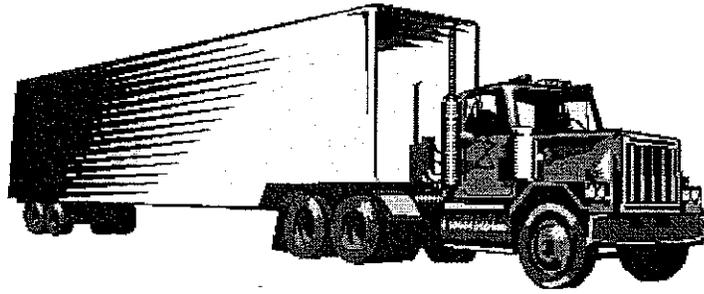


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**Posted by
Uxbridge
Town Clerk**



**CONTROLLED SUBSTANCES AND ALCOHOL
POLICY AND EDUCATIONAL MATERIALS FOR
DRIVERS**

**Federal Motor Carrier Safety Administration
(FMCSA) Mandated Program**

Standard Policy

**EMPLOYER'S DRUG AND
ALCOHOL PROGRAM
CONTACT (DAPM/DER)**

Drug and Alcohol Program Manager (DAPM)
Designated Employer Representative (DER)

Listed below is the individual whom Employer has identified as your contact for questions or issues regarding this policy and the drug and alcohol testing program in general.

DAPM/DER: _____

In his/her absence, please contact a current or acting DAPM/DER. _____

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FOLEY SERVICES, INC.

“STANDARD POLICY”

INSTRUCTIONS

Protected by
Electronic
Signature
Technology

1. **Issuing a Policy is a DOT Requirement.** You have selected the FOLEY SERVICES, INC. STANDARD POLICY. This policy states that the employer may take disciplinary actions, up to and including termination, for any violation of the prohibitions defined herein.
2. **Review the Policy.** Take special note of Section IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS *and* Section X. EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES to be sure that they reflect the intentions of your business.
3. **Save the policy** on your “C-drive” to keep as the original – before you make changes. Save a second version to which you can make changes under a different name.
4. **Fill in the DAPM/DER name** on the policy's cover page.
5. **Print the Policy.**
6. **Copies** - Order copies from Foley Services' Duplication Service (See ORDER FORM), or make the appropriate number of copies to provide one to each safety-sensitive individual and to each supervisor of drivers.
7. **Schedule a training meeting** to go over the policy.
8. **Distribute** the Policy to your drivers.
9. **Add Policy to Manual** – Place a copy of the Policy in the Drug and Alcohol Program Manual binder, SECTION IV – POLICY AND EDUCATIONAL MATERIALS or in the DAT Section of Your New Entrant Program Organizer.
10. **You now have your policy in place.**

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LICENSE AGREEMENT - 8-1-2008

By opening this package and/or using the materials provided, Licensee (Client) agrees to abide by the terms and conditions of the foregoing Licensing Agreement with Licensor (Foley Services, Inc. of Glastonbury, CT 06033).

I. LICENSE GRANT - Licensor hereby grants to Licensee, subject to the terms and conditions of this agreement, a license to use Licensed Products (forms, manuals, documents, and any drug and alcohol testing policies of any title or form (herein policy), etc. in any media) for implementing, a drug and alcohol testing program. Requirements and protections provided in this agreement are in addition to the rights, responsibilities and obligations under any applicable copyright laws. Licensee has no ownership rights to the licensed materials.

II. PERMITTED USES - Licensee may duplicate blank forms, policies, and other documents and use as applicable for then-current employees and contractors (herein employees). Licensee may put their business name on materials, but Licensor copyright and license information may not be removed.

III. PROHIBITED USES - Licensee may not use any materials to derive replacement materials for use after program termination. Any and all derived products become the intellectual property of Licensor and the use of these derived products is governed by this agreement. Licensee may not remove any copyright notice and/or license agreement notice from any derived products and to provide evidence upon written notice.

IV. OBLIGATIONS UPON PROGRAM TERMINATION OR IF LICENSEE IS NOT IN GOOD STANDING - 1. COMPLETED FORMS MAY BE MAINTAINED AFTER PROGRAM TERMINATION – Forms, policies, etc. that have been completed by Licensee's employees may be maintained by licensee and/or employees to prove that they meet or have met the requirements. This right is granted after Licensee is no longer in good standing for any Licensee agreement with Licensor or any agreement has been terminated for any reason. Licensee may subsequently duplicate these *completed* forms as necessary to meet DOT requirements, to provide information to subsequent employers, upon request of employees as required or permitted by regulation, and to provide evidence that regulatory requirements were met. All other uses are prohibited.

2. ANY AND ALL POLICIES MUST BE RETRACTED WITHIN TEN DAYS AFTER PROGRAM TERMINATION - Licensee must cease using licensed materials, retract the drug and alcohol testing policy from all individuals covered by any licensed policy, and obtain a written notice from each individual retracting the policy within 10 days when Licensee is no longer in good standing with Licensor for any reason. Upon written notice by Licensor, Licensee must provide licensor copies of completed retraction forms to assure that this requirement has been met.

3. DRUG AND ALCOHOL PROGRAM MANUAL MATERIALS MUST BE RETURNED OR DESTROYED AFTER PROGRAM TERMINATION - Licensee agrees to return or destroy the Drug and Alcohol Program Manual, discs, blank policies, computer files, and copies in any media within ten days when Licensee is no longer in good standing with Licensor.

V. INFRINGEMENT RESOLUTION – License violation, at Licensor's option, may utilize Commercial Dispute Resolution Procedures, including Supplementary Procedures for Online Arbitration or Mediation, of the American Arbitration Association. Licensee will reimburse Licensor all reasonable costs (including attorney's fees) incurred by Licensor if Licensor obtains a court or arbitration award for violations of this licensing agreement and/or copyright violations in addition to damages awarded.

VI. LICENSING AGREEMENT MODIFICATIONS – Licensor may modify this License Agreement by providing Licensee written notice three months in advance of the effective date.

I. GENERAL INFORMATION

A. TO REVIEW THE POLICY

SUBJECT SUMMARY

The policy is separated by section headings and includes text boxes that provide a summary of the information covered in that section. Review each text box to have an overview of the requirements.

The regulations mandating the drug and alcohol testing program are lengthy and detailed. The policy is one of the most important components of the program since it informs the driver of what his/her requirements are and the consequences for not complying with those requirements. It is the driver's responsibility to understand the requirements in order to be compliant with the regulations.

The policy is divided into major sections, which include minor sections that cover detailed information. To make the review of the policy less arduous, the driver has the opportunity to choose the level of detail that he/she feels is necessary. To the left of each section is a text box that summarizes the information covered in that section. The driver can read all of the text boxes and have an overview of the requirements. If the driver wants more information, he/she can read the accompanying text in each section.

EDUCATIONAL MATERIALS - This section has headings that indicate the criteria covered in that section. The information is provided in a question and answer format, addressed directly to the driver.

For the purposes of this policy and the management of the drug and alcohol testing program, Foley Services, Inc. considers the Drug and Alcohol Program Manager (DAPM) and the Designated Employer Representative (DER) to have equal roles in fulfilling the duties of the program, as they pertain to a driver.

B. SCOPE AND OVERVIEW

SUBJECT SUMMARY

A driver is responsible for being aware of all federal regulations regarding drugs and alcohol (those defined in this policy and Other Controlled Substances defined in federal regulation).

This policy covers serious consequences for violations of the regulations. It is not an employment contract and shall not be construed as such.

As Independently Authorized, and allowed by state law, employee may be an "Employee at will" of employer.

In order to promote public safety, the Federal Motor Carrier Safety Administration (FMCSA) requires this employer (herein "employer") to have in place a drug and alcohol testing program for certain safety-sensitive individuals (drivers) who drive or are available to drive commercial motor vehicles. This program is subject to all of the requirements and conditions stated in 49 CFR Parts 382 and 40 as they may change over time. These individuals will be tested in a variety of circumstances for the presence of controlled substances (also referred to herein as "drugs") and alcohol at or above the current threshold levels. Additionally, this program is subject to complex procedural safeguards as regulated by the U.S. Department of Transportation (DOT) in 49 CFR Part 40. These policies and guidelines are formulated to protect the safety and security of the public, employees, facilities, and assets, and to be in compliance with the mandates of the U.S. DOT, FMCSA, and/or state governments and supported by the force of federal and/or state law and/or regulation where applicable.

In addition to 49 CFR Part 382, there are other federal regulations (49 CFR Parts 383, 391, and 392) defined in this policy that cover use, possession, sale, and consumption of controlled substances. These other regulations also define Other Controlled Substances and address their legal and illegal use, as well as alcohol misuse, and possession of un-manifested beverage alcohol.

Controlled Substances use and alcohol misuse have a significant negative impact on an individual's health, work, and personal life. When a driver has used controlled substances or misused alcohol and is performing a safety-sensitive function, the risk to society in general significantly increases.

This policy defines serious consequences required by federal regulation, as well as consequences imposed by this employer, for drivers who violate the drug and alcohol testing regulations. There are also administrative actions required by federal regulation for a driver with an alcohol concentration as low as 0.02. To put this in

perspective, many states have charges of "driving while intoxicated" when the alcohol concentration is 0.10 or 0.08.

Items in this policy relating to disciplinary actions, terminations, leaves of absence, and all financial issues are not FMCSA or DOT requirements. These elements are based on employer's authority independent of DOT regulations and are discussed in the policy sections: EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES FOR VIOLATIONS OF THIS POLICY and EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES.

This policy is not an employment contract and shall not be construed as such. As *Independently Authorized*, and allowed by state law, an employee may be an "Employee at will" of employer.

C. EDUCATIONAL MATERIALS

SUBJECT SUMMARY

Educational Materials section is written in Q & A format and contains detailed information not covered in the policy.

Section XI. EDUCATIONAL MATERIALS is located at the end of this policy. It is important that you read this section in addition to this policy since that is where many of the items covered in the policy are explained in greater detail. Foley Services, Inc. formatted this section in question and answer format. It covers some of the questions most commonly asked by individuals covered by the DOT drug and alcohol testing programs.

Covered Topics Include: Collection Process, Post-Accident Testing, Shy Bladder, Adulteration and Substitution of a Specimen, etc.

D. SUPPLEMENT TO EMPLOYER'S GENERAL POLICY

SUBJECT SUMMARY

If your employer issued a general policy and there is a conflict - this policy shall be controlling.

Drivers who are employees remain subject to the prohibitions, rules, and benefits of employer's General Policy, whether in force now, or implemented in the future, and should view this *Controlled Substances and Alcohol Policy for Drivers* as a supplement to employer's General Policy.

To the extent that there may be a conflict between any provision of the General Policy and a provision of this policy, this *Controlled Substances and Alcohol Policy for Drivers* and applicable federal and/or state regulations shall be controlling.

E. CHANGING DOT REGULATIONS

SUBJECT SUMMARY

Employer shall implement changes in DOT requirements, as they become effective.

DOT regulations change from time to time and it is employer's procedure to implement the new requirements, as they become effective.

Such changes may be added to this policy as an addendum and/or amendment.

F. PARTICIPATION IS REQUIRED

SUBJECT SUMMARY

In order to perform safety-sensitive functions for this employer, driver must participate in this drug and alcohol testing program.

Participation in this FMCSA mandated controlled substances and alcohol testing program and submission to tests administered in accordance with 49 CFR Parts 382 and 40 is a requirement of employment (or use as a contractor/subcontractor) for drivers. This policy also requires a driver to provide all mandatory information that can be obtained by the driver and to cooperate with the MRO and/or SAP if the situation arises. The driver must provide correct prior employment information and prior controlled substances and/or alcohol information relating to the DOT controlled substances and alcohol testing program.

G. CERTIFICATE OF RECEIPT

SUBJECT SUMMARY

Driver is required to certify that he/she received and reviewed the policy.

Each driver is required by regulation to certify that he/she has received a copy of these materials. The ACKNOWLEDGEMENT OF RECEIPT AND REVIEW OF EMPLOYER'S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND EDUCATIONAL MATERIALS is the last page of this document. The DAPM/DER will answer any questions a driver may have about signing the form.

H. DRIVER CATEGORIES SUBJECT TO THIS POLICY

SUBJECT SUMMARY

A driver, whose job classification is described in any of the categories listed to the right, is subject to the requirements of this policy.

This policy applies to employees and contractors who possess a CDL and whose positions require them to drive a CMV and to applicants for such positions.

DOT Regulation and Guidance establishes that individuals in the following positions are subject to the controlled substances and alcohol testing requirements of 49 CFR Parts 382 and 40:

- Every person who operates a commercial motor vehicle in commerce in any state and is subject to: (1) The commercial driver's license requirements of 49 CFR Part 383; (2) The Licencia Federal de Conductor (Mexico) requirements; or (3) The commercial driver's license requirements of the Canadian National Safety Code
- An employer who employs himself/herself as a CMV driver
- Intrastate as well as Interstate drivers of CMVs who are required to have a CDL
- An employee who does not drive a CMV as part of his/her usual job functions, but who holds a CDL and may be called upon to drive at any time, on an occasional or emergency basis. Example: Snowplow drivers who are on a list for such activities.
- Mechanics who possess a CDL and test drive CMVs
- Students who are being trained to be CMV operators
- Alaskan drivers with a CDL who operate CMVs and have been waived from certain CDL requirements
- A foreign resident driver operating between the U.S. and a foreign country from a U.S. terminal for a U.S.-based employer that is subject to the FMCSA regulations

I. REQUIRED HOURS OF COMPLIANCE

SUBJECT SUMMARY

*A driver is not allowed to use:
Drugs - at any time on or off the job (unless under doctor's care).
Alcohol - 4 hours prior to working, while working, immediately after working, or up to 8 hours after an accident requiring testing.*

The required hours of compliance for controlled substances and/or alcohol are as listed below:

Controlled Substances: A driver shall not use controlled substances at any time on or off the job unless that use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance will not adversely affect his/her ability to safely operate a commercial motor vehicle.

Alcohol: A driver shall not use alcohol:

- Four hours prior to performing a safety-sensitive function.
- While performing a safety-sensitive function.
- Immediately after performing a safety-sensitive function, (to allow for alcohol testing immediately after a shift).
- Up to eight hours following an accident or until the driver undergoes a post-accident alcohol test, whichever occurs first.

J. VALID MEDICAL PRESCRIPTION

SUBJECT SUMMARY

Driver must ensure that physician is aware of driver's duties and that prescribed medication will not adversely affect those duties.

A driver using a Schedule I drug under the direction of a licensed medical practitioner shall ensure that the physician is aware of the driver's duties and acknowledges that the driver's fitness for fulfilling the responsibilities of safety-sensitive functions is not compromised by the medication.

If using a prescribed Schedule I drug, the driver is to notify the DAPM/DER of that fact prior to performing safety-sensitive functions.

II. DEFINITIONS

SUBJECT SUMMARY

The terms defined here are not all used in this policy. We have included terms which are used in 49 CFR Parts 382 and 40.

There are specific definitions that we feel the driver should review in detail. We have noted those definitions with an arrow (➡).

Adulterated Specimen is a urine specimen that contains a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration. Once verified by the MRO, this is reported as a "refusal-to-test."

Actual Knowledge means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances or an employee's admission of alcohol or controlled substances use, except as provided in Sec. 382.121. Direct observation as used in this definition means observation of alcohol or controlled substances use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under Sec. 382.307.

Air Blank is a reading by an EBT of ambient (circulating) air containing no alcohol. (In EBTs using gas chromatography technology, a reading of the device's internal standard.)

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol Concentration (herein AC) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test.

Alcohol Confirmation Test (Confirmation Test for Alcohol Testing) is a subsequent test using an EBT that provides quantitative data of alcohol concentration which is administered following a screening test that had a result of 0.02 AC or greater.

Alcohol Misuse means use in a manner that is prohibited by federal regulation.

Alcohol Screening Device (ASD) is a breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

Alcohol Testing Form (ATF) is the form used by the Breath Alcohol Technician to document an alcohol test.

Alcohol Testing Site is where the individual presents himself/herself for the purpose of providing a specimen for alcohol testing. The site must provide visual and aural privacy, sufficient to prevent unauthorized persons from seeing or hearing the test results.

Alcohol Use means the drinking or swallowing of any beverage, liquid mixture, or preparation (including any medication), containing alcohol.

Aliquot. Is a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Blind Specimen or Blind Performance Test Specimen is a urine specimen submitted to a laboratory for quality control testing purposes. It has a fictitious identifier, so the laboratory cannot distinguish it from an employee specimen.

Breath Alcohol Technician (BAT) is an individual who instructs and assists in the alcohol testing process and operates an evidential breath testing device (EBT).

Canceled Test is a drug or alcohol test that has a problem identified that cannot be or has not been corrected or otherwise requires it to be canceled. A canceled test is neither a positive nor a negative test.

Chain of Custody refers to the procedures used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF).

Collection Container is the container into which the employee urinates to provide the urine sample used for a drug test.

Collection Site is a place designated by the employer where individuals present themselves for the purpose of providing a urine specimen to be analyzed for the presence of controlled substances.

Collector is a person who instructs and assists employees at a collection site and who receives and makes an initial inspection of the urine specimen provided by those employees, and who initiates and completes the CCF.

Commerce means:

- (1) Any trade, traffic or transportation within the jurisdiction of the U.S. between a place in a State and a place outside of such State, including a place outside of the U.S. and
- (2) Trade, traffic and transportation in the U.S., which affects any trade, traffic and transportation described in paragraph (1) of this definition.

Commercial Driver's License (CDL) means a license that is issued to an individual by a State or other jurisdiction in accordance with the standards contained in 49 CFR Part 383 which authorizes the individual to operate a class of a commercial motor vehicle.

Commercial Motor Vehicle (CMV) means a motor vehicle or any combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle –

- Has a gross combination weight rating of 11,794 or more kilograms (26,001 or more pounds) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or
- Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

Confirmation (or Confirmatory) Drug Test means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (Gas chromatography/ mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine).

Confirmatory Validity Test is a second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed Drug Test is the test result received by the MRO from the laboratory.

Confirmed Alcohol Test Result refers to the result of the confirmation test conducted by a BAT on an EBT.

Consortium/Third-Party Administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for the purposes of these regulations.

Controlled Substances (Drugs) are the following substances or derivatives thereof:

- Amphetamines
- Cocaine
- Marijuana
- Opiates
- Phencyclidine

Custody and Control Form (CCF) is the laboratory form used to track the chain of custody of a urine specimen that has been collected for drug testing.

Designated Employer Representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. This individual must be an employee of the company. Service agents cannot serve as DAPMs/DERs.

Dilute Specimen means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

Disabling Damage means damage which precludes departure of a motor vehicle from the scene of an accident in its usual manner in daylight after simple repairs.

Inclusions -

- Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

Exclusions -

- Damage which can be remedied temporarily at the scene of the accident without special tools or parts.
- Tire disablement without other damage even if no spare tire is available.
- Headlight or taillight damage.
- Damage to turn signals, horn, or windshield wipers that make them inoperative.

DOT, The Department, DOT Agency, refer to terms that encompass all DOT agencies (or "operating administrations") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing in accordance with Part 40. They include, but are not limited to, the United States Coast Guard (USCG), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Research and Special Programs Administration (RSPA), and the Office of the Secretary (OST). This term also refers to any designee of a DOT agency.

Driver means any person who operates a CMV as defined in 49 CFR Part 382. This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

As used in this policy, the terms: "applicant," "employee," "individual," "donor," "safety-sensitive individual," "mechanic" who has a CDL and test drives a CMV, as well as a "student driver" who is operating a CMV as part of his/her schooling, have the same meaning as "driver."

Drug and Alcohol Program Manager (DAPM) is the individual responsible for the implementation of the drug and alcohol testing program. This individual may also perform the duties of a DER. (See Designated Employer Representative)

Drugs (See "Controlled Substances").

EBT (Evidential Breath Testing Device) is a device which has been approved by the National Highway Traffic Safety Administration (NHTSA) for the testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL), and identified on the CPL as conforming with the model specifications available from NHTSA, Office of Alcohol and State Programs.

Employee (See "Driver").

Employer is the person or entity employing one or more employees (including an individual who is self-employed) that is subject to DOT agency regulations requiring compliance with Parts 382 and 40. As used in this part, employer means the entity responsible for overall implementation of DOT drug and alcohol program requirements, including individuals employed by the entity who take personnel actions resulting from violations of this part and any applicable DOT agency regulations. The term includes an employer's officers, representatives, and management personnel. Service agents are not considered employers for the purpose of Parts 40 and 382.

FMCSA is the Federal Motor Carrier Safety Administration, an operating administration of the Federal DOT.

HHS is The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Initial Drug Test (Screening Drug Test) is an immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.

Initial Validity Test is the first test used to determine if a urine specimen is adulterated, diluted, or substituted.

Invalid Result is the result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has an abnormal physical characteristic, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

Laboratory is the facility where the actual testing of a urine specimen takes place.

Licensed Medical Practitioner means a person who is licensed, certified, and/or registered, in accordance with applicable Federal, State, local, or foreign laws and regulations, to prescribe controlled substances and other drugs.

Limit of Detection (LOD) is the lowest concentration at which an analyte can be reliably shown to be present under defined conditions.

Medical Review Officer (MRO) means a licensed physician (Medical Doctor or Doctor of Osteopathy) who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Non-Negative Specimen is a urine specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), and/or invalid.

Office of Drug and Alcohol Policy and Compliance (ODAPC) means the office within the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of Part 40.

Other Policy Prohibitions refer to conduct that is prohibited in this policy that is not related to the requirements in 49 CFR Part 382 or Part 40. These *Other Policy Prohibitions* do not have the same consequences as violations of the drug and alcohol testing prohibitions listed in this policy. However, there are penalties and consequences invoked by federal regulation. As independently authorized, employer may also have consequences for these prohibitions.

Oxidizing Adulterant is a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Performing (a safety-sensitive function) means a driver is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions. (See the definition of a Safety Sensitive Function.)

Prohibition refers to the actual conduct that is prohibited under the drug and alcohol testing regulations as defined in 49 CFR Parts 382 and 40. Any violation of these prohibitions will result in the individual not being able to perform safety-sensitive functions until the return-to-duty requirements are met. See Section V. DOT AND FMCSA PROHIBITIONS

Primary Specimen is the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

Refusal (or Refuse) to Submit means a specific action taken by a driver to interfere with the controlled substances and/or alcohol testing process required under Parts 382 and 40. The following criteria constitute a refusal to submit under these regulations.

Controlled Substances Testing

When the driver:

- Fails 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.
- Fails to remain at the testing site until the testing process is complete. Exception: An applicant who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- Fails to provide a urine specimen for any drug test required by 382 or DOT agency regulations. Exception: An applicant who does not provide a urine specimen because he/she left the testing site before the testing process began for a pre-employment test is not deemed to have refused to test.
- In the case of a directly observed or monitored collection for a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen
- Fails to provide sufficient quantity of urine within the time limit under then-

current regulations and it has been determined, through a required medical evaluation that there was no adequate medical explanation for the failure

- Fails or declines to take a second test the employer, MRO, or collector has directed the driver to take
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DAPM/DER as part of the “shy bladder” procedures. Note: In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
- Fails to cooperate with any part of the testing process (e.g. refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector, etc.)
- Fails to remain readily available for post-accident testing or fails to report, without a valid reason, that he/she was in a post-accident situation that required testing
- If the MRO reports to the driver that he/she has a verified adulterated or substituted test result
- For an observed collection, fails to follow the observer’s instructions to raise the driver’s clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the driver has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that the driver has adulterated or substituted the specimen.

Breath Alcohol Testing

When the driver:

- Fails to appear for any test (except a pre-employment test) within a reasonable amount of time, as determined by the employer, 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
- Fails to remain at the testing site until the testing process is complete. Exception: An individual who is there for a pre-employment test and leaves before the testing process begins is not deemed to have refused to test.
- Fails to provide a saliva or breath specimen, as applicable, for any DOT required test. Exception: An individual who does not provide a saliva or breath specimen because he/she left the testing site before the testing process began for a pre-employment test is not deemed to have refused to test.
- Fails to provide a sufficient breath specimen and a physician has determined through a required medical evaluation that there was no adequate medical explanation for the failure.
- Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures
- Fails to sign the certification at Step 2 of the alcohol testing form (ATF)

Safety-Sensitive Function means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing that work. Safety-Sensitive Functions shall include:

- All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting equipment as required by 49 CFR Parts 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of 49 CFR Part 393.76);
- All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Safety Sensitive Individual (See "Driver")

Screening Test (also known as Initial Test)

- In alcohol testing, it means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in a breath or saliva specimen.
- In drug testing, it means a test to eliminate "negative" urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of drugs/drug metabolites.

Screening Test Technician (STT) is a person who instructs and assists employees in the alcohol testing process and operates an Alcohol Screening Device (ASD).

Secretary is the Secretary of Transportation or the Secretary's designee.

Service Agent means any person or entity, other than an employee of the employer, who provides services specified under Parts 382 and 40 to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, SAPs, and C/TPAs. To act as service agents, persons and organizations must meet applicable qualifications. Service agents are not employers for purposes of these regulations.

Shipping Container is a container that is used for transporting and protecting urine specimen bottles and associated documents from the collection site to the laboratory.

Specimen Bottle is the bottle that, after being labeled and sealed according to the procedures of 49 CFR Part 40 is used to hold the urine specimen during transportation to the laboratory.

Split Specimen is applicable only in drug testing. It is a part of the urine specimen that is sent to a first laboratory and retained unopened. It is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive, adulterated or substituted test result of the primary specimen.

Substance Abuse Professional (SAP) means a person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations

concerning education, treatment, follow-up testing, and aftercare. (See Educational Materials for more information.)

Substituted Specimen is a urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine. Once verified by the MRO, this is reported as a "refusal-to-test."

Validity Testing:

- Initial Validity Test is the first test used to determine if a specimen is adulterated, diluted, or substituted.
- Confirmation (or Confirmatory) Validity Test is the second test performed on a urine specimen to further support a validity test result.

Verified Test Result is a drug test result or validity testing result from a HHS-certified laboratory that has undergone review and final determination by the MRO.

III. CIRCUMSTANCES FOR CONTROLLED SUBSTANCES AND/OR ALCOHOL TESTING

Drivers must submit to alcohol and/or controlled substances tests in the circumstances listed below. A driver is subject to controlled substances testing at any time while on the job. He/she is also subject to alcohol testing any time during the required hours of compliance for: random, post-accident, reasonable-suspicion, and follow-up testing.

A. PRE-EMPLOYMENT TESTING

SUBJECT SUMMARY

An individual applying for or transferring into a safety-sensitive position must have a pre-employment drug test with a negative result.

An individual with a non-negative test result must fulfill the return-to-duty requirements prior to beginning safety-sensitive functions for this employer or any other employer.

Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances. Any offer of a safety-sensitive position (employment, transfer, or use as a contractor) is contingent upon the driver submitting to this test and achieving a verified negative test result.

Employer may require a pre-employment alcohol test as allowed by 49 CFR Part 382.

Employer has the option to invoke the DOT's pre-employment testing exception, if applicable. (49 CFR Part 382.301 (b))

An applicant or an employee transferring into a safety-sensitive function must be aware that if he/she has any result other than a verified "negative" for a pre-employment drug test, the individual is subject to all of the return-to-duty requirements of 49 CFR Part 40. The individual will not be able to perform safety-sensitive functions for any employer until those requirements have been met.

B. POST-ACCIDENT TESTING

Alcohol Testing

As soon as practicable following an accident involving a CMV operating on a public road in commerce, employer shall have alcohol testing conducted for each of its surviving drivers who was performing safety-sensitive functions with respect to the vehicle, when:

- The accident involves the loss of human life; or
- The driver receives a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident AND if the accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- The driver received a citation within eight (8) hours of the occurrence under State or local law for a moving traffic violation arising from the accident AND any vehicle involved in the accident sustained disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Controlled Substances Testing

As soon as practicable following an accident involving a CMV operating on a public road in commerce, employer shall have controlled substances testing conducted for each of its surviving drivers who was performing safety-sensitive functions with respect to the vehicle, when:

- The accident involves the loss of human life; or
- The driver receives a citation within thirty-two (32) hours of the occurrence under State or local law for a moving traffic violation arising from the

SUBJECT SUMMARY

Post-accident alcohol testing is required, within 8 hours of the accident, when there has been:

*A fatality; or
The driver received a citation within 8 hours of the accident
AND*

There is bodily injury or disabling damage.

Controlled substances testing is required when within 32 hours of the accident when there has been:

*A fatality; or
The driver received a citation within 32 hours of the accident
AND*

There is bodily injury or disabling damage.

accident AND if the accident involved bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

- The driver receives a citation within thirty-two (32) hours of the occurrence under State or local law for a moving traffic violation arising from the accident AND any vehicle involved in the accident sustained disabling damage requiring the vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Exceptions

Federal Post accident testing does not apply to:

- An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- An occurrence involving only the loading or unloading of cargo; or
- An occurrence in the course of the operation of a passenger car or multipurpose passenger vehicle (as defined in 49 CFR Part 571.3) by an employer unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR Part 177.823.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care. In a post-accident situation, the driver must notify employer as soon as possible and get information on how to proceed with testing. Drivers are obligated to follow instructions and have the tests conducted, if possible.

The results of a breath or blood test for the use of alcohol and/or a urine test for the use of controlled substances conducted by Federal, State, or local officials having independent authority for the test, will not necessarily fulfill the DOT requirement. The driver must notify employer if law enforcement personnel performed any tests.

C. RANDOM TESTING

SUBJECT SUMMARY

All drivers are subject to random drug and alcohol testing. The random selections are computer-generated by Foley Services, Inc. in accordance with DOT requirements and without bias. An individual may be selected multiple times or not at all during any given year.

Drivers are subject to unannounced random controlled substances and alcohol testing. The random selections are made at not less than the current minimum-testing rates established by the FMCSA. Foley Services, Inc. generates the random selections using a computer-based random number generator that is matched to an individual's ID number (social security number or employee ID). Once the selections are generated, Foley Services then notifies employer's DAPM/DER as to who has been selected for a random alcohol and/or controlled substances test. Employer's DAPM/DER then notifies the driver to proceed immediately to the designated collection site.

Random selections are to be spread reasonably throughout the calendar year. The probability of an individual being randomly selected in the future is not changed by prior random selections. A characteristic of the DOT required random selection process is that a driver may be selected for random testing multiple times, or not at all, during any given year.

See Section XI. EDUCATIONAL MATERIALS for more information.

D. REASONABLE-SUSPICION TESTING

SUBJECT SUMMARY

A reasonable-suspicion alcohol and/or drug test is required to be conducted when a trained supervisor determines that an individual appears to be impaired.

Employer requires a driver to submit to a controlled substances and/or alcohol test if the employer has reasonable suspicion to believe that the driver has violated the drug and alcohol prohibitions. See Section V. DOT AND FMCSA PROHIBITIONS

The employer's determination shall be based upon specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The required observations shall be made by a company official or supervisor who has been trained to identify actions, appearance, and conduct in accordance with 49 CFR Part 382.603.

Reasonable-suspicion alcohol testing is authorized only if the required observations are made during, just preceding, or just after the period of the workday that the driver is required to be in compliance with this section.

E. RETURN-TO-DUTY TESTING

SUBJECT SUMMARY

Return-to-duty testing needs to be completed when the SAP has informed the DAPM/DER that a driver has complied with the SAP's recommended treatment and/or education. This testing must be prior to returning to safety-sensitive functions. No driver shall be returned to safety-sensitive functions without having the required negative return-to-duty test result(s).

An employee who violates a DOT drug and alcohol prohibition cannot perform safety-sensitive functions for any employer until complying with the required elements of the return-to-duty process. Once the SAP has determined, during the follow-up evaluation, that the employee has successfully complied with prescribed education and/or treatment, the SAP shall inform employer's DAPM/DER that the driver may now have the return-to-duty test. **All return-to-duty test urine specimen collections must be directly observed.** See Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

An employer is not required to return an employee to safety-sensitive duties because the employee has met these conditions. The return-to-duty test will only be performed for current employer if driver is not otherwise terminated. However, a driver is unable to perform safety-sensitive functions until the return-to-duty testing has been completed.

DOT regulation requires that a driver must submit to and receive a negative return-to-duty test before he/she can resume safety-sensitive functions. This means that if being tested for alcohol, the alcohol test result must be less than 0.02 AC; for controlled substances, the result must be a verified negative drug test result.

The SAP may determine that both alcohol and controlled substances testing is necessary for a particular driver. If such is the case, and employer wishes to return the individual to safety-sensitive functions, the employer shall direct the driver to submit to both return-to-duty tests.

See Section IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES FOR VIOLATIONS OF THIS POLICY

F. FOLLOW-UP TESTING

SUBJECT SUMMARY

There are to be a minimum of six tests conducted within 12 months of returning to duty. These tests are to be conducted for current /subsequent employer if driver returns to safety-sensitive functions.

After a violation of the drug and alcohol testing prohibitions and following successful return-to-duty testing, a driver is subject to a minimum of six (6) follow-up tests within twelve (12) months of returning to safety-sensitive functions. The SAP establishes a follow-up testing plan that defines the number and frequency of the follow-up tests to be conducted. **All follow-up test urine specimen collections must be directly observed.** The employer will schedule the test dates and ensure that the appropriate tests are conducted within the twelve-month period after the employee returns to duty, as well as any subsequent testing requirements for up to a five-year period.

Tests may be for both controlled substances and/or alcohol regardless of whether the prohibition violation concerned either specific substance. There is no limit to the number and frequency of the follow-up tests. A driver is to be removed from the follow-up testing program after completing 60 months, if the SAP did not release him/her sooner. The SAP may modify his/her own follow-up plan.

IV. PROCEDURES USED TO ENSURE THE INTEGRITY OF THE TESTING PROCESS

A. CONTROLLED SUBSTANCES

SUBJECT SUMMARY

The DOT has many safeguards to ensure the integrity of the collection/testing process.

They include:

- *Chain of custody documentation*
- *Split specimen collection*
- *MRO review of results*
- *Collector training*
- *Blind specimen testing*

Employer, and service agents utilized in connection with controlled substances testing, will comply with all DOT regulations intended to ensure the privacy, as well as the fair and respectful treatment, of the individuals being tested, the security of the specimens, and the accuracy and confidentiality of test results.

All individuals submitting to required testing must be identified via picture identification or by an authorized employer representative to ensure that the individual being tested is the correct person. A donor's social security number or employee identification number is used to track the specimen through the testing process.

DOT approved procedures, including the "chain of custody" and split-specimen method of collection, have been established to safeguard the integrity of the collection and testing process. Individuals are in direct visual contact with their urine specimen container/bottles until the collection process is complete. Tamperproof seals on the specimen bottles, initialed by the donor, along with the appropriate chain of custody paperwork provide additional security in the collection/testing procedure.

The actual controlled substances test analysis will be conducted only at laboratories that are certified by the Department of Health and Human Services (HHS).

Foley MRO Services, as required by regulation, has a "Blind Specimen" testing program in which known positive, negative and adulterated and/or substituted drug specimens are periodically sent to the laboratories to check the integrity of their testing process.

B. ALCOHOL

SUBJECT SUMMARY

Trained technicians perform alcohol testing using approved equipment. If the initial test result is higher than 0.02AC, a confirmation test is performed. The confirmation test is conducted on an EBT that goes through calibration checks to test its accuracy and actually prints out the test result. Refer to: EDUCATIONAL MATERIALS for more information.

Only trained individuals, using equipment that is listed on NHTSA's conforming products list, conduct alcohol testing. An initial alcohol screening test, conducted on an approved screening device, measures the AC of the driver. This result may be handwritten by the technician, printed directly on the alcohol testing form (ATF) by the testing equipment, or affixed to the ATF with tamper-evident tape. Any test result that is less than 0.02AC becomes the actual test result and no further testing is required.

If an initial alcohol screening test is 0.02AC or greater, a second (confirmation) test is performed on an evidential breath testing device (EBT) and the confirmation test result becomes the result of record (not the initial screening test result). Before this confirmation test is conducted, a 15 to 30-minute waiting period is required to reduce the impact of mouth alcohol. The confirmation testing process may only be performed on an EBT utilizing air blanks to ensure that surrounding air conditions are not negatively affecting the testing process. The confirmation test result is either printed directly on the ATF by the testing device or is affixed to the form with tamper evident tape. The driver is given a copy of the ATF.

C. MAINTENANCE AND RELEASE OF CONFIDENTIAL INFORMATION

All controlled substances and alcohol test results, as well as related medical records and information will be maintained in a confidential manner and released only as permitted by 49 CFR Parts 382 and 40. Their disclosure shall be strictly limited to those with a need to know.

Each driver has the right to have a copy of his/her controlled substances and/or alcohol test result(s), as well as any associated reports, upon written request.

SUBJECT SUMMARY

All results and associated records dealing with this program are maintained in a confidential manner. Only individuals with a "need to know" have access to this information.

A driver may receive copies of his/her records upon written request.

In certain administrative or legal proceedings, a driver's confidential information may be released without his/her permission.

Employers, as well as local, state, or federal authorities may obtain information on possession and consumption. It is important that a driver understand that when employer obtains drug and/or alcohol test results that were conducted by local, state or federal authorities, for any purpose, the employer can use these results to support actions taken by employer.

Confidential information may be released in certain situations. Indicated below are situations when the employer or MRO may release this information.

Employer may release information pertaining to a driver's drug and alcohol test results without the driver's consent in certain legal proceedings, per 49 CFR Part 40.323.

These proceedings refer to cases brought by, or on behalf of the driver and result from a positive DOT drug or alcohol test result or refusal-to-test (including, but not limited to, adulterated or substituted test results), such as:

- A lawsuit (e.g., wrongful discharge action),
- A grievance (e.g., arbitration concerning disciplinary action taken by the employer), or
- An administrative proceeding (e.g., unemployment compensation hearing)

These proceedings also include a criminal or civil action resulting from a driver'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. The court would issue an order directing the employer to produce the information. The employer would release the information, with the stipulation that the decision maker to whom it is released would make it available only to parties involved in the proceeding. The driver would be notified in writing of any information that is released under this section.

Medical Review Officer (MRO)

When a driver speaks with the MRO as part of the verification process, it is important to understand the following:

- The driver is required to cooperate with the MRO during the confidential interview
- The driver is to provide any information that would be helpful to the MRO in the verification process when he/she discusses a confirmed positive, adulterated, substituted or invalid test
- The MRO is required to release any confidential drug test information as well as medical information affecting the driver's performance of safety-sensitive functions to third parties, including employer. This release of information can be done without the driver's consent.

V. DOT AND FMCSA PROHIBITIONS

Listed below is conduct that is prohibited by 49 CFR Parts 382 and 40. Specific to each prohibition, no employer having actual knowledge that a driver has violated a prohibition shall permit the driver to perform or continue to perform safety-sensitive functions. The consequences of these violations are defined in Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

SUBJECT SUMMARY

A driver is prohibited from:

- *Reporting for duty or remaining on duty while having an AC of 0.04 or more.*
- *Using alcohol while on duty*
- *Reporting for duty within 4 hours after using alcohol*
- *Reporting for or remaining on duty while using any drug (except if prescribed by doctor who advised driver it would not adversely affect his/her ability to drive)*
- *Reporting for duty if he/she has a positive test result or has adulterated or substituted a test specimen for drugs,*
- *Using alcohol if required to take a post-accident alcohol test, and has not yet done so.*
- *Refusing to submit to required testing which includes providing an adulterated or substituted specimen*

ALCOHOL CONCENTRATION

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an AC of 0.04 or greater. (See safety-sensitive function in Section II. DEFINITIONS)

ON-DUTY USE

No driver shall use alcohol while performing safety-sensitive functions.

PRE-DUTY USE

No driver shall perform safety-sensitive functions within four hours after using alcohol.

CONTROLLED SUBSTANCES USE

No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when he/she uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

CONTROLLED SUBSTANCES TESTING

No driver shall report for duty, remain on duty or perform a safety-sensitive function if the driver tests positive or has adulterated or substituted a test specimen for controlled substances.

USE FOLLOWING AN ACCIDENT

No driver required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first. (See Post-Accident Testing)

REFUSAL-TO-SUBMIT TO REQUIRED TESTING

No driver shall refuse to submit to a post-accident alcohol or controlled substances test required under Part 382.303, a random alcohol or controlled substances test required under Part 382.305, a reasonable-suspicion alcohol or controlled substances test required under Part 382.307, or a follow-up alcohol or controlled substances test required under Part 382.311.

VI. REFUSAL-TO-SUBMIT

It is important that a driver know and understand what constitutes a refusal-to-submit since he/she could inadvertently put himself/herself in a position to be deemed a refusal-to-submit.

An individual with a "refusal-to-submit" is subject to the same consequences as an individual who tests positive for drugs. The individual cannot perform safety-sensitive functions for employer or any other employer until the requirements of the return-to-duty process have been met.

The definition of a Refusal (or Refuse) to Submit means a specific action taken by a driver to interfere with the controlled substances and/or alcohol testing process required under Parts 382 and 40. The following criteria constitute a refusal to submit under these regulations.

Controlled Substances Testing

When the driver:

- Fails 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.
- Fails to remain at the testing site until the testing process is complete. Exception: An applicant who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- Fails to provide a urine specimen for any drug test required by 382 or DOT agency regulations. Exception: An applicant who does not provide a urine specimen because he/she left the testing site before the testing process began for a pre-employment test is not deemed to have refused to test.
- In the case of a directly observed or monitored collection for a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen.
- Fails to provide sufficient quantity of urine within the time limit under then-current regulations and it has been determined, through a required medical evaluation that there was no adequate medical explanation for the failure.
- Fails or declines to take a second test the employer, MRO, or collector has directed the driver to take.
- Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DAPM/DER as part of the "shy bladder" procedures. Note: In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
- Fails to cooperate with any part of the testing process (e.g. refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector, etc.).
- Fails to remain readily available for post-accident testing or fails to report, without a valid reason, that he/she was in a post-accident situation that required testing.

SUBJECT SUMMARY

A refusal to submit has the same consequences as a positive drug test result.

It is imperative that you understand all of the situations that are considered a refusal to submit so that you do not inadvertently get yourself into a situation that violates the Prohibitions.

Since this issue so important, this Return-to-duty section has been included in this policy.

- If the MRO reports to the driver that he/she has a verified adulterated or substituted test result.
- For an observed collection, fails to follow the observer's instructions to raise the driver's clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the driver has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that the driver has adulterated or substituted the specimen.

Breath Alcohol Testing

When the driver:

- Fails to appear for any test (except a pre-employment test) within a reasonable amount of time, as determined by the employer, 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.
- Fails to remain at the testing site until the testing process is complete. Exception: An individual who is there for a pre-employment test and leaves before the testing process begins is not deemed to have refused to test.
- Fails to provide a saliva or breath specimen, as applicable, for any DOT required test. Exception: An individual who does not provide a saliva or breath specimen because he/she left the testing site before the testing process began for a pre-employment test is not deemed to have refused to test.
- Fails to provide a sufficient breath specimen and a physician has determined through a required medical evaluation that there was no adequate medical explanation for the failure.
- Fails to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures.
- Fails to sign the certification at Step 2 of the alcohol testing form (ATF).

VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

There are specific consequences for violating the prohibitions of 49 CFR Part 382 or the alcohol or controlled substances rules of another DOT agency. The following listing includes all required components of the return-to-duty process as required by 49 CFR Part 40, Subpart O. See Section V. DOT AND FMCSA PROHIBITIONS

Once an individual has violated a drug and alcohol testing prohibition the driver will be:

- Removed from safety-sensitive duties and not permitted to perform such functions, including driving a CMV (as defined under Part 382.107) and a CMV in interstate commerce (as defined in 49 CFR Part 390)
- Referred to a SAP for an initial face-to-face evaluation at which time the SAP will determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use
- Required to meet or complete prescribed education and/or treatment recommended by the SAP
- Required to meet with the SAP for a follow-up face-to-face evaluation to determine whether the driver has successfully carried out the SAP's education and/or treatment recommendations
- Required to have a negative controlled substances return-to-duty test result and/or an alcohol return-to-duty test with a result of less than 0.02AC before resuming safety-sensitive functions
- Placed in a follow-up testing program and will need to meet the requirements of this follow-up testing program prescribed by the SAP and administered by employer
- The SAP may require additional education and/or treatment or aftercare be completed

Note: All urine specimen collections for return-to-duty and follow-up controlled substances tests must be directly observed.

A request for a split specimen test after a verified positive controlled substances test result or a refusal to submit due to adulteration or substitution will not delay any consequences. If a split specimen test is requested, and is not conducted or it fails to re-confirm the initial test result, the initial test result is canceled and all consequences against the driver will cease.

ADMINISTRATIVE ACTION

Administrative Action for Alcohol Test Result ≥ 0.02 but < 0.04 – A driver having an AC of 0.02 or greater, but less than 0.04, will not be permitted to perform safety-sensitive functions for one shift, which will be no less than 24 hours. DOT regulations do not require this individual to complete the return-to-duty process in order to return to safety-sensitive functions.

SUBJECT SUMMARY

An individual who violates the prohibitions cannot drive a CMV as defined by Part 382 or a CMV in interstate commerce as defined in Part 390 until complying with the return-to-duty process.

The driver must:

- *Be removed from safety-sensitive duty*
- *Be evaluated by a SAP*
- *Complete recommended education and/or treatment*
- *Have a follow-up evaluation to determine if the driver complied with the SAP's recommendations*
- *Successfully complete return-to-duty testing*
- *Be placed in a follow-up testing program*

A driver with an alcohol concentration at or over 0.02 but less than 0.04 is not allowed to perform safety-sensitive duties for one shift, which is no less than 24 hours.

VIII. OTHER DOT REQUIREMENTS OR PROHIBITIONS

There are other controlled substances and alcohol related issues under 49 CFR Parts 383, 391, 392 and other federal regulations. Because they address drug and/or alcohol issues, they have been included herein; they are NOT considered violations of the drug and alcohol testing prohibitions of 49 CFR Part 382. Where applicable, these federal regulations are referenced.

OTHER CONTROLLED SUBSTANCES

These refer to chemical compounds defined as "controlled substances" under Section 102(6) of the controlled substances Act (21 U.S.C. 802(6)), including all substances listed in Schedules I through V of 21 CFR Part 1308, as they may be amended by the U.S. Dept. of Justice. Schedule I substances are identified in Appendix D and Schedules II through V in Appendix E of 49 CFR Part 383. These schedules include over 100 substances including mescaline, methaqualone, peyote, lysergic acid, barbiturates, and anabolic steroids. Also included are the controlled substances under Part 382, as previously defined in this policy.

SUBJECT SUMMARY

There are other drug and alcohol related issues in other DOT regulations that have an impact on a driver.

Review this section to familiarize yourself with these issues and know that employer also has consequences for violations of any of these regulations. They are included in this policy since they relate to drugs and/or alcohol and some carry severe consequences.

REPORTING DRUG CONVICTIONS

(49 CFR Part 383.31) Employees must report any conviction under a criminal drug statute, including a plea of "no contest," occurring on or off employer premises while conducting employer business. This notification must be provided to the jurisdiction where the license was issued as well as to employer within thirty days of the conviction, it must be in writing and contain the specifically requested information (refer to the regulation); and be signed by the employee.

DISQUALIFICATION OFFENSES

(49 CFR Part 383.51) This section relates to conviction of offenses relating to controlled substances use, use of *Other Controlled Substances*, and alcohol misuse. These offenses include driving a CMV while under the influence of alcohol (0.04AC or greater) or controlled substances, leaving the scene of an accident, a refusal to take an alcohol, controlled substances, or an *Other Controlled Substances* test required by any state or jurisdiction in the enforcement of specific items in 49 CFR Part 383 and 392.

COMMISSION OF A FELONY

(49 CFR Part 383.51) A driver is prohibited from using a CMV in the commission of a felony involving manufacturing, distributing, or dispensing *Other Controlled Substances*.

CLINICAL DIAGNOSIS OF ALCOHOLISM

(49 CFR Part 391.41(b)(13)) No person will be "physically qualified" to drive a CMV if he/she has a current clinical diagnosis of alcoholism.

ILLEGAL OR UNAUTHORIZED USE OF OTHER CONTROLLED SUBSTANCES

(49 CFR Part 391.41(b)(12)) No person will be "physically qualified" to drive a CMV if he/she uses an *Other Controlled Substance* unless prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties and who has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a CMV.

METHADONE

No driver shall operate a CMV while taking prescription methadone. Methadone is a habit-forming narcotic that can produce drug dependence and is not an allowable drug for drivers. (Federal Register Vol. 62, No. 65 April 4, 1997)

USE, POSSESSION, OR 'UNDER THE INFLUENCE' OF DRUGS AND OTHER SUBSTANCES

(49 CFR Part 392.4) No driver may be on duty and possess, be under the influence of, or use, any Schedule I substance, any amphetamine or any formulations thereof (including, but not limited to, "pep pills" and "bennies"), a narcotic drug or any derivative thereof, or any other substance, to a degree which renders the driver incapable of safely operating a motor vehicle, unless under the instructions of a licensed medical practitioner who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle. This possession prohibition does not apply to cargo that is manifested and transported as part of a shipment.

POSSESSION OF ALCOHOL

(49 CFR Part 392.5) No driver shall be on duty or operate a CMV while the driver possesses beverage alcohol (wine, beer, and distilled spirits as defined in 49 CFR Part 392.5, [26 U.S.C. 5052(a) and 5002(a), of the Internal Revenue Code of 1954]). However, this does not apply to possession of wine, beer, or distilled spirits, which are manifested and transported as part of a shipment; or, possessed or used by bus passengers.

USE OF ALCOHOL

(49 CFR Part 392.5) No driver shall use alcohol, be under the influence of alcohol, or have any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a CMV.

FEDERAL / STATE PENALTIES

49 CFR Part 392.5(c-e) 49 CFR Part 383.51 Federal regulations include penalties for conviction of the above *Other Policy Prohibitions* that reference 49 CFR Part 383, ranging from disqualification for a period of one year up to a disqualification for life.

The federal/state penalty for alcohol possession or any detectable presence of alcohol in an individual's system is being placed out-of-service for 24 hours.

IX. EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES AND REQUIREMENTS

The consequences defined herein are not part of an employee agreement. As *Independently Authorized*, employer may take disciplinary actions, up to and including termination, for any violation of the DOT and FMCSA Prohibitions, the Other DOT Requirements or Prohibitions, or Other Employer's Authorized Requirements as defined in this policy.

A. RETURN-TO-DUTY REQUIREMENT

Should this employer afford a driver who violates the DOT AND FMCSA PROHIBITIONS a second chance, the driver must complete the DOT Return-to-Duty requirements. Once the DAPM/DER has received a written report from the SAP that the driver has demonstrated successful compliance with the SAP's education and/or treatment recommendations, it is at the discretion of the DAPM/DER to direct the driver to have the return-to-duty test(s) completed.

Upon receipt of the negative return-to-duty test result(s), the driver shall be returned to safety-sensitive functions and shall adhere to the SAP's follow-up testing plan, as required by regulation. See Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

SUBJECT SUMMARY

Drivers offered a "second chance" must complete the DOT Return-to-Duty requirements.

B. OTHER EMPLOYER AUTHORIZED REQUIREMENTS

The following items are required *as Independently Authorized* by Employer:

NEGATIVE-DILUTE DRUG TEST RESULT

Employer requires a driver who has a negative-dilute pre-employment, return-to-duty or follow-up drug test result to submit to a second specimen collection.

AFTER REASONABLE-SUSPICION TESTING

A driver brought for a reasonable-suspicion controlled substances test or a reasonable-suspicion alcohol test with a test result of 0.02AC or greater will be required to accept employer-arranged transportation, or arrange for independent transportation home, whichever is acceptable to employer. *Refusal to accept independent transportation may result in disciplinary actions, up to and including, immediate termination.*

COOPERATION

A driver is required to fully co-operate with the SAP or the MRO including, but not limited to, meeting any required education and/or treatment, whether in-patient or out-patient. *Failure to cooperate fully may result in disciplinary action up to and including termination.*

TIMELY RETURN-TO DUTY TESTING

Employer has a time limit for a driver to complete successful return-to-duty testing. Once the SAP has conducted the follow-up evaluation and notified the DAPM/DER that the individual has successfully complied with the education and/or treatment recommendations, the DAPM/DER will require that return-to-duty testing take place within the following time parameters:

- Alcohol, Opiates, Cocaine, Phencyclidine, Amphetamines 5 Days
- Marijuana 40 Days

Failure to have the testing completed within these time frames may result in disciplinary action up to and including termination.

CONVICTION OF A FELONY

An employee who has been convicted of a felony involving the possession of or a transaction in, illegal controlled substances (regardless of where the unlawful activities took place) *is subject to disciplinary action, up to and including, dismissal.*

EMPLOYER NOTIFICATION

Employer requires any driver who has had an occurrence of any of the *Other DOT Requirements or Prohibitions* to notify employer of such occurrence within 24 hours.

ADMINISTRATIVE ACTION FOR ALCOHOL TEST RESULT ≥ 0.02 BUT < 0.04

In a case where a driver is removed from safety-sensitive duties because of an AC of 0.02 or greater, but less than 0.04, *if employer determines that no appropriate non-safety-sensitive work is available, the driver will be placed on an unpaid leave of absence and may be required to discuss the situation with a SAP.*

X. EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES

This section identifies situations that affect the driver financially. Listed are services that if availed by the driver, he/she would be responsible for the associated fees incurred. The driver would also be financially affected if he/she was on an unpaid leave of absence.

SUBJECT SUMMARY

As a driver, there are certain expenses, that if incurred, Employer requires that you pay for if the expense is not covered by insurance, if any. They are:

- *Cost of a medical evaluation for a shy bladder or shy lung situation.*
- *Split specimen test if the result reconfirms the original result*
- *The SAP initial and follow-up evaluations*
- *Cost associated with the treatment and/or education assigned by the SAP*
- *Return-to-duty test fee(s)*
- *Follow-up test fees*

Driver is to reimburse Employer, if he/she incurred these expenses, regardless of whether driver is or is not a current employee.

COST OF MEDICAL EVALUATION FOR SHY BLADDER OR SHY LUNG

Driver responsible for cost - If a driver is required to have a medical evaluation for a shy bladder or shy lung situation, this is at his/her expense. The driver is to pay the licensed medical practitioner directly, if it is not otherwise covered by employee's health care coverage.

UNPAID LEAVE OF ABSENCE

After a violation of the prohibitions, if the driver is not otherwise terminated, the employer has the option to have the driver perform non-safety-sensitive duties or place him/her on an unpaid leave of absence until the driver has met all return-to-duty requirements.

COST OF SPLIT SPECIMEN TEST

Driver responsible for cost - If a driver, reported to have a verified positive controlled substances test result, or a refusal-to-test due to adulteration or substitution of a specimen, requests the split specimen to be conducted, it will be at his/her expense. Driver agrees to reimburse employer for this test fee.

If the split specimen test does not reconfirm the original positive test result, or the adulterant was not found within the criteria, or the specimen was not consistent with the substitution criteria, the driver will not be charged for this test fee. If requested, the test will be conducted.

IF THE SPLIT SPECIMEN TEST RESULT DOES NOT RECONFIRM THE ORIGINAL RESULT

Employer responsible for back pay - If the split specimen test does not reconfirm the original positive test result, or the adulterant was not found within the criteria, or the specimen was not consistent with the substitution criteria, the driver will be reimbursed back pay if he/she was on an unpaid leave of absence.

A. EXPENSES ASSOCIATED WITH THE RETURN-TO-DUTY PROCESS

Following a violation of the prohibitions, employer may allow the driver to remain an employee and go through the return-to-duty process. The driver is responsible for all fees associated with the return-to-duty process that are not covered by the driver's insurance, if any. If terminated, the driver will be responsible for all requirements of the return-to-duty process. While Return-to-Duty costs may vary, employees should expect to pay as much as \$600 for Substance Abuse Professional (SAP) services and up to \$200 for each Return-to-Duty and Follow-Up test.

INITIAL SAP EVALUATION

The driver will be responsible for the expense of the initial SAP evaluation to prescribe recommended education and/or treatment. Driver agrees to reimburse employer for the expense of this service.

FOLLOW-UP SAP EVALUATION

The driver will be responsible for the expense of the follow-up SAP evaluation to determine whether he/she was compliant in meeting the SAP's recommendations. Driver agrees to reimburse employer for the expense of this service.

COST OF TREATMENT

Driver will be responsible for the expense of any education and/or treatment not covered by insurance. Driver will make own arrangements to pay the education and/or treatment provider directly.

COST OF RETURN-TO-DUTY TEST(S)

The driver will be responsible for the expense of any return-to-duty controlled substances and/or alcohol test after the violation of a prohibition. Driver agrees to reimburse employer for this expense.

COST OF FOLLOW-UP TESTS

The cost of all follow-up tests will be at the expense of the driver. This follow-up testing program will continue for up to sixty months. Driver is responsible for this item and agrees to reimburse employer for these fees.

SAP INFORMATION FOR TERMINATED DRIVER

If terminated for a violation of the prohibitions, the driver will be provided with a listing of SAPs' names, addresses and telephone numbers. There will not be any fee for this information.

End of Policy

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XI. EDUCATIONAL MATERIALS

The following information is provided to drivers to help clarify the DOT mandated drug and alcohol testing program requirements. In this section we answer some of the questions most commonly asked by drivers subject to these regulations. The questions have been grouped within different sections.

A. REGULATORY REQUIREMENTS

Why do truck drivers have to be tested for controlled substances and alcohol?

The Omnibus Transportation Employee Testing Act of 1991 established drug testing for safety-sensitive employees. As an outgrowth of this act on February 15, 1994, the DOT issued new rules, which expanded the drug testing requirements, and added alcohol testing of DOT safety-sensitive individuals.

This "safety-sensitive" classification defined job categories, which if performed by an impaired individual could cause a large risk to public safety. All employers of drivers who are required to have a CDL must have this program in place.

These regulations require comprehensive drug and alcohol testing programs for safety-sensitive employees of all companies, municipalities, states, and the federal government operating under the Federal DOT, including: FMCSA, FAA, FTA, FRA, RSPA and USCG. There are about 8.3 million safety-sensitive individuals in the U.S., of which 7.3 million operate under the FMCSA.

Why do I have to give my new (prospective) employer permission to contact my past employers for whom I conducted safety-sensitive functions?

All prospective employers must conduct a specific inquiry for all applicants /transfers. All previous employers for whom you have worked within the prior two years will be surveyed.

This inquiry is performed to determine if you had any positive drug test results, alcohol tests with a result of 0.04AC or greater, if you ever refused to submit to testing, or violated any of the other prohibitions. If any of these situations apply to you, your prospective employer would need to know if you need to complete any part of the return-to-duty process before you can begin safety-sensitive functions.

B. POLICY ISSUES

What's in the policy? Why should I read it?

The DOT Controlled Substances and Alcohol Policy for Drivers defines many important details in the program including:

- Drug and alcohol testing situations
- Consequences for violations of the DOT and FMCSA prohibitions such as testing positive, refusing to be tested, etc.

You should read the policy because it is **your** responsibility to understand its elements.

What happens if I have questions about any part of this policy or the procedures?

Your employer has identified an individual as the Designated Employer Representative (DAPM/DER). He/she is the person you will contact with any questions you may have. The name of this individual is printed on the cover of your policy.

What happens if I don't sign the form stating that I received and reviewed the policy?

You cannot perform safety-sensitive functions for this employer. This employer is under regulatory requirements to comply with these drug and alcohol testing regulations. Part of that requirement is having a written policy and making it available to you. FMCSA requires that your employer maintain documentation that you have received the policy and the educational materials.

C. PROGRAM MATERIALS

What do I do with the Driver's Card?

You will receive a Driver's Card that is provided by Foley Services, Inc. It provides documentation that you are in a DOT-qualified drug and alcohol testing program and should be kept in your wallet along with your Medical Card. The card provides you with the following valuable information:

- Your Social Security Number or Employee ID – this is the number that must be used at the collection site for all required testing.
- Company Name & Client Code or Lab Code (code that specifically identifies your employer), which will be useful to the collector.
- DOT Post-accident testing criteria for reference in an accident situation.
- Foley Services' telephone number if you are in need of emergency assistance and cannot reach your DAPM/DER.

Each year that your employer has a program with Foley Services, Inc. you will receive an updated Driver's Card. If you are expected to perform, or to be available to perform, safety-sensitive functions and you do not have a current Driver's Card, please contact your DAPM/DER.

D. CONFIDENTIAL INFORMATION

What should I do if I suspect someone has a problem with drugs or alcohol?

You may contact the DAPM/DER or your immediate supervisor in strict confidence if you suspect a co-worker (driver) is impaired by drugs or alcohol while on the job. A trained supervisor will then assess the situation.

Who has the opportunity to see my drug or alcohol test results?

Your employer will keep all drug and alcohol test results in a secure and confidential file. Only those individuals who have a "need to know" will have access to those records. This includes the Secretary of Transportation, any DOT agency or any State or local officials with regulatory authority over the employer or any of its drivers.

As stated in the policy:

Your test results may also be released to officials in an arbitration or court proceeding

The MRO is required to release information to your employer when he/she feels that the employer needs to be aware of certain information because you perform safety-sensitive functions.

E. COLLECTION FACILITIES

Where will I go to be tested?

Your employer has one or more designated medical facilities (collection sites) that you will be sent to for alcohol and/or drug testing. Employer will also have an assigned after-hours collection site and procedure for conducting emergency testing after hours. Your DAPM/DER will advise you of the collection site that you are to go to for testing.

F. GOING FOR A DRUG AND/OR ALCOHOL TEST

If I have to go for testing, what do I need to bring?

You will need to have the following items before going to the site:

- A custody and control form (CCF) which is the large laboratory form with holes on each side – provided by your DAPM/DER
- Federal Test Notification and Authorization - provided by your DAPM/DER
- A picture ID, such as a driver's license or photo ID issued by the employer

- Directions to the collection site -provided by your DAPM/DER

What do I need to do when told to go for an alcohol and/or drug test?

When notified to go for an alcohol and/or drug test, please follow this guidance:

- Proceed immediately to the collection site upon notification, with the appropriate CCF. Employer may compare the time of notification with the collection time to verify that you proceeded as directed.
- Have available and provide photo identification.
- Cooperate with the collector/technician and carefully follow his/her instructions.
- Complete and sign all forms when requested
- Remain at the collection facility until the collection/testing process is completed and the collector/ technician has told you that you may leave.
- Do not interfere with the collection/testing procedure, or cause damage to the collection equipment.
- Immediately object to the collector/technician if you feel the collection/test did not meet DOT requirements and also inform your DAPM/DER. Do not terminate the collection/testing procedure – that would place you in a refusal-to-submit situation.

G. COLLECTION PROCEDURE FOR A DRUG TEST

What is the specific procedure for a drug test collection?

As the donor, you will be directed by the collector to do the following:

- Show your photo ID
- Remove any unnecessary outer garments such as a jacket or hat.
- Leave your personal belongings (purse, briefcase, etc.) with your outer garments (you may request a receipt). You may keep your wallet.
- Empty your pockets and display the items in them for the collector. Once the collector has inspected the items, you may return them to your pockets unless there is anything that could be used as an adulterant, such as eye drops. The collector may retain that item with your other belongings until the collection is completed. If you have anything that appears to have been brought for the purpose of tampering with the specimen, a directly observed collection will be conducted.
- Not to attempt to adulterate or substitute a specimen.
- Wash and dry your hands immediately prior to providing a specimen, when requested by the collector.
- After washing your hands, you are to remain in the presence of the collector and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent, etc.
- Either you or the collector will select a collection kit.
- Either you or the collector will unwrap the collection container for you to provide your specimen.
- You will be allowed privacy while providing your specimen (unless you are subject to a directly observed collection).
- Provide your urine specimen as directed.
- Provide at least 45mL of urine into the collection container.

- Do not flush the toilet until requested to do so by the collector.
- The collector will check the volume of the specimen, the temperature of the specimen, and check for other signs of tampering, such as foreign objects, unusual odor or color.
- Observe the collector pour the urine into two specimen bottles. A minimum of 30mL will be poured into the primary specimen bottle and a minimum of 15mL into the second bottle (to be used as the split specimen). The bottles will then be sealed.
- Excess urine can be used to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. No other additional testing can be performed on the excess urine and it cannot be turned over to the donor.
- When so directed by the collector, initial the bottle seals and sign the custody and control form (CCF).
- If an adequate amount of urine is not initially provided (less than 45mL), the collector will discard that original specimen and offer you fluids (not to exceed 40oz) that are reasonably distributed over a period of time not to exceed three hours. If, after three hours, you are still unable to provide an adequate specimen, the collector will contact your DAPM/DER, and you will need to have a medical evaluation by a physician to determine if there is a medical explanation for the failure. (See SHY BLADDER)
- In certain situations such as a multi-stall bathroom, a collection may be conducted as a monitored collection, where a medical professional or same-gender individual stands outside the stall while you provide your specimen.
- In specific situations, as required or permitted by DOT regulation, you may be required to submit to an observed urine collection by a same-gender individual. (See Directly Observed Collection)

What happens if I don't show up for a test or leave once I get there?

Regulation requires that you proceed without delay to the collection site once you have been notified that you need to have a federal drug test conducted. Once at the site you are not to leave until the collection process has been completed. Not going directly to the collection site, or leaving before the testing has been completed would be a refusal to submit and you would have violated the drug and alcohol testing prohibitions. You would then be removed from safety-sensitive functions and you would need to comply with the requirements of the return-to-duty process.

Exceptions: There is an exception for pre-employment testing. The DOT realizes that there can be legitimate reasons an applicant does not go for a pre-employment test or leaves before the testing process has begun. The following are examples of an individual not being tested, yet not violating the prohibitions.

- **Pre-employment - No-show** - An individual does not go for a pre-employment test because he/she decided not to take the job, etc.
- **Pre-employment - Leaves Site** - An individual leaves the collection site before the testing began because there was a long wait and he/she had another obligation, etc.

Remember – the consequences do not attach in pre-employment testing situations ONLY. If you, as an employee, leave or don't show in a timely fashion for a collection, you would have violated the prohibitions, all consequences attach and you could lose your job.

At what point does the collection process begin?

For a pre-employment test, the collection "begins" when the driver or collector selects a specimen kit. Up until that time an applicant may leave a collection site without the outcome being considered a refusal-to-test.

For a driver being sent for a random, return-to-duty, reasonable-suspicion, post-accident, or follow-up

test the collection process begins as soon as the driver arrives at the collection site. He/she is not allowed to leave the site until the collection process has been completed. Leaving before that point creates a refusal-to-submit situation for the driver and he/she would be removed from safety-sensitive functions and subject to all of the elements of the return-to-duty process.

H. SPLIT SPECIMEN

What does a "split specimen" mean?

It literally means that the specimen you provide is "split" into two specimen bottles. The primary specimen must contain at least 30mL and the bottle containing the 15mL is called the "split specimen." Both bottles are sealed, labeled appropriately, secured in the same mailing container along with the proper chain-of-custody documentation and sent to the lab.

When would the split specimen be tested?

All DOT urine specimens will be collected utilizing the split sample method. This is a protective option should the laboratory report your specimen as positive, adulterated or substituted and you believe that the laboratory has made an error. You would then have the opportunity to have the split specimen of the original collection tested at a different HHS laboratory.

The MRO would notify you directly if there was a confirmed positive test result, or the lab reported the specimen as adulterated or substituted. Should the MRO verify the test as positive or verify that it is a refusal-to-test due to adulteration or substitution, he/she would provide you with a 72-hour window in which to request a test of the split specimen.

To ensure that there is no misunderstanding, if you have verbally requested to have the split specimen tested, the MRO requests that you provide him/her or the DAPM/DER with the request in writing.

It is important to consider that there are thresholds for the presence of the drug(s)/drug metabolite(s) in the initial and confirmation tests of the primary specimen. However, for the test of the split specimen, any detectable presence will confirm the positive result. If the laboratory is unable to detect the drug(s)/drug metabolite(s) in the split specimen, they are authorized to conduct validity testing to determine whether the specimen has been adulterated or substituted. If that test fails to reconfirm the original positive result for drug(s)/drug metabolite(s), the second laboratory may then transmit the specimen or aliquot portion to another laboratory to conduct yet another reconfirmation test.

In the case of an adulterated specimen, the second laboratory would test for the adulterant that was detected in the primary specimen. For a substituted specimen, the second laboratory would use the same criteria that would have been used on the primary specimen to determine substitution.

Should a laboratory be unable to reconfirm the original test result, the original test result would be changed from positive (or refusal-to-test, in the case of an adulterated or substituted specimen), to test canceled.

If the split specimen was not available for testing, your DAPM/DER would direct you to have a directly observed collection.

I. SHY BLADDER

What happens if I cannot provide an adequate amount of urine at the time of the collection?

40.193, 40.195

During a drug test collection, if you fail to provide an adequate amount of urine (45mL) during the first attempt, the collector shall discard the inadequate portion, document the time and inform you that your three-hour period has begun and when it will end. During this time you will be offered up to forty (40) ounces of fluids following the initial unsuccessful attempt. If, during subsequent attempt(s), you are still unable to provide an adequate specimen and the three-hour period has expired, the collector will note that fact in the Remarks section of the CCF and notify your DAPM/DER.

If unable to provide an adequate quantity of specimen, you will have three hours within which to provide one. If you fail to provide the required amount, you will need to undergo a medical evaluation.

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The MRO and your DAPM/DER will then be sent the appropriate pages of the CCF documenting your inability to provide a sufficient quantity.

Your DAPM/DER will consult with the MRO and shall then direct you to obtain, within five days, an evaluation from a licensed physician who is acceptable to the MRO and has expertise in the medical issues raised by your failure to provide an adequate specimen. The physician will determine in his/her reasonable medical judgment whether a medical condition has, or with a high degree of probability could have, precluded you from providing an adequate amount of urine. The physician shall provide a written statement of his/her conclusions to the MRO, who will then make his/her final determination and provide a written report to your DAPM/DER.

If the MRO determines that there was not a medical condition that could have precluded you from providing an adequate specimen, you would now have a violation of a prohibitions (Refusal-to-Submit).

As a driver, it is important to note that there are very few medical conditions that are acceptable reasons for an individual to have failed to provide an adequate specimen. "Situational Anxiety," which could hamper an individual from voiding on demand, is not an acceptable medical condition. Since the consequences for a refusal-to-submit are the same as a positive test result, it is not a wise decision for an individual to try to "beat the system" by not providing a sample and feigning an inability to produce an adequate specimen.

What if a negative drug test is needed and the individual cannot provide an adequate specimen?

A pre-employment, follow-up or return-to-duty drug test requires a negative result for the individual to begin or resume safety-sensitive functions. If an individual has a permanent or long-term medical condition that precludes him/her from providing a sufficient quantity of urine, the MRO must either conduct a medical evaluation, or have a licensed physician conduct the evaluation.

The regulations allow the physician conducting the evaluation to conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use. If the evaluation reveals evidence of drug use, the test is canceled. The employer would not be allowed to have the individual begin or resume safety-sensitive functions since a canceled test result is not acceptable for a pre-employment, follow-up or return-to-duty test.

J. DIRECTLY OBSERVED COLLECTION

Who conducts the directly observed collection?

A direct observation collection is always conducted by an individual who is the same gender as the donor. Even a medical professional, such as a doctor, of the opposite gender is not allowed to perform the direct observation collection. When a trained urine specimen collector is not the same gender as the donor, the collector will find another individual who is the same gender as the donor to observe the collection. If an observer of the same gender is not immediately available at the collection site, the collector may call the donor's DER/DAPM and ask the employer to send someone of the same gender as the donor to act as the observer.

An observer should never handle the specimen unless the observer is also the collector of record for the collection. The donor should always hand his/her urine specimen to the collector.

In what situations could I have to undergo a directly observed collection?

Situation #1: If the laboratory reported to the MRO that your drug test result was invalid and the MRO reported to your employer that there was not an adequate medical explanation for the result, you will be directed to have an observed collection. The collector will explain to you the reason, if known, for the direct observation.

Situation #2: If the collector notices any irregularities in a donor's conduct, or the actual specimen, at the time of the collection that gives him/her reason to believe that it could have been tampered with, such as:

- Donor brought materials into the collection site that clearly indicate an attempt to tamper with the specimen
- The specimen has bluing in it

- The temperature is not within range
- There is visible sediment in the specimen

The collector will explain to you why he/she needs to immediately perform a second collection under direct observation. If the collector is not the same gender as the donor, the collector will have someone else perform the observation part of the collection.

Situation #3: If the collector learns that a direct observation collection should have been performed and was not, the collector will inform your employer to have you come for an immediate recollection under direct observation. The collector will explain to you the reason, if known, for the direct observation.

Situation #4: If you had an original positive, adulterated, or substituted test result and the result had to be canceled because the split-specimen was unavailable for testing, your employer will direct you to have an observed collection. The collector will explain to you the reason, if known, for the direct observation.

Situation #5: If you are to have a return-to-duty or follow-up drug test conducted, the urine specimen will be collected under direct observation. The collector will explain to you the reason, if known, for the direct observation.

How is a direct observation collection conducted?

A directly observed collection virtually eliminates any attempt to adulterate a specimen. You will be required to lower your pants and underpants to mid-thigh, and raise your shirt/blouse/skirt to the navel, as appropriate, and turn completely around so that the collector can ensure that you do not have a prosthetic device that could be used to cheat on the drug test. You will then be permitted to return your clothing to the proper position and proceed with the observed urination. Per regulation, the observer needs to specifically watch the urine go from your body into the collection container. The individual who conducts the observation is always the same gender as the donor.

K. ALCOHOL TESTING PROCEDURE

What am I to do for an alcohol test?

The requirements for a breath alcohol test are very simple.

- Provide an adequate amount of breath
- Continue to attempt to provide breath specimens until the technician tells you to stop
- Sign the ATF when asked to
- Do not tamper with the alcohol testing equipment
- Do not leave the testing site until testing is completed

What is the procedure for a breath alcohol test?

The Initial Test - A trained technician, using a DOT-authorized alcohol testing device, will conduct the first test (the initial screening) to measure your alcohol concentration. For breath alcohol testing, you will be asked to blow into a mouthpiece until the BAT tells you to stop. There is an alcohol test form (ATF) that you will be asked to sign. Any test result less than 0.02AC is considered a negative test result; no further testing is conducted and you would be provided with a copy of the test result. If the initial test is 0.02AC or greater, a second (confirmation) test is performed.

The Confirmation Test - When the initial screening test is 0.02AC or greater a confirmation test is required. The confirmation testing process may only be performed on an EBT by a BAT. Before beginning this test, there would be a 15 to 30-minute wait period to reduce the impact of mouth alcohol. The BAT will instruct you not to eat, drink, put any object or substance into your mouth, and to the extent possible, not belch during the waiting period. These requirements are for your benefit, to prevent any accumulation of mouth alcohol leading to an artificially high reading. If you disregard these instructions the BAT shall note it on the ATF.

In your presence, the BAT will conduct an air blank test on the EBT before beginning the confirmation test. This test is performed to ensure that the surrounding air conditions are not negatively affecting the testing process. The reading must be 0.00 and you will be shown the reading of this air blank test. If it is not 0.00, another air blank test may be run and if that result is 0.00, the confirmation test may be conducted. If the reading is not 0.00, the EBT is removed from service until an external calibration check is performed. Your confirmation test would then be conducted using another EBT, if available.

All confirmatory test results are either printed directly on the ATF by the testing device or are affixed to the form with tamper evident tape. You will be given a copy of the test result.

How do I know that the equipment (EBT) is working properly?

An external calibration check is conducted following a defined procedure, in which samples containing known alcohol concentrations are blown into the EBT. The result must read within allowed parameters set by the manufacturer. If the calibration test is outside of the allowable range, the unit may be recalibrated and put back into service.

L. SHY LUNG

What happens if I cannot provide an adequate amount of breath for an alcohol test?

If you fail to provide a sufficient amount of breath, the BAT will instruct you to attempt it again. If after three attempts you still fail to provide an adequate amount of breath for an alcohol test, the BAT will note that fact in the Remarks section and notify your DAPM/DER. Upon notification, your DAPM/DER shall direct you to obtain an evaluation from a physician who is acceptable to the employer and has expertise in the medical issues raised by your failure to provide an adequate specimen.

The physician shall make a determination, in his/her reasonable medical judgment, whether a medical condition has, or with a high degree of probability could have, precluded you from providing an adequate amount of breath. The physician shall provide your employer with a written statement of his/her conclusion.

Employer shall make the final determination as to whether the physician's conclusion supports the evidence that there is a medical condition that exists or existed, and therefore your failure to provide an adequate amount of breath shall not be deemed a refusal to submit to testing. If there is no evidence of a medical condition, you will now have a violation of a prohibition (Refusal to Submit).

M. REFUSAL-TO-SUBMIT (REFUSAL-TO-TEST)

What is a Refusal to Submit?

The circumstances constituting a refusal-to-submit are outlined in Section VI. REFUSAL-TO-SUBMIT of the policy. Basically, a refusal-to-submit may be any action that interferes with the collection and/or testing process. It is important that you are very familiar with these items so that you cannot inadvertently be deemed to have refused to test.

N. MEDICAL REVIEW OFFICER (MRO)

What qualifies the MRO to make a determination that I had a positive test result?

The FMCSA requires that this program utilize a Medical Review Officer (MRO). The MRO is to be a licensed physician (medical doctor or doctor of osteopathy) who has appropriate knowledge of and clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed test results.

The MRO receives the confirmed drug test result from the laboratory. He/she then interprets and evaluates the confirmed positive, adulterated or substituted test result, together with the driver's medical history and any other relevant biomedical information to determine the verified test result. (Refer to 49 CFR Part 40.121)

New requirements, effective August 1, 2001, require MROs to meet qualification training requirements within a schedule of implementation dates. The MRO will need to have completed an exam administered by a nationally recognized certification board or subspecialty board for medical practitioners in the field of medical review of DOT mandated tests. He/she will also be required to meet

a schedule of continuing education every three years after certification.

What does the MRO do if the laboratory said I tested positive or that I adulterated or substituted a specimen?

(49 CFR Part 135) Upon receiving a laboratory confirmed test result that is positive, adulterated, substituted or invalid the MRO:

- Reviews the laboratory's "chain of custody" documentation (copies 1 and 2) to ensure that it properly tracked the handling and storage of the urine specimen and that the certifying scientist signed the form
- Contacts you to conduct a medical interview about the test result
- Informs you that he/she is required to provide to third parties, without your consent, drug test result information and medical information affecting the performance of safety-sensitive duties that you provide him/her during your interview
- Could direct you to undergo further medical evaluation either with him/her or another physician.
- Could require you to take a second drug test (possibly under direct observation).
- Reviews and takes all reasonable steps to verify the authenticity of all medical records that you provide to establish if there is a legitimate medical explanation for the confirmed test result.

What happens if the MRO leaves me a message to call him/her and I don't return the call?

If, after making reasonable efforts, the MRO is unable to reach you directly, he/she shall contact your DAPM/DER. The DAPM/DER shall direct you to contact the MRO as soon as possible. If it becomes necessary to reach you through the DAPM/DER, he/she shall employ procedures that ensure, to the maximum extent practicable, that your need to contact the MRO is held in confidence. The MRO shall not discuss with your DAPM/DER the reason that he/she (the MRO) needs to contact you.

If after making all reasonable efforts, the DAPM/DER is unable to contact you, you may be placed on temporary medically unqualified status or medical leave from your employer.

The MRO may verify a controlled substances test result as positive or a refusal-to-test, as applicable, without having communicated directly with you about the test, in these three circumstances:

- You expressly decline the opportunity to discuss the test with the MRO;
- Neither the MRO nor the DAPM/DER, after making all reasonable efforts, has been able to contact you within ten days of the date on which the MRO receives the confirmed test result from the laboratory; or
- More than 72 hours have passed since the DAPM/DER contacted you and instructed you to immediately contact the MRO, and no contact has been made.

If a drug test is verified as a positive or refusal-to-test and the result was reported to your DAPM/DER without your input as in the situations described above, you may contact the MRO to reopen your verification. The MRO will allow you to present to him/her, within 60 days of the verification, information documenting that serious illness, injury, or other circumstances unavoidably precluded you from making contact with the MRO and/or DAPM/DER in the times provided. The MRO, on the basis of such information, may reopen the verification, allowing you to present information concerning a legitimate medical explanation for the confirmed test result.

O. SUBSTANCE ABUSE PROFESSIONAL (SAP)

What are the qualifications of a SAP?

The DOT rules define the SAP to be a licensed physician (Medical Doctor or Doctor of Osteopathy), a licensed or certified psychologist, a licensed or certified social worker, or a licensed or certified employee assistance professional, or a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) or by the International Counselors Reciprocity Consortium (ICRC). This definition covers present organizations and any that shall be accepted in the future. All SAPs must be knowledgeable about and have clinical experience in,

the diagnosis and treatment of alcohol and controlled substances-related disorders, as well as the DOT agency regulations that are applicable to the employer for whom the SAP is performing SAP functions.

When would I have to be evaluated by a SAP?

Regulation requires that a driver, who has violated a DOT prohibition relating to drugs or alcohol (positive test result, refusal-to-test, prohibited use of alcohol/drugs), have a comprehensive face-to-face evaluation by a SAP as part of the return-to-duty requirements. This is only completed through your present employer if you will be returned to safety-sensitive functions for this employer. If you are terminated, yet want to return to safety-sensitive functions, you need to have the evaluations completed on your own as part of your return-to-duty requirements. See Section VII. DOT CONSEQUENCES FOR ENGAGING IN SUBSTANCE USE-RELATED CONDUCT

There will be a minimum of two evaluations conducted by the SAP. During the initial evaluation, the SAP will determine the recommended course of education and/or treatment that you would need in resolving problems associated with drug use and/or alcohol misuse.

You would then need to comply with the education and/or treatment requirements recommended by the SAP. During the follow-up evaluation, the SAP would determine if you complied with those recommendations.

If you are terminated from your present employer, you must still complete the regulatory components indicated under the return-to-duty section prior to resuming safety-sensitive functions. If you are allowed a second chance, there may be fees that you will be responsible for. See Section X. EMPLOYER'S INDEPENDENTLY AUTHORIZED FINANCIAL RESPONSIBILITIES

P. PRESCRIPTION/OVER-THE-COUNTER MEDICATIONS

IMPORTANT – Read this section! You could innocently and inadvertently violate the “Drug Use” Prohibition and you would then be subject to the requirements of the return-to-duty process.

I take medications, could I end up with a violation of the prohibitions?

Possibly - If you are taking a medication that causes a laboratory confirmed positive drug test result, the MRO will call you to speak about a possible medical explanation for the positive test result. At that time, you would disclose information about your medication. If the MRO verifies that you have a valid prescription, and are using the medication appropriately, for a substance that caused the positive result, he/she would more than likely verify your test result as negative.

But, one of the prohibitions is “Drug Use.” If you are driving while taking medication that should not be used while performing safety-sensitive duties, you are violating the drug use prohibition.

Whenever a physician prescribes medication for you, he/she needs to be aware of your occupation. This is valuable information that he/she shall use to determine which medications can be prescribed in order for you to be able to continue to work while using medication, or if you cannot work while on a prescribed medication.

Failure to provide the physician with information about your occupation, or not following the doctor's orders regarding using the medication while driving, can result in a violation of the prohibition “Drug Use.”

Remember that any prohibition violation requires the return-to-duty process to be completed and, depending upon your employer's policy, you could lose your job.

If the MRO deems it appropriate, he/she shall inform your DAPM/DER that you are not to perform safety-sensitive functions while using a prescribed medication. The MRO may suggest a different medication that may be used that would not adversely affect your ability to perform safety-sensitive functions.

I sometimes use my spouse's back pain prescription medication, any problem with that?

Yes. It is very important that you never use another individual's prescription medication. If the prescription is not in your name, the MRO will have to verify the result as a positive since you do not have a valid prescription. You would now have a violation of the prohibitions and, depending upon your employer's policy, you could lose your job.

So, as long as the prescription is in my name, I'm all set, right?

Not exactly. Use of a substance (medication) can only be used to substantiate legitimate medical use if it is used consistently with its proper and intended medical purpose. An MRO could verify a drug test as positive if the individual was using a prescription that was prescribed for a former and unrelated use. (This does not refer to the use of medication that has been prescribed to be used "as necessary" for a chronic condition.)

Example: Driver has a sore back and self-medicates himself with a pain reliever in October that was prescribed for him the past February for a sprained ankle. This would not be using a medication consistently with its proper and intended medical purpose.

Can I drive while in a methadone treatment program?

No. Methadone is a synthetic habit-forming narcotic, which is used in the treatment of heroin addiction. It can produce drug dependence and is not an allowable drug for operators of CMVs. Methadone use is a medically disqualifying event, even though a driver may be able to provide a valid medical explanation due to enrollment in a methadone maintenance program. A driver using methadone is medically disqualified from performing safety sensitive duties per 49 CFR Part 391.41 (b)(12).

Q. MARIJUANA

I have a prescription for marijuana to ease my pain. That's accepted, right?

No. There is no approved use of marijuana for drivers of CMVs. A valid prescription for medicinal marijuana will not change a confirmed positive drug test result to a verified negative test result. The MRO will verify the test as positive and you would now have a violation of a prohibition.

I use lots of herbal products; some include hemp. Will I test positive for marijuana?

You could. If the reportable threshold of any controlled substance is reached, the laboratory reports the result as a confirmed positive. Since there is no approved use of marijuana, the MRO would verify the test as positive and you would now have a violation of a prohibition.

What about "passive inhalation"?

When you speak with an MRO about any confirmed positive drug test, he/she is not allowed to accept any reasons for a confirmed positive except a "legitimate medical explanation." This means that if you had a positive marijuana test result and you explained to the MRO that you traveled in a closed car with several individuals smoking a joint, your test would be still be verified as positive since that is not a legitimate medical explanation.

R. DILUTE, SUBSTITUTED, ADULTERATED SPECIMENS

What does a "dilute" specimen mean?

A dilute specimen is one that has a creatinine concentration and specific gravity level that is lower than expected for normal human urine, yet not so low as to meet the criteria for a substituted specimen. Refer to the policy for the exact levels.

Dilute specimens may be due to self-hydration or diuretics. When a specimen is so dilute that the MRO requires a second collection, the employer will receive a drug test result from the MRO that is "**verified negative-dilute, recollection required under direct observation**" and must have the individual tested as soon as possible. The direct observation will be by an individual who is the same gender as the donor.

When an employer receives a "**verified negative-dilute,**" without the requirement for a recollection, the employer determines, through company policy, whether or not to have another collection conducted. **This collection would not be conducted under direct observation.**

When an MRO informs an employer of a "verified positive – dilute" drug test result, the employer merely treats the result as a verified positive drug test result.

What does a "substituted specimen" mean?

When a laboratory receives a specimen that does not exhibit the clinical signs or characteristics associated with normal human urine, it is reported to the MRO as a substituted specimen. These

results are defensible since they have conclusive data reporting that the creatinine concentration was $\leq 5\text{mg/dL}$ and the specific gravity was ≤ 1.001 or ≥ 1.020 . If the MRO verifies that the specimen was "substituted," it is reported to the DAPM/DER as a refusal-to-test due to substitution and the donor would have a violation of the prohibitions with the same consequences as a positive test result.

What is validity testing?

Validity testing is the evaluation of a specimen to determine whether it is consistent with normal human urine. Testing laboratories are authorized to conduct validity testing which determines whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

What is meant by an adulterated specimen?

An adulterated specimen is one in which a donor, in order to mask or destroy a drug or drug metabolite that may be present in the specimen (and would therefore produce a positive drug test result), adds anything, such as a chemical, to the urine specimen at the time of collection. March 9, 1998, DOT Guidance established technical thresholds (cut-off values), for pH and nitrites for this testing process. Adulterant testing identifies adulterants to the point that substances that worked in the past to mask a positive test result no longer sneak through the testing process undetected.

The testing laboratory's current thresholds identify a specimen as adulterated if the pH is < 3 or > 11 or if the nitrite concentration is $\geq 500 \text{ g/mL}$. The test result is reported to the MRO, who in turn reports it to the employer as a refusal to submit due to adulteration. The donor then has a prohibition with the same consequences as if the individual had tested positive.

S. RANDOM TESTING

How am I selected for Random Testing?

Random selections are performed by Foley Services, Inc. through a computer-generated program and are therefore without bias or input from employer. Individuals selected for random testing, as well as testing dates, are unannounced and are with unpredictable frequency throughout the year.

How come some guys are selected several times and others haven't been selected at all?

DOT Regulation requires that at each draw, every individual in the selection pool has an equal chance of being selected for testing, independent of prior selections. Once randomly selected an individual's name is returned to the pool for possible future selection and the chance of being selected in the future will not be changed.

As a practical matter relating to random selections, certain individuals will be selected multiple times and others very infrequently, if at all over a period of years. This does not indicate a bias for a specific individual. This is a statistical characteristic of randomness. If an individual is selected as many as four times in a year, it should be understood that he/she is not identified in any way to have a higher probability of actual selection.

T. REASONABLE-SUSPICION TESTING

What does it mean when it says I can be tested for Reasonable-Suspicion?

You may be tested for drugs and/or alcohol when employer has reasonable suspicion that you have violated the prohibitions of 49 CFR Part 382. (See Section V. DOT AND FMCSA PROHIBITIONS) This determination would be made through the independent observation of a supervisor or company official who has been trained to recognize the signs of controlled substances or alcohol use. The observations may include indications of the chronic and withdrawal effects of controlled substances.

If an alcohol test is required, you would be removed from safety-sensitive functions until either an alcohol test is administered (and the result is under 0.02 AC), or 24 hours have elapsed.

If a drug test is required, your employer will inform you as to when you may return you to safety-sensitive functions.

Your employer has certain requirements that must be met after a reasonable-suspicion test. These have been put into place to insure your safety and the safety of the public. See Section IX.

EMPLOYER'S INDEPENDENTLY AUTHORIZED CONSEQUENCES FOR VIOLATIONS OF THIS POLICY

Management will act on their best judgment if they feel emergency medical service is required.

U. POST-ACCIDENT TESTING

What happens if I'm involved in an accident?

IMPORTANT! Post-accident testing is only to be conducted for FMCSA requirements if the following conditions are met:

- If there was a fatality, **OR**
- If **you** received a citation for a moving traffic violation **AND** there were injuries resulting from the accident that required medical treatment away from the scene of the accident, **OR**
- If **you** received a citation for a moving traffic violation **AND** there was disabling damage to any vehicle involved in the accident that required it to be towed or removed from the scene by another motor vehicle.

If there is no loss of life, it is the citation that is the key issue as to whether post-accident tests are to be conducted.

There are time limits within which post-accident testing must be completed. These limits are the point at which attempts to have the testing completed are to be discontinued. It is your responsibility to have the testing done as soon as practicable – without any delay. The external time limits are eight (8) hours for alcohol testing and thirty-two (32) hours for drug testing.

If, for example, a citation was issued twelve hours after an accident, there would be no alcohol test (since the eight hour window had lapsed), but a post-

accident drug test would still be required.

As another example, if a citation were issued six hours after an accident, employer would make every effort to have the alcohol test completed. Independent of the time restraints for the alcohol test, the drug test must be completed within its time frame (32 hours).

In an accident situation, you should follow these steps:

- Call employer to report the accident. Follow your employer's internal procedures for reporting an accident. Be sure to let employer know where you can be reached.
- Record the date and time of the accident.
- Report the accident as required by State or Federal law.
- Call your DAPM/DER to report the accident and establish whether FMCSA post-accident testing is required. Your DAPM/DER will provide you with the location of the collection site where the collection and testing is to be performed.
- If you have exhausted all possibilities of contacting your employer (DAPM/DER), call Foley Services, Inc. to request information on how to conduct post-accident testing.

How do I contact Foley Services, Inc.?

Should you exhaust all possibilities of contacting your employer, you may contact Foley Services, Inc. during business hours, Monday - Friday 8:30 A.M. - 5 P.M. Eastern Time, call 1-860-633-2660 or 1-800-253-5506, press "0" and tell the receptionist that this is a POST-ACCIDENT EMERGENCY.

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Never leave a request for post-accident testing information in an individual's voice mail.

If this call is after business hours, please call either of the numbers above and tell the answering service that this is a POST-ACCIDENT EMERGENCY.

Provide them with a telephone number where you can be contacted.

Note: Other groups, such as the police and the National Transportation Safety Board (NTSB) can perform drug and alcohol tests after accidents based on their own independent authority to do so.

XII. INFORMATION CONCERNING THE EFFECTS OF ALCOHOL AND DRUG USE ON AN INDIVIDUAL'S HEALTH, WORK AND PERSONAL LIFE

The impact of drug use and alcohol misuse in the workplace is more than just causing harm to the health and safety of the affected individual. Drug use and alcohol misuse decrease an individual's performance and the performance of co-workers who rely on him/her. Impaired judgment, carelessness, and lack of coordination cause more accidents, which put the safety and lives of the affected individual and co-workers at risk. Co-workers may become frustrated trying to help the affected individual by covering up, taking on additional work, or lending him/her money. The result of this frustration can be decreased morale and distrust as co-workers become tired of trying to help and supervisors become suspicious of increased absenteeism, tardiness, lowered job efficiency, etc.

A. ALCOHOL (A NON-CONTROLLED SUBSTANCE) AND ITS EFFECTS

Alcohol is a legal substance that is widely used and, unfortunately, misused. While it is important for your safety, the safety of your co-workers and the general public to continue to be very concerned about the significant dangers of controlled substances, the abuse of alcohol has a major impact on the safety of those individuals as well. The most common substance found in drivers of commercial vehicles involved in fatal accidents is alcohol (the second most prevalent substance is marijuana).

The significance of alcohol misuse among the American population is borne out by statistics:

- It is estimated that 3-10% of all Americans have an alcohol related problem, depending upon how alcoholism is defined.
- 25% of all hospital admissions in the United States are related to alcohol misuse.
- 2-3% of the driving population is legally drunk at any one time. This rate doubles at night and on weekends.
- 40% of family court cases involve an alcohol problem.
- 2/3 of all homicides are committed by people who drink prior to the crime.
- More than 60% of burns, 40% of falls, 69% of boating accidents, and 76% of private aircraft accidents are alcohol related.

Alcohol abusers are costing companies, health care organizations and the general public tens of thousands of dollars each year in poor quality products, health care costs, workers compensation costs, and unemployment costs. More importantly, these abusers are costing innocent lives.

The National Institute on Alcohol Abuse and Alcoholism has estimated that 50% of the people with job performance problems suffer from alcohol-related problems. The rationale underlying an employer's approach to alcohol abuse in the workplace is that any alcohol abuser, even one in the early stages of abuse, will tend to exhibit a pattern of deteriorating job performance that will eventually effect not only the abuser, but his or her co-workers, and the general public.

Unless detected early on, alcohol use in the workplace can lead to a series of costly and potentially dangerous situations, including:

- Absenteeism - Tardiness and excessive use of sick time.
- Lower Productivity - Studies have shown that an alcohol abuser works at only two-thirds of his/her actual work potential.
- Poor Work Quality - Shoddy work, rework and material waste may be evident. For drivers it means decreased mental and physical agility and concentration.

- Poor Morale - Chronic alcohol misuse often creates wide mood swings, anxiety, depression and anger. Non-drinking co-workers often see alcohol users as poor team workers and safety hazards.
- Increased Number of Accidents and Near Misses - Impaired individuals are 3-6 times more likely to be involved in on-the-job accidents or near miss incidents. A person who is legally intoxicated is six times more likely to have an accident than a sober person is.
- Equipment Problems Due to Negligence - Alcohol misuse often leads to inadequate maintenance of machinery or equipment because the driver has lost interest or is hoping their equipment will not work to avoid working themselves.

B. CONTROLLED SUBSTANCES AND THEIR EFFECTS

Substance abuse is a national problem that negatively impacts every American. It not only affects individual users and their families, but it also presents new and increasing dangers in the workplace. One in six working Americans has a drug related problem. Employees who use controlled substances are 33% less productive, 500% more likely to be involved in an on-the-job accident, 500% more likely to file a worker's compensation claim, 250% more likely to have an absence exceeding eight days, significantly more likely to be involved in employee theft, and 360% more likely to injure themselves or another person in the workplace.

As with alcohol abuse, drug use can lead to a series of costly and potentially dangerous problems in the workplace, including:

- Absenteeism - Tardiness and excessive use of sick leave.
- Staff Turnover - Substance-abusing employees have disorganized lives. Many quit rather than face detection. Others transfer or are fired because of poor or unsafe performance.
- Lower Productivity and Work Quality - As with alcohol abusers, substance-abusing employees perform at about two-thirds of their actual work potential. Shoddy work, rework and material waste may be evident. For drivers, decreased mental and physical agility and concentration causes increased cargo damage or passenger complaints, missed schedules, incomplete or lost shipments and more traffic accidents.
- Equipment Breakdown - Again, substance-abusing employees often do not maintain their equipment, either because they have lost interest in their job, or look forward to having equipment declared out of service as a means of avoiding work.
- Poor Morale - Chronic substance abusers create the same atmosphere as alcohol abusers in the workplace. Non-drug using employees often view them as poor team workers and a hazard to the safety of others.
- Increased Accidents and Near Misses - Substance abusers are 3.6 times more likely to be involved in an accident. Even small quantities of controlled substances in the system can cause a deterioration of alertness, clear-mindedness and reaction time.

INSERT APPENDIX:

STATE REQUIREMENTS

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FMCSA Requirement – Employee’s acknowledgement that he/she has received and reviewed the policy.

DAT-4

R-1

ACKNOWLEDGMENT OF RECEIPT AND REVIEW OF EMPLOYER’S CONTROLLED SUBSTANCES AND ALCOHOL POLICY AND EDUCATIONAL MATERIALS

I acknowledge that I have received a copy of the Employer's DOT Controlled Substances and Alcohol Testing Policy and Educational Materials.

I HAVE BEEN MADE AWARE OF THE FOLLOWING COMPONENTS OF EMPLOYER’S POLICY:

- Identity of the Designated Employer Representative (DAPM/DER)
- Categories of drivers who are subject to 49 CFR Part 382
- Information about safety-sensitive functions and hours of compliance
- Prohibitions
- Circumstances for controlled substances and alcohol testing
- Collection procedures and safeguards
- The requirement to submit to testing
- What constitutes a refusal-to-submit and the attendant consequences
- Consequences of violating the prohibitions, including removal from safety-sensitive functions
- Administrative action for an alcohol concentration greater than 0.02 but less than 0.04
- Information on the effects of alcohol and controlled substances use
- Additional state requirements

Receipt and Review of Policy

Employer provided me with an additional General Policy that is issued to all employees.

Employee’s Full Name (printed): _____

Employee’s Signature: _____ Date: _____

DAPM/DER Full Name (printed): _____

DAPM/DER Signature: _____ Date: _____

Retain for 2 years after
employee has ceased
safety-sensitive functions

