

(1) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(2) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

**§ 655.46 Return to duty following refusal to submit to a test, verified positive drug test result and/or breath alcohol test result of 0.04 or greater.**

Where a covered employee refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the employer, before returning the employee to duty to perform a safety-sensitive function, shall follow the procedures outlined in 49 CFR Part 40.

**§ 655.47 Follow-up testing after returning to duty.**

An employer shall conduct follow-up testing of each employee who returns to duty, as specified in 49 CFR Part 40, subpart O.

**§ 655.48 Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.**

If an employer chooses to permit a covered employee to perform a safety-sensitive function within 8 hours of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04, the employer shall retest the covered employee to ensure compliance with the provisions of § 655.35. The covered employee may not perform safety-sensitive functions unless the confirmation alcohol test result is less than 0.02.

**§ 655.49 Refusal to submit to a drug or alcohol test.**

(a) Each employer shall require a covered employee to submit to a post-accident drug and alcohol test required under § 655.44, a random drug and alcohol test required under § 655.45, a reasonable suspicion drug and alcohol test required under § 655.43, or a follow-up drug and alcohol test required under § 655.47. No employer shall permit an employee who refuses to submit to

such a test to perform or continue to perform safety-sensitive functions.

(b) When an employee refuses to submit to a drug or alcohol test, the employer shall follow the procedures outlined in 49 CFR Part 40.

**§ 655.50 [Reserved]**

**Subpart F—Drug and Alcohol Testing Procedures**

**§ 655.51 Compliance with testing procedures requirements.**

The drug and alcohol testing procedures in 49 CFR Part 40 apply to employers covered by this part, and must be read together with this part, unless expressly provided otherwise in this part.

**§ 655.52 Substance abuse professional (SAP).**

The SAP must perform the functions in 49 CFR Part 40.

**§ 655.53 Supervisor acting as collection site personnel.**

An employer shall not permit an employee with direct or immediate supervisory responsibility or authority over another employee to serve as the urine collection person, breath alcohol technician, or saliva-testing technician for a drug or alcohol test of the employee.

**§§ 655.54–655.60 [Reserved]**

**Subpart G—Consequences**

**§ 655.61 Action when an employee has a verified positive drug test result or has a confirmed alcohol test result of 0.04 or greater, or refuses to submit to a test.**

(a) (1) Immediately after receiving notice from a medical review officer (MRO) or a consortium/third party administrator (C/TPA) that a covered employee has a verified positive drug test result, the employer shall require that the covered employee cease performing a safety-sensitive function.

(2) Immediately after receiving notice from a Breath Alcohol Technician (BAT) that a covered employee has a confirmed alcohol test result of 0.04 or greater, the employer shall require