

actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as provided in the manufacturer's instructions for the device.

(4) If the employee chooses not to use the swab, or in all cases in which a new test is necessary because the device did not activate (see paragraph (d)(7) of this section), the STT shall insert the absorbent end of the swab into the employee's mouth, moving it actively throughout the mouth for a sufficient time to ensure that it is completely saturated, as provided in the manufacturer's instructions for the device. The STT shall wear a surgical glove or other adequate sanitary hand protection while doing so, consistent with applicable requirements.

(5) The STT shall place the device on a flat surface or otherwise in a position in which the swab can be firmly placed into the opening provided in the device for this purpose. The STT shall insert the swab into this opening and maintain firm pressure on the device until the device indicates that it is activated.

(6) If the procedures of paragraphs (d)(2)–(d)(4) of this section are not followed successfully (e.g., the swab breaks, the STT drops the swab on the floor or another surface, the swab is removed or falls from the device before the device is activated), the STT shall discard the device and swab and conduct a new test using a new device. The STT shall note in the remarks section of the form that the reason for the new test. In this case, the STT shall offer the employee the choice of using the swab himself or herself or having the STT use the swab. If the procedures of paragraphs (d)(2)–(d)(4) of this section are not followed successfully on the new test, the collection shall be terminated and an explanation provided in the remarks section of the form. A new test shall then be conducted, using breath testing.

(7) If the procedures of paragraphs (d)(2)–(d)(4) of this section are followed successfully, but the device is not activated, the STT shall discard the device and swab and conduct a new test, in the same manner as provided in paragraph (d)(6) of this section. In this case, the STT shall place the swab into the employee's mouth to collect saliva for the new test.

(8) The STT shall read the result displayed on the device within the time provided in the manufacturer's instructions for the device. The STT shall show the device and its reading to the employee and enter the result on the form.

(9) Devices, swabs, gloves and other materials used in saliva testing shall not

be reused, and shall be disposed of in a sanitary manner following their use, consistent with applicable requirements.

(e) In the case of any screening test performed under this section, the STT, after determining the alcohol concentration result, shall follow the applicable provisions of § 40.63 (e)(1)–(2), (f), (g), and (h). Following completion of the screening test, the STT shall date the form and sign the certification in Step 3 of the form.

§ 40.103 Refusals to test and uncompleted tests.

(a) Refusal by an employee to complete and sign the alcohol testing form required by § 40.99 (Step 2), to provide a breath or saliva sample, to provide an adequate amount of breath, or otherwise to cooperate in a way that prevents the completion of the testing process, shall be noted by the STT in the remarks section of the form. This constitutes a refusal to test. The testing process shall be terminated and the STT shall immediately notify the employer.

(b) If the screening test cannot be completed, or if an event occurs that would invalidate the test, the STT shall, if practicable, begin a new screening test, using a new testing form and, in the case of test using a saliva screening device, a new device.

§ 40.105 Inability to provide an adequate amount of breath or saliva.

(a) If an employee is unable to provide sufficient breath to complete a test on a non-evidential breath testing device, the procedures of § 40.69 apply.

(b) 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), the STT, as provided in § 40.101 of this Part, shall conduct a new test using a new device. If the employee refuses to complete the new test, the STT shall terminate testing and immediately inform the employer. This constitutes a refusal to test.

(c) If the new test is completed, but there is an insufficient amount of saliva to activate the device, STT shall immediately inform the employer, which shall immediately cause a breath alcohol test to be administered to the employee.

§ 40.107 Invalid tests.

An alcohol test using a non-evidential screening device shall be invalid under the following circumstances:

(a) With respect to a test conducted on a saliva device—

(1) The result is not read within the time frame specified by the

manufacturer's instructions for the device.

(2) The device does not activate;

(3) The device is used for a test after the expiration date printed on its package;

(b) With respect to any test conducted on a non-evidential alcohol testing device—

(1) The STT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording on the form of the test result; or

(2) The procedures of § 40.101(d) are not followed.

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

The provisions of § 40.81 apply to records of non-evidential alcohol screening tests.

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

Records concerning STTs and non-evidential testing devices shall be maintained and disclosed following the same requirements applicable to BATs and EBTs under § 40.81 of this Part.

5. A new Appendix C to Part 40 is proposed to be added, to read as follows:

Appendix C to Part 40—The Saliva Alcohol Testing Form

[A printed version of the saliva alcohol testing form was not ready at the time of the publication of this notice. However, for the information of commenters, the form is in most respects identical to the existing breath alcohol testing form. Differences are as follows: References to the "Breath Alcohol Testing Form" and the "Breath Alcohol Technician" would be replaced by references to the "Saliva Alcohol Testing Form" and "Screening Test Technician," respectively. References to "breath alcohol testing" would be replaced by references to "saliva alcohol testing." In Block 3, the line directing confirmation test results to be attached to the back of the form would be deleted, as would the space for attaching such results on the back of the form. Also in Block 3, the words "Testing Device Serial Number" would be deleted and the words "Device Expiration Date" substituted.]

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