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remove the inflation bag, and prepare
the device to be read by the analyzer in accordance with the manufacturer’s di-
rections.

(7)(i) If you were unable to successful-
ly follow the procedures of para-
graphs (b)(4) through (b)(6) of this sec-
tion (e.g., the device breaks apart, the
employee did not fill the inflation bag),
you must discard the device and con-
duct a new test using a new one.

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

(iii) You must note on the “Re-
marks” line of the ATF the reason for
the new test. (Note: You may continue
using the same ATF with which you
began the test.)

(iv) You must offer the employee the choice of holding the device or having
you hold it unless the employee, in the
your opinion, was responsible (e.g., the
employee failed to fill the inflation bag) for the new test needing to be con-
ducted.

(v) If you are unable to successfully
follow the procedures of paragraphs
(b)(4) through (b)(6) of this section on
the new test, you must end the collec-
tion and put an explanation on the
“Remarks” line of the ATF.

(vi) You must then direct the em-
ployee to take a new test immediately,
using another type of ASD (e.g., saliva
device) or an EBT.

(8) If you were able to successfully
follow the procedures of paragraphs
(b)(4) through (b)(6) of this section and
after having waited the required
amount of time directed by the manu-
ufacturer for the detector device to in-
cubate, you must place the device in
the analyzer in accordance with the
manufacturer’s directions. The result
must be read from the analyzer no ear-
lier than the required incubation time
of the device. In all cases, the result
must be read within 15 minutes of the
test.

(9) You must follow the manufactur-
er’s instructions for determining the
result of the test. You must show the
analyzer result to the employee and
record the result on Step 3 of the ATF.

(10) You must never re-use detector
deVICES or any gloves used in breath
tube testing. The inflation bag must be
voided of air following removal from a
device. Inflation bags and electronic
analyzers may be re-used but only in
accordance with the manufacturer’s di-
rections.

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

§ 40.247 What procedures does the BAT
or STT follow after a screening test
result?

(a) If the test result is an alcohol
concentration of less than 0.02, as the
BAT or STT, you must do the fol-
lowing:

(1) Sign and date Step 3 of the ATF;
and

(2) Transmit the result to the DER in
a confidential manner, as provided in
§ 40.255.

(b) If the test result is an alcohol
concentration of 0.02 or higher, as the
BAT or STT, you must direct the em-
ployee to take a confirmation test.

(1) If you are the BAT who will con-
duct the confirmation test, you must
then conduct the test using the proce-
dures beginning at § 40.251.

(2) If you are not the BAT who will
conduct the confirmation test, direct
the employee to take a confirmation
test, sign and date Step 3 of the ATF,
and give the employee Copy 2 of the
ATF.

(3) If the confirmation test will be
performed at a different site from the
screening test, you must take the fol-
lowing additional steps:

(i) Advise the employee not to eat,
drink, put anything (e.g., cigarette,
chewing gum) into his or her mouth, or
belch;

(ii) Tell the employee the reason for
the waiting period required by
§ 40.251(a) (i.e., to prevent an accumu-
lation of mouth alcohol from leading to
an artificially high reading);

(iii) Explain that following your in-
structions concerning the waiting pe-
riod is to the employee’s benefit;

(iv) Explain that the confirmation
test will be conducted at the end of the
waiting period, even if the instructions
have not been followed;

(v) Note on the “Remarks” line of
the ATF that the waiting period in-
structions were provided;

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR
1299, Jan. 11, 2007]
(vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
(vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
(c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the “Remarks” line of the ATF. If practicable, repeat the testing process (see §40.271).

Subpart M—Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?
As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:
(a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
(1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
(ii) 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.
(iii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, you must carry out the waiting period requirement.
(iv) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.
(2) Concerning the waiting period, you must tell the employee:
(i) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
(ii) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
(iii) That following your instructions concerning the waiting period is to the employee’s benefit; and
(iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
(3) If you become aware that the employee has not followed the instructions, you must note this on the “Remarks” line of the ATF.
(b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the “Remarks” line of the ATF that a different BAT or STT conducted the screening test.
(c) Complete Step 1 of the ATF.
(d) 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.
(e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in §40.253, not another screening test.
(f) You must note on the “Remarks” line of the ATF 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.
(g) 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.

§ 40.253 What are the procedures for conducting an alcohol confirmation test?
As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process: