

RESOLUTION NO. 96- 238

A RESOLUTION ESTABLISHING PROCEDURES FOR A DRUG AND ALCOHOL-FREE
WORKPLACE PROGRAM FOR EMPLOYEES WITH
COMMERCIAL DRIVER'S LICENSES

The City Council of the City of Delta, Utah, referred to herein as the "City Council," hereby recites the following as the basis for adopting this resolution:

RECITALS

A. The City of Delta ("Delta City") has a public trust to provide a variety of services to the community. An efficient and productive work force is vital to carry out that trust. The public has a reasonable right to expect persons employed by Delta City to perform their duties free from the effects of drugs and alcohol.

B. Delta City has an obligation to ensure public safety through the actions of its employees. Furthermore, employees of Delta City have a reasonable right to work in a safe environment free from the effects of drug and alcohol use. Delta City has a reasonable right to expect employees to report for work fit for duty and free from the effects of drug and alcohol use.

C. Delta City recognizes that an employee's physical condition affects job performance, and that drug abuse ranks as one of the major health problems in our society. It is the intent of this policy to express procedures on drug and alcohol testing and to provide guidelines for consistent handling of situations arising from such procedures.

D. No part of the policy or procedures adopted by this Resolution, nor any of the related procedures thereto, is intended to affect the City's right to manage its work place and discipline its employees, or to guarantee employment, continued employment, or terms or conditions of employment. Further, it is not intended to create any kind of contractual rights of employment, whether express or implied between Delta City and its employees.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

Section 1. Procedures for a Drug and Alcohol-Free Workplace Program for Delta City Employees With Commercial Driver's Licenses - Adopted. The document attached hereto and incorporated herein by reference entitled "Procedures for a Drug and Alcohol-Free Workplace Program for Delta City Employees With Commercial Driver's Licenses" is hereby adopted by the City Council.

Section 2. Administration. The Mayor, as the Delta City Chief Executive Officer, is ordered to implement these procedures in accordance with federal and state laws and appropriate Delta City policy.

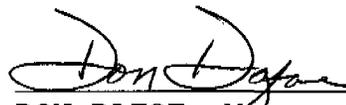
Section 3. Effective Date. This resolution shall become effective upon adoption.

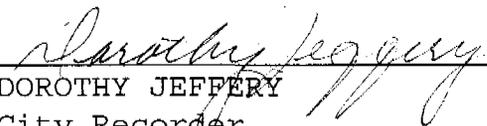
Section 4. Notice. A copy of the attached procedures shall be provided to each Delta City employee. The City Recorder is directed to file a signed copy from each Delta City employee to be placed in his/her personnel file.

Section 5. Severability. In the event that any provision of this resolution or the procedures adopted thereby, less than the entire resolution or such procedures is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

Section 6. Repeal of Conflicting Resolutions. To the extent that any ordinances, resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND APPROVED this 22nd day of January, 1996.


DON DAFOE, Mayor

Attest: 
DOROTHY JEFFERY
City Recorder

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PROCEDURES FOR A DRUG AND ALCOHOL-FREE WORKPLACE PROGRAM FOR EMPLOYEES WITH COMMERCIAL DRIVER'S LICENSES

I. STATEMENT

Delta City is committed to providing a workplace environment that ensures the safety and encourages the personal health and productivity of its employees. Delta City recognizes that substance abuse in the workplace is a threat to the safety, health, and job performance of its employees. The goals of these procedures are to implement and advance the "Drug and Alcohol-Free Workplace Program" governing Delta City employees with Commercial Driver's Licenses; to maintain a safe, productive drug and alcohol-free workplace; and to conform to Department of Transportation (DOT) requirements for employees who hold Commercial Driver's Licenses (CDL's).

The purpose of this document is to convey to Delta City employees who possess CDL's the procedures on alcohol and drug testing in the workplace. These policies and procedures are not intended to create a contract between Delta City and its employees.

II. SCOPE

All Delta City employees who possess a CDL and who operate any vehicle which meets the following criteria are covered by these procedures.

- A. The gross vehicle weight rating is over 26,000 pounds, or
- B. The vehicle holds sixteen (16) passengers, or more, including the driver; or
- C. The vehicle holds hazardous materials requiring placards.

III. DEFINITIONS

Air Blank: An Evidential Breath Testing Device (EBT) reading of ambient air containing no alcohol.

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

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

Alcohol Concentration (or content): The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.

Alcohol Use: The consumption of any beverage, mixture or preparation, including any medication, containing alcohol.

Aliquot: A portion of a specimen used for testing.

Blind Sample or Blind Performance Test Specimen: A specimen submitted to a laboratory for quality control testing purposes. The specimen is labeled with a fictitious identifier so that the laboratory cannot distinguish it from employee specimens and is spiked with known quantities of specific drugs or which is blank (containing no drugs).

Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an EBT.

Cancelled or Invalid Test: In drug testing, a test that has been declared invalid by a Medical Review Officer. A cancelled test is neither positive nor a negative test. A sample that has been rejected for testing by a laboratory is treated the same as a cancelled test. In alcohol testing, a test that is deemed to be invalid due to mechanical malfunction of the device or the BAT's failure to follow guidelines. It is neither a positive or a negative test.

Chain of Custody: Procedures to account for the integrity of each urine or blood specimen by tracking its handling and storage from point of collecting the specimen to final disposition of the specimen. In drug testing, these procedures shall require that an appropriate drug testing custody form be used from the time of collection to receipt by the laboratory. Once the specimen reaches the laboratory, an appropriate laboratory chain of custody form(s) accounts for the sample or sample aliquot within the laboratory.

Collection Container: A container into which the employee urinates to provide the urine sample used for a controlled substance test.

Collection Site: A site designated by the employer where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

Collection Site Person: A person who instructs and assists individuals at a collection site and who receives and makes a screening examination of the urine specimen provided by those individuals.

Commerce: Any trade, traffic or transportation within the jurisdiction of the United States between a place in a state and a place outside of that state, including a place outside of the United States and trade, traffic and transportation in the United States which affects any such trade, traffic, or transportation.

Commercial Motor Vehicle: A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds.
2. Has a gross vehicle weight rating of 26,001 or more pounds.
3. Is designed to transport 16 or more passengers, including the driver.
4. Is of any size and is used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act.

Confirmation Test:

1. Alcohol Testing. A second test, following a screening test with a result of 0.02 percent or greater, that provides quantitative data of alcohol concentration.
2. Controlled Substances Testing. A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

Consortium: An entity, including a group or association of employers or contractors, that provides alcohol or controlled substance testing as required by DOT alcohol or controlled substance test rules, and that acts on behalf of the employers.

DHHS: The Department of Health and Human Resource Services or any designate thereof.

DOT Agency: An agency of the United States Department of Transportation administering regulations requiring alcohol and/or controlled substance testing.

Driver: A person that operates a Commercial Motor Vehicle (CMV). This includes, but is not limited to: full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers; and independent, owner-operator contractors who are directly employed by or under lease to an employer or who operates a CMV at the direction of, or with the consent of an employer. For pre-employment or pre-duty purposes of testing, the term *driver* includes a person applying for employment to operate a CMV.

Employee: An individual designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. This includes an applicant for employment. "Employee" and "individual" or "individual to be tested" has the same meaning.

Employer: Any person who owns or leases a CMV or assigns persons to operate such a vehicle, including an employer's agent(s), officer(s), and representative(s).

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

Gas Chromatography/Mass Spectrometry (GC/MS): The only authorized confirmation method for cocaine, marijuana, opiates, amphetamines and phencyclidine.

Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer's drug-testing program who has knowledge of

substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

On-Duty Time: The entire period of time from when the driver begins work assignment, or is required to be in readiness to work, until the time he/she is relieved from work and all responsibility for performing work. This includes the time inspecting equipment, drive-time, the time in or upon a CMV except time resting in a sleeper berth, and servicing or conditioning any CMV, at any time, any 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; the time repairing, receiving assistance or remaining in attendance upon a disabled vehicle; the time spent providing a breath or urine sample including travel time to and from the collection site in order to comply with all testing requirements. The time spent performing any compensated work for any non-motor carrier entity and performing any other work in the capacity of or in the employ or service of a common contract or private motor carrier.

Performing (a safety-sensitive function): A driver is considered to be performing a safety-sensitive function during any period in which he/she is actually performing, ready to perform or immediately available to perform safety-sensitive functions.

Positive Rate: The number of positive results for random controlled substance tests conducted, plus the number of refusals of testing divided by the total number of random controlled substance tests conducted, plus the number of refusals of testing.

$$\frac{\# \text{ of random positive results} + \# \text{ of refusals of tests}}{\# \text{ of random tests conducted} + \# \text{ of refusals of tests}}$$

Refusal to Submit (to an alcohol or controlled substance test):

1. Failure to provide adequate breath for alcohol testing, without a valid medical explanation after he/she has received notice of the requirement for breath testing;
2. Failure to provide an adequate urine sample for controlled substance testing, without a genuine inability to provide a specimen (as determined by a medical evaluation);

3. Engages in conduct that clearly obstructs the testing process.

Safety-Sensitive Function: Applies to CDL drivers while inspecting equipment, driving time, the time in/or upon a CMV, at any time, loading or unloading a vehicle, supervising or assisting in the loading or unloading of a vehicle, 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. Repairing, receiving assistance or remaining in attendance upon a disabled vehicle.

Screening/Initial Test:

1. Alcohol Testing. An analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his/her system.

2. Controlled Substance Testing. An immunoassay screen to eliminate "negative" urine samples from further consideration.

Secretary: The Secretary of Transportation or the Secretary's designate.

Shipping Container: A container capable of being secured with a tamper-evident seal that is used for the transfer of one or more urine specimen bottles and associated documentation from the collection site to the laboratory.

Specimen Bottle: The bottle that, after being labeled and sealed according to procedures, is used to transmit a urine sample to the laboratory.

Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or a licensed or certified psychologist, social worker, Employee Assistance Professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

Violation Rate: The number of drivers found, during random tests, with an alcohol concentration of 0.04 percent or greater, plus the number of drivers who refuse a random test required divided by the total reported number of drivers in the industry given random alcohol

tests, plus the total number reported in the industry who refuse a random test required.

with alcohol concentration of 0.04 or greater + # who refuse the test
of total random tests given + # of total refusals

IV. FEDERAL MOTOR CARRIER SAFETY REGULATIONS

- A. The Federal Motor Carrier Safety Regulations apply to drivers required to have a Commercial Driver's License (CDL), driving a Commercial Motor Vehicle (CMV) which includes:
1. Vehicles with a gross weight rating over 26,000 pounds;
 2. Vehicles with 16 passengers including the driver; or
 3. Vehicles carrying hazardous materials requiring placards.
- B. The Federal Highway Administration (FHWA) rules specify safety-sensitive CDL drivers who operate commercial motor vehicles include:
1. Individuals operating commercial motor vehicles in interstate or intrastate commerce are subject to CDL requirements.
 2. Employers that employ himself/herself as a driver must comply with both the requirements that apply to employers and the requirements that apply to drivers. Any employer who employs himself/herself as a driver shall implement an alcohol and controlled substances testing program that includes more individuals than himself/herself as covered employees in the random testing pool.

V. SIGNS & SYMPTOMS

A. RECOGNIZING THE "AT-RISK" EMPLOYEE

In order to comply with the DOT regulations, company officials and supervisors should be capable of recognizing the "at-risk" employee, without overreacting to unfounded suspicions of drug use that would infringe on an employee's right of privacy and confidentiality. Substance abuse whether on or off the job, can impair the ability of drivers to safely operate motor vehicles and

perform other duties. It can bring harm to the user's fellow employees, employer, family and other members of society. An anti-drug program should ensure that employers, supervisors and drivers understand these implications and recognize the telltale signs of drug-use.

B. PERFORMANCE INDICATORS OF SUBSTANCE ABUSE

1. **Absenteeism:** Tardiness or excessive use of sick leave may be observed.
2. **Staff Turnover:** Chemically dependent people have disorganized lives. Many quit rather than face detection. Others transfer or are fired for poor and unsafe performance.
3. **Lower Productivity:** Studies have shown drug and alcohol affected employees perform at about two-thirds of their actual work potential.
4. **Equipment Breakdown:** Substance-abusing employees often do not adequately maintain their vehicles, because they either lose interest in their jobs or look forward to having their equipment declared out of service as a means of avoiding work..
5. **Poor Work Quality:** Shoddy work, rework and material waste may be evident. In drivers, decreased mental and physical agility and concentration caused by substance abuse could result in greater numbers of FMCSR violations, general traffic violations, increased cargo damage or passenger complaints, missed schedules, incomplete or lost shipments and more traffic accidents (both non-reportable and reportable).
6. **Poor Morale:** Chronic drug abuse often creates wide mood swings, anxiety, depression and anger. Non drug-using employees often see drug abusers as poor team workers and safety hazards.
7. **Increased Accidents and Near Misses:** Impaired employees are 3.6 times more likely to be involved in an accident. Even small quantities of drugs in the system, as well as

the hangover effect, can cause a deterioration of alertness, clear-mindedness, and reaction time.

8. **Theft of Equipment and Material:** Drugs are expensive. Cocaine costs up to \$135 per gram. One ounce of high potency marijuana costs \$85 to \$125. Coinciding with the drug abuser's need for money is the distortion of their value systems and judgement caused by the drug. These changes erode their loyalty and dedication to their employers.
9. **Additional Grievances:** Often times substance abusers project a defensive attitude. They have a tendency to file one grievance after another, possibly in an attempt to prolong their stay on the job.
10. **Additional Workers' Compensation Claims:** An accident on the job due to alcohol or use of controlled substances, usually results in workers' compensation claims causing unjustified increases in costs for the employer.

Observing these indicators may be complicated because drug and alcohol-abusing employees often develop survival skills to make recognition more difficult. Initially, these performance indicators are best addressed through the routine performance monitoring and correction processes. Typically, a supervisor may confront an employee regarding job performance. This confrontation is based on objective, documented information related to performance deterioration, not the specific signs of substance abuse.

C. BEHAVIORAL SIGNS OF SUBSTANCE ABUSE

General performance or behavior problems with an employee may indicate the involvement of drug and alcohol use. Examples of such behavior include:

1. A sudden change, usually for the worse, in attitude, work performance, or behavior.
2. A "lackadaisical" or "I don't care" attitude (often an indication of marijuana use).
3. Deteriorating or erratic performance.

4. Hangover symptoms.
5. Drug culture jargon.
6. Secretive behavior (e.g. inappropriate whispering, wearing sunglasses indoors)
7. Carelessness.
8. Changes in personal appearance and hygiene.
9. Wanting to be alone, avoiding "straight" (non substance-abusing) workers.
10. Forgetfulness, indecision and erratic judgement.
11. Impulsive and temperamental behavior.
12. Jitters, hand tremors, hyperexcitability.
13. Sleeping on the job.

Each symptom, by itself, may point to problems other than drug abuse. But, when a pattern begins to develop, the supervisor or manager needs to be alert and act quickly. When fueled by drug or alcohol abuse, these behaviors can lead to greater absenteeism, higher operating costs, serious production problems and a definite increase in accidents and health care costs.

D. PHYSICAL SYMPTOMS OF SUBSTANCE ABUSE

Observable physical signs and symptoms usually are not apparent until the employee's abuse of drugs or alcohol has reached an advanced level. At advanced stages of drug use, the employee is less able to disguise the physical indicators, and often becomes careless because of a clouded mental state. Specific signs include:

1. Blood spots on shirt-sleeves (indicating intravenous needle use)
2. Bloodshot or watery eyes (usually caused by marijuana use).
3. Changes in speech (e.g. slowed, slurred, or incoherent).

4. Hand tremors.
5. Intoxicated behavior (e.g. swaying, staggering).
6. Odor of alcohol on breath.
7. Odor of marijuana smoke.
8. Actual on-the-job, out-in-the-open drug use.
9. Poor coordination.
10. Racing heart, irregular rhythms (cocaine and amphetamines often cause the heart to react unpredictably).
11. Runny nose or sores around nostrils (caused by chronic snorting of cocaine).
12. Slow reactions.
13. Unsteady gait.
14. Very large or small pupils (Narcotics and depressants will cause the pupils to constrict. Cocaine and amphetamines will cause the pupils to dilate).

E. COMMON JOB SITES WHERE DRUGS ARE USED

Drug users tend to frequent certain job sites which either allow for privacy necessary to prevent detection or the anonymity which may be provided by the cover of a crowded area. Some common areas include:

1. Lunchroom and lounge areas.
2. Parking lots, cars and other vehicles.
3. Remote areas of the work site.
4. Equipment or storage rooms.
5. Rest rooms.

VI. PROHIBITIONS

A. ALCOHOL PROHIBITIONS

1. Alcohol Concentration 0.04 Percent or Greater. Drivers will not report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 percent or greater. No employer having actual knowledge that a driver has an alcohol concentration of 0.04 percent or greater shall permit the driver to perform or continue to perform safety-sensitive functions.
2. Alcohol Possession. Drivers will not be on duty or operate a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. Employers having actual knowledge that a driver possesses unmanifested alcohol may not permit the driver to drive or continue to drive a commercial motor vehicle.
3. On-Duty Alcohol Use. Drivers will not use alcohol while performing safety-sensitive functions. Employers having actual knowledge that a driver is using alcohol while performing safety-sensitive functions shall not permit the driver to perform or continue to perform safety-sensitive functions.
4. Pre-Duty Alcohol Use. Drivers will not perform safety-sensitive functions within four hours after using alcohol. Employers having actual knowledge that a driver has used alcohol within four hours prior to performing safety sensitive functions shall not permit a driver to perform or continue to perform safety-sensitive functions.
5. Alcohol Use Following an Accident. Drivers required to take a post-accident test will not use alcohol eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

B. CONTROLLED SUBSTANCE PROHIBITIONS

1. Controlled Substance Testing. Drivers will not be on duty or perform safety-sensitive functions, if the driver tests

positive for a controlled substance. Employer's having actual knowledge that a driver has tested positive for controlled substances shall not permit a driver to perform or continue to perform safety-sensitive functions.

2. Controlled Substance Use. Drivers will not be on duty or operate a commercial motor vehicle while consuming any controlled substance, except when the use is pursuant to a physician's instructions, who advises the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Employers having actual knowledge that a driver has used a controlled substance shall not permit the driver to perform or continue to perform safety-sensitive functions. **An employer may require the driver to inform the employer of any therapeutic drug use.**
3. Refusal To Submit. Drivers will not perform safety-sensitive functions if they refuse to submit to post-accident, random, reasonable suspicion or follow-up alcohol and controlled substance test. Employers having actual knowledge that a driver has refused to submit shall not permit the driver to perform or continue to perform safety-sensitive functions.

VII. TYPES OF TESTING

A. PRE-EMPLOYMENT TESTING

Drivers will undergo testing for controlled substances (not alcohol) prior to the first time the driver performs safety-sensitive functions for an employer.

Prior to the collection of a urine sample the applicant-drivers will be notified that the sample will be tested for the presence of controlled substances. The motor carrier will not allow a non-driver employee or applicant-driver to drive until test results are received.

1. Exceptions.
 - a. Driver has participated in a drug-testing program meeting the requirements within the previous 30 days; and

- b. while participating in that program either was tested for controlled substances within the past six months from the date of the application, or participated in the drug-testing program for the previous 12 months from the date of the application.
- c. The employer ensures that no prior employer of the driver (of whom the employer has knowledge) has records of a violation or the controlled substance use rule of another DOT agency within the previous six months.
- d. Any employer who exercises these exceptions shall contact the controlled substances testing program in which the driver participates or participated and obtain the following information:
 - (1) Name and address of the program.
 - (2) Verification that the driver participates or has participated in the program.
 - (3) Verification that the driver is qualified under the rules, including that the driver has not refused to be tested for controlled substances.
 - (4) The date the driver was last tested for controlled substances.
 - (5) The results, positive or negative, or any test taken and any violations.

The motor carrier shall retain the information required in the driver's qualification file.

A motor carrier who uses, but does not employ, such a driver more than once a year must assure itself once every six months that the driver participates in a controlled substance testing program that meets the requirements.

B. POST-ACCIDENT TESTING

Any driver involved in a reportable accident must be tested for alcohol within two hours of the accident. Any driver involved in a

reportable accident must be tested for controlled substances within eight hours of the accident.

1. Reportable Accident. When the accident involves the loss of human life or the driver receives a citation under state or local law for a moving traffic violation arising from the accident.
2. Alcohol As soon as possible, but not later than two hours after a reportable accident, the employer shall test each driver involved for alcohol. If an alcohol test is not performed within two hours, the employer shall maintain on file a record stating the reasons the test was not promptly administered. If after eight hours an alcohol test has not been performed, the employer shall cease any and all attempts to administer an alcohol test and shall prepare and maintain a record for reasons the test was not performed. These records should be submitted to Office of Motor Carrier Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, S.W., Washington, DC 205590, ATTN: Alcohol Testing Program.
3. Controlled Substances As soon as possible, but not later than 32 hours after a reportable accident, the employer shall test each driver involved for controlled substances. If a controlled substance test is not performed within 32 hours, the employer shall cease any and all attempts to administer a test and shall prepare and maintain on file a record stating the reasons the test was not administered.
4. Tests Conducted by Federal, State or Local Officials The results of a breath or blood test for the use of alcohol or a urine test for the use of controlled substances, conducted by Federal, state or local officials having independent authority for the test, shall be considered to meet the requirements of a post-accident test, provided such tests conform to applicable Federal, state or local requirements, and that the results of the tests are obtained by the employer.
5. Record of Reasons Testing was not Administered Employers shall append these records to their MIS submissions. Each record shall include the following:

- a. Type of test (reasonable suspicion/post accident).
- b. Triggering event (including date, time, and location).
- c. Reason(s) test could not be completed within eight hours;
and
- d. If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

C. RANDOM TESTING

Drivers that are required to possess a CDL must be placed in a CDL random selection pool for alcohol and drugs that are made up of individuals that possess a CDL. Drivers cannot be put in a pool with non-CDL employee's.

1. Alcohol - At a Twenty-Five Percent Level. The minimum annual percentage rate for random alcohol testing is 25 percent of the number of drivers each selection period.
2. Controlled Substances - At a Fifty Percent Level. The minimum annual percentage rate for random controlled substances testing is 50 percent of the number of drivers each selection period.

A driver will only be tested for alcohol while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions or just after the driver has ceased performing such functions.

3. Selection Under the selection process, each driver has an equal chance of being tested each time selections are made.

The selection of drivers for random alcohol and controlled substance testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers or other comparable identifying numbers.

The employer shall randomly select a sufficient number of drivers for testing during each calendar year to equal an annual

rate not less than the minimum annual percentage rate for random alcohol and controlled substances testing determined by the FHWA administrator. If the employer conducts random testing for alcohol and/or controlled substances through a consortium, the number of drivers covered by the consortium are subject to random alcohol and/or controlled substance testing at the same minimum annual percentage rate under this part or any DOT alcohol or controlled substances random testing rule.

Each employer will ensure that random alcohol and controlled substance tests conducted under this section are unannounced and that the dates for administering random alcohol and controlled substance tests are spread reasonable throughout the calendar year.

Each employer will require each driver who is notified of selection for random alcohol and/or controlled substance testing, to proceed to the test-site immediately, provided, however, that if the driver is performing a safety-sensitive function at the time of notification, the employer shall instead ensure that the driver ceases to perform the safety-sensitive function and proceed to the testing site as soon as possible.

If a given driver is subject to random alcohol or controlled substance testing under the random alcohol or controlled substance testing rules of more than one DOT agency for the same employer, the driver will be subject to random alcohol and/or controlled substance testing at the annual percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the driver's function.

If an employer is required to conduct random alcohol or controlled substance testing under the alcohol or controlled substance testing rules of more than one DOT agency, the employer may:

- a. Establish separate pools for random selection, with each pool containing the DOT-covered employees who are subject to testing at the same required minimum annual percentage rate; or
- b. Randomly select such employees for testing at the highest minimum annual percentage rate established for the calendar year by any DOT agency to which the employer is subject.

D. REASONABLE SUSPICION TESTING

An employer will require a driver to submit to an alcohol test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions.

An employer will require a driver to submit to a controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the prohibitions.

The required observation for alcohol and/or controlled substance, reasonable suspicion testing will be made by a supervisor or Company official that is trained in reaching such a determination. The person responsible for determining that reasonable suspicion exists shall not conduct the alcohol test, or drug collection of the driver.

The employer's determination that reasonable suspicion exists requiring the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations addressing the appearance, behavior, speech or body odor of the driver.

Alcohol testing is authorized only if the observations required are made during, just preceding, or just after the period of the work day that the driver is required to be in compliance. The driver may be directed by the employer to only undergo reasonable suspicion testing while the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing such functions.

If a required alcohol test is not administered within two hours following the determination, the employer will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered. If an alcohol test is not administered, and not performed within 8 hours following the determination, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

Employers who submit MIS reports will submit to the FHWA each record of a test required that is not completed within 8 hours. The employer's record of tests that could not be completed within 8 hours shall be submitted to the FHWA by March 15, for the preceding calendar year.

Each record should contain the following:

- a. Type of test (Reasonable suspicion/Post accident)
- b. Triggering event (including date, time, and location)
- c. Reason(s) test could not be completed within 8 hours; and
- d. If blood-alcohol testing could have been completed within 8 hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

These records should be submitted to the Office of Motor Carrier Standards (HCS-1), Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 205590, ATTN: Alcohol Testing Program.

Driver's will not report for duty or remain on duty requiring the performance of safety-sensitive functions while the driver is under the influence of/or impaired by alcohol, as shown by the behavioral, speech and performance indicators of alcohol misuse, nor shall an employer permit the driver to perform or continue to perform safety-sensitive functions, until:

- a. An alcohol test is administered and the driver's alcohol concentration measures less than 0.02 percent; or
- b. Twenty-four (24) hours has elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions concerning the use of alcohol.

The employer will not take any action against a driver based solely on the driver's behavior and appearance, with respect to alcohol use, in the absence of an alcohol test. This does not prohibit an employer with independent authority from taking any action otherwise consistent with law.

E. RETURN-TO-DUTY TESTING

Before a driver returns to duty, after a violation of prohibited conduct, the driver must undergo an alcohol and/or controlled substance test.

Employers will ensure that a driver can return to duty, requiring the performance of a safety-sensitive function and after engaging in conduct prohibited concerning alcohol, the driver must undergo a return-to-duty alcohol test with a alcohol concentration result of less than 0.02 percent.

Employers will ensure that prior to a driver returning to duty requiring the performance of a safety-sensitive function and after engaging in conduct prohibited concerning controlled substances, the driver shall undergo a return-to-duty controlled substance test with a verified negative result for controlled substance use.

F. FOLLOW-UP TESTING

Drivers are subject to unannounced follow-up alcohol and/or controlled substance tests after the determination is made that a driver is in need of assistance by a substance abuse professional.

Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or controlled substances, each employer will ensure that the driver is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional.

Follow-up alcohol and/or controlled substance testing will be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

A minimum of six tests will be conducted during the first 12 months after the driver has returned to work.

VIII. TESTING PROCEDURES

A. ALCOHOL SCREENING TEST

1. Purpose. DOT's rules on alcohol testing were established to detect and deter alcohol misuse in the transportation industry.
2. Screening Process. Alcohol testing is performed by Breath Alcohol Technicians (BAT) who are responsible for complying

with DOT specifications that pertain to alcohol testing. The locations for alcohol testing will be afforded visual and aural privacy. Only 1 employee may be tested at a time. The BAT is not permitted to leave the testing location while the screening test procedures are in progress.

The screening initial test measures the alcohol concentration in the breath. This relates directly to the alcohol concentration in the blood and provides an accurate determination of the quantity of alcohol reaching the brain. The device used is referred to as an Evidential Breath Tester (EBT). All EBT's are required to meet National Highway Traffic Safety Administration's (NHTSA) specifications for precision and accuracy, as mandated by DOT's alcohol test program.

Before the test can be conducted an employee is expected to show proof of identification and sign an authorization consent statement. The authorization statement includes:

"I certify that I am about to submit to breath alcohol testing by U.S. Department of transportation Regulations and that the identifying information provided on this form is true and correct."

The employee is instructed on, "How to provide a breath." Dependant upon the outcome of the test results the following will take place:

- a. Alcohol contents resulting in 0.019 or less are verified, printed and recorded on the testing form and log book by the BAT. The employee is instructed to initial the results, read and sign the certification of results statement. This statement includes:

"I certify that I have submitted to a breath-alcohol test and the results are as recorded on this form. I understand that I must not drive, perform safety-sensitive duties or operate heavy equipment if the results are 0.020 percent or greater."

- b. Alcohol contents resulting in 0.020 or greater must go through a confirmation process.

3. Confirmation Process. The confirmation or second test is necessary to confirm that the alcohol content was greater than the specified limit. A positive confirmation disallows drivers to perform safety-sensitive functions.

The BAT begins by informing the employee of a 15-30 minute waiting period before the confirmation test can be performed. This period prevents the accumulation of mouth alcohol leading to an artificially high reading.

When the screening and confirmation test results are not identical, the confirmation test result is determined as the final result upon which to seek administrative action.

4. Screening Using a Non-Federal Breath Tester. Non-evidential screening devices may be used when conducting saliva-alcohol tests. They are recognized by the National Highway Traffic Safety Administration and on its conforming products list. Non-evidential screening devices may be used in place of EBT's to perform alcohol screening tests as required by operating administration's alcohol testing regulations.

Non-evidential screening devices **may not** be used for Confirmation Alcohol tests. Only EBT's may be used to conduct Alcohol Confirmation tests.

5. Do's and Don'ts for Alcohol Testing.

- a. **Refusal.** A refusal is when an employee fails to provide a breath sample (i.e., refuses to blow into the mouthpiece), to provide an adequate breath sample (i.e., a breath that is not hard enough or long enough to register), or to sign the certificate to "submit & acknowledge" DOT's requirements section of the breath alcohol test form.

If a refusal occurs the collector is to terminate the test process, note the "refusal" in the "remarks section" of the test form and immediately notify the employer.

- b. **Incomplete Tests.** An incomplete test is when a screening or confirmation test cannot be completed or an event occurs that invalidates the test.

(1) Examples:

- (a) mouthpiece will not attach
- (b) instrument temperature reading is incorrect
- (c) device malfunctions

If an incomplete test occurs the BAT will begin a new screening or confirmation test using a different EBT, if available.

Where backup is not available, cancel the test. Annotate cancellation in the "remarks section" of the testing form, due to the device malfunctioning.

- c. **Unable to Provide an Adequate Amount of Breath.** Identified when an employee is unable, or alleges he/she is unable to provide the sufficient amount of breath required to register a valid breath test, due to a medical condition. Examples of medical conditions include: asthma, colds, lung cancer, lung problems, etc.

If inability occurs the BAT is to instruct the employee to attempt in providing an adequate breath; if the employee fails to make the attempt, notify the employer immediately. If the employee attempts and fails to provide a breath, the BAT is to annotate such in the "remarks section" of the test form and immediately inform the employer.

d. **Invalid Tests.** An alcohol test is invalid when:

- (1) The external calibration of the EBT produces a result that is not within the appropriate standard range stated by the manufacturer's Quality Assurance Plan.
- (2) The minimum 15-30 minute waiting period prior to the confirmation test was not obeyed.
- (3) An air blank of the EBT was not conducted prior to a confirmation test or the air blank does not render a reading of 0.000 prior to the test.

- (4) The form is not signed by the BAT as required.
- (5) The BAT fails to annotate in the "remarks section" of the test form that the employee failed to sign the form following the recording of, printing on or attachment to the form of the test results.
- (6) The EBT fails to print a confirmation test result.
- (7) On a confirmation test and where applicable, on a screening test, the sequential test number or the alcohol concentration reading displayed on the EBT is not the same as the sequential test number or the alcohol concentration reading on the printed result.

If an Invalid Test Occurs, the BAT is to begin, if practicable, a new screening or confirmation test using a different EBT, if available.

As applicable, use a new breath-alcohol test form with a new sequential test number (in the case of a screening test conducted on an EBT that meets the same requirements as an EBT used for a confirmation test, or in the case of a confirmation test).

B. CONTROLLED SUBSTANCE TEST

1. Purpose. The purpose of controlled substance testing is to reduce highway accidents that result from driver use of controlled substances thereby reducing fatalities, injuries and property damage. Therefore, DOT's minimum safety standard regulations were established to detect and deter the use of controlled substance in the transportation industry.

DOT agency drug-testing programs require that employers test for marijuana, cocaine, opiates, amphetamines and phencyclidine. An employer may include in their testing protocols other controlled substances or alcohol tests only pursuant to DOT agency approval.

The employer's determination that reasonable suspicion exists to require a driver to undergo a controlled substance test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odor of the

driver. The observations may include indications of chronic and/or withdrawal effects of controlled substances.

A written record is required of the observations leading to a controlled substance or reasonable suspicion test, and signed by the supervisor or Company official that noted the observations, within 24 hours of the observed behavior or before the result of the controlled substance test is released, whichever is earlier.

2. Collection Site Person. The collection site person (collector) shall have successfully completed training to carry out the functions or shall be a licensed medical professional or technician who has provided instructions for the collection process under DOT requirements.
3. Site Location. The collection site location consists of an enclosed area or "stall" to allow private urination to occur, a toilet for completion of urination, a suitable clean surface for writing, and a source of water for washing hands.
4. Test Process. The employee must provide proof-of-identification. A Control and Custody form is filled out by the collector and the employee. The employee removes excess outer-wear and bulky items from pockets and wash hands thoroughly. Upon entrance to the restroom, the collector instructs the employee to provide 45 mls of urine (into the appropriate specimen container) and return within 4 minutes of urination with the specimen. The urine is inspected for contaminants and both the collector and the employee participate in labeling and sealing the specimen. Finally, upon completion of paper work, the donor is free to leave.
5. Chain of Custody. Each time a specimen is handled, transferred or placed into shipment, all participants must be identified and the date and purpose of change recorded on the original "Custody and Control" form.
6. Ensuring Specimens Integrity and Security. If there is a lapse of time between release by the collector and pickup by the courier, it is necessary for the sealed specimen, in the sealed shipping container, to be stored in a secure location until shipping can be accomplished.

7. Do's and Don'ts for Controlled Substance Testing.

- a. **Refusal.** A refusal is when an employee fails to provide an adequate urine sample for a controlled substance test without a genuine inability to provide a specimen after he/she has received notice of the (DOT) requirements. §382.107.

If a refusal occurs, the collector is to terminate the test process, note the "refusal" in the "remarks section" of the test form and immediately notify the employer.

Failure to sign and provide donor personal information is NOT considered a "refusal" but MUST be recorded in the "remarks section."

8. Adulteration. An adulterated specimen is one that has been changed or altered or one which a donor purposely and knowingly passed a specimen that does not belong to said donor. Therefore, each specimen must be visually inspected for temperature, color, unusual odor and amount immediately after the donor surrenders the specimen.

- a. **Temperature.** A temperature reading is required within 4 minutes of urination. If the temperature is not within the range of (32°-38°C/90°-100°F), the urine temperature section on the form should be marked "NO" and the actual temperature reading shown on the container should be recorded and the donor's body temperature must be obtained from an oral thermometer. If the body temperature is within (1°C/1.8°F) of the specimen, the collector should annotate this in the "remarks section" of the custody form and continue the collection process. If the temperature is NOT within the (1°C/1.8°F) range, there is reason to believe the sample may have been adulterated or substituted.
- b. **Amount.** At least 45 mls of urine is required for the laboratory to conduct a screening test. **Essential element to meet the specified amount for a valid deposit.*

- c. **Color.** Color is checked for signs of contaminants or bluing that may have been added to alter the sample.
- d. **Odor.** If odor is detected as unusual, it is noted as a suspicion.

If adulteration occurs, the collector shall proceed with collecting the specimen and complete the test process by writing "SUSPECT" across the front of the bottle and the seal. The (collector notes the suspicion in the "remarks section") and requests a second collection to be obtained under direct observation. Both specimens are then placed in the plastic transport bag and sealed. Both specimens are placed into the same shipping box and are ready for delivering to the lab.

C. UNABLE TO YIELD A SPECIMEN

If the donor tells the collector he/she is unable to provide a specimen, the collector instructs the donor to attempt to provide the specimen. Upon return from the rest room the donor has failed to produce or provide an inadequate amount of urine, the collector:

1. Notes the inability in the "remarks section" and records each attempt and time of attempt.
2. Discards inadequate quantities of urine and the bottles/collection containers used for the void. Retains the form.
3. Donor is to drink fluids (*up to, but not more than, 24 fluid ounces*) and remain at the collection site, while consuming fluids, to prevent actions that may compromise the collection process.
4. Donor has two hours to provide another specimen. If the donor provides another specimen the collector continues the collection process using the original form, noting the new time and that a new container was used.
5. If the donor cannot provide sufficient quantity of urine after the two-hour period the testing process is discontinued and the employer notified. (*two hours is the maximum time frame permitted under DOT regulations*).

D. (DOT)/SPLIT COLLECTIONS

Employers with employees subject to drug testing under the drug-testing rules of the Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, or Federal Aviation Administration are required to use the "split sample" method of collection for those employees.

The donor is given a specimen collection cup and instructed to provide 45 mls of urine. **Essential element to meet the specified amount for a valid deposit.** The collector, in view of the donor, pours 30 mls of urine into a specimen bottle which becomes the primary container. The remaining 15 mls of urine is poured into the secondary bottle. The collector places both labeled specimen containers into a plastic transport bag, seals, signs and dates the bag. The bag containing the specimen is placed into a shipping box and sealed. The specimen is then ready to be transported to the lab.

When the primary container (A) produces a positive test result, the "split sample" method allows:

1. The employee may request a MRO to direct the split specimen from container B to be tested in a different DHHS certified lab for the presence of the drug(s) extracted from the primary container A.

IX. RESULTS

A. **CONSEQUENCES.** Violations for any of the prohibitions require the CDL driver to:

1. Be evaluated by a substance abuse professional (SAP).
2. Be advised of resources available.
3. Notified of further testing ("return to duty" and "follow-up").
4. Prohibited from driving a 10,000 GVWR vehicle.

5. Removal from safety-sensitive functions, including driving CMV's.
6. Employer's may not permit a driver to perform safety-sensitive functions knowing the driver has violated the requirements.
7. Penalties occur if violation of these requirements exist.

X. RECORDS

A. General Requirement

Employers shall maintain records of their alcohol misuse and controlled substance use prevention programs. These records are to be maintained in a secured location, with limited, controlled access.

B. Period of Retention

1. Each employer shall maintain the following records for a five-year period:
 - a. Records of driver alcohol test results with results indicating an alcohol concentration of 0.02 percent or greater.
 - b. Records of driver verified positive controlled substances test results.
 - c. Documentation of refusals to take required alcohol and/or controlled substances tests.
 - d. Calibration documentation.
 - e. Driver evaluation and referrals.
 - f. A copy of each annual calendar year summary.
2. Each employer shall maintain the following records for a two-year period:
 - a. Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing [EBT] devices.

- b. Records related to training.
- 3. Each employer shall maintain the following records for a one-year period:
 - a. Records of negative and canceled controlled substances test results.
 - b. Records of alcohol test results with a concentration of less than 0.02 percent.

C. TYPES OF RECORDS

The following specific records shall be maintained by designated collection agencies and employers:

- 1. Records related to the collection process.
- 2. Collection logbooks, if used.
- 3. Documents relating to the random selection process.
- 4. Calibration documentation for evidential breath testing devices.
- 5. Documentation for breath-alcohol technician training.
- 6. Documents generated in connection with decisions to administer reasonable suspicion alcohol or controlled substance tests.
- 7. Documents generated in connection with decisions on Post-Accident tests.
- 8. Documents verifying existence for a medical explanation of the inability of a driver to provide adequate breath or to provide a urine specimen for testing.
- 9. Consolidated annual calendar-year summaries record-related to a driver's test results.
- 10. The employer's copy of the alcohol test form, including the results of the test.

11. The employer's copy of the controlled substance test chain-of-custody and Control form.
12. Documents sent by the Medical Review Officer to the employer.
13. Documents related to the refusal of driver's to submit to an Alcohol or Controlled substance test.
14. Documents presented by a driver to dispute the result of an Alcohol or Controlled substances test administered.
15. Records related to other violations.
16. Records related to evaluations.
17. Records pertaining to a determination by a substance abuse professional concerning a driver's need for assistance.
18. Records concerning a driver's compliance with recommendations of the substance abuse professional.
19. Records related to education and training.
20. Materials on alcohol misuse and controlled substance use awareness, including a copy of the employer's policy on alcohol misuse and controlled substance use.
21. Documentation of compliance with the requirements, including the driver's signed receipt of educational materials.
22. Documentation of training provided to supervisors for the purpose of qualifying the supervisors in making a determination concerning the need for alcohol and/or controlled substance testing based on reasonable suspicion.
23. Certification that any training conducted complies with the requirement for such training.
24. Records related to drug testing.

25. Agreements with collection site facilities, laboratories, MRO's, and consortia.
26. Names and positions of officials and their roles in the employer's alcohol and controlled substance testing program(s).
27. Monthly laboratory statistical summaries of urinalysis.
28. The employer's drug-testing policy and procedures.

D. LOCATION OF RECORDS

All required records shall be maintained and shall be made available for inspection at the employer's principal place of business within two business days after a request has been placed by an authorized representative of the Federal Highway Administration.

All records are confidential and will not be shared with unauthorized personnel or individuals.

E. MANAGEMENT INFORMATION SYSTEM (MIS) - REPORTING OF RESULTS

An employer shall prepare and maintain a summary of the results of its alcohol and controlled substance testing programs performed during the previous calendar year, when requested by the Secretary of Transportation, any DOT agency or any State or local officials with regulatory authority over the employer or any of its drivers.

If an employer is notified in January for a request by the Federal Highway Administration to report the employer's annual calendar year summary information; the employer shall prepare and submit the report to the FHA by March 15 of that calendar year. The employer shall ensure that the Annual Summary Report is accurate and received by March 15 at the location that the FHA specifies in its request. The report shall be in the form and manner prescribed by the FHA in its request. When the report is submitted to the FHA by mail or electronic transmission, the information requested shall be typed, except for the signature of the certifying official. Each employer shall ensure the accuracy and timeliness of each report submitted by the employer or a consortium.

Each annual calendar year summary containing information on a verified positive controlled substance test result, an alcohol

screening test result of 0.02 percent or greater or any other violation of the alcohol misuse provisions shall include the following informational elements:

1. Number of drivers subject to these rules.
2. Number of drivers subject to testing under the Alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency.
3. Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post accident).
4. Number of positive test results verified by an MRO, by type of test and type of controlled substance.
5. Number of persons denied a position as a driver following a pre-employment verified positive controlled substance test.
6. Number of drivers with tests verified positive by an MRO for multiple controlled substances.
7. Number of drivers who refused to submit to an alcohol or controlled substance test required.
8. Number of supervisors who have received required Alcohol Training during the reporting period.
9. Number of supervisors who have received required controlled substance training during the reporting period.
10. Number of Screening Alcohol tests by, type of test.
11. Number of Confirmation Alcohol tests, by type of test.
12. Number of Confirmation Alcohol test indicating an alcohol concentration of 0.02 percent or greater but less than 0.04 percent, by type of test.
13. Number of Confirmation Alcohol tests indicating an alcohol concentration of 0.04 percent or greater, by type of test.

14. Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional) in this reporting period who previously had a verified positive controlled substance test result or engaged in prohibited alcohol misuse.
15. Number of drivers who were administered alcohol/drug tests at the same time, with both a verified positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 percent or greater.
16. Number of drivers who were found to have violated any non-testing prohibitions and any action taken in response to the violation.

Each employer's annual calendar year summary that contains only negative controlled substance test results, alcohol screening test results of less than 0.02 percent and does not contain any other violations, may prepare and submit, either a standard report form containing all the information elements or an "EZ" report form. The "EZ" report shall include the following information elements:

1. Number of drivers subject to testing.
2. Number of drivers subject to testing under the alcohol misuse or controlled substance use rules of more than one DOT agency, identified by each agency.
3. Number of urine specimens collected by type of test (e.g., pre-employment, random, reasonable suspicion, post accident).
4. Number of negative tests verified by a MRO by type of test.
5. Number of drivers who refused to submit to and alcohol or controlled substance test required.
6. Number of supervisors who have received required alcohol training during the reporting period.
7. Number of supervisors who have received required controlled substance training during the reporting period.
8. Number of screen alcohol tests by type of test.

9. Number of drivers who were returned to duty (having complied with the recommendations of a substance abuse professional) in this reporting period who previously had a verified positive controlled substance test result or who engaged in prohibited alcohol misuse.

Employers that are subject to more than one DOT agency Alcohol or controlled substance rule shall identify each driver covered by the regulations of more than one DOT agency. The identification will be by the total number of covered functions. Prior to conducting any alcohol or controlled substance tests on a driver subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

A consortium may prepare annual calendar year summaries and reports on behalf of individual employers for purposes of compliance. However, each employer shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

XI. TRAINING

A. EMPLOYEES

Each employer shall provide educational materials that explain the requirements and the employer's policies and procedures with respect to meeting these requirements.

The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substance testing and to each driver subsequently hired or transferred into a position requiring driving a CMV's.

Each motor carrier shall provide written notice to representatives of employee organizations of the availability of this information.

The materials made available to drivers shall include detailed discussion of at least the following:

1. The identity of the person designated by the employer to answer driver questions about the materials.

2. The categories of drivers who are subject to the provisions.
3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance.
4. Specific information concerning driver conduct that is prohibited.
5. The circumstances under which a driver will be tested for alcohol and/or controlled substances.
6. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver.
7. An explanation of what constitutes a refusal to submit to an alcohol or controlled substance test and the attendant consequences.
8. the consequences for drivers found to have violated the prohibitions, including the requirement that the driver be removed immediately from safety-sensitive functions and the procedures for referral, evaluation and treatment.
9. The consequences for drivers found to have an alcohol concentration of 0.02 percent or greater but less than 0.04 percent.
10. Information concerning the effects of alcohol and controlled substance use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substance problem (driver's or co-worker's); and available methods of intervening when an alcohol or a controlled substance problem is suspected, including confrontation, referral to any Employee Assistance Program and/or referral to management.

The materials supplied to drivers may also include information on additional employer policies with respect to the use or

possession of alcohol or controlled substance, including consequences for a driver found to have a specified alcohol or controlled substance level, that are based on the employer's authority independent of these rules. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

11. Certificate of Receipt. Employer's shall ensure that each driver is required to sign a statement certifying that he/she has received a copy of these materials. Each employer shall maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

B. SUPERVISORS

Each employer shall ensure that persons designated to determine whether Reasonable Suspicion exists to require a driver to undergo testing, receive at least 60 minutes of training on Alcohol Misuse and receive at least an additional 60 minutes of training on controlled substance use. The training shall cover the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of controlled substance.

XII. TREATMENT

A. REFERRAL, EVALUATION AND TREATMENT

Each driver that has engaged in conduct shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substance, including the names, addresses and telephone numbers of substance abuse professionals and counselling and treatment programs.

Each driver that engages in conduct shall be evaluated by a substance abuse professional who shall determine type of assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance use.

Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in conduct, he/she shall undergo a return-to-duty Alcohol test with a result indication an

alcohol concentration of less than 0.02 percent if the conduct involved alcohol, or controlled substance test with a verified negative result if the conduct involved a controlled substance.

Each employee needing assistance in resolving problems associated with Alcohol Misuse or Controlled substance use, shall be evaluated by a substance abuse professional to determine that the driver has properly followed any rehabilitation program prescribed, and shall be subject to unannounced follow-up alcohol and controlled substance tests administered by the employer following the driver's return-to-duty. The number and frequency of such follow-up testing shall be as directed by the substance abuse professional of at least six tests in the first 12 months following the driver's return-to-duty. The employer may direct the driver to undergo return-to-duty and follow-up testing for both alcohol and controlled substance, if the substance abuse professional determines that return-to-duty and follow-up testing for both alcohol and controlled substance is necessary for that particular driver. Follow-up testing shall not exceed 60 months from the date of the driver's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

XIII. CHARTS

See attached Medical Review Officer Review and Action for Positive Urinalysis Results.

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MEDICAL REVIEW OFFICER REVIEW AND ACTION FOR POSITIVE URINALYSIS RESULTS

(Taken from U.S. Department of Transportation *Guidelines for Implementing the FHWA Anti-Drug Program*)

