

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?

As the STT, you must take the following steps:

(a) Check the expiration date on the device and show it to the employee. You may not use the device after its expiration date.

(b) Open an individually wrapped or sealed package containing the device in the presence of the employee.

(c) 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.

(d) 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 (g) 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.

(e) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions re-

garding necessary next steps in ensuring that the device has activated.

(f)(1) If you were unable to successfully follow the procedures of paragraphs (c) through (e) 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.

(2) The new device you use must be one that has been under your control or that of the employer before the test.

(3) 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.)

(4) 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.

(5) If you are unable to successfully follow the procedures of paragraphs (c) through (e) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

(6) You must then direct the employee to take a new test immediately, using an EBT for the screening test.

(g) If you are able to successfully follow the procedures of paragraphs (c)-(e) 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 (f) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.

(h) 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.

(i) You must never re-use devices, swabs, gloves or other materials used in saliva testing.

(j) You must note the fact that you used a saliva ASD in Step 3 of the ATF.

EFFECTIVE DATE NOTE: At 67 FR 61522, Oct. 1, 2002, § 40.245 was revised effective October

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31, 2002. For the convenience of the user, the revised text is set forth as follows.

§ 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 employee 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 pro-

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vided 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 device or on the package containing the device and show it to the employee. You must not use the device after its expiration date.

(2) Remove a device from the package and break the tube's ampule in the presence of the employee.

(3) Secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.

(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 either hold the device or place it on a clean flat surface while waiting for the reading to appear.

(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 the 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, you must compare the color of the crystals in the device with the colored crystals on the manufacturer-produced control tube no sooner than the manufacturer instructs. In all cases color comparisons must take place within 15 minutes of the test.

(9) You must follow the manufacturer's instructions for determining the result of the test. You must then show both the device and the control tube side-by-side to the employee and record the result on the ATF.

(10) You must never re-use devices or gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. One inflation bag can be used for up to 10 breath tube tests.

(11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

§ 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