

- (2) As the collector, you must do the following when continuing with an oral fluid specimen collection under this section:
- (i) If the employee demonstrates an inability to provide a specimen after 15 minutes of using the collection device, and if the donor states that he or she could provide a specimen after drinking some fluids, urge the employee to drink (up to 8 ounces) and wait an additional 10 minutes before beginning the next specimen collection (a period of up to one hour must be provided, or until the donor has provided a sufficient oral fluid specimen, whichever occurs first). If the employee simply needs more time before attempting to provide an oral fluid specimen, the employee is not required to drink any fluids during the one-hour wait time. It is not a refusal to test if the employee declines to drink. The employee must remain at the collection site, in a monitored area designated by the collector, during the wait period.
 - (ii) If the employee has not provided a sufficient specimen within one hour of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER.
- (3) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.
- (c) As the DER, if the collector informs you that the employee has not provided a sufficient amount of specimen (see paragraph (b) of this section), you must, after consulting with the MRO, direct the employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a urine (see paragraph (b)(1) of this section) or oral fluid (see paragraph (b)(2) of this section) sufficient specimen, but not both. The evaluation and MRO determination required by this section only applies to the oral fluid or the urine insufficient specimen that was the final methodology at the collection site. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
- (1) As the MRO, if another physician will perform the evaluation, you must provide the other physician with the following information and instructions:
- (i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of specimen to complete the test;
 - (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
 - (iii) That the referral physician must agree to follow the requirements of paragraphs (d) through (g) of this section.
- (2) [Reserved]
- (d) As the referral physician conducting this evaluation, you must recommend that the MRO make one of the following determinations:
- (1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:
 - (i) Check "Test Cancelled" (Step 6) on the CCF; and
 - (ii) Sign and date the CCF.
 - (2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:
 - (i) Check the "Refusal to Test" box and "Other" box in Step 6 on Copy 2 of the CCF and note the reason next to the "Other" box and on the "Remarks" lines, as needed.
 - (ii) Sign and date the CCF.
- (e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction in the case of a urine test or autoimmune disorder in the case of an oral fluid test), or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.

- (f) As the referral physician making the evaluation, after completing your evaluation, you must provide a written statement of your recommendations and the basis for them to the MRO. You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (g) If, as the referral physician making this evaluation in the case of a pre-employment, return-to-duty, or follow-up test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of specimen for a very long or indefinite period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of § 40.195, where applicable.
- (h) As the MRO, you must seriously consider and assess the referral physician's recommendations in making your determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. You must report your determination to the DER in writing as soon as you make it.
- (i) As the employer, when you receive a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. If the test reason was 'random', the employee remains in the random testing pool.

[88 FR 27647, May 2, 2023]

§ 40.195 What happens when an individual is unable to provide a sufficient amount of specimen for a pre-employment, follow-up, or return-to-duty test because of a permanent or long-term medical condition?

- (a) This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment follow-up or return-to-duty test and the condition involves a permanent or long-term disability. As the MRO in this situation, you must do the following:
 - (1) You must determine if there is clinical evidence that the individual is an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under § 40.193(d).
 - (2) If you do not personally conduct the medical evaluation, you must ensure that one is conducted by a licensed physician acceptable to you.
 - (3) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (b) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.
 - (1) Check "Negative" (Step 6) on the CCF.
 - (2) Sign and date the CCF.
- (c) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (*i.e.*, the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).
- (d) For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.

- (1) Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters.
- (2) Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (d)(1) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

§ 40.197 What happens when an employer receives a report of a dilute urine specimen?

- (a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.
- (b) As an employer, if the MRO informs you that a negative test was dilute, take the following action:
 - (1) If the MRO directs you to conduct a recollection under direct observation (*i.e.*, because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see § 40.155(c)), you must do so immediately.
 - (2) Otherwise (*i.e.*, if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.
 - (i) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).
 - (ii) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (*e.g.*, conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.
- (c) The following provisions apply to all tests you direct an employee to take under paragraph (b) of this section:
 - (1) You must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;
 - (2) You must treat the result of the test you directed the employee to take under paragraph (b) of this section—and not a prior test—as the test result of record, on which you rely for purposes of this part;
 - (3) If the result of the test you directed the employee to take under paragraph (b)(1) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute.
 - (4) If the result of the test you directed the employee to take under paragraph (b)(2) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.
 - (5) If the employee declines to take a test you directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

[68 FR 31626, May 28, 2003, as amended at 69 FR 64867, Nov. 9, 2004; 73 FR 35974, June 25, 2008]

§ 40.199 What problems always cause a drug test to be cancelled?

- (a) As the MRO, when the laboratory discovers a “fatal flaw” during its processing of incoming specimens (see § 40.83), the laboratory will report to you that the specimen has been “Rejected for Testing” (with the reason stated). You must always cancel such a test.
- (b) The following are “fatal flaws”:
 - (1) There is no CCF;
 - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;

- (3) There is no printed collector's name and no collector's signature;
 - (4) Two separate collections are performed using one CCF;
 - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;
 - (6) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, see § 40.83(h)); or
 - (7) Because of leakage or other causes, there is an insufficient amount of specimen in the primary specimen bottle for analysis and the specimens cannot be re-designated (see § 40.83(h)).
 - (8) For an oral fluid collection, the collector used an expired device at the time of collection.
 - (9) For an oral fluid collection, the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory confirmed that the device was expired.
- (c) You must report the result as provided in § 40.161.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27648, May 2, 2023]

§ 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

As the MRO, you must cancel a drug test when a laboratory reports that any of the following problems have occurred. You must inform the DER that the test was cancelled. You must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

- (a) The laboratory reports an "Invalid Result." You must follow applicable procedures in § 40.159 (recollection under direct observation may be required).
- (b) The laboratory reports the result as "Rejected for Testing." You must follow applicable procedures in § 40.161 (a recollection may be required).
- (c) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. You must follow the applicable procedures in § 40.187(b)—no recollection is required in this case, unless the split specimen creatinine concentration for a substituted primary specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/ dL, or the primary specimen had an invalid result which was not reported to the DER. Both these cases require recollection under direct observation.
- (d) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results, and that the split specimen was invalid. You must follow the procedures in § 40.187(c)(1)—recollection under direct observation is required in this case.
- (e) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the split specimen was not available for testing or there was no split laboratory available to test the specimen. You must follow the applicable procedures in § 40.187(e)—recollection under direct observation is required in this case.
- (f) The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of specimen. You must follow applicable procedures in § 40.193(d)(1) (no recollection is required in this case).

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35974, June 25, 2008; 88 FR 27648, May 2, 2023]

§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?

- (a) As the MRO, when a laboratory discovers a "correctable flaw" during its processing of incoming specimens (see § 40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been "Rejected for Testing" (with the reason stated).
- (b) The following is a "correctable flaw" that laboratories must attempt to correct: The collector's signature is omitted on the certification statement on the CCF.

- (c) As the MRO, when you discover a “correctable flaw” during your review of the CCF, you must cancel the test unless the flaw is corrected.
- (d) The following are correctable flaws that you must attempt to correct:
 - (1) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the “Remarks” line of the CCF.
 - (2) The certifying scientist's signature is omitted on Copy 1 of the CCF for a positive, adulterated, substituted, or invalid test result.
 - (3) The collector uses a non-Federal form or an expired CCF for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures in this part in an HHS-certified laboratory.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011; 82 FR 52246, Nov. 13, 2017]

§ 40.205 How are drug test problems corrected?

- (a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.
 - (1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (e.g., a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.
 - (2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.
- (b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that can be corrected (see § 40.203), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled.
 - (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the “Remarks” line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
 - (2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
 - (3) You must maintain the written documentation of a correction with the CCF.
 - (4) You must mark the CCF in such a way (e.g., stamp noting correction) as to make it obvious on the face of the CCF that you corrected the flaw.
- (c) If the correction does not take place, as the MRO you must cancel the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.207 What is the effect of a cancelled drug test?

- (a) A cancelled drug test is neither positive nor negative.
 - (1) As an employer, you must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position).
 - (2) As an employer, you must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or follow-up test).
 - (3) However, as an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part that require another test to be conducted (e.g., §§ 40.159(a)(5) and 40.187(b)(2), (c)(1), and (e)).
- (b) A cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the employer's minimum random testing rate).
- (c) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).
- (d) If a test is cancelled for a correctible flaw (i.e., § 40.203 or § 40.205), only the MRO who cancelled the test can reverse the cancellation and must do so within 60 days of the cancellation. After 60 days, the MRO who cancelled the test cannot reverse the cancellation without the permission of ODAPC. For example, if an MRO cancels a test because the MRO did not receive a copy of the CCF, but later receives a copy of the CCF, the MRO may reverse the decision to cancel the test within 60 days. After 60 days, the MRO must contact ODAPC for permission to reverse the cancellation. An MRO must not reverse the cancellation of a test that the laboratory has reported as rejected for testing, as described in § 40.83(g). A laboratory is not authorized to reverse a cancellation due to a fatal flaw, as described in § 40.199.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35975, June 25, 2008; 88 FR 27648, May 2, 2023]

§ 40.208 What problems require corrective action but do not result in the cancellation of a test?

- (a) If, as a laboratory, collector, employer, or other person implementing the DOT drug testing program, you become aware that any of the following omissions listed in paragraphs (a)(1) through (3) of this section occurred, you must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure the problem does not recur:
 - (1) For a urine collection, the specimen temperature on the CCF was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range; or
 - (2) For an oral fluid collection, the collector failed to check the box in Step 2 of the CCF that indicates "Each Device was Within Expiration Date" but the collector entered the "Split Specimen Device Expiration Date" in Step 4 of the CCF.
 - (3) For an oral fluid collection, the collector erred by entering the expiration date as the "Primary/Single Specimen Device Expiration Date" instead of entering the date as the "Split Specimen Device Expiration Date" in Step 4 of the CCF.
- (b) The errors listed in paragraph (a) of this section do not result in the cancellation of the test.
- (c) As an employer or service agent, the errors listed in paragraph (a) of this section, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or subpart R of this part.

[88 FR 27649, May 2, 2023]

§ 40.209 What procedural problems do not result in the cancellation of a test and do not require correction?

- (a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors

will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (b) of this section.

- (b) No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:
- (1) A minor administrative mistake (e.g., the omission of the employee's middle initial, a transposition of numbers in the employee's SSN or Employee ID No., the omission of the DOT Agency in Step 1–D of the CCF.)
 - (2) An error that does not affect employee protections under this part (e.g., the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);
 - (3) The collection of a specimen by a collector who is required to have been trained (see § 40.33 or 40.35), but who has not met this requirement;
 - (4) A delay in the collection process (see § 40.61(a));
 - (5) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see § 40.121(a) through (b)) but who has not met training and/or documentation requirements (see § 40.121(c) through (e));
 - (6) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
 - (7) The fact that a test was conducted in a facility that does not meet the requirements of § 40.42;
 - (8) If the specific name of the courier on the CCF is omitted or erroneous;
 - (9) Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on Copy 1); or
 - (10) Claims that the employee was improperly selected for testing.
 - (11) The failure to use a new CCF for a second collection after an insufficient specimen was conducted under a different methodology (e.g., failing to use a new CCF for an oral fluid test after an insufficient quantity of urine was produced on a urine test.)
- (c) As an employer or service agent, these types of errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or action under Subpart R of this part.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 88 FR 27649, May 2, 2023]

§ 40.210 What kinds of drug tests are permitted under the regulations?

Both urine and oral fluid specimens are authorized for collection and testing under this part. An employer can use one or the other, but not both at the beginning of the testing event. For example, if an employee is sent for a test, either a urine or oral fluid specimen can be collected, but not both simultaneously. However, if there is a problem in the collection that necessitates a second collection (e.g., insufficient quantity of urine, temperature out of range, or insufficient saliva), then a different specimen type could be chosen by the employer (i.e., through a standing order or a discussion with the collector) or its service agent (i.e., if there is no standing order and the service agent cannot contact the DER) to complete the collection process for the testing event. Only urine and oral fluid specimens screened and confirmed at HHS-certified laboratories (see § 40.81) are allowed for drug testing under this part. Point-of-collection (POC) urine, POC oral fluid drug testing, hair testing, or instant tests are not authorized.

[88 FR 27649, May 2, 2023]

Subpart J—Alcohol Testing Personnel

§ 40.211 Who conducts DOT alcohol tests?

- (a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

- (b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
- (c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

§ 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

- (a) You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. Procedures and guidance are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-3784, or on the ODAPC Web site, <http://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at (<https://www.transportation.gov/odapc/get-odapc-email-updates>).
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (b).
 - (1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.
 - (2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (*i.e.*, the ASD(s) or EBT(s)) you will be using.
 - (3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
 - (4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a "train the trainer" course.
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).
 - (1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who meets the requirements of paragraph (b)(4) of this section.
 - (2) These tests must use the alcohol testing devices (*e.g.*, EBT(s) or ASD(s)) that you will use as a BAT or STT.
 - (3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.
- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform STT or BAT functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.
- (f) **Error Correction Training.** If you make a mistake in the alcohol testing process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

- (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.
- (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
- (3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.
- (h) **Other persons who may serve as BATs or STTs.**
 - (1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.
 - (2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 5244, Feb. 2, 2010; 82 FR 52246, Nov. 13, 2017]

§ 40.215 What information about the DER do employers have to provide to BATs and STTs?

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

§ 40.217 Where is other information on the role of STTs and BATs found in this regulation?

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

- § 40.3—Definitions.
- § 40.223—Responsibility for supervising employees being tested.
- §§ 40.225–40.227—Use of the alcohol testing form.
- §§ 40.241–40.245—Screening test procedures with ASDs and EBTs.
- §§ 40.251–40.255—Confirmation test procedures.
- § 40.261—Refusals to test.
- §§ 40.263–40.265—Insufficient saliva or breath.
- § 40.267—Problems requiring cancellation of tests.
- §§ 40.269–40.271—Correcting problems in tests.

Subpart K—Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

§ 40.221 Where does an alcohol test take place?

- (a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.
- (b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of § 40.223.
- (c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
- (d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

- (e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.
- (f) An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§ 40.223 What steps must be taken to protect the security of alcohol testing sites?

- (a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.
 - (1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (e.g., on the basis of employer policy or labor-management agreement), and DOT agency representatives.
 - (2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
 - (3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
- (b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (see §§ 40.241–40.255).
- (c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.
- (d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.
- (e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.
 - (1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.
 - (2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.
 - (3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

§ 40.225 What form is used for an alcohol test?

- (a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in appendix I to this part. You may view this form on the ODAPC web site (<http://www.transportation.gov/odapc>).
- (b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:
 - (1) You may include other information needed for billing purposes, outside the boundaries of the form.
 - (2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.
 - (3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

- (4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper, or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.
- (5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.
- (6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.
- (c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 8529, Feb. 25, 2010; 75 FR 13009, Mar. 18, 2010; 82 FR 52246, Nov. 13, 2017; 88 FR 27649, May 2, 2023]

§ 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

- (a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.
- (b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with § 40.271(b).

§ 40.229 What devices are used to conduct alcohol screening tests?

ASDs listed on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" and EBTs listed on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and must not be used for confirmation tests.

[82 FR 52246, Nov. 13, 2017]

§ 40.231 What devices are used to conduct alcohol confirmation tests?

- (a) EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.
- (b) To conduct a confirmation test, you must use an EBT that has the following capabilities:
 - (1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;
 - (2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;
 - (3) Prints, on each copy of the 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
 - (6) Performs an external calibration check.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

§ 40.233 What are the requirements for proper use and care of EBTs?

- (a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before ODAPC places the EBT on its Web page for “Approved Evidential Breath Measurement Devices.”
 - (1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).
 - (2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
- (b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.
- (c) As the user of the EBT (e.g., employer, service agent), you must do the following:
 - (1) You must follow the manufacturer’s instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.
 - (2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA’s CPL for “Calibrating Units for Breath Alcohol Tests.”
 - (3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.
 - (4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in § 40.333(a)(3).
 - (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.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

§ 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 approves it and ODAPC places the device on its Web page for “Approved Screening Devices to Measure Alcohol in Bodily Fluids”. 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

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

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 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.
 - (7) If you are able to successfully follow the procedures of paragraphs (a)(3)–(a)(5) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (a)(6) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.
 - (8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.
 - (9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.
 - (10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.
- (b) As the STT or BAT, you must take the following steps when using the breath tube ASD:
- (1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.
 - (2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.
 - (3) Break the tube's ampoule in the presence of the employee.
 - (4) Offer the employee the opportunity to use the device. If the employee chooses to use (e.g. hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).

- (5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.
- (6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.
- (7)
 - (i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (e.g., the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct 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 "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 holding the device or having you hold it unless the employee, in your opinion, was responsible (e.g., the employee failed to fill the inflation bag) for the new test needing to be conducted.
 - (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 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 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 manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier 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 manufacturer'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 directions.
- (11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR 1299, Jan. 11, 2007]

§ 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 following:
 - (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 employee to take a confirmation test.
 - (1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures 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 following 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 accumulation of mouth alcohol from leading to an artificially high reading);
 - (iii) Explain that following your instructions concerning the waiting period 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 instructions were provided;
 - (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.
 - (i) 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.
 - (ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.
 - (iii) 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:

- (a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.
 - (1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.
 - (2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.
 - (3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.
 - (4) You must proceed with the test of the employee using another EBT, if one is available.
- (b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) You must ensure that you and the employee read the unique test number displayed on the EBT.
- (d) You must 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.
- (e) You must show the employee the result displayed on the EBT.
- (f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
- (g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.255 What happens next after the alcohol confirmation test result?

- (a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:
 - (1) Sign and date Step 3 of the ATF.
 - (2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.
 - (3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.

- (4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (see § 40.271).
- (5) Immediately transmit the result directly to the DER in a confidential manner.
 - (i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.
 - (ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.
- (b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:
 - (1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.
 - (2) You must store all test result information in a way that protects confidentiality.

Subpart N—Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

- (a) As an employee, you are considered to have refused to take an alcohol test if you:
 - (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.241(a));
 - (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
 - (3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided* that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
 - (4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.265(c));
 - (5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at § 40.265(c);
 - (6) Fail to sign the certification at Step 2 of the ATF (see §§ 40.241(g) and 40.251(d)); or
 - (7) Fail to cooperate with any part of the testing process.
- (b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.
- (c)
 - (1) As a BAT or an STT, or as the physician evaluating a "shy lung" situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to

the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

- (2) As the BAT or STT, you must note the actions that may constitute a refusal in the "Remarks" line (Step 3), and sign and date the ATF. The BAT or STT does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.
- (d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 88 FR 27649, May 2, 2023]

§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

- (a) As the STT, you must take the following steps 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).
 - (1) You must conduct a new screening test using a new screening device.
 - (2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - (3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
- (b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

- (a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.
- (b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
 - (1) If the employee refuses to make the attempt, you must discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - (2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.
 - (3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
 - (4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.
 - (5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.
- (c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
 - (1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:

- (i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
- (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;
- (iii) That the physician must provide you with a signed statement of his or her conclusions; and
- (iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:
 - (A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.
 - (B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.
 - (C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.
- (2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

§ 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

- (a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:
 - (1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see § 40.245(a)(8) for the saliva ASD and § 40.245(b)(8) for the breath tube ASD).
 - (2) The saliva ASD does not activate (see § 40.245(a)(7)); or
 - (3) The device is used for a test after the expiration date printed on the device or on its package (see § 40.245(a)(1) for the saliva ASD and § 40.245(b)(1) for the breath tube ASD).
 - (4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see § 40.245(b)(1)).
- (b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see § 40.253(c), (e) and (f)).
- (c) In the case of a confirmation test:
 - (1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see § 40.251(a)(1));
 - (2) The BAT does not conduct an air blank before the confirmation test (see § 40.253(a));
 - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (see § 40.253(a)(1) and (2));
 - (4) The EBT does not print the result (see § 40.253(f)); or

- (5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see § 40.233(a)(1) and (c)(3)).

[65 FR 79526, Dec. 19, 2000, as amended at 67 FR 61522, Oct. 1, 2002; 71 FR 49384, Aug. 23, 2006; 72 FR 1299, Jan. 11, 2007]

§ 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:

- (a) The BAT or STT does not sign the ATF (see §§ 40.247(a)(1) and 40.255(a)(1)).
- (b) The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (see § 40.255(a)(3)).
- (c) The BAT or STT uses a non-DOT form for the test (see § 40.225(a)).

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

§ 40.271 How are alcohol testing problems corrected?

- (a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.
- (1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see § 40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.
- (2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if you have been trained to do so in accordance with § 40.213(c).
- (3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.
- (4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
- (b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a "correctable flaw" (see § 40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.
- (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.
- (2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
- (c) If you cannot correct the problem, you must cancel the test.

§ 40.273 What is the effect of a cancelled alcohol test?

- (a) A cancelled alcohol test is neither positive nor negative.
 - (1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).
 - (2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).
 - (3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.
- (b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.
- (c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.
- (d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

- (a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not “fatal flaws” or “correctable flaws” listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.
- (b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.
- (c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

§ 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (e.g., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

Subpart O—Substance Abuse Professionals and the Return-to-Duty Process

§ 40.281 Who is qualified to act as a SAP?

To be permitted to act as a SAP in the DOT drug and alcohol testing program, you must meet each of the requirements of this section:

- (a) **Credentials.** You must have one of the following credentials:
 - (1) You are a licensed physician (Doctor of Medicine or Osteopathy);
 - (2) You are a licensed or certified social worker;
 - (3) You are a licensed or certified psychologist;
 - (4) You are a licensed or certified employee assistance professional;
 - (5) You are a state-licensed or certified marriage and family therapist; or

- (6) You are a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
- (1) You must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
 - (2) You must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.
 - (3) You must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines. You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT SAP Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590 (202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
- (1) Qualification training must provide instruction on the following subjects:
 - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
 - (ii) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;
 - (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
 - (v) SAP qualifications and prohibitions;
 - (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
 - (viii) Reporting and recordkeeping requirements;
 - (ix) Issues that SAPs confront in carrying out their duties under the program.
 - (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
 - (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform SAP functions.
- (d) **Continuing education.** During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.
 - (2) Your continuing education activities must include documentable assessment tools to assist you in determining whether you have adequately learned the material.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

- (f) **Limitation.** If you are an otherwise qualified SAP under this part, you must abide by the geographic limitations applicable to your credential when performing remote evaluations. You must not conduct an evaluation that exceeds your geographic limitations.

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 3022, Jan. 22, 2004; 71 FR 49384; Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 82 FR 52246, Nov. 13, 2017; 88 FR 27649, May 2, 2023]

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

- (a) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to § 40.281(a)(6), you may submit a written petition to DOT requesting a review of your petition for inclusion.
- (b) You must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on your petition.
- (c) You must also meet the minimum requirements of appendix G to this part before DOT will act on your petition.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 88 FR 27650, May 2, 2023]

§ 40.285 When is a SAP evaluation required?

- (a) As an employee, when you have violated DOT drug and alcohol regulations, you cannot again perform any DOT safety-sensitive duties for any employer until and unless you complete the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
- (b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

§ 40.289 Are employers required to provide SAP and treatment services to employees?

- (a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
- (b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
- (c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?

- (a) As a SAP, you are charged with:

- (1) Making a clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. At the SAP's discretion, this assessment or evaluation may be performed face-to-face in-person or remotely. If a SAP is not prohibited from using technology within the parameters of the SAP's State-issued license or other credential(s), a remote evaluation must be must be conducted in accordance with the following criteria:
 - (i) The technology must permit real-time audio and visual interaction between the SAP and the employee; and
 - (ii) The quality of the technology (e.g., speed of the internet connection and clarity of the video display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would otherwise gather in an in-person face-to-face interaction, while providing security to protect the confidentiality of the communications at the level expected by industry standards for remote substance abuse evaluations.
 - (2) Referring the employee to an appropriate education and/or treatment program;
 - (3) Conducting a follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. This assessment or evaluation may be performed face-to-face in-person or remotely. A face-to-face remote evaluation must meet the criteria in paragraphs (a)(1)(i) and (ii) of this section.
 - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
 - (5) Providing the employee and employer with recommendations for continuing education and/or treatment.
- (b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

- (a) Provide a comprehensive assessment and clinical evaluation meeting the requirements of § 40.291(a)(1).
- (b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
 - (1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
 - (2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
- (c) Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
- (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.
- (e) You must assess and clinically evaluate each employee on an individual basis and use your professional judgment to determine education and/or treatment, as well as a follow-up testing plan unique to the needs of the individual employee. For example, do not require the same and/or substantially similar education, treatment, and/or follow-up testing plan for most of the employees you assess.
- (f) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (see § 40.311(c)).
- (g) For purposes of your role in the evaluation process, you must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. You must not take into consideration in any way, as a factor in determining what your recommendation will be, any of the

following:

- (1) A claim by the employee that the test was unjustified or inaccurate;
 - (2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or
 - (3) Personal opinions you may have about the justification or rationale for drug and alcohol testing.
- (h) In the course of gathering information for purposes of your evaluation in the case of a drug-related violation, you may consult with the MRO. As the MRO, you are required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

- (a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.
- (b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?

- (a) Except as provided in paragraph (b) of this section, no one (e.g., an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.
- (b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).
- (c) The SAP, who is otherwise fully qualified under this subpart, must not perform evaluations outside the geographic jurisdiction for their credential(s). If the SAP who made the evaluation exceeds their geographic jurisdiction, the employee will not be required to seek the evaluation of a second SAP.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

- (a) As a SAP, upon your determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into an education and/or treatment program.
- (b) To prevent the appearance of a conflict of interest, you must not refer an employee requiring assistance to your private practice or to a person or organization from which you receive payment or to a person or organization in which you have a financial interest. You are precluded from making referrals to entities with which you are financially associated.
- (c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. You may refer an employee to any of the following providers of assistance, regardless of your relationship with them:
 - (1) A public agency (e.g., treatment facility) operated by a state, county, or municipality;
 - (2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment and/or education services (e.g., the employer's contracted treatment provider);

- (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
- (4) The sole source of therapeutically appropriate treatment reasonably available to the employee (e.g., the only treatment facility or education program reasonably located within the general commuting area).

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

- (a) As a SAP, after you have prescribed assistance under § 40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.
 - (1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
 - (2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.
- (b) As the SAP making the follow-up evaluation determination, you must:
 - (1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
 - (2) Conduct a clinical interview meeting the requirements of § 40.291(a)(1) with the employee to determine if the employee demonstrates successful compliance with your initial evaluation recommendations.
- (c)
 - (1) If the employee has demonstrated successful compliance, you must provide a written report directly to the DER highlighting your clinical determination that the employee has done so with your initial evaluation recommendation (see § 40.311(d)).
 - (2) You may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment you recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program you prescribed, you may make a "successful compliance" determination even though you conclude that the employee has not yet completed the out-patient counseling you recommended or should continue in an aftercare program.
- (d)
 - (1) As the SAP, if you believe, as a result of the follow-up evaluation, that the employee has not demonstrated successful compliance with your recommendations, you must provide written notice directly to the DER (see § 40.311(e)).
 - (2) As an employer who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations, you must not return the employee to the performance of safety-sensitive duties.
 - (3) As the SAP, you may conduct additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as you have reported it and with the employer's policy and/or labor-management agreements.
 - (4) As the employer, following a SAP report that the employee has not demonstrated successful compliance, you may take personnel action consistent with your policy and/or labor-management agreements.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.303 What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

- (a) As a SAP, if you believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, you must provide recommendations for these services in your follow-up evaluation report (see § 40.311(d))

(10)).

- (b) As an employer receiving a recommendation for these services from a SAP, you may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. You may monitor and document the employee's participation in the recommended services. You may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations. Nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (see § 40.309).
- (c) As an employee, you are obligated to comply with the SAP's recommendations for these services. If you fail or refuse to do so, you may be subject to disciplinary action by your employer.

§ 40.305 How does the return-to-duty process conclude?

- (a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
- (b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.
- (c) As a SAP or MRO, you must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.
- (d) As the employer, if a SAP who is otherwise fully qualified under this subpart performed a remote evaluation of the employee outside the geographic jurisdiction for their credential(s), the employee who they evaluated will not be required to seek the evaluation of a second SAP. If you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you will proceed with the requirements of paragraph (a) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

- (a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment.
- (b) You must present a copy of this plan directly to the DER (see § 40.311(d)(9)).
- (c) You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol.
- (d) However, you must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
 - (1) You may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g., you may require one test a month during the 12-month period; you may require two tests per month during the first 6-month period and one test per month during the final 6-month period).
 - (2) You may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
 - (3) You are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's.

- (4) As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
- (e) The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

Example 1 to paragraph (e): The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under § 40.25.

Example 2 to paragraph (e): The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

- (f) As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing. You must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.
- (g) As the employer, SAP, or other service agent, you must not provide to the employee a copy of their drug and/or alcohol follow-up testing schedule prescribed by the SAP. No employer, SAP, or other service agent will indicate to the employee what the frequency or duration of the employee's follow-up testing schedule will be. The SAP can require follow-up testing for either or both drugs and alcohol for a drug-related or an alcohol-related violation.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

- (a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- (b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
- (c) You cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.
- (d) You cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

§ 40.311 What are the requirements concerning SAP reports?

- (a) As the SAP conducting the required evaluations, you must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in § 40.355(e)). You may, however, forward the document simultaneously to the DER and to a C/TPA.
- (b) As an employer, you must ensure that you receive SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
- (c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
 - (1) Employee's name and SSN or employee ID No.;

- (2) Employer's name and address;
 - (3) Reason for the assessment (specific violation of DOT regulations and violation date);
 - (4) Date(s) and format (*i.e.*, face-to-face or remote) of the assessment;
 - (5) SAP's education and/or treatment recommendation; and
 - (6) SAP's telephone number.
- (d) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
- (1) Employee's name and SSN or employee ID No.;
 - (2) Employer's name and address;
 - (3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
 - (4) Date(s) and format (*i.e.*, face-to-face or remote) of the initial assessment and synopsis of the treatment plan;
 - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - (6) Inclusive dates of employee's program participation;
 - (7) Clinical characterization of employee's program participation;
 - (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;
 - (9) Follow-up testing plan;
 - (10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
 - (11) SAP's telephone number.
- (e) The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
- (1) Employee's name and SSN or employee ID No.;
 - (2) Employer's name and address;
 - (3) Reason for the initial assessment (specific DOT violation and date);
 - (4) Date(s) and format (*i.e.*, face-to-face or remote) of initial assessment and synopsis of treatment plan;
 - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - (6) Inclusive dates of employee's program participation;
 - (7) Clinical characterization of employee's program participation;
 - (8) Date(s) of the first follow-up evaluation;
 - (9) Date(s) of any further follow-up evaluation the SAP has scheduled;
 - (10) SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
 - (11) SAP's telephone number.
- (f) As a SAP, you must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
- (g) As a SAP, you are to maintain copies of your reports to employers for 5 years, and your employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. You must make these records available, on request, to DOT agency representatives (*e.g.*, inspectors

conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.

- (h) As an employer, you must maintain your reports from SAPs for 5 years from the date you received them.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.313 Where is other information on SAP functions and the return-to-duty process found in this regulation?

You can find other information on the role and functions of SAPs in the following sections of this part:

- § 40.3—Definition.
- § 40.347—Service agent assistance with SAP-required follow-up testing.
- § 40.355—Transmission of SAP reports.
- § 40.329(c)—Making SAP reports available to employees on request.
- Appendix E to Part 40—SAP Equivalency Requirements for Certification Organizations.

Subpart P—Confidentiality and Release of Information

§ 40.321 What is the general confidentiality rule for drug and alcohol test information?

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

- (a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
- (b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

§ 40.323 May program participants release drug or alcohol test information in connection with legal proceedings?

- (a) As an employer, you may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
 - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
 - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.
- (b) In such a proceeding, you may release the information to the decisionmaker in the proceeding (e.g., the court in a lawsuit). You may release the information only with a binding stipulation that the decisionmaker to whom it is released will make it available only to parties to the proceeding.
- (c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (e.g., the laboratory's data package), you must provide the requested information to the employer.
- (d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

§ 40.325 [Reserved]

§ 40.327 When must the MRO report medical information gathered in the verification process?

- (a) As the MRO, you must, except as provided in paragraph (d) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if you determine, in your reasonable medical judgment, that:
 - (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
 - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.
- (b) The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
- (c) The MRO must not report such medical information using the CCF. Instead, the MRO must provide the information in a separate written communication (e.g., letter, secure email). The information must state the specific nature of the MRO's safety concern (e.g., the effects of a medication the employee is taking, the employee's underlying medical condition that the employee disclosed to the MRO).
- (d) If the law of a foreign country (e.g., Canada) prohibits you from providing medical information to the employer, you may comply with that prohibition.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.329 What information must laboratories, MROs, and other service agents release to employees?

- (a) As an MRO or service agent you must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. You may charge no more than the cost of preparation and reproduction for copies of these records.
- (b) As a laboratory, you must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). You may charge no more than the cost of preparation and reproduction for copies of these records.
- (c) As a SAP, you must make available to an employee, on request, a copy of all SAP reports (see § 40.311). However, you must redact follow-up testing information from the report before providing it to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.331 To what additional parties must employers and service agents release information?

As an employer or service agent you must release information under the following circumstances:

- (a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.
- (b) If you are an employer, you must, upon request of DOT agency representatives, provide the following:
 - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this

information at your principal place of business in the time required by the DOT agency.

- (3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (c) If you are a service agent, you must, upon request of DOT agency representatives, provide the following:
 - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
 - (3) All items in paragraph (c)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (d) If requested by the National Transportation Safety Board as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.
- (e) If requested by a Federal, state or local safety agency with regulatory authority over you or the employee, you must provide drug and alcohol test records concerning the employee.
- (f) Except as otherwise provided in this part, as a laboratory you must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. DNA testing and other types of identity testing are not authorized and ODAPC will not give permission for such testing. If a party seeks a court order directing you to release a specimen or part of a specimen contrary to any provision of this part, you must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of § 40.13). This part does not require you to disobey a court order, however.
- (g) Notwithstanding any other provision of this Part, as an employer of Commercial Motor Vehicle (CMV) drivers holding commercial driving licenses (CDLs) or as a third party administrator for owner-operator CMV drivers with CDLs, you are authorized to comply with State laws requiring you to provide to State CDL licensing authorities information about all violations of DOT drug and alcohol testing rules (including positive tests and refusals) by any CMV driver holding a CDL.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 33737, June 13, 2008; 82 FR 52247, Nov. 13, 2017]

§ 40.333 What records must employers keep?

- (a) As an employer, you must keep the following records for the following periods of time:
 - (1) You must keep the following records for five years:
 - (i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - (ii) Records of verified positive drug test results;
 - (iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - (iv) SAP reports; and
 - (v) All follow-up tests and schedules for follow-up tests.
 - (2) You must keep records for three years of information obtained from previous employers under § 40.25 concerning drug and alcohol test results of employees.
 - (3) You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
 - (4) You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

- (b) You do not have to keep records related to a program requirement that does not apply to you (e.g., a maritime employer who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
- (c) You must maintain the records in a location with controlled access.
- (d) A service agent may maintain these records for you. However, you must ensure that you can produce these records at your principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must ensure that you can provide them within two business days.
- (e) If you store records electronically, where permitted by this part, you must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

Subpart Q—Roles and Responsibilities of Service Agents

§ 40.341 Must service agents comply with DOT drug and alcohol testing requirements?

- (a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.
- (b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

§ 40.343 What tasks may a service agent perform for an employer?

As a service agent, you may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.

§ 40.345 In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

- (a) As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).
- (b) The specific provisions of this part concerning which you may act as an intermediary are listed in appendix H to this part. These are the only situations in which you may act as an intermediary. You are prohibited from doing so in all other situations.
- (c) In every case, you must ensure that, in transmitting information to employers, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit drug testing results from MROs to DERs, you must transmit each drug test result to the DER in compliance with the MRO requirements set forth in § 40.167.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.347 What functions may C/TPAs perform with respect to administering testing?

As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing.

- (a) You may operate random testing programs for employers and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).

- (b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
 - (1) If you combine employees from more than one transportation industry, you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
 - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
- (c) You may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither you nor the employer are permitted to randomly select employees from a "follow-up pool" for follow-up testing.

§ 40.349 What records may a service agent receive and maintain?

- (a) Except where otherwise specified in this part, as a service agent you may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. You do not need the employee's consent to receive and maintain these records.
- (b) You may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.
- (c) If a service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to you, as a C/TPA or other service agent who maintains this information for the employer.
- (d) If you are serving as an intermediary in transmitting information that is required to be provided to the employer, you must ensure that it reaches the employer in the same time periods required elsewhere in this part.
- (e) You must ensure that you can make available to the employer within two business days any information the employer is asked to produce by a DOT agency representative.
- (f) On request of an employer, you must, at any time on the request of an employer, transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.
- (g) If you are planning to go out of business or your organization will be bought by or merged with another organization, you must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

§ 40.351 What confidentiality requirements apply to service agents?

Except where otherwise specified in this part, as a service agent the following confidentiality requirements apply to you:

- (a) When you receive or maintain confidential information about employees (e.g., individual test results), you must follow the same confidentiality regulations as the employer with respect to the use and release of this information.
- (b) You must follow all confidentiality and records retention requirements applicable to employers.
- (c) You may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose you are a C/TPA that has employers X and Y as clients. Employee Jones works for X, and you maintain Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. You may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, you may not provide this information to employer Z, who is not a C/TPA member, without this consent.

- (d) You must not use blanket consent forms authorizing the release of employee testing information.
- (e) You must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic data bases.

§ 40.353 What principles govern the interaction between MROs and other service agents?

As a service agent other than an MRO (e.g., a C/TPA), the following principles govern your interaction with MROs:

- (a) You may provide MRO services to employers, directly or through contract, if you meet all applicable provisions of this part.
- (b) If you employ or contract for an MRO, the MRO must perform duties independently and confidentially. When you have a relationship with an MRO, you must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
- (c) Only your staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of your staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. You must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- (d) Like other MROs, an MRO you employ or contract with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, your staff cannot perform these functions.

§ 40.355 What limitations apply to the activities of service agents?

As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program.

- (a) You must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
- (b) You must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to you, with you in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to your computer system, and you then assign the results to a particular MRO, is not permitted.
- (c) You must not transmit drug test results directly from the laboratory to the employer (by electronic or other means) or to a service agent who forwards them to the employer. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
- (d) You must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
- (e) Except as provided in paragraph (f) of this section, you must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to you, with you in turn sending them to the actual employer. However, you may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to you simultaneously with sending them to the DER.
- (f) As an exception to paragraph (e) of this section, you may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.
- (g) Except as provided in paragraph (h) of this section, you must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a C/TPA. You may, however, provide advice and information to employers regarding

these testing issues and how the employer should schedule required testing.

- (h) As an exception to paragraph (g) of this section, you may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- (i) Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.
- (j) As an exception to paragraph (i) of this section, you may make a determination that an employee has refused a drug or alcohol test, if:
 - (1) You schedule a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
 - (2) As an MRO, you determine that an individual has refused to test on the basis of adulteration or substitution.
- (k) You must not act as a DER. For example, while you may be responsible for transmitting information to the employer about test results, you must not act on behalf of the employer in actions to remove employees from safety-sensitive duties.
- (l) In transmitting documents to laboratories, you must ensure that you send to the laboratory that conducts testing only Copy 1 of the CCF. You must not transmit other copies of the CCF or any ATFs to the laboratory.
- (m) You must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a C/TPA serving employers in the pipeline or motor carrier industry, you must not require employers to have provisions in their DOT plans that PHMSA or FMCSA regulations do not require.
- (n) You must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions you have performed, because of a payment dispute or other reasons.

Example 1 to paragraph (n): A laboratory that has tested a specimen must not delay transmitting the documentation of the test result to an MRO because of a billing or payment dispute with the MRO or a C/TPA.

Example 2 to paragraph (n): An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to the employer because of such a dispute with the employer or employee.

Example 3 to paragraph (n): A collector who has performed a specimen collection must not delay sending the drug specimen and CCF to the laboratory because of a payment or other dispute with the laboratory or a C/TPA.

Example 4 to paragraph (n): A BAT who has conducted an alcohol test must not delay sending test result information to an employer or C/TPA because of a payment or other dispute with the employer or C/TPA.

- (o) While you must follow the DOT agency regulations, the actual employer remains accountable to DOT for compliance, and your failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the employer subject to enforcement action by the Department.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 75 FR 59108, Sept. 27, 2010; 88 FR 27650, May 2, 2023]

Subpart R—Public Interest Exclusions

§ 40.361 What is the purpose of a public interest exclusion (PIE)?

- (a) To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.

- (b) The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.
- (c) A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.
- (d) Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

§ 40.363 On what basis may the Department issue a PIE?

- (a) If you are a service agent, the Department may issue a PIE concerning you if we determine that you have failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation.
- (b) The Department also may issue a PIE if you have failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, compliance and enforcement reviews, or requests for documents and other information about compliance with this part or DOT agency drug and alcohol regulations.

§ 40.365 What is the Department's policy concerning starting a PIE proceeding?

- (a) It is the Department's policy to start a PIE proceeding only in cases of serious, uncorrected noncompliance with the provisions of this part, affecting such matters as safety, the outcomes of test results, privacy and confidentiality, due process and fairness for employees, the honesty and integrity of the testing program, and cooperation with or provision of information to DOT agency representatives.
- (b) The following are examples of the kinds of serious noncompliance that, as a matter of policy, the Department views as appropriate grounds for starting a PIE proceeding. These examples are not intended to be an exhaustive or exclusive list of the grounds for starting a PIE proceeding. We intend them to illustrate the level of seriousness that the Department believes supports starting a PIE proceeding. The examples follow:
 - (1) For an MRO, verifying tests positive without interviewing the employees as required by this part or providing MRO services without meeting the qualifications for an MRO required by this part;
 - (2) For a laboratory, refusing to provide information to the Department, an employer, or an employee as required by this part; failing or refusing to conduct a validity testing program when required by this part; or a pattern or practice of testing errors that result in the cancellation of tests. (As a general matter of policy, the Department does not intend to initiate a PIE proceeding concerning a laboratory with respect to matters on which HHS initiates certification actions under its laboratory guidelines.);
 - (3) For a collector, a pattern or practice of directly observing collections when doing so is unauthorized, or failing or refusing to directly observe collections when doing so is mandatory;
 - (4) For collectors, BATs, or STTs, a pattern or practice of using forms, testing equipment, or collection kits that do not meet the standards in this part;
 - (5) For a collector, BAT, or STT, a pattern or practice of "fatal flaws" or other significant uncorrected errors in the collection process;
 - (6) For a laboratory, MRO or C/TPA, failing or refusing to report tests results as required by this part or DOT agency regulations;
 - (7) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a "litigation package";
 - (8) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without interviews meeting the requirements of § 40.291(a)(1);
 - (9) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (e.g., a laboratory that derives a financial benefit from having an employer use a specific MRO);

- (10) For any service agent, falsely representing that the service agent or its activities is approved or certified by the Department or a DOT agency (such representation includes, but is not limited to, the use of a Department or DOT agency logo, title, or emblem).
- (11) For any service agent, disclosing an employee's test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a "blanket" consent from employees or by creating a data base from which employers or others can retrieve an employee's DOT test results without the specific consent of the employee;
- (12) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;
- (13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or
- (14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (e.g., failure to properly conduct the selection process for random testing).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017; 88 FR 27650, May 2, 2023]

§ 40.367 Who initiates a PIE proceeding?

The following DOT officials may initiate a PIE proceeding:

- (a) The drug and alcohol program manager of a DOT agency;
- (b) An official of ODAPC, other than the Director; or
- (c) The designee of any of these officials.

§ 40.369 What is the discretion of an initiating official in starting a PIE proceeding?

- (a) Initiating officials have broad discretion in deciding whether to start a PIE proceeding.
- (b) In exercising this discretion, the initiating official must consider the Department's policy regarding the seriousness of the service agent's conduct (see § 40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.
- (c) A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of noncompliance.

§ 40.371 On what information does an initiating official rely in deciding whether to start a PIE proceeding?

- (a) An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.
- (b) Before sending a correction notice (see § 40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official's determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

§ 40.373 Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?

- (a) If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.
- (b) The correction notice identifies the specific areas in which you must come into compliance in order to avoid being subject to a PIE proceeding.

- (c) If you make and document changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date you receive the notice, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that you have made and maintained satisfactory corrections. When he or she is satisfied that you are in compliance, the initiating official sends you a notice that the matter is concluded.

§ 40.375 How does the initiating official start a PIE proceeding?

- (a) As a service agent, if your compliance matter is not correctable (see § 40.373(a)), or if have not resolved compliance matters as provided in § 40.373(c), the initiating official starts a PIE proceeding by sending you a notice of proposed exclusion (NOPE). The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.
- (b) The NOPE includes the following information:
 - (1) A statement that the initiating official is recommending that the Department issue a PIE concerning you;
 - (2) The factual basis for the initiating official's belief that you are not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;
 - (3) The factual basis for the initiating official's belief that your noncompliance has not been or cannot be corrected;
 - (4) The initiating official's recommendation for the scope of the PIE;
 - (5) The initiating official's recommendation for the duration of the PIE; and
 - (6) A statement that you may contest the issuance of the proposed PIE, as provided in § 40.379.
- (c) The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to you.

§ 40.377 Who decides whether to issue a PIE?

- (a) The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decisionmaker, all references in this subpart to the Director refer to the designee.
- (b) To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.
- (c) There is a "firewall" between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

§ 40.379 How do you contest the issuance of a PIE?

- (a) If you receive a NOPE, you may contest the issuance of the PIE.
- (b) If you want to contest the proposed PIE, you must provide the Director information and argument in opposition to the proposed PIE in writing, in person, and/or through a representative. To contest the proposed PIE, you must take one or more of the steps listed in this paragraph (b) within 30 days after you receive the NOPE.
 - (1) You may request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
 - (2) You may present written information and arguments, consistent with the provisions of § 40.381, contesting the proposed PIE.
 - (3) You may arrange with the Director for an informal meeting to present your information and arguments.

- (c) If you do not take any of the actions listed in paragraph (b) of this section within 30 days after you receive the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (*i.e.*, the NOPE and any supporting information or testimony) and any additional information the Director obtains.

§ 40.381 What information do you present to contest the proposed issuance of a PIE?

- (a) As a service agent who wants to contest a proposed PIE, you must present at least the following information to the Director:
 - (1) Specific facts that contradict the statements contained in the NOPE (see § 40.375(b)(2) and (3)). A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;
 - (2) Identification of any existing, proposed or prior PIE; and
 - (3) Identification of your affiliates, if any.
- (b) You may provide any information and arguments you wish concerning the proposed issuance, scope and duration of the PIE (see § 40.375(b)(4) and (5)).
- (c) You may provide any additional relevant information or arguments concerning any of the issues in the matter.

§ 40.383 What procedures apply if you contest the issuance of a PIE?

- (a) DOT conducts PIE proceedings in a fair and informal manner. The Director may use flexible procedures to allow you to present matters in opposition. The Director is not required to follow formal rules of evidence or procedure in creating the record of the proceeding.
- (b) The Director will consider any information or argument he or she determines to be relevant to the decision on the matter.
- (c) You may submit any documentary evidence you want the Director to consider. In addition, if you have arranged an informal meeting with the Director, you may present witnesses and confront any person the initiating official presents as a witness against you.
- (d) In cases where there are material factual issues in dispute, the Director or his or her designee may conduct additional fact-finding.
- (e) If you have arranged a meeting with the Director, the Director will make a transcribed record of the meeting available to you on your request. You must pay the cost of transcribing and copying the meeting record.

§ 40.385 Who bears the burden of proof in a PIE proceeding?

- (a) As the proponent of issuing a PIE, the initiating official bears the burden of proof.
- (b) This burden is to demonstrate, by a preponderance of the evidence, that the service agent was in serious noncompliance with the requirements of this part for drug and/or alcohol testing-related services or with the requirements of another DOT agency drug and alcohol testing regulation.

§ 40.387 What matters does the Director decide concerning a proposed PIE?

- (a) Following the service agent's response (see § 40.379(b)) or, if no response is received, after 30 days have passed from the date on which the service agent received the NOPE, the Director may take one of the following steps:
 - (1) In response to a request from the service agent (see § 40.379(b)(1)) or on his or her own motion, the Director may dismiss a PIE proceeding if he or she determines that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
 - (i) If the Director dismisses a proposed PIE under this paragraph (a), the action is closed with respect to the noncompliance alleged in the NOPE.

- (ii) The Department may initiate a new PIE proceeding against you on the basis of different or subsequent conduct that is in noncompliance with this part or other DOT drug and alcohol testing rules.
- (2) If the Director determines that the initiating official's submission does not have complete information needed for a decision, the Director may remand the matter to the initiating official. The initiating official may resubmit the matter to the Director when the needed information is complete. If the basis for the proposed PIE has changed, the initiating official must send an amended NOPE to the service agent.
- (b) The Director makes determinations concerning the following matters in any PIE proceeding that he or she decides on the merits:
 - (1) Any material facts that are in dispute;
 - (2) Whether the facts support issuing a PIE;
 - (3) The scope of any PIE that is issued; and
 - (4) The duration of any PIE that is issued.

§ 40.389 What factors may the Director consider?

This section lists examples of the kind of mitigating and aggravating factors that the Director may consider in determining whether to issue a PIE concerning you, as well as the scope and duration of a PIE. This list is not exhaustive or exclusive. The Director may consider other factors if appropriate in the circumstances of a particular case. The list of examples follows:

- (a) The actual or potential harm that results or may result from your noncompliance;
- (b) The frequency of incidents and/or duration of the noncompliance;
- (c) Whether there is a pattern or prior history of noncompliance;
- (d) Whether the noncompliance was pervasive within your organization, including such factors as the following:
 - (1) Whether and to what extent your organization planned, initiated, or carried out the noncompliance;
 - (2) The positions held by individuals involved in the noncompliance, and whether your principals tolerated their noncompliance; and
 - (3) Whether you had effective standards of conduct and control systems (both with respect to your own organization and any contractors or affiliates) at the time the noncompliance occurred;
- (e) Whether you have demonstrated an appropriate compliance disposition, including such factors as the following:
 - (1) Whether you have accepted responsibility for the noncompliance and recognize the seriousness of the conduct that led to the cause for issuance of the PIE;
 - (2) Whether you have cooperated fully with the Department during the investigation. The Director may consider when the cooperation began and whether you disclosed all pertinent information known to you;
 - (3) Whether you have fully investigated the circumstances of the noncompliance forming the basis for the PIE and, if so, have made the result of the investigation available to the Director;
 - (4) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the grounds for issuance of the PIE; and
 - (5) Whether your organization has taken appropriate corrective actions or remedial measures, including implementing actions to prevent recurrence;
- (f) With respect to noncompliance with a DOT agency regulation, the degree to which the noncompliance affects matters common to the DOT drug and alcohol testing program;
- (g) Other factors appropriate to the circumstances of the case.

§ 40.391 What is the scope of a PIE?

- (a) The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.
- (b) If, as a service agent, the Department issues a PIE concerning you, the PIE applies to all your divisions, organizational elements, and types of services that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.
- (c) In the NOPE (see § 40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(3)).
- (d) In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.
- (e) The pervasiveness of the noncompliance within a service agent's organization (see § 40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.
- (f) The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.
- (g) A PIE applies to your affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.
- (h) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with your organization in the following circumstances:
 - (1) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of your organization; or
 - (2) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.
- (i) If a contractor to your organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.
- (j) PIEs do not apply to drug and alcohol testing that DOT does not regulate.
- (k) The following examples illustrate how the Department intends the provisions of this section to work:

Example 1 to § 40.391. Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40. However, P's other services fully comply with this part, and P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.

Example 2 to § 40.391. Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.

Example 3 to § 40.391. Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas—collections, MROs, SAPs, protecting the confidentiality of information—are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.

Example 4 to § 40.391. Service Agent W provides only one kind of service (e.g., laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.

Example 5 to § 40.391. Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous “fatal flaws” in tests. Alternatively, X received a correction notice pointing out these problems in its contractor's collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.

Example 6 to § 40.391. Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.

Example 7 to § 40.391. The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z's services.

§ 40.393 How long does a PIE stay in effect?

- (a) In the NOPE (see § 40.375(b)(5)), the initiating official proposes the duration of the PIE. The duration of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(4)).
- (b) In deciding upon the duration of the PIE, the Director considers the seriousness of the conduct on which the PIE is based and the continued need to protect employers and employees from the service agent's noncompliance. The Director considers factors such as those listed in § 40.389 in making this decision.
- (c) The duration of a PIE will be between one and five years, unless the Director reduces its duration under § 40.407.

§ 40.395 Can you settle a PIE proceeding?

At any time before the Director's decision, you and the initiating official can, with the Director's concurrence, settle a PIE proceeding.

§ 40.397 When does the Director make a PIE decision?

The Director makes his or her decision within 60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days.

§ 40.399 How does the Department notify service agents of its decision?

If you are a service agent involved in a PIE proceeding, the Director provides you written notice as soon as he or she makes a PIE decision. The notice includes the following elements:

- (a) If the decision is not to issue a PIE, a statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute.
- (b) If the decision is to issue a PIE—
 - (1) A reference to the NOPE;
 - (2) A statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute;

(3) A statement of the scope of the PIE; and

(4) A statement of the duration of the PIE.

§ 40.401 How does the Department notify employers and the public about a PIE?

- (a) The Department maintains a document called the "List of Excluded Drug and Alcohol Service Agents." This document may be found on the Department's web site (<http://www.transportation.gov/odapc>) . You may also request a copy of the document from ODAPC.
- (b) When the Director issues a PIE, he or she adds to the List the name and address of the service agent, and any other persons or organizations, to whom the PIE applies and information about the scope and duration of the PIE.
- (c) When a service agent ceases to be subject to a PIE, the Director removes this information from the List.
- (d) The Department also publishes a FEDERAL REGISTER notice to inform the public on any occasion on which a service agent is added to or taken off the List.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017]

§ 40.403 Must a service agent notify its clients when the Department issues a PIE?

- (a) As a service agent, if the Department issues a PIE concerning you, you must notify each of your DOT-regulated employer clients, in writing, about the issuance, scope, duration, and effect of the PIE. You may meet this requirement by sending a copy of the Director's PIE decision or by a separate notice. You must send this notice to each client within three business days of receiving from the Department the notice provided for in § 40.399(b).
- (b) As part of the notice you send under paragraph (a) of this section, you must offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

§ 40.405 May the Federal courts review PIE decisions?

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 *et. seq.*).

§ 40.407 May a service agent ask to have a PIE reduced or terminated?

- (a) Yes, as a service agent concerning whom the Department has issued a PIE, you may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.
- (b) Your request must be in writing and supported with documentation.
- (c) You must wait at least nine months from the date on which the Director issued the PIE to make this request.
- (d) The initiating official who was the proponent of the PIE may provide information and arguments concerning your request to the Director.
- (e) If the Director verifies that the sources of your noncompliance have been eliminated and that all drug or alcohol testing-related services you would provide to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.

§ 40.409 What does the issuance of a PIE mean to transportation employers?

- (a) As an employer, you are deemed to have notice of the issuance of a PIE when it appears on the List mentioned in § 40.401(a) or the notice of the PIE appears in the FEDERAL REGISTER as provided in § 40.401(d). You should check this List to ensure that any service agents you are using or planning to use are not subject to a PIE.

- (b) As an employer who is using a service agent concerning whom a PIE is issued, you must stop using the services of the service agent no later than 90 days after the Department has published the decision in the FEDERAL REGISTER or posted it on its web site. You may apply to the ODAPC Director for an extension of 30 days if you demonstrate that you cannot find a substitute service agent within 90 days.
- (c) Except during the period provided in paragraph (b) of this section, you must not, as an employer, use the services of a service agent that are covered by a PIE that the Director has issued under this subpart. If you do so, you are in violation of the Department's regulations and subject to applicable DOT agency sanctions (e.g., civil penalties, withholding of Federal financial assistance).
- (d) You also must not obtain drug or alcohol testing services through a contractor or affiliate of the service agent to whom the PIE applies.

Example to paragraph (d): Service Agent R was subject to a PIE with respect to SAP services. As an employer, not only must you not use R's own SAP services, but you also must not use SAP services you arrange through R, such as services provided by a subcontractor or affiliate of R or a person or organization that receives financial gain from its relationship with R.

- (e) This section's prohibition on using the services of a service agent concerning which the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations.

Example to paragraph (e): The initiating official for a PIE was the FAA drug and alcohol program manager, and the conduct forming the basis of the PIE pertained to the aviation industry. As a motor carrier, transit authority, pipeline, railroad, or maritime employer, you are also prohibited from using the services of the service agent involved in connection with the DOT drug and alcohol testing program.

- (f) The issuance of a PIE does not result in the cancellation of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the FEDERAL REGISTER or posting on the Department's web site, unless otherwise specified in the Director's PIE decision or the Director grants an extension as provided in paragraph (b) of this section.

Example to paragraph (f): The Department issues a PIE concerning Service Agent N on September 1. All tests conducted using N's services before September 1, and through November 30, are valid for all purposes under DOT drug and alcohol testing regulations, assuming they meet all other regulatory requirements.

§ 40.411 What is the role of the DOT Inspector General's office?

- (a) Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of the DOT Office of Inspector General.
- (b) In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.
- (c) The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.

§ 40.413 How are notices sent to service agents?

- (a) If you are a service agent, DOT sends notices to you, including correction notices, notices of proposed exclusion, decision notices, and other notices, in any of the ways mentioned in paragraph (b) or (c) of this section.
- (b) DOT may send a notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, fax number, or e-mail address. DOT deems the notice to have been received by you if sent to any of these persons.
- (c) DOT considers notices to be received by you—
 - (1) When delivered, if DOT mails the notice to the last known street address, or five days after we send it if the letter is undeliverable;
 - (2) When sent, if DOT sends the notice by fax or five days after we send it if the fax is undeliverable; or

- (3) When delivered, if DOT sends the notice by e-mail or five days after DOT sends it if the e-mail is undeliverable.

Appendix A to Part 40—DOT Standards for Urine Collection Kits

The Collection Kit Contents

1. *Collection Container*

- a. Single-use container, made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
- b. Must have graduated volume markings clearly noting levels of 45 mL and above.
- c. Must have a temperature strip providing graduated temperature readings 32–38 °C/90–100 °F, that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.
- d. Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peelable, sealed lid or other easily visible tamper-evident system.
- e. May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.

2. *Plastic Specimen Bottles*

- a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
- b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.
- c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.
- d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
- e. Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container; or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peelable, sealed lid or other easily visible tamper-evident system.
- f. Plastic material must be leach resistant.

3. *Leak-Resistant Plastic Bag*

- a. Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

4. *Absorbent material*

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

5. *Shipping Container*

- a. Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.

- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

Appendix B to Part 40—Oral Fluid Collection Kit Contents

1. Oral Fluid Collection Device

- a. A single device, which can be subdivided in the employee's presence into an "A" specimen and a "B" split specimen bottle sufficient for laboratory testing, that is either of the following:
 - (1) An oral fluid collection device made to collect a sufficient amount of oral fluid to permit an HHS-certified laboratory to analyze the specimen(s). For example, a device that directs the oral fluid into two separate collection bottles.
 - (2) A device that uses buffering solution that collects a specimen using a single pad or dual pads joined for insertion together into the same region of the mouth, which can be subdivided into two separate collection bottles. Such a buffered device may use a diluent (or other component, process, or method that modifies the volume of the testable specimen). The volume specifications for the device must be consistent with those set by HHS.
- b. Must have unit markings or other indicators that demonstrate the adequacy of the volume of oral fluid specimen collected.
- c. Must be sufficiently transparent to permit a visual assessment of the contents without opening the specimen bottle.
- d. Must be individually packaged in an easily visible tamper-evident system.
- e. Must have the device's expiration date on the specimen bottles sent to the laboratory (*i.e.*, the shortest expiration date of any component).
- f. Must not have components that substantially affect the composition of drugs and/or drug metabolites in the oral fluid specimen and/or interfere with an accurate analysis of the specimen.
- g. Must maintain the integrity of the specimen during storage and transport so the specimen can be tested in an HHS-certified laboratory.
- h. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit without concealing the expiration date on the bottles, without damage to the seal when the collector dates and the employee initials it.
- i. Must be approved by HHS for use by the specific HHS-certified laboratory that will test the specimen gathered by this device.

2. Instructions

Must include the manufacturer's instructions within the device's packaging. The instructions must provide sufficient detail to allow for an error-free collection when the instructions are followed.

3. Leak-Resistant Plastic Bag

- a. Must have two sealable compartments or pouches that are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork, as applicable.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

4. Absorbent Material

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

5. Shipping Container

- a. Must be designed to adequately protect the specimen bottles from damage during shipment of the specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual collection device sent to collection sites.
- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the leak-resistant plastic bags from the collection site to the laboratory.

[88 FR 27651, May 2, 2023]

Appendix C to Part 40 [Reserved]

Appendix D to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to Employers

The following items are required on each laboratory report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

Employer Identification: (name; may include Billing Code or ID code)

C/TPA Identification: (where applicable; name and address)

A. Urine Specimens

1. Urine Specimen Results Reported (Total Number) By Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)
- (c) Random (number)
- (d) Reasonable Suspicion/Cause (number)
- (e) Return-to-Duty (number)
- (f) Follow-up (number)
- (g) Type of Test Not Noted on CCF (number)

2. Urine Specimens Reported

- (a) Negative (number)
- (b) Negative and Dilute (number)

3. Urine Specimens Reported as Rejected for Testing (Total Number) by Reason

- (a) Fatal flaw (number)
- (b) Uncorrected Flaw (number)

4. Urine Specimens Reported as Positive (Total Number) by Drug

- (a) Marijuana Metabolite (number)
- (b) Cocaine Metabolite (number)
- (c) Opioids (number)
 - (1) Codeine (number)
 - (2) Morphine (number)
 - (3) 6-AM (number)

- (4) Hydrocodone (number)
- (5) Hydromorphone (number)
- (6) Oxycodone (number)
- (7) Oxymorphone (number)
- (d) Phencyclidine (number)
- (e) Amphetamines (number)
 - (1) Amphetamine (number)
 - (2) Methamphetamine (number)
 - (3) MDMA (number)
 - (4) MDA (number)

5. Urine Adulterated (Number)

6. Urine Substituted (Number)

7. Urine Invalid Result (Number)

B. Oral Fluid Specimens

1. Oral Fluid Specimen Results Reported (Total Number) by Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)
- (c) Random (number)
- (d) Reasonable Suspicion/Cause (number)
- (e) Return-to-Duty (number)
- (f) Follow-up (number)
- (g) Type of Test Not Noted on CCF (number)

2. Oral Fluid Specimens Reported

- (a) Negative (number)
- (b) Negative and Dilute (number)

3. Oral Fluid Specimens Reported as Rejected for Testing (Total Number) by Reason

- (a) Fatal flaw (number)
- (b) Uncorrected Flaw (number)

4. Oral Fluid Specimens Reported as Positive (Total Number) by Drug

- (a) Marijuana (number)
- (b) Cocaine and/or Cocaine Metabolite (number)
- (c) Opioids (number)
 - (1) Codeine (number)
 - (2) Morphine (number)
 - (3) 6-AM (number)
 - (4) Hydrocodone (number)

- (5) Hydromorphone (number)
- (6) Oxycodone (number)
- (7) Oxymorphone (number)
- (d) Phencyclidine (number)
- (e) Amphetamines (number)
 - (1) Amphetamine (number)
 - (2) Methamphetamine (number)
 - (3) MDMA (number)
 - (4) MDA (number)

5. Oral Fluid Adulterated (Number)

6. Oral Fluid Substituted (Number)

7. Oral Fluid Invalid Result (Number)

[88 FR 27651, May 2, 2023]

Appendix E to Part 40—Drug Testing Semi-Annual Laboratory Report to DOT

Mail, fax or email to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366–3897.

Email: ODAPCWebMail@dot.gov.

The following items are required on each report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

1. Specimen Type:

–oral fluid or urine

2. DOT agency

–FMCSA, FAA, FRA, FTA, PHMSA, or USCG

3. Test Reason

–Pre-Employment, Random, Reasonable Suspicion/Cause, Post-Accident, Return-to-Duty, Other, and Follow-up

A. DOT Specimen Results Reported (total number)

B. Negative Results Reported (total number)

1. Negative (number)

2. Negative-Dilute (number)

C. Rejected for Testing Results Reported (total number) By Reason

1. Fatal flaw (number)

- 2. Uncorrected Flaw (number)
- D. Positive Results Reported (total number) By Drug
 - 1. Marijuana or Marijuana Metabolite (number)
 - 2. Cocaine and/or Cocaine Metabolite (number)
 - 3. Opioids (number)
 - a. Codeine (number)
 - b. Morphine (number)
 - c. 6-AM (number)
 - d. Hydrocodone (number)
 - e. Hydromorphone (number)
 - f. Oxycodone (number)
 - g. Oxymorphone (number)
 - 4. Phencyclidine (number)
 - 5. Amphetamines (number)
 - a. Amphetamine (number)
 - b. Methamphetamine (number)
 - c. MDMA (number)
 - d. MDA (number)
- E. Adulterated Results Reported (total number) By Reason (number)
- F. Substituted Results Reported (total number)
- G. Invalid Results Reported (total number) By Reason (number)

[88 FR 27652, May 2, 2023]

Appendix F to Part 40—Report Format: Split Specimen Failure To Reconfirm

Mail, fax, or submit electronically to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366-3897.

Submit Electronically: <https://www.transportation.gov/odapc/mro-split-specimen-cancellation-notification>.

The following items are required on each report:

- 1. MRO name, address, phone number, and fax number.

2. Collection site name, address, and phone number.
3. Date of collection.
4. Specimen I.D. number.
5. Specimen type.
6. Laboratory accession number.
7. Primary specimen laboratory name, address, and phone number.
8. Date result reported or certified by primary laboratory.
9. Split specimen laboratory name, address, and phone number.
10. Date split specimen result reported or certified by split specimen laboratory.
11. Primary specimen results (e.g., name of drug, adulterant) in the primary specimen.
12. Reason for split specimen failure-to-reconfirm result (e.g., drug or adulterant not present, specimen invalid, split not collected, insufficient volume).
13. Actions taken by the MRO (e.g., notified employer of failure to reconfirm and requirement for re-collection).
14. Additional information explaining the reason for cancellation.
15. Name of individual submitting the report (if not the MRO).

[88 FR 27652, May 2, 2023]

Appendix G to Part 40—SAP Equivalency Requirements for Certification Organizations

1. **Experience:** Minimum requirements are for three years of full-time supervised experience or 6,000 hours of supervised experience as an alcoholism and/or drug abuse counselor. The supervision must be provided by a licensed or certified practitioner. Supervised experience is important if the individual is to be considered a professional in the field of alcohol and drug abuse evaluation and counseling.
2. **Education:** There exists a requirement of 270 contact hours of education and training in alcoholism and/or drug abuse or related training. These hours can take the form of formal education, in-service training, and professional development courses. Part of any professional counselor's development is participation in formal and non-formal education opportunities within the field.
3. **Continuing Education:** The certified counselor must receive at least 40–60 hours of continuing education units (CEU) during each two year period. These CEUs are important to the counselor's keeping abreast of changes and improvements in the field.
4. **Testing:** A passing score on a national test is a requirement. The test must accurately measure the application of the knowledge, skills, and abilities possessed by the counselor. The test establishes a national standard that must be met to practice.
5. **Testing Validity:** The certification examination must be reviewed by an independent authority for validity (examination reliability and relationship to the knowledge, skills, and abilities required by the counseling field). The reliability of the exam is paramount if counselor attributes are to be accurately measured. The examination passing score point must be placed at an appropriate minimal level score as gauged by statistically reliable methodology.
6. **Measurable Knowledge Base:** The certification process must be based upon measurable knowledge possessed by the applicant and verified through collateral data and testing. That level of knowledge must be of sufficient quantity to ensure a high quality of SAP evaluation and referral services.
7. **Measurable Skills Base:** The certification process must be based upon measurable skills possessed by the applicant and verified through collateral data and testing. That level of skills must be of sufficient quality to ensure a high quality of SAP evaluation and referral services.
8. **Quality Assurance Plan:** The certification agency must ensure that a means exists to determine that applicant records are verified as being true by the certification staff. This is an important check to ensure that true information is being accepted by the certifying agency.

9. **Code of Ethics:** Certified counselors must pledge to adhere to an ethical standard for practice. It must be understood that code violations could result in de-certification. These standards are vital in maintaining the integrity of practitioners. High ethical standards are required to ensure quality of client care and confidentiality of client information as well as to guard against inappropriate referral practices.
10. **Re-certification Program:** Certification is not just a one-time event. It is a continuing privilege with continuing requirements. Among these are continuing education, continuing state certification, and concomitant adherence to the code of ethics. Re-certification serves as a protector of client interests by removing poor performers from the certified practice.
11. **Fifty State Coverage:** Certification must be available to qualified counselors in all 50 states and, therefore, the test must be available to qualified applicants in all 50 states. Because many companies are multi-state operators, consistency in SAP evaluation quality and opportunities is paramount. The test need not be given in all 50 states but should be accessible to candidates from all states.
12. **National Commission for Certifying Agencies (NCCA) Accreditation:** Having NCCA accreditation is a means of demonstrating to the Department of Transportation that your certification has been reviewed by a panel of impartial experts that have determined that your examination(s) has met stringent and appropriate testing standards.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27651, May 2, 2023]

Appendix H to Part 40—Drug and Alcohol Testing Information that C/TPAs May Transmit to Employers

1. If you are a C/TPA, you may, acting as an intermediary, transmit the information in the following sections of this part to the DER for an employer, if the employer chooses to have you do so. These are the only items that you are permitted to transmit to the employer as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to employers, the transmission of SAP reports to employers, the transmission of positive alcohol test results, and the transmission of medical information from MROs to employers.
2. In every case, you must ensure that, in transmitting the information, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit MROs' drug testing results to DERs, you must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in § 40.167.

Drug Testing Information

§ 40.25: Previous two years' test results

§ 40.35: Notice to collectors of contact information for DER

§ 40.61(a): Notification to DER that an employee is a "no show" for a drug test

§ 40.63(e): Notification to DER of a collection under direct observation

§ 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen

§ 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)

§ 40.111(a): Transmission of laboratory statistical report to employer

§ 40.127(f): Report of test results to DER

§§ 40.127(g), 40.129(d), 40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled

§ 40.129(e): Report of test results to DER

§ 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation

§§ 40.149(b): Report to DER of changed test result

§ 40.155(a): Report to DER of dilute specimen

§ 40.167(b) and (c): Reports of test results to DER

§ 40.187(a)–(e) Reports to DER concerning the reconfirmation of tests

§ 40.191(d): Notice to DER concerning refusals to test

§ 40.193(b)(3): Notification to DER of refusal in shy bladder situation

§ 40.193(b)(4): Notification to DER of insufficient specimen

§ 40.193(b)(5): Transmission of CCF copies to DER (not to MRO)

§ 40.199: Report to DER of cancelled test and direction to DER for additional collection

§ 40.201: Report to DER of cancelled test

Alcohol Testing Information

§ 40.215: Notice to BATs and STTs of contact information for DER

§ 40.241(b)(1): Notification to DER that an employee is a “no show” for an alcohol test

§ 40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02

§ 40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02

§ 40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 35975, June 25, 2008. Redesignated and amended at 88 FR 27651, 27652, May 2, 2023]

Appendix I to Part 40—Alcohol Testing Form

The following form is the alcohol testing form required for use in the DOT alcohol testing program beginning January 1, 2011. Employers are authorized to use the form effective February 25, 2010.

U.S. Department of Transportation (DOT)

Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results
Here or Affix with
Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street _____
City, State, Zip _____

DER Name and Telephone No. _____
DER Name _____ DER Phone Number _____

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee Date Month Day Year

Print Confirmation
Results Here or Affix
with Tamper Evident
Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <i>QR</i>	Lot # & Exp Date	Activation Time	Reading Time	Result
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CONFIRMATION TEST: Results **MUST** be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company _____ Company Street Address _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) _____ Company City, State, Zip _____ Phone Number _____

Signature of Alcohol Technician _____ Date Month Day Year _____

Print Additional
Results Here or Affix
With Tamper Evident
Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee Date Month Day Year

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

U.S. Department of Transportation (DOT)

Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results
Here or Affix with
Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street _____
City, State, Zip _____

DER Name and Telephone No. _____
DER Name _____ DER Phone Number _____

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee Date Month Day Year

Print Confirmation
Results Here or Affix
with Tamper Evident
Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE* write in the space below only if the testing device is not designed to print)

Test #	Testing Device Name	Device Serial # QR	Lot # & Exp Date	Activation Time	Reading Time	Result
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CONFIRMATION TEST: Results **MUST** be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company _____ Company Street Address _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) _____ Company City, State, Zip _____ Phone Number _____

Signature of Alcohol Technician _____ Date Month Day Year _____

Print Additional
Results Here or Affix
With Tamper Evident
Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee Date Month Day Year

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

COPY 2 - EMPLOYEE RETAINS

U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results
Here or Affix with
Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street _____
City, State, Zip _____

DER Name and Telephone No. _____
DER Name _____ DER Phone Number _____

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee

_____/_____/_____
Date Month Day Year

Print Confirmation
Results Here or Affix
with Tamper Evident
Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: Results **MUST** be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company _____ Company Street Address _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) _____ Company City, State, Zip _____ Phone Number _____

_____/_____/_____
Signature of Alcohol Technician Date Month Day Year

Print Additional
Results Here or Affix
With Tamper Evident
Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

_____/_____/_____
Signature of Employee Date Month Day Year

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

COPY 3 – ALCOHOL TECHNICIAN RETAINS

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 8 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

BACK OF PAGES 1 and 2

INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION ALCOHOL TESTING FORM

NOTE: Use a ballpoint pen, press hard, and check all copies for legibility.

STEP 1 The Breath Alcohol Technician (BAT) or Screening Test Technician (STT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

NOTE: If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

STEP 2 Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

NOTE: If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

STEP 3 The BAT or STT completes the information required in this step and checks the type of device (saliva or breath) being used. After conducting the alcohol screening test, do the following (as appropriate):

Enter the information for the screening test (test number, testing device name, testing device serial number or lot number and expiration date, time of test with any device-dependent activation times, and the results), on the front of the ATF. For a breath testing device capable of printing, the information may be part of the printed record.

NOTE: Be sure to enter the result of the test exactly as it is indicated on the breath testing device, e.g., 0.00, 0.02, 0.04, etc.

Affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original printed information, or the device may print the results directly on the ATF. If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. The test process is complete.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

Ensure that a waiting period of at least 15 minutes occurs before the confirmation test begins. Check the box indicating that the waiting period lasted at least 15 minutes.

After conducting the alcohol confirmation test, affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original information, or the device may print the results directly on the ATF. Print, sign your name, and enter the date in the space provided. Go to STEP 4.

STEP 4 If the employee has a breath alcohol confirmation test result of 0.02 or higher, instruct the employee to read, sign, and date the employee certification statement in STEP 4.

NOTE: If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks line in STEP 3.

Immediately notify the DER if the employee has a breath alcohol confirmation test result of 0.02 or higher.

Forward Copy 1 to the employer. Give Copy 2 to the employee. Retain Copy 3 for BAT/STT records.

BACK OF PAGE 3

Appendix J to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

The following form is the MIS Data Collection form required for use to report calendar year MIS data. The instructions for this form are found at <https://www.transportation.gov/odapc>.

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: _____

OMB No. 2105-0529

Form DOT F 1385 (Rev. 4/2019)

I. Employer:

Company Name: _____
 Doing Business As (DBA) Name (if applicable): _____
 Address: _____ E-mail: _____
 Name of Certifying Official: _____ Signature: _____
 Telephone: (____) _____ Date Certified: _____
 Prepared by (if different): _____ Telephone: (____) _____
 C/TPA Name and Telephone (if applicable): _____ (____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMCSA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO
 ___ FAA – Aviation: Certificate # (if applicable): _____ Plan / Registration # (if applicable): _____
 ___ PHMSA – Pipeline: (Check) Gas Gathering ___ Gas Transmission ___ Gas Distribution ___ Transport Hazardous Liquids ___ Transport Carbon Dioxide ___
 ___ FRA – Railroad: Total Number of observed/documentated Part 219 “Rule G” Observations for covered employees: _____
 ___ USCG – Maritime: Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)
 ___ FTA – Transit

II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories:

--

(B) Enter Total Number of Employee Categories:

--

(C)

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

III. Drug Testing Data

Type of Test	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Total Number Of Test Results [Should equal the sum of columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results ~ For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opioids	Positive For Amphetamines	Refusal Results					Cancelled Results
									Adulterated	Substituted	"Shy Bladder" ~ With No Medical Explanation	Other Refusals To Submit To Testing		
Pre-Employment														
Random														
Post-Accident														
Reasonable Susp./Cause														
Return-to-Duty														
Follow-Up														
TOTAL														

IV. Alcohol Testing Data:

Type of Test	1	2	3	4	5	6	7	8	9
	Total Number Of Screening Test Results [Should equal the sum of columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	Refusal Results		
							"Shy Bladder" ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 90 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

[84 FR 16773, Apr. 23, 2019. Redesignated at 88 FR 27651, May 2, 2023]

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCYDept. Code: MTAType of Request: Initial Modification of an existing PSC (PSC # 46107 - 17/18)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: Laboratory Drug Testing ServicesFunding Source: Operating FundsPSC Original Approved Amount: \$200,000 PSC Original Approved Duration: 08/01/18 - 07/31/23 (5 years)PSC Mod#1 Amount: no amount added PSC Mod#1 Duration: 08/01/23-01/31/24 (26 weeks 2 days)PSC Cumulative Amount Proposed: \$200,000 PSC Cumulative Duration Proposed: 5 years 26 weeks**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

To provide federally mandated urine analysis for safety-sensitive employees with the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequence of denial:

This is a required service under the Department Of Transportation (DOT)/Federal Transit Administration (FTA) Rules. Denial will jeopardize continued transit agency federal assistance.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, PSC 4026 12/13 app 07/09/12

D. Will the contract(s) be renewed?

Yes. At the end of this contract, the SFMTA will issue a Request for Proposal for Laboratory Services as drug testing is expected to continue being a regulatory requirement.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

n/a

2. Reason(s) for the Request

A. Display all that apply

 Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Explain the qualifying circumstances:

Federal Code 49 CFR Part 40 requires the use of a U.S. Department of Health and Human Services (DHHS) certified lab for all Department of Transportation mandated drug testing.

B. Reason for the request for modification:

The contract term is expiring on 7/31/2023 and we are extending it for 6 months.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: A contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs.
- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. A Contractor is a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have such laboratory services.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
A Contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs or a job class to perform urine analysis.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. A Contract must be a U.S. Department of Health of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified lab and the number of urine analysis needed does not warrant the creation of a new job class.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
N/A
- C. Are there legal mandates requiring the use of contractual services?
Yes, 49 CFR Part 40.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Alere Toxicology Services, Inc. 800-433-3823 mike.selph@abbott.com

7. **Union Notification:** On 06/15/22, the Department notified the following employee organizations of this PSC/RFP request:

all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, HR, 6th Fl, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 46107 - 17/18

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 06/27/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Laboratory Drug Testing Services

Funding Source: Operating Funds

PSC Amount: \$200,000

PSC Est. Start Date: 08/01/2018

PSC Est. End Date 07/31/2023

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

To provide federally mandated urine analysis for safety-sensitive employees with the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequence of denial:

This is a required service under the Department Of Transportation (DOT)/Federal Transit Administration (FTA) Rules. Denial will jeopardize continued transit agency federal assistance.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services were provided by Phamatech under PSC # 4026-12/13 approved on July 9, 2012. The contract is due to expire on July 31, 2018.

D. Will the contract(s) be renewed?

Yes. At the end of this contract, the SFMTA will issue a Request for Proposal for Laboratory Services as drug testing is expected to continue being a regulatory requirement.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

B. Explain the qualifying circumstances:

Federal Code 49 CFR Part 40 requires the use of a U.S. Department of Health and Human Services (DHHS) certified lab for all Department of Transportation mandated drug testing.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: A contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:

Yes. A Contractor is a U.S. Department of Health and Human Services (DHHS) certified lab. The City does

not have such laboratory services.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not applicable, the City does not have a U.S. Department of Health and Human Services (DHHS) certified laboratory.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

A Contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs or a job class to perform urine analysis.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. A Contract must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified lab and the number of urine analysis needed does not warrant the creation of a new job class.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No. Urine analysis is a highly specialized task that city employees are not expected to participate in and must be done by federally regulated laboratory staff. Training City and County employees are not relevant to this contract.

C. Are there legal mandates requiring the use of contractual services?
Yes. Yes, 49 CFR Part 40.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 06/14/2018, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, HR, 6th Fl San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 46107 - 17/18

DHR Analysis/Recommendation:

Commission Approval Required

09/17/2018 DHR Approved for 09/17/2018

action date: 09/17/2018

Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Sunol Valley Facilities Improvements

Funding Source: SFPUC Water Enterprise

PSC Duration: 11 years 2 days

PSC Amount: \$15,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Perform highly specialized engineering tasks that include conducting geotechnical field explorations, investigations, and laboratory testing; hydraulic modeling, seismic vulnerabilities of water treatment facilities and chemical storage tanks, site surveying in remote locations, reliability and maintenance issues with chemical pumps, preparing reports for new and existing facilities; The SFPUC intends to award one (1) contract, not to exceed \$15,000,000.

B. Explain why this service is necessary and the consequence of denial:

Eighty-five percent of the water supply for the SFPUC customers travels through the Sunol Valley. These water treatment facilities and pipelines vary in age from 5 to over 80 years. If this service is denied, the SFPUC will not be able to understand the condition of the water treatment facilities and pipelines and minimize the potential of unplanned outages that will impact water supply delivery. Thus, these facilities require inspection and repair and or replacement.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

N/A

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The contract term is 10 years because the start/end dates and durations for the various projects in Sunol Valley identified in the Water Capital Plan range from 2 years to 10 years. This contract is meant to support these projects. Will report back in 4 years. The PSC is for 11 years to account for a late execution.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

This is highly specialized work that provides engineering support services to City staff who are performing the bulk of the engineering design work.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Perform highly specialized engineering tasks that include conducting geotechnical field explorations, investigations, and laboratory testing; hydraulic modeling, seismic vulnerabilities of water treatment facilities and chemical storage tanks, site surveying in remote locations, reliability and maintenance issues with chemical pumps, preparing reports for new and existing facilities
- B. Which, if any, civil service class(es) normally perform(s) this work? 5207, Assoc Engineer; 5211, Eng/Arch/Landscape Arch Sr; 5241, Engineer;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
Yes. The consultant will need to provide geotechnical investigation equipment and power testing equipment to perform field investigation work.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

This is highly specialized work that provides engineering support services to City staff who are performing the bulk of the engineering design work.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classifications are not applicable because these skill sets are specialized and require continuous training. SFPUC only requires these services on a project by project basis to support the design development of the capital program for water treatment facilities.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class for this work due to the highly specialized nature and as-needed schedule for the services.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. The Contractor will conduct training sessions in areas related to the scope of services in this RFP, with the objective of transferring technical design knowledge and skills to City staff. While training topics will be determined jointly with the City, potential training topics may include but are not limited to the following: treatment technologies, facility operation and start-up, Building Information Management (BIM), and/or lessons learned.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 07/27/2023, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sfgwater.org

Address: 525 Golden Gate Ave 8th Floor San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 41458 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhrrpscordinator@sfgov.org on behalf of shale@sfgov.org
To: [Hale, Shawndrea M.](mailto:Hale_Shawndrea_M.); junko.laxamana@sfgov.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; L21PSCReview@ifpte21.org; [Hale, Shawndrea M.](mailto:Hale_Shawndrea_M.); dhrrpscordinator@sfgov.org
Subject: Receipt of Notice for new PCS over \$100K PSC # 41458 - 23/24
Date: Thursday, July 27, 2023 10:46:52 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 41458 - 23/24 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 41458 - 23/24 for \$15,000,000 for Initial Request services for the period 02/01/2024 – 01/31/2035. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrrupal/node/21170> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: SHERIFF -- SHE

Dept. Code: SHE

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Refuse services for San Francisco County Jail #3 located in San Bruno, CA

Funding Source: General Fund

PSC Duration: 1 year

PSC Amount: \$140,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The San Francisco Sheriff's Office proposes to enter into a contract for the garbage collection services for the San Francisco County Jail #3 located in San Bruno, CA, and to comply with the San Bruno Municipal Code 10.20.050, which the City of San Bruno issued an exclusive contract for the collection of garbage.

B. Explain why this service is necessary and the consequence of denial:

San Francisco County Jail #3 located in San Bruno accommodates approximately 200 staff, over 600 incarcerated persons, and a large number of daily visitors. It is anticipated that in the coming weeks, two additional housing need to be open. At full capacity, County Jail #3 will house over 900 incarcerated persons. County Jail #3 generates a large volume of garbage on a daily basis. In addition, the San Bruno Municipal Code 10.20.050 issued an exclusive permanent contract for garbage services within the city of San Bruno. Denial of services will lead to a violation of the San Bruno Municipal Code and will disrupt the garbage service at County Jail #3. Any disruption of the garbage service will quickly lead to health and safety risks from exposure to uncollected refuse.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The Office of Contract Administration has approved Sole Source Waivers for garbage services per the San Bruno Municipal Code 10.20.050.

D. Will the contract(s) be renewed?

The contract will be reviewed and renewed annually to meet the mandate of San Bruno Municipal Code 10.20.050.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The Sheriff's Office does not have the specialized equipment, expertise, and resources to provide the garbage collection services to meet the needs of the department. In addition, the San Bruno Municipal Code 10.20.050 grants an exclusive contract for the collection of garbage within the city of San Bruno.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Garbage service at County Jail #3 requires specialized equipment and knowledge of sanitation codes and the operation of collection equipment.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Garbage service at County Jail #3 requires specialized equipment to collect the refuse in compactors.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The Sheriff's Office do not have the specialized equipment, expertise and resources to provide the garbage collection services to meet the needs of the department. San Bruno Municipal Code 10.20.050 grants an exclusive contract for the collection of garbage within the city of San Bruno.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil Service classes are not applicable. The San Bruno Municipal Code 10.20.050 has an exclusive permanent contract of garbage services within the City of San Bruno.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. It would not be practical to adopt a new civil service class to perform this work. The San Bruno Municipal Code 10.20.050 has an exclusive permanent contract of garbage services within the City of San Bruno.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

No. Training is not required in the scope of services as this is a garbage collection service at County Jail #3 in San Bruno, CA. Sheriff's staff does not have the expertise or the equipment to perform the garbage service. The garbage service is performed exclusively by the contractor.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/10/2023, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Peggy Zee Phone: 4155547229 Email: peggy.zee@sfgov.org

Address: 1 Dr. Carlton B. Goodlett Place, Room 456 San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 45295 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Receipt of Notice for new PCS over \$100K PSC # 45295 - 23/24

dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org>

on behalf of

peggy.zee@sfgov.org <peggy.zee@sfgov.org>

Thu 8/10/2023 1:36 PM

To:Zee, Peggy (SHF) <peggy.zee@sfgov.org>;jduritz@uapd.com <jduritz@uapd.com>;kdavis@ifpte21.org <kdavis@ifpte21.org>;kdavis@ifpte21.org <kdavis@ifpte21.org>;jharding@ifpte21.org <jharding@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;agarza@ifpte21.org <agarza@ifpte21.org>;dho@ifpte21.org <dho@ifpte21.org>;dho@ifpte21.org <dho@ifpte21.org>;dvickers@iam1414.org <dvickers@iam1414.org>;SF-DHR-Info@seiu1021.org <SF-DHR-Info@seiu1021.org>;SF-DHR-Info@seiu1021.org <SF-DHR-Info@seiu1021.org>;sbabaria@cirseiu.org <sbabaria@cirseiu.org>;andrea@sfmea.com <andrea@sfmea.com>;camaguey@sfmea.com (contact) <camaguey@sfmea.com>;camaguey@sfmea.com (contact) <camaguey@sfmea.com>;cpark@local39.org <cpark@local39.org>;cpark@local39.org <cpark@local39.org>;khughes@ibew6.org <khughes@ibew6.org>

RECEIPT for Union Notification for PSC 45295 - 23/24 more than \$100k

The SHERIFF -- SHF has submitted a request for a Personal Services Contract (PSC) 45295 - 23/24 for \$140,000 for Initial Request services for the period 10/01/2023 – 09/30/2024. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21221> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions

you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of peggy.zee@sfgov.org
Sent: Thursday, August 10, 2023 1:30 PM
To: Zee, Peggy (SHF); jduritz@uapd.com; kdavis@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; dho@ifpte21.org; dho@ifpte21.org; dvickers@iam1414.org; SF-DHR-Info@seiu1021.org; SF-DHR-Info@seiu1021.org; sbabaria@cirseiu.org; andrea@sfmea.com; camaguey@sfmea.com (contact); camaguey@sfmea.com (contact); cpark@local39.org; cpark@local39.org; khughes@ibew6.org; ewallace@ifpte21.org; ewallace@ifpte21.org; plangrooferlocal40@gmail.com; rooferslocal40@gmail.com; Stan Eichenberger; dtuttle@oe3.org; dtubble@oe3.org; pkim@ifpte21.org; Najuawanda Daniels; Pierre King - UAPD; president@sanfranciscodsa.com; max.porter@seiu1021.org; kennethlomba@gmail.com; snaranjo@cirseiu.org; mdennis@twusf.org; roger marenco; pwilson@twusf.org; cmoyer@nccrc.org; Frigault, Noah (HRC); sfdpoa@icloud.com; mjayne@iam1414.org; Emanuel, Rachel (DEM); laborers261@gmail.com; Laxamana, Junko (DBI); jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; mleach; rooferslocal40@gmail.com; sal@local16.org; Criss@sfmea.com; Julie.Meyers@sfgov.org; Stan Eichenberger; Jason Klumb; camaguey@sfmea.com (contact); ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Kbasconillo@sfwater.org; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy Frigillana; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmllocal300.org; Ramon Hernandez; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; XiuMin Li; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; l21pscreview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; David Canham; jtanner940@aol.com; Osha Ashworth; l21pscreview@ifpte21.org; laborers261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; christina@sfmea.com; ecdemvoter@aol.com; Thomas Vitale; Zee, Peggy (SHF); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 45295 - 23/24

RECEIPT for Union Notification for PSC 45295 - 23/24 more than \$100k

The SHERIFF -- SHF has submitted a request for a Personal Services Contract (PSC) 45295 - 23/24 for \$140,000 for Initial Request services for the period 10/01/2023 – 09/30/2024. Notification of 30 days (60 days for SEIU) is required.

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<http://apps.sfgov.org/dhrdrupal/node/21221> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

**ORDINANCE OF THE CITY OF SAN BRUNO
ESTABLISHING GARBAGE AND REFUSE RATES**

Whereas, pursuant to Article XI, Section 7 of the California Constitution and Section 10.20.050 of the San Bruno Municipal Code, the City has granted Recology San Bruno ("Recology") an exclusive contract for the collection of garbage and rubbish within the city; and

Whereas, the City regulates the rates charged by Recology to San Bruno residents and businesses; and

Whereas, pursuant to Section 10.20.050(D) of the Municipal Code, the City has agreed to assist Recology with the billing and collection of such rates; and

Whereas, Recology has requested approval of a rate increase of 5.34% effective July 1, 2019; and

Whereas, notice of a public hearing on that proposed rate increase was mailed to garbage and refuse customers 45 days prior to May 14, 2019; and

Whereas, the City retained R3 Consulting Group, an independent consulting firm specializing in utility rate reviews exclusively for public agencies, to conduct a thorough review of Recology's FY2019-20 rate application. R3 recommended a rate increase of 4.43% after adjustments to Recology's projections for July 1, 2019; and

Whereas, on May 14, 2019, at 7:00 p.m. at the San Bruno Senior Center located at 1555 Crystal Springs Road, San Bruno, California, the City Council held a public hearing on the proposed rate increase; and

Whereas, at the public hearing, the City Council considered testimony and protests from all interested persons; and

Whereas, the City Council did not receive written protests against the rate increase from a majority of the customers or parcels served by Recology; and

Whereas, the City Council now desires to approve the proposed rate increase.

The City Council of the City of San Bruno does ordain as follows:

Section 1. The above-stated recitals are true and correct.

Section 2. By its Ordinance No. 1824, this Council previously approved comprehensive garbage and refuse rates. Ordinance No. 1824 is hereby rescinded and superseded.

Section 3. The following rates for the collection of garbage and refuse are hereby approved:

Estimated Recology Cost for FY23-24

Commercial Garbage

	<u>Service</u>	<u>Bin Rental</u>
(1) - 1 yard garbage bins - serviced 1/ week	\$ 444.00	\$ 54.60

	<u>Monthly Cost</u>	<u>Annual Cost</u>
96 gallon garbage toter	\$ 158.72	\$ 1,904.64
Service (1 bin)	\$ 444.00	\$ 5,328.00
Bin Rental (1 bin)	\$ 60.77	\$ 729.24
	\$ 663.49	\$ 7,961.88

Organic Services

	<u>Service</u>	<u>Bin Rental</u>
(1) - 1 yard organics bin - serviced 1/ week	\$ 166.54	\$ 39.26

	<u>Monthly Cost</u>	<u>Annual Cost</u>
Service (1 bin)	\$ 166.54	\$ 1,998.48
Bin Rental (1 bin)	\$ 39.26	\$ 471.12
	\$ 205.80	\$ 2,469.60

Garbage Services - Training Center

	<u>Service</u>	<u>Bin Rental</u>
(2) - 96 gallon garbage toters - serviced 1/ week	\$ 317.44	\$ -
(1) - 96 gallon organics toter - serviced 1/ week	\$ 119.09	\$ -

	<u>Monthly Cost</u>	<u>Annual Cost</u>
Service (2 bin)	\$ 634.88	\$ 7,618.56
Bin Rental (1 bin)	\$ 119.09	\$ 1,429.08
	\$ 753.97	\$ 9,047.64

	<u>Monthly Cost</u>	<u>Annual Cost</u>
Aggregate Garbage & Organic Service	\$ 1,623.26	\$ 19,479.12

Debris Box Service

- (1) - 25 yard compactor, serviced 1x/week - \$2,053.25/ exchange
- (1) - 16 yard open debris box, cardboard, no charge
- (1) - 30 yard open debris box, on call service, \$1,170.42/ exchange

	<u>Exchg Cost</u>	<u># of Exchg</u>	<u>Annual Cost</u>
25 yard compactor	\$ 2,053.25	52	\$ 106,769.00
16 yard open debris box (No Charge)	\$ -	52	\$ -
30 yard open debris box, on call service	\$ 1,170.42	14	\$ 16,385.88
	\$ 3,223.67	118	\$ 123,154.88

Projected Costs **\$ 142,634.00**

Report Title: OCA Waiver Details
Run Date and Time: 2023-08-11 07:11:09 Pacific Daylight Time
Run by: Peggy Zee
Table name: u_oca_waiver

OCA Waiver

Number:	OCAWVR0008266	Request Status:	Completed
Requested for:	Peggy Zee	State:	Completed
Department Head/Delegated authority:	Katherine Johnson	Waiver Type:	Solicitation Waiver
Opened:	2023-08-08 13:06:23	Awaiting Info from:	
		Awaiting Info reason:	
		Requesting Department:	SHF
		Requester Phone:	+14155547229
		Opened by:	Peggy Zee
		Watch list:	

Short Description:

Sheriff 's Office propose to enter into a contract for the garbage collection services for the San Francisco County Jail #3 located in San Bruno

Supplier ID:	0000012410	Requested Amount:	\$140,000.00
Is this a new waiver or are you modifying a previously approved waiver?:	New Waiver	Increase Amount:	\$0.00
Last Approved OCA Waiver Request:		Previously Approved Amount:	\$0.00
		Total Requested Amount:	\$140,000.00
Document Type:	Requisition	Enter Contract ID:	
		Enter Requisition ID:	0000271214
		Enter Purchase Order ID:	

Advertising:

false

Commodities, Equipment and Hardware :

false

Equipment and Vehicle Lease:

false

On Premise Software and Support:

false

Online Content, Reports, Periodicals and Journals:

false

Professional and General Services:

true

Software as a Service (SaaS) and Cloud Software Applications:

false

Vehicles and Trailers:

false

Describe the product or service:

San Francisco County Jail #3 located in San Bruno accommodates approximately 200 staff, over 600 incarcerated persons, and a large number of daily visitors. It is anticipated that in the coming weeks, two additional housing units need to be open. An increased capacity at County Jail #3 and the County Jail #3 annex will house over 900 incarcerated persons. County Jail #3 generates a large volume of garbage on a daily basis. In addition, the San Bruno Municipal Code 10.20.050 issued an exclusive permanent contract for garbage services within San Bruno. Denial of services will lead to a violation of the San Bruno Municipal Code and will disrupt the garbage service at County Jail #3. Any disruption of the garbage service will quickly lead to health and safety risks from exposure to uncollected refuse.

Regulation 21.5(b): No Other Source:

true

Regulation 21.5(b): No Substitute:

false

Regulation 21.5(c): Perishable foods:

false

Regulation 21.5(d): Proprietary Articles Single Source:

false

Regulation 21.5(e): Pilot Project with a Term :

false

Regulation 21.5(f): Micro LBE Set :

false

Regulation 21.16(b): Reciprocal Agreements :

false

Regulation 21.16(c): Solicitations:

false

Regulation 21.30(d): Software Support:

false

Regulation 21.5(d): Proprietary Articles but More than One Source:

false

Cancel Notes:

OCA Admin

OCA Admin:

Connie Dantes

OCA Supervising Purchaser:

Stacey Lo

OCA Admin Decision:

Reviewed and approved

OCA Assistant Director:

Jonathan Medwin

OCA Admin Comments:

For your review/approval.

OCA Supervising Purchaser

OCA Supervising Purchaser:

Stacey Lo

Supervising Purchaser Decision:

Reviewed and approved

Reason for Determination (Supervisor):

SHF requesting this sole source waiver for Recology San Bruno for the San Bruno Jail. Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno. No others can perform this work.

SP Regulation 21.16(b): Reciprocal Agreements :

false

SP Regulation 21.16(c): Solicitations for Multiple Departments:

false

SP Regulation 21.30(d):

false

SP Regulation 21.5(b): No Other Source:

true

SP Regulation 21.5(b): No Substitute – Bid Required:

false

SP Regulation 21.5(b): No Substitute – No Bid Required:

false

SP Regulation 21.5(c): Perishable foods:

false

SP Regulation 21.5(d): Proprietary Articles – Bid Required:

false

SP Regulation 21.5(d): Proprietary Articles – No Bid Required:

false

SP Regulation 21.5(e): Pilot Project with a Term:

false

SP Regulation 21.5(f): Micro LBE Set Asides:

false

SP Prop 1:

false

SP Prop 2:

false

SP Prop 3:

false

SP Prop 4:

false

SP Prop 5:

false

SP Prop 6:

false

SP Prop 10:

false

SP Prop 12:

false

OCA Asst./Director

OCA Assistant Director:

Jonathan Medwin

Asst./Director Decision:

Reviewed and approved

Reason for Determination (Asst./Director):

The SHF is requesting a sole source waiver for Recology San Bruno for the San Bruno Jail. Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage within the City of San Bruno. No others entities can perform this work because of the exclusive contract. CCSF is required to adhere and utilize the San Bruno Recology contract for the jail in San Bruno.

DP Regulation 21.16(b): Reciprocal Agreements:

false

DP Regulation 21.16(c): Solicitations for Multiple Departments:

false

DP Regulation 21.30(d):

false

DP Regulation 21.5(b): No Other Source:

true

DP Regulation 21.5(b): No Substitute – Bid Required:

false

DP Regulation 21.5(b): No Substitute – No Bid Required:

false

DP Regulation 21.5(c): Perishable foods:

false

DP Regulation 21.5(d): Proprietary Articles – Bid Required:

false

DP Regulation 21.5(d): Proprietary Articles – No Bid Required:

false

DP Regulation 21.5(e): Pilot Project with a Term:

false

DP Regulation 21.5(f): Micro LBE Set Asides:

false

DP Prop 1:

false

DP Prop 2:

false

DP Prop 3:

false

DP Prop 4:

false

DP Prop 5:

false

DP Prop 6:

false

DP Prop 10:

false

DP Prop 12:

false

Regulation 21.5(b1)

Regulation 21.5(b) Question 1:

Recology Peninsula Services will provide garbage collection services for the San Francisco County Jail Facility located in San Bruno, CA.

Regulation 21.5(b) Question 2:

Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno.

Regulation 21.5(b) Question 3:

The City of San Bruno granted Recology the exclusive contract for the collection of garbage within the City of San Bruno since 2010.

Regulation 21.5(b) Question 4:

Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno. Supporting documentation is attached.

Regulation 21.5(b) Question 5:

N/A as San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno.

Regulation 21.5(b) Question 6:

Recology Peninsula Services (Supplier# 0000012410) is 12B Compliant. Sole Source Waiver has been submitted to CMD.

Regulation 21.5(b2)

Regulation 21.5(b) No Substitute Question 1:

Regulation 21.5(b) No Substitute Question 2:

Regulation 21.5(b) No Substitute Question 3:

Regulation 21.5(c)

Regulation 21.5(c) Question 1:

Regulation 21.5(d)

Regulation 21.5(d) Question 1:

Regulation 21.5(d) Question 2:

Regulation 21.5(d) Question 3:

Usr Prop 1:

false

Usr Prop 2:

false

Usr Prop 3:

false

Usr Prop 4:

false

Usr Prop 5:

false

Usr Prop 6:

false

Usr Prop 10:

false

Usr Prop 12:

false

Regulation 21.5(d2)

Regulation 21.5(d2) Question 1:

Regulation 21.5(d2) Question 2:

Usrd2 Prop 1:

false

Usrd2 Prop 2:

false

Usrd2 Prop 3:

false

Usrd2 Prop 4:

false

Usrd2 Prop 5:

false

Usrd2 Prop 6:

false

Usrd2 Prop 10:

false

Usrd2 Prop 12:

false

Regulation 21.5(e)

Regulation 21.5(e) Question 1:

Regulation 21.5(e) Question 2:

Regulation 21.5(e) Question 3:

Regulation 21.5(e) Question 4:

Regulation 21.5(e) Question 5:

Regulation 21.16(b)

Regulation 21.16(b) Question 1:

Regulation 21.16(b) Question 2:

Regulation 21.16(b) Question 3:

Regulation 21.16(b) Question 4:

Regulation 21.16(b) Question 5:

Regulation 21.16(b) Question 6:

Regulation 21.16(b) Question 7:

Regulation 21.16(b) Question 8:

Regulation 21.16(b) Question 9:

Regulation 21.16(c)

Regulation 21.16(c) Question 1:

Regulation 21.16(c) Question 2:

Regulation 21.16(c) Question 3:

Regulation 21.30

Regulation 2130 Revised Question 1:

Regulation 2130 Revised Question 2:

Regulation 2130 Revised Question 3:

Regulation 2130 Revised Question 4:

Regulation 2130 Revised Question 5:

New software not previously purchased:

false

Upgrade of previously purchased software:
false

Standard Support for previously purchased software:
false

Technical Services for previously purchased software:
false

Activities

Additional comments:

Related List Title: Approval List
Table name: sysapproval_approver
Query Condition: Approval for = OCAWVR0008266
Sort Order: Approver in ascending order

1 Approvals

State	▲ Approver	Approving	Created	Comments
Approved	Katherine Johnson	OCA Waiver: OCAWVR0008266	2023-08-10 09:03:34	2023-08-10 09:07:15 - Katherine Johnson (Comments) reply from: Katherine.Johnson@sfgov.org Ref:TIS4413036_IH47pIX953 33DjCy7LaD Sent from Mail<https://go.microsoft.com/ fwlink/?LinkId=550986> for Windows

Related List Title: OCA Waiver List
Table name: u_oca_waiver
Query Condition: Requested for = Peggy Zee AND Active = true
Sort Order: Requesting Department in descending order

4 OCA Waivers

Number	Active	Activity due	Additional assignee list	Approval	Approval history	Assigned to	Assignment group	Business duration
14BPREBID0001704	true	UNKNOWN		Not Yet Requested				
OCAWVR0008292	true	UNKNOWN		Not Yet Requested				
14BPREBID0001712	true	UNKNOWN		Not Yet Requested				
OCAWVR0008266	true	UNKNOWN		Not Yet Requested				

Related List Title: Metric List
Table name: metric_instance
Query Condition: Table = u_oca_waiver AND ID = 9998b3d91b2cbd9086e5c918624bcb8e
Sort Order: None

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS

Dept. Code: TIS

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Professional Services, Support and Maintenance for Cloud Services

Funding Source: Federal, State and City Funds

PSC Amount: \$15,000,000

PSC Est. Start Date: 09/01/2023

PSC Est. End Date 12/31/2030

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Background: The City retired its physical mainframe equipment in 2022. While the City offers its own private City Cloud Platform, it must also offer Public Cloud Service options to those City departments who choose not to leverage the City's Cloud Services. In addition, the City needs Cloud Services from Public Web Services providers for the City to maintain redundancy and disaster recovery services.

The Public Cloud Providers are expected to provide Cloud Technical Support and professional services to cover development and production issues for Cloud products and services, along with other key stack components:

"How to" questions about Cloud services and features,

Best practices to help successfully integrate, deploy, and manage applications in the cloud,

Troubleshooting Application Programming Interface (API) and Software Development Kit (SDK) issues,

Troubleshooting operational or systemic problems with Cloud resources,

Issues with our Management Console or other Cloud tools,

Problems detected by Cloud Providers health check tools, and f

A number of third-party applications such as Operating System (OS), web servers, email, Virtual Private Network (VPN), databases, and storage configuration

B. Explain why this service is necessary and the consequence of denial:

The City retired its mainframe and has adopted the Cloud services platform solution to supplant the equipment based mainframe solution. Although the City has its own Cloud environment, the City must also offer public cloud services options for redundancy and recovery services as well as an alternate option for City Departments who choose not to leverage the City Cloud Services. These technical and professional services are needed from the Cloud providers so that the City's Cloud Services is a robust and secure environment for storing and retrieving City data.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The services were primarily procured through the City's Technology Marketplace.

D. Will the contract(s) be renewed?

Yes, the Cloud Solution Platform has supplanted the physical hardware mainframe equipment for Cloud based hosted services over the internet. These Cloud Solution providers' agreements will be needed for the long term.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The City retired its mainframe solution and will use the Cloud solution more broadly and frequently as it migrates its information to the Cloud platform. With Citywide adoption of the Cloud platform, this solution and its various agreements will endure beyond five years. The Department of Technology is committed to making a Fourth Year report to the Commission as the Department evaluates the viability of the Cloud platform agreements beyond five years.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The Public Web Services Portal is owned by the manufacturer and cannot be fully maintained by the City.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The supplier must be skilled at and have robust experience in the following, but not limited to: Cloud Adoption Planning, Solution Architecture Development, Meeting Planning, Preparation, Execution and Follow Up Services, Project Planning, Resources and Skill Planning Services, Data Transfer Strategy, Security & Compliance Services, Configuration Management, Backup, Replication & Recovery Services, Change & Release Management, Continuous Improvement Strategy, Operational Excellence, Reliability, Performance Efficiency, Cost Optimization, Virtual Private Cloud Building Blocks, Virtual Private Cloud Security, Virtual Public Cloud Connectivity Options, Connect the City's Data Center to the Cloud, Traffic Distribution, and Internet Protocol (IP) Planning

B. Which, if any, civil service class(es) normally perform(s) this work? 1044, IS Engineer-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Although City employees can complete low level maintenance to the Public Cloud platform, no City employee has the access to perform and conduct troubleshooting services at the Public Web Service provider level.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Although City employees can complete low level maintenance to the Cloud platform, no City employee has the robust experience or skill to perform all the tasks identified above and conduct troubleshooting services at the web service provider level.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the City position exists and City employees oversee the City Cloud environment. However, this Public Cloud Service is outside of the City infrastructure as an alternate solution for City departments who choose not to leverage the City Cloud platform.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. Training for team to conduct low level maintenance of Public Web Services Portal.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 07/27/2023, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: Jolie Gines San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48964 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of jolie.gines@sfgov.org
To: [Gines, Jolie \(TIS\)](mailto:Gines,Jolie(TIS)); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; [Gines, Jolie \(TIS\)](mailto:Gines,Jolie(TIS)); [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator,DHR(HRD))
Subject: Receipt of Notice for new PCS over \$100K PSC # 48964 - 23/24
Date: Thursday, July 27, 2023 4:28:55 PM

RECEIPT for Union Notification for PSC 48964 - 23/24 more than \$100k

The GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS has submitted a request for a Personal Services Contract (PSC) 48964 - 23/24 for \$15,000,000 for Initial Request services for the period 09/01/2023 – 12/31/2030. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21172> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Modification

Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN

Dept. Code: ADM

Type of Request: Initial Modification of an existing PSC (PSC # 48582 - 22/23)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: As-Needed Armed and Unarmed Security Guard Services

Funding Source: General Fund

PSC Original Approved Amount: \$6,000,000 PSC Original Approved Duration: 09/01/23 - 08/31/26 (3 years)

PSC Mod#1 Amount: \$8,000,000 PSC Mod#1 Duration: 07/01/23-08/30/28 (2 years)

PSC Cumulative Amount Proposed: \$14,000,000 PSC Cumulative Duration Proposed: 5 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The Office of Contract Administration (OCA) would like to establish contracts for departments to obtain short-term and intermittent security guard services for special events and locations without existing service. Uniformed security guard services will provide a visible presence to the public and City staff while monitoring the grounds/facilities; protecting the safety of persons on sites; protecting the property against fire, theft, damage, and trespass; and investigating and reporting unusual or suspicious activities. These services will be available to all City departments requiring a short turnaround and for short-term duration services. Services will not cover long-term or consistent/regular security guard services.

B. Explain why this service is necessary and the consequence of denial:

The request for armed and unarmed security guard services is necessary for short-notice special events, locations without existing services, and intermittent needs to ensure the safety of those on site, conduct possible crowd control, and report suspicious activities. Special events may last for a short duration, take place sporadically and not be ongoing. Locations may need services immediately and for short-term durations or intermittently. Some services may include travel to City owned facilities outside of San Francisco, such as San Mateo and Alameda Counties to monitor the security needs of the facility and enforce safety regulations and policies. The consequences of denial will pose safety and security risks at sites requiring services and will be detrimental to the City's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48582 - 22/23

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

No, it would not be feasible to transition this work back to the City due to the intermittent and sporadic work. This request will not cover long-term or consistent/regular security guard services.

B. Reason for the request for modification:

Increase the amount from \$6,000,000 to 14,000,000 and the duration from 3 years to 5 years. This PSC will cover five contracts, and we need to modify it to cover the full anticipated not to exceed (NTE) amount and the duration.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: All armed and unarmed security guards assigned must possess a security guard state-certified valid Consumer Affairs guard card, have at least one year's experience as a security guard, be a minimum of twenty-one (21) years of age, possess a high school diploma or a General Equivalency Diploma ("GED") equivalent; and armed guards must be appropriately licensed to carry and sufficiently trained to use the firearms they are equipped with.
- B. Which, if any, civil service class(es) normally perform(s) this work? 8202, Security Guard; 8207, Bldg & Grounds Patrol Officer; 8211, Supv Bldg Grounds Patrol Ofcr; 8211, Supv Bldg Grounds Patrol Ofcr; 8302, Deputy Sheriff 1; 8304, Deputy Sheriff; 8306, Senior Deputy Sheriff; 8308, Sheriff's Sergeant; Q002, Police Officer; Q003, Police Officer 2; Q004, Police Officer 3; Q050, Sergeant, (Police Department);
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractor will provide staff with uniforms and equipment, i.e., duty belt, radio, cell phone, flashlight, and time management device.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil services classes are not applicable due to the as-needed basis, sporadic/intermittent and short-term need of these services.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical due to inconsistency in the frequency of work assignments across many different departments. This request will not cover long-term or consistent/regular security guard services.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
The contractor will not train City employees.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 06/30/23, the Department notified the following employee organizations of this PSC/RFP request:
SFPOA - Q2-Q50; SF Sheriff's Managers and Supv; SEIU 1021 Miscellaneous; Deputy Sheriff's Association;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48582 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of lynn.khaw@sfgov.org
To: [PSC RECEIPT of Modification notification sent to Unions and DHR](mailto:Khaw, Lynn (ADM); mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; sfsmsa@gmail.com; SF-DHR-Info@seiu1021.org; Najuwanda Daniels; Jason Klumb; Frigault, Noah (HRC); Julie.Meyers@sfgov.org; Thomas Vitale; Ricardo.lopez@sfgov.org; Kbasconcillo@sfwater.org; pcamarillo_seiu@sbcglobal.net; Wendy.Frigillana; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; XiuMin Li; Sin.Yee.Poon@sfgov.org; David Canham; jtanner940@aol.com; president@sanfranciscodsa.com; kennethlomba@gmail.com; ecdemvoter@aol.com; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 48582 - 22/23 - MODIFICATIONS
Date: Friday, June 30, 2023 12:15:13 PM</p><hr/></div><div data-bbox=)

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a modification request for a Personal Services Contract (PSC) for \$8,000,000 for services for the period July 1, 2023 – August 30, 2028. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/21002>

Email sent to the following addresses: ecdemvoter@aol.com
kennethlomba@gmail.com
[resident@sanfranciscodsa.com](mailto:president@sanfranciscodsa.com) jtanner940@aol.com david.canham@seiu1021.org
Sin.Yee.Poon@sfgov.org xiumin.li@seiu1021.org davidmkersten@gmail.com
ted.zarzecki@seiu1021.net pscreview@seiu1021.org
Wendy.Frigillana@seiu1021.org
pcamarillo_seiu@sbcglobal.net Kbasconcillo@sfwater.org
Ricardo.lopez@sfgov.org
thomas.vitale@seiu1021.org Julie.Meyers@sfgov.org noah.frigault@sfgov.org
jason.klumb@seiu1021.org najuawanda.daniels@seiu1021.org
SF-DHR-Info@seiu1021.org sfsmsa@gmail.com tracym@sfpoa.org @sfpoa.org
mlobre@sfpoa.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: As-Needed Armed and Unarmed Security Guard Services

Funding Source: General Fund

PSC Duration: 3 years

PSC Amount: \$6,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The Office of Contract Administration (OCA) would like to establish contracts for departments to obtain short-term and intermittent security guard services for special events and locations without existing service. Uniformed security guard services will provide a visible presence to the public and City staff while monitoring the grounds/facilities; protecting the safety of persons on sites; protecting the property against fire, theft, damage, and trespass; and investigating and reporting unusual or suspicious activities. These services will be available to all City departments requiring a short turnaround and for short-term duration services. Services will not cover long-term or consistent/regular security guard services.

B. Explain why this service is necessary and the consequence of denial:

The request for armed and unarmed security guard services is necessary for short-notice special events, locations without existing services, and intermittent needs to ensure the safety of those on site, conduct possible crowd control, and report suspicious activities. Special events may last for a short duration, take place sporadically and not be ongoing. Locations may need services immediately and for short-term durations or intermittently. Some services may include travel to City owned facilities outside of San Francisco, such as San Mateo and Alameda Counties to monitor the security needs of the facility and enforce safety regulations and policies. The consequences of denial will pose safety and security risks at sites requiring services and will be detrimental to the City's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has most recently been provided under OCA's Term Contract 86002 in which departments have obtained their own PSC or Prop J approval.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

No, it would not be feasible to transition this work back to the City due to the intermittent and sporadic work. This request will not cover long-term or consistent/regular security guard services.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: All armed and unarmed security guards assigned must possess a security guard state-certified valid Consumer Affairs guard card, have at least one year's experience as a security guard, be a minimum of twenty-one (21) years of age, possess a high school diploma or a General Equivalency Diploma ("GED") equivalent; and armed guards must be appropriately licensed to carry and sufficiently trained to use the firearms they are equipped with.

B. Which, if any, civil service class(es) normally perform(s) this work? 8202, Security Guard; 8207, Bldg & Grounds Patrol Officer; 8211, Supv Bldg Grounds Patrol Ofcr; 8211, Supv Bldg Grounds Patrol Ofcr; 8302, Deputy Sheriff 1; 8304, Deputy Sheriff; 8306, Senior Deputy Sheriff; 8308, Sheriff's Sergeant; Q002, Police Officer; Q003, Police Officer 2; Q004, Police Officer 3; Q050, Sergeant, (Police Department);

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractor will provide staff with uniforms and equipment, i.e., duty belt, radio, cell phone, flashlight, and time management device.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

These contracts will only be used on an as-needed basis for short-term or intermittent needs with a quick turnaround.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil services classes are not applicable due to the as-needed basis, sporadic/intermittent and short-term need of these services.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical due to inconsistency in the frequency of work assignments across many different departments. This request will not cover long-term or consistent/regular security guard services.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. The contractor will not train City employees.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 11/14/2022, the Department notified the following employee organizations of this PSC/RFP request:
Deputy Sheriff's Association; SEIU 1021 Miscellaneous; SF Sheriff's Managers and Supv; SFPOA - Q2-Q50

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430, 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48582 - 22/23

DHR Analysis/Recommendation:

action date: 03/06/2023

Commission Approval Required

Approved by Civil Service Commission

03/06/2023 DHR Approved for 03/06/2023

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # 43319 - 21/22)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport's Noise Insulation Program Consulting Services

Funding Source: Airport Capital/Operating & Federal Funds

PSC Original Approved Amount: \$7,000,000 PSC Original Approved Duration: 01/01/22 - 12/31/26 (5 years)

PSC Mod#1 Amount: \$8,000,000 PSC Mod#1 Duration: 12/31/26-06/30/28 (1 year 25 weeks)

PSC Cumulative Amount Proposed: \$15,000,000 PSC Cumulative Duration Proposed: 6 years 25 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Professional support services for the Noise Insulation Program (NIP) particularly on the following as-needed tasks: review of County records and updated noise impact boundaries to identify properties that may qualify for noise insulation improvements, outreach efforts to invite potentially eligible homeowners to participate in the NIP, coordination of aircraft noise easement acquisitions and recording, coordination of noise insulation design and construction work, handling inquiries from property owners regarding eligibility for noise insulation improvements funded by the Federal Aviation Administration (FAA) and the San Francisco International Airport (Airport), and preparation of outlay reports.

B. Explain why this service is necessary and the consequence of denial:

To maintain its commitments with the surrounding communities, the Airport needs to continue the Noise Insulation Program, monitoring the noise impact area and identifying additional properties that may require insulation and/or easement acquisition. This work requires the support of a specialized noise insulation consultant. The consequences of denial would mean that the Airport would not be able to meet its commitments to the surrounding communities.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
PSC 43319-21/22

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for the services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:
Need to align with the contract end date.

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

This as-needed work is performed as requests are made from homeowners in the impacted areas and funds are available.

- B. Reason for the request for modification:
Need to add money and time to the approval.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Experience in administration and management of aircraft noise insulation programs in communities near commercial airports particularly in California, including coordination of design and construction of noise insulation improvements, experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA, and understanding of the State of California Noise Standards for Airports.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5264, Airport Noise Abatement Spec; 5271, Sr Airport Noise Abatement Spe; 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Current civil service classes are not applicable because none have the specialized experience in administration and management of aircraft noise insulation programs in communities near commercial airports, including experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical to adopt a new civil service class to perform this work as this project requires work on an "as-needed basis" as requests are made from homeowners in the impacted areas.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, the contract is currently with CSDA Design Group

7. **Union Notification:** On 07/06/23, the Department notified the following employee organizations of this PSC/RFP request:
SEIU Local 1021; Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O. Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43319 - 21/22

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport's Noise Insulation Program Consulting Services

Funding Source: Airport Capital/Operating & Federal Funds

PSC Amount: \$7,000,000

PSC Est. Start Date: 01/01/2022

PSC Est. End Date 12/31/2026

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Professional support services for the Noise Insulation Program (NIP) particularly on the following as-needed tasks: review of County records and updated noise impact boundaries to identify properties that may qualify for noise insulation improvements, outreach efforts to invite potentially eligible homeowners to participate in the NIP, coordination of aircraft noise easement acquisitions and recording, coordination of noise insulation design and construction work, handling inquiries from property owners regarding eligibility for noise insulation improvements funded by the Federal Aviation Administration (FAA) and the San Francisco International Airport (Airport), and preparation of outlay reports.

B. Explain why this service is necessary and the consequence of denial:

To maintain its commitments with the surrounding communities, the Airport needs to continue the Noise Insulation Program, monitoring the noise impact area and identifying additional properties that may require insulation and/or easement acquisition. This work requires the support of a specialized noise insulation consultant. The consequences of denial would mean that the Airport would not be able to meet its commitments to the surrounding communities.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service was provided in the past under PSC 43708-16/17

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for the services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

This PSC duration is intended to match the professional service contract term.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

This as-needed work is performed as requests are made from homeowners in the impacted areas and funds are available.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Experience in administration and management of aircraft noise insulation programs in communities near commercial airports particularly in California, including

coordination of design and construction of noise insulation improvements, experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA, and understanding of the State of California Noise Standards for Airports.

B. Which, if any, civil service class(es) normally perform(s) this work? 5264, Airport Noise Abatement Spec; 5271, Sr Airport Noise Abatement Spe; 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

On May 24, 2021, the Airport sent a Notice of Intent to the following city departments (DPW, SFPUC, PORT, MTA), dated May 24, 2021 and no department was interested in doing this work.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Current civil service classes are not applicable because none have the specialized experience in administration and management of aircraft noise insulation programs in communities near commercial airports, including experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class to perform this work as this project requires work on an "as-needed basis" as requests are made from homeowners in the impacted areas.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No training will be provided.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/06/2021, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O. Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43319 - 21/22

DHR Analysis/Recommendation:

action date: 11/01/2021

Commission Approval Required

Approved by Civil Service Commission

11/01/2021 DHR Approved for 11/01/2021

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # 44356 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport Parking Access Revenue Control System (PARCS) Support & Maintenance

Funding Source: Airport Operating Funds

PSC Original Approved Amount: \$2,000,000 PSC Original Approved Duration: 12/01/19 - 11/30/23 (4 years)

PSC Mod#1 Amount: \$1,000,000 PSC Mod#1 Duration: 11/30/23-11/28/25 (1 year 52 weeks)

PSC Mod#2 Amount: \$3,500,000 PSC Mod#2 Duration: 11/28/25-12/31/26 (1 year 4 weeks)

PSC Cumulative Amount Proposed: \$6,500,000 PSC Cumulative Duration Proposed: 7 years 4 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.

B. Explain why this service is necessary and the consequence of denial:

The existing PARCS has reached the end of its useful life and requires consistent maintenance support to remain functional while the Airport seeks a replacement solution. When the initial PARCS was installed in 1986, Airport had a total capacity of approximately 9,000 parking spaces. Currently that capacity has now grown to over 23,000 parking spaces. If comprehensive maintenance service does not continue, the PARCS will become unstable, jeopardizing revenue flow and the ability for Airport to provide safe and secure parking operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

PSC 44356-19/20

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Need to bridge the service before being able to issue a RFP for a new service.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Airport does not have access to the proprietary software to maintain this system.

B. Reason for the request for modification:

Need to bridge the service before being able to issue a RFP for a new service.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Expertise providing software and hardware maintenance for the proprietary PARCS system at the Airport's parking facilities, including skills and experience installing new equipment for the PARCS system.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1054, IS Business Analyst-Principal; 0932, Manager IV;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide provide access to specialized PARCS components (both software and hardware components), as well as specialized testing equipment used to verify the functionality of the PARCS.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
There are no Civil Service classes for the specialty of maintaining this or other proprietary parking control systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, this is a highly specialized field of expertise, and the Airport's PARCS system requires it to be maintained by authorized technicians.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training will be provided since City staff do not have access to the proprietary software to maintain the system.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, Scheidt and Bachmann is the current provider

**7. Union Notification: On 08/18/23, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21; Municipal Executive Association;**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44356 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of cynthia.avakian@flysfso.com
To: [Cynthia Avakian \(AIR\)](mailto:Cynthia.Avakian@AIR); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; andrea@sfmea.com; [Laxamana Junko \(DBI\)](mailto:Laxamana.Junko@DBI); Criss@sfmea.com; christina@sfmea.com; staff@sfmea.com; [Sung Kim \(AIR\)](mailto:Sung.Kim@AIR); [DHR-PSCCoordinator.DHR \(HRD\)](mailto:DHR-PSCCoordinator.DHR@HRD)
Subject: Receipt of Modification Request to PSC # 44356 - 19/20 - MODIFICATIONS
Date: Friday, August 18, 2023 3:53:31 PM

PSC RECEIPT of Modification notification sent to Unions and DHR

The AIRPORT COMMISSION -- AIR has submitted a modification request for a Personal Services Contract (PSC) for \$3,500,000 for services for the period November 28, 2025 – December 31, 2026. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/14436>

Email sent to the following addresses: staff@sfmea.com Christina@sfmea.com Criss@SFMEA.com junko.laxamana@sfgov.org andrea@sfmea.com L21PSCReview@ifpte21.org amakayan@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ewallace@ifpte21.org agarza@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org kdavis@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSIONDept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # 44356 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport Parking Access Revenue Control System (PARCS) Support & MaintenanceFunding Source: Airport Operating Funds

PSC Original Approved Amount: \$2,000,000 PSC Original Approved Duration: 12/01/19 - 11/30/23 (4 years)

PSC Mod#1 Amount: \$1,000,000 PSC Mod#1 Duration: 11/30/23-11/28/25 (1 year 52 weeks)

PSC Cumulative Amount Proposed: \$3,000,000 PSC Cumulative Duration Proposed: 5 years 52 weeks

1. Description of Work**A. Scope of Work/Services to be Contracted Out:**

Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.

B. Explain why this service is necessary and the consequence of denial:

The existing PARCS has reached the end of its useful life and requires consistent maintenance support to remain functional while the Airport seeks a replacement solution. When the initial PARCS was installed in 1986, Airport had a total capacity of approximately 9,000 parking spaces. Currently that capacity has now grown to over 23,000 parking spaces. If comprehensive maintenance service does not continue, the PARCS will become unstable, jeopardizing revenue flow and the ability for Airport to provide safe and secure parking operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, this PSC 44356-1/20

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Airport needs PSC approval to align with contract term.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Airport does not have access to the proprietary software to maintain this system.

B. Reason for the request for modification:

Modification to increase PSC amount and duration.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Expertise providing software and hardware maintenance for the proprietary PARCS system at the Airport's parking facilities, including skills and experience installing new equipment for the PARCS system.

B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1054, IS Business Analyst-Principal; 0932, Manager IV;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide provide access to specialized PARCS components (both software and hardware components), as well as specialized testing equipment used to verify the functionality of the PARCS.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

There are no Civil Service classes for the specialty of maintaining this or other proprietary parking control systems.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, this is a highly specialized field of expertise, and the Airport's PARCS system requires it to be maintained by authorized technicians.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

No training will be provided since City staff do not have access to the proprietary software to maintain the system.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. **Union Notification:** On 01/24/20, the Department notified the following employee organizations of this PSC/RFP request:

Prof & Tech Eng, Local 21; Municipal Executive Association;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flyso.com

Address: PO Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44356 - 19/20

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 02/11/2020

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport Parking Access Revenue Control System (PARCS) Support & Maintenance

Funding Source: Airport Operating Funds

PSC Amount: \$2,000,000

PSC Est. Start Date: 12/01/2019

PSC Est. End Date 11/30/2023

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.

B. Explain why this service is necessary and the consequence of denial:

The existing PARCS has reached the end of its useful life and requires consistent maintenance support to remain functional while the Airport seeks a replacement solution. When the initial PARCS was installed in 1986, Airport had a total capacity of approximately 9,000 parking spaces. Currently that capacity has now grown to over 23,000 parking spaces. If comprehensive maintenance service does not continue, the PARCS will become unstable, jeopardizing revenue flow and the ability for Airport to provide safe and secure parking operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has been provided in the past through PSC #41758-14/15.

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

Airport does not have access to the proprietary software to maintain this system.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Expertise providing software and hardware maintenance for the proprietary PARCS system at the Airport's parking facilities, including skills and experience installing new equipment for the PARCS system.

B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1054, IS Business Analyst-Principal; 0932, Manager IV;

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide provide access to specialized PARCS components (both software and hardware components), as well as specialized testing equipment used to verify the functionality of the PARCS.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

None

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
There are no Civil Service classes for the specialty of maintaining this or other proprietary parking control systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, this is a highly specialized field of expertise, and the Airport's PARCS system requires it to be maintained by authorized technicians.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No training will be provided since City staff do not have access to the proprietary software to maintain the system.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes. Scheidt & Bachmann holds the current contract for PARCS maintenance.

**7. Union Notification: On 09/09/2019, the Department notified the following employee organizations of this PSC/RFP request:
Municipal Executive Association; Prof & Tech Eng, Local 21**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfso.com

Address: PO Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44356 - 19/20

DHR Analysis/Recommendation:

action date: 11/04/2019

Commission Approval Required
11/04/2019 DHR Approved for 11/04/2019

Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # 32594 - 15/16)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Medical Review Officer

Funding Source: Operating Budget

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 07/01/16 - 06/30/23 (7 years)

PSC Mod#1 Amount: no amount added PSC Mod#1 Duration: 07/01/23-06/30/25 (2 years 1 day)

PSC Mod#2 Amount: \$10,000 PSC Mod#2 Duration: no duration added

PSC Cumulative Amount Proposed: \$110,000 PSC Cumulative Duration Proposed: 9 years 1 day

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the Department of Transportation/ Federal Transit Administration (DOT/FTA), TITLE 49: TRANSPORTATION, Code of Federal Regulations, PART 40 – PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS (49 CFR Part 40).

B. Explain why this service is necessary and the consequence of denial:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Denial of this service will place the SFMTA Substance Abuse Program out of compliance with the Federal regulations and also jeopardize transit agency's Federal funding assistance. Denial would result in grave consequences for SFMTA's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 32594 - 15/16

D. Will the contract(s) be renewed?

Yes. The contract will be for an initial term of three (3) years with the option to renew for two (2) additional two-year terms

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The proposed Request For Proposal will reflect a 3-year contract with two, 2-year options to extend.

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

B. Reason for the request for modification:

SFMTA-2016-75 – Medical Review Officer Services, aligned with PSC 32594-15-16 Medical Review Officer Services is expiring on 2/14/24, and we are extending the contract through August 2024. The reason for modification is to request for additional amount to cover the funding for the contract extension through August 2024.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The consultant must be a licensed physician whom is a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with the Federal DOT/FTA Substance Abuse regulations. Please see attachment.

B. Which, if any, civil service class(es) normally perform(s) this work? 2220, Physician; 2230, Physician Specialist;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Classifications already exist.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training
- C. Are there legal mandates requiring the use of contractual services?
Please see attachment, Subpart G - Medical Review Officers and the Verification Process.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
no
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
no
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Comprehensive Drug Testing Inc. Patti McKitterick, (714) 852-5200

7. Union Notification: On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21; Physicians and Dentists - 8CC; Physicians and Dentists - 11AA;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: One South Van Nes Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 32594 - 15/16

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Wednesday, August 23, 2023 11:25 AM
To: Nuque, Amy (MTA); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; Laxamana, Junko (DBI); WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; l21pscreview@ifpte21.org; Pierre King - UAPD; tjenkins@uapd.com; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 32594 - 15/16 - MODIFICATIONS

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

PSC RECEIPT of Modification notification sent to Unions and DHR

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a modification request for a Personal Services Contract (PSC) for \$10,000 for services for the period July 1, 2023 – June 30, 2025. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

https://url.avanan.click/v2/___http://apps.sfgov.org/dhrDrupal/node/16237___YXAzOnNmZHQyOmE6bzpkOWYxMWRmNTQ0ZWViNTAxN2JlMDUxYjBhNTdmZTM2NT02OmU1MTY6YmJkZTJnN2FIM2I5NjZjZTUzZDE0MzU4MzRiYTfmODU0ODQxZmMyNTJmODI3NWFiZDMxMjFhNTAyNzg3OTI1YjpwOIQ

Email sent to the following addresses: tjenkins@uapd.com pking@uapd.com L21PSCReview@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com junko.laxamana@sfgov.org ewallace@ifpte21.org agarza@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org kdavis@ifpte21.org

Additional Attachment(s)

**PUBLIC TRANSPORTATION COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 99 - 116

WHEREAS, In 1994 the FTA issued Drug and Alcohol Testing Regulations, requiring that recipients of federal assistance have an ongoing drug and alcohol testing program and

WHEREAS, An essential component of such a program is a Medical Review Officer (MRO), whose function is to interpret and evaluate an individual's confirmed positive test result, together with his or her medical history and any other relevant biomedical information; and now therefore, be it

RESOLVED, That this Public Transportation Commission hereby authorizes the General Manager of the Public Transportation Department to request proposals, interview, select and recommend to the Commission a Medical Review Officer for the Substance Abuse Program.

I hereby certify that the foregoing resolution was adopted by the Public Transportation Commission at its meeting of DEC 07 1999


Secretary, Public Transportation Commission

Attachment 1

TITLE 49:
TRANSPORTATION, Code of Federal Regulations, PART 40
PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG
AND
ALCOHOL TESTING PROGRAMS
(49 CFR Part 40).

Page 84 of the CSC Packet

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCYDept. Code: MTAType of Request: Initial Modification of an existing PSC (PSC # 32594 - 15/16)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: Medical Review OfficerFunding Source: Operating BudgetPSC Original Approved Amount: \$100,000PSC Original Approved Duration: 07/01/16 - 06/30/23 (7 years)PSC Mod#1 Amount: no amount addedPSC Mod#1 Duration: 07/01/23-06/30/25 (2 years 1 day)PSC Cumulative Amount Proposed: \$100,000PSC Cumulative Duration Proposed: 9 years 1 day**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the Department of Transportation/ Federal Transit Administration (DOT/FTA), TITLE 49: TRANSPORTATION, Code of Federal Regulations, PART 40 – PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS (49 CFR Part 40).

B. Explain why this service is necessary and the consequence of denial:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Denial of this service will place the SFMTA Substance Abuse Program out of compliance with the Federal regulations and also jeopardize transit agency's Federal funding assistance. Denial would result in grave consequences for SFMTA's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes.

D. Will the contract(s) be renewed?

Yes. The contract will be for an initial term of three (3) years with the option to renew for two (2) additional two-year terms

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The proposed Request For Proposal will reflect a 3-year contract with two, 2-year options to extend.

2. Reason(s) for the Request

A. Display all that apply

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

B. Reason for the request for modification:

The contract term is expiring on 8/14/2021 and we are extending it for two years.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The consultant must be a licensed physician whom is a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with the Federal DOT/FTA Substance Abuse regulations. Please see attachment.
- B. Which, if any, civil service class(es) normally perform(s) this work? 2220, Physician; 2230, Physician Specialist;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Classifications already exist.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
N/a

C. Are there legal mandates requiring the use of contractual services?
Please see attachment, Subpart G - Medical Review Officers and the Verification Process.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Comprehensive Drug Testing Inc. Patti McKitterick, (714) 852-5200

7. Union Notification: On 03/24/21, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, Local 21; Physicians and Dentists - 8CC; Physicians and Dentists - 11AA;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: One South Van Nes Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 32594 - 15/16

DHR Analysis/Recommendation:
Commission Approval Not Required
Approved by DHR on 03/31/2021

PERSONAL SERVICES CONTRACT SUMMARY

DATE: February 21, 2012

DEPARTMENT NAME: San Francisco Municipal Transportation Agency

DEPARTMENT NUMBER: 68

TYPE OF APPROVAL: (X) EXPEDITED () REGULAR (OMIT POSTING)
() CONTINUING () ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST () MODIFICATION (PSC#)

TYPE OF SERVICE: Medical Review Officer

FUNDING SOURCE: SFMTA Operating Budget

PSC AMOUNT: \$50,000.00

PSC DURATION: August 1, 2012 through July 31, 2017

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

To provide medical review officer consulting services for the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequences of denial:

This is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) regulations. Denial of this service will place the Substance Abuse Program out of compliance with the Federal regulations and also jeopardize transit agency Federal funding assistance. Denial would result in grave consequences for SFMTA's operations.

C. Explain how this service has been provided in the past (If this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

University Services has previously provided this service under CSC personal services contract number 3094-07/08 for the period of August 1, 2008 through April 30, 2012.

D. Will the contract(s) be renewed:

Yes. The contract will be renewed every year for the next four (4) years.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

IFPTE, Local 21 Union Name Signature of person mailing / faxing form Date 2/21/12

RFP sent to Union Name on Date Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 3068-11/12

Approval Date: 2/24/12

By: Micki Callahan, Human Resources Director

SFMTA approved 2-21-12 FB Received 2/21/12 CMK

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

A. **Specify required skills and/or expertise:**

Contractor must be a licensed physician who possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with the Federal DOT/FTA Substance Abuse regulations.

B. **Which, if any, civil service class normally performs this work?**

Classifications such as 2220, Physician or 2230 Physician Specialist may perform this work. However, these classifications may not possess the specialized discipline and experience (knowledge of substance abuse disorders with appropriate training and certification) that is required by the Federal DOT/FTA regulations.

C. **Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:**

Yes. The contractual services will include all necessary facilities and/or equipment which the City is unable to provide. With the contractor providing its own facilities and necessary equipment, the City will not expend any additional monies to set-up a specialized medical facility, purchase equipment and provide staffing.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

A. **Explain why civil service classes are not applicable:**

Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is licensed and possesses the knowledge, experience, certification, and medical training in substance abuse disorders and drug test results interpretation. This type of specialized position is not classified by the City.

B. **Would it be practical to adopt a new civil service class to perform this work? Explain.**

No. Adopting a new civil service class may result in a recruitment and retention problem due to the as-needed nature of the service.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	()	(X)
B. Will the contractor train City and County employees?	()	(X)
C. Are there legal mandates requiring the use of contractual services? <i>49 CFR Part 40</i>	(X)	()
D. Are there federal or state grant requirements regarding the use of contractual services? <i>49 CFR Part 40</i>	(X)	()
E. Has a board or commission determined that contracting is the most effective way to provide this service? <i>(MTA Resolution #99-116)</i>	(X)	()
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department? <i>University Services is providing Medical Review Officer services.</i>	(X)	()

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

Parveen Boparai

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai
Print or Type Name

415-701-5377
Telephone Number

San Francisco Municipal Transportation Agency

1 S. Van Ness Ave., 7th Floor, San Francisco, CA 94103
Address

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: POLICE

Dept. Code: POL

Type of Request: Initial Modification of an existing PSC (PSC # 39913 - 23/24)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: SFPD Background Investigations

Funding Source: General Fund

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 11/01/22 - 10/31/26 (4 years)

PSC Mod#1 Amount: \$425,000 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$525,000 PSC Cumulative Duration Proposed: 4 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to support the hiring process for the Police Department. This service will also be used for special background investigations that would not be appropriate for internal staff to conduct, such as investigations of command staff positions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

48133-19/20

D. Will the contract(s) be renewed?

Unknown

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.

B. Reason for the request for modification:

The Department experienced a lot of turnover on the civilian side during the past year. At its peak, civilian position vacancies were at 104 (out of 666 total FTEs) and this created a significant surge in volume of pre-employment background investigation services to be performed within a short period of time. While the Department has several retired sworn officers to work as Prop F background investigators, their

caseload is primarily for recruit and police service aides candidates. The Department has continued to experience a significant shortfall in sworn staffing and has needed to rely upon overtime to help address the shortage of policing services. Last fiscal year, the Department reported that it was expecting a deficit of \$20+ million for the six-month Controller's report due to overtime usage. Due to the projected deficit, the Department was placed on a hiring freeze that did not lift until after a budget supplemental was passed. These factors have further complicated the hiring process and has forced the Department to adopt an accelerated hiring schedule to fill vacancies.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Contract staff must have private investigator licenses and extensive background investigations experience to conduct interviews and research and verify records.
- B. Which, if any, civil service class(es) normally perform(s) this work? Q002, Police Officer; Q050, Sergeant, (Police Department); Q060, Lieutenant (Police Department); 1251, Background Investigator;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Although the 1251 Background Investigator positions exists, SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. The 1251 background investigator classification exists.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
Explanation of training has not been provided by the department
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
SFPOA - Q2-Q50; Prof & Tech Eng, Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Vincent Lee Phone: 4158377127 Email: vincent.lee@sfgov.org

Address: 1245 3rd St, 6th Fl, San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 39913 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of vincent.lee@sfgov.org
Sent: Wednesday, August 23, 2023 12:24 PM
To: Lee, Vincent (POL); mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; Leung, Patrick (POL); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 39913 - 23/24 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The POLICE -- POL has submitted a modification request for a Personal Services Contract (PSC) for \$425,000 for services for the period October 1, 2023 – October 31, 2026. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/21262>

Email sent to the following addresses: L21PSCReview@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com ewallace@ifpte21.org dho@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org kdavis@ifpte21.org amakayan@ifpte21.org agarza@ifpte21.org tracym@sfpoa.org @sfpoa.org mlobre@sfpoa.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: POLICE -- POL

Dept. Code: POL

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: SFPD Background Investigations

Funding Source: General Fund

PSC Duration: 4 years

PSC Amount: \$100,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to support the hiring process for the Police Department. This service will also be used for special background investigations that would not be appropriate for internal staff to conduct, such as investigations of command staff positions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48133 - 19/20

D. Will the contract(s) be renewed?

Unknown

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Contract staff must have private investigator licenses and extensive background investigations experience to conduct interviews and research and verify

records.

- B. Which, if any, civil service class(es) normally perform(s) this work? Q002, Police Officer; Q050, Sergeant, (Police Department); Q060, Lieutenant (Police Department); 1251, Background Investigator;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not applicable.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Although the 1251 Background Investigator positions exists, SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The 1251 background investigator classification exists.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. Explanation of training has not been provided by the department
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

**7. Union Notification: On 07/13/2023, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21; Prof & Tech Eng, Local 21; SFPOA - Q2-Q50**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Vincent Lee Phone: 4158377127 Email: vincent.lee@sfgov.org

Address: 1245 3rd St, 6th Fl San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 39913 - 23/24

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 07/26/2023

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: POLICE

Dept. Code: POL

Type of Request: Initial Modification of an existing PSC (PSC # 48133 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Background Investigations

Funding Source: General Fund

PSC Original Approved Amount: \$62,500 PSC Original Approved Duration: 11/01/20 - 10/31/22 (1 year 52 weeks)

PSC Mod#1 Amount: \$125,000 PSC Mod#1 Duration: 11/01/22-10/31/26 (4 years 1 day)

PSC Cumulative Amount Proposed: \$187,500 PSC Cumulative Duration Proposed: 6 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references.

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to support the hiring process for the Police Department. This service will also be used for special background investigations that would not be appropriate for internal staff to conduct, such as investigations of command staff positions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48133 - 19/20

D. Will the contract(s) be renewed?

Unknown at this time.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

SFPD continues to require as-needed background investigations for this modification.

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

Contract is needed for anticipated very limited hiring of civilians. This contract would also be used for command level positions, such as Police Chief, that require third party independent background investigations to remove potential perceived bias by internal staff conducting background investigations.

B. Reason for the request for modification:

Add amount and continue contracting

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Contract staff must have private investigator licenses and extensive background investigations experience to conduct interviews and research and verify records.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1241, Personnel Analyst; Q002, Police Officer; Q050, Sergeant, (Police Department); Q060, Lieutenant (Police Department); 1241, Human Resources Analyst;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Although the 1251 classification is applicable, the need for this service is needed due to extremely limited anticipated hiring by SFPD.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: Although the 1251 classification is applicable, the need for this service is needed due to extremely limited anticipated hiring by SFPD.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Training is not needed.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Contract extension for current contractor

7. Union Notification: On 05/10/22, the Department notified the following employee organizations of this PSC/RFP request:

Bldg Mtl & Constr Teamsters, L 853;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Vincent Lee Phone: 4158377127 Email: vincent.lee@sfgov.org

Address: 1245 3rd Street, 6th Floor, San Francisco, CA 94158

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48133 - 19/20

DHR Analysis/Recommendation:
Commission Approval Required
06/06/2022 DHR Approved for 06/06/2022

06/06/2022
Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Services to support Department, Community and City initiatives

Funding Source: General Fund, Grants, Work Order

PSC Original Approved Amount: \$95,000 PSC Original Approved Duration: 10/01/16 - 09/30/18 (1 year 52 weeks)

PSC Mod#1 Amount: \$500,000 PSC Mod#1 Duration: 04/01/17-12/31/19 (1 year 13 weeks)

PSC Mod#2 Amount: \$295,000 PSC Mod#2 Duration: 07/01/17-09/30/20 (39 weeks 23 hours)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: no amount added PSC Mod#4 Duration: 07/01/19-12/31/20 (13 weeks 1 day)

PSC Mod#5 Amount: \$500,000 PSC Mod#5 Duration: 10/01/19-05/31/23 (2 years 21 weeks)

PSC Mod#6 Amount: \$700,000 PSC Mod#6 Duration: 10/01/22-06/30/25 (2 years 4 weeks)

PSC Mod#7 Amount: no amount added PSC Mod#7 Duration: 05/01/23-06/30/26 (1 year)

PSC Mod#8 Amount: \$5,000,000 PSC Mod#8 Duration: 10/01/23-12/31/28 (2 years 26 weeks)

PSC Cumulative Amount Proposed: \$7,590,000 PSC Cumulative Duration Proposed: 12 years 13 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.

B. Explain why this service is necessary and the consequence of denial:

Contractor assistance is needed to augment Department capacity and allow civil service staff to lead the project and to provide oversight and implementation, legislative and policy development, and project specific tasks essential to advance any initiative or project through to completion.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47706 - 16/17

D. Will the contract(s) be renewed?

Only if there are additional projects and continued funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The total PSC duration is in excess of five years because evaluations of programs are performed by firms that have highly trained evaluators in the subject area of the program being evaluated. In addition, program evaluators may also be seen as an independent evaluator of the program so the findings can be considered objective and unbiased therefore the evaluation services should be performed by outside experts.

2. Reason(s) for the Request

A. Display all that apply

- Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Explain the qualifying circumstances:

The subject area for an individual project will be diverse in nature. In addition, the need for the service is based on a given project and funding to support this service. Funding is typically based on grant funds, or one time funding to support a given initiative.

B. Reason for the request for modification:

This modification is to account for program evaluation services specifically related to expanded wellness centers and other substance use or Behavioral Health Programs.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The Contractor must have: strong facilitation skills in managing a large and smaller groups; meeting planning and preparation; creating agendas and synthesizing meeting minutes; report and issue brief and technical writing; experience in developing and delivering presentations to legislative bodies and commissions, community groups, executive and line staff, and City departments.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1805, Performance Analyst II;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor may be required to provide own equipment for documentation and presentations.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classes are not applicable due to the project-specific nature of the work, which requires specific knowledge on a given topic. In addition, the work is intermittent and temporary in nature.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class because of the short term, project-specific, topic-specific nature of the services needed.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
While formal training is not part of the central scope of the needed services, some knowledge transfer is expected due to the nature of the project, e.g., staff and stakeholders are expected to learn from any research or presentations made by the contractor.
- C. Are there legal mandates requiring the use of contractual services?
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Contractors: Harder & Company; Hatchuel,Tabernik,&Associates

7. **Union Notification:** On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 101 Grove St. Rm. 307, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47706 - 16/17

DHR Analysis/Recommendation:
 Commission Approval Required
 DHR Approved for 10/02/2023

Civil Service Commission Action:

Receipt of Union Notification(s)

Receipt of Modification Request to PSC # 47706 - 16/17 - MODIFICATIONS

dhr-psccordinator@sfgov.org

on behalf of

kelly.hiramoto@sfdph.org

Wed 8/23/2023 10:44 AM

To:Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>;agarza@ifpte21.org <agarza@ifpte21.org>;amakayan@ifpte21.org <amakayan@ifpte21.org>;andrea@sfmea.com <andrea@sfmea.com>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;Criss@sfmea.com <Criss@sfmea.com>;christina@sfmea.com <christina@sfmea.com>;staff@sfmea.com <staff@sfmea.com>;kdavis@ifpte21.org <kdavis@ifpte21.org>;jharding@ifpte21.org <jharding@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;dho@ifpte21.org <dho@ifpte21.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;ecassidy@ifpte21.com <ecassidy@ifpte21.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;kpage@ifpte21.org <kpage@ifpte21.org>;eerbach@ifpte21.org <eerbach@ifpte21.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$5,000,000 for services for the period October 1, 2023 – December 31, 2028. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/8372>

Email sent to the following addresses: L21PSCReview@ifpte21.org
eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org
tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com
ecassidy@ifpte21.com ewallace@ifpte21.org dho@ifpte21.org
mweirick@ifpte21.org
jharding@ifpte21.org kdavis@ifpte21.org staff@sfmea.com Christina@sfmea.com
Criss@SFMEA.com junko.laxamana@sfgov.org andrea@sfmea.com
amakayan@ifpte21.org
agarza@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Services to support Department, Community and City initiatives

Funding Source: General Fund, Grants, Work Order

PSC Original Approved Amount: \$95,000 PSC Original Approved Duration: 10/01/16 - 09/30/18 (1 year 52 weeks)

PSC Mod#1 Amount: \$500,000 PSC Mod#1 Duration: 04/01/17-12/31/19 (1 year 13 weeks)

PSC Mod#2 Amount: \$295,000 PSC Mod#2 Duration: 07/01/17-09/30/20 (39 weeks 23 hours)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: no amount added PSC Mod#4 Duration: 07/01/19-12/31/20 (13 weeks 1 day)

PSC Mod#5 Amount: \$500,000 PSC Mod#5 Duration: 10/01/19-05/31/23 (2 years 21 weeks)

PSC Mod#6 Amount: \$700,000 PSC Mod#6 Duration: 10/01/22-06/30/25 (2 years 4 weeks)

PSC Mod#7 Amount: no amount added PSC Mod#7 Duration: 05/01/23-06/30/26 (1 year)

PSC Cumulative Amount Proposed: \$2,590,000 PSC Cumulative Duration Proposed: 9 years 39 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such as Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.

B. Explain why this service is necessary and the consequence of denial:

Contractor assistance is needed to augment Department capacity and allow civil service staff to lead the project and to provide oversight and implementation, legislative and policy development, and project specific tasks essential to advance any initiative or project through to completion.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47706 - 16/17

D. Will the contract(s) be renewed?

Only if there are additional projects and continued funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

There is an on-going need for these core public health services.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Explain the qualifying circumstances:

The subject area for an individual project will be diverse in nature. In addition, the need for the service is based on a given project and funding to support this service. Funding is typically based on grant funds, or one time funding to support a given initiative.

B. Reason for the request for modification:

To extend the term at \$0 in order to accommodate the new grant term which funds existing programs.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The Contractor must have: strong facilitation skills in managing a large and smaller groups; meeting planning and preparation; creating agendas and synthesizing meeting minutes; report and issue brief and technical writing; experience in developing and delivering presentations to legislative bodies and commissions, community groups, executive and line staff, and City departments.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1805, Performance Analyst II;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor may be required to provide own equipment for documentation and presentations.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classes are not applicable due to the project-specific nature of the work, which requires specific knowledge on a given topic. In addition, the work is intermittent and temporary in nature.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class because of the short term, project-specific, topic-specific nature of the services needed.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
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While formal training is not part of the central scope of the needed services, some knowledge transfer is expected due to the nature of the project, e.g., staff and stakeholders are expected to learn from any research or presentations made by the contractor.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Contractors: Harder & Company; Hatchuel,Tabernik,&Associates

7. **Union Notification:** On 11/29/22, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 101 Grove St. Rm. 307, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47706 - 16/17

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 12/19/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

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PSC Mod#6 Amount: \$700,000 PSC Mod#6 Duration: 10/01/22-06/30/25 (2 years 4 weeks)

PSC Cumulative Amount Proposed: \$2,590,000 PSC Cumulative Duration Proposed: 8 years 39 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

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