

§ 40.235

(4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in § 40.333(a)(2).

(5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

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

(a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA places the ASD on the CPL. Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (*e.g.*, temperature, altitude, humidity) that may affect the ASD's performance.

(b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.

(c) As the user of the ADS (*e.g.*, employer, STT), you must follow the QAP instructions.

(d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.

(e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of § 40.233.

Subpart L—Alcohol Screening Tests

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

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the

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scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.

(b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

(2) If the employee needs medical attention (*e.g.*, an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (*e.g.*, a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.

(e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.

(f) Complete Step 1 of the ATF.

(g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

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

As the BAT or STT, you must take the following steps:

(a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.

(b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(d) Show the employee the displayed test result.

(e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.

(f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

(g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

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

(a) As the STT or BAT, you must take the following steps when using the saliva ASD:

(1) Check the expiration date on the device or on the package containing

the device and show it to the employee. You may not use the device after its expiration date.

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

(3) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.

(4) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (a)(7) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.

(5) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.

(6)(i) If you were unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section (*e.g.*, the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.

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

(iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (*e.g.*, the employee dropped the device) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

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