behaving in a confrontational manner that disrupts the testing process; admitting to the collector that he or she adulterated, diluted, or adulterated the specimen; is found to have a device, such as a prosthetic appliance, the purpose of which is to interfere with providing an actual urine specimen; or leaving the collection site before all of the collection procedures are completed, it will be considered a refusal to test, and sanctions for subverting the testing process will be imposed under §26.75(b). If the donor refuses to cooperate in the collection procedures, the collector shall inform FFD program management to obtain guidance on the actions to be taken.

(d) In order to promote the security of specimens, avoid distraction of the collector, and ensure against any confusion in the identification of specimens, a collector shall conduct only one collection procedure at any given time. For this purpose, a urine collection procedure is complete when the urine specimen container has been sealed and initialed, the chain-of-custody form has been executed, and the donor has departed the collection site.

§26.91 Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use.

(a) Acceptable alcohol screening devices. Alcohol screening devices (ASDs), including devices that test specimens of oral fluids or breath, must be approved by the National Highway Traffic Safety Administration (NHTSA) and listed in the most current version of NHTSA’s Conforming Products List (CPL) for such devices. An ASD that is listed in the NHTSA CPL may be used only for initial tests for alcohol, and may not be used for confirmatory tests.

(b) Acceptable evidential breath testing devices. Evidential breath testing devices listed in the NHTSA CPL for evidential devices that meet the requirements of paragraph (c) of this section must be used to conduct confirmatory alcohol tests, and may be used to conduct initial alcohol tests. Note that, among the devices listed in the CPL for EBTs, only those devices listed without an asterisk (*) may be used for confirmatory alcohol testing under this subpart.

(c) EBT capabilities. An EBT that is listed in the NHTSA CPL for evidential devices that has the following capabilities may be used for conducting initial alcohol tests and must be used for confirmatory alcohol tests under this subpart:

1. Provides a printed result of each breath test;
2. Assigns a unique number to each completed test, which the collector and donor can read before each test and which is printed on each copy of the test result;
3. Prints, on each copy of the test result, the manufacturer’s name for the device, its serial number, and the time of the test;
4. Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
5. Tests an air blank; and

(d) Quality assurance and quality control of ASDs. (1) Licensees and other entities shall implement the most recent version of the quality assurance plan submitted to NHTSA for any ASD that is used for initial alcohol testing.

(2) Licensees and other entities may not use an ASD that fails the specified quality control checks or that has passed its expiration date.

(3) For ASDs that test breath specimens and meet EBT requirements for confirmatory testing, licensees and other entities shall also follow the device use and care requirements specified in paragraph (e) of this section.

(e) Quality assurance and quality control of EBTs. (1) Licensees and other entities shall implement the most recent version of the manufacturer’s instructions for the use and care of the EBT consistently with the quality assurance plan submitted to NHTSA for the EBT, including performing external calibration checks no less frequently than at the intervals specified in the manufacturer’s instructions.

(2) When conducting external calibration checks, licensees and other entities shall use only calibration devices appearing on NHTSA’s CPL for “Calibrating Units for Breath Alcohol Tests.”
§ 26.93 Preparing for alcohol testing.

(a) Immediately before collecting a specimen for alcohol testing, the collector shall—

(1) Ask the donor whether he or she, in the past 15 minutes, has had anything to eat or drink, belched, or put anything into his or her mouth (including, but not limited to, a cigarette, breath mint, or chewing gum), and instruct the donor that he or she should avoid these activities during the collection process;

(2) If the donor states that he or she has not engaged in the activities listed in paragraph (a)(1) of this section, alcohol testing may proceed;

(3) If the donor states that he or she has engaged in any of the activities listed in paragraph (a)(1) of this section, inform the donor that a 15-minute waiting period is necessary to prevent an accumulation of mouth alcohol from leading to an artificially high reading;

(b) Explain that it is to the donor’s benefit to avoid the activities listed in paragraph (a)(1) of this section during the collection process;

(c) Explain that the initial and confirmatory tests, if a confirmatory test is necessary, will be conducted at the end of the waiting period, even if the donor has not followed the instructions; and

(d) Document that the instructions were communicated to the donor.

§ 26.95 Conducting an initial test for alcohol using a breath specimen.

(a) The collector shall perform the initial breath test as soon as practical after the donor indicates that he or she has not engaged in the activities listed in §26.93(a)(1) or after the 15-minute waiting period has elapsed, if required.

(b) To perform the initial test, the collector shall—

(1) Select, or allow the donor to select, an individually wrapped or sealed mouthpiece from the testing materials;

(2) Open the individually wrapped or sealed mouthpiece in view of the donor and insert it into the device as required by the manufacturer’s instructions;

(3) Instruct the donor to blow steadily and forcefully into the mouthpiece for at least 6 seconds or until the device indicates that an adequate amount of breath has been obtained;

(4) Show the donor the displayed or printed test result; and

(5) Ensure that the test result record can be associated with the donor and is maintained secure.

(c) Unless problems in administering the breath test require an additional collection, only one breath specimen may be collected for the initial test. If an additional collection(s) is required, the collector shall rely on the test result from the first successful collection.