

**SUBSTANCE ABUSE POLICY FOR  
COMMERCIAL MOTOR VEHICLE DRIVERS<sup>1</sup>  
FOR USE WITH DRIVERS BASED IN ALASKA<sup>2</sup>**

**1.0 STATEMENT OF PURPOSE AND SCOPE OF POLICY**

- 1.1 **Colville**, (“Company”) has vital interests in ensuring a safe, healthy and efficient working environment for our employees and in preventing accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by drivers of commercial motor vehicles. The unlawful or improper presence or use of controlled substances or alcohol in the workplace presents a danger to everyone. For these reasons, and as required by the drug and alcohol testing regulations of the Federal Motor Carrier Safety Administration ("FMCSA"), the Company has established this substance abuse policy. Drug and alcohol testing is an integral part of our program. Compliance with this policy is required as a condition of employment and also as a condition of continued employment.
- 1.2 Any driver (as defined in Appendix A – page 24 of this policy) who operates a “commercial motor vehicle” (as defined in Appendix A – page 22 of this policy) for or on behalf of the Company who is required to have a commercial driver's license (“CDL”) in order to operate that vehicle is required to comply with the FMCSA's drug and alcohol rules and the provisions of this policy (“CMV driver position”). This policy also applies to supervisors of CMV drivers who actually drive or may be required to drive a commercial motor vehicle. Additionally, all applicants who seek employment as a CMV driver are covered by this policy and by the FMCSA's drug and alcohol rules.

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<sup>1</sup> NOTE: The “Designated Employer Representative’s Copy” of the policy contains the identical policy provisions provided in the copy of the policy which is distributed to drivers. The Designated Employer Representative’s copy includes, however, explanatory footnotes which are intended solely to further explain a policy provision and provide guidance to the Program Manager and others in management to assist in the policy’s implementation or administration. The footnotes do not and are not intended to change, expand, or alter in any other way the substantive terms and conditions of the policy which drivers receive.

<sup>2</sup> DOT’s drug and alcohol testing regulations preempt state and local testing laws which directly conflict with the federal requirements, i.e. when compliance with the state or local requirement would prevent the carrier’s compliance with DOT’s requirement. In some instances, therefore, a particular state or local testing requirement may apply in addition to the federal requirements, e.g., mandatory state or local laws concerning an employer’s right to terminate an employee who tests positive or governing the employer’s obligation to pay for tests and test-related expenses. Instances where a specific state or local law affects this policy are indicated by an explanatory footnote.

- 1.3 This policy explains the FMCSA's drug and alcohol regulations and the Company's own policies with respect to drivers of commercial motor vehicles who use controlled substances or misuse alcohol. Provisions of this policy which are imposed under the Company's independent authority are specifically noted by underline.
- 1.4 This policy represents management guidelines only and should not be interpreted as a contract of employment. Noncompliance with this policy will result in disciplinary action, up to and including immediate termination. In the case of an applicant, noncompliance will result in an applicant being ineligible for employment with the Company.
- 1.5 Consistent with its fair employment policy, the Company maintains a policy of non-discrimination and will endeavor to make reasonable accommodations to assist recovering addicts or alcoholics and those having a medical history reflecting treatment for substance abuse conditions. We encourage employees to seek assistance before drug and alcohol use renders them unable to perform their essential job functions or jeopardizes the health and safety of themselves or others.
- 1.6 This policy was designed to protect an individual's privacy, to ensure the integrity and reliability of testing procedures and to protect the confidentiality of individual test results and medical histories. Any questions regarding the meaning or application of this policy should be directed to the Designated Employer Representative:
- Colville /DOT  
Anchorage, AK 99501  
(907)334-9972
- 1.7 The Designated Employer Representative has distributed a copy of this policy to each driver covered by this policy and will ensure that it is distributed to each driver subsequently hired or transferred to a CMV driver position.

## 2.0 PROHIBITED CONDUCT

### 2.1 Prohibited Conduct Concerning Driver's Use of Drugs and Alcohol:

- a. Drivers are prohibited from reporting for duty, or remaining on duty when using any drugs, except when the use is pursuant to the instructions of a licensed medical practitioner (as defined in Appendix A – page 24 of this policy) who has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.
- b. Drivers are prohibited from reporting for duty or remaining on duty with an alcohol concentration of 0.04 or greater. Driver found to have an alcohol concentration of 0.02 or greater, but less than 0.04, are prohibited from performing any safety-sensitive functions for at least 24 hours from the test.
- c. Drivers are prohibited from using alcohol in any form (including medications containing alcohol) while performing safety-sensitive functions (refer to Appendix A – page 25 of this policy for the definition of performing safety-sensitive functions).
- d. Drivers are prohibited from performing safety-sensitive functions within four (4) hours after using alcohol. On-call employees who are not at work, but could be called to drive or perform other safety-sensitive functions, are subject to this pre-duty alcohol prohibition. This means a driver who is on-call must decline a call to work if his or her acceptance would require the employee to drive or perform other safety-sensitive functions within four (4) hours after consuming alcohol. Under the Company's independent authority, an on-call driver who is required to decline work because of his/her violation of the four-hour rule is subject to discipline up to and including termination.
- e. Drivers are prohibited from using alcohol for eight (8) hours following an accident, or until the driver takes a post-accident alcohol test, whichever occurs first.
- f. Drivers may not refuse to submit to any drug or alcohol test required under the FMCSA's drug and alcohol rules and/or this policy.
- g. Drivers are prohibited from performing or continuing to perform a safety-sensitive function if they have tested positive for controlled substances or alcohol.
- h. Under the Company's independent authority, drivers may not refuse to submit to any inspection required under Section 10.0 of this policy.

- i. Under the Company's independent authority, drivers are prohibited from engaging in the unlawful or unauthorized manufacture, distribution, dispensation, sale, purchase, solicitation, transfer, possession, use or transport of controlled substances or alcohol, while on Company paid time, on Company premises, in Company vehicles, or while engaged in Company activities. This prohibition does not include the authorized distribution, dispensation, sale, purchase, solicitation, transfer, possession, use or transport of alcoholic beverages in connection with Company-sponsored functions or events.
- j. Under the Company's independent authority, drivers are prohibited from failing to stay in contact with the Company or its medical review officer while awaiting the results of a drug test.

2.2 **Consumption of Food or Food-Products Containing Hemp:** The consumption of food and food-products containing hemp (*e.g.*, “Seedy Sweeties” and hemp oil) may cause a driver to test positive. A test result that is positive as a result of a driver's consumption of food or food-products containing hemp will be reported as a positive test and subject the driver to discipline, up to and including termination. (Refer to Section 6.3.)

2.3 **Prohibition On Supervisor Or Manager Permitting A Driver To Work:** Any supervisor or manager who has actual knowledge that a driver has engaged or is engaging in conduct prohibited above, shall not permit the driver to perform or continue to perform any safety-sensitive function.

2.4 **Prohibition Against Working While Using Any Medication Which Affect Safety Or Performance:**

2.41 Except as otherwise provided in this section, use of any medication (therapeutic drugs) while engaged in Company activities is prohibited to the extent such use may affect the driver's ability to perform his/her job duties safely.

2.42 A driver using any medication that contains alcohol or a controlled substance has an obligation to inquire and determine whether the substance the driver is taking may affect the driver's ability to perform his/her job duties safely.

2.43 If the driver is or will be using any such medication, the driver is required to obtain from the driver's licensed medical practitioner a written statement which provides that the medication will not interfere with the driver's ability to safely and efficiently perform the driver's job duties or provides any work restrictions.

- 2.44 Any such information must be reported to the driver's immediate supervisor prior to commencing any safety-sensitive functions, without disclosing the identity of the substance. Drivers using such a medication must have the medication in its original container which identifies the medication dosage and other pertinent information which may be reviewed by the Company's MRO.
- 2.45 A driver may continue to work, if the Company's MRO and the licensed medical practitioner have determined that the medication will not adversely affect the driver's ability to safely and efficiently perform the driver's safety-sensitive functions or determined that a reasonable accommodation can be made. A driver may not be permitted to perform his or her safety-sensitive functions unless such a determination or reasonable accommodation has been made.

### **3.0 REQUIRED TESTS AND PAST TEST RESULTS INFORMATION**

As required by the FMCSA's regulations, the Company will conduct drug and alcohol tests under the conditions and circumstances described below.

#### **3.1 Pre-Employment Drug Testing and Past Test Results Information:**

- 3.11 All applicants who have received a conditional offer of employment in a CMV driver position, and all existing employees whose transfer to a CMV position has been conditionally approved, are required to submit to a pre-employment drug test and must receive a negative test result as a condition of employment. Such tests will be conducted prior to the time the applicant is hired or transferred.
- 3.12 In addition to a pre-employment drug test, FMCSA's regulations require the Company to obtain information concerning an applicant's past drug and alcohol tests from all of the motor carriers for which the applicant worked during the two years preceding the date of the application. As a condition of employment with the Company, applicants for CMV driver positions are required to complete and sign the Company's "Applicant's Authorization to Obtain Past Drug and Alcohol Test Results" form, which authorizes the applicant's former motor carrier employers during the preceding two years (from the date of application) to release to the Company information concerning the applicant's: (i) alcohol test results of 0.04 or greater; (ii) verified positive drug test results; (iii) refusals to be drug or alcohol tested (including verified adulterated or substituted drug test results); and (iv) other violations of DOT drug and alcohol testing regulations. This information will be obtained in a confidential manner. The Company will maintain a written confidential record with respect to each former employer contacted. The information from a previous employer may contain any

alcohol and drug information the previous employer obtained from other previous employers after January 1, 1995.<sup>3</sup>

- 3.13 If the Company learns from the driver's previous employers that the driver violated a DOT drug and alcohol regulation, the driver either will be ineligible for employment with the Company, or if hired, the driver's employment will be terminated, unless the Company obtains evidence that the driver has successfully completed DOT's return-to-duty requirements.

### 3.2 **Post-Accident Drug And Alcohol Testing:**

- 3.21 A driver who is performing safety-sensitive functions (as defined in Appendix A – page 25 of this policy) involving a commercial motor vehicle is required to submit to a post-accident drug and/or alcohol test as soon as practicable following the accident<sup>4</sup>, under the following circumstances described in subparagraphs a. and b. below<sup>5</sup>:
- a. A driver who is involved in an accident which results in a death to another human being must always submit to a drug and alcohol test.
  - b. A driver who is involved in a non-fatal accident must submit to a post-accident drug and alcohol test if the driver was given a citation for a moving traffic violation arising from the accident **and** the accident results in either: (i) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of accident; or (ii) one or more of the vehicles involved in the accident incurs disabling damage (as defined in

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<sup>3</sup> FMCSA's regulations also permit the information to be provided directly to the Company by the driver. In such cases, the Company will verify that the information is true and accurate. FMCSA's regulations further require that, if feasible, the required information must be obtained and reviewed by the Company prior to the first time a driver performs safety-sensitive functions for the Company. If not feasible, the information must be obtained and reviewed as soon as possible, but no later than 30 calendar days after the first time a driver performs safety-sensitive functions for the Company. The Company will make a good faith effort to obtain the above information. If after 30 days, the information is not available, the Company will use or continue to use the driver. If the driver stops performing safety-sensitive functions before the expiration of the 30-day period, or before the Company has obtained the above information, the Company must still make a good faith effort to obtain the information.

<sup>4</sup> FMCSA's regulations require post-accident drug tests to be conducted within 32 hours of the accident and post-accident alcohol tests to be conducted within 8 hours of the accident. If an alcohol test is not conducted within 2 hours of the accident, FMCSA's regulations require the Company to document the reasons for the failure to test. Fill out Part I of the Company's "Failure to Conduct Alcohol Test" form in this circumstance, and Part II of the same report if an alcohol test is not conducted within 8 hours of the accident. Similar documentation is required if drug testing is not conducted within the required 32 hours.

<sup>5</sup> FMCSA's regulations do not require a driver to submit to a post-accident test if the occurrence involved only boarding or alighting from a stationary vehicle or the loading or unloading of cargo.

Appendix A – page 23 of the policy), requiring the vehicle(s) to be transported away from the scene by a tow truck or other vehicle.

- 3.22 In the event of an accident, the driver must notify the Designated Employer Representative as soon as possible to obtain information on how to proceed with the required testing. Drivers are obligated to follow the Designated Employer Representative's instructions and to submit to post-accident drug and alcohol tests, as directed.
- 3.23 When required, both alcohol and drug testing must be performed as soon as possible after the accident, but no later than 8 and 32 hours respectively. If alcohol testing is not completed within 2 hours, the Company will document the reasons for this failure. If alcohol testing is not completed within 8 hours, the Company will cease efforts to conduct the test and document the reasons for this failure.
- 3.24 A driver who is subject to post-accident testing must remain readily available for such testing or else will be deemed to have refused to submit to such testing. However, this "readily available" requirement does not require the delay of necessary medical attention for injured people, or prohibit a driver from leaving the scene of the accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
- 3.24 Under the Company's independent authority, a driver who is required to submit to a post-accident test will be suspended after completion of the drug and/or alcohol tests. If the test results are negative, the driver will be compensated for all time lost from work which is directly attributable to the taking of the tests.<sup>6</sup> The Company also reserves the right to evaluate the conduct of the driver which may have caused or contributed to the accident, to determine if this conduct in and of itself should warrant discipline, up to and including termination.

### 3.3 Random Drug And Alcohol Testing:

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<sup>6</sup> Supervisors of drivers who are "exempt employees" under the federal wage and hour law may not be suspended without pay during the middle of their workweek, or for periods of less than one week. By comparison, non-supervisory drivers can be suspended for shorter periods, *e.g.*, pending the test results. The importance of this distinction cannot be stressed enough, as some courts have held that improper payroll deductions from exempt employees not only can invalidate that employee's exempt status but the exempt status of all other exempt employees in the same job classification. If the Company's workweek for payroll purposes is Monday to Sunday, therefore, a supervisor who has to submit to a test on Wednesday could not be suspended without pay on Thursday and Friday of that week, but must instead be paid through Sunday of that workweek. The supervisor could be suspended without pay for the entire following workweek, however. Because of this difference in treatment required between exempt and non-exempt employees, and to avoid any possible confusion or misunderstanding of the policy, the duration of a suspension is intentionally not specified in the policy itself.

- 3.31 Each year the Company will administer random alcohol and drug tests. Random *drug* tests may be conducted at any time. Random *alcohol* tests will only be conducted while a driver is performing safety-sensitive functions, just before the driver performs safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.
- 3.32 The minimum number of random *drug tests* the Company will conduct is equal to 50 percent of the average number of driver positions. The minimum number of random *alcohol tests* the Company will conduct is equal to 10 percent of the average number of driver positions. These rates may be increased or decreased as required by the FMCSA's drug and alcohol regulations.
- 3.33 The Company shall select drivers for testing using a random number table or a computer-based random number generator that is matched with the drivers' social security numbers, or other comparable identification numbers which will ensure that each driver has an equal chance of being tested each time selections are made.
- 3.34 All random tests will be unannounced and the dates for administering the tests will be spread reasonably throughout the calendar year. The dates of random testing, locations and names of those to be tested are kept in the strictest confidence by the Designated Employer Representative.
- 3.35 Each driver who is notified of selection for random drug or alcohol testing must proceed to the test site immediately. If the driver is performing a safety-sensitive function (other than driving a commercial motor vehicle) at the time of notification, the driver must cease performing the safety-sensitive function and proceed to the test site as soon as possible. Failure to appear for any test within a reasonable time of being directed to do so will be considered as a refusal to test.

3.4 **Reasonable Suspicion Drug and/or Alcohol Testing:**

- 3.41 A driver must submit to a reasonable suspicion drug and/or alcohol test whenever a manager or supervisor has reasonable suspicion to believe that the driver has violated the drug or alcohol prohibitions contained in this policy. Reasonable suspicion drug tests may be conducted at any time. Reasonable suspicion alcohol tests may be conducted only while the driver performing safety-sensitive functions, just before the driver performs safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.<sup>7</sup>

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<sup>7</sup> FMCSA's regulations require reasonable suspicion alcohol tests to be conducted within 8 hours of the determination to test. If an alcohol test is not conducted within 2 hours of the determination to test, FMCSA's



- 3.42 Reasonable suspicion determinations will be based on specific, contemporaneous, articulable observations concerning the driver, including but not limited to, the driver's appearance, behavior, speech, or body odors. For drug testing, the observations may also include indications of the chronic and withdrawal effects of drugs.
- 3.43 Documentation of the observations leading to a reasonable suspicion test will be prepared and signed by the supervisor or manager who made the observations. All supervisors or managers who will make a reasonable suspicion determination have received training on alcohol misuse and controlled substances use in accordance with the FMCSA's regulations. The supervisor or manager who makes a reasonable suspicion determination will not conduct the drug or alcohol test.
- 3.44 A driver who is directed to take a reasonable suspicion drug and/or alcohol testing must submit to the test as directed. The Company shall transport or ensure transport of the driver both to and from the collection site.
- 3.45 In the event an alcohol test has not been conducted as required by FMCSA but the Company has reason to believe a driver is under the influence of or impaired by alcohol (as shown by the driver's behavior, speech or performance), the driver is prohibited from reporting for duty or remaining on duty requiring the performance of any safety-sensitive functions until an alcohol test can be administered and the result is below 0.02 or 24 hours have elapsed since the reasonable suspicion determination, whichever first occurs.
- 3.46 Under the Company's independent authority, a driver who is requested to submit to a reasonable suspicion drug and/or alcohol test will be suspended after the completion of the tests.<sup>8</sup> If the test results are negative, the driver will be compensated for all time lost from work which is directly attributable to the request to take the tests. The Company also reserves the right to evaluate the conduct of the driver which warranted the reasonable suspicion drug or alcohol tests to determine if the conduct in and of itself should warrant discipline, up to and including termination.

### 3.5 **Return-To-Duty Drug Or Alcohol Testing:**

- 3.51 FMCSA's regulations prohibit drivers who have engaged in conduct prohibited by the FMCSA's drug and alcohol regulations from performing

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regulations require the Company to document the reasons for the failure to test. Fill out Part I of the Company's "Failure to Conduct Alcohol Test" form in this circumstance, and Part II of the same report if an alcohol test is not conducted within 8 hours of the determination.

<sup>8</sup>See footnote 6 regarding suspension of supervisors.

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safety-sensitive functions until they have fulfilled the DOT's requirements for return to duty, including:

- a. Initial evaluation by a Substance Abuse Professional to determine the level of assistance needed to address the employee's drug and/or alcohol problems;
- b. Initiation of the education and/or treatment plan prescribed by the SAP; and
- c. Follow-up evaluation by the SAP to determine whether the employee has successfully complied with the prescribed education and/or treatment plan.

3.52 Drivers who have fulfilled the above requirements for return to duty must also submit to a return-to-duty drug and/or alcohol test and receive negative results prior to returning to safety-sensitive duties.

3.53 Under the Company's independent authority, drivers who engage in conduct prohibited by FMCSA's regulations or this policy will not be permitted to return to duty until they comply with the company's terms and conditions.

#### **3.6 Follow-Up Drug and/or Alcohol Testing:**

3.61 Drivers who have fulfilled the DOT's requirements for return to duty are required to submit to unannounced follow-up drug and/or alcohol tests after returning to duty, as directed by the SAP's follow-up evaluation report.

3.62 A minimum of six follow-up drug and/or alcohol tests must be conducted during the first twelve months following the driver's return to duty. Testing may continue for up to a total of 60 months to be determined by the SAP.

3.63 Under the Company's independent authority, drivers who engage in conduct prohibited by FMCSA's regulations or this policy will not be permitted to return to duty until they execute the Company's "Agreement for Evaluation and Conditions for Continued Employment" and comply with its terms and conditions, which include submitting to any follow-up tests which may be directed by a substance abuse professional and receiving negative test results.

#### **4.0 SELF-IDENTIFICATION OF SUBSTANCE ABUSE PROBLEM**

4.1 Under the Company's independent authority, a driver who voluntarily self-identifies himself or herself as having a drug or alcohol problem and requests

assistance for such a problem will be referred to the Company's EAP for referral to a substance abuse professional for an evaluation and, if recommended, an appropriate counseling, treatment or rehabilitation program. The cost of the counseling, treatment or rehabilitation is the driver's responsibility. (See the Company's policies regarding leaves of absences and benefit entitlement for further details).

- 4.2 **This request must be made before the driver is directed or otherwise required to submit to a drug or alcohol test required by DOT or this policy. Under these circumstances, the Company will take no adverse action against the employee.**
- 4.3 If the substance abuse professional determines that the driver is able to perform non-safety-sensitive functions while participating in such program, the Company will attempt to reassign the driver to another available position which does not require the performance of safety-sensitive functions and for which the driver is also qualified. The driver will receive the rate of pay for the position to which he or she has been reassigned.
- 4.4 Before the driver will be permitted to return to his/her driving duties or perform other safety-sensitive functions, the driver will be required to submit to drug and/or alcohol tests and must receive negative results. In accordance with applicable state or local law, the driver may also be required to submit to follow-up drug and/or alcohol tests. Return-to-duty and follow-up tests performed under this section of the policy will be conducted in accordance with applicable state or local law, if any. Where there is no applicable state or local law, or where such laws do not provide specific detailed procedures governing such testing, the Company will follow the Federal Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, as amended.

## **5.0 DRUG AND ALCOHOL TESTING PROCEDURES**

As required by the FMCSA's rules, the Company's drug and alcohol testing procedures comply with the Federal Procedures For Transportation Workplace Drug and Alcohol Testing Programs, 49 CFR Part 40, as amended. (A copy may be obtained from the Designated Employer Representative). These procedures ensure the integrity, confidentiality and reliability of the testing processes, safeguard the validity of the test results and ensure that these results are attributed to the correct driver. Further, these procedures minimize the impact upon the privacy and dignity of persons undergoing such tests to every extent feasible.

### **5.1 Drug Testing Procedures:**

- 5.11 **Drugs being tested for:** The drugs specifically being tested for include: marijuana, opiates, amphetamines, cocaine, and phencyclidine (PCP) and their metabolites.

5.12 **Custody and control form and laboratory:** For purposes of conducting drug tests, the Company has established a procedure for the collection and analysis of urine specimens, using the Federal Drug Testing Custody and Control Form (“CCF”), that will verify the identity of each specimen and test result. All drug tests conducted pursuant to this policy shall be performed by laboratories which are certified by the Department of Health and Human Services (“DHHS”).

5.13 **Confirmation and review of drug test results:**

- a. All positive drug test results will be confirmed by gas chromatography and mass spectrometry (GC/MS). All confirmed positive drug test results will be reviewed by a medical review officer ("MRO") to determine whether there is any legitimate medical explanation for the confirmed positive, adulterated, substituted or invalid test result. This review may include a medical interview, review of the applicant's or driver's medical history, or review of any other relevant biomedical factors and all medical records made available by the tested individuals.
- b. Individuals testing positive will be given the opportunity to discuss with the MRO any legitimate explanation for the positive test result. If, after speaking with the driver, the MRO determines that there is a legitimate medical explanation for the confirmed positive test result, the MRO will report the test result as “negative” to the Designated Employer Representative or his/her alternate. If the MRO determines that there is no legitimate explanation for the confirmed positive test result, the result will be verified as a positive test result by the MRO.
- c. Under the circumstances set forth in 49 CFR Part 40, the MRO is permitted to verify a test result as positive without having first communicated directly with the driver. In the event that serious illness, injury or other unavoidable circumstances prevented the driver from being contacted by the MRO or a designed Company representative, however, the MRO may reopen the verification process to permit the driver to provide information concerning a legitimate explanation for the positive test.

5.14 **Right to have split specimen analyzed:** All applicants and drivers have the right to request, within 72 hours of being notified by the MRO of a verified positive test result, that the split specimen be analyzed in a different DHHS certified laboratory, selected by the employee, for the presence of

the drug(s) for which a positive result was obtained or for reconfirmation of an adulterated, substituted or invalid test result.

- a. If the split specimen reconfirms the presence of the drug(s) or drug metabolite(s) or the adulteration, substitution or invalid finding, the MRO will notify the Designated Employer Representative or his/her alternate and the tested individual of the test results.
- b. If the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation and the reasons for it to the Designated Employer Representative or his/her alternate and the tested individual. When this occurs, another specimen must be collected immediately under direct observation.
- c. If the split specimen fails to reconfirm the presence of the drug(s) found in the primary specimen or the adulteration, substitution or invalid finding, the MRO shall cancel the test and report the cancellation and the reasons for it to the Designated Employer Representative or his/her alternate, the tested individual, and the DOT's Office of Drug and Alcohol Program Compliance.

5.15 **Inability to provide adequate amount of urine specimen:** Applicants and drivers must provide at least 45 milliliters of urine for a drug test. If the tested individual is unable to provide such a quantity of urine, then the tested individual will be instructed to drink up to 40 oz of fluids and after a period of time, again attempt to provide a complete specimen. If an applicant refuses to provide a new urine specimen, this will constitute a refusal to submit to a test and the applicant will be ineligible for employment with the Company. If a driver refuses to provide a new urine specimen, this will constitute a refusal to submit to testing and the driver's employment will be terminated. If a driver has not provided a sufficient specimen within 3 hours after the first unsuccessful attempt to provide the specimen, the Company will direct the driver to obtain as soon as possible, a medical evaluation from a physician selected by the Company. If the physician determines that there is no legitimate medical explanation for the driver's failure to provide an adequate amount of urine, this will constitute a refusal to submit to a test and the driver's employment will be terminated.

5.16 **Dilute urine specimens:** The Company will require prompt re-collection in the case of negative dilute results for pre-employment and reasonable suspicion tests, as permitted under 49 CFR 40.197.

5.17 **Altered or substituted urine specimens:** Procedures for collecting urine specimens allow individual privacy unless there is a reason to believe that a particular individual has altered or attempted to alter or substitute the specimen as defined in the Federal Procedures for Transportation Workplace Drug Testing Programs, 49 CFR Part 40. In such cases, a specimen may be obtained under the direct observation of a same gender collection site person in accordance with such procedures.

## 5.2 **Alcohol Testing Procedures:**

5.21 **How test will be performed:** Alcohol screening tests will be performed by a screening test technician ("STT") using a non-evidential screening device, or by a breath alcohol technician ("BAT") using an evidential breath testing device ("EBT"). The Company has a quality assurance plan for each non-evidential alcohol screening device and EBT it uses. In addition, the Company ensures that the STTs are proficient in the operation of non-evidential screening devices and that the BATs are proficient in the operation of EBTs. Further, the Company uses non-evidential alcohol screening devices that are on the National Highway Traffic Safety Administration's ("NHTSA") Conforming Products List ("CPL") for non-evidential screening devices and EBTs which are on NHTSA's CPL for evidential breath measurement devices.

5.22 **Confirmation of alcohol test results:** In accordance with 49 CFR 40.251 if the result of the screening test is an alcohol concentration of 0.02 or greater, a confirmation test will be performed using an EBT. A waiting period of at least 15 minutes from the completion of the screening test must be observed. The confirmation test then will be conducted within 30 minutes from the end of the waiting period. The confirmation test result is the final result upon which any discipline or other action taken under the Company's policy shall be based.

### 5.23 **Inability to provide adequate amount of sample for alcohol testing:**

- a. If a driver fails to provide or claims that he or she is unable to provide a sufficient amount of breath sample to permit a valid breath test for whatever reason, including a medical condition, the Company will follow the guidelines found in 49 CFR 40.265. The DER will be notified immediately in the event an individual is not able to produce a sufficient breath sample.
- b. If the driver is unable to provide sufficient saliva to complete a test on a saliva screening device, the STT shall conduct a new test, using a new device. If the driver refuses to complete the new test, this will constitute a refusal to submit to a test and the DER will be

notified immediately. If the new test is completed, but there is an insufficient amount of saliva to activate the device, the driver shall immediately take an alcohol test using an EBT. If the driver refuses to submit to the test using an EBT, the DER will be notified immediately.

## **6.0 CONSEQUENCES FOR POLICY VIOLATIONS**

The consequences discussed below apply to applicants and drivers who are found to have violated this policy. Regardless of the discipline imposed, however, FMCSA's regulations require drivers who engage in any prohibited conduct under this policy to be advised of available resources for evaluating and resolving problems associated with drug use and alcohol misuse, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. This information will be provided through the Company's Human Resource Department.

- 6.1 **Automatic Removal From Safety-Sensitive Functions:** FMCSA's regulations require drivers who violate this policy in any way to be immediately removed from their safety-sensitive functions. Such drivers are prohibited from performing, or being permitted to perform, a safety-sensitive function.
- 6.2 **Refusal To Submit:**
- 6.21 Under the Company's independent authority, the employment of any driver who refuses to submit to a test will be terminated. Applicants who refuse to submit to a test will be ineligible for employment with the Company.
- 6.22 For purposes of this policy, the following conduct will be considered as a refusal to submit to a test:
- (i) Failure to appear for any test (except a pre-employment test) within a reasonable time after being directed to do so by the Company.
  - (ii) Failure to remain at the testing site until the testing process is complete.
  - (iii) Failure to provide a urine specimen for any drug test required by DOT agency regulations.
  - (iv) Failure to permit the observation or monitoring of the provision of a specimen, when required to do so by DOT regulations.
  - (v) Failure to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.

- (vi) Failure to take a second test the employer or collector has directed the driver to take.
- (vii) Failure to undergo a medical examination or evaluation, when directed to do so by the MRO as part of the verification process, or when directed by the Company.
- (viii) Failure to cooperate with any part of the testing process.
- (ix) Having a verified adulterated or substituted test result as reported by the MRO.

**6.3 Positive Test Results:**

6.31 **Applicants:** Under the Company's independent authority, all applicants who receive a verified positive drug test result will be ineligible for employment with the Company.

6.32 **Drivers:**

- a. **Temporary suspension:** Under the Company's independent authority, any driver who is required to submit to a reasonable suspicion or post-accident drug or alcohol test pursuant to this policy will be temporarily suspended.<sup>9</sup> If the verified test results or split specimen test results are negative, the driver will receive backpay for the period of suspension.
- b. **Verified positive drug test and alcohol test results of 0.04 or greater:** Under the Company's independent authority, any driver who receives a verified positive drug test or an alcohol test result of 0.04 or greater for the first time will be suspended without pay and may be subject to further discipline, up to and including termination.<sup>10</sup> However, the driver's employment will not be terminated unless:
  - (1) The Company has first given the driver an "Agreement For Evaluation And Conditions For Continued Employment" ("Agreement for Evaluation"), which provides the employee with the opportunity to participate in (at the driver's own expense or pursuant to coverage under an employee benefit plan), a drug or alcohol evaluation, counseling, treatment or rehabilitation program, whichever is determined to be more

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<sup>9</sup> See footnote 6 regarding suspension of supervisors.

<sup>10</sup> See footnote 6 regarding suspension of supervisors.



appropriate by the substance abuse professional who evaluates the driver; **and**

- (2) The driver: (i) refuses or fails to be evaluated by a substance abuse professional, (ii) refuses to participate in the counseling, treatment or rehabilitation program recommended by the substance abuse professional, (iii) fails to successfully complete the program, as evidenced by the driver's withdrawal from the program before its completion or (iv) violates the drug/alcohol prohibitions of this policy during the two-year period after return to duty.
- (3) A driver's employment will be terminated if he/she: (i) refuses or fails to be evaluated by a substance abuse professional, (ii) fails to fully cooperate and complete the recommended counseling, treatment or rehabilitation program, (iii) refuses to sign the "Agreement For Evaluation" or fails to comply with its terms, or (iv) violates the drug/alcohol prohibitions of this policy during the two-year period after return to duty.

- c. **Positive alcohol test results of 0.02 or greater but less than 0.04:** Under the Company's independent authority, a driver who receives a confirmed alcohol test result of 0.02 or greater, but less than 0.04, **for the first time**, will be suspended without pay for 24 hours.<sup>11</sup> The employment of a driver who receives a confirmed positive alcohol test result of 0.02 or greater **for a second time** will be terminated.
- d. **Fitness-for-duty evaluation in the event of driver's legal and authorized use of a controlled substance:** Under the Company's independent authority, whenever a driver submits to a reasonable suspicion test and receives a positive result for the legal and authorized use of a controlled substance, the driver will be required to submit to a fitness-for-duty evaluation, which may include a review of the driver's medical records and a medical examination. Under such circumstances, drivers will be required to provide the Company with the necessary authorization to obtain the driver's medical records and agreement to submit to the medical examination. The purpose of the evaluation is to determine whether the driver can satisfactorily perform his/her essential job functions or poses a direct threat to the health or safety of the drivers or

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<sup>11</sup> See footnote 6 regarding suspension of supervisors.

others. Depending on the results of the evaluation, the Company will consider whether the safety or health risk can be eliminated or substantially reduced by a reasonable accommodation, if applicable.

- 6.4 **Other Policy Violations:** Under the Company's independent authority, drivers who commit policy violations other than those addressed in Sections 6.2 and 6.3 above will be subject to discipline, up to and including, immediate termination of employment. Applicants who violate this policy will be ineligible for employment with the Company.
- 6.5 **Potential Forfeiture of Workers' Compensation and/or Unemployment Compensation Benefits:** A driver's violation of FMCSA's regulations and/or the requirements of this policy constitute gross and willful misconduct. In addition to the discipline and other consequences imposed by FMCSA and the Company under this policy, such misconduct may also result in the denial of unemployment compensation under the applicable state law. In addition, drivers who are injured as a result of a violation of FMCSA's regulations and/or the Company's safety rules (including but not limited to the conduct prohibited under this policy) may also forfeit workers' compensation benefits under the applicable state law.

## **7.0 NOTIFICATION OF TEST RESULTS**

Applicants will be notified of the results of a pre-employment drug test, if the applicant requests his/her test results within 60 days of being notified of the disposition of the employment application. Drivers will be advised of drug test results which are verified positive, adulterated, or substituted, and the drug or drug(s) for which a positive result was verified. Drivers will be notified of the results of their alcohol tests immediately after the administration of the screening test and, if necessary, the confirmatory test.

## **8.0 TESTING EXPENSES AND COMPENSATION FOR TESTS**

Under the Company's independent authority, the Company will pay for drug and alcohol tests and related expenses as follows:

- 8.1 The Company will pay for all drug and alcohol tests required to be taken by drivers or applicants under this policy, including confirmation tests. Except where prohibited by state or local law, any test taken at a driver's request, including split specimen tests, will be at the driver's expense, unless the result of the test is negative. Applicants will be required to pay for split specimen tests in all locations, but will be reimbursed by the Company if the result is negative.
- 8.2 All time spent by drivers providing a urine, saliva, or breath specimen required under this policy, including travel time to and from the collection site, will be considered as on-duty time. The driver will receive his or her regular compensation, including overtime if applicable, for such time.

## **9.0 RECORDKEEPING, ACCESS TO RECORDS AND CONFIDENTIALITY OF TEST RESULTS**

- 10.1 The Company will maintain records of its alcohol misuse and drug use prevention programs as required by the FMCSA's regulations. These records will be maintained in a secure location with controlled access and will not be released to any person except as required by law or expressly authorized by the driver.
- 10.2 The laboratory may disclose drug test results only to the MRO. The MRO, STT and BAT may disclose test results only to the individual tested, designated Company representatives, a treatment program, or a court of law or administrative tribunal to the extent required by law. Beyond that, a driver's test results shall not be released to any person without the individual's written consent.

## **10.0 INSPECTIONS**

- 10.1 **Inspections of Company Property:** Under the Company's independent authority, the Company may conduct unannounced random inspections for drugs and alcohol on Company facilities and property such as, but not limited to, Company vehicles, desks, file cabinets, Company-issued employee lockers in which the Company retains a copy of the key or the combination, etc. Drivers are expected to cooperate in the conduct of such inspections. Inspections of Company facilities and property may be conducted at any time and need not be based on reasonable suspicion.
- 10.2 **Inspections of Driver Property:** Under the Company's independent authority, inspections of drivers and their personal property such as, but not limited to, vehicles, clothing, packages, purses, brief cases, lunch boxes, or other containers brought on to Company premises may be conducted when there is reasonable suspicion to believe that the driver may have or has violated the drug or alcohol prohibitions contained in this policy.

## **11.0 COMPLIANCE WITH POLICY AS CONDITION OF EMPLOYMENT**

All applicants and drivers are advised that full compliance with this substance abuse policy shall be a condition of employment and continued employment. See Section 7.0 for the consequences for refusal to submit to tests and policy violations.

## **12.0 EMPLOYEE ASSISTANCE PROGRAM ("EAP")**

As part of the Company's commitment to provide a safe, healthy and efficient working environment for our employees, the Company maintains an Employee Assistance Program ("EAP"). The EAP provides information concerning the effects and consequences of alcohol and drug use on an individual's health, work, and personal life and the signs and symptoms of an alcohol or drug problem. In addition, the EAP provides referral services to drivers and their

families seeking help with problems resulting from alcohol misuse and drug use. Participation in this program is voluntary and confidential. The EAP can discuss available counseling, treatment and rehabilitation programs, fiscal responsibilities, and can help the employee decide what program might be best for his or her situation. For further information or to arrange an appointment, call (907)334-9972.

**Appendix A: Definitions from Part 382 (Regulatory language cited)**

**Actual knowledge** for the purpose of subpart B of this part, 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 substance use, except as provided in §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 §382.307.

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

**Alcohol concentration (or content)** means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

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

**Commerce means:**

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; and

(2) Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in paragraph (1) of this definition.

**Commercial motor vehicle** means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle—

(1) 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

(2) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 or more pounds); or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) 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 (49 U.S.C. 5103(b)) 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 performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmation (or confirmatory) validity test** means a second test performed on a urine specimen to further support a validity test result.

**Confirmed drug test** means a confirmation test result received by an MRO from a laboratory.

**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 provide or 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 purposes of this part.

**Controlled substances** mean those substances identified in §40.85 of this title.

**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. The individual must be an employee of the Company. Service agents cannot serve as DERs.

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

(1) **Inclusions.** Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

(2) **Exclusions.** (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

(ii) Tire disablement without other damage even if no spare tire is available.

(iii) Headlight or taillight damage.

(iv) Damage to turn signals, horn, or windshield wipers which make them inoperative.

**DOT Agency** means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing (14 CFR parts 61, 63, 65, 121, and 135; 49 CFR parts 199, 219, 382, and 655), in accordance with part 40 of this title.

**Driver** means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent owner-operator contractors.

**Employer** means a 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 this part. The term, as used in this part, 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. Service agents are not employers for the purposes of this part.

**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.

**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.

**Positive rate for random drug testing** means the number of verified positive results for random drug tests conducted under this part plus the number of refusals of random drug tests required by this part, divided by the total number of random drug tests results (*i.e.*, positives, negatives, and refusals) under this part.

**Refuse to submit (to an alcohol or controlled substances test)** means that a driver:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a) of this title);
- (2) Fail to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences (see §40.63(c) of this title) a pre-employment test is not deemed to have refused to test;
- (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations. Provided, that an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63(c) of this title) for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen (see §§40.67(l) and 40.69(g) of this title);

(5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2) of this title);

(6) Fail or declines to take a second test the employer or collector has directed the driver to take;

(7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d) of this title. 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;

(8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process); or

(9) Is reported by the MRO as having a verified adulterated or substituted test result.

**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 work. Safety-sensitive functions shall include:

(1) 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;

(2) All time inspecting equipment as required by §§392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All time spent at the driving controls of a commercial motor vehicle in operation;

(4) 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 §393.76 of this subchapter);

(5) 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

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Screening test (or initial test)** means:

(1) In drug testing, a test to eliminate “negative” urine specimens from further analysis or to identify a specimen that requires additional testing for the presence of controlled substances.



(2) In alcohol testing, an analytical procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

**Stand-down** means the practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test results.

**Violation rate for random alcohol testing** means the number of 0.04 and above random alcohol confirmation test results conducted under this part plus the number of refusals of random alcohol tests required by this part, divided by the total number of random alcohol screening tests (including refusals) conducted under this part.

## **Additional Terms from 49 CFR Part 40 (Regulatory Language Cited)**

In this part, the terms listed in this section have the following meanings:

Adulterated specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a public interest exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.

Air blank. In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

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

Alcohol concentration. 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 under this part.

Alcohol confirmation test. A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Alcohol screening device (ASD). 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 screening test. An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol testing site. A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

Alcohol use. The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Blind specimen or blind performance test specimen. A specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier, so that the laboratory cannot distinguish it from an employee specimen.

Breath Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

Cancelled test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Chain of custody. The procedure 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. A container into which the employee urinates to provide the specimen for a drug test.

Collection site. A place selected by the employer where employees present themselves for the purpose of providing a urine specimen for a drug test.

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

Confirmation (or confirmatory) drug test. A second analytical procedure performed on a urine specimen to identify and quantify the presence of a specific drug or drug metabolite.

Confirmation (or confirmatory) validity test. A second test performed on a urine specimen to further support a validity test result.

Confirmed drug test. A confirmation test result received by an MRO from a laboratory.

Consortium/Third-party administrator (C/TPA). A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically 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. C/TPAs are not "employers" for purposes of this part.

Continuing education. Training for medical review officers (MROs) and substance abuse professionals (SAPs) who have completed qualification training and are performing MRO or SAP functions, designed to keep MROs and SAPs current on changes and developments in the DOT drug and alcohol testing program.

Designated employer representative (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

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

DOT, The Department, DOT agency. These terms encompass all DOT agencies, including, but 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 Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). These terms include any designee of a DOT agency.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

Employee. Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for

employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term “donor” as found on CCF and related guidance materials produced by the Department of Health and Human Services.

Employer. A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.

Error Correction Training. Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

Evidential Breath Testing Device (EBT). A device approved by NHTSA for the evidential testing of breath at the .02 and .04 alcohol concentrations, placed on NHTSA's Conforming Products List (CPL) for “Evidential Breath Measurement Devices” and identified on the CPL as conforming with the model specifications available from NHTSA's Traffic Safety Program.

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

Initial drug test. The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial validity test. The first test used to determine if a specimen is adulterated, diluted, or substituted.

Invalid drug test. The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part. (The HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs are available on the internet at <http://www.health.org/workpl.htm> or from the Division of Workplace Programs, 1 Choke Cherry Road, Room 2-1035, Rockville, MD 20587)

Medical Review Officer (MRO). A person who is a licensed physician and 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.

Office of Drug and Alcohol Policy and Compliance (ODAPC). The office in 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 this part.

Primary specimen. In drug testing, 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.

Qualification Training. The training required in order for a collector, BAT, MRO,

SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

Refresher Training. The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

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

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

Service agent. Any person or entity, other than an employee of the employer, who provides services specified under this part 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, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of this part. Service agents are not employers for purposes of this part.

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

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold the urine specimen during transportation to the laboratory.

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

Stand-down. The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Substance Abuse Professional (SAP). 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.

Substituted specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 71 FR 49384, August 23, 2006; 71 FR 55347, Sept. 22, 2006]

### **382.113 Requirement for notice**

**Notice of Testing:** Before performing each alcohol or controlled substances test under Part 382, the Company will notify a driver that the alcohol or controlled substances test is required by Part 382. The Company will not falsely represent that a test is administered under this Part 382.

### **§ 382.301 Pre-employment testing**

#### **Once-a-Year Drivers**

If the Company uses, but does not employ a driver more than once a year to operate commercial motor vehicles the Company must obtain the following information at least once every six months. c) (1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

- (i) Name(s) and address(es) of the program(s).
- (ii) Verification that the driver participates or participated in the program(s).
- (iii) Verification that the program(s) conforms to part 40 of this title.
- (iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.
- (v) The date the driver was last tested for controlled substances.
- (vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

The records prepared in compliance with this section will be maintained in accordance with §382.401 of the regulations. If the Company cannot verify that the driver is participating in a controlled substances testing program in accordance, the Company will conduct a pre-employment controlled substances test.

### **§ 382.303 (g)(1)(2)**

#### **Post-Accident Tests Administered by Law Enforcement Officials**

A driver may be directed to submit to a drug and/or alcohol test at the accident scene by a federal, state, or local law enforcement officer. Whenever a law enforcement officer conducts a drug or alcohol test on a driver involved in an accident, the driver must contact his/her supervisor or other Company official to report the test result.

Whenever a driver is involved in a DOT accident and is not tested for controlled substances and/or alcohol by a law enforcement officer, the driver is required to immediately contact his/her supervisor or other Company official and remain available to be tested. The Company will provide the driver with the necessary instructions in the event of an accident that requires a drug/alcohol test.

**§ 382.303 (h)**

**Exception to Post-Accident Testing Requirements**

Per the regulations (references cited) this section does not apply to:

- (1) An occurrence involving only boarding or alighting from a stationary motor vehicle; or
- (2) An occurrence involving only the loading or unloading of cargo; or
- (3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in §571.3 of this title) 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 §177.823 of this title.

**§ 382.601 (d)**

**Certificate of receipt**

The Company will ensure that each driver is required to sign a statement certifying that he or she has received a copy of the educational and policy materials described in this section. The Company will maintain the original of the signed certificate and may provide a copy of the certificate to the driver.

I, \_\_\_\_\_, certify that I have received a copy of the Colville Substance Abuse Policy for Commercial Motor Vehicle Drivers.

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Signature

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Date