

§ 40.51 [Amended]

2. § 40.51(c) is proposed to be amended by adding the words "or non-evidential alcohol screening device" after the word "EBT."

3. A new § 40.63(h) is proposed to be added, to read as follows:

§ 40.63 Procedures for screening tests.

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(h) If the confirmation test will be conducted at a different site from the screening test, the employer or its agent shall ensure that—

(1) The employee is advised against taking any of the actions mentioned in the first sentence of § 40.65(b) of this Part;

(2) The employee is advised that he or she must not drive, perform safety-sensitive duties, or operate heavy equipment, as noted in Block 4 of the alcohol testing form; and

(3) The employee is under observation of a BAT, STT, or other employer personnel while in transit from the screening test site to the confirmation test site.

4. A new Subpart D of Part 40 is proposed to be added, to read as follows:

Subpart D—Non-Evidential Alcohol Screening Tests

40.91 Authorization for use of non-evidential alcohol screening devices.

40.93 The screening test technician.

40.95 Quality assurance plans and manufacturers' instructions for non-evidential screening devices.

40.97 Locations for non-evidential alcohol screening tests.

40.99 Testing forms and log books.

40.101 Screening test procedure.

40.103 Refusals to test and uncompleted tests.

40.105 Inability to provide an adequate sample.

40.107 Invalid tests.

40.109 Availability and disclosure of alcohol testing information about individual employees.

40.111 Maintenance and disclosure of records concerning non-evidential alcohol screening test devices and screening test technicians.

Subpart D—Non-evidential alcohol screening devices**§ 40.91 Authorization for use of non-evidential alcohol screening devices.**

Non-evidential alcohol screening tests, performed using screening devices included by the National Highway Traffic Safety Administration on its conforming products list for non-evidential screening devices, may be used in lieu of EBTs to perform screening tests required by operating administrations' alcohol testing regulations. Non-evidential screening

devices may not be used for confirmation alcohol tests, which must be conducted using EBTs as provided in Subpart C of this Part.

§ 40.93 The screening test technician.

(a) Anyone meeting the requirements of this Part to be a BAT may act as a screening test technician (STT), provided that the individual has demonstrated proficiency in the operation of the non-evidential screening device he or she is using.

(b) Any other individual may act as an STT if he or she successfully completes a course of instruction concerning the procedures required by this Part for conducting alcohol screening tests. Only the Department of Transportation model course, or a course of instruction determined by the Department of Transportation's Office of Drug Enforcement and Program Compliance to be equivalent to it, may be used for this purpose.

(c) With respect to any non-evidential screening device involving changes, contrasts, or other readings that are indicated on the device in terms of color, STTs shall, in order to be regarded as proficient, be able to discern correctly these changes, contrasts or readings.

(d) The STT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

(e) The employer or its agent shall document the training and proficiency of each STT it uses to test employees and maintain the documentation as provided in § 40.83.

(f) The provisions of § 40.51(b) and (c) of this Part apply to STTs as well as to BATs.

§ 40.95 Quality assurance plans and manufacturers' instructions for non-evidential screening devices.

(a) In order to be used for alcohol screening tests subject to this part, a non-evidential screening device shall have a DOT-approved quality assurance plan (QAP) developed by the manufacturer.

(1) The plan shall designate the method or methods to be used to perform quality control checks; the temperatures at which the non-evidential screening device shall be stored and used, as well as other environmental conditions (e.g., altitude, humidity) that may affect the performance of the device; and, where relevant, the shelf life of the device.

(2) The QAP shall prohibit the use of any device that does not pass the specified quality control checks or that has passed its expiration date.

(b) The manufacturers' instructions on or included in the package for each saliva testing device shall include directions on the proper use of the device, the time frame within reach the device must be read and indicate the manner in which the reading is made.

(c) The employer shall comply with the QAP and manufacturer's instructions for each non-evidential screening device it uses for alcohol screening tests subject to this Part.

§ 40.97 Locations for non-evidential alcohol screening tests.

(a) Locations for non-evidential alcohol screening tests shall meet the same requirements set forth for breath alcohol testing in § 40.57 of this Part.

(b) The STT shall supervise only one employee's use of a non-evidential screening device at a time. The STT shall not leave the alcohol testing location while the testing procedure for a given employee is in progress.

§ 40.99 Testing forms and log books.

(a) Employers using a non-evidential breath testing device shall use the alcohol testing form and log book as provided in § 40.59 and Appendix B of this Part for the screening test.

(b) Employers using a saliva screening device shall use the alcohol testing form found in Appendix C of this Part.

§ 40.101 Screening test procedure.

(a) The steps for preparation for testing shall be the same as provided for breath alcohol testing in § 40.61 of this Part.

(b) The STT shall complete Step 1 on the form required by § 40.99. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

(c) If the employer is using a non-evidential breath testing device, the STT shall follow the same steps outlined for screening tests using EBTs in § 40.63.

(d) If the employer is using a saliva testing device, the STT shall take the following steps:

(1) The STT shall check the expiration date of the saliva testing device, and shall not use a device at any time subsequent to the expiration date.

(2) The STT shall open an individually sealed package containing the device in the presence of the employee.

(3) The STT shall offer the employee the opportunity to use the swab. If the employee chooses to use the swab, the STT shall instruct the employee to insert the absorbent end of the swab into the employee's mouth, moving it