-40.185 in a timely manner, once the employee has made a timely request for a test of the split specimen.
- (b) As the employer, you must not condition your compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse you for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must ensure that the test takes place in a timely manner, even though this means that you pay for it.

- (c) As the employer, you may seek payment or reimbursement of all or part of the cost of the split specimen from the employee (e.g., through your written company policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

#### **§ 40.175 What steps does the first laboratory take with a split specimen?**

- (a) As the laboratory at which the primary and split specimen first arrive, you must check to see whether the split specimen is available for testing.
- (b) If the split specimen is unavailable or appears insufficient, you must then do the following:
  - (1) Continue the testing process for the primary specimen as you would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.
  - (2) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information as you can about the cause of the unavailability.
- (c) As the laboratory that tested the primary specimen, you are not authorized to open the split specimen under any circumstances (except when the split specimen is redesignated as provided in § 40.83).
- (d) When you receive written notice from the MRO instructing you to send the split specimen to another HHS-certified laboratory, you must forward the following items to the second laboratory:
  - (1) The split specimen in its original specimen bottle, with the seal intact;
  - (2) A copy of the MRO's written request; and
  - (3) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.
- (e) You must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not, however, cause a fatal flaw.
- (f) This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split specimen. That decision is left to the parties involved.

#### **§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?**

- (a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) confirmed in the primary specimen.
- (b) You must conduct this test without regard to the cutoff concentrations of § 40.85 or § 40.91, as applicable.
- (c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in § 40.87 or § 40.93, as applicable.



- (d) In addition, if the test fails to reconfirm the presence of the drug(s)/ drug metabolite(s) reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008; 88 FR 27646, May 2, 2023]

#### **§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?**

- (a) As the laboratory testing the split specimen, you must test the split specimen for the adulterant detected in the primary specimen, using the confirmatory test for the adulterant and using criteria in § 40.89 or § 40.93, as applicable and confirmatory cutoff levels required by the HHS Mandatory Guidelines.
- (b) In addition, if the test fails to reconfirm the adulterant result reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[73 FR 35973, June 25, 2008, as amended at 88 FR 27646, May 2, 2023]

#### **§ 40.181 What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?**

As the laboratory testing a urine split specimen, you must test the split specimen using the confirmatory tests for creatinine and specific gravity, using the criteria set forth in § 40.88.

[88 FR 27646, May 2, 2023]

#### **§ 40.183 What information do laboratories report to MROs regarding split specimen results?**

- (a) As the laboratory responsible for testing the split specimen, you must report split specimen test results by checking the “Reconfirmed” box and/or the “Failed to Reconfirm” box (Step 5(b)) on Copy 1 of the CCF, as appropriate, and by providing clarifying remarks using current HHS Mandatory Guidelines requirements.
- (b) As the laboratory certifying scientist, enter your name, sign, and date the CCF.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

#### **§ 40.185 Through what methods and to whom must a laboratory report split specimen results?**

- (a) As the laboratory testing the split specimen, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or another service agent (e.g., a C/TPA).
- (b) You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF, which has been signed by the certifying scientist.
- (c) You must transmit the laboratory result to the MRO immediately, preferably on the same day or next business day as the result is signed and released.



### § 40.187 What does the MRO do with split specimen laboratory results?

As the MRO, the split specimen laboratory results you receive will fall into five categories. You must take the following action, as appropriate, when a laboratory reports split specimen results to you.

- (a) **Category 1:** The laboratory reconfirmed one or more of the primary specimen results. As the MRO, you must report to the DER and the employee the result(s) that was/were reconfirmed.
  - (1) In the case of a reconfirmed positive test(s) for drug(s) or drug metabolite(s), the positive is the final result.
  - (2) In the case of a reconfirmed adulterated or substituted result, the refusal to test is the final result.
  - (3) In the case of a combination positive and refusal to test results, the final result is both positive and refusal to test.
- (b) **Category 2:** The laboratory failed to reconfirm all of the primary specimen results because, as appropriate, drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. As the MRO, you must report to the DER and the employee that the test must be cancelled.
  - (1) As the MRO, you must inform ODAPC of the failure to reconfirm using the format in appendix F to this part.
  - (2) In a case where the split failed to reconfirm because the substitution criteria were not met and the split specimen creatinine concentration was equal to or greater than 2mg/dL but less than or equal to 5mg/dL, as the MRO, you must, in addition to step (b)(1) of this paragraph, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
  - (3) In a case where the split failed to reconfirm and the primary specimen's result was also invalid, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
- (c) **Category 3:** The laboratory failed to reconfirm all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted.
  - (1) In the case where the laboratory failed to reconfirm all of the primary specimen results and the split was reported as invalid, as the MRO, you must:
    - (i) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation.
    - (ii) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
    - (iii) Inform ODAPC of the failure to reconfirm using the format in appendix F to this part.
  - (2) In the case where the laboratory failed to reconfirm any of the primary specimen results, and the split was reported as adulterated and/or substituted, as the MRO, you must:

- (i) Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated and/or substituted, as appropriate.
- (ii) Follow the procedures of § 40.145 to determine if there is a legitimate medical explanation for the laboratory finding of adulteration and/or substitution, as appropriate.
- (iii) If you determine that there is a legitimate medical explanation for the adulterated and/or substituted test result, report to the DER and the employee that the test must be cancelled; and inform ODAPC of the failure to reconfirm using the format in appendix F to this part.
- (iv) If you determine that there is not a legitimate medical explanation for the adulterated and/or substituted test result, you must take the following steps:
  - (A) Report the test to the DER and the 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 is also present in the primary specimen and/or to determine if the primary specimen meets appropriate substitution criteria.
  - (B) Except when the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §§ 40.153, 40.171, 40.173, 40.179, 40.181, and 40.185, as appropriate.
  - (C) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen and/or to determine that the primary specimen meets appropriate substitution criteria, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.
  - (D) If the test of the primary specimen reconfirms the adulteration and/or substitution finding of the split specimen, as the MRO you must report the result as a refusal to test as provided in paragraph (a)(2) of this section.
  - (E) If the test of the primary specimen fails to reconfirm the adulteration and/or substitution finding of the split specimen, as the MRO you must cancel the test, following procedures in paragraph (b) of this section.
- (d) **Category 4:** The laboratory failed to reconfirm one or more but not all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted. As the MRO, in the case where the laboratory reconfirmed one or more of the primary specimen result(s), you must follow procedures in paragraph (a) of this section and:
  - (1) Report that the split was also reported as being invalid, adulterated, and/or substituted (as appropriate).
  - (2) Inform the DER to take action only on the reconfirmed result(s).
- (e) **Category 5:** The split specimen was not available for testing or there was no split laboratory available to test the specimen. As the MRO, you must:
  - (1) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation;

- (2) Direct the DER to ensure the immediate recollection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection; and
  - (3) Notify ODAPC of the failure to reconfirm using the format in appendix F to this part.
- (f) For all split specimen results, as the MRO you must in Step 7 of Copy 2 of the CCF:
- (1) Report split specimen test results by checking the "Reconfirmed" box and/or the "Failed to Reconfirm" box, or the "Test Cancelled" box, as appropriate.
  - (2) , Enter your name, sign, and date.
  - (3) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see § 40.163) to the employer and keep a copy for your records. Transmit the document as provided in § 40.167.

[73 FR 35973, June 25, 2008, as amended at 75 FR 59108, Sept. 27, 2010; 88 FR 27646, May 2, 2023]

## Subpart I—Problems in Drug Tests

### § 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

- (a) As an employee, you have refused to take a drug test if you:
- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a));
  - (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (see § 40.63(c) or § 40.72(d)(3), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
  - (3) Fail to provide a specimen for any drug test required by this part or DOT agency regulations. Provided that an employee who does not provide a specimen because he or she has left the testing site before the testing process commences (see § 40.63(c) or § 40.72(d)(3), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
  - (4) In the case of a directly observed or monitored urine collection in a drug test, fail to permit the observation or monitoring of an employee's provision of a specimen (see §§ 40.67(m) and 40.69(g));
  - (5) Fail to provide a sufficient amount of specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.193(d)(2));
  - (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, § 40.197(b) as applicable);

- (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under § 40.193(c). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;
  - (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector, fail to remove objects from mouth, fail to permit inspection of the oral cavity, or fail to complete a rinse when requested);
  - (9) For an observed urine collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
  - (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process; or
  - (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
- (c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.
- (d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.
- (1) As the collector, you must note the actions that may constitute a refusal in the "Remarks" line (Step 2), and sign and date the CCF. The collector does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.
  - (2) As the MRO, you must note the refusal by checking the "Refusal to Test" box in Step 6 on Copy 2 of the CCF, checking whether the specimen was adulterated or substituted and, if adulterated, noting the adulterant/reason. If there was another reason for the refusal, check "Other" in Step 6 on Copy 2 of the CCF, and note the reason next to the "Other" box and on the "Remarks" lines, as needed. You must then sign and date the CCF.

- (e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 71 FR 49384, Aug. 23, 2006; 73 FR 35974, June 25, 2008; 75 FR 59108, Sept. 27, 2010; 88 FR 27647, May 2, 2023; 89 FR 51983, June 21, 2024]

## **§ 40.193 What happens when an employee does not provide a sufficient amount of specimen for a drug test?**

- (a) If an employee does not provide a sufficient amount of specimen to permit a drug test (i.e., 45 mL of urine in a single void, or 2mL oral fluid in a single sampling, as applicable) you, as the collector, must provide another opportunity to the employee to do so. In accordance with the employer's instructions, this can be done using the same specimen type as the original collection or this can be done by a collector qualified to use an alternate specimen collection for this purpose.
  - (1) If you change to an alternate specimen collection at this point (i.e., from urine to oral fluid; or from oral fluid to urine), the next collection begins under § 40.61(e) for urine or § 40.72 for oral fluid collection.
    - (i) If you proceed with an alternate specimen collection, discard the insufficient specimen and proceed with the next specimen collection.
    - (ii) If you proceed with an alternate specimen collection, discard the CCF for the insufficient specimen and begin a new CCF for the next specimen collection with a notation in the remarks section of the new CCF.
- (b)
  - (1) As the collector, you must do the following when continuing with a urine specimen collection under this section:
    - (i) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (see § 40.65(b) and (c)).
    - (ii) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of the time at which the three-hour period begins and ends.
    - (iii) If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, you must discontinue the collection, note that fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER of the conduct as provided in § 40.191(e)(1); the employer decides whether the situation is deemed to be a refusal.
    - (iv) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. You must also discard any specimen the employee previously provided, including any specimen that is "out of temperature range" or shows signs of tampering. In the remarks section of the CCF that you



will distribute to the MRO and DER, note the fact that the employee provided an “out of temperature range specimen” or “specimen that shows signs of tampering” and that it was discarded because the employee did not provide a second sufficient specimen.

- (2) As the collector, you must do the following when continuing with an oral fluid specimen collection under this section:
  - (i) If the employee demonstrates an inability to provide a specimen after 15 minutes of using the collection device, and if the donor states that he or she could provide a specimen after drinking some fluids, urge the employee to drink (up to 8 ounces) and wait an additional 10 minutes before beginning the next specimen collection (a period of up to one hour must be provided, or until the donor has provided a sufficient oral fluid specimen, whichever occurs first). If the employee simply needs more time before attempting to provide an oral fluid specimen, the employee is not required to drink any fluids during the one-hour wait time. It is not a refusal to test if the employee declines to drink. The employee must remain at the collection site, in a monitored area designated by the collector, during the wait period.
  - (ii) If the employee has not provided a sufficient specimen within one hour of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the “Remarks” line of the CCF (Step 2), and immediately notify the DER.
- (3) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.
- (c) As the DER, if the collector informs you that the employee has not provided a sufficient amount of specimen (see paragraph (b) of this section), you must, after consulting with the MRO, direct the employee 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 employee's failure to provide a urine (see paragraph (b)(1) of this section) or oral fluid (see paragraph (b)(2) of this section) sufficient specimen, but not both. The evaluation and MRO determination required by this section only applies to the oral fluid or the urine insufficient specimen that was the final methodology at the collection site. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
  - (1) As the MRO, if another physician will perform the evaluation, you must provide the other physician with the following information and instructions:
    - (i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of specimen to complete the test;
    - (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
    - (iii) That the referral physician must agree to follow the requirements of paragraphs (d) through (g) of this section.
  - (2) [Reserved]
- (d) As the referral physician conducting this evaluation, you must recommend that the MRO make one of the following determinations:
  - (1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:



- (i) Check "Test Cancelled" (Step 6) on the CCF; and
  - (ii) Sign and date the CCF.
- (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 specimen. As the MRO, if you accept this recommendation, you must:
  - (i) Check the "Refusal to Test" box and "Other" box in Step 6 on Copy 2 of the CCF and note the reason next to the "Other" box and on the "Remarks" lines, as needed.
  - (ii) Sign and date the CCF.
- (e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction in the case of a urine test or autoimmune disorder in the case of an oral fluid test), or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.
- (f) As the referral physician making the evaluation, after completing your evaluation, you must provide a written statement of your recommendations and the basis for them to the MRO. You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (g) If, as the referral physician making this evaluation in the case of a pre-employment, return-to-duty, or follow-up test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of specimen for a very long or indefinite period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of § 40.195, where applicable.
- (h) As the MRO, you must seriously consider and assess the referral physician's recommendations in making your 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 specimen. You must report your determination to the DER in writing as soon as you make it.
- (i) As the employer, when you receive a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. If the test reason was 'random', the employee remains in the random testing pool.

[88 FR 27647, May 2, 2023]

**§ 40.195 What happens when an individual is unable to provide a sufficient amount of specimen for a pre-employment, follow-up, or return-to-duty test because of a permanent or long-term medical condition?**

- (a) This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment follow-up or return-to-duty test and the condition involves a permanent or long-term disability. As the MRO in this situation, you must do the following:

- (1) You must determine if there is clinical evidence that the individual is an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under § 40.193(d).
  - (2) If you do not personally conduct the medical evaluation, you must ensure that one is conducted by a licensed physician acceptable to you.
  - (3) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (b) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This 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.
- (1) Check "Negative" (Step 6) on the CCF.
  - (2) Sign and date the CCF.
- (c) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This 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 (i.e., the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).
- (d) For purposes of this section, 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.
- (1) 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 genito-urinary matters.
  - (2) 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 paragraph (d)(1) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

## § 40.197 What happens when an employer receives a report of a dilute urine specimen?

- (a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.
- (b) As an employer, if the MRO informs you that a negative test was dilute, take the following action:

- (1) If the MRO directs you to conduct a recollection under direct observation (*i.e.*, because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see § 40.155(c)), you must do so immediately.
- (2) Otherwise (*i.e.*, if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.
  - (i) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).
  - (ii) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (*e.g.*, conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.
- (c) The following provisions apply to all tests you direct an employee to take under paragraph (b) of this section:
  - (1) You must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;
  - (2) You must treat the result of the test you directed the employee to take under paragraph (b) of this section—and not a prior test—as the test result of record, on which you rely for purposes of this part;
  - (3) If the result of the test you directed the employee to take under paragraph (b)(1) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute.
  - (4) If the result of the test you directed the employee to take under paragraph (b)(2) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.
  - (5) If the employee declines to take a test you directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

[68 FR 31626, May 28, 2003, as amended at 69 FR 64867, Nov. 9, 2004; 73 FR 35974, June 25, 2008]

### § 40.199 What problems always cause a drug test to be cancelled?

- (a) As the MRO, when the laboratory discovers a “fatal flaw” during its processing of incoming specimens (see § 40.83), the laboratory will report to you that the specimen has been “Rejected for Testing” (with the reason stated). You must always cancel such a test.
- (b) The following are “fatal flaws”:
  - (1) There is no CCF;
  - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;
  - (3) There is no printed collector's name and no collector's signature;
  - (4) Two separate collections are performed using one CCF;
  - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;

- (6) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, see § 40.83(h)); or
  - (7) Because of leakage or other causes, there is an insufficient amount of specimen in the primary specimen bottle for analysis and the specimens cannot be re-designated (see § 40.83(h)).
  - (8) For an oral fluid collection, the collector used an expired device at the time of collection.
  - (9) For an oral fluid collection, the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory confirmed that the device was expired.
- (c) You must report the result as provided in § 40.161.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27648, May 2, 2023]

### **§ 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?**

As the MRO, you must cancel a drug test when a laboratory reports that any of the following problems have occurred. You must inform the DER that the test was cancelled. You must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

- (a) The laboratory reports an "Invalid Result." You must follow applicable procedures in § 40.159 (recollection under direct observation may be required).
- (b) The laboratory reports the result as "Rejected for Testing." You must follow applicable procedures in § 40.161 (a recollection may be required).
- (c) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. You must follow the applicable procedures in § 40.187(b)—no recollection is required in this case, unless the split specimen creatinine concentration for a substituted primary specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/ dL, or the primary specimen had an invalid result which was not reported to the DER. Both these cases require recollection under direct observation.
- (d) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results, and that the split specimen was invalid. You must follow the procedures in § 40.187(c)(1)—recollection under direct observation is required in this case.
- (e) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the split specimen was not available for testing or there was no split laboratory available to test the specimen. You must follow the applicable procedures in § 40.187(e)—recollection under direct observation is required in this case.
- (f) The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of specimen. You must follow applicable procedures in § 40.193(d)(1) (no recollection is required in this case).

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35974, June 25, 2008; 88 FR 27648, May 2, 2023]



**§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?**

- (a) As the MRO, when a laboratory discovers a “correctable flaw” during its processing of incoming specimens (see § 40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been “Rejected for Testing” (with the reason stated).
- (b) The following is a “correctable flaw” that laboratories must attempt to correct: The collector's signature is omitted on the certification statement on the CCF.
- (c) As the MRO, when you discover a “correctable flaw” during your review of the CCF, you must cancel the test unless the flaw is corrected.
- (d) The following are correctable flaws that you must attempt to correct:
  - (1) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the “Remarks” line of the CCF.
  - (2) The certifying scientist's signature is omitted on Copy 1 of the CCF for a positive, adulterated, substituted, or invalid test result.
  - (3) The collector uses a non-Federal form or an expired CCF for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures in this part in an HHS-certified laboratory.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011; 82 FR 52246, Nov. 13, 2017]

**§ 40.205 How are drug test problems corrected?**

- (a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.
  - (1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (e.g., a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.
  - (2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.
- (b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that can be corrected (see § 40.203), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled.
  - (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the “Remarks” line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

- (2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
- (3) You must maintain the written documentation of a correction with the CCF.
- (4) You must mark the CCF in such a way (e.g., stamp noting correction) as to make it obvious on the face of the CCF that you corrected the flaw.
- (c) If the correction does not take place, as the MRO you must cancel the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

## § 40.207 What is the effect of a cancelled drug test?

- (a) A cancelled drug test is neither positive nor negative.
  - (1) As an employer, you must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position).
  - (2) As an employer, you must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or follow-up test).
  - (3) However, as an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part that require another test to be conducted (e.g., §§ 40.159(a)(5) and 40.187(b)(2), (c)(1), and (e)).
- (b) A cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the employer's minimum random testing rate).
- (c) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).
- (d) If a test is cancelled for a correctible flaw (e.g., § 40.203 or § 40.205), only the MRO who cancelled the test can reverse the cancellation and must do so within 60 days of the cancellation. After 60 days, the MRO who cancelled the test cannot reverse the cancellation without the permission of ODAPC. For example, if an MRO cancels a test because the MRO did not receive a copy of the CCF, but later receives a copy of the CCF, the MRO may reverse the decision to cancel the test within 60 days. After 60 days, the MRO must contact ODAPC for permission to reverse the cancellation. An MRO must not reverse the cancellation of a test that the laboratory has reported as rejected for testing, as described in § 40.83(g). A laboratory is not authorized to reverse a cancellation due to a fatal flaw, as described in § 40.199.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35975, June 25, 2008; 88 FR 27648, May 2, 2023; 89 FR 51983, June 21, 2024]



**§ 40.208 What problems require corrective action but do not result in the cancellation of a test?**

- (a) If, as a laboratory, collector, employer, or other person implementing the DOT drug testing program, you become aware that any of the following omissions listed in paragraphs (a)(1) through (3) of this section occurred, you must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure the problem does not recur:
  - (1) For a urine collection, the specimen temperature on the CCF was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range; or
  - (2) For an oral fluid collection, the collector failed to check the box in Step 2 of the CCF that indicates "Each Device was Within Expiration Date" but the collector entered the "Split Specimen Device Expiration Date" in Step 4 of the CCF.
  - (3) For an oral fluid collection, the collector erred by entering the expiration date as the "Primary/Single Specimen Device Expiration Date" instead of entering the date as the "Split Specimen Device Expiration Date" in Step 4 of the CCF.
- (b) The errors listed in paragraph (a) of this section do not result in the cancellation of the test.
- (c) As an employer or service agent, the errors listed in paragraph (a) of this section, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or subpart R of this part.

[88 FR 27649, May 2, 2023]

**§ 40.209 What procedural problems do not result in the cancellation of a test and do not require correction?**

- (a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (b) of this section.
- (b) No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:
  - (1) A minor administrative mistake (e.g., the omission of the employee's middle initial, a transposition of numbers in the employee's SSN or Employee ID No., the omission of the DOT Agency in Step 1-D of the CCF.)
  - (2) An error that does not affect employee protections under this part (e.g., the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);
  - (3) The collection of a specimen by a collector who is required to have been trained (see § 40.33 or 40.35), but who has not met this requirement;
  - (4) A delay in the collection process (see § 40.61(a));

- (5) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see § 40.121(a) through (b)) but who has not met training and/or documentation requirements (see § 40.121(c) through (e));
  - (6) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
  - (7) The fact that a test was conducted in a facility that does not meet the requirements of § 40.42;
  - (8) If the specific name of the courier on the CCF is omitted or erroneous;
  - (9) Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on Copy 1); or
  - (10) Claims that the employee was improperly selected for testing.
  - (11) The failure to use a new CCF for a second collection after an insufficient specimen was conducted under a different methodology (e.g., failing to use a new CCF for an oral fluid test after an insufficient quantity of urine was produced on a urine test.)
- (c) As an employer or service agent, these types of errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or action under Subpart R of this part.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 88 FR 27649, May 2, 2023]

## § 40.210 What kinds of drug tests are permitted under the regulations?

Both urine and oral fluid specimens are authorized for collection and testing under this part. An employer can use one or the other, but not both at the beginning of the testing event. For example, if an employee is sent for a test, either a urine or oral fluid specimen can be collected, but not both simultaneously. However, if there is a problem in the collection that necessitates a second collection (e.g., insufficient quantity of urine, temperature out of range, or insufficient saliva), then a different specimen type could be chosen by the employer (i.e., through a standing order or a discussion with the collector) or its service agent (i.e., if there is no standing order and the service agent cannot contact the DER) to complete the collection process for the testing event. Only urine and oral fluid specimens screened and confirmed at HHS-certified laboratories (see § 40.81) are allowed for drug testing under this part. Point-of-collection (POC) urine, POC oral fluid drug testing, hair testing, or instant tests are not authorized.

[88 FR 27649, May 2, 2023]

## Subpart J—Alcohol Testing Personnel

### § 40.211 Who conducts DOT alcohol tests?

- (a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.
- (b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
- (c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

## § 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

- (a) You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. Procedures and guidance are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-3784, or on the ODAPC Web site, <http://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at (<https://www.transportation.gov/odapc/get-odapc-email-updates>).
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (b).
  - (1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.
  - (2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (i.e., the ASD(s) or EBT(s)) you will be using.
  - (3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
  - (4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a "train the trainer" course.
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).
  - (1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who meets the requirements of paragraph (b)(4) of this section.
  - (2) These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.
  - (3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.
- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform STT or BAT functions.

- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.
- (f) **Error Correction Training.** If you make a mistake in the alcohol testing process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.
  - (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.
  - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
  - (3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part 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 your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.
- (h) **Other persons who may serve as BATs or STTs.**
  - (1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.
  - (2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 5244, Feb. 2, 2010; 82 FR 52246, Nov. 13, 2017]

## § 40.215 What information about the DER do employers have to provide to BATs and STTs?

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

## Subpart K—Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

### § 40.221 Where does an alcohol test take place?

- (a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.
- (b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of § 40.223.



- (c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
- (d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.
- (e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.
- (f) 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.

#### **§ 40.223 What steps must be taken to protect the security of alcohol testing sites?**

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

**§ 40.225 What form is used for an alcohol test?**

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

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 8529, Feb. 25, 2010; 75 FR 13009, Mar. 18, 2010; 82 FR 52246, Nov. 13, 2017; 88 FR 27649, May 2, 2023]

**§ 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?**

- (a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.
- (b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with § 40.271(b) .

**§ 40.229 What devices are used to conduct alcohol screening tests?**

ASDs listed on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" and EBTs listed on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and must not be used for confirmation tests.



[82 FR 52246, Nov. 13, 2017]

## § 40.231 What devices are used to conduct alcohol confirmation tests?

- (a) EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.
- (b) To conduct a confirmation test, you must use an EBT that has the following capabilities:
  - (1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;
  - (2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;
  - (3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
  - (4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
  - (5) Tests an air blank; and
  - (6) Performs an external calibration check.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

## § 40.233 What are the requirements for proper use and care of EBTs?

- (a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before ODAPC places the EBT on its Web page for "Approved Evidential Breath Measurement Devices."
  - (1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).
  - (2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
- (b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.
- (c) As the user of the EBT (e.g., employer, service agent), you must do the following:
  - (1) You must follow the manufacturer's instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.
  - (2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."

- (3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.
- (4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in § 40.333(a)(3).
- (5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

## § 40.235 What are the requirements for proper use and care of ASDs?

- (a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA approves it and ODAPC places the device on its Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids". Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., temperature, altitude, humidity) that may affect the ASD's performance.
- (b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.
- (c) As the user of the ADS (e.g., employer, STT), you must follow the QAP instructions.
- (d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.
- (e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of § 40.233 .

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

## Subpart L—Alcohol Screening Tests

### § 40.241 What are the first steps in any alcohol screening test?

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.

- (b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.
  - (1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.
  - (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
- (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.
- (e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.
- (f) Complete Step 1 of the ATF.
- (g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

#### **§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?**

As the BAT or STT, you must take the following steps:

- (a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.
- (b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (d) Show the employee the displayed test result.
- (e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.
- (f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

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

**§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?**

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

- (8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.
- (9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.
- (10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.
- (b) As the STT or BAT, you must take the following steps when using the breath tube ASD:
  - (1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.
  - (2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.
  - (3) Break the tube's ampoule in the presence of the employee.
  - (4) Offer the employee the opportunity to use the device. If the employee chooses to use (e.g. hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).
  - (5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.
  - (6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.
  - (7)
    - (i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (e.g., the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct a new test using a new one.
    - (ii) The new device you use must be one that has been under your control or that of the employer before the test.
    - (iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)
    - (iv) You must offer the employee the choice of holding the device or having you hold it unless the employee, in your opinion, was responsible (e.g., the employee failed to fill the inflation bag) for the new test needing to be conducted.
    - (v) If you are unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.
    - (vi) You must then direct the employee to take a new test immediately, using another type of ASD (e.g., saliva device) or an EBT.



- (8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section and after having waited the required amount of time directed by the manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier than the required incubation time of the device. In all cases, the result must be read within 15 minutes of the test.
- (9) You must follow the manufacturer's instructions for determining the result of the test. You must show the analyzer result to the employee and record the result on Step 3 of the ATF.
- (10) You must never re-use detector devices or any gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. Inflation bags and electronic analyzers may be re-used but only in accordance with the manufacturer's directions.
- (11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR 1299, Jan. 11, 2007; 89 FR 51983, June 21, 2024]

### § 40.247 What procedures does the BAT or STT follow after a screening test result?

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



- (vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
- (c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (see § 40.271).

## Subpart M—Alcohol Confirmation Tests

### § 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

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

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

### § 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

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

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

### § 40.255 What happens next after the alcohol confirmation test result?

- (a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:
  - (1) Sign and date Step 3 of the ATF.

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

## Subpart N—Problems in Alcohol Testing

### § 40.261 What is a refusal to take an alcohol test, and what are the consequences?

- (a) As an employee, you are considered to have refused to take an alcohol test if you:
  - (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.241(a));
  - (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
  - (3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided* that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

- (4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.265(c));
  - (5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at § 40.265(c);
  - (6) Fail to sign the certification at Step 2 of the ATF (see §§ 40.241(g) and 40.251(d)); or
  - (7) Fail to cooperate with any part of the testing process.
- (b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.
- (c)
- (1) As a BAT or an STT, or as the physician evaluating a “shy lung” situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).
  - (2) As the BAT or STT, you must note the actions that may constitute a refusal in the “Remarks” line (Step 3), and sign and date the ATF. The BAT or STT does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.
- (d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 88 FR 27649, May 2, 2023]

### **§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?**

- (a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device).
- (1) You must conduct a new screening test using a new screening device.
  - (2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the “Remarks” line of the ATF, and immediately notify the DER. This is a refusal to test.
  - (3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the “Remarks” line of the ATF and immediately notify the DER.

- (b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

### **§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?**

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



- (B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.
  - (C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.
- (2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
  - (3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

### § 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

- (a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:
  - (1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see § 40.245(a)(8) for the saliva ASD and § 40.245(b)(8) for the breath tube ASD).
  - (2) The saliva ASD does not activate (see § 40.245(a)(7); or
  - (3) The device is used for a test after the expiration date printed on the device or on its package (see § 40.245(a)(1) for the saliva ASD and § 40.245(b)(1) for the breath tube ASD).
  - (4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see § 40.245(b)(1)).
- (b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see § 40.253(c), (e) and (f)).
- (c) In the case of a confirmation test:
  - (1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see § 40.251(a)(1));
  - (2) The BAT does not conduct an air blank before the confirmation test (see § 40.253(a));
  - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (see § 40.253(a)(1) and (2));
  - (4) The EBT does not print the result (see § 40.253(f)); or



- (5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see § 40.233(a)(1) and (c)(3)).

[65 FR 79526, Dec. 19, 2000, as amended at 67 FR 61522, Oct. 1, 2002; 71 FR 49384, Aug. 23, 2006; 72 FR 1299, Jan. 11, 2007]

## § 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are “correctable flaws.” These problems are:

- (a) The BAT or STT does not sign the ATF (see §§ 40.247(a)(1) and 40.255(a)(1)).
- (b) The BAT or STT fails to note on the “Remarks” line of the ATF that the employee has not signed the ATF after the result is obtained (see § 40.255(a)(3)).
- (c) The BAT or STT uses a non-DOT form for the test (see § 40.225(a)).

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

## § 40.271 How are alcohol testing problems corrected?

- (a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.
  - (1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see § 40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.
  - (2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if you have been trained to do so in accordance with § 40.213(c) .
  - (3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.
  - (4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
- (b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a “correctable flaw” (see § 40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.
  - (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the “Remarks” line of the ATF that the employee did not sign the certification. You would,

when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.

- (2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You 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 your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

- (c) If you cannot correct the problem, you must cancel the test.

### **§ 40.273 What is the effect of a cancelled alcohol test?**

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

### **§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?**

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

- (c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

### § 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (e.g., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

## Subpart O—Substance Abuse Professionals and the Return-to-Duty Process

### § 40.281 Who is qualified to act as a SAP?

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

- (a) **Credentials.** You must have one of the following credentials:
- (1) You are a licensed physician (Doctor of Medicine or Osteopathy);
  - (2) You are a licensed or certified social worker;
  - (3) You are a licensed or certified psychologist;
  - (4) You are a licensed or certified employee assistance professional;
  - (5) You are a state-licensed or certified marriage and family therapist; or
  - (6) You are a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
- (1) You must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
  - (2) You must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.
  - (3) You must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines. You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT SAP Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590 (202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
- (1) Qualification training must provide instruction on the following subjects:
    - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
    - (ii) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;

- (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
  - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
  - (v) SAP qualifications and prohibitions;
  - (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
  - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
  - (viii) Reporting and recordkeeping requirements;
  - (ix) Issues that SAPs confront in carrying out their duties under the program.
- (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform SAP functions.
- (d) **Continuing education.** During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.
  - (2) Your continuing education activities must include documentable assessment tools to assist you in determining whether you have adequately learned the material.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.
- (f) **Limitation.** If you are an otherwise qualified SAP under this part, you must abide by the geographic limitations applicable to your credential when performing remote evaluations. You must not conduct an evaluation that exceeds your geographic limitations.

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 3022, Jan. 22, 2004; 71 FR 49384; Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 82 FR 52246, Nov. 13, 2017; 88 FR 27649, May 2, 2023]

## § 40.283 How does a certification organization obtain recognition for its members as SAPs?

- (a) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to § 40.281(a)(6), you may submit a written petition to DOT requesting a review of your petition for inclusion.

- (b) You must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on your petition.
- (c) You must also meet the minimum requirements of appendix G to this part before DOT will act on your petition.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 88 FR 27650, May 2, 2023]

#### **§ 40.285 When is a SAP evaluation required?**

- (a) As an employee, when you have violated DOT drug and alcohol regulations, you cannot again perform any DOT safety-sensitive duties for any employer until and unless you complete the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
- (b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

#### **§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?**

As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

#### **§ 40.289 Are employers required to provide SAP and treatment services to employees?**

- (a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
- (b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
- (c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

#### **§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?**

- (a) As a SAP, you are charged with:



- (1) Making a clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. At the SAP's discretion, this assessment or evaluation may be performed face-to-face in-person or remotely. If a SAP is not prohibited from using technology within the parameters of the SAP's State-issued license or other credential(s), a remote evaluation must be conducted in accordance with the following criteria:
    - (i) The technology must permit real-time audio and visual interaction between the SAP and the employee; and
    - (ii) The quality of the technology (e.g., speed of the internet connection and clarity of the video display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would otherwise gather in an in-person face-to-face interaction, while providing security to protect the confidentiality of the communications at the level expected by industry standards for remote substance abuse evaluations.
  - (2) Referring the employee to an appropriate education and/or treatment program;
  - (3) Conducting a follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. This assessment or evaluation may be performed face-to-face in-person or remotely. A face-to-face remote evaluation must meet the criteria in paragraphs (a)(1)(i) and (ii) of this section.
  - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
  - (5) Providing the employee and employer with recommendations for continuing education and/or treatment.
- (b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023; 89 FR 51983, June 21, 2024]

### **§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?**

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

- (a) Provide a comprehensive assessment and clinical evaluation meeting the requirements of § 40.291(a)(1).
- (b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
  - (1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
  - (2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.

- (c) Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
- (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.
- (e) You must assess and clinically evaluate each employee on an individual basis and use your professional judgment to determine education and/or treatment, as well as a follow-up testing plan unique to the needs of the individual employee. For example, do not require the same and/or substantially similar education, treatment, and/or follow-up testing plan for most of the employees you assess.
- (f) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (see § 40.311(c)).
- (g) For purposes of your role in the evaluation process, you must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. You must not take into consideration in any way, as a factor in determining what your recommendation will be, any of the following:
  - (1) A claim by the employee that the test was unjustified or inaccurate;
  - (2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or
  - (3) Personal opinions you may have about the justification or rationale for drug and alcohol testing.
- (h) In the course of gathering information for purposes of your evaluation in the case of a drug-related violation, you may consult with the MRO. As the MRO, you are required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

#### **§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?**

- (a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.
- (b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

#### **§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?**

- (a) Except as provided in paragraph (b) of this section, no one (e.g., an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.

- (b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).
- (c) The SAP, who is otherwise fully qualified under this subpart, must not perform evaluations outside the geographic jurisdiction for their credential(s). If the SAP who made the evaluation exceeds their geographic jurisdiction, the employee will not be required to seek the evaluation of a second SAP.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

#### **§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?**

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

#### **§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?**

- (a) As a SAP, after you have prescribed assistance under § 40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.
  - (1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
  - (2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.
- (b) As the SAP making the follow-up evaluation determination, you must:
  - (1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and

- (2) Conduct a clinical interview meeting the requirements of § 40.291(a)(1) with the employee to determine if the employee demonstrates successful compliance with your initial evaluation recommendations.

(c)

- (1) If the employee has demonstrated successful compliance, you must provide a written report directly to the DER highlighting your clinical determination that the employee has done so with your initial evaluation recommendation (see § 40.311(d)).
- (2) You may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment you recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program you prescribed, you may make a “successful compliance” determination even though you conclude that the employee has not yet completed the out-patient counseling you recommended or should continue in an aftercare program.

(d)

- (1) As the SAP, if you believe, as a result of the follow-up evaluation, that the employee has not demonstrated successful compliance with your recommendations, you must provide written notice directly to the DER (see § 40.311(e)).
- (2) As an employer who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations, you must not return the employee to the performance of safety-sensitive duties.
- (3) As the SAP, you may conduct additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as you have reported it and with the employer's policy and/or labor-management agreements.
- (4) As the employer, following a SAP report that the employee has not demonstrated successful compliance, you may take personnel action consistent with your policy and/or labor-management agreements.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

### **§ 40.303 What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?**

- (a) As a SAP, if you believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, you must provide recommendations for these services in your follow-up evaluation report (see § 40.311(d)(10)).
- (b) As an employer receiving a recommendation for these services from a SAP, you may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. You may monitor and document the employee's participation in the recommended services. You may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations. Nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (see § 40.309).



- (c) As an employee, you are obligated to comply with the SAP's recommendations for these services. If you fail or refuse to do so, you may be subject to disciplinary action by your employer.

### § 40.305 How does the return-to-duty process conclude?

- (a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
- (b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.
- (c) As a SAP or MRO, you must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.
- (d) As the employer, if a SAP who is otherwise fully qualified under this subpart performed a remote evaluation of the employee outside the geographic jurisdiction for their credential(s), the employee who they evaluated will not be required to seek the evaluation of a second SAP. If you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you will proceed with the requirements of paragraph (a) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

### § 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

- (a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment.
- (b) You must present a copy of this plan directly to the DER (see § 40.311(d)(9)).
- (c) You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol.
- (d) However, you must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
  - (1) You may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g., you may require one test a month during the 12-month period; you may require two tests per month during the first 6-month period and one test per month during the final 6-month period).



- (2) You may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
- (3) You are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's.
- (4) As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
- (e) The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

*Example 1 to paragraph (e):* The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under § 40.25.

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

- (f) As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing. You must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.
- (g) As the employer, SAP, or other service agent, you must not provide to the employee a copy of their drug and/or alcohol follow-up testing schedule prescribed by the SAP. No employer, SAP, or other service agent will indicate to the employee what the frequency or duration of the employee's follow-up testing schedule will be. The SAP can require follow-up testing for either or both drugs and alcohol for a drug-related or an alcohol-related violation.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

## **§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?**

- (a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- (b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
- (c) You cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.

- (d) You cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

### § 40.311 What are the requirements concerning SAP reports?

- (a) As the SAP conducting the required evaluations, you must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in § 40.355(e)). You may, however, forward the document simultaneously to the DER and to a C/TPA.
- (b) As an employer, you must ensure that you receive SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
- (c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
  - (1) Employee's name and SSN or employee ID No.;
  - (2) Employer's name and address;
  - (3) Reason for the assessment (specific violation of DOT regulations and violation date);
  - (4) Date(s) and format (*i.e.*, face-to-face or remote) of the assessment;
  - (5) SAP's education and/or treatment recommendation; and
  - (6) SAP's telephone number.
- (d) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
  - (1) Employee's name and SSN or employee ID No.;
  - (2) Employer's name and address;
  - (3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
  - (4) Date(s) and format (*i.e.*, face-to-face or remote) of the initial assessment and synopsis of the treatment plan;
  - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
  - (6) Inclusive dates of employee's program participation;
  - (7) Clinical characterization of employee's program participation;
  - (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;
  - (9) Follow-up testing plan;
  - (10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
  - (11) SAP's telephone number.

- (e) The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
  - (1) Employee's name and SSN or employee ID No.;
  - (2) Employer's name and address;
  - (3) Reason for the initial assessment (specific DOT violation and date);
  - (4) Date(s) and format (*i.e.*, face-to-face or remote) of initial assessment and synopsis of treatment plan;
  - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
  - (6) Inclusive dates of employee's program participation;
  - (7) Clinical characterization of employee's program participation;
  - (8) Date(s) of the first follow-up evaluation;
  - (9) Date(s) of any further follow-up evaluation the SAP has scheduled;
  - (10) SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
  - (11) SAP's telephone number.
- (f) As a SAP, you must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
- (g) As a SAP, you are to maintain copies of your reports to employers for 5 years, and your employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. You must make these records available, on request, to DOT agency representatives (*e.g.*, inspectors conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.
- (h) As an employer, you must maintain your reports from SAPs for 5 years from the date you received them.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

## Subpart P—Confidentiality and Release of Information

### § 40.321 What is the general confidentiality rule for drug and alcohol test information?

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

- (a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.

- (b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

### **§ 40.323 May program participants release drug or alcohol test information in connection with legal proceedings?**

- (a) As an employer, you may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
  - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
  - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.
- (b) In such a proceeding, you may release the information to the decisionmaker in the proceeding (e.g., the court in a lawsuit). You may release the information only with a binding stipulation that the decisionmaker to whom it is released will make it available only to parties to the proceeding.
- (c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (e.g., the laboratory's data package), you must provide the requested information to the employer.
- (d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

### **§ 40.325 [Reserved]**

### **§ 40.327 When must the MRO report medical information gathered in the verification process?**

- (a) As the MRO, you must, except as provided in paragraph (d) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if you determine, in your reasonable medical judgment, that:
  - (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
  - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.

- (b) The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
- (c) The MRO must not report such medical information using the CCF. Instead, the MRO must provide the information in a separate written communication (e.g., letter, secure email). The information must state the specific nature of the MRO's safety concern (e.g., the effects of a medication the employee is taking, the employee's underlying medical condition that the employee disclosed to the MRO).
- (d) If the law of a foreign country (e.g., Canada) prohibits you from providing medical information to the employer, you may comply with that prohibition.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

### **§ 40.329 What information must laboratories, MROs, and other service agents release to employees?**

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

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

### **§ 40.331 To what additional parties must employers and service agents release information?**

As an employer or service agent you must release information under the following circumstances:

- (a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.
- (b) If you are an employer, you must, upon request of DOT agency representatives, provide the following:
  - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.



- (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
  - (3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (c) If you are a service agent, you must, upon request of DOT agency representatives, provide the following:
- (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
  - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
  - (3) All items in paragraph (c)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (d) If requested by the National Transportation Safety Board as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.
- (e) If requested by a Federal, state or local safety agency with regulatory authority over you or the employee, you must provide drug and alcohol test records concerning the employee.
- (f) Except as otherwise provided in this part, as a laboratory you must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. DNA testing and other types of identity testing are not authorized and ODAPC will not give permission for such testing. If a party seeks a court order directing you to release a specimen or part of a specimen contrary to any provision of this part, you must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of § 40.13). This part does not require you to disobey a court order, however.
- (g) Notwithstanding any other provision of this Part, as an employer of Commercial Motor Vehicle (CMV) drivers holding commercial driving licenses (CDLs) or as a third party administrator for owner-operator CMV drivers with CDLs, you are authorized to comply with State laws requiring you to provide to State CDL licensing authorities information about all violations of DOT drug and alcohol testing rules (including positive tests and refusals) by any CMV driver holding a CDL.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 33737, June 13, 2008; 82 FR 52247, Nov. 13, 2017]

### § 40.333 What records must employers keep?

- (a) As an employer, you must keep the following records for the following periods of time:
  - (1) You must keep the following records for five years:
    - (i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;

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

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

## Subpart Q—Roles and Responsibilities of Service Agents

### § 40.341 Must service agents comply with DOT drug and alcohol testing requirements?

- (a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.
- (b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

### § 40.343 What tasks may a service agent perform for an employer?

As a service agent, you may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.

**§ 40.345 In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?**

- (a) As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).
- (b) The specific provisions of this part concerning which you may act as an intermediary are listed in appendix H to this part. These are the only situations in which you may act as an intermediary. You are prohibited from doing so in all other situations.
- (c) In every case, you must ensure that, in transmitting information to employers, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit drug testing results from MROs to DERs, you must transmit each drug test result to the DER in compliance with the MRO requirements set forth in § 40.167.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

**§ 40.347 What functions may C/TPAs perform with respect to administering testing?**

As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing.

- (a) You may operate random testing programs for employers and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).
- (b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
  - (1) If you combine employees from more than one transportation industry, you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
  - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
- (c) You may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither you nor the employer are permitted to randomly select employees from a "follow-up pool" for follow-up testing.

**§ 40.349 What records may a service agent receive and maintain?**

- (a) Except where otherwise specified in this part, as a service agent you may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. You do not need the employee's consent to receive and maintain these records.
- (b) You may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.

- (c) If a service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to you, as a C/TPA or other service agent who maintains this information for the employer.
- (d) If you are serving as an intermediary in transmitting information that is required to be provided to the employer, you must ensure that it reaches the employer in the same time periods required elsewhere in this part.
- (e) You must ensure that you can make available to the employer within two business days any information the employer is asked to produce by a DOT agency representative.
- (f) On request of an employer, you must, at any time on the request of an employer, transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.
- (g) If you are planning to go out of business or your organization will be bought by or merged with another organization, you must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

## § 40.351 What confidentiality requirements apply to service agents?

Except where otherwise specified in this part, as a service agent the following confidentiality requirements apply to you:

- (a) When you receive or maintain confidential information about employees (e.g., individual test results), you must follow the same confidentiality regulations as the employer with respect to the use and release of this information.
- (b) You must follow all confidentiality and records retention requirements applicable to employers.
- (c) You may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose you are a C/TPA that has employers X and Y as clients. Employee Jones works for X, and you maintain Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. You may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, you may not provide this information to employer Z, who is not a C/TPA member, without this consent.
- (d) You must not use blanket consent forms authorizing the release of employee testing information.
- (e) You must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic data bases.



**§ 40.353 What principles govern the interaction between MROs and other service agents?**

As a service agent other than an MRO (e.g., a C/TPA), the following principles govern your interaction with MROs:

- (a) You may provide MRO services to employers, directly or through contract, if you meet all applicable provisions of this part.
- (b) If you employ or contract for an MRO, the MRO must perform duties independently and confidentially. When you have a relationship with an MRO, you must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
- (c) Only your staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of your staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. You must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- (d) Like other MROs, an MRO you employ or contract with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, your staff cannot perform these functions.

**§ 40.355 What limitations apply to the activities of service agents?**

As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program.

- (a) You must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
- (b) You must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to you, with you in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to your computer system, and you then assign the results to a particular MRO, is not permitted.
- (c) You must not transmit drug test results directly from the laboratory to the employer (by electronic or other means) or to a service agent who forwards them to the employer. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
- (d) You must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
- (e) Except as provided in paragraph (f) of this section, you must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to you, with you in turn sending them to the actual employer. However, you may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to you simultaneously with sending them to the DER.



- (f) As an exception to paragraph (e) of this section, you may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.
- (g) Except as provided in paragraph (h) of this section, you must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a C/TPA. You may, however, provide advice and information to employers regarding these testing issues and how the employer should schedule required testing.
- (h) As an exception to paragraph (g) of this section, you may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- (i) Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.
- (j) As an exception to paragraph (i) of this section, you may make a determination that an employee has refused a drug or alcohol test, if:
  - (1) You schedule a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
  - (2) As an MRO, you determine that an individual has refused to test on the basis of adulteration or substitution.
- (k) You must not act as a DER. For example, while you may be responsible for transmitting information to the employer about test results, you must not act on behalf of the employer in actions to remove employees from safety-sensitive duties.
- (l) In transmitting documents to laboratories, you must ensure that you send to the laboratory that conducts testing only Copy 1 of the CCF. You must not transmit other copies of the CCF or any ATFs to the laboratory.
- (m) You must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a C/TPA serving employers in the pipeline or motor carrier industry, you must not require employers to have provisions in their DOT plans that PHMSA or FMCSA regulations do not require.
- (n) You must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions you have performed, because of a payment dispute or other reasons.

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

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

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

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

- (o) While you must follow the DOT agency regulations, the actual employer remains accountable to DOT for compliance, and your failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the employer subject to enforcement action by the Department.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 75 FR 59108, Sept. 27, 2010; 88 FR 27650, May 2, 2023]

## Subpart R—Public Interest Exclusions

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

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

### § 40.363 On what basis may the Department issue a PIE?

- (a) If you are a service agent, the Department may issue a PIE concerning you if we determine that you have failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation.
- (b) The Department also may issue a PIE if you have failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, compliance and enforcement reviews, or requests for documents and other information about compliance with this part or DOT agency drug and alcohol regulations.

### § 40.365 What is the Department's policy concerning starting a PIE proceeding?

- (a) It is the Department's policy to start a PIE proceeding only in cases of serious, uncorrected noncompliance with the provisions of this part, affecting such matters as safety, the outcomes of test results, privacy and confidentiality, due process and fairness for employees, the honesty and integrity of the testing program, and cooperation with or provision of information to DOT agency representatives.

- (b) The following are examples of the kinds of serious noncompliance that, as a matter of policy, the Department views as appropriate grounds for starting a PIE proceeding. These examples are not intended to be an exhaustive or exclusive list of the grounds for starting a PIE proceeding. We intend them to illustrate the level of seriousness that the Department believes supports starting a PIE proceeding. The examples follow:
- (1) For an MRO, verifying tests positive without interviewing the employees as required by this part or providing MRO services without meeting the qualifications for an MRO required by this part;
  - (2) For a laboratory, refusing to provide information to the Department, an employer, or an employee as required by this part; failing or refusing to conduct a validity testing program when required by this part; or a pattern or practice of testing errors that result in the cancellation of tests. (As a general matter of policy, the Department does not intend to initiate a PIE proceeding concerning a laboratory with respect to matters on which HHS initiates certification actions under its laboratory guidelines.);
  - (3) For a collector, a pattern or practice of directly observing collections when doing so is unauthorized, or failing or refusing to directly observe collections when doing so is mandatory;
  - (4) For collectors, BATs, or STTs, a pattern or practice of using forms, testing equipment, or collection kits that do not meet the standards in this part;
  - (5) For a collector, BAT, or STT, a pattern or practice of “fatal flaws” or other significant uncorrected errors in the collection process;
  - (6) For a laboratory, MRO or C/TPA, failing or refusing to report tests results as required by this part or DOT agency regulations;
  - (7) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a “litigation package”;
  - (8) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without interviews meeting the requirements of § 40.291(a)(1);
  - (9) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (e.g., a laboratory that derives a financial benefit from having an employer use a specific MRO);
  - (10) For any service agent, falsely representing that the service agent or its activities is approved or certified by the Department or a DOT agency (such representation includes, but is not limited to, the use of a Department or DOT agency logo, title, or emblem).
  - (11) For any service agent, disclosing an employee's test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a “blanket” consent from employees or by creating a data base from which employers or others can retrieve an employee's DOT test results without the specific consent of the employee;
  - (12) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;
  - (13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or

- (14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (e.g., failure to properly conduct the selection process for random testing).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017; 88 FR 27650, May 2, 2023]

### **§ 40.367 Who initiates a PIE proceeding?**

The following DOT officials may initiate a PIE proceeding:

- (a) The drug and alcohol program manager of a DOT agency;
- (b) An official of ODAPC, other than the Director; or
- (c) The designee of any of these officials.

### **§ 40.369 What is the discretion of an initiating official in starting a PIE proceeding?**

- (a) Initiating officials have broad discretion in deciding whether to start a PIE proceeding.
- (b) In exercising this discretion, the initiating official must consider the Department's policy regarding the seriousness of the service agent's conduct (see § 40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.
- (c) A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of noncompliance.

### **§ 40.371 On what information does an initiating official rely in deciding whether to start a PIE proceeding?**

- (a) An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.
- (b) Before sending a correction notice (see § 40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official's determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

### **§ 40.373 Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?**

- (a) If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.
- (b) The correction notice identifies the specific areas in which you must come into compliance in order to avoid being subject to a PIE proceeding.

- (c) If you make and document changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date you receive the notice, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that you have made and maintained satisfactory corrections. When he or she is satisfied that you are in compliance, the initiating official sends you a notice that the matter is concluded.

### **§ 40.375 How does the initiating official start a PIE proceeding?**

- (a) As a service agent, if your compliance matter is not correctable (see § 40.373(a)), or if have not resolved compliance matters as provided in § 40.373(c), the initiating official starts a PIE proceeding by sending you a notice of proposed exclusion (NOPE). The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.
- (b) The NOPE includes the following information:
  - (1) A statement that the initiating official is recommending that the Department issue a PIE concerning you;
  - (2) The factual basis for the initiating official's belief that you are not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;
  - (3) The factual basis for the initiating official's belief that your noncompliance has not been or cannot be corrected;
  - (4) The initiating official's recommendation for the scope of the PIE;
  - (5) The initiating official's recommendation for the duration of the PIE; and
  - (6) A statement that you may contest the issuance of the proposed PIE, as provided in § 40.379.
- (c) The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to you.

### **§ 40.377 Who decides whether to issue a PIE?**

- (a) The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decisionmaker, all references in this subpart to the Director refer to the designee.
- (b) To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.
- (c) There is a "firewall" between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

### **§ 40.379 How do you contest the issuance of a PIE?**

- (a) If you receive a NOPE, you may contest the issuance of the PIE.
- (b) If you want to contest the proposed PIE, you must provide the Director information and argument in opposition to the proposed PIE in writing, in person, and/or through a representative. To contest the proposed PIE, you must take one or more of the steps listed in this paragraph (b) within 30 days after you receive the NOPE.



- (1) You may request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
  - (2) You may present written information and arguments, consistent with the provisions of § 40.381, contesting the proposed PIE.
  - (3) You may arrange with the Director for an informal meeting to present your information and arguments.
- (c) If you do not take any of the actions listed in paragraph (b) of this section within 30 days after you receive the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (i.e., the NOPE and any supporting information or testimony) and any additional information the Director obtains.

### **§ 40.381 What information do you present to contest the proposed issuance of a PIE?**

- (a) As a service agent who wants to contest a proposed PIE, you must present at least the following information to the Director:
- (1) Specific facts that contradict the statements contained in the NOPE (see § 40.375(b)(2) and (3)). A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;
  - (2) Identification of any existing, proposed or prior PIE; and
  - (3) Identification of your affiliates, if any.
- (b) You may provide any information and arguments you wish concerning the proposed issuance, scope and duration of the PIE (see § 40.375(b)(4) and (5)).
- (c) You may provide any additional relevant information or arguments concerning any of the issues in the matter.

### **§ 40.383 What procedures apply if you contest the issuance of a PIE?**

- (a) DOT conducts PIE proceedings in a fair and informal manner. The Director may use flexible procedures to allow you to present matters in opposition. The Director is not required to follow formal rules of evidence or procedure in creating the record of the proceeding.
- (b) The Director will consider any information or argument he or she determines to be relevant to the decision on the matter.
- (c) You may submit any documentary evidence you want the Director to consider. In addition, if you have arranged an informal meeting with the Director, you may present witnesses and confront any person the initiating official presents as a witness against you.
- (d) In cases where there are material factual issues in dispute, the Director or his or her designee may conduct additional fact-finding.
- (e) If you have arranged a meeting with the Director, the Director will make a transcribed record of the meeting available to you on your request. You must pay the cost of transcribing and copying the meeting record.

### **§ 40.385 Who bears the burden of proof in a PIE proceeding?**

- (a) As the proponent of issuing a PIE, the initiating official bears the burden of proof.

- (b) This burden is to demonstrate, by a preponderance of the evidence, that the service agent was in serious noncompliance with the requirements of this part for drug and/or alcohol testing-related services or with the requirements of another DOT agency drug and alcohol testing regulation.

### **§ 40.387 What matters does the Director decide concerning a proposed PIE?**

- (a) Following the service agent's response (see § 40.379(b)) or, if no response is received, after 30 days have passed from the date on which the service agent received the NOPE, the Director may take one of the following steps:
  - (1) In response to a request from the service agent (see § 40.379(b)(1)) or on his or her own motion, the Director may dismiss a PIE proceeding if he or she determines that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
    - (i) If the Director dismisses a proposed PIE under this paragraph (a), the action is closed with respect to the noncompliance alleged in the NOPE.
    - (ii) The Department may initiate a new PIE proceeding against you on the basis of different or subsequent conduct that is in noncompliance with this part or other DOT drug and alcohol testing rules.
  - (2) If the Director determines that the initiating official's submission does not have complete information needed for a decision, the Director may remand the matter to the initiating official. The initiating official may resubmit the matter to the Director when the needed information is complete. If the basis for the proposed PIE has changed, the initiating official must send an amended NOPE to the service agent.
- (b) The Director makes determinations concerning the following matters in any PIE proceeding that he or she decides on the merits:
  - (1) Any material facts that are in dispute;
  - (2) Whether the facts support issuing a PIE;
  - (3) The scope of any PIE that is issued; and
  - (4) The duration of any PIE that is issued.

### **§ 40.389 What factors may the Director consider?**

This section lists examples of the kind of mitigating and aggravating factors that the Director may consider in determining whether to issue a PIE concerning you, as well as the scope and duration of a PIE. This list is not exhaustive or exclusive. The Director may consider other factors if appropriate in the circumstances of a particular case. The list of examples follows:

- (a) The actual or potential harm that results or may result from your noncompliance;
- (b) The frequency of incidents and/or duration of the noncompliance;
- (c) Whether there is a pattern or prior history of noncompliance;
- (d) Whether the noncompliance was pervasive within your organization, including such factors as the following:

- (1) Whether and to what extent your organization planned, initiated, or carried out the noncompliance;
  - (2) The positions held by individuals involved in the noncompliance, and whether your principals tolerated their noncompliance; and
  - (3) Whether you had effective standards of conduct and control systems (both with respect to your own organization and any contractors or affiliates) at the time the noncompliance occurred;
- (e) Whether you have demonstrated an appropriate compliance disposition, including such factors as the following:
- (1) Whether you have accepted responsibility for the noncompliance and recognize the seriousness of the conduct that led to the cause for issuance of the PIE;
  - (2) Whether you have cooperated fully with the Department during the investigation. The Director may consider when the cooperation began and whether you disclosed all pertinent information known to you;
  - (3) Whether you have fully investigated the circumstances of the noncompliance forming the basis for the PIE and, if so, have made the result of the investigation available to the Director;
  - (4) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the grounds for issuance of the PIE; and
  - (5) Whether your organization has taken appropriate corrective actions or remedial measures, including implementing actions to prevent recurrence;
- (f) With respect to noncompliance with a DOT agency regulation, the degree to which the noncompliance affects matters common to the DOT drug and alcohol testing program;
- (g) Other factors appropriate to the circumstances of the case.

#### **§ 40.391 What is the scope of a PIE?**

- (a) The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.
- (b) If, as a service agent, the Department issues a PIE concerning you, the PIE applies to all your divisions, organizational elements, and types of services that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.
- (c) In the NOPE (see § 40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(3)).
- (d) In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.
- (e) The pervasiveness of the noncompliance within a service agent's organization (see § 40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.
- (f) The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.

- (g) A PIE applies to your affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.
- (h) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with your organization in the following circumstances:
  - (1) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of your organization; or
  - (2) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.
- (i) If a contractor to your organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.
- (j) PIEs do not apply to drug and alcohol testing that DOT does not regulate.
- (k) The following examples illustrate how the Department intends the provisions of this section to work:

**Example 1 to § 40.391.** Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40. However, P's other services fully comply with this part, and P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.

**Example 2 to § 40.391.** Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.

**Example 3 to § 40.391.** Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas—collections, MROs, SAPs, protecting the confidentiality of information—are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.

**Example 4 to § 40.391.** Service Agent W provides only one kind of service (e.g., laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.

**Example 5 to § 40.391.** Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous "fatal flaws" in tests. Alternatively, X received a correction notice pointing out these problems in its contractor's collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.

**Example 6 to § 40.391.** Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.

**Example 7 to § 40.391.** The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z's services.

### § 40.393 How long does a PIE stay in effect?

- (a) In the NOPE (see § 40.375(b)(5)), the initiating official proposes the duration of the PIE. The duration of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(4)).
- (b) In deciding upon the duration of the PIE, the Director considers the seriousness of the conduct on which the PIE is based and the continued need to protect employers and employees from the service agent's noncompliance. The Director considers factors such as those listed in § 40.389 in making this decision.
- (c) The duration of a PIE will be between one and five years, unless the Director reduces its duration under § 40.407.

### § 40.395 Can you settle a PIE proceeding?

At any time before the Director's decision, you and the initiating official can, with the Director's concurrence, settle a PIE proceeding.

### § 40.397 When does the Director make a PIE decision?

The Director makes his or her decision within 60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days.

### § 40.399 How does the Department notify service agents of its decision?

If you are a service agent involved in a PIE proceeding, the Director provides you written notice as soon as he or she makes a PIE decision. The notice includes the following elements:

- (a) If the decision is not to issue a PIE, a statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute.
- (b) If the decision is to issue a PIE—
  - (1) A reference to the NOPE;
  - (2) A statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute;
  - (3) A statement of the scope of the PIE; and



- (4) A statement of the duration of the PIE.

#### § 40.401 How does the Department notify employers and the public about a PIE?

- (a) The Department maintains a document called the "List of Excluded Drug and Alcohol Service Agents." This document may be found on the Department's web site (<http://www.transportation.gov/odapc>) . You may also request a copy of the document from ODAPC.
- (b) When the Director issues a PIE, he or she adds to the List the name and address of the service agent, and any other persons or organizations, to whom the PIE applies and information about the scope and duration of the PIE.
- (c) When a service agent ceases to be subject to a PIE, the Director removes this information from the List.
- (d) The Department also publishes a FEDERAL REGISTER notice to inform the public on any occasion on which a service agent is added to or taken off the List.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017]

#### § 40.403 Must a service agent notify its clients when the Department issues a PIE?

- (a) As a service agent, if the Department issues a PIE concerning you, you must notify each of your DOT-regulated employer clients, in writing, about the issuance, scope, duration, and effect of the PIE. You may meet this requirement by sending a copy of the Director's PIE decision or by a separate notice. You must send this notice to each client within three business days of receiving from the Department the notice provided for in § 40.399(b).
- (b) As part of the notice you send under paragraph (a) of this section, you must offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

#### § 40.405 May the Federal courts review PIE decisions?

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 et. seq).

#### § 40.407 May a service agent ask to have a PIE reduced or terminated?

- (a) Yes, as a service agent concerning whom the Department has issued a PIE, you may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.
- (b) Your request must be in writing and supported with documentation.
- (c) You must wait at least nine months from the date on which the Director issued the PIE to make this request.
- (d) The initiating official who was the proponent of the PIE may provide information and arguments concerning your request to the Director.

- (e) If the Director verifies that the sources of your noncompliance have been eliminated and that all drug or alcohol testing-related services you would provide to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.

### § 40.409 What does the issuance of a PIE mean to transportation employers?

- (a) As an employer, you are deemed to have notice of the issuance of a PIE when it appears on the List mentioned in § 40.401(a) or the notice of the PIE appears in the FEDERAL REGISTER as provided in § 40.401(d). You should check this List to ensure that any service agents you are using or planning to use are not subject to a PIE.
- (b) As an employer who is using a service agent concerning whom a PIE is issued, you must stop using the services of the service agent no later than 90 days after the Department has published the decision in the FEDERAL REGISTER or posted it on its web site. You may apply to the ODAPC Director for an extension of 30 days if you demonstrate that you cannot find a substitute service agent within 90 days.
- (c) Except during the period provided in paragraph (b) of this section, you must not, as an employer, use the services of a service agent that are covered by a PIE that the Director has issued under this subpart. If you do so, you are in violation of the Department's regulations and subject to applicable DOT agency sanctions (e.g., civil penalties, withholding of Federal financial assistance).
- (d) You also must not obtain drug or alcohol testing services through a contractor or affiliate of the service agent to whom the PIE applies.

*Example to paragraph (d):* Service Agent R was subject to a PIE with respect to SAP services. As an employer, not only must you not use R's own SAP services, but you also must not use SAP services you arrange through R, such as services provided by a subcontractor or affiliate of R or a person or organization that receives financial gain from its relationship with R.

- (e) This section's prohibition on using the services of a service agent concerning which the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations.

*Example to paragraph (e):* The initiating official for a PIE was the FAA drug and alcohol program manager, and the conduct forming the basis of the PIE pertained to the aviation industry. As a motor carrier, transit authority, pipeline, railroad, or maritime employer, you are also prohibited from using the services of the service agent involved in connection with the DOT drug and alcohol testing program.

- (f) The issuance of a PIE does not result in the cancellation of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the FEDERAL REGISTER or posting on the Department's web site, unless otherwise specified in the Director's PIE decision or the Director grants an extension as provided in paragraph (b) of this section.

*Example to paragraph (f):* The Department issues a PIE concerning Service Agent N on September 1. All tests conducted using N's services before September 1, and through November 30, are valid for all purposes under DOT drug and alcohol testing regulations, assuming they meet all other regulatory requirements.

### § 40.411 What is the role of the DOT Inspector General's office?

- (a) Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of the DOT Office of Inspector General.
- (b) In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.

- (c) The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.

### § 40.413 How are notices sent to service agents?

- (a) If you are a service agent, DOT sends notices to you, including correction notices, notices of proposed exclusion, decision notices, and other notices, in any of the ways mentioned in paragraph (b) or (c) of this section.
- (b) DOT may send a notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, fax number, or e-mail address. DOT deems the notice to have been received by you if sent to any of these persons.
- (c) DOT considers notices to be received by you—
  - (1) When delivered, if DOT mails the notice to the last known street address, or five days after we send it if the letter is undeliverable;
  - (2) When sent, if DOT sends the notice by fax or five days after we send it if the fax is undeliverable; or
  - (3) When delivered, if DOT sends the notice by e-mail or five days after DOT sends it if the e-mail is undeliverable.

## Appendix A to Part 40—DOT Standards for Urine Collection Kits

### The Collection Kit Contents

#### 1. *Collection Container*

- a. Single-use container, made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
- b. Must have graduated volume markings clearly noting levels of 45 mL and above.
- c. Must have a temperature strip providing graduated temperature readings 32-38 °C/90-100 °F, that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.
- d. Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peelable, sealed lid or other easily visible tamper-evident system.
- e. May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.

#### 2. *Plastic Specimen Bottles*

- a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
- b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.

- c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.
- d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
- e. Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container; or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peelable, sealed lid or other easily visible tamper-evident system.
- f. Plastic material must be leach resistant.

### 3. *Leak-Resistant Plastic Bag*

- a. Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

### 4. *Absorbent material*

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

### 5. *Shipping Container*

- a. Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.
- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

## Appendix B to Part 40—Oral Fluid Collection Kit Contents

### 1. Oral Fluid Collection Device

- a. A single device, which can be subdivided in the employee's presence into an "A" specimen and a "B" split specimen bottle sufficient for laboratory testing, that is either of the following:
  - (1) An oral fluid collection device made to collect a sufficient amount of oral fluid to permit an HHS-certified laboratory to analyze the specimen(s). For example, a device that directs the oral fluid into two separate collection bottles.
  - (2) A device that uses buffering solution that collects a specimen using a single pad or dual pads joined for insertion together into the same region of the mouth, which can be subdivided into two separate collection bottles. Such a buffered device may use a diluent (or other component, process, or method that modifies the volume of the testable specimen). The volume specifications for the device must be consistent with those set by HHS.

- b. Must have unit markings or other indicators that demonstrate the adequacy of the volume of oral fluid specimen collected.
- c. Must be sufficiently transparent to permit a visual assessment of the contents without opening the specimen bottle.
- d. Must be individually packaged in an easily visible tamper-evident system.
- e. Must have the device's expiration date on the specimen bottles sent to the laboratory (*i.e.*, the shortest expiration date of any component).
- f. Must not have components that substantially affect the composition of drugs and/or drug metabolites in the oral fluid specimen and/or interfere with an accurate analysis of the specimen.
- g. Must maintain the integrity of the specimen during storage and transport so the specimen can be tested in an HHS-certified laboratory.
- h. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit without concealing the expiration date on the bottles, without damage to the seal when the collector dates and the employee initials it.
- i. Must be approved by HHS for use by the specific HHS-certified laboratory that will test the specimen gathered by this device.

## 2. Instructions

Must include the manufacturer's instructions within the device's packaging. The instructions must provide sufficient detail to allow for an error-free collection when the instructions are followed.

## 3. Leak-Resistant Plastic Bag

- a. Must have two sealable compartments or pouches that are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork, as applicable.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

## 4. Absorbent Material

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

## 5. Shipping Container

- a. Must be designed to adequately protect the specimen bottles from damage during shipment of the specimens from the collection site to the laboratory (*e.g.*, standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual collection device sent to collection sites.



- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the leak-resistant plastic bags from the collection site to the laboratory.

[88 FR 27651, May 2, 2023]

## Appendix C to Part 40 [Reserved]

## Appendix D to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to Employers

The following items are required on each laboratory report:

*Reporting Period:* (inclusive dates)

*Laboratory Identification:* (name and address)

*Employer Identification:* (name; may include Billing Code or ID code)

*C/TPA Identification:* (where applicable; name and address)

### A. Urine Specimens

#### 1. Urine Specimen Results Reported (Total Number) By Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)
- (c) Random (number)
- (d) Reasonable Suspicion/Cause (number)
- (e) Return-to-Duty (number)
- (f) Follow-up (number)
- (g) Type of Test Not Noted on CCF (number)

#### 2. Urine Specimens Reported

- (a) Negative (number)
- (b) Negative and Dilute (number)

#### 3. Urine Specimens Reported as Rejected for Testing (Total Number) by Reason

- (a) Fatal flaw (number)
- (b) Uncorrected Flaw (number)

#### 4. Urine Specimens Reported as Positive (Total Number) by Drug

- (a) Marijuana Metabolite (number)
- (b) Cocaine Metabolite (number)
- (c) Opioids (number)
  - (1) Codeine (number)
  - (2) Morphine (number)

- (3) 6-AM (number)
- (4) Hydrocodone (number)
- (5) Hydromorphone (number)
- (6) Oxycodone (number)
- (7) Oxymorphone (number)
- (d) Phencyclidine (number)
- (e) Amphetamines (number)
  - (1) Amphetamine (number)
  - (2) Methamphetamine (number)
  - (3) MDMA (number)
  - (4) MDA (number)

## 5. Urine Adulterated (Number)

## 6. Urine Substituted (Number)

## 7. Urine Invalid Result (Number)

## B. Oral Fluid Specimens

### 1. Oral Fluid Specimen Results Reported (Total Number) by Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)
- (c) Random (number)
- (d) Reasonable Suspicion/Cause (number)
- (e) Return-to-Duty (number)
- (f) Follow-up (number)
- (g) Type of Test Not Noted on CCF (number)

### 2. Oral Fluid Specimens Reported

- (a) Negative (number)
- (b) Negative and Dilute (number)

### 3. Oral Fluid Specimens Reported as Rejected for Testing (Total Number) by Reason

- (a) Fatal flaw (number)
- (b) Uncorrected Flaw (number)

### 4. Oral Fluid Specimens Reported as Positive (Total Number) by Drug

- (a) Marijuana (number)
- (b) Cocaine and/or Cocaine Metabolite (number)
- (c) Opioids (number)
  - (1) Codeine (number)
  - (2) Morphine (number)
  - (3) 6-AM (number)
  - (4) Hydrocodone (number)
  - (5) Hydromorphone (number)
  - (6) Oxycodone (number)
  - (7) Oxymorphone (number)
- (d) Phencyclidine (number)
- (e) Amphetamines (number)
  - (1) Amphetamine (number)
  - (2) Methamphetamine (number)
  - (3) MDMA (number)
  - (4) MDA (number)

## 5. Oral Fluid Adulterated (Number)

## 6. Oral Fluid Substituted (Number)

## 7. Oral Fluid Invalid Result (Number)

[88 FR 27651, May 2, 2023]

## Appendix E to Part 40—Drug Testing Semi-Annual Laboratory Report to DOT

Mail, fax or email to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

**Fax:** (202) 366-3897.

**Email:** [ODAPCWebMail@dot.gov](mailto:ODAPCWebMail@dot.gov).

The following items are required on each report:

**Reporting Period:** (inclusive dates)

**Laboratory Identification:** (name and address)

1. Specimen Type:

—oral fluid or urine

2. DOT agency

—FMCSA, FAA, FRA, FTA, PHMSA, or USCG

### 3. Test Reason

—Pre-Employment, Random, Reasonable Suspicion/Cause, Post-Accident, Return-to-Duty, Other, and Follow-up

A. DOT Specimen Results Reported (total number)

B. Negative Results Reported (total number)

1. Negative (number)

2. Negative-Dilute (number)

C. Rejected for Testing Results Reported (total number) By Reason

1. Fatal flaw (number)

2. Uncorrected Flaw (number)

D. Positive Results Reported (total number) By Drug

1. Marijuana or Marijuana Metabolite (number)

2. Cocaine and/or Cocaine Metabolite (number)

3. Opioids (number)

a. Codeine (number)

b. Morphine (number)

c. 6-AM (number)

d. Hydrocodone (number)

e. Hydromorphone (number)

f. Oxycodone (number)

g. Oxymorphone (number)

4. Phencyclidine (number)

5. Amphetamines (number)

a. Amphetamine (number)

b. Methamphetamine (number)

c. MDMA (number)

d. MDA (number)

E. Adulterated Results Reported (total number) By Reason (number)

F. Substituted Results Reported (total number)

G. Invalid Results Reported (total number) By Reason (number)

[88 FR 27652, May 2, 2023]

## Appendix F to Part 40—Report Format: Split Specimen Failure To Reconfirm

Mail, fax, or submit electronically to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366-3897.

*Submit Electronically: <https://www.transportation.gov/odapc/mro-split-specimen-cancellation-notification>.*

The following items are required on each report:

1. MRO name, address, phone number, and fax number.
2. Collection site name, address, and phone number.
3. Date of collection.
4. Specimen I.D. number.
5. Specimen type.
6. Laboratory accession number.
7. Primary specimen laboratory name, address, and phone number.
8. Date result reported or certified by primary laboratory.
9. Split specimen laboratory name, address, and phone number.
10. Date split specimen result reported or certified by split specimen laboratory.
11. Primary specimen results (e.g., name of drug, adulterant) in the primary specimen.
12. Reason for split specimen failure-to-reconfirm result (e.g., drug or adulterant not present, specimen invalid, split not collected, insufficient volume).
13. Actions taken by the MRO (e.g., notified employer of failure to reconfirm and requirement for re-collection).
14. Additional information explaining the reason for cancellation.
15. Name of individual submitting the report (if not the MRO).

[88 FR 27652, May 2, 2023]

## Appendix G to Part 40—SAP Equivalency Requirements for Certification Organizations

1. **Experience:** Minimum requirements are for three years of full-time supervised experience or 6,000 hours of supervised experience as an alcoholism and/or drug abuse counselor. The supervision must be provided by a licensed or certified practitioner. Supervised experience is important if the individual is to be considered a professional in the field of alcohol and drug abuse evaluation and counseling.
2. **Education:** There exists a requirement of 270 contact hours of education and training in alcoholism and/or drug abuse or related training. These hours can take the form of formal education, in-service training, and professional development courses. Part of any professional counselor's development is participation in formal and non-formal education opportunities within the field.
3. **Continuing Education:** The certified counselor must receive at least 40-60 hours of continuing education units (CEU) during each two year period. These CEUs are important to the counselor's keeping abreast of changes and improvements in the field.
4. **Testing:** A passing score on a national test is a requirement. The test must accurately measure the application of the knowledge, skills, and abilities possessed by the counselor. The test establishes a national standard that must be met to practice.



5. **Testing Validity:** The certification examination must be reviewed by an independent authority for validity (examination reliability and relationship to the knowledge, skills, and abilities required by the counseling field). The reliability of the exam is paramount if counselor attributes are to be accurately measured. The examination passing score point must be placed at an appropriate minimal level score as gauged by statistically reliable methodology.
6. **Measurable Knowledge Base:** The certification process must be based upon measurable knowledge possessed by the applicant and verified through collateral data and testing. That level of knowledge must be of sufficient quantity to ensure a high quality of SAP evaluation and referral services.
7. **Measurable Skills Base:** The certification process must be based upon measurable skills possessed by the applicant and verified through collateral data and testing. That level of skills must be of sufficient quality to ensure a high quality of SAP evaluation and referral services.
8. **Quality Assurance Plan:** The certification agency must ensure that a means exists to determine that applicant records are verified as being true by the certification staff. This is an important check to ensure that true information is being accepted by the certifying agency.
9. **Code of Ethics:** Certified counselors must pledge to adhere to an ethical standard for practice. It must be understood that code violations could result in de-certification. These standards are vital in maintaining the integrity of practitioners. High ethical standards are required to ensure quality of client care and confidentiality of client information as well as to guard against inappropriate referral practices.
10. **Re-certification Program:** Certification is not just a one-time event. It is a continuing privilege with continuing requirements. Among these are continuing education, continuing state certification, and concomitant adherence to the code of ethics. Re-certification serves as a protector of client interests by removing poor performers from the certified practice.
11. **Fifty State Coverage:** Certification must be available to qualified counselors in all 50 states and, therefore, the test must be available to qualified applicants in all 50 states. Because many companies are multi-state operators, consistency in SAP evaluation quality and opportunities is paramount. The test need not be given in all 50 states but should be accessible to candidates from all states.
12. **National Commission for Certifying Agencies (NCCA) Accreditation:** Having NCCA accreditation is a means of demonstrating to the Department of Transportation that your certification has been reviewed by a panel of impartial experts that have determined that your examination(s) has met stringent and appropriate testing standards.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27651, May 2, 2023]

## Appendix H to Part 40—Drug and Alcohol Testing Information that C/TPAs May Transmit to Employers

1. If you are a C/TPA, you may, acting as an intermediary, transmit the information in the following sections of this part to the DER for an employer, if the employer chooses to have you do so. These are the only items that you are permitted to transmit to the employer as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to employers, the transmission of SAP reports to employers, the transmission of positive alcohol test results, and the transmission of medical information from MROs to employers.

2. In every case, you must ensure that, in transmitting the information, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit MROs' drug testing results to DERs, you must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in § 40.167.

## Drug Testing Information

§ 40.25: Previous two years' test results

§ 40.35: Notice to collectors of contact information for DER

§ 40.61(a): Notification to DER that an employee is a "no show" for a drug test

§ 40.63(e): Notification to DER of a collection under direct observation

§ 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen

§ 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)

§ 40.111(a): Transmission of laboratory statistical report to employer

§ 40.127(f): Report of test results to DER

§§ 40.127(g), 40.129(d), 40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled

§ 40.129(e): Report of test results to DER

§ 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation

§§ 40.149(b): Report to DER of changed test result

§ 40.155(a): Report to DER of dilute specimen

§ 40.167(b) and (c): Reports of test results to DER

§ 40.187(a)-(e) Reports to DER concerning the reconfirmation of tests

§ 40.191(d): Notice to DER concerning refusals to test

§ 40.193(b)(3): Notification to DER of refusal in shy bladder situation

§ 40.193(b)(4): Notification to DER of insufficient specimen

§ 40.193(b)(5): Transmission of CCF copies to DER (not to MRO)

§ 40.199: Report to DER of cancelled test and direction to DER for additional collection

§ 40.201: Report to DER of cancelled test

## Alcohol Testing Information

§ 40.215: Notice to BATs and STTs of contact information for DER

§ 40.241(b)(1): Notification to DER that an employee is a “no show” for an alcohol test

§ 40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02

§ 40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02

§ 40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

*[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 35975, June 25, 2008. Redesignated and amended at 88 FR 27651, 27652, May 2, 2023]*

## Appendix I to Part 40—Alcohol Testing Form

The following form is the alcohol testing form required for use in the DOT alcohol testing program beginning January 1, 2011. Employers are authorized to use the form effective February 25, 2010.

## U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results  
Here or Affix with  
Tamper Evident Tape

### Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name \_\_\_\_\_  
(Print) (First, M.I., Last)

B: SSN or Employee ID No. \_\_\_\_\_

C: Employer Name \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_

DER Name and Telephone No. \_\_\_\_\_  
DER Name \_\_\_\_\_ DER Phone Number \_\_\_\_\_

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

### STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_  
Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Print Confirmation  
Results Here or Affix  
with Tamper Evident  
Tape

### STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH\* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result
CONFIRMATION TEST: Results <u>MUST</u> be affixed to each copy of this form or printed directly onto the form.					

REMARKS:

Alcohol Technician's Company \_\_\_\_\_ Company Street Address \_\_\_\_\_  
(PRINT) Alcohol Technician's Name (First, M.I., Last) \_\_\_\_\_ Company City, State, Zip \_\_\_\_\_ Phone Number \_\_\_\_\_  
Signature of Alcohol Technician \_\_\_\_\_ Date \_\_\_\_\_  
Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Print Additional  
Results Here or Affix  
With Tamper Evident  
Tape

### STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_  
Month \_\_\_\_\_ Day \_\_\_\_\_ Year \_\_\_\_\_

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

**COPY 1 – ORIGINAL – FORWARD TO THE EMPLOYER**



## U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

### Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name \_\_\_\_\_  
(Print) (First, M.I., Last)  
B: SSN or Employee ID No. \_\_\_\_\_  
C: Employer Name \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
DER Name and Telephone No. \_\_\_\_\_  
DER Name \_\_\_\_\_ DER Phone Number \_\_\_\_\_  
D: Reason for Test: ☐ Random ☐ Reasonable Susp ☐ Post-Accident ☐ Return to Duty ☐ Follow-up ☐ Pre-employment

### STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year

### STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☐ BAT ☐ STT DEVICE: ☐ SALIVA ☐ BREATH\* 15-Minute Wait: ☐ Yes ☐ No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result
--------	---------------------	--	-----------------	--------------	--------

CONFIRMATION TEST: Results MUST be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company \_\_\_\_\_ Company Street Address \_\_\_\_\_  
(PRINT) Alcohol Technician's Name (First, M.I., Last) \_\_\_\_\_ Company City, State, Zip \_\_\_\_\_ Phone Number \_\_\_\_\_  
Signature of Alcohol Technician \_\_\_\_\_ Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year

### STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Month Day Year

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

Print Screening Results  
Here or Affix with  
Tamper Evident Tape

Print Confirmation  
Results Here or Affix  
with Tamper Evident  
Tape

Print Additional  
Results Here or Affix  
With Tamper Evident  
Tape

COPY 2 - EMPLOYEE RETAINS



## U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results  
Here or Affix with  
Tamper Evident Tape

### Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name \_\_\_\_\_  
(Print) (First, M.I., Last)  
B: SSN or Employee ID No. \_\_\_\_\_  
C: Employer Name \_\_\_\_\_  
Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
DER Name and Telephone No. \_\_\_\_\_  
DER Name \_\_\_\_\_ DER Phone Number \_\_\_\_\_  
D: Reason for Test: ☐ Random ☐ Reasonable Susp ☐ Post-Accident ☐ Return to Duty ☐ Follow-up ☐ Pre-employment

### STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

Print Confirmation  
Results Here or Affix  
with Tamper Evident  
Tape

### STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: ☐ BAT ☐ STT DEVICE: ☐ SALIVA ☐ BREATH\* 15-Minute Wait: ☐ Yes ☐ No

SCREENING TEST: (For BREATH DEVICE\* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result
--------	---------------------	--	-----------------	--------------	--------

CONFIRMATION TEST: Results MUST be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company \_\_\_\_\_ Company Street Address \_\_\_\_\_  
(PRINT) Alcohol Technician's Name (First, M.I., Last) \_\_\_\_\_ Company City, State, Zip \_\_\_\_\_ Phone Number \_\_\_\_\_  
Signature of Alcohol Technician \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

Print Additional  
Results Here or Affix  
With Tamper Evident  
Tape

### STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee \_\_\_\_\_ Date \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Month Day Year

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

COPY 3 - ALCOHOL TECHNICIAN RETAINS

## **PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 8 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

**BACK OF PAGES 1 and 2**

---

## INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION ALCOHOL TESTING FORM

**NOTE:** Use a ballpoint pen, press hard, and check all copies for legibility.

**STEP 1** The Breath Alcohol Technician (BAT) or Screening Test Technician (STT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

**NOTE:** If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

**STEP 2** Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

**NOTE:** If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

**STEP 3** The BAT or STT completes the information required in this step and checks the type of device (saliva or breath) being used. After conducting the alcohol screening test, do the following (as appropriate):

Enter the information for the screening test (test number, testing device name, testing device serial number or lot number and expiration date, time of test with any device-dependent activation times, and the results), on the front of the ATF. For a breath testing device capable of printing, the information may be part of the printed record.

**NOTE:** Be sure to enter the result of the test exactly as it is indicated on the breath testing device, e.g., 0.00, 0.02, 0.04, etc.

Affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original printed information, or the device may print the results directly on the ATF. If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. The test process is complete.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

Ensure that a waiting period of at least 15 minutes occurs before the confirmation test begins. Check the box indicating that the waiting period lasted at least 15 minutes.

After conducting the alcohol confirmation test, affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original information, or the device may print the results directly on the ATF. Print, sign your name, and enter the date in the space provided. Go to STEP 4.

**STEP 4** If the employee has a breath alcohol confirmation test result of 0.02 or higher, instruct the employee to read, sign, and date the employee certification statement in STEP 4.

**NOTE:** If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks line in STEP 3.

Immediately notify the DER if the employee has a breath alcohol confirmation test result of 0.02 or higher.

Forward Copy 1 to the employer. Give Copy 2 to the employee. Retain Copy 3 for BAT/STT records.

[75 FR 8529, Feb. 25, 2010, as amended at 75 FR 13009, Mar. 18, 2010; 75 FR 38423, July 2, 2010. Redesignated at 88 FR 27651, May 2, 2023]

## **Appendix J to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form**

The following form is the MIS Data Collection form required for use to report calendar year MIS data. The instructions for this form are found at <https://www.transportation.gov/odapc>.



## U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: \_\_\_\_\_

OMB No. 2105-0529

Form DOT F 1385 (Rev. 4/2019)

**I. Employer:**

Company Name: \_\_\_\_\_

Doing Business As (DBA) Name (if applicable): \_\_\_\_\_

Address: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_ Signature: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_\_ Date Certified: \_\_\_\_\_

Prepared by (if different): \_\_\_\_\_ Telephone: (\_\_\_\_) \_\_\_\_\_

C/TPA Name and Telephone (if applicable): \_\_\_\_\_ (\_\_\_\_) \_\_\_\_\_

**Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:**

\_\_\_ FMCSA – Motor Carrier: DOT #: \_\_\_\_\_ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

\_\_\_ FAA – Aviation: Certificate # (if applicable): \_\_\_\_\_ Plan / Registration # (if applicable): \_\_\_\_\_

\_\_\_ PHMSA – Pipeline: (Check) Gas Gathering \_\_\_ Gas Transmission \_\_\_ Gas Distribution \_\_\_ Transport Hazardous Liquids \_\_\_ Transport Carbon Dioxide \_\_\_

\_\_\_ FRA – Railroad: Total Number of observed/documented Part 219 “Rule G” Observations for covered employees: \_\_\_\_\_

\_\_\_ USCG – Maritime: Vessel ID # (USCG- or State-Issued): \_\_\_\_\_ (If more than one vessel, list separately.)

\_\_\_ FTA – Transit

**II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories:****(B) Enter Total Number of Employee Categories:****(C)**

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

**III. Drug Testing Data:**

	1	2	3	4	5	6	7	8	9	10	11	12	13
Type of Test	Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results ~ For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opioids	Positive For Amphetamines	Refusal Results				Cancelled Results
Pre-Employment									Adulterated	Substituted	“Shy Bladder” ~ With No Medical Explanation	Other Refusals To Submit To Testing	
Random													
Post-Accident													
Reasonable Susp./Cause													
Return-to-Duty													
Follow-Up													
TOTAL													

**IV. Alcohol Testing Data:**

	1	2	3	4	5	6	7	8	9
Type of Test	Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	Refusal Results		Cancelled Results
Pre-Employment							“Shy Lung” ~ With No Medical Explanation	Other Refusals To Submit To Testing	
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									



**PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 90 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

[84 FR 16773, Apr. 23, 2019. Redesignated at 88 FR 27651, May 2, 2023]

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** MTA

**Submitted By:** Daniel Wu

**Department Coordinator:** Amy Nuque,  
Amy.Nuque@sfmta.com

**Project Manager:** Daniel Wu

**ServiceNow Number:** DHRPSC0005942

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** Transit Lane and Bus Stop Enforcement System

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$700,000

**Does contract include items other than services?:** Yes

- Commodities & Equipment: \$1,844,132
- Cloud-Based Software Licenses and Support (without Professional Services): \$13,095,644

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 24

## Funding

**Funding Source:** State Funds, City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The scope is to install complex vendor-specific hardware/software solutions designed to detect unauthorized parking in designated transit or bus lanes, automatically read license plates, and create evidence packages for our PCOs (Parking Control Officer) to review and approve as valid citations.

**Why are these services required and what are the consequences of denial?:** These complex vendor-specific hardware/software solutions require precise installation and ongoing auditing and maintenance to ensure compliance with baseline performance standards. Without specialist

oversight, the system may fail to meet these standards, resulting in diminished program credibility, compromised transit lane integrity, and reduced service reliability and rider safety.

**Has your department contracted out these services in the last three years?:** No

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Temporary Basis

**Q5a) Explain the Temporary basis of the services:** Services needed to address a transitional or short-term situation

**Q5b) Why do you believe this to be a transitional or short-term situation?:** This is a short-term transitional effort to install an updated system on 212 buses.

**Q5c) How will you ensure the services aren't needed once this PSC request has ended?:** The contract will required the vendor to provide training to internal staff for on-going core support.

**Q5d) Describe the required skills and expertise needed to perform the services:** The vendor has individuals with the skills to install, configure, and continually tune their proprietary system to meet the performance requirements in our contract.

**Q5e) Does the Department have employees with the required skills and expertise?:** No  
**Q5f) not needed**

**Q5g) Will the services terminate upon resolution of the situation?:** unknown

**Q5h) Explain why:** The vendor holds full responsibility for end-to-end support of the solution. If issues arise that exceed the capabilities of internal staff, the vendor must intervene and provide additional training to ensure staff can provide support.

**Additional information to support your request (Optional):** The solution will impact multiple unions by introducing enhanced tools for enforcing parking violations in transit-only lanes and bus stops. While timely and accurate installation by the vendor is critical, the vendor must also train existing staff to provide Tier 1 support. Should any technology issues arise, they will be communicated to the vendor for resolution and product improvement.

### Union Notifications

**Job Class(es):** 7318 - Electronic Maintenance Tech, 8214 - Parking Control Officer, 9508 - Prpl

### Post Union Notification

Permit and Citation Clerk, 8216 - Senior Parking Control Officer

**Labor Unions:** 006 - Electrical Workers, Local 6, 790 - SEIU, Local 1021, Misc

**Labor Union Email Addresses:** ibew6@ibew6.org, oashworth@ibew6.org,  
PSCreview@seiu1021.org

**Union Review Sent On:** 12/1/2025

**Union Review End Date:** 12/31/2025

**Union Review Duration Met On:** 12/31/2025

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Susan Quan

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Brendan Conran

**ServiceNow Number:** DHRPSC0005710

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** CS-1260 FY26-35 Inventory Count

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$800,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 120

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** Inventory Count Services consisting of a full count for three enterprises. Work includes observing, performing, and/or validating physical inventory counts of various inventory items and comparing them to the SFPUC's Inventory Tracking System. The analysis, findings and recommendations will be provided in a written report for each warehouse location. Format for the content of such reports shall be determined by the Financial Reporting and Analysis group (FR&A). The timely submission of all reports is a necessary and material term and condition of this Agreement. Full counts are required at each location. Inventories include but not limited to the following items: water pipes, valves, fittings, meters and meter boxes, safety gear, electrical supplies, switches, power poles, fittings, safety gear, and sewage treatment inventory supplies, chains, rotors, valves, switches,



tubes, etc. It is expected 1. March to plan of the count days in June. 2. June is the physical inventory count. 3. July, draft report regarding results of the count. 4. August, issuance of the inventory report 5. Sept/Oct presentation to Commissioner by the audit bureau team.

**Why are these services required and what are the consequences of denial?:** In accordance with the Controller's Accounting Policies and Procedures 6.1, all departments must perform a full annual inventory count to ensure the accuracy, completeness, and consistency of inventory valuation and financial reporting. For SFPUC, this requirement is not only a matter of compliance but also essential to safeguarding public assets across three distinct enterprises. Since FY2014, the Financial Reporting & Analysis (FR&A) group has relied on an independent, third-party vendor to conduct the annual counts. This is by design: independence is critical to ensuring that the review of internal controls and inventory balances is objective, credible, and free from the appearance of conflict. Internal staff cannot credibly audit their own work; without external verification, the results would lack integrity in the eyes of the Controller's Office, external auditors, the Commission, and ultimately the public.

The vendor's work provides:

- Expert, independent validation of the accuracy of SFPUC's inventory records across thousands of critical utility items (e.g., water pipes, electrical gear, safety equipment, wastewater treatment supplies).
- Timely, standardized reporting that supports FR&A in meeting its strict deadlines for financial reporting, including Commissioner presentations and City Controller review.
- Risk mitigation by identifying discrepancies, control weaknesses, and accountability gaps before they escalate into financial misstatements, operational inefficiencies, or public findings.

Consequences of denial: If SFPUC is unable to secure these services, the department will be in violation of Controller's accounting policy, and our inventory balances could not be independently verified. This would expose SFPUC to the following risks:

- Findings and potential sanctions from the Controller's Office for non-compliance.
- Reduced confidence in SFPUC's financial statements and internal controls.
- Reputational harm before the Commission, the Controller's Office, and the public for failure to safeguard public assets.
- Delays in required reporting cycles, which directly impacts the City's financial transparency and accountability.

In short, denial of this request would compromise SFPUC's ability to meet mandated requirements, undermine the independence of its audit process, and place the department at risk of both financial and reputational consequences. Approval ensures compliance, independence, and the continued trust of oversight bodies and the public.

**Has your department contracted out these services in the last three years?:** No

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:** The count is to be performed in June and the reports due August.

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** Work includes observing, performing, and validating physical inventory counts of various inventory items and comparing them to the SFPUC's Inventory Tracking System. The analysis, findings and recommendations will be provided in a written report for each warehouse location, no later than 30 days after the count.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** Yes

**Q5c1) Identify the classifications:** 1634 - Principal Account Clerk, 1652 - Accountant II, 1632 - Senior Account Clerk, 1657 - Accountant IV, 1654 - Accountant III

**Q5c2) Does the Department have employees in these classifications?:** Yes

**Q5c3) Why are they not able to perform the services?:** Since fiscal year 2014, to maintain independence and objectivity in the inventory process, Financial Reporting & Analysis (FR&A) has contracted a third-party vendor to perform the annual inventory count. This approach addresses challenges including but not limited to accurately identify certain inventory items, independence that is critical to ensuring that the review of internal controls and inventory balances is objective, credible, and free from the appearance of conflict, and in addition, year-end closing activities during the inventory count period.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** This is an independent count and report of the results of the inventory in the warehouse.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** Since fiscal year 2014, to maintain independence and objectivity in the inventory process, Financial Reporting & Analysis (FR&A) has contracted a third-party vendor to perform the annual inventory count. This approach addresses challenges including but not limited to accurately identify certain inventory items, independence that is critical to ensuring that the review of internal controls and inventory

balances is objective, credible, and free from the appearance of conflict, and in addition, year-end closing activities during the inventory count period.

**Additional information to support your request (Optional):** Using 3rd party maintains independence and objectivity in the inventory process between warehouse team and finance team.

**Union Notifications**

**Job Class(es):** 1634 - Principal Account Clerk, 1652 - Accountant II, 1632 - Senior Account Clerk, 1657 - Accountant IV, 1654 - Accountant III

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 790 - SEIU, Local 1021, Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, PSCreview@seiu1021.org

**Union Review Sent On:** 12/4/2025

**Union Review End Date:** 12/14/2025

**Union Review Duration Met On:** 12/14/2025

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Nathan Gronlund

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Johanna Wong

**ServiceNow Number:** DHRPSC0005879

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** PRO.0358, Wastewater Treatment Facilities Improvement

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$24,000,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 120

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** Scope of Work/Services to be Contracted Out: The San Francisco Public Utilities Commission (SFPUC) intends to award one (1) contract for \$24 million over 10 years to provide services to support the planning and engineering design for Southeast Water Pollution Control Plant, Oceanside Water Pollution Control Plant, and Northpoint Facility. SFPUC is seeking a comprehensive phased process engineering master plan and the related designs for construction that will include the rehabilitation, repair, replacement or upgrade of wastewater treatment systems and their components. Systems include primary treatment, secondary treatment, tertiary treatment, and related sidestream systems. Current systems conditions will be reviewed and analyzed with respect to the currently available industry technologies while considering increased process

reliability and efficiencies.

Systems components to be incorporated as part this phased approach include grit classification and removal, screening conveyers, scum removal and compaction, digested sludge dewatering capability increases by centrifuge and screw press, primary and aeration tank rehabilitation, primary odor controls, secondary odor controls, solids handling capacity increases, secondary system capacity increases through load removal by primary filtration, primary sedimentation tank upgrades, secondary sedimentation tank upgrades, sludge transfer pumping, metering upgrades, variable frequency driven fans, feasibility for digestion capacity increase through incorporating recuperative thickening or thermal hydrolysis, electrical system and emergency generator evaluation and upgrades.

The systems have special safety consideration of the OSHA hazardous classified locations as defined by NFPA 70 NEC, including Class 1 Division 1 and Division 2 ignitable concentrations of gases. Also, flow pattern optimizations for fluid systems with the boundary condition interactions between liquids and gasses will require the development of Computational Fluid Dynamics (CFD) models.

City Staff will be managing and overseeing the work of the consultants on these multiple related projects to assure that the project deliverables achieve the goals within the defined constraints.

Spending totals for this project will vary from year to year, so an even distribution of funds by year is not expected.

**Why are these services required and what are the consequences of denial?:** The duration of this contract is coordinated with the 10-year CIP to assure that the project delivery requirements of the 10-year CIP can be met. The 10-Year CIP has identified numerous wastewater treatment process related projects that will require specialized technical expertise in treatment process and controls engineering. Renovation of the aging infrastructure is required to maintain and improve level of service required for continuous system availability and high efficiency. If this PSC is denied, then capital projects will be delayed. The SFPUC does not have the staff resources to perform the required work. These services are required to maintain compliance with operational permitting of the wastewater facilities. The City has determined that this project requires specialized expertise and skills. If denied, then the capital projects would not be developed as needed and result in deterioration of the availability and efficiency of the wastewater treatment facilities. Delays in these capital projects will negatively impact system operations, safety, reliability, efficiency, capacity, and self-sufficiency.

**Has your department contracted out these services in the last three years?:** No

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes



**Provide details related to contracts for which dept comm approval required:** All contracts over \$1,170,000 require SFPUC Commission approval.

**Will any contracts under this PSC require Board of Supervisors approval:** Yes

**Provide details related to contracts for which BOS approval will be required?:** Contracts over 10 million.

## Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:** The duration of this contract is coordinated with the 10-year CIP to assure that the project delivery requirements of the 10-year CIP can be met. Requested consulting services are needed because specialized expertise can vary from project to project including for project evaluations and/or design. Support may be necessary during any phase of engineering for the project, so the total demand is not easily forecast; however, City staff will always be looked to as a first option and specialized support will only be sought if City lacks the skills and/or capacity to the short-term, intermittent work.

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:**

Technical expertise for the phased planning and innovative design of multiple interdependent wastewater treatment processes and also development of the related control strategies for each of the systems. The systems have special safety consideration of the OSHA hazardous classified locations as defined by NFPA 70 NEC, including Class 1 Division 1 and Division 2 ignitable concentrations of gases. Also, flow pattern optimizations for fluid systems with the boundary condition interactions between liquids and gasses will require the development of Computational Fluid Dynamics (CFD) models.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** Yes

**Q5c1) Identify the classifications:** 5241 - Engineer, 5211 - Eng/Arch/Landscape Arch Sr

**Q5c2) Does the Department have employees in these classifications?:** Yes

**Q5c3) Why are they not able to perform the services?:** Some work can and will be done by City staff whenever possible. Current civil service staff of this background experience are not always available to perform this scope of services, since not all staff have the specialized experience and/or knowledge required to adequately develop the master planning and design of

a large, complex and interdependent wastewater treatment plant process systems projects. Engineering positions for these projects require specialized technical expertise.

The level of engineering resources required for this is not a long-term need that would warrant the hiring of new SFPUC personnel. These positions are needed in part due to peak workload staffing requirements resulting from the increase of planning and design needs for wastewater project work over next 10 years. Once a project design begins, and if an SFPUC or SFPW staff person with the required expertise becomes available, then that person may be assigned to the project staff.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** Yes

**Q5e1) Clearly describe and detail the training activities:** Planning and design meetings will include City staff oversight together with focused technology transfer workshop sessions for innovative wastewater systems solutions that will be included as part of the project(s).

**Q5f) Is there a plan to transition this work back to the City?:** Yes

**Q5f1) Describe the transition plan, including the anticipated timeline:** City staff will manage and oversee the development of the projects from start to finish. At the end of each task, there will also be a requirement for focused technology transfer workshop sessions for innovative wastewater systems solutions that will be included as part of the project(s).

#### **Additional information to support your request (Optional):**

##### **Union Notifications**

**Job Class(es):** 5241 - Engineer, 5211 - Eng/Arch/Landscape Arch Sr

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

**Union Review Sent On:** 12/15/2025

**Union Review End Date:** 12/25/2025

**Union Review Duration Met On:** 12/25/2025

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:**

**Submitted By:** Joey Yan

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Joey Yan

**ServiceNow Number:** DHRPSC0005883

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** DB-140 Southeast Water Pollution Control Plant -  
Secondary Clarifiers Rehabilitation

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$5,000,000

**Does contract include items other than services?:** Yes

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 59

## Funding

**Funding Source:** Federal Funds, City Funds

**Special circumstances related to funding:** Yes

**Explain the special circumstances:** This project may receive partial funding from the US Environmental Protection Agency (EPA) Water Infrastructure Finance and Innovation Act (WIFIA) loan program.

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The San Francisco Public Utilities Commission (SFPUC) intends to award an approximately \$44 million (\$5 million design and \$39 million construction) Fixed Budget Limit Design-Build construction contract (DB-140) for design and construction services to upgrade and increase operational reliability for eight (8) of sixteen (16) clarifiers at the Southeast Water Pollution Control Plant (SEP).

The \$5,000,000 design portion of the D-B procurement will complete the detailed design utilizing

the bridging documents (~10+% design level) to be provided in the Request for Proposal. The duration of the design portion is approximately 1 year, and the duration of engineering supporting during construction is approximately 2 years.

**Why are these services required and what are the consequences of denial?:** SFPUC implemented a condition assessment study of SEP between 2012 and 2013, which identified structural deficiencies and needs for aging/antiquated equipment replacement, such as for the secondary clarifiers. Because the Project's current development follows recently completed work with Contract No. WW-626, Primary & Secondary Clarifier Upgrades, the Project scope of work for this proposed procurement is substantially defined.

Fixed Budget Limit Design-Build is a delivery system, where design and construction professionals are integrated as one team in order to deliver projects such as DB-140. The Fixed Budget Limit Design-Build construction contract procurement method will deliver these upgrades as an integrated service, which helps avoid significant delays to upgrades to the remaining eight clarifiers at SEP and improves reliability to meet Commission endorsed level of service.

**Has your department contracted out these services in the last three years?:** No

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** SFPUC Commission approval is required to award the DB-140 contract valued over \$1,170,000.

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** No

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** This project requires specialized expertise in wastewater treatment and computational fluid dynamic (CFD) modeling, which is not work typically performed by City employees. The need for this support will be for the project specific duration and hiring individuals for these specialized areas

is not feasible. City resources will lead the project, including project management, technical design oversight, and construction management. City staff will oversee the Fixed Budget Limit Design-Build team to ensure compliance with SFPUC-Infrastructure standards and procedures.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** Yes

**Q5c1) Identify the classifications:** 5241 - Engineer, 5212 - Engineer/Architect Principal, 5211 - Eng/Arch/Landscape Arch Sr, 5207 - Assoc Engineer

**Q5c2) Does the Department have employees in these classifications?:** Yes

**Q5c3) Why are they not able to perform the services?:** This project requires specialized expertise in wastewater treatment and CFD modeling, which is not typical work performed by City employees. The Department has contacted the engineering bureaus within the SF Public Utilities Commission and SF Public Works (SFPW) for engineering staff who can perform the work. Both SFPUC and SFPW engineering managers have declined the work.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** Yes

**Q5e1) Clearly describe and detail the training activities:** Training in the form of webinar/workshop

presentations in the area of

emerging market trends in

the wastewater process treatment field. Total of

twenty (20) – hours will be

dedicated and tracked for

the workshop presentations.

Occupational types to

receive the training will be

Enterprise Facility

Managers, Enterprise

Operations and

Maintenance Managers,

Project Managers, and

Engineers.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** The work is being delivered under a Fixed-Budget Limit Design-Build contract that integrates design and construction services. The service is needed for a specific capital project which is limited in duration. This type of project work is also not routine work performed by City employees.

City resources will lead the project, including project management, technical design oversight, and construction management.

**Additional information to support your request (Optional):**

## Union Notifications

### Post Union Notification



**Job Class(es):** 5241 - Engineer, 5212 - Engineer/Architect Principal, 5211 - Eng/Arch/Landscape Arch Sr, 5207 - Assoc Engineer

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

**Union Review Sent On:** 12/15/2025

**Union Review End Date:** 12/25/2025

**Union Review Duration Met On:** 12/25/2025

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:**

**Submitted By:** Joey Yan

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Joey Yan

**ServiceNow Number:** DHRPSC0005873

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** DB-136 Wastewater Facilities Security Enhancements

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$5,000,000

**Does contract include items other than services?:** Yes

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 59

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The San Francisco Public Utilities Commission (SFPUC) intends to award an approximately \$40 million (\$5 million design and \$35 million construction) Progressive Design Build (PDB) construction contract (DB-136) to support SFPUC civil and electrical engineering staff with specialized security design services to upgrade physical security across SFPUC's wastewater facilities. Locations include Southeast and Oceanside wastewater treatment plants, Northpoint wet-weather facility, and other facilities adjacent to these three major facilities.

Progressive Design Build is a delivery system, where design and construction professionals are integrated as one team in order to deliver complex, high risk and security sensitive projects such

as DB-136. Because of how rapidly security infrastructure and technologies are advancing, the bifurcation of design and construction accountability is not conducive to security innovations necessary for this Project. As such, failure to procure specialty design-build security system design services as a part of the DB-136 contract may result in very significant delays and may jeopardize our efforts to implement security at SFPUC's critical/vulnerable facilities.

The \$5,000,000 design portion of the DB procurement will complete the detailed design utilizing the planning documents (~10% design level) to be provided in the Request for Proposal. The duration of the design portion is approximately 1.5 years, and the duration of engineering supporting during construction is approximately 2 years.

**Why are these services required and what are the consequences of denial?:** Security System design is a very specialized work, with specialty knowledge of the security system devices and industry standards in the application and facility installation. These services are short-term and specifically associated with identified wastewater capital improvement program security upgrade projects. Timely design and implementation of security components along with other planned upgrades at various operating facilities provide proper integration, compliance with Homeland Security to respond effectively to security threats and breaches in order to limit the interruption to providing critical services to rate payers. Timely implementation of security program will result in reduced risk of non-compliance with numerous regulatory agencies. Failure to procure specialty design-build services may result in very significant delays and may jeopardize our efforts to implement security at SFPUC's critical/vulnerable facilities-sites.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The services require experience in implementing an SFPUC Enterprise-wide security program and integrating numerous security systems and security software applications, Certified Protection Professional (CPP) certification, expertise at designing a full range of electronic security monitoring systems, expertise at developing security program policy and procedures, and thorough knowledge of start-up commissioning and testing procedures. Security design and SFPUC Enterprise-wide implementation is a specialty professional engineering service requiring many years of practical implementation experience, a thorough knowledge of security principals and technologies, which are constantly evolving. Electrical Engineers do not have CPP certification nor the expertise to evaluate facilities for security deficiencies, compliance requirements and alternate security monitoring devices and technologies. They do not have the expertise to coordinate and manage the implementation of an SFPUC Enterprise-wide security program.

No civil service classifications normally perform this specific work. However, this work will be performed in collaboration with SFPUC staff, such as Civil/Electrical Engineers (e.g., 5207

Associate Engineer & 5211 Senior Engineering classifications) and Information Systems (IS) Engineers (e.g., 1043 Senior IS Engineer & 1044 Principal IS Engineer classifications). City resources will also lead the project, including project management, technical design oversight, and construction management.

It would not be practical to adopt a new Civil Service Class to perform the services. This is a specialty work with short-term services, and the knowledge and technology for this specialty work advances at a rapid pace.

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Contracts greater than \$1,170,000

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** No

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** The services require experience in implementing an SFPUC Enterprise-wide security program and integrating numerous security systems and security software applications, Certified Protection Professional (CPP) certification, expertise at designing a full range of electronic security monitoring systems, expertise at developing security program policy and procedures, and thorough knowledge of start-up commissioning and testing procedures. Security design and SFPUC Enterprise-wide implementation is a specialty professional engineering service requiring many years of practical implementation experience, a thorough knowledge of security principals and technologies, which are constantly evolving.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** Security System design is a very specialized work, with specialty knowledge of the security system devices and industry standards in the application and facility installation. These services are specifically associated with an identified wastewater capital improvement program security upgrade project, which is limited in

duration.

Timely design and implementation of security components along with other planned upgrades at various operating facilities provide proper integration, compliance with Homeland Security to respond effectively to security threats and breaches in order to limit the interruption to providing critical services to rate payers. Timely implementation of security program will result in reduced risk of non-compliance with numerous regulatory agencies.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** Yes

**Q5e1) Clearly describe and detail the training activities:** Training in the form of webinar/workshop presentations in the area of emerging market trends in security arena of Public Utilities Sector. Total of forty (40) – hours will be dedicated and tracked for the workshop presentations. Occupational types to receive the training will be Enterprise Facility Managers, Enterprise Operations and Maintenance Managers, Project Managers, and Engineers.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** Progressive Design Build is a delivery system, where design and construction professionals are integrated as one team in order to deliver complex, high risk and security sensitive projects such as DB-136. Because of how rapidly security infrastructure and technologies are advancing, the bifurcation of design and construction accountability is not conducive to security innovations necessary for this Project. As such, failure to procure specialty design-build security system design services as a part of the DB-136 contract may result in very significant delays and may jeopardize our efforts to implement security at SFPUC's critical/vulnerable facilities.

### **Additional information to support your request (Optional):**

#### **Union Notifications**

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, president@sfsherriffsmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org, mfinnegan@ibt856.org, administration@sffdlocal798.org, larryjr@ualocal38.org,



president@twusf.org, WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org,  
PSCreview@seiu1021.org, President@sanfranciscodsa.com, staff@sfmea.com,  
mleach@ibt856.org, ibew6@ibew6.org, oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 11/19/2025

**Union Review End Date:** 11/26/2025

**Union Review Duration Met On:** 11/26/2025

**Instructions:**

- Step 1: Download and save this template to your desktop.
- Step 2: Complete the fields below.
- Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

[illegible]

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Eric Choi

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Eric Choi

**ServiceNow Number:** DHRPSC0005104

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** PRO.0295 - WSTD Technical Services for Pipeline and Tunnel Inspection and Repair Program

The San Francisco Public Utilities Commission (SFPUC) seeks a qualified Proposer to support its Regional Water System (RWS) Pipeline and Tunnel Inspection and Repair Renewal and Replacement (R&R) Program. This program aims to manage and extend the life of aging infrastructure, which includes pipelines and tunnels of varying sizes, materials, and conditions.

The scope involves analyzing the water transmission system to understand its operations, failure mechanisms, and how to assess, inspect, maintain, and repair assets while ensuring they remain partially in service to meet water service goals set by the Water System Improvement Program (WSIP). The work includes supporting the Water Supply and Treatment Division (WSTD) with condition assessments, failure analysis, monitoring program recommendations, and repair/replacement strategies. Additionally, the contractor will provide technical support for inspecting steel and non-steel pipes, as well as tunnels, using current inspection technologies.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$9,000,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 96

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Post Union Notification

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The San Francisco Public Utilities Commission (SFPUC), a department of the City and County of San Francisco ("City"), seeks to retain the services of a qualified Proposer to provide support to the Regional Water System's (RWS'S) Pipeline and Tunnel Inspection and Repair Renewal and Replacement (R&R) Program. The SFPUC has developed the RWS's R&R Program to manage and document the Department's aging infrastructure, i.e., life extension of existing capital assets. The RWS comprises of pipelines and tunnels that range greatly in terms of diameter, installation date, pipeline material, pipeline condition, and operational importance.

The scope of work is to analyze the water transmission system to understand operations, failure mechanisms, and how to inspect/assess, maintain, and perform work on the asset, which must remain partially in service to meet water level of service goals defined by SFPUC Water System Improvement Program (WSIP). It is also to support the Water Supply and Treatment Division (WSTD) staff efforts to understand failure mechanisms, perform comprehensive condition assessments, recommend monitoring programs, and create repair and replacement strategies. Additionally, the proposed work is to also provide technical support for pipeline and tunnel condition assessment services of steel pipe, non-steel pipe, and tunnels utilizing current and available inspection technologies.

**Why are these services required and what are the consequences of denial?:** This service is necessary because routine pipeline and tunnel inspections are essential to minimize pipeline failures. Inspection result can feed into the pipeline condition assessment studies, which provide basis for prioritizing pipeline replacements. Routine pipeline inspections are a part of good industry maintenance practice for large diameter transmission pipelines.

The consequences if the requested contract is denied, the scheduled pipeline and tunnel inspections cannot be carried out. Without maintenance inspection, different sections of pipelines may go out of service unexpectedly, leading to service disruption to our wholesale customers.

**Has your department contracted out these services in the last three years?:** No

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Contracts over \$1,170,000

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** Yes

**Q4a) What facilities or equipment does the City lack that contractor possesses?:** These necessary services required to assess the various different pipe materials in the RWS is highly specialized, and require proprietary equipment, and extensive database and experience to accurately perform inspection on large diameter pipelines. It is not available within the SFPUC.

**Does the dept plan to acquire the facilities/equipment to perform the services?:** No

**Explain why:** The equipment required for pipeline inspection are proprietary and it is not commercially available. Furthermore the City does not possess, nor has the expertise to operate.

**Additional information to support your request (Optional):**

**Union Notifications**

**Job Class(es):** 5241 - Engineer, 5211 - Eng/Arch/Landscape Arch Sr, 5201 - Junior Engineer, 5207 - Assoc Engineer

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

**Union Review Sent On:** 12/22/2025

**Union Review End Date:** 1/1/2026

**Union Review Duration Met On:** 1/1/2026



# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Julie Ortiz

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Kevin Galvin

**ServiceNow Number:** DHRPSC0005984

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** CS-1279 Conservation Database- Hosting, maintenance, and as-needed enhancements to a water conservation customer participation database used by the SFPUC Water Conservation Section to process and track water customer participation in SFPUC conservation assistance measures. The SFPUC has long had a comprehensive water conservation program that provides a wide range of financial, technical and educational assistance measures to help homes, businesses, landscapes and all types of buildings and properties in San Francisco and the SFPUC's retail water service area save water and money. The SFPUC's conservation assistance measures help its customers eliminate water waste and high water bills caused by water leaks and from old and inefficient plumbing fixtures, appliances, equipment and irrigation systems. Providing a wide suite of water-savings assistance measures and being able to track and efficiently report on participation is critical to the SFPUC's ability to meet strict State water conservation standards and requirements.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$925,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 48

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

## Post Union Notification

**Clearly describe scope and detail the services to be performed:** The scope covers the hosting, maintenance and upgrade of a proprietary conservation database and software system the SFPUC Water Conservation Section uses to process and track water customer participation in the SFPUC's conservation assistance programs and allows customers to apply for programs online and track the status of their applications online.

**Why are these services required and what are the consequences of denial?:** The SFPUC Water Conservation Section uses the conservation database and system daily to efficiently process and track its interactions with SFPUC water service customers. It is foundational to the operation of the Conservation Section. Without it, the SFPUC would have to halt or change all of its water-saving assistance programs, which would result in lost water savings, customer frustration, and potential non-compliance with State water conservation requirements.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** It is a proprietary software platform

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** Yes. See attached letter from the manufacturer confirming these services must be performed by the manufacturer or an authorized reseller/distributor.

**Additional information to support your request (Optional):**

### Union Notifications

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org,

### Post Union Notification

mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, jvarga@ibt856.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, president@sfsheriffmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org, administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org, WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org, President@sanfranciscodsa.com, staff@sfmea.com, mleach@ibt856.org, ibew6@ibew6.org, oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 12/23/2025

**Union Review End Date:** 12/30/2025

**Union Review Duration Met On:** 12/30/2025

**Instructions:**

- Step 1: Download and save this template to your desktop.
- Step 2: Complete the fields below.
- Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

[illegible]

1 October 2025

To: Mr. Kevin Galvin  
Water Conservation Program Manager  
San Francisco PUC

**Re: ConserveTrack – Proprietary Software as a Service System**

Dear Mr. Galvin,

This letter is to declare ConserveTrack is an online web-based software and service created by and provided exclusively by RightThere LLC. The ConserveTrack system is proprietary to RightThere LLC.

RightThere is the sole developer, operator and owner of the ConserveTrack software and system. RightThere is the only one that can perform installation and development work for the ConserveTrack software system.

ConserveTrack was created to meet the unique requirements of water conservation at municipalities. It has been developed over many years in response to the needs for managing water conservation programs. It is now in use at many cities throughout the US.

Please let us know if you have any questions.

Sincerely,



Joseph Miller, President  
RightThere LLC



# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Tedman Lee

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Tedman Lee

**ServiceNow Number:** DHRPSC0005739

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** PRO.0346 As-Needed Curb Ramp Engineering Design Services.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$8,000,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 60

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** engineering design, engineering support during construction, and surveying for curb ramps to support water conveyance, water distribution, wastewater collection, and power projects

**Why are these services required and what are the consequences of denial?:** PUC/PW staffing shortage; consequence is delay in capital projects

**Has your department contracted out these services in the last three years?:** No

## Board and Commission Approvals

## Post Union Notification

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Contracts over \$1,170,000

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:**

engineering design, engineering support during construction, and surveying for curb ramps to support water conveyance, water distribution, wastewater collection, and power projects, are only required whenever a project impacts an intersection that triggers a curb ramp design

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** curb ramp engineering design experience; coordination experience with Disability Access Coordinator

**Q5c) Does City have classifications with the required specialized skills or expertise?:** Yes

**Q5c1) Identify the classifications:** 5241 - Engineer, 5207 - Assoc Engineer

**Q5c2) Does the Department have employees in these classifications?:** Yes

**Q5c3) Why are they not able to perform the services?:** PUC/PW staffing shortage

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** City staff have the skill set to perform the work, but are not available

**Q5f) Is there a plan to transition this work back to the City?:** Yes

**Q5f1) Describe the transition plan, including the anticipated timeline:** hiring additional staff has been requested, subject to approval from the Mayor's office

**Additional information to support your request (Optional):** hiring additional staff has been requested, subject to approval from the Mayor's office

### Union Notifications

**Job Class(es):** 5241 - Engineer, 5207 - Assoc Engineer

**Labor Unions:** 021 - Prof & Tech Eng, Local 21

**Labor Union Email Addresses:** L21pscreview@ifpte21.org

### Post Union Notification

**Union Review Sent On:** 11/19/2025  
**Union Review End Date:** 11/29/2025  
**Union Review Duration Met On:** 11/29/2025

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** DEC

**Submitted By:** Matthew Ahn

**Department Coordinator:** Matthew Ahn,  
mahn@sfgov.org

**Project Manager:** Tracy Fong

**ServiceNow Number:** DHRPSC0002548

**Version:** 2.01

**Version Type:** Amendment

**Legacy PSC #:** 46213-23/24

**Brief description of proposed work:** Communications Consulting Services

**Reason for the Request for Amendment:** The amendment is being requested to adjust the contract duration and amount to align with the upcoming RFP that DEC plans to issue for the continuation of communication consulting services for the department.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount
- Requires CSC Approval by Duration
- Requires CSC Approval by Scope

## Amount

**Previously Approved Amount:** \$1,900,000

**Increase Amount:** \$3,000,000

**Why are you requesting the PSC amount to be increased?:** To accommodate the new contract amount stemming from the RFP that DEC plans to release.

**Total Amended Amount:** \$4,900,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**Previously Approved Duration (months):** 48

**Duration Increase (months):** 72

**Why are you requesting the PSC duration to be increased:** To accommodate the new contract duration stemming from the RFP that DEC plans to release.

**Total Amended Duration (months):** 120

**First Contract Start Date:** 7/1/2024

**PSC Duration End Date:** 7/1/2034

## Funding

**Funding Source:** City Funds

## Post Union Notification

**Special circumstances related to funding:** No

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** Yes

**Clearly describe scope and detail the services to be performed:** The contractor will continue to help plan and increase the communications capacity for the Department of Early Childhood (DEC), formed by the San Francisco Children and Families First Commission, dba First 5 San Francisco (F5SF) and the San Francisco Office of Early Care & Education (OECE). As DEC increased its staffing, it anticipates that the consultant will play a more direct role with the implementation during the initial phase of this project, and DEC staff members will increase their responsibilities for the communications plan implementation accordingly. Key deliverables include, but are not limited to:

1. Planning, designing, implementing, and evaluating digital and place-based advertising campaigns to raise awareness of DEC programs and services to the public.
2. Support for the planning, design, and implementation of digital collateral, including photography and videography, editing, and publication.
3. Writing, design, and publication support for DEC print collateral, such as annual reports, briefing materials, and program brochures.
4. Support for media and community outreach events, including program planning, and design, creation, and acquisition of materials, supplies, and equipment to increase public engagement with DEC.
5. Market research support, to assist DEC in reaching its intended audiences and understanding how to serve them more effectively.

**Has your response to any of the following questions changed?:** No

**Why are these services required and what are the consequences of denial?:** These services are required to effectively execute updated communications and marketing strategies that support organizational goals; denial would result in reduced outreach effectiveness, missed engagement opportunities, and potential delays in achieving key community-based project objectives.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The required services demand specialized expertise and flexibility that are more efficiently obtained through a consultant, allowing the City to access targeted skills on a project basis without the long-term



costs, training requirements, and staffing commitments associated with hiring.

## Board and Commission Approvals

**Has your response to any of the following questions changed?:** No

**Will any contracts under this PSC require department Commission approval:** Department does not have a Commission

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Has your response to any of the following questions changed?:** No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:** The services are needed on an as-needed, intermittent, and periodic basis to address fluctuating project demands, seasonal campaign schedules, and specific strategic initiatives, ensuring resources are engaged only when required for maximum efficiency and cost-effectiveness.

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** The services require advanced expertise in strategic communications planning, brand development, public relations, digital marketing, and content creation, along with proficiency in data-driven campaign management, stakeholder engagement, and media outreach.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** Creating a new job classification is not feasible because the required services are project-specific, intermittent, and variable in scope, making it inefficient to establish a permanent position. Additionally, the specialized skills needed are highly flexible and demand short-term engagement, which cannot be justified under a full-time, long-term role within the City's existing staffing structure.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** Yes

**Q5e1) Clearly describe and detail the training activities:** The training will include workshops, hands-on exercises, and one-on-one coaching to build skills in communications strategy, content

creation, and digital marketing. Training materials and assessments will be provided to ensure knowledge retention and consistent application of best practices.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** The work will not be transitioned back to the City because it requires specialized, intermittent expertise that is not available within current staff, and the project-based nature of the services makes it inefficient to absorb into permanent City roles. Engaging a consultant ensures flexibility, continuity, and access to targeted skills without long-term staffing commitments.

**Additional information to support your request (Optional):**

**Union Notifications**

**Have the Job Classes/Labor Unions changed?:** No

**Job Class(es):** 1823 - Senior Administrative Analyst, 9252 - Communications Specialist

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 351 - Municipal Exec Assoc-Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, staff@sfmea.com

**Union Review Sent On:** 12/22/2025

**Union Review End Date:** 1/1/2026

**Union Review Duration Met On:** 1/1/2026

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** DEC

**Submitted By:** Matthew Ahn

**Department Coordinator:** Matthew Ahn,  
mahn@sfgov.org

**Project Manager:** Tracy Fong

**ServiceNow Number:** DHRPSC0002548

**Version:** 1.01

**Version Type:** Amendment

**Legacy PSC #:** 46213-23/24

**Brief description of proposed work:** Communications Consulting Services

**Reason for the Request for Amendment:** The amendment is requested to ensure that the scope, timelines, and deliverables of the communications and marketing consulting services align with the evolving needs and priorities of our organization.

## Amount

**Previously Approved Amount:** \$1,600,000

**Increase Amount:** \$300,000

**Why are you requesting the PSC amount to be increased?:** The PSC amount increase is requested to cover additional deliverables and resources needed to meet updated communications and marketing objectives.

**Total Amended Amount:** \$1,900,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**Previously Approved Duration (months):** 48

**Duration Increase (months):** 0

**Total Amended Duration (months):** 48

**First Contract Start Date:** 7/1/2024

**PSC Duration End Date:** 7/1/2028

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** No

**Clearly describe scope and detail the services to be performed:** Original coordinator's email: MAhn@sfgov.org.

The contractor will continue to help plan and implement a robust and comprehensive communications strategy for the new Department of Early Childhood (DEC), formed by the San Francisco Children and Families First Commission, dba First 5 San Francisco (F5SF) and the San Francisco Office of Early Care & Education (OECE). As DEC increased its staffing, it anticipates that the consultant will play a more direct role with the implementation during the initial phase of this project, and DEC staff members will increase their responsibilities for the communications plan implementation accordingly. Key deliverables include, but are not limited to:

1. Perform comprehensive assessment of existing OECE, First 5 SF, and DEC communications content and infrastructure including collaboration with former communications consulting firm as needed to create a smooth transition.
2. Develop and implement a multi-stakeholder planning process culminating in a comprehensive plan for communications and community engagement for DEC.
3. Assist ongoing launch of DEC brand identity through electronic, print, and other media and communications and development.
4. Increase DEC communications capacity in identified areas of need.

**Why are these services required and what are the consequences of denial?:** These services are required to effectively execute updated communications and marketing strategies that support organizational goals; denial would result in reduced outreach effectiveness, missed engagement opportunities, and potential delays in achieving key community-based project objectives.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** The required services demand specialized expertise and flexibility that are more efficiently obtained through a consultant, allowing the City to access targeted skills on a project basis without the long-term costs, training requirements, and staffing commitments associated with hiring.

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Department does not have a Commission

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:** The services are needed on an as-needed, intermittent, and periodic basis to address fluctuating project demands, seasonal campaign schedules, and specific strategic initiatives, ensuring resources are engaged only when required for maximum efficiency and cost-effectiveness.

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** The services require advanced expertise in strategic communications planning, brand development, public relations, digital marketing, and content creation, along with proficiency in data-driven campaign management, stakeholder engagement, and media outreach.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** Creating a new job classification is not feasible because the required services are project-specific, intermittent, and variable in scope, making it inefficient to establish a permanent position. Additionally, the specialized skills needed are highly flexible and demand short-term engagement, which cannot be justified under a full-time, long-term role within the City's existing staffing structure.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** Yes

**Q5e1) Clearly describe and detail the training activities:** The training will include workshops, hands-on exercises, and one-on-one coaching to build skills in communications strategy, content creation, and digital marketing. Training materials and assessments will be provided to ensure knowledge retention and consistent application of best practices.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** The work will not be transitioned back to the City because it requires specialized, intermittent expertise that is not available within current staff, and the project-based nature of the services makes it inefficient to absorb into permanent City roles. Engaging a consultant ensures flexibility, continuity, and access to targeted skills without long-term staffing commitments.

**Additional information to support your request (Optional):**

## Union Notifications

### Post Union Notification



**Have the Job Classes/Labor Unions changed?:**

**Job Class(es):** 1823 - Senior Administrative Analyst, 9252 - Communications Specialist

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 351 - Municipal Exec Assoc-Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, staff@sfmea.com

**Union Review Sent On:** 8/26/2025

**Union Review End Date:** 9/5/2025

**Union Review Duration Met On:** 9/5/2025

## PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: Department of Early Childhood -- DEC Dept. Code: DECType of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # \_\_\_\_\_)Type of Approval: ☐ Expedited ☒ Regular (☐ Omit Posting)Type of Service: Communications Consulting ServicesFunding Source: Local PSC Duration: 4 years  
PSC Amount: \$1,600,000 PSC Est. Start Date: 07/01/2022 PSC Est. End Date: 06/30/2026**1. Description of Work****A. Scope of Work:**

The contractor will continue to help plan and implement a robust and comprehensive communications strategy for the new Department of Early Childhood (DEC), formed by the San Francisco Children and Families First Commission, dba First 5 San Francisco (F5SF) and the San Francisco Office of Early Care & Education (OECE). As DEC increased its staffing, it anticipates that the consultant will play a more direct role with the implementation during the initial phase of this project, and DEC staff members will increase their responsibilities for the communications plan implementation accordingly. Key deliverables include, but are not limited to:

1. Perform comprehensive assessment of existing OECE, First 5 SF, and DEC communications content and infrastructure including collaboration with former communications consulting firm as needed to create a smooth transition.
2. Develop and implement a multi-stakeholder planning process culminating in a comprehensive plan for communications and community engagement for DEC.

**B. Explain why this service is necessary and the consequence of denial:**

This specialized service will continue building a cohesive DEC brand and effectively communicate to the public health and human welfare services in order to promote well-being, self-sufficiency, and positive outcomes. Denial of this service may prevent eligible families with young children from accessing needed services.

**C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.**

This service has been provided in the past under the Department of Human Services, we are submitting a new PSC request under the newly formed DEC department. Since this has been initiated under the Department of Human Services, the start date was July 1, 2022. Please refer to PSC No. 48540 - 21/22 for more information.

**D. Will the contract(s) be renewed? Yes, based on funding and performance**

**2. Union Notification:** On 01/19/2024, the Department notified the following employee organizations of this PSC/RFP request: Municipal Executive Association; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21; SEIU 1021 Miscellan

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**PSC# 46213 - 23/24

DHR Analysis/Recommendation:

04/15/2024

Commission Approval Required

DHR Approved for 04/15/2024

Approved by Civil Service Commission

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise:

The Contractor must demonstrate expertise in developing and implementing plans and strategies that result in a greater level of general public participation and information dissemination in a similar metropolitan area. Must possess specialized expertise in facilitating meetings, public participation planning, collateral development, digital media, public engagement and communications related to public services.

B. Which, if any, civil service class(es) normally perform(s) this work?

1823,9252,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

No, this service is information-based.

**4. Why Classified Civil Service Cannot Perform**

A. Explain why civil service classes are not applicable:

This is a temporary project that is immediately needed. This work is time sensitive and requires subject matter experts in both public participation and brand development currently not available through Civil Service positions.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No, this service is a short-term project so it is not feasible to adopt a new civil service class.

**5. Additional Information (if "yes", attach explanation)**

**YES NO**

- |  |                                     |                                     |
|--|-------------------------------------|-------------------------------------|
| A. Will the contractor directly supervise City and County employee?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| B. Will the contractor train City and County employee?   | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| The scope of work will include limited specific training SF Benefits employee                                |                                     |                                     |
| C. Are there legal mandates requiring the use of contractual services?                                       | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| D. Are there federal or state grant requirements regarding the use of contractual services?                  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| E. Has a board or commission determined that contracting is the most effective way to provide this service?  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |

☒ THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD ON 03/19/2024 BY:

Name: Matthew Ahn Phone: 6286523063 Email: MAhn@sfgov.org

Address: 1650 Mission Street, Suite 312 San Francisco, CA, 94103

List of Previously Approved Contracts for Similar Services (Measured 3 years from the PSC Submission Date)

Instructions:

- Step 1: Download and save this template to your desktop.
- Step 2: Complete the fields below.
- Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

Document Content:

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

Dept Acronym:	DEC
Dept Name:	Department of Early Childhood
PSC Coordinator Name:	Matthew Ahn
PSC Coordinator Email:	Mahn@sfgov.org
PSC ServiceNow Record No.:	DHRPSC0002548

Brief Description of Services Rendered			
PSC Contract ID	Contract Start Date	Contract End Date	Contract Not to Exceed Amount
1000026422	7/1/2022	6/30/2026	\$1,600,000
PSC ServiceNow Record Number (if PSC approval was obtained)			
DHRPSC0002548			
The contractor will continue to help plan and implement a robust and comprehensive communications strategy for the Department of Early Childhood (DEC). Key deliverables include, but are not limited to:			
1. Perform comprehensive assessment of existing DEC communications content and infrastructure including collaboration with former communications consulting firm as needed to create a smooth transition.			
2. Develop and implement a multi-stakeholder planning process culminating in a comprehensive plan for communications and community engagement for DEC.			
3. Assist ongoing launch of DEC brand identity through electronic, print, and other media and communications and development.			
4. Increase DEC communications capacity in identified areas of need.			

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** DPH

**Submitted By:** Reanna Albert

**Department Coordinator:** Reanna Albert,  
reanna.albert@sfdph.org

**Project Manager:** Maximilian Rocha

**ServiceNow Number:** DHRPSC0004810

**Version:** 1.01

**Version Type:** Amendment

**Legacy PSC #:** 48652-16/17

**Brief description of proposed work:** Substance Use Disorder (SUD) Treatment Services

**Reason for the Request for Amendment:** DPH is requesting an increase of \$280 million in PSC authority to ensure uninterrupted access to essential Substance Use Disorder (SUD) treatment services. Although contracts for these services have already been executed, a portion of the labor-related funding has not yet been expended due to phased implementation, multi-year contract structures, and ongoing provider onboarding. This requested increase will allow DPH to fully utilize the labor components of existing contracts and prevent disruptions to critical services for vulnerable populations.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount
- Requires CSC Approval by Scope

## Amount

**Previously Approved Amount:** \$367,880,000

**Increase Amount:** \$280,000,000

**Why are you requesting the PSC amount to be increased?:** DPH is requesting an increase of \$280 million in PSC authority to ensure uninterrupted access to essential Substance Use Disorder (SUD) treatment services. Although contracts for these services have already been executed, a portion of the labor-related funding has not yet been expended due to phased implementation, multi-year contract structures, and ongoing provider onboarding. This requested increase will allow DPH to fully utilize the labor components of existing contracts and prevent disruptions to critical services for vulnerable populations.

The SUD services provided under these contracts are essential to:

1. DPH's ability to fulfill its obligation to continue to provide a full continuum of care including Opioid Treatment Program, Outpatient Program, Intensive Outpatient, and Residential SUD Services including Withdrawal Management and Residential Step Down services to beneficiaries in San Francisco.



2. Continue to deliver evidence-based practices and improve coordination with other health systems, including primary care and mental health.

3. Sustain services reaching broad range of San Franciscans in need of substance use services, including justice-involved populations, youth, those who are under-housed or homeless.

Program components include patient engagement and peer support, medication-assisted treatment, withdrawal management, case management, recovery services, and supportive services tailored to adolescents, pregnant women, and parents with dependent children. These services comply with all State Drug MediCal Organized Delivery System regulations and include robust data collection, evaluation, quality improvement, and workforce development components.

Increasing PSC authority will ensure continuity of these critical SUD services, allow providers to continue existing programs, and support improved health outcomes while maintaining program integrity and efficiency.

**Total Amended Amount:** \$647,880,000

**Does contract include items other than services?:** Yes

- Commodities & Equipment: \$167,626,674

## Duration

**Is PSC by Duration or Continuing:** Duration

**Previously Approved Duration (months):** 144

**Duration Increase (months):** 0

**Total Amended Duration (months):** 144

**First Contract Start Date:** 7/1/2017

**PSC Duration End Date:** 7/1/2029

## Funding

**Funding Source:** Federal Funds, State Funds, City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** Yes

**Clearly describe scope and detail the services to be performed:** There is no substantive change to the scope of work. Instead, the purpose of the change is to reflect that this PSC supports continuing these services at existing funding levels.

These services are provided by contractors to continue San Francisco's Drug Medi-Cal Organized Delivery System (DMC-ODS). Initially, the proposed PSC authorized the implementation of ODS

programming in San Francisco, following a solicitation utilized to bring existing services up to the new Federal standards. This organized delivery system ensures that the full continuum of health care services continues to be accessible to Medicaid eligible individuals with substance use disorders. Its purpose is to provide the appropriate level of care to meet the needs of Drug/MediCal (DMC) beneficiaries while decreasing other system health care costs. Critical ongoing elements include:

1. Continue to deliver a full continuum of care including Opioid Treatment Program, Outpatient Program, Intensive Outpatient, and Residential SUD Services, including Withdrawal Management and Residential Step Down services.
2. Continue to deliver evidence-based practices and improve coordination with other health systems, including primary care and mental health.
3. Sustain services reaching broad range of San Franciscans in need of substance use services, including justice-involved populations, youth, those who are under-housed or homeless.

Services will continue to prioritize the following:

-Services to specific underserved and priority populations, including persons who are Black/African American, homeless, incarcerated or involved with the criminal/juvenile justice systems/Drug Court, adolescents aged 10-18 years old, Transitional Aged Youth (TAY) aged 18-24 years old, Lesbian/Gay/Bisexual/Transgender/Queer/Questioning/Intersex/Ally/Two-Spirit, and Pregnant/Parenting women with children.

-Under resourced geographic areas, including Hayes Valley/Tenderloin/North of Market, South of Market, Bernal Heights/Inner Mission/94110, Bayview Hunter's Point/94124, and Southeast/Visitation Valley/Sunnydale/94134.

-Opportunities to enhance patient engagement, peer support, medication assisted treatment, case management, and recovery services and supports ancillary treatment and outreach services.

**Why are these services required and what are the consequences of denial?:** In accordance with Federal Centers for Medicare and Medicaid (CMS) regulations, State Department of Healthcare Services (DHCS) sets forth Network Adequacy Standards where San Francisco City and County as a SUD Health Plan (i.e. Organized Delivery System or ODS) must provide a full continuum of services, including Opioid Treatment Program, Outpatient Program, Intensive Outpatient, and Residential SUD Services, including Withdrawal Management and Residential Step Down services in a manner that is sufficient to meet the needs of all Drug Medi-Cal (DMC) beneficiaries of the county within expected time and distance standards. DHCS may impose administrative and/or monetary sanctions for failure to comply with Network Adequacy Certification requirements.

**Has your department contracted out these services in the last three years?:** Yes. See

attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 20

**Why have you not hired City employees to perform the services?:** Each time new service categories or initiatives are established, the department evaluates its ability to initiate the service as a civil service program. The department hired civil service employees to staff the Bringing Expanded Access to Medication for Opioid Use Disorder program which is a relatively new program that the department was able to establish as a civil service program. To meet the broad range of required DMC/ODS services, the department relied upon the existence of its long standing contractual relationships, and would absolutely not have been able to implement (or continue) the Drug/MediCal Organized Delivery System (ODS) in San Francisco without reliance on the network of existing providers. The City does not currently have the facilities (including buildings for residential services with necessary licenses and certifications) or capacity to provide these services, which provide an integral part of the City's system of care for people with substance abuse disorder diagnoses. Additionally, due to the budget forecast in San Francisco, there is future funding uncertainty.

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Health Commission presentation will be required.

**Will any contracts under this PSC require Board of Supervisors approval:** Yes

**Provide details related to contracts for which BOS approval will be required?:** Board of Supervisors approval will be required.

### Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:** No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** Yes

**Q4a) What facilities or equipment does the City lack that contractor possesses?:** The City does not have the facilities (including buildings for residential services and outpatient clinics, with the necessary licenses and certifications) or capacity to provide the full range of required services under DMC ODS, which provide an integral part of the City's system of care for people with substance abuse disorder diagnoses.

**Does the dept plan to acquire the facilities/equipment to perform the services?:** No

**Explain why:** Contractors currently provide their own treatment and office space, including buildings for residential treatment, as licensed/required by the State.

**Additional information to support your request (Optional):** Contractors must provide services that are responsive trauma-informed care with cultural humility in a wholistic, person-centered, multi-dimensional, community focused manner. All providers must also meet State and City requirements for Drug Medi-Cal certification, harm reduction, cultural and linguistic competency, Americans with Disabilities Act and other access requirements, as well as have the ability to serve priority service populations and geographic service areas.

## Union Notifications

### Have the Job Classes/Labor Unions changed?:

**Job Class(es):** 2110 - Medical Records Clerk, 2305 - Psychiatric Technician, 2587 - Health Worker 3, 2908 - Sen Hospital Eligibility Wrkr, 2593 - Health Program Coordinator 3, 2930 - Behavioral Health Clinician, 2243 - Sup Psychiatric Physician Spec, 2320 - Registered Nurse, 2591 - Health Program Coordinator 2, 2586 - Health Worker 2, 2913 - Program Specialist, 2328 - Nurse Practitioner, 2242 - Sr Psychiatric Physician Spec, 2585 - Health Worker 1, 2910 - Social Worker, 2574 - Clinical Psychologist, 2932 - Sr Behavioral Health Clinician, 2589 - Health Program Coordinator 1, 2931 - Marriage, Family & Child Cnslr, 2588 - Health Worker 4, 2920 - Medical Social Worker, 2822 - Health Educator

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 250 - SEIU 1021, 164 - Physician/Dentists 8-CC, UAPD, 791 - SEIU 1021 Staff & Per Diem RNs, 535 - SEIU 1021, 163 - Physician/Dentists 11-AA, UAPD, 790 - SEIU, Local 1021, Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, PSCreview@seiu1021.org, pking@uapd.com, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, PSCreview@seiu1021.org

**Union Review Sent On:** 12/23/2025

**Union Review End Date:** 1/2/2026

**Union Review Duration Met On:** 1/2/2026

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 48652 - 16/17)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Substance Use Disorder (SUD) Treatment Services

Funding Source: State Drug MediCal, General Fund

PSC Original Approved Amount: \$192,080,000 PSC Original Approved Duration: 07/01/17 - 06/30/22 (5 years)

PSC Mod#1 Amount: \$175,800,000 PSC Mod#1 Duration: 07/01/22-06/30/27 (5 years 1 day)

PSC Mod#2 Amount: no amount added PSC Mod#2 Duration: 07/01/27-06/30/28 (1 year 1 day)

PSC Mod#3 Amount: no amount added PSC Mod#3 Duration: 07/01/28-06/30/29 (1 year)

PSC Cumulative Amount Proposed: \$367,880,000 PSC Cumulative Duration Proposed: 12 years 2 days

**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

These services will be provided by contractors responding to a new RFP to create a Drug Medi-Cal Organized Delivery System (DMC-ODS) pilot, which tests a new paradigm for the organized delivery of health care services for Medicaid eligible individuals with a substance use disorder. Its purpose is to demonstrate how such a system will increase the success of DMC beneficiaries while decreasing other system health care costs. Critical elements include:

--Providing a continuum of care modeled after the American Society of Addiction Medicine (ASAM) Criteria for Substance Use Disorder (SUD) treatment services, which describes specific service levels within Opioid Treatment, Intensive Outpatient, and Residential SUD services;

--Increasing local control and accountability, creating utilization controls, and increasing program oversight and integrity;

--Requiring evidence-based practices and increasing coordination with other systems of care, including primary care and mental health;

--Expanding the SUD treatment workforce by including Licensed Practitioners of Healing Arts; and

--Providing more intensive services for the criminal justice population.

Services will:

--Prioritize services to specific populations, including persons who are Black/African American, homeless, incarcerated or involved with the criminal/juvenile justice systems/Drug Court, adolescents aged 10-18 years old, Transitional Aged Youth (TAY) aged 18-24 years old, Lesbian/Gay/Bisexual/Transgender/Queer/Questioning/Intersex/Ally/Two-Spirit, Pregnant/Parenting women with children, and/or whose primary substance is alcohol.

--Prioritize services in specific geographic areas, including Hayes Valley/Tenderloin/North of Market, South of Market, Bernal Heights/Inner Mission/94110, Bayview Hunter's Point/94124, and Southeast/Visitation Valley/Sunnydale/94134

--Include patient engagement and peer support, medication assisted treatment, withdrawal management, case management, and recovery services and supports, with appropriate integration of adolescent-specific



considerations, pregnant women and women with dependent children residential treatment requirements, evidence-based practices, DMC-ODS compliant policies and regulations, electronic health records and data systems, evaluation and quality improvement, workforce development and staffing, ancillary treatment and outreach services.

B. Explain why this service is necessary and the consequence of denial:

The State funding that San Francisco receives for Substance Use Disorder treatment is now the result of California's Medi-Cal waiver, which received Federal approval August 2015 and was rolled out to counties in steps throughout 2016. This waiver allows counties to support a much wider range of options to people with low incomes who are on Medi-Cal. Without this funding, San Francisco's funding for SUD treatment would be severely limited and people needing these services would likely be untreated and/or require significant increases in repetitive primary care and mental health treatment, experiencing worsening symptoms, requiring more expensive treatment, and escalating mortality rates.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

PSC 48652-16/17

D. Will the contract(s) be renewed?

Yes, as funding is available.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Department expects the need for the services to continue.

**2. Reason(s) for the Request**

A. Display all that apply

☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

The City does not have the facilities (including buildings for residential services) or capacity to provide these services, which provide an integral part of the City's system of care for people with substance abuse disorder diagnoses.

B. Reason for the request for modification:

To align the duration with the anticipated contract term.

**3. Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: Contractors must provide services responsive to the requirements and goals of the new DMC-ODS pilot founded on values of a trauma-informed system of care, the practice of cultural humility and of whole person care, utilizing multi-dimensional assessments as specified by the American Society of Addiction Medicine (ASAM) criteria and an evidence-based, clinically/outcomes-driven treatment model that is person-centered, based on the person's illness and level of functioning, operating within the broad and flexible continuum of care, providing individualized treatment that can be stepped up or down to different care levels, and implemented with an interdisciplinary team approach in collaboration with the person's medical home, behavioral health clinics, and other services providers. All providers must also meet State and City requirements for Drug Medi-Cal certification, harm reduction, cultural and linguistic competency, Americans with Disabilities Act and other access requirements, as well as have the ability to serve priority service populations and geographic service areas.

B. Which, if any, civil service class(es) normally perform(s) this work? 2110, Medical Records Clerk; 2305, Psychiatric Technician; 2320, Registered Nurse; 2328, Nurse Practitioner; 2552, Dir of Act, Therapy & Vol

Svcs; 2574, Clinical Psychologist; 2585, Health Worker 1; 2586, Health Worker 2; 2587, Health Worker 3; 2588, Health Worker 4; 2589, Health Program Coordinator 1; 2591, Health Program Coordinator 2; 2593, Health Program Coordinator 3; 2822, Health Educator; 2908, Hospital Eligibility Worker; 2910, Social Worker; 2913, Program Specialist; 2915, Program Specialist Supervisor; 2920, Medical Social Worker; 2930, Psychiatric Social Worker; 2935, Sr Marriage, Fam & Cld Cnslr;

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractors will provide their own treatment and office space, including buildings for residential treatment, as licensed/required by the State.

**4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

Not Applicable

**5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.

Existing civil service classes are already overburdened with the current maximum level of delivery of local government-based services which can be provided by the City and County. The remainder of the substance use disorder treatment services within the City's system of care must be based in and often is best performed by community based organizations with the experience, focus, and often the trust of and credibility in the community, who are able to operate the flexible, grassroots-oriented programs.

- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, there are existing classifications performing this work, however, the demand for services exceeds the capacity of City facilities to provide them, so the City uses contractors to meet as many of the clients' needs as possible.

**6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
The purpose of the services is does not include formal training of civil service staff, however, there may be transfer of knowledge through City staff's close coordination and collaboration with providers.

- C. Are there legal mandates requiring the use of contractual services?  
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.

- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No

- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
Please see attached list of current contractors.

**7. Union Notification: On 05/30/24, the Department notified the following employee organizations of this PSC/RFP request:**

SEIU Local 1021; SEIU 1021 Miscellaneous; Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Management & Superv Local 21; Architect & Engineers, Local 21;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Reanna Albert Phone: 628-271-6178 Email: reanna.albert@sfdph.org

Address: 101 Grove Street, Room 307, San Francisco, CA 94103

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 48652 - 16/17

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 09/06/2024

## List of Previously Approved Contracts for Similar Services (Measured 3 years from the PSC Submission)

### Instructions:

Step 1: Download and save this template to your desktop.

Step 2: Complete the fields below.

Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

### Document Content:

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. If there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

Dept Acronym:	DPH
Dept Name:	Department of Public Health
PSC Coordinator Name:	Reanna Albert
PSC Coordinator Email:	<a href="mailto:reanna.albert@sfdph.org">reanna.albert@sfdph.org</a>
PSC ServiceNow Record No.:	DHRPSC0004810

PS Contract ID	Contract Start Date	Contract End Date	Contract Not to Exceed Amount	PSC ServiceNow Record Number (if PSC approval was obtained)	Brief Description of Services Rendered
1000002816	7/2/2015	6/30/2019	\$566,925	48652-16/17	Provide substance use disorder treatment services
1000005928	7/1/2017	12/31/2024	\$7,057,916	48652-16/17	Provide substance use disorder treatment services
1000006000	7/1/2017	6/30/2024	\$38,721,744	48652-16/17	Provide substance use disorder treatment services
1000007566	7/1/2018	6/30/2027	\$6,867,004	48652-16/17	Provide substance use disorder treatment services
1000007692	7/1/2017	12/31/2023	\$9,960,904	48652-16/17	Provide substance use disorder treatment services
1000007730	1/1/2018	6/30/2027	\$20,541,061	48652-16/17	Provide substance use disorder treatment services
1000007954	7/1/2017	6/30/2024	\$9,798,863	48652-16/17	Provide substance use disorder treatment services
1000008078	1/1/2018	12/31/2018	\$1,453,434	48652-16/17	Provide substance use disorder treatment services
1000008642	1/1/2018	12/31/2018	\$407,541	48652-16/17	Provide substance use disorder treatment services
1000008643	7/1/2017	6/30/2026	\$15,580,935	48652-16/17	Provide substance use disorder treatment services
1000008696	7/1/2017	12/31/2025	\$15,438,048	48652-16/17	Provide substance use disorder treatment services
1000009152	7/1/2017	6/30/2027	\$9,301,740	48652-16/17	Provide substance use disorder treatment services
1000009607	7/1/2018	6/30/2023	\$3,302,806	48652-16/17	Provide substance use disorder treatment services
1000009751	7/1/2017	6/30/2022	\$84,000	48652-16/17	Provide substance use disorder treatment services
1000009821	7/1/2018	6/30/2027	\$98,283,105	48652-16/17	Provide substance use disorder treatment services
1000009940	7/1/2018	6/30/2027	\$120,789,738	48652-16/17	Provide substance use disorder treatment services
1000010020	7/1/2018	6/30/2028	\$42,052,558	48652-16/17	Provide substance use disorder treatment services
1000010136	7/1/2018	6/30/2027	\$87,031,676	48652-16/17	Provide substance use disorder treatment services
1000010302	7/1/2018	6/30/2024	\$9,990,842	48652-16/17	Provide substance use disorder treatment services
1000010457	7/1/2018	6/30/2028	\$305,358,044	48652-16/17	Provide substance use disorder treatment services
1000010465	7/1/2018	6/30/2027	\$45,226,998	48652-16/17	Provide substance use disorder treatment services
1000010693	7/1/2018	6/30/2023	\$2,420,915	48652-16/17	Provide substance use disorder treatment services
1000010816	7/1/2018	6/30/2023	\$2,524,821	48652-16/17	Provide substance use disorder treatment services
1000010832	7/1/2018	6/30/2027	\$5,288,731	48652-16/17	Provide substance use disorder treatment services
1000010841	7/1/2018	6/30/2027	\$9,987,603	48652-16/17	Provide substance use disorder treatment services
1000010972	7/1/2018	6/30/2027	\$7,929,023	48652-16/17	Provide substance use disorder treatment services
1000011177	7/1/2018	6/30/2027	\$17,598,422	48652-16/17	Provide substance use disorder treatment services
1000011339	7/1/2018	6/30/2027	\$751,801	48652-16/17	Provide substance use disorder treatment services
1000011493	7/1/2018	6/30/2028	\$19,635,695	48652-16/17	Provide substance use disorder treatment services
1000011970	7/1/2018	6/30/2027	\$8,755,524	48652-16/17	Provide substance use disorder treatment services
1000012594	7/1/2018	6/30/2019	\$129,349	48652-16/17	Provide substance use disorder treatment services
1000015738	7/1/2019	12/31/2024	\$9,360,727	48652-16/17	Provide substance use disorder treatment services
1000017171	7/1/2021	6/30/2025	\$9,875,729	48652-16/17	Provide substance use disorder treatment services
1000018358	7/1/2020	12/31/2022	\$278,720	48652-16/17	Provide substance use disorder treatment services
1000023217	7/1/2023	6/30/2027	\$287,5095	48652-16/17	Provide substance use disorder treatment services
1000023218	12/1/2023	6/30/2027	\$6,272,000	48652-16/17	Provide substance use disorder treatment services
1000027495	11/16/2022	6/30/2024	\$9,414,414	48652-16/17	Provide substance use disorder treatment services
1000028623	7/1/2023	6/30/2027	\$2,020,148	48652-16/17	Provide substance use disorder treatment services
1000029668	9/1/2023	2/28/2025	\$3,427,200	48652-16/17	Provide substance use disorder treatment services
1000030157	7/1/2023	6/30/2027	\$4,888,733	48652-16/17	Provide substance use disorder treatment services
1000030741	3/1/2024	6/30/2028	\$2,771,044	48652-16/17	Provide substance use disorder treatment services
1000032060	7/1/2024	8/31/2028	\$1,545,600	48652-16/17	Provide substance use disorder treatment services
1000032774	10/1/2024	6/30/2028	\$8,960,000	48652-16/17	Provide substance use disorder treatment services
1000032803	7/1/2024	12/31/2025	\$9,998,919	48652-16/17	Provide substance use disorder treatment services
1000032806	7/1/2024	6/30/2026	\$8,657,844	48652-16/17	Provide substance use disorder treatment services
1000032807	7/1/2024	6/30/2026	\$9,965,347	48652-16/17	Provide substance use disorder treatment services
1000035636	7/1/2025	6/30/2028	\$9,768,847	48652-16/17	Provide substance use disorder treatment services
1000035747	6/2/2025	6/30/2026	\$7,774,934	48652-16/17	Provide substance use disorder treatment services
1000035783	3/15/2025	6/30/2026	\$592,480	48652-16/17	Provide substance use disorder treatment services

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** DPH

**Submitted By:** Reanna Albert

**Department Coordinator:** Reanna Albert,  
reanna.albert@sfdph.org

**Project Manager:** Nikole Trainor

**ServiceNow Number:** DHRPSC0005164

**Version:** 1.01

**Version Type:** Amendment

**Brief description of proposed work:** Community Health Equity and Promotion (CHEP) Program Administration Services

**Reason for the Request for Amendment:** Increase funding to support ongoing services.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount
- Requires CSC Approval by Duration

## Amount

**Previously Approved Amount:** \$4,800,000

**Increase Amount:** \$13,981,169

**Why are you requesting the PSC amount to be increased?:** The original PSC was approved for \$4,800,000 over a 48-month term. At the time of the initial submission, final confirmation of Federal and Grant funding had not yet been received, as those sources were anticipated to experience reductions. However, soon after PSC approval, Community Health Equity & Promotion (CHEP) received confirmation of increased federal grant allocations, as well as reinstated Sugary Drink Distributor Tax (SDDT) and Tobacco Tax revenues. These funds will be used to restore and expand program activities that were originally slated for reduction.

**Total Amended Amount:** \$18,781,169

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**Previously Approved Duration (months):** 48

**Duration Increase (months):** 72

**Why are you requesting the PSC duration to be increased:** To support ongoing services.

**Total Amended Duration (months):** 120

**First Contract Start Date:** 9/1/2025

**PSC Duration End Date:** 9/1/2035



## Funding

**Funding Source:** Federal Funds, State Funds, City Funds

**Special circumstances related to funding:** Yes

**Explain the special circumstances:** This initiative is primarily funded by CDC (Centers for Disease Control and Prevention) Federal and State grants, which require subcontracting with community based organizations (CBOs) that serve priority populations to address health disparities. A Program Administrator ensures grant compliance, expands funding access for grassroots organizations, and provides essential fiscal and operational support.

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** No

**Clearly describe scope and detail the services to be performed:** Contractor will provide general program administration services, financial management and reporting, performance and quality management, management of subcontractor agreements, and as-needed recruitment, onboarding and human resource management. Contractor will also staff public health positions specific to achieving the goals of the Community Health Equity and Promotion (CHEP) programs.

**Has your response to any of the following questions changed?:** No

**Why are these services required and what are the consequences of denial?:** Program Administration services are essential to strengthening community partnerships between the Department of Public Health (DPH) and community-based organizations (CBOs) to effectively address public health disparities. These services ensure that the System of Care meets grant-funded requirements while also facilitating the equitable distribution of health resources to communities disproportionately affected by chronic and infectious diseases. Denial of services will significantly disrupt critical public health programs, leading to an increase in chronic diseases like diabetes and hypertension, the spread of infectious diseases such as HIV and hepatitis due to gaps in care, and worsening health inequities among marginalized populations.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 4

**Why have you not hired City employees to perform the services?:** The work requires specialized cultural competencies and established community relationships that are uniquely held by community-based organizations (CBOs) and individuals with lived experience in the priority populations. Additionally, federal and state grant requirements mandate that a significant portion of funding be allocated to small CBOs.

## Board and Commission Approvals

### Post Union Notification

**Has your response to any of the following questions changed?:** No

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Health Commission approval is required.

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Has your response to any of the following questions changed?:** No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** No

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** These services require specialized cultural competencies and established community relationships that are uniquely held by community-based organizations (CBOs) and individuals with lived experience within the identified priority populations.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** Yes

**Q5c1) Identify the classifications:** 1842 - Management Assistant, 2119 - Health Care Analyst, 2589 - Health Program Coordinator 1

**Q5c2) Does the Department have employees in these classifications?:** Yes

**Q5c3) Why are they not able to perform the services?:** The work requires specialized cultural competencies and established community relationships that are uniquely held by community-based organizations (CBOs) and individuals with lived experience in the priority populations. Additionally, federal and state grant requirements mandate that a significant portion of funding be allocated to small CBOs.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** Training is not a component of this contract.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** This work will not be transitioned to the City to ensure that we continue to follow grant fund requirements.

**Additional information to support your request (Optional):** Per grant requirements, 35% of funding must be allocated to small CBOs with an annual budget of \$300,000 or less, ensuring that resources are directed toward organizations with deep community ties that are best positioned to effectively serve marginalized populations.

## Union Notifications

**Have the Job Classes/Labor Unions changed?:** No

**Job Class(es):** 1842 - Management Assistant, 2119 - Health Care Analyst, 2589 - Health Program Coordinator 1

**Labor Unions:** 021 - Prof & Tech Eng, Local 21, 790 - SEIU, Local 1021, Misc

**Labor Union Email Addresses:** L21pscreview@ifpte21.org, PSCreview@seiu1021.org

**Union Review Sent On:** 12/1/2025

**Union Review End Date:** 12/11/2025

**Union Review Duration Met On:** 12/11/2025

**Instructions:**  
Step 1: Download and save this template to your desktop.  
Step 2: Complete the fields below.  
Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**  
**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below, do not change or alter this template.

Dept Acronym:	DPH
Dept Name:	Department of Public Health
PSC Coordinator Name:	Reanna Albert
PSC Coordinator Email:	<a href="mailto:reanna.albert@sfph.org">reanna.albert@sfph.org</a>
PSC ServiceNow Record Number:	DHRPSC0005164

[illegible]

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** POL

**Submitted By:** Vincent Lee

**Department Coordinator:** Vincent Lee,  
vincent.lee@sfgov.org

**Project Manager:** Art Howard

**ServiceNow Number:** DHRPSC0004741

**Version:** 1.01

**Version Type:** Amendment

**Brief description of proposed work:** The O2X Human Performance program is a wellness program designed specifically for first responders to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands

**Reason for the Request for Amendment:** Amending the contract to extend the duration for 2 years and increase the contract amount

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**Previously Approved Amount:** \$500,000

**Increase Amount:** \$840,250

**Why are you requesting the PSC amount to be increased?:** amending the contract to extend the term 2 years

**Total Amended Amount:** \$1,340,250

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**Previously Approved Duration (months):** 24

**Duration Increase (months):** 24

**Why are you requesting the PSC duration to be increased:** SFPD is amending the contract to extend services for 2 additional years

**Total Amended Duration (months):** 48

**First Contract Start Date:** 1/1/2025

**PSC Duration End Date:** 1/1/2029

## Funding

**Funding Source:** State Funds

**Special circumstances related to funding:** No

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** No

**Clearly describe scope and detail the services to be performed:** The O2X Human Performance program is designed to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands. Along with on-site specialists, virtual resources included in the O2X program are able to extend the bandwidth of the on-site specialists and incorporate resources and education in the areas of nutrition and energy management, mental health, resiliency, and sleep. The O2X Human Performance targets increasing readiness, enhancing resilience, improving retention and extending career longevity for members at every department level.

**Has your response to any of the following questions changed?:** No

**Why are these services required and what are the consequences of denial?:** These services are required to improve the overall health and performance of SFPD members. If these services are denied, SFPD members will not be able to optimize their mental and physical health. Additionally, grant funds given to SFPD will be wasted/unused.

**Has your department contracted out these services in the last three years?:** No

## Board and Commission Approvals

**Has your response to any of the following questions changed?:** No

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

## Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No



**Has your response to any of the following questions changed?:** No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:**

These are as-needed wellness services for SFPD members

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** - NSCA

Certified Strength and Conditioning Specialist (CSCS)

- Injury Risk Reduction and Recovery Specialist: Athletic Trainer (AT)

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** services are as-needed

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** There are no job training services required.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** This is currently an as-needed service

### **Additional information to support your request (Optional):**

#### **Union Notifications**

**Have the Job Classes/Labor Unions changed?:** No

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, jvarga@ibt856.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, president@sfsherriffmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org,

administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org,  
WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org,  
President@sanfranciscodsa.com, staff@sfmea.com, mleach@ibt856.org, ibew6@ibew6.org,  
oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 12/16/2025

**Union Review End Date:** 12/23/2025

**Union Review Duration Met On:** 12/23/2025

**From:** [The Civil Service Commission](#)  
**To:** [Jones, Nicole \(POL\)](#); [Howard, Art \(POL\)](#); [Lee, Vincent \(POL\)](#); [Ashpole, Robert \(POL\)](#); [Yeung, Fannie \(POL\)](#); [Demafeliz, Kristine \(POL\)](#)  
**Subject:** POL [DHRPSC0004741] was approved by CSC on 2024-11-04  
**Date:** Tuesday, November 5, 2024 3:55:47 PM  
**Attachments:** [image](#)  
[image](#)

---



**CIVIL SERVICE COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO**

**NOTICE OF CIVIL SERVICE COMMISSION ACTION**

Hello Vincent Lee,

At its meeting on **2024-11-04 14:00:00 PST**, the Civil Service Commission had for its consideration the POL PSC [DHRPSC0004741].

The Civil Service Commission, APPROVED PSC [DHRPSC0004741] on 2024-11-04.

**CSC Approval Type: Approval Granted**

**Relevant Comments:** Approved PSC #DHRPSC0004741 V0.01 with the condition to revise the PSC document to only include the scope of work and remove the requirement of an endorsement of the contractor by removing the contractor name. (4-1; FX Crowley dissents)

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.

***NOTE: It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.***

**CIVIL SERVICE COMMISSION**

**Sandra Eng | Executive Officer**

**PSC Summary**

=====

**Record Number:** DHRPSC0004741 v 1.0

**Description of Proposed Work:** The O2X Human Performance program is a wellness program designed specifically for first responders to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands

**Request Type:** New

**Approval Type:** CSC Approval

**CSC Review Reason(s):**

✓ CSC Approval by Amount

**Submitting Department:** POL

**Dept PSC Coordinator:** Vincent Lee

**Dept PSC Coordinator Email:** vincent.lee@sfgov.org

**DHR Admin/Reviewer:** Suzanne Choi

**CSC Admin/Reviewer:** Elizabeth Aldana

**PSC Amount:** \$500,000.00

**PSC Duration (months):** 24

**Funding Source(s):** State Funds

**Scope of Work:** The O2X Human Performance program is designed to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands. Along with on-site specialists, virtual resources included in the O2X program are able to extend the bandwidth of the on-site specialists and incorporate resources and education in the areas of nutrition and energy management, mental health, resiliency, and sleep. The O2X Human Performance targets increasing readiness, enhancing resilience, improving retention and extending career longevity for members at every department level.

#### **PSC Justification(s)**

=====

- ✓ Services required on an as-needed, intermittent, or periodic basis
- ✓ Services requiring specialized expertise, knowledge experience

[Take me to the PSC Record](#)

Ref:TIS5439199\_3O5lf2iR3faW8tWqDkfk

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** POL

**Submitted By:** Vincent Lee

**Department Coordinator:** Vincent Lee,  
vincent.lee@sfgov.org

**Project Manager:** Art Howard

**ServiceNow Number:** DHRPSC0004741

**Version:** 0.01

**Version Type:** New

**Brief description of proposed work:** The O2X Human Performance program is a wellness program designed specifically for first responders to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**PSC Amount:** \$500,000

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**PSC Duration (Months):** 24

## Funding

**Funding Source:** State Funds

**Special circumstances related to funding:** No

## Scope of Work

**Clearly describe scope and detail the services to be performed:** The O2X Human Performance program is designed to target areas of risk and improve occupational health outcomes within the department. Through an integrated approach, O2X focuses on reducing the risk of injury and mitigating occupational health issues in the areas of orthopedic injury, cardiac disease risk, obesity and associated health risks amplified by job demands. In addition, the program is

designed to improve fitness and conditioning, increase readiness and resilience, and optimize performance in job-related tasks and demands. Along with on-site specialists, virtual resources included in the O2X program are able to extend the bandwidth of the on-site specialists and incorporate resources and education in the areas of nutrition and energy management, mental health, resiliency, and sleep. The O2X Human Performance targets increasing readiness, enhancing resilience, improving retention and extending career longevity for members at every department level.

**Why are these services required and what are the consequences of denial?:** These services are required to improve the overall health and performance of SFPD members. If these services are denied, SFPD members will not be able to optimize their mental and physical health. Additionally, grant funds given to SFPD will be wasted/unused.

**Has your department contracted out these services in the last three years?:** No

### Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** No

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**  
No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** Yes

**Q5a1) Why are the services required on an as-needed, intermittent and periodic basis?:**  
These are as-needed wellness services for SFPD members

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** - NSCA Certified Strength and Conditioning Specialist (CSCS)  
- Injury Risk Reduction and Recovery Specialist: Athletic Trainer (AT)

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** services are as-needed

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** There are no job training services required.



**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** This is currently an as-needed service

**Additional information to support your request (Optional):**

**Union Notifications**

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** pmendeziamaw@comcast.net, dvickers@iam1414.org, mfinnegan@ibt856.org, administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org, pwilson@twusf.org, mdennis@twusf.org, WOrellana@opcmialocal300.org, djohnson@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org, President@sanfranciscodsa.com, ibew6@ibew6.org, oashworth@ibew6.org, staff@sfmea.com, Christina@sfmea.com, Criss@SFMEA.com, Amit@sfmea.com, local22publicsector@nccrc.org, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, pwilson@twusf.org, mdennis@twusf.org, jb@local16.org, sal@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, nichelle.flentroy@sfcityatty.org, local200twu@sbcglobal.net, rmarenco@twusf.org, staff@sfmea.com, Christina@sfmea.com, Criss@SFMEA.com, Amit@sfmea.com, tracym@sfpoa.org, cyndee@sfpoa.org, leah@sfpoa.org, info@sfpoa.org, joshv@smw104.org, DannyC@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, anthony@dc16.us, charlie@local377.com, ccarr@oe3.org, tneep@oe3.org, mbeauchamp@oe3.org, ccarr@oe3.org, mbeauchamp@oe3.org, tneep@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, rooferslocal40@gmail.com, salvlocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, epeterson@cirseiu.org, abush@cirseiu.org, snaranjo@cirseiu.org, emathurin@cirseiu.org, lvega@nccrc.org, mespinoza2@nccrc.org, cmoyer@nccrc.org, president@twusf.org, pwilson@twusf.org, mdennis@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, sfdpoa@icloud.com, b.rod07@yahoo.com, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org, pwilson@twusf.org, mdennis@twusf.org, president@sfsheriffmsa.org, cjohnson@bac3-ca.org, stevek@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, Christina@sfmea.com, Criss@SFMEA.com, Amit@sfmea.com, local22publicsector@nccrc.org

**Union Review Sent On:** 10/4/2024

**Union Review End Date:** 10/11/2024

**Union Review Duration Met On:** 10/11/2024

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Shamica Jackson

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Ilan Fussman

**ServiceNow Number:** DHRPSC0003558

**Version:** 1.01

**Version Type:** Amendment

**Legacy PSC #:** 45858-23/24

**Brief description of proposed work:** Power Optimization Tool

**Reason for the Request for Amendment:** This amendment is needed to ensure that CleanPowerSF has an agreement in place to provide these critical battery optimization tools for planned battery projects. This amendment adds battery optimization tools for up to six additional battery projects and includes a one-time fee that will be triggered if we change scheduling coordinators for our battery systems. This amendment increases the PSC amount by \$1,636,512.00, bringing the Total Amended PSC amount to \$2,524,512.00.

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**Previously Approved Amount:** \$888,000

**Increase Amount:** \$1,636,512

**Why are you requesting the PSC amount to be increased?:** The current Agreement provides battery optimization tools for three large battery energy storage systems that CleanPowerSF has under contract. These systems are currently operational and charge during solar energy producing hours so they can provide energy when solar is not available. The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CPSF to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements and operate the batteries in the most economically efficient manner, CleanPowerSF must procure a battery optimization tool for these types of projects. This amendment is needed to ensure that CleanPowerSF has an agreement in place to provide these critical battery optimization tools for planned battery projects. This amendment adds battery optimization tools for up to six additional battery projects and includes a one-time fee that will be triggered if we change scheduling coordinators for our battery systems. This amendment increases the PSC amount by \$1,636,512.00, bringing the Total Amended PSC amount to \$2,524,512.00.

**Total Amended Amount:** \$2,524,512

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration  
**Previously Approved Duration (months):** 48  
**Duration Increase (months):** 0  
**Total Amended Duration (months):** 48  
**First Contract Start Date:** 4/14/2025  
**PSC Duration End Date:** 4/14/2029

## Funding

**Funding Source:** City Funds  
**Special circumstances related to funding:** No

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** No

**Clearly describe scope and detail the services to be performed:** Original coordinator's email: shale@sfgwater.org.

CleanPowerSF (CPSF) currently has contracts with two large battery storage systems as part of its renewable energy compliance requirements. The contract amount for this contract will go towards software licensing and overhead costs. The batteries are operated by two different vendors and charge during solar energy producing hours so they can provide energy when solar is not available. The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CPSF to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements, CPSF must procure a battery optimization tool for both projects and other future battery installations.

**Why are these services required and what are the consequences of denial?:** The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CPSF to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements, CPSF must procure a battery optimization tool for both projects and other future battery installations.

**Has your department contracted out these services in the last three years?:** No

## Board and Commission Approvals

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Contracts over \$1,170,000.00

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** No

**Q5 - Are the services required on a temporary basis or on a long-term basis?:** Long-term Basis

**Q5a) Are the services required on an as-needed, intermittent, or periodic basis?:** No

**Q5b) Do the services require specialized expertise, knowledge experience?:** Yes

**Q5b1) Describe the specialized skills and expertise required to perform the services:** This battery optimization software is necessary to submit bids, utilizing CleanPowerSF's battery storage projects, into the CAISO using complex forecast analysis, in compliance with CAISO Tariff.

**Q5c) Does City have classifications with the required specialized skills or expertise?:** No

**Q5c1) Should City develop a classification to perform these services?:** No

**Q5c2) Explain why new a job classification is not feasible:** None, Battery optimization on software must be CAISO compliant and able to serve both batteries despite the different manufacturers. No current civil service class exists that can create or maintain this software.

**Q5d) Will contractor directly supervise City employees?:** No

**Q5e) Will contractor train City employees?:** No

**Q5e1) Explain why training of City employees is not required:** No training will be provided, as the battery optimization on software will utilize tools and software which holds internal company intellectual property.

**Q5f) Is there a plan to transition this work back to the City?:** No

**Q5f1) Explain why the work will not be transitioned back to the City:** No, due to the complexity of the software and intellectual property, this can not be transitioned back to the City.

**Additional information to support your request (Optional):**

### Union Notifications

**Have the Job Classes/Labor Unions changed?:**

**Job Class(es):** -None- - None Selected

**Labor Unions:** No Union Selected -

**Labor Union Email Addresses:** anthony@dc16.us, charlie@local377.com, mbeauchamp@oe3.org, ccarr@oe3.org, pking@uapd.com, pfinn@ibt856.org, mleach@ibt856.org, plangrooferslocal40@gmail.com, laborers261@gmail.com, nick@dc16.us, PSCreview@seiu1021.org, lvega@nccrc.org, president@twusf.org, PSCreview@seiu1021.org, PSCreview@seiu1021.org, pking@uapd.com, mleach@ibt856.org, cpark@local39.org, jvarga@ibt856.org, PSCreview@seiu1021.org, L21pscreview@ifpte21.org, president@twusf.org,

### Post Union Notification

president@sfsheriffmsa.org, cjohnson@bac3-ca.org, mhenneberry@teamsters853.org, staff@sfmea.com, mleach@ibt856.org, laborers261@gmail.com, president@twusf.org, jb@local16.org, local22publicsector@nccrc.org, john.lenny@sfgov.org, sfcwupresidentjmleonard@yahoo.com, local200twu@sbcglobal.net, staff@sfmea.com, Louis@sfpoa.org, joshv@smw104.org, administration@sffdlocal798.org, PSCreview@seiu1021.org, pmendeziamaw@comcast.net, dvickers@iam1414.org, administration@sffdlocal798.org, larryjr@ualocal38.org, president@twusf.org, WOrellana@opcmialocal300.org, L21pscreview@ifpte21.org, PSCreview@seiu1021.org, President@sanfranciscodsa.com, staff@sfmea.com, mleach@ibt856.org, ibew6@ibew6.org, oashworth@ibew6.org, sfdpoa@yahoo.com

**Union Review Sent On:** 12/23/2025

**Union Review End Date:** 12/30/2025

**Union Review Duration Met On:** 12/30/2025

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # \_\_\_\_\_)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Power Optimization Tool

Funding Source: 198644-24750-10000-10026777-0001

PSC Duration: 4 years 1 day

PSC Amount: \$888,000

**1. Description of Work**

**A. Scope of Work/Services to be Contracted Out:**

CleanPowerSF (CPSF) currently has contracts with two large battery storage systems as part of its renewable energy compliance requirements. The contract amount for this contract will go towards software licensing and overhead costs. The batteries are operated by two different vendors and charge during solar energy producing hours so they can provide energy when solar is not available. The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CPSF to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements, CPSF must procure a battery optimization tool for both projects and other future battery installations.

**B. Explain why this service is necessary and the consequence of denial:**

This battery optimization software is necessary to submit bids, utilizing CleanPowerSF's battery storage projects, into the CAISO using complex forecast analysis, in compliance with CAISO Tariff. The software integrates with third party assets, and must be compliant with the Operating Parameters, Business Practice Manuals, and Applicable Law. Battery optimization software to submit bids/offers using real-time site telemetry and market signals to generate revenue must be CAISO compliant and able to serve both batteries despite the different manufacturers. Denial of this service will cause CleanPowerSF to not provide the information the CAISO is demanding, forcing CleanPowerSF unable to avoid fines for failure to provide real time energy reliability.

**C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.**

No

**D. Will the contract(s) be renewed?**

Yes

**E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.**

CleanPowerSF (CPSF) currently has contracts with two large battery storage systems as part of its renewable energy compliance requirements. The contract amount for this contract will go towards software licensing and overhead costs. The batteries are operated by two different vendors and charge during solar energy producing hours so they can provide energy when solar is not available. The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CPSF to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements, CPSF must procure a battery optimization tool for both projects and other future battery installations.



## **2. Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

- ☒ Immediately needed services to address unanticipated or transitional situations, or services needed to address emergency situations.
- ☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- ☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- ☒ Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.
- ☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The California Independent System Operator (CAISO) mandates a certain amount of energy be available from entities such as CleanPowerSF (CPSF) to ensure the reliability of California electric grid and entities are fined if energy is not available as required. In order to comply with availability requirements, CPSF must procure a battery optimization tool for both projects and other future battery installations.

## **3. Description of Required Skills/Expertise**

- A. Specify required skills and/or expertise: This battery optimization software is necessary to submit bids, utilizing CleanPowerSF's battery storage projects, into the CAISO using complex forecast analysis, in compliance with CAISO Tariff.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

## **4. If applicable, what efforts has the department made to obtain these services through available resources within the City?**

None, Battery optimization software must be CAISO compliant and able to serve both batteries despite the different manufacturers. No current civil service class exists that can create or maintain this software.

## **5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out**

- A. Explain why civil service classes are not applicable.  
Battery optimization software must be CAISO compliant and able to serve both batteries despite the different manufacturers. No current civil service class exists that can create or maintain this software.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The work for battery optimization software is highly specialized, as this software will require complex forecast analysis using real-time datasets from various sources, maintenance of the software itself, while being able to integrate with our battery projects located off-site. It will require a few hours a month to perform.

## **6. Additional Information**

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.  
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.  
No. No training will be provided, as the battery optimization software will utilize tools and software which holds internal company intellectual property.
- C. Are there legal mandates requiring the use of contractual services?  
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.  
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.  
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.  
No.

**7. Union Notification:** On 01/16/2024, the Department notified the following employee organizations of this PSC/RFP request:  
all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sfwater.org

Address: 525 Golden Gate Ave 8th Floor San Francisco, CA 94102

\*\*\*\*\*

**FOR DEPARTMENT OF HUMAN RESOURCES USE**

PSC# 45858 - 23/24

DHR Analysis/Recommendation:

action date: 03/04/2024

Commission Approval Required

Approved by Civil Service Commission

03/04/2024 DHR Approved for 03/04/2024

# Personal Service Contract Summary (PSC Form 1)

## PSC Basic Information

**Submitting Department:** PUC

**Submitted By:** Brahman Conci

**Department Coordinator:** Shawndrea Hale,  
SHale@sfgwater.org

**Project Manager:** Bill Teahan

**ServiceNow Number:** DHRPSC0005565

**Version:** 1.01

**Version Type:** Amendment

**Brief description of proposed work:** Crane and Hoist Services (11323)

**Reason for the Request for Amendment:** Awarded low bidder's bid exceeds total contract value and need increase in total contract amount

## Review Type and Reason

**CSC Review Required:** Yes

**CSC Review Reason(s):**

- Requires CSC Approval by Amount

## Amount

**Previously Approved Amount:** \$1,500,000

**Increase Amount:** \$1,962,771

**Why are you requesting the PSC amount to be increased?:** Awarded low bidder's bid exceeds total contract value and need increase in total contract amount

**Total Amended Amount:** \$3,462,771

**Does contract include items other than services?:** No

## Duration

**Is PSC by Duration or Continuing:** Duration

**Previously Approved Duration (months):** 84

**Duration Increase (months):** 0

**Total Amended Duration (months):** 84

**First Contract Start Date:**

**PSC Duration End Date:**

## Funding

**Funding Source:** City Funds

**Special circumstances related to funding:** No

## Scope of Work

**Are you making substantive changes to the scope of work last approved?:** No

**Clearly describe scope and detail the services to be performed:** Crane inspections and repair in accordance with CalOSHA ANSI standards in compliance with Plate V title 8 Federal code including OSHA 1810.179, ASME, and ANSI.

Scope of services will include, but is not limited to the following main services on equipment located within SFPUC-WWE system wide:

- Quarterly Maintenance and Inspections
- Mandatory Partial Load Testing,
- Proof Load and Operational Testing,
- Mandatory Annual Inspection, Maintenance, Certification
- Quadrennial Inspection, Maintenance, Certification,
- Troubleshooting and
- "As-needed Repairs"

**Has your response to any of the following questions changed?:** No

**Why are these services required and what are the consequences of denial?:** Mandatory CalOSHA Title 8 Compliance. Required inspections and preventive maintenance are essential to promoting Crane Safety and Title 8 compliance. Routine inspections can reveal issues requiring repairs which can be scheduled so as to not affect operational needs. A lack of required frequency inspections, testing and necessary repairs could lead to equipment failures while using cranes. This in turn could lead to costly equipment failures with the potential for personnel injuries leaving the department and City liable to enforcement action by regulating bodies, workers comp and personnel injury costs if the department was found not to have had cranes inspected, tested and maintained.

**Has your department contracted out these services in the last three years?:** Yes. See attached list of contracts entered into for these or similar services in the last 3 years.

**How many contracts?:** 1

**Why have you not hired City employees to perform the services?:** City Staff do not possess the requisite licensing, certification and training to perform the work nor do they possess the equipment necessary.

## Board and Commission Approvals

**Has your response to any of the following questions changed?:** No

**Will any contracts under this PSC require department Commission approval:** Yes

**Provide details related to contracts for which dept comm approval required:** Contracts over

\$1,170,000

**Will any contracts under this PSC require Board of Supervisors approval:** No

### Justification

**Has your response to Q1 changed?:** No

**Q1 - Are there any regulatory or legal requirements supporting outsourcing of this work?:**

Yes

**Q1a) Clearly describe & site the regulatory/legal requirements to support outsourcing:**

Crane Inspections and repair in accordance with CalOSHA ANSI standards in compliance with Plate V Title 8 Federal Code including OSHA 1810.79 The state requires contractors to be properly licensed and earn a Department of Occupational Safety and Health (DOSH) number with Dual C-61 Limited Specialty, D21 Machinery and Pumps Contractors Licenses. City employees do not possess the CSLB certifications required to legally work on these units.

**Has your response to any of the following questions changed?:** No

**Q2 - Does performing these services cause a conflict of interest?:** No

**Q3 - Are these proprietary services City is not authorized to do?:** No

**Q4 - Does City lacks necessary facilities/equipment?:** Yes

**Q4a) What facilities or equipment does the City lack that contractor possesses?:** Equipment and specialized California Contractor and valid DOSH Licenses and surveyors numbers which are minimum certifications required to perform maintenance, repair, technical and proprietary testing gear and equipment to perform diagnostic testing and service

**Does the dept plan to acquire the facilities/equipment to perform the services?:** No

**Explain why:** City staff would not have the requisite knowledge, skills or abilities, notwithstanding the requisite californai contractor licenses and DOSH surveyor numbers

**Additional information to support your request (Optional):**

### Union Notifications

**Have the Job Classes/Labor Unions changed?:** No

**Job Class(es):** 7334 - Stationary Engineer, 7205 - Chief Stationary Engineer, 7341 - Statnry Eng Water Treat Plant, 7370 - Rigger, 7108 - Heavy Equip Ops Asst Sprv, 7245 - Chf Statnry Eng, Wtr Treat Plnt, 7373 - Sr. Stationary Eng, Sew Plant, 7120 - Bldgs & Grounds Maint Supt, 9331 - Piledriver Engine Operator, 7335 - Senior Stationary Engineer, 7372 - Stationary Eng, Sewage Plant, 7328 - Operating Engineer, Universal, 7343 - Sr Statnry Eng, Wtr Treat Plnt, 7110 - Mobile Equipment Asst Sprv, 7208 - Heavy Equipment Ops Sprv

**Labor Unions:** 003 - Operating Engineers, Local 3, 039 - Stationary Engineers, Local 39

**Labor Union Email Addresses:** ccarr@oe3.org, cpark@local39.org

**Union Review Sent On:** 12/18/2025

**Union Review End Date:** 12/25/2025

**Union Review Duration Met On:** 12/25/2025

### Post Union Notification





**From:** [The Civil Service Commission](#)  
**To:** [Kyger, Todd](#); [Ureel, Samantha M](#); [Teahan, Bill](#); [Manuel, Ryan \(ADM\)](#); [Hale, Shawndrea M.](#); [Conci, Brahman](#)  
**Subject:** PUC [DHRPSC0005565] was approved by CSC on 2025-10-06  
**Date:** Wednesday, October 8, 2025 9:42:24 AM  
**Attachments:** [image](#)  
[image](#)

---

**This Message Is From an External Sender**

This message came from outside your organization.

[Report Suspicious](#)



**NOTICE OF CIVIL SERVICE COMMISSION ACTION**

Hello Shawndrea Hale,

At its meeting on **2025-10-06 14:00:00 PDT**, the Civil Service Commission had for its consideration the PUC PSC [DHRPSC0005565].

The Civil Service Commission, APPROVED PSC [DHRPSC0005565] on 2025-10-06.

**CSC Approval Type: Approval Granted**

**Relevant Comments:**

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.

***NOTE: It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.***

**CIVIL SERVICE COMMISSION**

**Sandra Eng | Executive Officer**

**PSC Summary**

=====

**Record Number:** DHRPSC0005565 v 1.0

**Description of Proposed Work:** Crane and Hoist Services (11323)

**Request Type:** New

**Approval Type:** CSC Approval

**CSC Review Reason(s):**

☐ CSC Approval by Amount

**Submitting Department:** PUC  
**Dept PSC Coordinator:** Shawndrea Hale  
**Dept PSC Coordinator Email:** SHale@sfgwater.org  
**DHR Admin/Reviewer:** Suzanne Choi  
**CSC Admin/Reviewer:** Elizabeth Aldana  
**PSC Amount:** \$1,500,000.00  
**PSC Duration (months):** 84  
**Funding Source(s):** City Funds

**Scope of Work:** Crane inspections and repair in accordance with CalOSHA ANSI standards in compliance with Plate V title 8 Federal code including OSHA 1810.179, ASME, and ANSI. Scope of services will include, but is not limited to the following main services on equipment located within SFPUC-WWE system wide: • Quarterly Maintenance and Inspections • Mandatory Partial Load Testing, • Proof Load and Operational Testing, • Mandatory Annual Inspection, Maintenance, Certification • Quadrennial Inspection, Maintenance, Certification, • Troubleshooting and • "As-needed Repairs"

**Job Class(es):** 7328 - Operating Engineer, Universal, 7370 - Rigger, 7108 - Heavy Equip Ops Asst Sprv, 7110 - Mobile Equipment Asst Sprv, 7208 - Heavy Equipment Ops Sprv, 9331 - Piledriver Engine Operator, 7334 - Stationary Engineer, 7335 - Senior Stationary Engineer, 7205 - Chief Stationary Engineer, 7341 - Statnry Eng Water Treat Plant, 7343 - Sr Statnry Eng, Wtr Treat Plnt, 7245 - Chf Statnry Eng, WtrTreat Plnt, 7120 - Bldgs & Grounds Maint Supt, 7372 - Stationary Eng, Sewage Plant, 7373 - Sr. Stationary Eng, Sew Plant

**PSC Justification(s)**

=====

- ☐ Regulatory or legal requirements disallow use of City employees
- ☐ Service for which City lacks the necessary facilities/equipment

[Take me to the PSC Record](#)

Ref:TIS6192211\_tbZew4ob4RRJhr6zWj3o

**Instructions:**

- Step 1: Download and save this template to your desktop.
- Step 2: Complete the fields below.
- Step 3: Upload a copy of the completed file to your PSC record under the "Required Documentation" tab.

**Document Content:**

**Do not use this document to list contracts let under this PSC record; those will be tracked separately in the PSC record itself at the end of each fiscal year.** Rather, use this template to identify other contracts executed by your department for the services now being requested with this PSC submission. The list of contracts should be limited to those executed within the last three years, measured from the date of the PSC submission. The Commission will use this information to determine if there is a pattern of contracting this or similar work out, regardless of which PSC record is associated with those other contracts.

Other than completing the blank fields below and adding row at the bottom, do not change or alter this template.

[illegible]