

# Lexington Utilities

## Alcohol Testing Policy and Procedures for Pipeline and Hazardous Material Safety Administration

Effective  
January 1, 2018  
Fidelity Search  
Jess June

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I. INTRODUCTION

A. Alcohol Misuse Prevention Policy (AMPP)

1. The Company has a long-standing commitment to maintain the highest standards for employee safety and health and to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions.
2. Lexington Utilities Purpose. The purpose of 49 CFR Part 199 is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions.
3. In addition, Lexington Utilities must comply with all DOT regulations and other regulations, which require affirmative action to eliminate the impact of the misuse of alcohol in the workplace. The purpose of the alcohol misuse prevention plan is to reduce accidents that result from the misuse of alcohol, thereby reducing fatalities, injuries, and property damage.
4. The Company will maintain and follow a written alcohol misuse prevention plan that conforms to the requirements of 49 CFR Part 199 and procedures 49 CFR Part 40 concerning alcohol testing programs.
5. The use or possession of alcoholic beverages while on Lexington Utilities property, or in any Lexington Utilities vehicle, or on Lexington Utilities time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited. Nothing in Part 199 shall be construed to affect Lexington Utilities independent authority, or the rights of their employees with respect to the use or possession of alcohol when conducting alcohol testing and rehabilitation.
6. **The use or possession of alcoholic beverages while on Lexington Utilities property, or in any Lexington Utilities vehicle, or on Lexington Utilities time, including breaks or lunch, paid or unpaid, on any shift, is strictly prohibited.**
7. **The anti-alcohol plan herein sets forth the requirements of 49 CFR Parts 199 and Part 40. Those areas of the plan that appears in bold and underlined print reflect Lexington Utilities independent authority to require additional provisions with regard to the alcohol testing procedures. Different collection forms will be used for DOT and NON-DOT; however, all procedures will follow the DOT guidelines. All employees will be afforded the same protections under the DOT guidelines to ensure that an employee is not wrongly identified as a substance abuser. In some instances, an employee may be subject to a DOT and NON-DOT alcohol screen when requested to submit to testing.**

B. Implementation of Alcohol Misuse Prevention Plan (AMPP).

1. The Company has implemented the Alcohol and Drug Testing Regulations as set forth in the Pipeline and Hazardous Material Safety Administration (PHMSA) Part 199 of the Department of Transportation, Procedures for Transportation Workplace Alcohol and Drug Testing Programs as set forth in 49 CFR Part 40.
2. Alcohol materials supplied to covered employees may also include information on additional

Company mandated policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on Lexington Utilities authority independent of the federal regulations under 49 CFR Part 199 and 40.

3. Compliance with DOT Regulations §40.1 - DOT Part 40 regulations provide that 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. DOT Part 40 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.
4. The alcohol misuse prevention plan herein sets forth the requirements of 49 CFR Part 199, and 40. Those areas of the plan that appears in bold and underlined print reflect this Company's independent authority to require additional provisions with regard to the alcohol testing procedures.

#### C. Background.

1. The catalyst for the alcohol misuse plan is Title 49 Code of Federal Regulations (CFR) Part 199 which requires pipeline operators subject to 49 CFR Parts 192, 193, and 195, and their contractors to test their employees for misuse of alcohol under the following work-related conditions:
  - a. Pre-Employment (Optional)
  - b. Post-Accident
  - c. Reasonable Suspicion
  - d. Return-to-duty
  - e. Follow-up
2. Title 49 CFR Part 40 specifies procedures, which must be followed by Lexington Utilities when conducting alcohol misuse testing pursuant to regulations issued by agencies of the Department of Transportation.
3. DOT Procedures (382) - Title 49 CFR Part 40 specifies procedures that must be followed by Lexington Utilities when conducting drug testing pursuant to regulations issued by agencies of the Department of Transportation. The anti-drug and alcohol programs required by 49 CFR Part 199 must be conducted in accordance to the requirements of 49 CFR Part 199 and DOT procedures. Terms and concepts used in 49 CFR Part 199 have the same meaning as in DOT procedures. Violations of DOT procedures with respect to anti-drug and alcohol programs required by 49 CFR Part 199 are violations of this part.
4. Authoritative interpretations (§40.5) - The DOT Office of Drug and Alcohol Policy Compliance (ODAPC) and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of 49 CFR Part 40. 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.

D. Preemption Provisions

1. Except as provided in paragraph 2 of this section, Part 199 and Part 199 preempts any state or local law, rule, regulation, or order to the extent that:
  - a. Compliance with both state or local requirement and this regulation is not possible.
  - b. Compliance with state or local requirement is an obstacle to the accomplishment and execution of any requirement as set forth in 49 CFR Part 199.
  - c. The state or local requirement is a pipeline safety standard applicable to interstate pipeline facility.
2. This provision shall not be construed to preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to jeopardy, whether the provisions apply specifically to transportation employees or employers or to the general public.

E. Definitions - For purposes of this AMPP the following definitions apply:

1. Accident (Part 199) - An incident reportable under Part 191 involving gas pipeline facilities or LNG facilities or an accident reportable under Part 195 involving hazardous liquid pipeline facilities.
  - a. § 191.3 - An accident on a gas pipeline or LNG facility is defined as an "incident," as follows:
    - (1) An event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility and:
      - (a) A death, or personal injury necessitating inpatient hospitalization; or
      - (b) Estimated property damage, including cost of gas lost, to the operator or others, or both, of \$50,000 or more (\$5,000 or more for intrastate operators/contractors in Kansas and New Mexico).
    - (2) An event that results in an emergency shutdown of an LNG facility.
    - (3) An event that is significant, in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2).
  - b. § 195.50 - An accident report is required for each failure in a pipeline system in which there is a release of the hazardous liquid or carbon dioxide transported resulting in any of the following:
    - (1) Explosion or fire not intentionally set by the operator.



- (2) Release of 5 gallons (19 liters) or more of hazardous liquid or carbon dioxide, except that no report is required for a release of less than 5 barrels (0.8 cubic meters) resulting from a pipeline maintenance activity if this release is:
  - (a) Not otherwise reportable under this section;
  - (b) Not one described in §195.52(a)(4);
  - (c) Confined to Company property or pipeline right-of-way; and
  - (d) Cleaned up promptly;
- (3) Death of any person.
- (4) Personal injury necessitating hospitalization;
- (5) Estimated property damage, including cost of cleanup and recovery, value of lost product, and damage to the property of the operator or others, or both, exceeding \$50,000.

**Accident all employees: When employees have caused, contributed to, or are involved in an on-the-job injury that resulted in a loss of work-time, which means any period of time during which an employee stops performing the normal duties of employment and leaves the place of employment to seek care from a licensed medical provider. When employees have caused or contributed to on-the-job incidents resulting in a substantial amount of property damage that requires immediate repair or replacement. (As determined by a supervisor and/or safety director) When employees have caused, contributed to or are involved in an automobile accident, while conducting Company business, whether in a Company vehicle, their own vehicle or someone else's vehicle.**

2. 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 control 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 who public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of 49 CFR Part 40, Subpart F.
3. 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.
4. Alcohol - means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol's including methyl or isopropyl alcohol.
5. Alcohol concentration - means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test conducted under the federal regulations.
6. Alcohol Screening Device - 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 the Bodily Fluids" because it conforms to the model specifications from NHTSA.

7. Alcohol Use - means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.
8. Breath Alcohol Technician (BAT) - means an individual who instructs and assists individuals in the alcohol testing process and operates an EBT.
9. 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.
10. Commerce means (1) any trade, traffic or transportation within the jurisdiction of the United States between a place in a state and a place outside of such State, including a place outside of the United States and (2) trade, traffic, and transportation in the United States which affects any trade, traffic and transportation described in paragraph (1) of this definition.
11. Confirmation Test - means a second test following a screening test with a result of 0.02 or greater that provides quantitative data of alcohol concentration.
12. Continuing education - Training for medical review officers (MROs) and substance abuse professionals (SAP's) who have completed qualification training and are performing MRO or SAP functions, designed to keep MRO's and SAP's' current on changes and developments in the DOT drug and alcohol testing program.
13. Covered employee, employee, or individual to be tested - means any person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.
14. 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 OER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40. Service agents cannot act as DER's.
15. DOT Procedures - means the Procedures for Transportation Workplace Drug and Alcohol Testing Program published by the Office of the Secretary of Transportation in 49 CFR Part 40.
16. 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 Material Safety Administration (PHMSA), and the Office of Secretary (OST). For the purposes of this part, the United States Coast Guard (USCG), in the Department of Homeland Security, is a DOT agency for drug testing purposes only since the USCG regulations does not incorporate Part 40 for its alcohol testing program.
17. 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.

18. 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.
19. Error Correction Training - Training provided to BAT's, collectors, and screening test technicians (STT's) 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.
20. Missed Tests - means any test that is not administered within 8-hour time period,
21. Office of Drug and Alcohol Policy and Compliance (CODAPC) -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.
22. Operator - is defined as an owner or operator of pipeline facilities.
23. Performing a Covered Function - includes actually performing, ready to perform, or immediately available to perform a covered function.
24. Pipeline - means all parts of the physical facilities through which product moves in transportation. This includes pipe, valves, and other appurtenances attached to pipe, compressor units, metering stations, delivery stations, holders, and fabricated assemblies.
25. Pipeline Facilities - include new and existing pipeline, rights-of-way, and any equipment, facility, or building used in the transportation of product.
26. Prohibited Conduct - means anyone who has an alcohol concentration of 0.02 or greater, who has used alcohol within 4 hours of reporting for duty and anyone who has used alcohol on-duty.
27. 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).
28. Refresher Training - The training required periodically for qualified collectors, BAT's, and STT's 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).
29. Refusal to Submit, Refuse, or Refuse to take - means behavior consistent with DOT Procedures Concerning refusal to take a drug test or refusal to take an alcohol test. See Section VII of this plan for additional information.

30. Screening test (or initial test) - means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath specimen.
  31. Screening Test Technician (STT) means an individual who has successfully completed an approved Department of Transportation non-evidential training course and who will conduct alcohol-screening tests in accordance with Part 199 and Part 40
  32. Secretary - The Secretary of Transportation or the Secretary's designee
  33. Service-agent - Any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BAT's and STT's, laboratories, MRO's, substance abuse professionals, and C/TPA's. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR Part 199 and Part 40. Service agents are not employers for purposes of 49 CFR Part 199 and 40.
  34. 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.
  35. State Agency - means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under section 5 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 674) or section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2009).
  36. 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.
- F. Lexington Utilities Responsibilities.
1. Alcohol Program Manager (APM) or Designated Employer Representative (DER). Appendix A contains the name, address, and phone number of the responsible individual(s). The APM or DER shall be responsible for the preparation of an alcohol misuse plan which complies with requirements of the Department of Transportation regulations as set forth in 49 CFR Part 40. The APM or DER shall be responsible for providing oversight and evaluation on the plan; providing guidance and counseling; reviewing of all discipline applied under this plan for consistency and conformance to human resources policies and procedures; scheduling for types of testing (post-accident, reasonable suspicion, etc.); maintaining a locked file system on all alcohol test results; and overseeing the referral of employees for evaluation and treatment. Lexington Utilities shall ensure that all covered employees are aware of the provisions and coverage of Lexington Utilities AMPP and that all employees are notified prior to testing that such a test is required by Part 199.
  2. Requirement for Notice. Lexington Utilities shall ensure that all covered employees are aware of the provisions and coverage of Lexington Utilities AMPP and that all employees are notified prior to testing. Before performing an alcohol test under this plan, Lexington Utilities shall notify a covered employee that the alcohol test is required by 49 CFR Part 199. Lexington Utilities shall not falsely represent that an alcohol test is being conducted under the provisions of Part 199.

3. Supervisor(s). Any of Lexington Utilities individuals responsible for observing the performance and behavior of employees; observation/documentation of events suggestive of reasonable suspicion; and post- accident testing if determined that it is applicable.
  4. Employees. Lexington Utilities shall ensure that each employee is notified and aware of the provisions of Lexington Utilities AMPP and has knowledgeable of the requirements of Lexington Utilities AMPP and to fully comply with the provisions of the plan.
  5. The Company shall be responsible for compliance with all applicable requirements and procedures of 49 CFR Part 40.
  6. Lexington Utilities is responsible for all actions of its officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
  7. 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 49 CFR Part 40 and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.
- G. **Background Check Procedures (§40.25)** -Lexington Utilities must check on the drug and alcohol testing records of employees it is intending to use to perform safety-sensitive duties.
1. The Company must, after obtaining an employee's written consent, request the information about the employee listed in paragraph 2 of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for Lexington Utilities for the first time (i.e., a new hire, an employee transfers into a safety-sensitive position). If the employee refuses to provide this written consent, Lexington Utilities must not permit the employee to perform safety-sensitive functions.
  2. The Company must request the information listed below from DOT-regulated companies who have employed the employee during any period during the two years before the date of the employee's application or transfer:
    - a. Alcohol tests with a result of 0.04 or higher alcohol concentration;
    - b. Verified positive drug test;
    - c. Refusals to be tested (including verified adulterated or substituted drug test results);
    - d. Other violations of DOT agency drug and alcohol testing regulations; and
    - e. 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) is required. If the previous company does not have information about the return-do-duty process; (e.g., a company who did not hire an employee who tested positive on a pre-employment test), Lexington Utilities must seek to obtain this information from the employee.

3. 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.
  4. If feasible, Lexington Utilities must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, Lexington Utilities must obtain and review the information as soon as possible. However, Lexington Utilities 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 Lexington Utilities has obtained or made and documented a good faith effort to obtain this information.
  5. If Lexington Utilities obtains information that the employee has violated a DOT agency drug and alcohol regulation, Lexington Utilities must not use the employee to perform safety-sensitive functions unless Lexington Utilities also obtains information that the employee has subsequently complied with the return-to-duty requirements of Subpart a of 49 CFR Part 40 and DOT agency drug and alcohol regulations.
  6. The Company must provide to each of the employers from whom they request information under paragraph 2 of this section written consent for the release of the information cited in paragraph 1 of this section.
  7. The release of information under this section must be in a written form (e.g., fax, e-mail, and letter) that ensures confidentiality. The previous company 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.
  8. The company from whom information is requested under paragraph 2 of this section must, after reviewing the employee's specific, written consent, immediately release the requested information to Lexington Utilities making the inquiry.
  9. As Lexington Utilities requesting the information required under this section, Lexington Utilities must maintain a written, confidential record of the information Lexington Utilities obtained or of the good faith efforts Lexington Utilities made to obtain the information. Lexington Utilities must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for Lexington Utilities
  10. The Company 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 a company 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, Lexington Utilities must not use the employee to perform safety-sensitive functions for Lexington Utilities, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs 2(e) and 5 of this section).
- H. DOT Testing versus Non-DOT Testing Provisions (§40.13).
1. DOT tests must be completely separate from non-DOT tests in all respects
  2. DOT tests must take priority and must be conducted and completed before a non-DOT test is

begun.

3. Except as provided in paragraph 4 of this section, Lexington Utilities must not perform any tests on DOT urine or breath specimens' other than those specifically authorized by 49 CFR Part 40 or DOT agency regulations.
  4. No one is permitted to change or disregard the results of DOT tests based on the results of non- DOT tests. Lexington Utilities must not disregard a verified breath test result because the employee presents a negative breath test result collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
  5. The Company must not use the CCF or the ATF in the non-DOT drug and alcohol-testing program. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. Lexington Utilities must always use the CCF and A TF for all DOT-mandated drug and alcohol tests. Non-DOT custody and control forms must be used for all non-DOT drug and alcohol tests.
- I. Company's Use of Service Agent for DOT Drug & Alcohol Testing Requirements (§40.15).
1. The Company may use a service agent to perform the tasks needed to comply with 49 CFR Part 40 and DOT agency drug and alcohol testing regulations, consistent with the requirements of Roles and Responsibilities of Service Agents Section in this plan and other applicable provisions of 49 CFR Part 40.
  2. The Company is responsible for ensuring that the service agents used meet the qualifications set forth in 49 CFR Part 40 (e.g., Medical Review Officer requirements). Lexington Utilities may require service agents to show documentation that they meet the requirements of 49 CFR Part 40 (e.g., documentation of MRO qualifications as required in this plan).
  3. The Company remains responsible for compliance with all applicable requirements of 49 CFR Part 40 and other DOT drug and alcohol testing regulations even when using a service agent. If Lexington Utilities violates any part of this plan or other DOT drug and alcohol testing regulations because a service agent has not provided services as 49 CFR Part 40 requires a DOT agency can subject Lexington Utilities to sanctions. Lexington Utilities good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which Lexington Utilities alleged noncompliance with 49 CFR Part 40 or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
  4. The Company must not permit a service agent to act as Lexington Utilities Designated Employee Representative (DER).
- J. Company's Responsibility for Obtaining Information from Its Service Agents (§40.17),
1. The Company is responsible for obtaining information required by 49 CFR Part 40 from Lexington Utilities service agents. This is required whether or not Lexington Utilities chooses to use a consortium/third party administrator (C/TPA) as an intermediary in transmitting information to Lexington Utilities. An example of this requirement would be an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in Lexington Utilities receipt of the test result from an MRO or C/TPA, Lexington Utilities must not assume that "no news is good news" and permit the applicant to perform safety-sensitive

duties before receiving the result. Lexington Utilities would be in violation of the DOT regulations.

## II. **ROLES AND RESPONSIBILITIES OF SERVICE AGENTS - 49 CFR Part 40: Subpart Q**

### A. General Provisions for Service Agents (§40.341)

1. Service agent's compliance with DOT drug and alcohol testing requirements (§ 40.341)
  - a. The service agent who provides services to transportation employers must meet the requirements of 49 CFR Part 40 and the DOT agency drug and alcohol testing regulations.
  - b. If the service agent does not comply, DOT may take action under the Public Interest Exclusions (PIE) procedures of 49 CFR part 40 (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

### B. Tasks and Functions of Service Agents. (§40.343 - 40.345 - 40.347).

1. Tasks that a service agent may perform for Lexington Utilities (§40.343) - The service agent may perform for Lexington Utilities the tasks needed to comply with DOT agency drug and alcohol testing regulations subject to the requirements and limitations of this part.
2. Circumstances in which a C/TPA may act as an intermediary in the transmission of drug and alcohol testing information to Lexington Utilities (§40.345).
  - a. The C/TPA or other service agent, may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if Lexington Utilities chooses to have the C/TPA do so. Each company makes the decision about whether to receive some or all of this information from the C/TPA, 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 49 CFR Part 40 concerning which services C/TPA's may act as an intermediary are listed in Appendix F to 49 CFR Part 40.
  - c. In every case, the C/TPA must ensure that, in transmitting information to Lexington Utilities, the C/TPA must 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 Lexington Utilities. For example, if the C/TPA transmits drug test results from MRO's to DER's; the C/TPA must transmit each drug test result to the DER in compliance with the MRO requirements set forth in §40.167.
3. Functions that C/TPA's may perform with respect to administering testing (§40.347) -The C/TPA, except as otherwise specified in this part, may perform the following functions for Lexington Utilities concerning random selection and other selections for testing.
  - a. The C/TPA may operate random testing programs for Lexington Utilities and may



assist (i.e., through contracting with laboratories or collection sites, conducting collections) Lexington Utilities with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).

- b. The C/TPA may combine employees from more than one company or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
- c. If the C/TPA combines employees from more than one transportation industry, the C/TPA must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
- d. Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees. The C/TPA may assist Lexington Utilities in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither the C/TPA nor Lexington Utilities is permitted to randomly select employees from a follow-up pool for follow-up testing.

C. Record-Keeping Requirements for Service Agents (§40.349).

1. Records that a service agent may receive and maintain (§40.349)
  - a. Except where otherwise specified in 49 CFR Part 40 a service agent may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. The C/TPA does not need the employee's consent to receive and maintain these records.
  - b. The C/TPA may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, and copies of notices to Lexington Utilities of selected employees) on behalf of Lexington Utilities
  - c. 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 the C/TPA or other service agent who maintains this information for Lexington Utilities.
  - d. If the C/TPA is serving as an intermediary in transmitting information that is required to be provided to Lexington Utilities the C/TPA must ensure that it reaches Lexington Utilities in the same time periods required elsewhere in this part.
  - e. The C/TPA must ensure that he/she can make available to Lexington Utilities within two days any information Lexington Utilities is asked to produce by a DOT agency representative.
  - f. At the request of Lexington Utilities, the C/TPA must transfer immediately all records pertaining to Lexington Utilities and its employees to Lexington Utilities or to any other service agent Lexington Utilities designates. The C/TPA must carry out this transfer as soon as Lexington Utilities requests it. The C/TPA is not required to obtain employee

consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.

- g. If the C/TPA is planning to go out of business or the organization will be bought by or merged with another organization, the C/TPA must immediately notify all companies and offer to transfer all records pertaining to Lexington Utilities and its employees to Lexington Utilities or to any other service agent Lexington Utilities designates. The C/TPA must carry out this transfer as soon as Lexington Utilities requests it. The C/TPA is not required to obtain employee consent for this transfer. The C/TPA must not charge more than a reasonable administrative cost for conducting this transfer. The C/TPA may not charge a fee for the release of these records.

D. Confidentiality Requirements for Service Agents (§40.351 - §40.353).

1. Confidentiality requirements that apply to service agents (§40.351) - Except where otherwise specified in 49 CFR Part 40 the confidentiality requirements apply to the C/TPA and shall include the following:
  - a. When the C/TPA receives or maintains confidential information about employees (e. g., individual test results), the C/TPA must follow the same confidentiality regulations as Lexington Utilities with respect to the use and release of this information.
  - b. The C/TPA must follow all confidentiality and records retention requirements applicable to Lexington Utilities.
  - c. The C/TPA may not provide individual test results or other confidential information to another company without a specific, written consent from the employee. For example, suppose a C/TPA that has employers X and Y as clients. Employee Jones works for X, and the C/TPA maintains Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. The C/TPA may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, the C/TPA may not provide this information to employer Z, who is not a C/TPA member, without this consent.
  - d. The C/TPA must not use blanket consent forms authorizing the release of employee testing information.
  - e. The C/TPA 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 databases.
2. Principles that govern the interaction between MROs and other service agents (§40.353) - The service agent other than an MRO (e.g., a C/TPA) is subject to the following principles that govern the interaction with MROs:
  - a. The service agent may provide MRO services to Lexington Utilities, directly or through contract, if the service agent meets all applicable provisions of 49 CFR Part 40.

- b. If the service agent employs or contracts for an MRO, the MRO must perform duties independently and confidentially. When the service agent has a relationship with an MRO, the service agent 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 the service agent's staff that is 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 the service agent's 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. The service agent must ensure that MRO staff operates under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- d. Like other MRO's, an MRO the service agent employs or contracts with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, the service agent staff cannot perform these functions.

E. Service Agent Limitations (§40.355).

- 1. Limitations that apply to the activities of service agents - The service agents are subject to the following limitations concerning the service agent's activities in the DOT drug and alcohol-testing program.
  - a. The service agent 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. The service agent 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 the service agent with the service agent in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to the service agent's computer system, and the service agent then assign the results to a particular MRO, is not permitted.
  - c. The service agent must not transmit drug test results directly from the laboratory to Lexington Utilities (by electronic or other means) or to a service agent who forwards them to Lexington Utilities. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
  - d. The service agent must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or SAT to the DER.
  - e. Except as provided in paragraph 1.f. of this section, the service agent must not act as an intermediary in the transmission of individual SAP reports to Lexington Utilities That is, the SAP may not send such reports to the service agent and then in turn send them

to Lexington Utilities. However, the service agent 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 the service agent simultaneously with sending them to the DER.

- f. As an exception to paragraph 1.e. of this section, the service agent 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 1.h. of this section, the service agent 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 Lexington Utilities cannot delegate to a C/TPA. The service agent may, however, provide advice and information to Lexington Utilities regarding these testing issues and how Lexington Utilities should schedule required testing.
- h. As an exception to paragraph 1.g. of this section, the service agent 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 1.j. of this section, the service agent must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of Lexington Utilities. The service agent may, however, provide advice and information to Lexington Utilities regarding refusal-to-test issues.
- j. As an exception to paragraph 1.i. of this section, the service agent may make a determination that an employee has refused a drug or alcohol test, if:
  - (1) The service agent schedules 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) The MRO determines that an individual has refused to test on the basis of adulteration or substitution.
- k. The service agent must not act as a DER. For example, while the service agent may be responsible for transmitting information to Lexington Utilities about test results, the service agent must not act on behalf of Lexington Utilities in actions to remove employees from safety-sensitive duties.
- l. In transmitting documents to laboratories, the service agent must ensure that the service agent sends to the laboratory that conducts testing only the laboratory copy of the CCF. The service agent is not to transmit other copies of the CCF or any ATFs to the laboratory.
- m. The service agent must not impose conditions or requirements on Lexington Utilities that DOT regulations do not authorize. For example, as a C/TPA serving companies in the pipeline or motor carrier industry the service agent must not require companies to have provisions in their DOT plans that RSPA or FMCSA regulations do not require.

- n. The service agent must not intentionally delay the transmission of drug or alcohol testing- related documents concerning actions the service agent has performed because of a payment dispute or other reasons.

Example 1 to Paragraph (1.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 (1.n.): An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to Lexington Utilities because of such a dispute with Lexington Utilities or employee.

Example 3 to Paragraph (1.n.): A collector who has performed a urine 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 (1.n.): A BAT who has conducted an alcohol test must not delay sending test result information to Lexington Utilities or C/TPA because of a payment or other dispute with Lexington Utilities or C/TPA.

- o. While the service agent must follow the DOT agency regulations, Lexington Utilities remains accountable to DOT for compliance, and the service agent's failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes Lexington Utilities subject to enforcement action by DOT.

### **III EMPLOYEE/SUPERVISOR ALCOHOL TESTING REQUIREMENTS**

#### **A. Individuals Subject to Alcohol Testing**

- 1. Any applicant/employee who would perform a safety sensitive function regulated by Part 199 would be subject to alcohol testing under this program. A covered employee or individual to be tested - means any person who performs a covered function.

#### **B. Procedure for Notifying Employees (§382.601) (Part 199).**

- 1. This AMPP shall be included in the appropriate Company manual. Upon receipt of Lexington Utilities AMPP, each manager shall post the plan in a prominent location that is readily accessible to all covered employees.
- 2. All covered employees will be provided a complete copy of the AMPP Criteria for Employee Notification.

#### **C. Criteria for Employee Notification (Part 199).**

- 1. General Criteria. Lexington Utilities shall provide written educational materials explaining the alcohol misuse requirements and Lexington Utilities policies and procedures on how they will comply with those requirements.

- a. The Company will distribute to each covered employee prior to the start of alcohol testing and to each person subsequently hired/transferred to perform covered functions.
  - b. The Company shall provide written notice to representatives of employee organizations on the availability of this written educational information.
2. Required Information. Lexington Utilities shall provide written materials to all covered employees that shall include detailed information and discussion of the following elements:
- a. Name of Company representative designated to answer questions for covered employees about the alcohol regulations. See Appendix A.
  - b. List of categories of covered employees who are subject to the alcohol regulations. See Appendix E for listing of employee/supervisor job classifications/titles.
  - c. Information about covered functions, which provides sufficient guidance on which portions of the workday the covered employee, is required to be in compliance with the AMPP.
  - d. Information concerning covered employee conduct that specifies what is prohibited by the AMPP.
  - e. Circumstances under which a covered employee will be tested for alcohol under the AMPP.
  - f. Procedures that cover:
    - (1) Testing for presence of alcohol
    - (2) Protection of employee rights
    - (3) Integrity of breath testing process
    - (4) Safeguarding validity of test results
    - (5) Assignment of test results to proper employee
  - g. Information which detailing what constitutes a refusal and consequences of such refusal,
  - h. Information detailing consequences of covered employees who violate the prohibitions as set forth in the AMPP. It must address removal from performing covered functions and guidance on referral for evaluation and/or treatment.
  - i. Information detailing consequences of covered employees who test at an alcohol concentration of 0.02 or greater but less than 0.04.
  - j. Information detailing alcohol misuse and how it impacts on:
    - (1) Individual's health, work and personal life
    - (2) Detecting signs and symptoms of alcohol problem
    - (3) Intervening evaluation and resolving problems associated with alcohol misuse suspicions,

(4) Confrontation, referral to EAP and referral to management official)

#### IV. ALCOHOL TESTS REQUIRED

##### A. Pre-Employment (Optional) (199.209).

1. The Company may but is not required to conduct pre-employment alcohol testing less than 49 CFR Part 40. If Lexington Utilities conducts pre-employment alcohol testing Lexington Utilities must:
  - a. Conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions):
  - b. Treat all employees the same for the purpose of pre-employment alcohol testing (i.e. Company must not test some covered employees and not others):
  - c. Conduct the pre-employment tests after making a contingent offer of employment or transfer subject to the employee passing the pre-employment alcohol test:
  - d. Conduct all pre-employment alcohol tests using the alcohol testing procedures in the DOT procedures in 49 CFR Part 40: and
  - e. Not allow any covered employee to begin performing covered functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

##### B. Post-Accident Testing (§199.225).

1. The Company shall promptly determine and test each surviving covered employee for alcohol if that employee's performance contributed to the "accident" or cannot be completely discounted as a contributing factor to the accident. The decision not to administer an alcohol test under this section shall be based on Lexington Utilities determination, using the best available information at the time of the determination.

#### **For purposes of vehicle operations "Accident" shall be defined as:**

- a. **An event involving a company vehicle or vehicle being utilized for company business that involves a death or personal injury necessitating in-patient hospitalization.**
- b. **An event involving a company vehicle or vehicle being utilized for company business that, in the judgment of the supervisor of the involved individual is "significant". Extensive damage and/or the involvement of non-company personnel will be factors in the supervisor's decision.**

#### **In the event of these circumstances, employees shall be post-accident tested.**

2. Each employee shall be required to submit to an alcohol test within 2 hours of the accident. If a test

is not administered within two hours following the accident Lexington Utilities shall prepare and maintain on file a record stating the reasons why the test was not administered. If a test is not administered within 8 hours following the accident Lexington Utilities shall cease all attempts to conduct an alcohol test and shall prepare and maintain on file written documentation indicating why the alcohol test was not conducted.

3. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying Lexington Utilities or Company representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by Lexington Utilities to have refused to submit to testing.
4. The employee must remain available for alcohol testing and may not consume any alcohol for 8 hours following the accident or until the alcohol test has been conducted. Notwithstanding the previous statement, employees shall not be delayed in seeking necessary medical attention for injured people. An employee shall not be prohibited from leaving the scene of an accident for a period of time necessary to obtain assistance in responding to the accident or to obtain necessary medical personnel to administer medical care to any injured people.
5. The following steps will be used to guide supervisor to a satisfactory outcome in a post-accident situation.
  - a. Verify the post-accident decision. Does the definition of accident in Section I apply to the current situation? Does the possibility exist that the employee's performance contributed to the accident or cannot be completely discounted as a factor, which contributed to the accident? Anonymous tips must be taken seriously but should not be the sole reason to initiate a request for a specimen. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? Before proceeding further, individual may need to obtain approval from the division manager/department head or designee to proceed with post-accident testing.
  - b. Isolate and inform the employee. Remove the employee from the work place. Explain that you have reason to believe his/her performance contributed to the accident or cannot be completely discounted as a contributing factor to the accident and therefore, they will be required to submit to an alcohol test.
  - c. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity in route to the collection site for the employee to ingest anything that could affect the outcome of the alcohol test.
  - d. Document the events. Record the activity performed that support the determination to conduct a post-accident alcohol test. This documentation of the employee's activity should be prepared and signed by the supervisor and remain on file. See Appendix C for documentation format if test is not administered within prescribed time frames.
  - e. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid submission to an alcohol test. If he/she is not under the influence of alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's



explanation. Remember, a request for an alcohol test is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so, it is important to stress that this is merely a request for additional data.

- f. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur.
- g. Employee Responsibility. As soon as practicable following an accident as defined in this plan, the employee shall make every attempt to contact his/her supervisor and the APM.
  - (1) The employee will be given instructions for obtaining alcohol and substance abuse testing.
  - (2) An employee who is subject to post-accident testing must remain available for testing, or Lexington Utilities may consider the employee to have refused to submit to an alcohol test.
  - (3) The employee subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.
- h. Company Responsibility.
  - (1) Upon receiving a report of an accident Lexington Utilities shall test the employee (if not a fatality) for alcohol and controlled substance as soon as practicable.
  - (2) The DER will instruct the employee in obtaining the required drug and alcohol test.

C. Random Testing (Not required for Part 199)

D. Reasonable Suspicion Testing (199.225) (b).

- 1. An employee shall be required to submit to a reasonable suspicion alcohol and controlled substance testing if it is believed that the employee has violated this subpart.
- 2. The determination that an employee shall undergo a reasonable suspicion alcohol or controlled substance test shall be based on the specific, contemporaneous, articulable observation concerning the appearance, behavior, speech, or body odors of the employee. A supervisor who is trained in detecting the symptoms of alcohol misuse shall make the required observations. The supervisor who makes the determination of the reasonable suspicion test shall not conduct the actual test on that employee.
- 3. Alcohol substance testing for reasonable suspicion may only be conducted if the observable symptoms occurred prior to, during or just after duty hours. The employee may be requested to submit to an alcohol test only when he/she is performing covered functions, just prior to

performing covered functions, or just after they performed a covered function. A supervisor who is trained in detecting the symptoms of alcohol misuse shall make the required observations. The supervisor who makes the determination of the reasonable suspicion test shall not conduct the actual test on that employee.

4. If the required test under this section is not administered within 2 hours following the determination under this section:
  - a. A file record will be prepared and maintained stating the reason the employee was not tested.
  - b. If the test is not administered within eight hours a file will be prepared and maintained stating the reason the employee was not tested.
  - c. If the test is not administered within eight hours attempts to conduct the test will stop.
5. An employee is not permitted to report for duty or remain on duty in a covered position if they are not tested for reasonable suspicion, having exhibited the symptoms of alcohol or controlled substance misuse until:
  - a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02 or.
  - b. Twenty-four hours have lapsed following the determination under paragraph (a) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this part concerning the use of alcohol.
  - c. Except as provided in paragraph (e) (2) of this section, no employer, shall take any action under this part against an employee based solely on the employee's behavior and prohibit an employer with independent authority of this part from taking any action otherwise consistent with law.
4. The following steps will be used to guide the supervisor to a satisfactory outcome in a reasonable suspicion situation.
  - a. Verify the reasonable suspicion decision. Anonymous tips must be taken seriously but should not be the sole reason to initiate a request for a specimen. Hearsay is not an acceptable basis for reasonable suspicion referral. If witnesses saw a specific event or behavior, ask them to describe what they saw. How far away were they? How long did they observe the person? What, if anything, caused them to believe it was alcohol related? On what basis did they reach their conclusion? Before proceeding further, obtain concurrence or approval from the manager/department head or designee to proceed with reasonable suspicion alcohol testing.
  - b. Isolate and inform the employee. Remove the employee from the work location. Explain that there is reasonable suspicion to believe the employee's performance is being affected by alcohol. Ask the employee to explain the suspected behavior and to describe the events that took place from his/her perspective. Ask if there is any medication or physical condition that would explain the behavior. A persuasive explanation may/or may not deter you from asking for the employee to submit to an

- alcohol test. If there is still a reasonable belief that alcohol is a factor in the situation/ incident, a request for testing should be made; if no reasonable belief is determined then no request for testing should be made. If the decision to test is made, inform the employee that they are being requested to accompany the appropriate Company official or representative to the specimen collection site to conduct an alcohol test. Inform the employee of the consequences of refusal to submit to alcohol testing.
- c. Review your findings. During the conversation, observe physical and mental symptoms. Be sure to document any characteristics that either support or contradict initial information. In all cases, a reasonable suspicion decision to test must be made by a supervisor who has received the required supervisor training. This creates greater objectivity, provides additional observation, and generally strengthens the defensibility of the reasonable cause determination.
  - d. Transport the employee. The potentially affected employee should not be allowed to proceed alone to or from the collection site. In addition to the safety concerns for the employee, accompanying the employee also assures that there is no opportunity in route to the collection site for the employee to ingest anything that could affect the alcohol test result.
  - e. Document the events. Record the behavioral signs and symptoms that support the determination to conduct a reasonable suspicion alcohol test. This documentation (See Appendix C for guidance) of the employee's conduct should be prepared and maintained on file to document the request for reasonable suspicion alcohol testing. See Appendix B for documentation format if test is not administered within prescribed time frames.
  - f. Denial should be an expected reaction. If a person knows he/she will test positive, he/she may give many explanations and protestations, wanting to avoid alcohol testing. If he/she is not under the influence or affected by alcohol, vehement denial also would be expected. Listen to the employee and carefully evaluate the employee's explanation. Remember, a request to submit to an alcohol test is not an accusation; it is merely a request for additional objective data. To the employee it may feel like an accusation; so, it is important to stress that this is merely a request for additional data.
  - g. Following administration of alcohol test. After returning from the collection site, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the reasonable suspicion belief that he/she may be under the influence of alcohol. **If the employee insists on driving, the proper local enforcement authority may be notified that an employee who Lexington Utilities believes may be under the influence of alcohol is leaving Lexington Utilities premises driving a motor vehicle.**
5. The Company shall conduct an alcohol test within two hours of a determination to test under reasonable suspicion. If a reasonable suspicion test is not administered within two hours following the determination, Lexington Utilities shall prepare and maintain on file a record stating the reasons why the test was not promptly administered. If the required test is not

administered within eight hours of the determination, Lexington Utilities shall cease all attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Upon request, such records shall be made available to the agency administrator or any person who has been delegated authority in the matter concerned.

6. The Company shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:
  - a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
  - b. The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP.
7. Except as provided above, Lexington Utilities shall not take any action under 49 CFR Part 199 against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. However, this does not prohibit Lexington Utilities from taking any disciplinary action otherwise consistent with local and/or state laws.
8. LEXINGTON UTILITIES shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall the employee be permitted to perform or continue to perform covered functions until:
  - a. An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or
  - b. The start of the employee's next regularly scheduled duty period but not less than eight hours following the determination that there is reasonable suspicion to believe that the employee has violated the prohibitions as contained in the AMPP.
9. Except as provided above, Lexington Utilities shall not take any action under 49 CFR Part 199 against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. However, this does not prohibit Lexington Utilities from taking any disciplinary action otherwise consistent with local and/or state laws.
10. **Any employee failing to cooperate with any of the procedures described above will be subject to discipline, up to and including discharge.**

D. Return-to-Duty Testing (199.225(c)).

1. The Company shall ensure that before an employee may return-to-duty to perform covered functions after engaging in prohibited conduct, as set forth in Section VI of this plan, that the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol

concentration of less than 0.02. Lexington Utilities shall not permit an employee who refuses to submit to an alcohol test to perform or continue to perform covered functions.

2. If the substance abuse professional makes a determination that some form of evaluation and/or treatment is required then the employee must comply with the recommended provisions in order to be considered eligible for consideration in being allowed to return-to-duty.
3. To ensure the individual is fit for duty, any employee with a violation of the alcohol testing rule who has been removed from safety-sensitive functions as indicated by a positive alcohol test result of 0.02 to 0.039 must comply with a return to duty alcohol test. This test must occur following a removal from safety-sensitive duties and prior to resuming covered functions. The test result must be below 0.02 in order to resume safety-sensitive duties. Refusal to cooperate will be viewed, as insubordination and the employee would be subject to disciplinary action up to and including discharge.
4. The requirements for return-to-duty testing must be performed in accordance with 49 CFR part 40, Subpart O
5. **An employee who self-reports a substance abuse problem and completed substance abuse treatment will be required to pass an alcohol test before returning to duty.**
6. **The employee shall pay the expense of return to duty testing.**

E. Follow-up Testing

1. Following the determination that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, the employee will be subject to unannounced follow-up alcohol testing as directed by a substance abuse professional. An employee who returns to duty shall be subject to a reasonable program of follow-up alcohol testing, without prior notice, for up to 60 months after his or her return to duty
2. The employee shall be subject to at least six, unannounced alcohol follow-up tests during the first 12-months following his/her return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the initial six tests have been completed, if the substance abuse professional makes the determination that such testing is no longer warranted.
3. The Company may require a covered employee to submit to drug follow-up testing when the substance abuse professional has reason to suspect drug involvement. The drug testing must comply with the requirements contained in 49 CFR Part 40, Subpart A. The same procedures would apply should it be determined that an employee had tested positive for drugs and the substance abuse professional had reason to suspect alcohol misuse.
4. Follow-up testing will only be conducted when the covered employee is performing, just before performing, or just after ceasing to perform covered functions.
5. The requirements for follow-up testing must be performed in accordance with 49 CFR Part 40, Subpart O.

6. **An employee who self-reports a substance abuse problem and completes treatment will be required to take and pass at least six (6) unannounced alcohol tests in the first twelve (12) months following their return-to- duty.**
  7. **The employee shall pay the expense of the Follow-up testing.**
- F. Stand Down Procedures (§40.21) - The employer may stand down an employee before the MRO has completed the verification by following these procedures.
1. The Company is prohibited from standing employees down, except consistent with a waiver a DOT agency grants under 49 CFR Part 40.
  2. The Company may make a request to the concerned DOT agency for a waiver from the prohibition of the above paragraph in this section. Such a waiver, if granted, permits Lexington Utilities 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.
    - a. 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.
    - b. Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate Lexington Utilities other covered employees.
    - c. The concerned DOT agency provides a written response to each company that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.
  3. The Company's request for a waiver must include, at a minimum, the following elements
    - a. Information about Lexington Utilities organization
      - (1) The Company's determination that standing employees down is necessary for safety in Lexington Utilities organization and a statement of Lexington Utilities 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;
      - (2) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for Lexington Utilities 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;
      - (3) 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
- (4) A statement of which DOT agencies regulate Lexington Utilities employees
- b. The Company's proposed written policy concerning stand-down, which must include the following elements:
- (1) The Company's assurance that they will distribute copies of Lexington Utilities written policy to all employees that it covers;
  - (2) The Company's 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 Lexington Utilities organization (or subsequently to another company) other than the employee, the MRO and the DER;
  - (3) The Company's means of ensuring that all covered employees in a particular job category in Lexington Utilities organization are treated the same way with respect to stand-down.
  - (4) The Company's means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;
  - (5) The Company's means of ensuring that Lexington Utilities 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;
  - (6) The Company's 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 Lexington Utilities is informed in writing by the MRO that a longer period is needed to complete the verification process; and
  - (7) The Company's means of ensuring that, in the event that the MRO verifies the test negative or cancels it --
    - (a) The Company returns the employee immediately to the performance of safety-sensitive duties.
    - (b) The employee suffers no adverse personnel or financial consequences as a result; and
    - (c) The Company maintains no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (i.e., Lexington Utilities maintains a record of the

test only as a negative or cancelled test).

4. 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 Lexington Utilities organization, there is a high probability that the procedures Lexington Utilities proposes will effectively enhance safety and protect the interests of employees in fairness and confidentiality.
  - a. The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
  - b. The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that Lexington Utilities has failed to protect effectively the interests of employees in fairness and confidentiality, that Lexington Utilities has failed to comply with the requirements of this section, or that Lexington Utilities has failed to comply with any other conditions the DOT agency has attached to the waiver.
5. The Company must not stand employees down in the absence of a waiver, or inconsistent with the terms of the waiver. Lexington Utilities shall be in violation of 49 CFR Part 40 and DOT agency drug testing regulations, and Lexington Utilities is subject to enforcement action by the DOT agency just as Lexington Utilities is for other violations of this 49 CFR Part 40 and DOT agency rules.

**V. SUBSTANCE ABUSE PROFESSIONALS AND THE RETURN-TO-DUTY PROCESS**  
**- 49 CFR PART 40 - SUBPART 0**

- A. SAP Qualifications (§40.281).
  1. 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. SAP Basic Knowledge. The SAP must be knowledgeable in the following areas
      - (1) The SAP must be knowledgeable about and have clinical experience in the



- diagnosis and treatment of alcohol and controlled substances-related disorders.
- (2) The SAP must be knowledgeable about the SAP function as it relates to company interests in safety-sensitive duties.
  - (3) The SAP must be knowledgeable about this part, the DOT agency regulations applicable to the companies for whom the SAP evaluates employees, the DOT SAP Guidelines, 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. SAP Qualification Training. The SAP must receive qualification training meeting the requirements of this paragraph.
- (1) Qualification training must provide instruction on the following subjects:
    - (a) Background, rationale, and coverage of the Department's drug and alcohol testing program;
    - (b) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;
    - (c) Key DOT drug testing requirements, including collections, laboratory testing,
    - (d) MRO review and problems in drug testing;
    - (e) Key DOT alcohol testing requirements, including the testing process, the role of BAT's and STT's, and problems in alcohol tests; SAP qualifications and prohibitions;
    - (f) 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;
    - (g) SAP consultation and communication with companies, MRO's, and treatment providers;
    - (h) Reporting and record-keeping requirements;
    - (i) Issues that SAP's confront in carrying out their duties under the program.
  - (2) Following the SAP completion of qualification training under paragraph 1.c. (1) of this section, the SAP 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 1.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.
- (4) SAP Continuing Education. During each three-year period from the date on which the SAP satisfactorily completes the examination under paragraph 1.c. (2) of this section, the SAP must complete continuing education consisting of at least 12 professional development hours (*e.g.*, *CEUs*) relevant to performing SAP functions.
  - (a) 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 the SAP met the qualification training requirements of this section.
  - (b) The SAP continuing education activities must include documentable assessment tools to assist the SAP in determining whether the SAP has adequately learned the material.
- (5) SAP Documentation. The SAP must maintain documentation showing that he/she currently meet all requirements of this section. The SAP must provide this documentation on request to DOT agency representatives and to Lexington Utilities and C/TPA's who are using or contemplating using the SAP's services.

2. Criteria for a certification organization to obtain recognition for its members as SAP's (§40.283).
  - a. If the SAP represents a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to §40.281 (a) (5), the SAP may submit a written petition to DOT requesting a review of the SAP's petition for inclusion.
  - b. The SAP must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on the SAP's petition.
  - c. The SAP must also meet the minimum requirements of 49 CFR Part 40, Appendix E before DOT will act on the SAP's petition.

B. SAP Requirements (§40.285 - §40.289).

1. Requirements for conducting a SAP evaluation.
  - a. When an employee violates the DOT drug and alcohol regulations the employee cannot again perform any DOT safety-sensitive duties for Lexington Utilities until and unless the employee has completed 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. 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 urine 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.
  2. Information Lexington Utilities is required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation (§40.287).
    - a. The Company must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAP's readily available to the employee and acceptable to Lexington Utilities, with names, addresses, and telephone numbers. Lexington Utilities cannot charge the employee any fee for compiling or providing this list.
    - b. The Company may provide this list or through a C/TPA or other service agent.
  3. Company requirements regarding SAP evaluation and treatment services to employees (§ 40.289).
    - a. The Company is 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 Lexington Utilities offers the employee an opportunity to return to a DOT safety- sensitive duty following a violation, Lexington Utilities 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 Lexington Utilities and employees to decide and may be governed by existing management-labor agreements and health care benefits.
- C. SAP Evaluation, Referral, and Treatment (§40.291 - §40.297).
1. 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. The SAP is charged with:
      - (1) Making a face-to-face clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and or drug use;
      - (2) Referring the employee to an appropriate education and or treatment program;

- (3) Conducting a face-to-face 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;
      - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
      - (5) Providing the employee and Company with recommendations for continuing education and/or treatment.
    - b. The SAP is not an advocate for Lexington Utilities or employee. The SAP function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/ treatment, follow-up tests, and aftercare.
  2. The SAP's functions in conducting the initial evaluation of an employee (§ 40.293) - The SAP must for every employee who comes to the SAP following a DOT drug and alcohol regulation violation the SAP must accomplish the following:
    - a. Provide a comprehensive face-to-face assessment and clinical evaluation.
    - 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) The SAP must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
      - (2) The SAP 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, outpatient *counseling* programs, and aftercare.
    - e. The SAP must provide a written report directly to the DER highlighting the specific recommendations for assistance (see §40.311 (c)).
    - f. For purposes of the evaluation process, the SAP must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. The SAP must not take into consideration in any way, as a factor in determining what the 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 the SAP may have about the justification or rationale for drug and alcohol testing.
- g. In the course of gathering information for purposes of the evaluation in the case of a drug- related violation, the SAP may consult with the MRO. The MRO is 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.
3. Criteria for employees or Lexington Utilities to seek a second SAP evaluation if they disagree with the first SAP's recommendations (§40.295).
    - a. The employee with a DOT drug and alcohol regulation violation having been evaluated by a SAP must not seek a second SAP's evaluation in order to obtain another recommendation.
    - b. The Company must not seek a second SAP's evaluation, if a qualified SAP has already evaluated the employee. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation Lexington Utilities may not rely on it for any purpose under this part.
  4. Authority to change a SAP's initial evaluation (§40.297)
    - a. Except as provided in paragraph 4.b. of this section, no one (*e.g., Lexington Utilities, employee, a managed-care provider, and 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 SAPs recommendation by changing the SAPs evaluation or seeking another SAPs 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*).
- D. SAP's Role and Limitations (§40.299). - Requirements of SAP's role and the limits on a SAP's discretion in referring employees for education and treatment
1. The SAP upon making a determination of the best recommendation for assistance, the SAP will serve as a referral source to assist the employee's entry into an education and or treatment program.
  2. To prevent the appearance of a conflict of interest the SAP must not refer an employee requiring assistance to the SAP's private practice or to a person or organization from which the SAP receives payment or to a person or organization in which the SAP has a financial interest.
  3. The SAP is precluded from making referrals to entities with which the SAP is financially associated.
  4. There are four exceptions to the prohibitions contained in paragraph (b) of this section. The

SAP may refer an employee to any of the following providers of assistance, regardless of Lexington Utilities relationship with them:

- a. A public agency (e.g., treatment facility) operated by a state, county, or municipality;
- b. The Company or a person or organization under contract to Lexington Utilities to provide alcohol or drug treatment and/or education services (e.g., the employer's contracted treatment provider);
- c. 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
- d. 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).

E. SAP Functions in Evaluation, Treatment, and Aftercare or Support Group Services (§40.301 - §40.303).

1. The SAP's functions in the follow-up evaluation of an employee.
  - a. The SAP, once the prescribed assistance under §40.293 is complete, must re-evaluate the employee to determine if the employee has successfully carried out the SAP's education and/or treatment recommendations.
    - (1) This is the SAP's way to gauge for Lexington Utilities the employee's ability to demonstrate successful compliance with the education and or treatment plan.
    - (2) The SAP evaluation may serve as one of the reasons Lexington Utilities decides to return the employee to safety-sensitive duty.
  - b. The SAP must make the follow-up evaluation determination:
    - (1) The SAP must confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
    - (2) The SAP must conduct a face-to-face clinical interview with the employee to determine if the employee demonstrates successful compliance with the initial evaluation recommendations.
  - c. SAP requirements:
    - (1) If the employee has demonstrated successful compliance, the SAP must provide a written report directly to the DER highlighting the clinical determination that the employee has done complied with the initial evaluation recommendation (see §40.311 (d)).



F. Completion of the Return-to-Duty Process (§40.305).

1. If Lexington Utilities must decide that the employee is permitted to return to the performance of safety-sensitive functions 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.
2. The Company must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph 1 above. However, Lexington Utilities is not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that Lexington Utilities has the discretion to make, subject to collective bargaining agreements or other legal requirements.
3. The SAP or MRO 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 Lexington Utilities rather than the SAP or MRO who must decide whether to put the employee back to work in a safety-sensitive position.

G. SAP's Functions in Prescribing the Employee's Follow-up Tests (§40.307).

1. The 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, must establish a written follow-up testing plan. The SAP does not establish this plan until after it has been determined that the employee has successfully complied with the recommendations for education and/or treatment.
2. The SAP must present a copy of this plan directly to the DER (see §40.311 (d)).
3. The SAP is 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 the evaluation or the treatment program professionals determined that the employee had an alcohol problem as well the SAP should require that the employee have follow-up tests for both drugs and alcohol.
4. However, the SAP 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.
  - a. The SAP may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (*e.g. the SAP may require one test a month during the 12-month period; the SAP may require two tests per month during the first 6-month period and one test per month during the final 6-month period*).
  - b. The SAP may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
  - c. The SAP is not to establish the actual dates for the follow-up tests the SAP prescribes. The decision on specific dates to test is Lexington Utilities.



- d. The Company 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. The SAP may modify the determinations the SAP has made concerning follow-up tests. For example, even if the SAP recommended follow-up testing beyond the first 12-months the SAP can terminate the testing requirement at any time after the first year of testing. The SAP 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.

H. Company's Responsibilities on SAP's Directions for Follow-up Tests (§40.309).

- 1. The Company must carry out the SAP's follow-up testing requirements. Lexington Utilities may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- 2. The Company should schedule follow-up tests on dates of their own choosing, but Lexington Utilities must ensure that the tests are unannounced with no discernible pattern as to their timing, and that the employee is given no advance notice.
- 3. The Company 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.
- 4. The Company cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

I. Requirements of SAP's Reports (§40.311).

- 1. The SAP conducting the required evaluations 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)). The SAP may however forward the document

simultaneously to the DER and to a C/TPA.

2. The SAP must ensure that Lexington Utilities receives written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
3. 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:
  - a. Employee's name and SSN;
  - b. Employer's name and address;
  - c. Reason for the assessment (specific violation of DOT regulations and violation date);
  - d. Date(s) of the assessment;
  - e. SAP's education and or treatment recommendation; and
  - f. SAP's telephone number.
4. 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:
  - a. Employee's name and SSN;
  - b. Employer's name and address;
  - c. Reason for the initial assessment (specific violation of DOT regulations and violation date);
  - d. Date(s) of the initial assessment and synopsis of the treatment plan;
  - e. Name of practice(s) or service(s) providing the recommended education and/or treatment;
  - f. Inclusive dates of employee's program participation;
  - g. Clinical characterization of employee's program participation;
  - h. SAP's clinical determination as to whether the employee has demonstrated successful compliance;
  - i. Follow-up testing plan;
  - j. Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and

- k. SAP's telephone number.
5. 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:
    - a. Employee's name and SSN;
    - b. Employer's name and address;
    - c. Reason for the initial assessment (specific DOT violation and date);
    - d. Date(s) of initial assessment and synopsis of treatment plan;
    - e. Name of practice(s) or service(s) providing the recommended education and or treatment;
    - f. Inclusive dates of employee's program participation;
    - g. Clinical characterization of employee's program participation; Date(s) of the first follow-up evaluation;
    - h. Date(s) of any further follow-up evaluation the SAP has scheduled;
    - i. SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
    - j. SAP's telephone number.
  6. The SAP 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.
  7. The SAP is to maintain copies of the employer's reports to employers for 5 years, and the employer's employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. The SAP 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.
  8. The Company must maintain the reports from SAP's for 5 years from the date Lexington Utilities receives the reports.
- J. Additional Information on SAP Functions and Return-to-duty Process (§40.313).

Other information on the role and functions of SAP's is located in the following sections of 49 CFR Part 40  
§ 40.3 - Definition.

§ 40.347 - Service agent assistance with SAP-required follow-up testing. § 40.355 - Transmission of SAP reports.

§ 40.329(c) - Making SAP reports available to employees on request.

Appendix E to Part 40-SAP Equivalency Requirements for Certification Organizations

## VI. **ALCOHOL PROHIBITED**

- A. General. Lexington Utilities shall provide guidance to all covered employees regarding the various types of alcohol-prohibited conducts.
- B. Alcohol Concentration. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. If a Company representative has actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater the employee shall not be permitted to perform or continue to perform covered functions.
- C. On-Duty Use. No employee shall use alcohol while performing safety sensitive functions. If a Company representative has actual knowledge that a covered employee is using alcohol while performing covered functions, the employee shall not be permitted to perform or continue to perform covered functions,
- D. Pre-Duty Use. No employee shall use alcohol while performing safety sensitive functions within four hours prior to performing covered functions. No employer having actual knowledge that an employee has used alcohol within four hours shall permit an employee to perform or continue to perform safety-sensitive functions.
- E. Use Following an Accident. No employee required to take a post-accident alcohol test under 382.303 shall use alcohol for eight hours following the accident or until he/she undergoes a post-accident alcohol test, whichever occurs first.
- F. **On call employees who may perform covered functions are subject to pre-duty alcohol prohibition. An employee, who is notified to report to duty to respond to a covered function, may not use alcohol after being notified to report. If company personnel determine that an employee has used alcohol within the time period after the employee has been notified to report for duty, the company shall not allow the on-call employee to perform covered functions. If an on-call employee is called to work and is under the influence of alcohol they must notify company personnel that they are under the influence and they must not perform covered functions.**

## VII. **PROBLEMS ASSOCIATED WITH ALCOHOL TESTING (49 CFR PART 40 – SUBPART N)**

- A. Refusal Criteria and Consequences (§40.261) - Criteria for refusal to take an alcohol test and the consequences.
  - 1. The employee is considered to have refused to take an alcohol test if he/she
    - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by Lexington Utilities, consistent with applicable DOT agency regulations,

after being directed to do so by Lexington Utilities. This includes the failure of an employee (including an owner-operator) to appear for a test when called by C/TPA (see §40.241 (b) (1));

- b. Fail to remain at the testing site until the testing process is complete; Provided, that an employee who leaves the testing site before the testing process commences (see Section 40.243(a) for a pre-employment test is not deemed to have refused to test;
  - c. Fail to attempt 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 Section 40.243(a) for a pre-employment test is not deemed to have refused to test;
  - d. 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));
  - e. Fail to undergo a medical examination or evaluation, as directed by Lexington Utilities as part of the insufficient breath procedures outlined at §40.265(c);
  - f. Fail to sign the certification at Step 2 of the ATF (see §40.241 (g) and §40.251 (d)
  - g. Fail to cooperate with any part of the testing process.
2. Any employee who refuses to take an alcohol test will incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.
  3. 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 1 of this section, the collector must terminate the portion of the testing process in which they are involved, document the refusal on the ATF (or in a separate document which should 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. The collector must make this notification directly to the DER (not using a C/TPA as an intermediary).
  4. An employee who refuses to take a non-DOT test or to sign a non-DOT form has not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.
- B. Consequences for Inability to Provide Sufficient Saliva for Alcohol Test (§40.263) - Consequences for an employee who is unable to provide a sufficient amount of saliva for an alcohol screening test.
1. The STT 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). §40.265.
    - a. The STT must conduct a new screening test using a new screening device.
    - b. If the employee refuses to make the attempt to complete the new test, the STT must discontinue testing, note the fact on the " Remarks" line of the A TF, and immediately

notify the DER. This is a refusal to test.

- c. If the employee has not provided a sufficient amount of saliva to complete the new test, the STT must note the fact on the " Remarks" line of the A TF and immediately notify the DER.
  2. The DER, when the STT informs the DER that the employee has not provided a sufficient amount of saliva (see paragraph (a) (3) of this section), the DER must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.
- C. Criteria for Inability to Provide Sufficient Breath for Alcohol Test (§40.265) - Criteria for an employee who is unable to provide a sufficient amount of breath for an alcohol test.
  1. If an employee does not provide a sufficient amount of breath to permit a valid breath test, the BAT must take the steps listed in this section.
  2. The BAT must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
    - a. If the employee refuses to make the attempt the SAT must discontinue the test, note the fact on the " Remarks" line of the A TF, and immediately notify the DER. This is a refusal to test.
    - b. If the employee again attempts and fails to provide a sufficient amount of breath, the BAT may provide another opportunity to the employee to do so if they believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.
    - c. When the employee's attempts under paragraph C.2.b. of this section have failed to produce a sufficient amount of breath, the BAT must note the fact on the " Remarks" line of the ATF and immediately notify the DER.
    - d. If the BAT is using an EBT that has the capability of operating manually, he/she may attempt to conduct the test in manual mode.
    - e. If the collector is qualified to use saliva ASD and the collector is in the screening test stage, the collector may change to saliva ASD only to complete the screening test.
  3. The Company shall when notified by the BAT that the employee has not provided a sufficient amount of breath, the BAT must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to Lexington Utilities and the physician has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
    - a. The Company is required to provide the physician who will conduct the evaluation with the following information and instructions:
      - (1) 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;
      - (2) The consequences of the appropriate DOT agency regulation for refusing to

take the required alcohol test;

(3) That the physician must provide Lexington Utilities with a signed statement of his or her conclusions; and

(4) 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.3.a. (4)(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.

b. The physician who makes evaluation must provide a written statement of his/her conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). The physician must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain his/her conclusion.

c. Upon receipt of the report from the examining physician the DER must immediately inform the employee and take appropriate action based upon the appropriate DOT agency regulations.

D. Problems Associated with Cancelled Alcohol Tests (§40.267).

1. The Company, a BAT, or an STT, must cancel an alcohol test if any of the following problems occur. These are "fatal flaws... He/she 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 saliva ASD or a breath tube ASD:

(1) The STT or SAT reads the result either sooner than or later than the time allotted by the manufacturer and 49 CFR 40 - Section §40.245(a) (8) for the saliva ASD and Section §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 (See §40.245(b) (1)» for the breath tube ASD.
    - 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 EST produces a result that differs by more than the tolerance stated in the OAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EST since the last valid external calibration check is cancelled (See §40.233(a) (1) and (d)).
- E. Problems Associated with Cancelled Test & Corrective Action (§40.269) - Problems that cause an alcohol test to be cancelled unless they are corrected.
  1. The BAT or STT or company must cancel an alcohol test if any of the following problems occur unless they are corrected. These are "correctable flaws":
    - 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) (2)».
    - c. The BAT or STT uses a non-DOT form for the test (See §40.225(a)).
  - F. Correction of Alcohol Testing Problems (§40.271).
  2. The BAT or STT has the responsibility of trying to complete successfully an alcohol test for each employee.
    - a. If, during or shortly after the testing process the collector becomes aware of any event that will cause the test to be cancelled (See §40.267) they must try to correct the problem promptly, if practicable. They may repeat the testing process as part of this effort.



- b. If repeating the testing process is necessary the collector must begin a new test as soon as possible. They must use a new ATF, a new sequential test number, and, if needed, a new ASD and/ or a new EST. It is permissible to use additional technical capabilities of the EST (e.g., manual operation) if they have been trained to do so in accordance with §40.213(c).
          - c. If repeating the testing process is necessary, the collector is 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.
          - d. If another testing device is not available for the new test at the testing site, the collector 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.
  2. If the STT, BAT, company or other service agent administering the testing process becomes aware of a "correctable flaw" (see § 40.269) that has not already been corrected, they must take all practicable action to correct the problem so that the test is not cancelled.
    - a. If the problem resulted from the omission of required information, the BAT or STT is responsible for providing the missing information in writing with a signed statement that it is true and accurate. For example, suppose a BAT or STT forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. The BAT or STT, when the problem is called to his/her attention, must supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that the collector's signed statement is true and accurate.
    - b. If the problem is the use of a non-DOT form, the BAT or STT 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. The BAT or STT 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 the BAT or STT control, and the steps taken to prevent future use of non-DOT forms for DOT tests. The BAT or STT must supply this information on the same business day on which notified of the problem, transmitting it by fax or courier.
  3. If the BAT or STT cannot correct the problem they must cancel the test.
- G. Effects of a Cancelled Alcohol Test (§40.273).
1. A cancelled alcohol test is neither positive nor negative
    - a. The Company 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).
    - b. The Company 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).

- c. The Company must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph 1.b. of this section or other provisions of this part.
  2. A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.
  3. When a test must be cancelled the BAT, STT or other person who determines that the cancellation is necessary he/she must inform the affected DER within 48 hours of the cancellation.
  4. A cancelled DOT test does not provide a valid basis for Lexington Utilities to conduct a non-DOT test (i.e., a test under Company authority).
- H. Effects of Procedural Problems that are not Sufficient to Cancel an Alcohol Test (§40.275).
  1. The STT, BAT, company, or a service agent administering the testing process must document any errors in the testing process 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 2 of this section.
  2. 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 A TF result in the cancellation of the test. Nor is a test to be cancelled based on a claim by an employee that he or she was improperly selected for testing.
  3. When Lexington Utilities notes these errors, even though not sufficient to cancel an alcohol test result, Lexington Utilities may be subject to enforcement action under DOT agency regulations.
- I. Criteria for Acceptable Alcohol Tests (§40.277) - Alcohol tests other than saliva or breath are not permitted under these regulations.
  1. No other types of alcohol tests (e.g., blood and urine) are authorized for testing done in conjunction with 49 CFR Part 40.
  2. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted under 49 CFR Part 40.

## **VIII. EMPLOYEE WHO REFUSES ALCOHOL TEST**

### **A. General.**

1. A covered employee who has an alcohol test administered and the alcohol concentration is greater than 0.02 shall not be permitted to perform covered functions or not allowed to continue

to perform covered functions. An employee who engages in prohibited conduct as outlined in the AMPP shall be advised of available resources to evaluate and resolve problems associated with alcohol misuse.

2. **A covered employee who fails or refuses an alcohol test will face disciplinary action up to and including termination.**
3. **Refusal to take a required Non-DOT alcohol test or failure of an alcohol test shall result in removal from performing covered functions. Additional disciplinary action up to and including termination may result.**
4. No covered employee who has violated the rules on alcohol misuse or refuses to submit to testing can perform any covered function unless and until that employee has:
  - a. Been evaluated by a SAP to determine whether the employee is in need of assistance in resolving problems related to alcohol use.
  - b. Completed any treatment recommended by the SAP.
  - c. Been evaluated by a SAP to ensure that the employee has properly followed the treatment program.
  - d. Undergone a return-to-duty alcohol test with resulting alcohol concentration of less than 0.02.
  - e. Been advised of the follow-up testing provisions as specified in section III of this plan
5. Following administration of alcohol test where the employee tested positive, the employee should not be allowed to return to performing any covered functions pending the results of the alcohol test and any discussion of disciplinary action that may occur. The employee should make arrangements to be transported home. The employee should be instructed not to drive any motor vehicle due to the positive test result that he/she is under the influence of alcohol. **If the employee insists on driving the proper local enforcement authority may be notified that an employee who the Company believes may be under the influence of alcohol is leaving Company premises driving a motor vehicle.**
6. **Should an employee complete alcohol substance abuse treatment and fail a subsequent follow up test the employee will be terminated and will be ineligible for rehire.**

B. Required Referrals and Evaluations

1. Lexington Utilities shall ensure that employees who engage in prohibited conduct are made aware of potential resources to assist in the evaluation of their problems and to help resolve any problems associated with the misuse of alcohol. Employees who engage in prohibited conduct must be referred to a substance abuse professional for evaluation and/or treatment.
2. No covered employee who has violated the rules on alcohol misuse or refuses to submit to testing can perform any covered function unless and until that employee has:
  - a. Been evaluated by a SAP to determine whether the employee is in need of assistance in resolving problems related to alcohol use.

- b. Completed any treatment recommended by the SAP.
- c. Been evaluated by a SAP to ensure that the employee has properly followed the treatment program.
- d. Entered into a Company-approved evaluation and/or treatment and/or rehabilitation program and successfully completed the treatment and/or program.
- e. Undergone a return-to-duty alcohol test with resulting alcohol concentration of less than 0.02.
- f. Been advised of the follow-up testing provisions as specified in section III of this plan

C. Evaluation, Treatment and Rehabilitation

1. A Substance Abuse Professional (SAP) is a licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.
2. Lexington Utilities shall not permit an employee to return to duty requiring the performance of a covered function after engaging in conduct prohibited in Section VI of this plan until the employee has undergone a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.
3. Lexington Utilities shall ensure that a SAP who determines that a covered employee requires assistance in resolving problems associated with alcohol misuse does not refer the employee to the SAP's private practice or to a person or organization from which the SAP receives remuneration or has a financial interest. This does not prohibit a SAP from referring an employee for assistance to a public agency (State, county, or municipality); a person under contract with Lexington Utilities to provide treatment for alcohol on behalf of Lexington Utilities; the sole source of therapeutic treatment under the employee's health insurance policy Lexington Utilities y; or sole source of therapeutic treatment reasonably accessible to the employee.
4. The employee's evaluation and rehabilitation may be provided by a company under contract; or a SAP not affiliated with Lexington Utilities.
5. **Rehabilitation may be offered to the employee only one time. If the employee fails a follow up alcohol test after passing a return to duty alcohol test they will not be offered rehabilitation a second time.**
6. **The employee will be responsible for any costs associated with the rehabilitation process if it is offered to the employee.**

D. Levels of Disciplinary Actions. Disciplinary action as set forth below will be taken under each of the described circumstances

1. **0.02 - 0.039 Consequences.**
  - a. **When the results of an alcohol (screen/confirmation) test indicate an alcohol concentration of 0.02 or greater but less than 0.04 the employee will be removed immediately from performing the covered function for the remainder of his/her shift and may be subject to loss of pay for that period of time.**
  - b. **When the results of an alcohol (screen/confirmation) test indicate an alcohol concentration is 0.02 or greater but less than 0.04 on a second test the employee will be removed immediately from performing the covered function and shall be suspended.**
  - c. **When the results of another alcohol (screen/confirmation) test indicate alcohol concentration 0.02 or greater but less than 0.04 after an alcohol test, which had produced an alcohol concentration of 0.04 or greater than that employee, will be removed immediately from performing the covered function. The employee shall be suspended and referred to the substance abuse professional and must follow all the recommendations following completion of the assessment.**
2. **0.04 or Greater Consequences.**
  - a. **When an employee has tested for alcohol in a concentration of 0.04 or greater the employee will be removed from performing the covered function and shall be suspended. The employee shall be referred to a substance abuse Professional that shall determine what assistance if any the employee needs in resolving problems associated with alcohol misuse.**
  - b. **In all cases when an employee tests at an alcohol concentration of 0.04 or greater after an alcohol test which had on a previous occasion produced an alcohol concentration of 0.04 or greater than the employee shall be removed immediately from performing the covered function.**
3. **Other Alcohol Consequences.**
  - a. **When an employee refuses to report for assessment evaluation and/or referral for treatment with a substance abuse professional he/she will be removed immediately from performing the covered function and will be subject to disciplinary action up to and including termination.**
  - b. **When an employee after assessment is referred for rehabilitation and/or treatment and the employee refuses to enter or successfully complete such a rehabilitation and/or treatment assessment program he/she will be removed immediately from performing the covered function and subject to disciplinary action up to and including termination.**
  - c. **An employee who refuses to provide an adequate breath for alcohol testing without a valid medical explanation after he/she has received notice of the requirement to be tested in accordance with the requirements of the AMPP or who engages in conduct that clearly obstructs the testing procedure will be removed immediately from performing the covered function. The employee will**

**be subject to disciplinary action up to and including termination.**

- d. **On duty use or possession of alcohol on Company time on Company premises or in Company vehicles will result in immediate removal from performing the covered function. The employee will be subject to disciplinary action up to and including termination.**

## X. DISCLOSURE OF ALCOHOL INFORMATION/RECORDS

### A. General.

1. The Company or the authorized agent shall maintain all alcohol related testing information including all test results and other appropriate records in a secure manner to prevent the disclosure of such information to unauthorized personnel.
2. The APM/DER shall maintain a locked file system, which will contain the alcohol testing information and records. The APM/DER shall provide all records whenever deemed necessary for inspection by any authorized agency or operator. The files shall be maintained as confidential. Employee files shall be handled on strict "need to know" basis.
3. Alcohol test results shall not be included in personnel files.
4. The Company may disclose information without employee's consent as provided by DOT procedures 49 CFR Part 40 concerning certain legal proceedings.

### B. Disclosure Provisions.

1. The Company shall not release covered employee information that is contained in records as required to be maintained by the provisions of the AMPP and in accordance with federal requirements except as required by law or when expressly authorized or required by 49 CFR Parts 40.
2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his/her alcohol tests. Lexington Utilities shall promptly provide the requested records. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.
3. The Company shall permit access to all facilities utilized in complying with the requirements of 49 CFR Parts 40 to the Secretary of Transportation or any DOT or state agency with regulatory authority over Lexington Utilities.
4. The Company shall make available copies of all results for alcohol testing conducted under the AMPP as required by 49 CFR Parts 40 when requested by the Secretary of Transportation or any DOT or state agency with regulatory authority over Lexington Utilities. When specified by the agency the information shall include name-specific alcohol test results, records, and reports.

5. When requested by the National Transportation Safety Board as part of an accident investigation, Lexington Utilities shall disclose information related to its administration of any post-accident alcohol tests administered following the accident under investigation.
6. The Company shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.
7. The Company may disclose required information pertaining to a covered employee to the employee or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered as required by the AMPP and the regulations set forth in 49 CFR Part 199 and Part 40 or from Lexington Utilities determination that the covered employee engaged in prohibited alcohol conduct including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee.
8. The Company shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

C. Drug and Alcohol Testing Information C/TPA's May transmit to Lexington Utilities.

1. The C/TPA may, acting as an intermediary, transmit the information in the following sections of 49 CFR Part 40 to the DER for-Lexington Utilities, if Lexington Utilities chooses to do so. These are the only items that the C/TPA is permitted to transmit to Lexington Utilities 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 Lexington Utilities, the transmission of SAP reports to Lexington Utilities, the transmission of positive alcohol test results, and the transmission of medical information from MROs to Lexington Utilities.
2. In every case, the C/TPA must ensure that, in transmitting the information, the C/TPA meets 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 Lexington Utilities. For example, if the C/TPA transmitted MROs' drug testing results to DER's, the C/TPA must transmit each drug test result to the DER in compliance with the requirements for MRO's set forth in §40.167.
3. Drug Testing Information
  - Sec. 40.25: Previous two years' test results
  - Sec. 40.35: Notice to collectors of contact information for DER
  - Sec. 40.61 (a): Notification to DER that an employee is a "no show" for a drug test
  - Sec. 40.63(e): Notification to DER of a collection under direct observation
  - Sec. 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
  - Sec. 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.)

Sec. 40.111 (a): Transmission of laboratory statistical reports to Lexington Utilities  
Sec. 40.127(f): Report of test results to DER  
Sec. 40.127(g), 40.129(d); 40.159(a) (4) (ii); 40.161(b): Reports to DER that test is cancelled  
Sec. 40.129 (d): Report of test results to DER  
Sec. 40.129(g) (1): Report to DER of confirmed positive test in stand-down situation  
Sec. 40.149(b): Report to DER of changed test result  
Sec. 40.155(a): Report to DER of dilute specimen  
Sec. 40.167(b) and (c): Reports of test results to DER  
Sec. 40.187(a)-(f) Reports to DER concerning the reconfirmation of tests  
Sec. 40.191(d): Notice to DER concerning refusals to test  
Sec. 40.193(b) (3): Notification to DER of refusal in shy bladder situation  
Sec. 40.193(b) (4): Notification to DER of insufficient specimen  
Sec. 40.193(b) (5): Transmission of CCF copies to DER (not to MRO)  
Sec. 40.199: Report to DER of cancelled test and direction to DER for additional collection  
Sec. 40.201: Report to DER of cancelled test

4. Alcohol testing information

§40.215: Notice to BAT's and STT's 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

XI. CONFIDENTIALITY AND RELEASE OF INFORMATION - PART 40 - SUBPART P

A. General Confidentiality Requirements (§40.321 - §40.323).

1. General confidentiality rules for drug and alcohol test information - Except as otherwise provided in this subpart the service agent or company participating in the DOT drug or alcohol testing process is 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.
2. Criteria for program participant's release of drug or alcohol test information in connection with



legal proceedings (§40.323).

- a. The Company 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 Lexington Utilities), 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 Lexington Utilities 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 employee or the employee's employer was negligent. Lexington Utilities is authorized to respond to the court's order to produce the records.
- b. The Company may release the information to the decision-maker in the proceeding (e.g., the court in a lawsuit) Lexington Utilities may release the information only with a binding stipulation that the decision-maker to whom it is released will make it available only to parties to the proceeding.
- c. If a service agent receives a Company request for its employee's drug or alcohol-testing information from the service agent to use in a legal proceeding as authorized in paragraph 1.a. of this section (e.g., the laboratory's data package) the service agent must provide the requested information to Lexington Utilities.
- d. The Company or service agent must immediately notify the employee in writing of any information Lexington Utilities releases under this section.

B. Release of Medical Information in Verification Process (§40.327).

1. MRO procedures regarding release of medical information gathered in the verification process
  - a. The MRO must, except as provided in paragraph 1.c of this section, report drug test results and medical information learned as part of the verification process to third parties without the employee's consent if the MRO determines in their 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 the MRO is authorized to provide information by this section include Lexington Utilities, 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. If the law of a foreign country (e.g., Canada) prohibits the MRO from providing medical information to Lexington Utilities the MRO may comply with that prohibition.
- C. **To what additional parties must employers and service agents release information?** (§40.329 - §40.331)
  1. Information that laboratories, MROs, and other service agents must release to employees
    - a. The MRO or service agent 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. The MRO or service agent may charge no more than the cost of preparation and reproduction for copies of these records
    - b. The laboratory 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). The laboratory may charge no more than the cost of preparation and reproduction for copies of these records.
    - c. The SAP must make available to an employee, on request, a copy of all SAP reports (See § 40.311). However, the SAP must redact follow-up testing information before providing it to the employee.
  2. Additional parties that Lexington Utilities and service agent must release information (§40.331)  
-Lexington Utilities or service agent must release information under the following circumstances:
    - a. If Lexington Utilities or service agent receives a specific written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, Lexington Utilities or service agent must provide the information to the identified person. For example, as a Company, when you receive a written request from a former employee to provide information to a subsequent company Lexington Utilities or service agent must do so. In providing the information Lexington Utilities or service agent must comply with the terms of the employee's consent.
    - b. The Company must, upon request of DOT agency representatives must 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 49 CFR part 40 and DOT agency regulations. Lexington Utilities must provide this information at Lexington Utilities principal place of business in the time required by the DOT agency.
  - (3) All items in paragraph 2.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. The service agent must, upon request of DOT agency representatives, provide the following
  - (1) Access to the service agent's facilities used for 49 CFR Part 40 and all 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 49 CFR Part 40 and DOT agency regulations. Lexington Utilities must provide this information at Lexington Utilities principal place of business in the time required by the DOT agency.
  - (3) All items in paragraph 2.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 the service agent 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 Lexington Utilities or service agent or the employee, company or service agent 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 § Part 40.13). This part does not require you to disobey a court order, however., the laboratory must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. If a party seeks a court order directing the release of a specimen or part of a specimen contrary to any provision of 49 CFR Part 40 the laboratory 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. The requirement of 49 CFR Part 40 does not require the laboratory to disobey a court order, however.

- D. Record-Keeping Requirements for Lexington Utilities (382.401).
1. Records that are maintained by Lexington Utilities (§40.333).
    - a. The Company must keep the following records for the following periods of time:
      - (1) The Company must keep the following records for five years:
        - (a) Records of employee alcohol test results indicating an alcohol concentration of 0.02 or greater;
        - (b) Records of employee verified positive drug test results;
        - (c) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
        - (d) SAP reports; and
        - (e) All follow-up tests and schedules for follow-up tests.
      - (2) The Company must keep records for three years of information obtained from previous employers under § 40.25 concerning drug and alcohol test results of employees.
      - (3) The Company must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
      - (4) The Company 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. The Company does not have to keep records related to a program requirement that does not apply to Lexington Utilities (e.g., a maritime company who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
    - c. The Company must maintain the records in a location with controlled access.
    - d. A service agent may maintain these records for Lexington Utilities. However, the service agent must ensure that the service agent can produce these records at Lexington Utilities 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 Lexington Utilities must ensure that the service agent can provide them within two working days.
    - e. If Lexington Utilities stores records electronically, where permitted by 49 CFR Part 40, Lexington Utilities 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, Lexington Utilities must convert them to printed documentation in a rapid and readily auditable manner at the request of the DOT agency.

## XII. EMPLOYEE ASSISTANCE PROGRAM (EAP)

### A. **Scope of Program.**

1. The EAP will provide education and training materials on alcohol misuse to all covered employees. The materials should include:
  - a. Informational material displayed on bulletin boards, employee break rooms, locker rooms, etc. and distributed to employees.
  - b. A community service hot-line telephone number for employees to obtain assistance regarding alcohol misuse should be displayed on bulletin boards and distributed to covered employees.
  - c. Distribution of Lexington Utilities policy regarding alcohol misuse to all new employees' policy should be displayed in prominent places throughout Lexington Utilities.
2. Each covered employee shall receive a copy of the information specified in section III. C The employee should acknowledge receipt of this information.
3. The informational materials should address:
  - a. The effects of alcohol misuse on the individual's health, work, and personal life
  - b. The signs and symptoms of an alcohol problem for an employee or co-worker.
  - c. Procedures for intervening evaluations and assistance in resolving problems associated with the misuse of alcohol.
  - d. Procedures for intervening when an alcohol problem is suspected, including confrontation and referral to management for assistance.
4. Lexington Utilities may provide optional information and provisions concerning the following
  - a. Lexington Utilities policies with respect to the use or possession of alcohol.
  - b. Consequences for an employee, who is found to have a prohibited alcohol level, based on Lexington Utilities authority independent of Part 199 requirements.
  - c. Any additional policies or consequences shall be clearly identified or described as being based on Lexington Utilities authority.

### B. **Supervisor Training**

1. Supervisory personnel responsible for those employees covered under Part 199 and 40 will receive training under the alcohol misuse prevention plan.

2. The training shall include at least one 60-minute period of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.
3. The supervisory alcohol training materials should address the specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, and body odors of the employee who may be subjected to reasonable suspicion alcohol testing. It shall also address the physical and performance indicators of probable alcohol misuse.
4. The required reasonable suspicion observations shall be made by a Lexington Utilities supervisor who is trained in detecting the symptoms of alcohol misuse.

### XIII RECORD-KEEPING PROCEDURES

#### A. General.

1. Lexington Utilities APM or designee shall maintain the alcohol testing records in accordance with the provisions set out in the AMPP. The APM shall maintain all records under lock and key for Lexington Utilities.
2. Records shall be maintained for the specified periods of time as required in 49 CFR Part 199 and 49 CFR Part 40.

#### B. Record Retention Provisions.

1. The following types of records shall be maintained for a minimum period of five years.
  - a. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater.
  - b. Documentation of refusals to take required alcohol tests.
  - c. Calibration documentation of each EBT used in alcohol testing, including records of the results of external calibration checks.
  - d. Employee referrals and evaluations.
  - e. MIS annual alcohol misuse reports data.
  - f. Documentation pertaining to any missed tests {Example of Form in Appendix C - a post- accident or reasonable suspicion test that could not be conducted within the prescribed time frame}.
2. The following types of records shall be maintained for a minimum period of two years
  - a. Records related to the collection process (except calibration of EBT devices)
  - b. Records related to training.

- c. Records of the inspection and maintenance of each EBT used in employee testing.
    - d. Documentation of Lexington Utilities compliance with the QAP for each EBT it uses for alcohol testing under the AMPP.
    - e. Records of the training and proficiency testing of each BAT/STT used in employee testing.
    - f. Log books used in conjunction with EBTs.
  3. Records of all test results below 0.02 shall be maintained for a minimum period of one year.
  4. Records of decisions not to administer post-accident employee alcohol tests shall be maintained for at least three years
- C. Maintenance of Specific Types of Records.
  1. The following types of records related to the collection process shall be maintained
    - a. Collection log books, if used.
    - b. Calibration documentation for EBT devices.
    - c. Documentation of BAT/STT training.
    - d. Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.
    - e. Documents generated in connection with decisions to administer post-accident alcohol tests.
    - f. Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for alcohol testing.
  2. The following types of records related to test results:
    - a. Lexington Utilities copy of the alcohol test forms, including the test results.
    - b. Documents related to the refusal of any covered employee to submit to a required alcohol test.
    - c. Documents presented by a covered employee to dispute the result of an alcohol test administered under the AMPP.
  3. Records related to other violations of Part 199 as outlined in the AMPP.
  4. The following types of records related to referrals and evaluations:
    - a. Records pertaining to a determination by a SAP concerning a covered employee's need for assistance.
    - b. Records concerning a covered employee's compliance with the recommendations of

the SAP.

5. Records related to Lexington Utilities MIS annual alcohol misuse testing data. Lexington Utilities shall submit the required alcohol misuse MIS testing data to the FHWA as prescribed by the regulations.
  - a. The report shall contain the following informational elements
    - (1) Number of covered employees
    - (2) Number of covered employees subject to testing under the alcohol misuse rule of another DOT agency.
    - (3) Number of screening tests.
    - (4) Number of confirmation tests.
    - (5) Number of confirmation tests indicating an alcohol concentration of 0.02 or greater,
    - (6) But less than 0.04, by type of test.
    - (7) Number of alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test.
    - (8) Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions that were returned to duty in a covered position.
    - (9) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.
    - (10) Number of covered employees who were found to have violated other provisions of Section IV of the plan, and any action taken in response to the violation. Number of covered employees who refuse to submit to an alcohol test required by Part 199 and any action taken in response to the refusal.
    - (11) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.
  - b. Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions shall be submitted on "FHWA or RSPA Alcohol Testing MIS Data Collection EZ Form" and include the following informational elements. (This "EZ" report may only be submitted if the program results meet these criteria)
    - (1) Number of covered employees
    - (2) Number of covered employees subject to testing under the alcohol misuse rule



of another operating administration identified by each agency.

- (3) Number of screening tests by type of test.
- (4) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.
- (5) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

- c. Lexington Utilities may use a consortium to prepare reports on behalf of Lexington Utilities for purposes of compliance with this reporting requirement. However, Lexington Utilities shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

6. The following types of records related to education and training of employees and supervisors:
  - a. Materials on alcohol misuse awareness, including a copy of Lexington Utilities policy on alcohol misuse.
  - b. Documentation of compliance with the requirements for access to all Lexington Utilities facilities and records.
  - c. Documentation of training provided to supervisors for the purposes of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.
  - d. Certification that any training conducted under the AMPP compliance with the requirements of 40 CFR Part 199 and 40.

D. Maintenance and Disclosure of Records Concerning EBTs and BAT/STT's.

1. Lexington Utilities or its designated agent shall maintain the following records for a minimum period of two years.
  - a. All records pertaining to the inspection and maintenance of each EBT used in alcohol testing for its employees.
  - b. Documentation of Lexington Utilities compliance with the QAP for each EBT it uses for testing employees under the alcohol testing regulations as set forth in Part 199 and 40.
  - c. All records pertaining to the training and proficiency testing of each BAT/STT used by Lexington Utilities or its designated alcohol testing sites for alcohol testing its employees.
  - d. All log books, if applicable, used in conjunction with the alcohol testing provisions.
2. Lexington Utilities or its designated agent shall maintain for a minimum of five years records

pertaining to the calibration procedures for each EBT used in conjunction with the alcohol testing as set forth in Part 199 and 40. These records shall also include documentation concerning the results of all external calibration checks conducted on each EBT.

3. Lexington Utilities shall maintain all records required by this section and shall release this information only under the terms as specified in Section XI of this plan. Lexington Utilities will ensure that records regarding the EBTs and BAT/STT's are maintained in a confidential manner and are released only in accordance with applicable federal regulations as outlined in this plan.

APPENDIX A

CONSORTIUM/THIRD PARTY ADMINISTRATOR (C/TPA)

Fidelity Search Enterprises  
1029 Campbell St.  
Suite 105  
Jackson, TN 38301  
731-422-9911

DESIGNATED EMPLOYER REPRESENTATIVE (DER)

Michael Harper

SUBSTANCE ABUSE PROFESSIONAL (SAP)

**Linda Laney**  
386 Carriage House Dr.  
Suite E.  
Jackson, TN 38305  
731-217-8666

BREATH ANALYSIS TECHNICIAN (BAT/STT)

Jess June or Ricky McMinn  
Fidelity Search Enterprises  
1029 Campbell St.  
Suite 105  
Jackson, TN 38301  
731-422-9911

EAP

Cumberland Heights  
130 Stonebridge Blvd  
Jackson TN 38305  
731-660-2790

## APPENDIX B

### I. Alcohol Testing Personnel - 49 CFR Part 40 - Subpart J

#### A. Conducting DOT alcohol tests (§40.211).

1. Screening test technicians (STT's) and breath alcohol technicians (BAT's) meeting their respective requirements of 49 CFR Part 40 are the only people authorized to conduct DOT alcohol tests.
2. An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
3. The BAT or STT qualified immediate supervisor of a particular employee 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 Lexington Utilities from doing so.

#### B. § 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:

1. Basic information. 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>).
2. Qualification training. You must receive qualification training meeting the requirements of this paragraph (b).
  - a. 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.transportation.gov/odapc>). 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.
  - b. 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.

- c. 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.
    - d. 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.
3. 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).
  - a. 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.
  - b. These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.
  - c. 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) before you begin to perform STT or BAT functions.
4. Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:
  - a. If you became a BAT or STT before August 1, 2001, you were required to have met the requirements set forth in paragraphs (b) and (c) of this section, and you do not have to meet them again.
  - b. If you become a BAT or STT on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform BAT or STT functions.
5. 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.
6. 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.

- a. 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.
  - b. 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.
  - c. 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.
7. 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.
8. Other persons who may serve as BATs or STTs.
- a. 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.
  - b. 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.
- C. Information about DER that Lexington Utilities must provide to BAT's and STT's (§40.215).
1. Lexington Utilities must provide to the STT's and BAT's 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.
- D. Additional information on the role of STT's and BAT's may be found in the following areas of 49 CFR Part 40 (§40.217).
1. Other information on the role and functions of STT's and BAT's can be found in the following sections of 49 CFR Part 40.
    - § 40.3-Definitions.
    - § 40.223-Responsibility for supervising employees being tested.
    - § 40.225-40.227-Use of the alcohol testing form.
    - § 40.241-40.245-Screening test procedures with ASDs and EBTs.
    - § 40.251-40.255-Confirmation test procedures.
    - § 40.261-Refusals to test.
    - § 40.263-40.265-Insufficient saliva or breath.

§ 40.267-Problems requiring cancellation of tests.  
§ 40.269-40.271-Correcting problems in tests.

## **II Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing 49 CFR Part 40 - Subpart K**

- A. Procedure for conducting an alcohol test and location (§40.221).
1. A DOT alcohol test must take place at an alcohol-testing site meeting the requirements of this section.
  2. A collector operating an alcohol-testing site must ensure that it meets the security requirements of §40.223.
  3. A collector operating an alcohol-testing site 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.
  4. A collector operating an alcohol-testing site 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.
  5. If an alcohol-testing site fully meeting all the visual and aural privacy requirements is not readily partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.
  6. An alcohol-testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.
- B. Steps that must be taken to protect the security of alcohol testing sites (§40.223).
1. The BAT, STT, or other person operating an alcohol testing site, he/she must prevent unauthorized personnel from entering the testing site.
    - a. The only people to be treated as authorized persons are employees being tested, BAT's, STT's, and other alcohol testing site workers, DERs, employee representatives authorized by Lexington Utilities (e.g., on the basis of Lexington Utilities policy or labor-management agreement), and DOT agency representatives.
    - b. The BAT or STT must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
    - c. The BAT or STT may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
  2. The BAT or STT must not allow any person other than the BAT or STT, the employee, or a DOT agency representative to actually witness the testing process (See §40.241- 40.255).
  3. If the 8AT or STT is operating an alcohol-testing site he/she must ensure that when an E8T or

ASD is not being used for testing, it is stored in a secure place.

4. If the BAT or STT is operating an alcohol-testing site he/she must ensure that no one other than BAT's or other employees of the site have access to the site when an EBT is unsecured.
5. The BAT or STT is to avoid distraction that could compromise security. he/she is limited to conducting an alcohol test for only one employee at a time.
  - a. 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, the BAT is not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.
  - b. The BAT who will conduct both the screening and the confirmation test is to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.
  - c. The SAT or STT is 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.

C. Form to be used for an alcohol test (§40.225).

1. The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. Beginning February 1, 2002. The ATF must be a three-part carbon less manifold form. The ATF can be found in 49 CFR Part 40, Appendix G. You may view this form on the ODAPC web site "<http://www.transportation.gov/odapc>".
2. Lexington Utilities in using the DOT alcohol-testing program is not permitted to modify or revise the ATF except as follows:
  - a. The Company may include other information needed for billing purposes, outside the boundaries of the form.
  - b. The Company may use a ATF directly generated by an EST which omits the space for affixing a separate printed result to the ATF, provided the EST prints the result directly on the ATF.
  - c. The Company may use an ATF that has Lexington Utilities 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.
  - d. The Company may use an A TF in which all pages are printed on white paper. Lexington Utilities may modify the A TF 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.
  - e. The BAT or STT may add, on the " Remarks" line of the ATF, the name of the DOT



agency under whose authority the test occurred.

f. The BAT or STT may use an ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

3. The Company may use an equivalent foreign-language version of the ATF approved by ODAPC. Lexington Utilities 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.

D. Lexington Utilities use of ATF for non-DOT tests or non-DOT forms for DOT tests (§40.227).

1. The Company, BAT, or STT is prohibited from using the ATF for non-DOT alcohol tests. Lexington Utilities BAT's or STT's are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either will subject Lexington Utilities BAT or STT to enforcement action under DOT agency regulations.

2. 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 Lexington Utilities 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).

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

ASB's 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 only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

F. Devices to be used to conduct alcohol-screening tests (§40.229).

1. EBTs and ASDs on the NHTSA conforming products lists (CPL) for evidential and non-evidential devices are the only devices the BAT or STT is allowed to use to conduct alcohol screening tests under 49 CFR Part 40. The BAT or STT may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in 49 CFR Part 40. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

G. Devices to be used to conduct alcohol confirmation tests (§40.231).

EBTs on ODAPC's web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (1) of this section are the only devices Lexington Utilities may use to conduct alcohol confirmation tests under this part.

Note that, among devices on the CPL for EBTs, only those devices listed without an asterisk (\*) are authorized for use in confirmation testing in the DOT alcohol-testing program.

2. To conduct a confirmation test, you must use an EBT that has the following capabilities:

- a. Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;
  - b. 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;
  - c. Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
  - d. Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
  - e. Tests an air blank; and
  - f. Performs an external calibration check.
- H. Requirements for proper use and care of EBTs (§40.233).
1. An EBT manufacturer must submit, for NHTSA approval, a quality assurance plan (QAP) for the EBT before ODAPC places the EBT on its web page for "Approved Evidential Breath Measurement Devices".
    - a. The manufacturer's 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 the manufacturer's 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).
    - b. The manufacturer's QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
  2. The manufacturer must include, with each EBT, instructions for its use and care consistent with the QAP.
  3. The user of the EBT (e.g., Lexington Utilities. service agent) must do the following:
    - a. The user must follow the manufacturer's instructions, including performance of external calibration checks at the intervals the instructions specify.
    - b. In conducting external calibration checks, the user must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests. ..
    - c. If an EST fails an external check of calibration, the user must take the EST out of service. The user may not use the EST again for DOT alcohol testing until it is repaired and passes an external calibration check.
    - d. The user must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a) (3).

- e. The user 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.

I. **What are the requirements for proper use and care of ASB's (§40.235).**

1. As an ASD manufacturer must submit, for NHTSA approval, a QAP for the ASD before NHTSA approves it and ODAPC places the ASD 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.
2. The manufacturer 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.
3. The user of the ASD (e.g., Lexington Utilities, and STT) must follow the QAP instructions
4. The user is not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.
5. The Company with respect to breath ASDs. must also follow the device use and care requirements of §40.233.

III. Alcohol Screening Tests -49 CFR Part40 - Subpart L

A. First steps in alcohol screening test (§40.241).

1. The BAT or STT will take the following steps to begin all alcohol screening tests, regardless of the type of testing device the BAT or STT is 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, the DER must be notified 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, the alcohol testing process begins without undue delay. For example, do not wait because the employee says he or she is not ready or because an authorized Lexington Utilities or employee representative is delayed in arriving.
    - (1) If the employee is also going to take a DOT drug test, 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. A photo ID issued by Lexington Utilities (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., an employee's license). Faxes or photocopies of identification are not acceptable. Positive identification by an Lexington Utilities representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, the collector must contact the OER to verify the identity of the employee.
        - d. If the employee asks, the BAT or STT must provide identification to the employee. The collector's identification must include name and company's name but is not required to include a 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.
- B. Procedure for alcohol screening test using EBT or non-evidential breath ASD (§40.243).
  1. The BAT or STT 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.
  2. 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.
    - a. Show the employee the displayed test result
    - b. If the device is one that prints the test number, testing device name and serial number, time and result directly onto the A TF, check to ensure that the information has been printed correctly onto the A TF.
    - c. 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 A TF, affix the printout of the information to the designated space on the A TF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

- d. 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, record this information in Step 3 of the A TF.

C. Procedure for an alcohol-screening test using saliva ASD (§40.245)

1. The STT or BAT must take the following steps when using the saliva ASD
  - a. Check the expiration date on the device or on the package containing the device and show it to the employee. The STT or BAT 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, the STT or BAT 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 1.g. of this section), the STT or BAT must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. The STT or BAT 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 the STT or BAT must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.
  - f. Instructions to follow:
    - (1) If the STT or BAT was unable to successfully follow the procedures of paragraphs 1.c. through 1.e. of this section (e.g., the device breaks, you drop the device on the floor), the STT or BAT must discard the device and conduct a new test using a new device.
    - (2) The new device the STT or BAT uses must be one that has been under the STT's control or that of Lexington Utilities before the test.
    - (3) The STT or BAT must note on the "Remarks" line of the A TF the reason for the new test. (Note: The STT or BAT may continue using the same ATF with which you began the test.)
    - (4) The STT or BAT must offer the employee the choice of using the device or having the STT or BAT 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 the STT or BAT is unable to successfully follow the procedures of

paragraphs 1.c. through 1.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) The STT or BAT must then direct the employee to take a new test immediately, using an EBT for the screening test.
  - g. If the STT or BAT is able to successfully follow the procedures of paragraphs 1.c. - 1.e. of this section, but the device does not activate the STT or BAT must discard the device and conduct a new test, in the same manner as provided in paragraph 1.f. of this section. In this case, the STT or BAT must place the device into the employee's mouth to collect saliva for the new test.
  - h. The STT or BAT 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. The STT or BAT must then show the device and it's reading to the employee and enters the result on the A TF.
  - i. The STT or BAT must never re-use devices, swabs, gloves or other materials used in saliva testing.
  - j. The STT or BAT must note the fact that they used saliva ASD in Step 3 of the ATF.
2. As the STT or BAT, you must take the following steps when using the breath tube ASD
- a. Check the expiration date on the device or on the package containing the device and show it to the employee. The STT or BAT may not use the device after its expiration date.
  - b. Remove a device from the package and break the tube's ampul in the presence of the employee.
  - c. Secure an inflation bag on to the appropriate end of the device, as directed by the manufacturer on the device's instructions.
  - d. 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 the device until the inflation bag fills with air (approximately 12 seconds).
  - e. If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph 2.d. of this section.
  - f. 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.
  - g. Instructions to follow:
    - (1) If you were unable to successfully follow the procedures of paragraphs 2.d.

through 21. 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.

- (2) The new device you use must be one that has been under your control or that of the employee 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 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.
  - (5) If you were unable to successfully follow the procedures of paragraphs 2.d. through 2.f. of this section on the new test, you must end the collection and put an explanation on the "Remarks" line on the ATF.
  - (6) You must then direct the employee to take a new test immediately, using another type of ASD (e.g., saliva device) or an EBT.
- h. If you were able to successfully follow the procedures of paragraphs 2.d. through 21. 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.
  - i. 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.
  - j. You must never re-use devices or gloves used in the breath tube testing. The inflation bag must be voided of air following removal from the device. One inflation bag can be used for up to 10 breath tube tests.
- D. Procedures the BAT or STT are to follow after a screening test result (§40.247).
1. If the test result is an alcohol concentration of less than 0.02, the BAT or STT must do the following:
    - a. Sign and date Step 3 of the ATF; and
    - b. Transmit the result to the DER in a confidential manner, as provided in §40.255
  2. If the test result is an alcohol concentration of 0.02 or higher the BAT or STT must direct the employee to take a confirmation test.
    - a. The SAT who will conduct the confirmation test must then conduct the test using the procedures beginning at §40.251.

- b. If a different BAT 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.
- c. If the confirmation test will be performed at a different site from the screening test the BAT must take the following additional steps:
  - (1) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
  - (2) Tell the employee the reason for the waiting period required by section §40.251 (a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
  - (3) Explain that following the BAT instructions concerning the waiting period is to the employee's benefit;
  - (4) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;
  - (5) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;
  - (6) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
  - (7) Ensure that the BAT or another BAT, STT, or Lexington Utilities representative observe the employee as he or she is transported to the confirmation testing site. The BAT or STT must direct the employee not to attempt to drive a motor vehicle to the confirmation-testing site.
- 3. If the screening test is invalid the SAT or STT must 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).

#### IV. Alcohol Confirmation Tests - 49 CFR Part 40 - Subpart M

##### A. First steps in an alcohol confirmation test (§40.251). The SAT for an alcohol confirmation test must follow these steps to begin the confirmation test process:

- 1. The BAT must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
  - a. The BAT 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, the BAT should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.



- (1) 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.
    - (2) if the BAT cannot verify, through review of the A TF, that waiting period instructions were provided, then the BAT must carry out the waiting period requirement.
    - (3) The BAT or another BAT or STT, or an Lexington Utilities representative, must observe the employee during the waiting period.
  - b. Concerning the waiting period, the BAT must tell the employee:
    - (1) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
    - (2) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
    - (3) That following the BAT's instructions concerning the waiting period is to the employee's benefit; and
    - (4) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
  - c. If the BAT becomes aware that the employee has not followed the instructions, the BAT must note this on the " Remarks" line of the A TF.
2. If the SAT did not conduct the screening test for the employee the SAT must require positive identification of the employee, explain the confirmation procedures, and use a new A TF. The SAT must note on the " Remarks" line of the A TF that a different SAT or STT conducted the screening test.
  3. Complete Step 1 of the A TF.
  4. Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification the BAT must document this refusal on the Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.
  5. Even if more than 30 minutes have passed since the screening test result was obtained the BAT must begin the confirmation test procedures in §40.253. not another screening test.
  6. The BAT must note on the " Remarks" line of the A TF 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.
  7. 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.

- B. Procedures for conducting an alcohol confirmation test (§40.253) - The BAT conducting an alcohol confirmation test must follow these steps in order to complete the confirmation test process:
1. In the presence of the employee the SAT must conduct an air blank on the EST the SAT is using before beginning the confirmation test and show the reading to the employee.
    - a. If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must conduct another air blank.
    - b. If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, the BAT must take the EBT out of service.
    - c. If the BAT takes 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.
    - d. The BAT must proceed with the test of the employee using another EBT if one is available.
  2. The SAT 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.
  3. The BAT must ensure that both the BAT and the employee read the unique test number displayed on the EBT.
  4. The BAT 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.
  5. The SAT must show the employee the result displayed on the EST.
  6. The SAT 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.
  7. If the EBT provides a separate printout of the result, the BAT 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.
- C. **Procedure to follow after the next alcohol confirmation test result (§40.255).**
1. After the EBT has printed the result of an alcohol confirmation test the BAT must take the following additional steps:
    - a. Sign and date Step 3 of the ATF
    - b. If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. The BAT must sign and date Step 3 of the ATF.
    - c. 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, the BAT must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.

- d. 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).
  - e. Immediately transmit the result directly to the DER in a confidential manner.
    - (1) The BAT may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, the BAT 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. The BAT must not transmit these results through C/TPAs or other service agents.
    - (2) If the BAT does not make the initial transmission in writing, the BAT must follow up the initial transmission with Copy 1 of the ATF.
2. The Company must take the following steps with respect to the receipt and storage of alcohol test result information:
- a. If Lexington Utilities receives any test results that are not in writing (e.g., by telephone or electronic means), Lexington Utilities must establish a mechanism to establish the identity of the BAT sending you the results.
  - c. The Company must store all test result information in a way that protects confidentiality.

APPENDIX C

**REASONABLE CAUSE OBSERVATION CHECKLIST**

(STRICTLY CONFIDENTIAL)

EMPLOYEE: \_\_\_\_\_ DATE: \_\_\_\_\_

SUPERVISOR \_\_\_\_\_ SUPERVISOR \_\_\_\_\_

Has the supervisors observed any of the following:

**A. QUALITY AND QUANTITY OF WORK**

- Refuse to do assigned tasks
- Increase in errors
- Reduction in quantity of work
- Inconsistent quality of work
- Behavior that disrupts workflow
- Procrastination on decisions or tasks
- Requires, more supervision than necessary
- Unsupported, explanations for poor work performance
- Change in written or verbal communication
- Other (please specify)

**B. INTERPERSONAL WORK RELATIONSHIPS**

- Change in relations with co-workers, supervisors
- Arguments with supervisor/coworkers
- Verbally/Physically abusiveness
- Withdrawn
- Intentional avoidance of supervisor
- Expressions of frustration or discontent
- Frequency complains
- Complaints by co-workers
- Sensitive to advice or critique of work
- Avoid supervision
- Passive-aggressive attitude or behavior, doing things "behind your back"

**C. GENERAL JOB PERFORMANCE**

- Excessive unauthorized absences-number in last 12 months
- Excessive authorized absences-number in last 12 months

Excessive use of sick leave in last 12 months  
Frequent Monday/Friday absence or other pattern  
Unexplained absences  
Excessive breaks or lunch  
Frequently leaves work early-number of days per week or month  
Increased concern about (actual incidents) safety offenses involving the employee  
Experiences or causes job accidents  
Major change in duties or responsibilities  
Interferes with or ignores established procedures  
Inability to follow through on job performance recommendation

#### **D. PERSONAL MATTERS**

Changes in or unusual personal appearance (dress, hygiene)  
Changes in or unusual speech (incoherent, stuttering, loud)  
Changes in or unusual physical mannerisms (gesture, posture)  
Engages in detailed discussion about obtaining/using drugs/alcohol  
Have personal relationship problems (spouse, girl/boyfriend, children, in-laws)  
Has received professional assistance for emotional or physical problems  
Makes unfounded accusations toward others, i.e., has feelings of persecution  
Secretive or furtive  
Memory problems (difficulty recalling instructions, data, past behaviors)  
Frequent colds, flu, excessive fatigue, or other illnesses  
Makes unreliable or false statements  
Unrealistic self-appraisal or grandiose statements  
Temper tantrums or angry outbursts  
Demanding, rigid, inflexible  
Major change in physical health  
Concerns about sexual behavior or sexual harassment

Other observations \_\_\_\_\_

## **APPENDIX D**

### **ALCOHOL SUPPLEMENT**

#### **A. Why You Should Get Involved.**

1. Although (Lexington Utilities) has not had a history of substance abuse problems, we recognize that alcoholism and alcohol misuse are problems throughout America.
2. There are three good reasons why you should be concerned if any of your coworkers is using drugs or alcohol on the job.
  - a. Your health and safety may be at risk.
  - b. Alcohol misuse costs you money.
  - c. Alcohol creates a negative work environment.
3. According to the National Institute on Alcohol Abuse and Alcoholism, drug and alcohol use on the job costs society an estimated \$102 billion a year. Since most of this cost is passed on to you in the form of higher health insurance rates or in consumer prices, drug and alcohol use on the job costs you and your fellow workers a significant amount of money.
4. Absenteeism among problem drinkers or alcoholics is 3.8 to 8.3 times greater than normal. If your fellow workers don't come to work, you may have to do their jobs in addition to your own.
5. Workers who misuse alcohol don't function at their full potential. Not only is absenteeism a problem, when they are at work these employees may have reduced capabilities and productivity. Since our product is the safe transportation of hazardous liquid (or natural gas), alcohol misuse is an especially serious issue.
6. No matter what your position is in the organization, there is something you can do to ensure that drug and alcohol use on the job never becomes a problem at Lexington Utilities Acceptance of any misuse puts you, Lexington Utilities and the public at risk.

#### **B. Effects of Alcohol Misuse on an Individual's Health, Work, and Personal Life.**

1. Alcohol is a central nervous system depressant. Taken in large quantities, it causes not only the euphoria, associated with being drunk but also adversely affects your judgment, ability to think, and your motor functions. Drink enough alcohol fast enough and it can kill you.
2. Long term overuse of alcohol can cause liver damage, heart problems, sexual dysfunction, and other serious medical problems.
3. In some cases, alcohol use can lead to physical and psychological dependence on alcohol. Alcoholism is a serious chronic disease. Left untreated it will inevitably get worse.

4. Workers who use alcohol (and other drugs) affect everyone. Studies show that compared to alcohol-and drug-free workers, substance abusers are far less productive, miss more workdays, are more likely to injure themselves or someone else, and file more workers' compensation claims.

5. The measurable dollar costs of workplace substance abuse from absenteeism, overtime pay, tardiness, sick leave, insurance claims, and workers' compensation can be substantial. However, the hidden costs resulting from diverted supervisory and managerial time, friction among workers, damage to equipment, and damage to Lexington Utilities public image mean that workplace substance abuse can further cut profits and competitiveness.

6. Alcohol can also destroy relationships, lead to serious problems with the law (e.g., drunk driving), and even cause harm to the people you love.

7. If drinking affects your work life, it could lead to job loss and all the financial problems that would follow.

C. Signs and Symptoms of Alcohol Misuse - Any One or More of the Following Signs May Indicate a Drinking Problem:

- . Family or social problems caused by drinking
- . Job or financial difficulties related to drinking
- . Loss of a consistent ability to control drinking
- . "Blackouts" or the inability to remember what happened while drinking
- . Distressing physical and/or psychological reactions if you try to stop drinking
- . A need to drink increasing amounts of alcohol to get the desired effect.
- . Marked changes in behavior or personality when drinking.
- . Getting drunk frequently.
- . Injuring yourself-or someone-else while intoxicated
- . Breaking the law while intoxicated.
- . Starting the day with a drink.

D. Available Methods of Evaluating and Resolving Problems Associated with the Misuse of Alcohol.

1. Outpatient programs exist in a variety of settings:
  - a. Community mental health centers,
  - b. Full service agencies
  - c. Private physicians' and therapists' offices
  - d. Occupational settings
  - e. Specialized alcoholism treatment facilities
2. Inpatient services, designed for those with more serious alcohol problems, can be found in hospitals, residential care facilities, community halfway houses, and some alcoholism clinics.
3. Your local phone directory will list helpful referral organizations such as:

- a. Local council on alcoholism
  - b. Alcoholics Anonymous
  - c. Community alcoholism or mental health clinic
  - d. Social services or human resources department
  - e. County medical society
4. The SAP will perform an initial evaluation, recommend any additional treatment if necessary, and refer employees needing assistance for treatment covered under our health insurance program.



**APPENDIX E**  
**COVERED POSITIONS**

GENERAL MANAGER  
ASSISTANT GENERAL MANAGER  
CLERK/CASHIERS  
SUPERVISORS  
GAS INSPECTORS  
FOREMAN  
METER READERS  
CONTRACTORS  
SERVICEMEN  
WAREHOUSEMEN  
DISPATCHERS  
GEOGRAPHIC INFORMATION SYSTEM (GIS)