

Striving to be Drug Free  
for a Safe Industry

# **BCRC**



**Building & Construction  
Resource Center, Inc.**

# **D.O.T. (FMCSA) DRUG & ALCOHOL POLICY**

**As Revised and Adopted October 1, 2019**

**49 CFR Part 40 and 49 CFR Part 382 for  
DOT-Covered Contractor Participant**



Striving to be Drug Free  
for a Safe Industry



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Your Employee Assistance Program (EAP)

Policy Revision: October 1, 2019



<b>INDEX</b>	<b>PAGE</b>
Purpose . . . . .	1
Scope . . . . .	1
References . . . . .	2
Definitions . . . . .	3
Employer Obligation to Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substances .	11
Policy / Rules of Conduct . . . . .	13
Authorized Use of Controlled Substances . . . . .	15
Testing of Controlled Substances and Alcohol . . . . .	16
Covered Drivers . . . . .	16
FMCSA Prohibitions . . . . .	16
Tests Required . . . . .	17
Pre-employment / Pre-placement Testing . . . . .	18
Post-accident Testing . . . . .	20
Random Testing . . . . .	22
Reasonable Suspicion Testing . . . . .	23
Return-to-Duty Testing . . . . .	25
Follow-up Testing . . . . .	26
General Testing Information . . . . .	26
Alcohol Testing & Reporting of Test Results . . . . .	27
Controlled Substance Testing, MRO Process and Reporting of Test Results . . . . .	28
Test Records . . . . .	31
Consequences of Prohibited Conduct . . . . .	31
Education and Training . . . . .	33
Employee Assistance Program (EAP) . . . . .	33
Drug-Free Workplace Education . . . . .	34
Self-Identification Program and Policy . . . . .	35
Effects, Signs and Symptoms of Use of Alcohol and Controlled Substances . . . . .	36
Methods of Intervention when Alcohol and/or Controlled Substances Problem is Suspected. . . . .	38
Drug and Alcohol Clearinghouse . . . . .	39

**BUILDING and CONSTRUCTION RESOURCE CENTER, INC.  
(BCRC)**

**Drug and Alcohol Policy**

In compliance with  
49 CFR Part 40, and  
49 CFR Part 382 (FMCSA)

For

BCRC's DOT-Covered Contractor Participants

BCRC Board Approved

Effective Date: January 1, 2018

**I. PURPOSE**

Building and Construction Resource Center, Inc. ("BCRC" or the "Association") has established this alcohol and controlled substances testing program for contractor participants who have employees that are drivers of Commercial Motor Vehicles (CMVs) and who require Commercial Drivers Licenses (CDLs), to meet requirements of the U.S. Department of Transportation (DOT). The overall goals of this testing program are to ensure a safe and drug-free transportation environment, to reduce the potential for accidents and casualties related to accidents involving Company-owned /leased vehicles, and to cooperate with the U.S. Department of Transportation and the transportation industry in efforts to eliminate the misuse of alcohol and the illegal use of controlled substances by our drivers.

With these objectives in mind, BCRC has established the following policy and procedures for DOT covered employees of its contractor participants. Full compliance with this policy is a condition of employment with each such contractor participant.

**II. SCOPE**

BCRC's Drug and Alcohol Policy for DOT-Covered Employees, outlined herein ("DOT Policy" or "Policy"), applies to all full-time, part-time, and temporary employees who are "covered drivers" as defined in Section IX. This policy also covers independent drivers who may be specifically named in a contract to provide service. In addition, this policy covers all job applicants for positions that require Commercial Drivers Licenses (CDL) for the operating of Commercial Motor Vehicles as described in Section IX.

In those circumstances that are not addressed by DOT regulations or in this DOT Policy, DOT-covered employees remain subject to the policies, rules, and testing as defined in BCRC's Drug and Alcohol Policy for all employees. However, any testing under this DOT Policy shall take precedence over any testing under other non-DOT policies. Furthermore, any DOT Policy testing shall take place separate from any testing under other non-DOT policies. In cases where samples are collected for testing under both this DOT Policy and other non-DOT policies, the samples for the testing under this DOT Policy shall be collected first and separate from the samples for the testing under the non-DOT policies.

In addition; a driver will be required to submit to a non-DOT test for reasonable suspicion in those circumstances when the driver is suspected of drug or alcohol use, or has violated a work rule as stated elsewhere in this policy, or is involved in or may have contributed to the causing of an accident, or causes injury to him/herself or to another person, when the circumstances related to that incident do not meet the requirements of a DOT test.

### **III. REFERENCES**

Title 49 CFR §382, et al., Federal Motor Carrier Safety Administration (FMCSA) Regulations on Controlled Substances and Alcohol Use and Testing

Title 49 CFR§40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs Title 41 U.S.C. §§ 403, 701 et, Seq., Drug-Free Workplace Act of 1988.

*Note: If there are conflicts between federal regulations and this policy, attributed in part, to revisions to the law or changes in interpretations, and when those changes have not been updated or accurately reflected in this policy, the federal law shall prevail.*

#### **IV. DEFINITIONS**

- **Accident** means an occurrence involving a commercial motor vehicle operating on a public road in commerce in which:
  - a. There is the loss of human life; or
  - b. The driver receives a citation under State or local law for a moving traffic violation arising from the accident; and
    - (1) Anyone receives bodily injury that results in their receiving immediate medical treatment away from the accident scene; or
    - (2) Any involved vehicle sustains disabling damage as defined herein.
  
- **Actual knowledge** means actual knowledge by an employer that a driver has used alcohol or controlled substances based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or controlled substances, or an employee's admission of alcohol or controlled substance use, except as provided by our Self-Identification Policy (Section XXVI).
  
- **Adulterated specimen** means a specimen that contains a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration.
  
- **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 (BrAC).
  
- **Alcohol screening device (ASD)** means 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** means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

- **Alcohol use** means the drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.
- **Aliquot** means a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.
- **Applicant** means a person, independent contractor, or person working for an independent contractor, who applies to become a driver/employee of a BCRC contractor participant, and includes a person who has received a job offer made contingent on the person passing a drug test.
- **Association** means Building and Construction Resource Center, which is the association formed by labor and management representatives of The Building and Construction Industry for Northwest Indiana, for the purpose of addressing problems of drugs and alcohol in the workplace.
- **Breath Alcohol Technician (BAT)** is an individual who is certified as trained to operate an Evidential Breath Testing device (EBT) and who is proficient in breath-testing procedures.
- **Canceled test** means a drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is otherwise required, by Part 40, to be canceled. A canceled test is neither a positive nor a negative test. There will be no adverse job action based on a canceled test.
- **Company** means an employer who is a member of Building and Construction Resource Center.
- **Collection site** means a place designated by BCRC where individuals present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of controlled substances, or for purposes of providing a saliva or breath sample to be analyzed for alcohol concentration.
- **Company property** means all employer owned and/or leased property, including but not limited to owned and/or leased buildings and other real estate, parking lots and vehicles located on parking lots, and employer owned and/or leased vehicles, lockers, and desks.

• **Confirmatory test**

- a. For alcohol testing, a confirmatory test is a second test following a screening test with a result of 0.02 or greater, conducted 15-30 minutes later, that provides quantitative data of alcohol concentration. This test is conducted on an EBT, and is conducted by a Breath Alcohol Technician (BAT).
- b. For controlled substances testing, a confirmatory test is a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opioids, amphetamines, and phencyclidine.)

• **Confirmatory validity test** means a second test performed on a different aliquot of the original urine specimen to further support a validity test results.

• **Consortium** means an entity, including a group or association of employers or contractors that provides services related to alcohol or controlled substances testing as required by the DOT rules and regulations and that acts on behalf of the employer. For purposes of this policy, BCRC serves as the consortium for contractor participants who are members of Building and Construction Resource Center.

• **Contractor participant** means an employer who is a contributing member of Building and Construction Resource Center.

• **Controlled substances** mean those substances, drugs, and classes of drugs identified in 49 CFR, Subtitle A, Part 40, Subpart F, §40.85. Any changes in such regulations are incorporated herein by reference upon the effective date of such changes. As of the effective date of this DOT Policy, such substances, drugs, and classes of drugs are: (a) Marijuana (THC) metabolites, (b) Cocaine metabolites; (c) Amphetamines (i.e., Amphetamine, Methamphetamine, MDMA, and MDA), (d) Opioids [i.e., Codeine, Morphine, 6-AM (heroin), Hydrocodone, Hydromorphone, Oxycodone, and Oxymorphone], and (e) Phencyclidine (PCP).

• **DER (designated employer representative)**, means an employee designated and authorized by each employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The DER also receives test results, SAP reports, and other communications on behalf of his/her employer. The DER is also the person(s) to whom the employees of the employer should direct questions and communications regarding the employer's DOT Policy. An employer may designate more than one DER.

• **DHHS-approved laboratory** means a laboratory that is certified under the U.S. Department of Health and Human Services Mandatory Guidelines for federal workplace drug testing programs. Drug tests for DOT covered drivers will be performed by a DHHS-certified laboratory.

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

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

*Inclusions:*

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

*Exclusions:*

- i. Damage that 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 that make them inoperative.

• **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 who are either directly employed by or under lease to an employer, or who operate a commercial motor vehicle at the direction of or with the consent of an employer.

- **Drug test** means a test conducted for Controlled Substances as defined herein, including marijuana, cocaine, amphetamines, opioids, and phencyclidine.
- **Employee** means an employee of a company, or of a contractor participant who is a member of BCRC.
- **Employer** means a company, or a contractor participant, who is a contributing member of BCRC, and who owns or leases a commercial motor vehicle that is subject to DOT's rules, and who assigns persons to operate such a vehicle. In this DOT Policy, employer includes a company's agents, officers and representatives.
- **FMCSA** means Federal Motor Carrier Safety Administration, an Operating Administration of the Department of Transportation.
- **Initial test (for drugs)** means an immunoassay test to eliminate "negative" urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing.
- **Injury (for post-accident testing)** excludes (i) an occurrence involving only boarding or alighting from a stationary motor vehicle; or (ii) an occurrence involving only the loading or unloading of cargo; or (iii) an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle by an employee, unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be placarded.
- **Initial validity test** means the first test used to determine if a urine specimen is adulterated, diluted, or substituted.
- **Invalid drug test** means the result reported by a laboratory for a urine specimen that contains an unidentified adulterant, contains an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing testing or obtaining a valid drug test result.

- **Limit of Detection (LOD)** means the lowest concentration at which an analyte can be reliably shown to be present under defined conditions.
- **Medical Review Officer** means a licensed physician responsible for receiving laboratory results generated by BCRC's drug testing program who has knowledge of substance abuse disorders and who 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.
- **Non-negative specimen** means a urine specimen that is reported as adulterated, substituted, positive (for drug (s) or drug metabolite (s)), and/or invalid.
- **Oxidizing adulterant** means a substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.
- **Positive Test (alcohol)** occurs when a driver's confirmatory test result reads 0.04% BrAC for higher.
- **Positive Test (drug)** occurs when a driver's confirmatory test or retest result is at or above cutoff concentrations specified by DHHS in DOT rules and regulations, and has been verified by the MRO to be a positive test. As of the Effective Date of this DOT Policy, the cutoff concentrations are identified in 49 CFR, Subtitle A, Part 40, Subpart F, §40.87.
- **Random selection** means a scientifically valid method for selection of drivers to be tested that results in an equal probability that any driver from a group of drivers subject to the selection mechanism will be selected, and does not give an employer discretion to waive the selection of any employee under the mechanism. Thus, a driver might be selected more than once during a year.
- **Reasonable suspicion** means a belief that a driver has violated alcohol or controlled substances prohibitions, based

on specific, contemporaneous, documentable observations concerning the appearance, behavior, speech, or body odors of that driver. In the case of controlled substances, the observations may include indicators of chronic and withdrawal effects of controlled substances.

- **Refusal to submit to a required alcohol test** includes failure to appear for any test, failure to provide a breath or saliva specimen for a required test, failure to remain at the testing site until the testing process is complete, failure to provide a sufficient breath specimen without a medical explanation, failure to undergo a medical examination following inability to provide a sufficient breath specimen, refusal to sign Step 2 of the Alcohol Testing Form, and failure to cooperate with the testing process.

- **Refusal to submit to a required drug test** includes failure to appear for any test within a reasonable time, failure to remain at the collection site until the testing process is complete, refusal to provide a urine specimen for a required drug test, failure to permit a directly observed or monitored collection when required, failure to provide a sufficient amount of urine without a medical explanation, failure to take a second test when required by a collector or by his/her employer, failure to undergo a medical examination following inability to provide a sufficient urine sample, and failure to cooperate with the collection/testing process (including refusing to empty pockets at the collection site and refusing to wash hands when instructed), behaving in a confrontational way that disrupts the collection process, possessing or wearing a prosthetic or other device that could be used to interfere with the collection process, or admitting to the collector or MRO that the specimen had been adulterated or substituted. Under each employer's independent authority, an employee/driver who refuses to submit to required alcohol and drug testing will be terminated from employment.

- **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:  
a) 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; b) All time inspecting equipment as required by §§ 392.7 and 392.8 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; c) All time spent at the driving controls of a commercial motor vehicle in operation; d) 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); e) 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 f) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle; and g) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by these rules, and when directed by the employer or by BCRC. A driver is considered to be performing a safety-sensitive functions during any period in which he/she is actually performing, ready to perform, or immediately available to perform safety-sensitive functions.

- **Screening test (for alcohol)** means an analytical procedure to determine whether a driver, may have a prohibited concentration of alcohol in a saliva or breath specimen.

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

- **Substance Abuse Professional (SAP)** means a licensed physician (Medical Doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, marriage and family therapist (MFT) or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission [NAADAC] or by the International Certification

Reciprocity Consortium/Alcohol & Other Drug Abuse [ICRC]), or by the National Board of Certified Counselors, Inc. and Affiliates/MAC [NBCC] with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders. A SAP evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

- **Substituted specimen** means a urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

- **Testing levels** means levels established by the U.S. DHHS, at which a specimen or sample is determined to be either negative or positive, according to 49 CFR §40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.

## **V. EMPLOYER OBLIGATION TO PROMULGATE A POLICY ON THE MISUSE OF ALCOHOL AND USE OF CONTROLLED SUBSTANCES**

(a) General requirements. Each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements.

(1) The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

(2) Each employer shall provide written notice to representatives of employee organizations of the availability of this information

(b) Required content. The materials to be 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 of this part;

(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 with this part;

(4) Specific information concerning driver conduct that is prohibited by this part;

(5) The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under §382.303(d);

(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 processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by §382.303(d);

(7) The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;

(8) An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(9) The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;

(10) The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;

(11) Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and/or referral to management; and

(12) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

- (i) A verified positive, adulterated, or substituted drug test result;
- (ii) An alcohol confirmation test with a concentration of 0.04 or higher;
- (iii) A refusal to submit to any test required by subpart C of this part;
- (iv) An employer's report of actual knowledge, as defined at § 382.107:
  - (A) On duty alcohol use pursuant to § 382.205;

- (B) Pre-duty alcohol use pursuant to § 382.207;
- (C) Alcohol use following an accident pursuant to § 382.209; and
- (D) Controlled substance use pursuant to § 382.213;
- (v) A substance abuse professional (SAP as defined in § 40.3 of this title) report of the successful completion of the return-to-duty process;
- (vi) A negative return-to-duty test; and
- (vii) An employer's report of completion of follow-up testing.

## **VI. POLICY / RULES OF CONDUCT**

A driver who violates the FMCSA prohibitions of this policy (Section X), including refusal to be tested, must be immediately removed from all FMCSA safety-sensitive functions, including driving, in accordance with 49 CFR Part 382.501, FMCSA rules and regulations. Under each employer's independent authority, the driver will be subject to disciplinary action up to and including termination of employment. An employer also reserves the right to take action against an employee, where appropriate, for violation of other general employer policies, procedures and/or rules that may be defined in rules that are separate from this policy for DOT-covered employees.

- A. A covered driver may not engage in any of the conduct(s) prohibited in Section X.
- B. Under independent authority, BCRC prohibits the possession of alcohol, or the sale, purchase, manufacture, possession or transfer of an illegal drug, or being under the influence of alcohol or of an illegal drug, during all work time, including meals and breaks, or at any time while on Company property, at a Company's job site, shipper/receiver site, truck stop, rest area, on Company business, or in a Company owned /leased vehicle. An employee who possesses alcohol, or who uses alcohol while on duty, will be terminated from employment.
- C. Under independent authority, BCRC prohibits the use of any over-the-counter medication by an employee during working time or any time while on Company property, at a job site, on Company business, or in a Company owned/leased vehicle if such use may detrimentally affect or impair the safety of coworkers,

- customers or members of the public, or an employee's job performance, or the safe or efficient operation of the Company, or its property.
- D. A driver who uses prescribed medication(s) will not be permitted or required to operate a Commercial Motor Vehicle until and unless the employer is provided with appropriate authorization from the employee's prescribing licensed medical professional. [See Section VII, Authorized Use of Controlled-Substances.]
  - E. Cases of suspected trafficking, possession, or use of illegal substances or drug paraphernalia on Company property, in or on Company vehicles, and/or at job sites will be referred to law enforcement authorities under each employer's independent authority.
  - F. BCRC encourages participants who wish to voluntarily seek assistance for questions or problems related to drugs and alcohol to do so by contacting the Association's Employee Assistance Program. DOT-covered drivers who seek assistance under the provisions of the Self-Identification Policy will have to be removed from safety-sensitive function during the time of assessment and rehabilitation, but their admission of use will not be considered a DOT violation. In accordance with the policy, drivers who return to work after rehabilitation will be required to take a DOT return-to-duty test and will be subject to non-DOT follow-up testing for up to two (2) years.
  - G. If a driver is called to duty during the driver's typical "off-duty" time, the driver may report to work only if he/she has not consumed alcohol at any time during the previous four (4) hours. When a driver has used alcohol during four (4) hours prior to his/her providing safety-sensitive duty, he/she will be expected to acknowledge such use at the time he/she is called. If it is not possible for the supervisor to delay the requested start time so as to accommodate DOT's pre-duty requirement, the employee will not report to work. If an on-call employee acknowledges the use of alcohol, he/she will be permitted to determine a start time that will comply with the 4-hour prohibition. Under each employer's independent authority, no discipline will be taken against an employee who acknowledges his/her use of alcohol during the four (4) hours prior to being called to duty, unless such conduct has the effect of making that employee repeatedly unavailable for duty.

- H. BCRC considers a conviction for criminal drug activity to be very serious. An employee who has a workplace-related drug conviction must report that conviction to his/her supervisor within five (5) days of receiving it. An employee who fails to report such a conviction will, upon discovery of the conviction, be subject to immediate termination from employment.
- I. Each employer reserves the right to test a DOT-covered employee for alcohol or controlled substance use under the Company's independent authority when DOT regulations do not apply. These circumstances would include suspected impairment, violation of an employer's drug and alcohol rules, or of other rules that are stated in this policy, and causing or being involved in an accident or injury of self or another employee. In those cases, testing levels would be identical to DOT levels, but the test would be conducted as a non-DOT test. A driver who violates the requirements of 49 CFR Part 382 or the requirements of 49 CFR Part 40 is subject to the civil and/or criminal penalty provision of 49 U.S.C. 521(b). If a DOT-covered employee tests positive for drugs or alcohol under an employer's independent authority, that employee will be considered to be in violation of BCRC's policy regarding drugs and alcohol in the workplace. He/she will be subject to consequences as defined in BCRC's policy for employees who are tested under non-DOT circumstances.

## **VII. AUTHORIZED USE OF CONTROLLED SUBSTANCES**

If a driver undergoes prescribed medical treatment with a drug or controlled substance, the driver is required to report this treatment to his/her employer, who will take steps to investigate whether the driver's job assignment should be temporarily changed during the period of treatment, or whether other accommodations may be appropriate.

BCRC requires a driver to make such notification as soon as possible, and prior to performing a safety-sensitive function, and to provide written documentation from the prescribing licensed medical practitioner that the medication(s) will not affect the driver's ability to perform safety-sensitive functions safely, including operating a commercial motor vehicle. Each employer reserves the right to obtain an independent medical opinion regarding the potential effects of a prescription or over-the-counter drug on a driver's ability to perform safety-

sensitive functions or other aspects of his/her job. Further, each employer reserves the right to place any driver taking medication(s) on a leave of absence pending a decision as to whether the driver may continue to perform his/her regular job duties while taking the medication(s).

Each employer may, as it determines necessary, and when possible, temporarily reassign an employee to non-safety sensitive functions for the duration of his/her use of such drug(s). However, due to the safety-sensitive nature of many jobs in the construction industry, no employee can be guaranteed that these accommodations can always be made.

#### **VIII. TESTING FOR CONTROLLED SUBSTANCES & ALCOHOL**

Employers who are members of BCRC will conduct controlled substance and alcohol testing of their driver/applicants and their driver/employees (including mechanics and management drivers) in compliance with regulations established by the U.S. Department of Transportation (DOT), 49 CFR §§ 40 and 382.

#### **IX. COVERED DRIVERS**

In accord with U.S. Department of Transportation FMCSA Regulations, drivers subject to drug and alcohol testing are those employees (of contractor participants) who are required to hold a Commercial Driver's License (CDL) and who operate a commercial motor vehicle (CMV), when that vehicle:

- has a gross vehicle or combination weight rating of 26,001 or more pounds;
- is designed to transport 16 or more persons including a driver; or
- is a vehicle of any size that transports hazardous materials and requires placarding under the Hazardous ' Materials Transportation Act.

#### **X. FMCSA PROHIBITIONS**

A driver shall not:

- Report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- Use alcohol, including medications that contain alcohol, while performing safety-sensitive functions.
- Perform safety-sensitive functions within four (4) hours after using alcohol, including the use of medications that contain alcohol.

- Use alcohol for eight (8) hours following an accident, or until the driver has undergone a post-accident alcohol test, whichever occurs first.
- Refuse to submit to a pre-employment, post-accident, random, reasonable suspicion, or follow-up alcohol or drug test.
- Report for duty or remain on duty requiring the performance of safety-sensitive functions when he/she uses any controlled substances, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the driver that the substance does not adversely affect the driver's ability to operate a commercial motor vehicle safely.
- Report for duty, remain on duty, or perform safety-sensitive functions if he/she tests positive for controlled substances.

If a driver engages in any of the conduct(s) prohibited in (B) above, the driver is not qualified, under FMCSA regulations, to drive a commercial motor vehicle (including operating any interstate commercial motor vehicle with GVWR of 10,001 pounds or more). He/she must be immediately removed from all safety-sensitive functions including driving, and is subject to Section XXII, Consequences of Prohibited Conduct.

A driver who engages in prohibited conduct a second time will be immediately terminated from employment. Under FMCSA regulations, a driver who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, may not operate or continue to operate a commercial motor vehicle or provide other safety-sensitive functions for a twenty-four (24) hour period. Under each employer's independent authority, that driver will be on unpaid leave for any hours not worked. In this regard, under independent authority, a driver who provides an alcohol test result greater than 0.02 but below 0.04 on a second incident will be subject to disciplinary action up to and including termination of employment for disrupting normal business hours.

## **XI. TESTS REQUIRED**

As provided in U.S. Department of Transportation rules and regulations, a driver who must possess a CDL shall be subject to pre-employment/pre-placement testing (drug only), and random, reasonable suspicion, post-accident, return-to-duty and follow-up testing for alcohol and controlled substances.

## **XII. PRE-EMPLOYMENT / PRE-PLACEMENT TESTING**

Every applicant for a driving position who receives a job offer from a BCRC contractor participant must submit to a urine drug test. The job offer is contingent on the applicant's providing a negative test result.

Each applicant will be asked whether he/she has tested positive, or refused to test, on any DOT pre-employment drug or alcohol test for a DOT employer during the previous three (3) years. An applicant who has previously tested positive, or refused to be tested, will not be considered for employment until or unless he/she successfully completes DOT's return to duty process. (See Section XXII, Consequences of Prohibited Conduct). DOT does not require a driver/applicant to submit to a pre-employment drug test if all the following provisions are met to an employer's satisfaction:

- a. The employer can verify that the driver has participated in a valid drug testing program (that meets the requirements of DOT rules and regulations) within the preceding thirty (30) days; and
- b. while participating in that program, the driver/applicant was either tested within the past six (6) months or was enrolled in a random selection program for the previous twelve (12) months; and
- c. no prior employer of whom the employer has knowledge has record that the driver violated any part of the DOT rules and regulations regarding controlled substances use within the last six (6) months.

If the applicant is a new hire, the testing must be completed, and a negative test result must be received, before the driver will be permitted to provide safety-sensitive function. If the pre-employment test result is positive, the job offer will be immediately withdrawn, and the applicant will be provided with names, addresses and phone numbers of qualified SAPs. The applicant cannot be reconsidered unless and until he/she completes a SAP assessment and recommended assistance (Section XXII, Consequences of Prohibited Conduct).

An applicant who has previously refused to be tested or who provided a positive test result on a DOT pre-employment test for controlled substances for any other employer will: be expected to report those test results at the time of application.

Under each employer's independent authority, failure to do so will constitute falsification of application information, and when discovered, will result in removal from consideration for employment, or, if already hired, immediate termination of employment. An employer who wishes to reconsider the individual for employment will make such consideration only after the individual has completed a SAP assessment, complied with the SAP's recommendations, and provided a negative result on a Return-to-Duty test.

If an applicant has previously complied with a SAP's recommendations as the result of a violation under a previous employer, the applicant's pre-employment test will be considered to also be a Return-to-Duty test. When significant time has lapsed since the SAP's report of compliance, an employer may require an additional, second follow-up evaluation to be conducted by a SAP, designated by the employer, to verify that the applicant is currently free of drug, use, prior to being considered for hire. The cost of this SAP evaluation will be paid by the employer who requests it.

An applicant is required to sign a form authorizing the hiring employer to obtain from all previous employers (in the previous three [3] years) a report of all DOT violations, including positive test results and refusals to be tested. The hiring employer will also request copies of Substance Abuse Professional (SAP) reports related to each of these violations. An applicant with a violation cannot be hired until the hiring employer has received a SAP's report of compliance, including a follow-up testing requirement.

If the applicant is a current employee who is being transferred to a position or assignment that requires the driver to possess a CDL, a negative pre-employment drug test result must be received before the employee assumes the new position or assignment. If the test result is positive, the offer of promotion or transfer will be immediately withdrawn, and the employee will be subject to rules that the employer may have established in a separate drug and alcohol policy for non-DOT employees. When an employer uses but does not employ a driver to operate a Commercial Motor Vehicle more than once a year, the driver will be required to provide authorization for the

employer to obtain verification at least once every six (6) months that the driver is participating in a qualified drug and alcohol testing program, that there have been no refusals to be tested for alcohol or controlled substances, the dates the driver was last tested for alcohol and/or controlled substances, the results of any tests within the previous six (6) months and any other violation of prohibited conduct as defined in VI(B) above. If an employer is unable to satisfactorily obtain this information, the driver will be required to submit to a pre-employment drug test with a negative test result prior to being permitted or requested to provide safety-sensitive functions for that employer.

### **XIII. POST-ACCIDENT TESTING**

As soon as possible following an Accident involving a commercial motor vehicle, (see Section IV, DEFINITIONS), the surviving DOT driver(s) involved in the Accident must be tested for alcohol and drugs in accordance with applicable DOT Regulations (e.g., 49 CFR, Subtitle B, Chapter III, Subtitle B, Part 382, Subpart C, §383.303). As of the Effective Date of this DOT Policy, such DOT Regulations require testing for alcohol for each of such surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the Accident involved the loss of human life; or
- (2) Who receives a citation within 8 hours of the Accident under State or local law for a moving traffic violation arising from the Accident, if the Accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the Accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A post-accident alcohol test, when required, must be administered as soon as possible, but within eight (8) hours following the accident. If testing is required but is not conducted within two (2) hours, the reasons the test was not conducted must be documented. If testing is required but is not able to be conducted within the next six (6) hours, the reasons the test

was not conducted must again be documented.

After eight (8) hours, there will be no more attempts to conduct an alcohol test. As of the Effective Date of this DOT Policy, such DOT Regulations require drug testing for Controlled Substances for each of such surviving drivers:

- (1) Who was performing safety-sensitive functions with respect to the vehicle, if the Accident involved the loss of human life; or
- (2) Who receives a citation within 8 hours of the Accident under State or local law for a moving traffic violation arising from the Accident, if the Accident involved:
  - (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - (ii) One or more motor vehicles incurring disabling damage as a result of the Accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

A post-accident drug test, when required, must be administered as soon as possible, but within thirty-two (32) hours following the accident. If testing is required but is not able to be conducted within thirty-two (32) hours, the reasons the test was not conducted must be documented. After thirty-two (32) hours, there will be no more attempts to conduct a drug test.

A driver who is subject to post-accident testing shall remain readily available for such testing. If the driver is not available for any reason, except for leaving the accident scene for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care, an employer will consider the driver to have refused to submit to testing.

Under independent authority, a driver who has submitted to a post-accident test will be permitted to return to safety-sensitive functions only at the direction of a supervisor.

Even if highway enforcement or other officials conduct a drug or alcohol test following an accident, drivers are still subject to DOT testing under these employer rules. In the event that federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled

substances following an accident, and a DOT test is required but is not able to be conducted, the tests conducted by law enforcement may meet the requirement of this section, provided those tests conform to applicable federal, state, or local requirements.

Each employer will request test results and other pertinent documentation from such agencies or law enforcement authorities, and a driver is required to sign a release allowing his/her employer to obtain such information. Under each employer's independent authority, refusal to sign such a release will be grounds for termination of employment.

In the event that a driver is so seriously injured that the driver cannot provide a sample of urine or breath at the time of the accident, each employer requires that the driver provide necessary authorization for his/her employer to obtain hospital records or other documents that would indicate whether controlled substances or alcohol were present (and the resulting levels) in the driver's body at the time of the accident. Under each employer's independent authority, refusal to sign such a release will be grounds for termination of employment.

#### **XIV. RANDOM TESTING**

A percentage of drivers will be subject to random alcohol and drug testing each year. The percentage of drivers to be tested will be as determined annually by FMCSA and published in the Federal Register in January. As of the Effective Date of this DOT Policy, the minimum annual percentages are ten percent (10) of the average number of driver positions for alcohol testing, and twenty-five percent (25%) of the average number of driver positions for drug testing, but such percentages minimum percentages are subject to change. Selections of drivers to be tested shall be done by a scientifically valid method that provides that each driver will have an equal chance of being selected each time that selections are made. While a driver is subject to testing, the driver's name is never removed from the pool. Thus, a driver might be selected more than once during a year.

- a. Random tests will be unannounced; the dates for random tests will be spread throughout the year.
- b. A driver who is selected for random testing will be

required to report to the collection site immediately upon notification. If the driver engages in conduct that does not lead to a collection as soon as possible after notification, such conduct will be considered as a refusal to submit to a test. The driver will be in a duty status (paid) from the time he/she leaves to go to the collection site until the time he/she returns from the collection site.

- c. A random test for alcohol shall be scheduled to occur only just prior to, during, or just after performing a safety-sensitive function, or at any time that the driver is in readiness to provide safety-sensitive function.
- d. A random test for controlled substances can be scheduled at any time the driver is on duty, and is not related to when the driver is performing safety-sensitive function.
- e. An employee who has been selected for random testing must be tested in that testing period. FMCSA regulations do not permit a replacement to be named if the selected employee is unavailable for testing.
- f. BCRC will administer its own random selection through a scientifically valid means, and will maintain all necessary records as required in 49 CFR §382, Subpart D, Recordkeeping.

## **XV. REASONABLE SUSPICION TESTING**

BCRC shall require an employee to submit to drug and/or alcohol testing for reasonable suspicion when a supervisor has reason to believe that an employee has engaged in Prohibited Conduct (See Section X, FMCSA Prohibitions), based on observation of the employee's appearance, behavior, speech, and/or body odor. Such employee conduct must be witnessed and documented by a supervisor who has been trained in compliance with FMCSA rules and regulations. Should a supervisor determine that an employee might have violated a prohibition of these regulations, the employee must submit to testing. Documentation is required for both drug and alcohol reasonable suspicion. Documentation for a drug test must be signed and submitted to the DER within 24 hours, and for an alcohol test, prior to the conducting of the alcohol test.

An employee who is represented by a bargaining unit and who is requested by a supervisor to submit to reasonable suspicion

testing may request to have a union representative present, provided the employee signs a consent for the supervisor to notify the union representative of the request for testing. When the suspicion involves drugs only, the employer will allow a maximum of one-half hour for the union representative to arrive and accompany the employee through the collection process. When the suspicion involves alcohol only, or alcohol and drugs, the union representative may be notified, but because DOT requires alcohol testing to occur in a timely manner, the half hour time allowance will not apply. If the union representative is not immediately available, he/she may have to arrange independent transportation to the collection site, as regulations do not allow for delay of the collection process.

Observation and testing for reasonable suspicion for controlled substances use can occur at any time the employee is on duty, and is not related to when he/she performs safety-sensitive functions. A trained supervisor's determination will be based on observation of an employee's appearance, behavior, speech and/or body odor, and on chronic and withdrawal effects of drug use. An employee who is suspected of controlled substances use must be immediately withdrawn from safety-sensitive functions and is required to undergo drug testing. Observation and testing for reasonable suspicion for alcohol use can occur only, just prior to, during, or just after the employee's performance of safety-sensitive function, or at any time that the employee is in readiness to provide safety-sensitive function.

A trained supervisor's determination of suspected alcohol use will be based on observation of an employee's appearance, behavior, speech and/or body odor. An employee who is suspected of alcohol misuse must be immediately withdrawn from safety-sensitive functions and cannot return unless an alcohol test has been conducted with an alcohol concentration that measures less than 0.02, or (if no test is conducted) twenty-four (24) hours have elapsed since the reasonable suspicion determination occurred. If this employee must return to safety-sensitive functions before 24 hours have passed, he/she must take an alcohol test with a test result below 0.02.

An alcohol test for reasonable suspicion should be administered within the first two (2) hours, or within the next six (6) hours, but no more than eight (8) hours after the initial observation occurred. If alcohol testing is not conducted within two (2) hours, the reasons the test was not conducted must be documented.

If alcohol testing then is not conducted within the next six (6) hours, the reasons the test was not conducted must again be documented. After eight (8) hours, there will be no more attempts to conduct an alcohol test. If no alcohol test is conducted at all, the driver cannot perform safety-sensitive functions until twenty-four (24) hours have elapsed following the original determination of reasonable suspicion of alcohol use. If this employee must return to safety-sensitive functions before 24 hours have passed, he/she may do so only after taking another alcohol test and receiving a test result below 0.02.

#### **XVI. RETURN-TO-DUTY TESTING**

Under DOT regulations, before a driver can be considered for reinstatement after having engaged in prohibited conduct (Section X, FMCSA Prohibitions), the driver must provide a negative Return-to-Duty drug and/or alcohol test, depending on the substance(s) involved in the prohibited conduct. A Substance Abuse Professional (SAP) may, however, order testing for both alcohol and controlled substances. In accordance with DOT rules, a return-to-duty drug test must be an observed collection.

Each employer reserves the right to withhold a final decision regarding reinstatement of a driver until after a negative result of a Return-to-Duty test has been received.

A positive Return-to-Duty test result is considered to be an employee's second violation, and is therefore cause for termination. An employee with a positive Return-to-Duty test will be required to complete an entirely new SAP process and will be subject to Follow-Up testing plans for each of the violations. An employee will not be returned to safety-sensitive functions until a negative result is obtained.

Under independent authority, an employer may require that the cost of Return-to-Duty tests will be borne by the driver.

## **XVII. FOLLOW-UP TESTING**

A driver, who returns to duty after complying with the recommendation of a Substance Abuse Professional and after providing a negative result on a Return-to-Duty test, is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the Substance Abuse Professional.

Follow-up testing may be scheduled for a period of up to sixty (60) months, and must include no fewer than six (6) tests to be conducted in the first twelve (12) months after the employee's return-to-duty date. Follow-up alcohol testing shall be conducted only just prior to, during, or just after the driver's performance of safety-sensitive functions, or when the driver is in readiness to perform safety-sensitive function.

In accordance with DOT rules, every follow-up drug test must be an observed collection.

Under independent authority, each employer may require that the cost of all follow-up tests will be borne by the driver. When an employer, under independent authority, has terminated a driver from employment, the responsibility for any remaining follow-up tests recommended by a SAP must be assumed by the driver's gaining employer, provided the driver is offered employment as a DOT = covered employee with a new employer.

If a newly-hired driver is subject to follow-up testing due to a previous violation while working for a previous employer, that driver will, under independent authority, be responsible for the cost of any remaining follow-up tests as required by the Substance Abuse Professional and such costs, if not paid by cash or personal check, will be deducted from the driver's next paycheck.

## **XVIII. GENERAL TESTING INFORMATION (STANDARDS AND INTEGRITY OF THE TESTING PROCESS)**

1. All tests shall be conducted as specified in U.S. Department of Transportation's 49 CFR §40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs.
2. An applicant or driver has the right to request and receive from his/her employer a copy of the test result report on

any drug or alcohol test for which he/she provided a urine or breath sample. The request, verbal or written, should be addressed to the employer's DER (for alcohol test results), and to the MRO for drug test results.

3. Collection and testing procedures will be such as to protect the driver and the integrity of the testing process, safeguard the validity of the test results, and ensure that test results are attributed to the correct driver.
4. Results of additional tests arranged by an employee, or requested by a medical practitioner, will not be considered. This includes testing of blood samples, hair samples, DNA, or any other testing methods or protocols.
5. When an employee is required to obtain a medical examination by a medical specialist (related to the employee's inability to provide a sufficient breath or urine specimen), under each employer's independent authority, the employee will be required to pay the costs associated with that examination.

#### **XIX. ALCOHOL TESTING AND THE REPORTING OF TEST RESULTS**

1. Alcohol tests (screening and confirmatory) will be performed on a device that appears on the National Highway Traffic Safety Administration's (NHTSA) Conforming Products List (CPL) and that meets the DOT's testing requirements.
2. When a specific time for an employee's test has been scheduled, and the employee does not appear at the collection site at the scheduled time, the BAT will contact the employer's DER, who may determine that the employee has refused to be tested.
3. For alcohol testing (screening and confirmatory), a breath sample will be collected and analyzed by a Breath Alcohol Technician (BAT) using an Evidential Breath Testing device (EBT). For the screening test, a saliva sample may be collected by a Screening Test Technician, using an Alcohol Screening Device.
4. If the result of the screening test indicates an alcohol concentration of 0.02 or greater, a Breath Alcohol Technician (BAT) will perform a confirmatory test, no less than fifteen (15) and no more than thirty (30) minutes after the completion of the screening test.

5. If the confirmatory test is positive (0.04 and above BrAC), the Breath Alcohol Technician (BAT) shall immediately notify the employer's DER.
6. Random, reasonable suspicion and follow-up alcohol testing must be conducted just before, during, or just after a driver performs safety-sensitive function, or at any time the driver is in readiness to perform safety-sensitive function.
7. A required Return-to Duty alcohol test must be completed, with a negative test result, prior to a driver returning to performing any safety-sensitive function.

**XX. CONTROLLED SUBSTANCES TESTING, THE MRO PROCESS AND REPORTING OF TEST RESULTS**

1. All controlled substances testing specimens shall be analyzed by a laboratory that is approved by the U. S. Department of Health and Human Services (DHHS), and that observes applicable chain-of custody procedures.
2. When a specific time for an employee's test has been scheduled, and the employee does not appear at the collection site at the scheduled time, the collection site personnel will contact an employer's DER, who may determine that the employee has refused to be tested.
3. At the collection site, the employee will be required to empty his/her pockets and display the items in them. A refusal to empty all pockets as directed by the collector will be a refusal to be tested.
4. If a urine specimen temperature is outside the acceptable range (90 - 100 degrees F), the collector must immediately require a new collection, under direct observation. An employee who, refuses to provide a second specimen, or who refuses to permit a direct observation collection, will be determined to have refused to be tested.
5. When a specimen for a drug test is collected under observed conditions, the observer must request the employee to raise his/her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer that the employee does not have such a device. The employee may then return clothing to its proper position for observed urination.
6. The DHHS-approved testing laboratory shall forward the results of every drug test to a BCRC designated Medical Review Officer (MRO) for review.

7. If a test result is negative, the result will be reported by the MRO to the employer's DER.
8. If the test result is confirmed positive, adulterated, substituted or invalid, the employee will be given an opportunity to discuss the test result with the MRO.
9. If a test result is verified as positive, or as a refusal to test because of adulteration or substitution, the MRO shall contact the driver, and will give the driver an opportunity to discuss the test results prior to making a final decision to verify a test result. The MRO shall inform the driver of his/ her right to request a retest of the same specimen at a different DHHS-approved laboratory and of the process for doing so. Such request must be made by the driver, verbally or in writing, within seventy-two (72) hours of the driver having been informed of a verified positive test result.
10. An employer, under independent authority, will require that the cost of a retest shall be borne by the driver, and will be deducted from the driver's subsequent paycheck.
11. If, after making 3 attempts in a 24-hour period, the MRO is not able to contact a driver, the MRO shall report to the employer's DER that all reasonable efforts have been made to contact the driver, without success. The DER shall then, as soon as practicable, ask the driver to contact the MRO within the next 72 hours, and shall apprise the MRO that the driver has been so notified.
12. The MRO may verify a test as positive without communicating with the driver if:
  - a. The driver expressly declines the opportunity to discuss the test result; or
  - b. The employer's DER has successfully made and documented a contact with the driver and instructed the driver to contact the MRO and more than 72 hours have passed since the time the employee was successfully contacted by the DER; or
  - c. Neither the MRO nor the DER, after making all reasonable efforts, has been able to contact the employee within 10 days of the date on which the MRO receives the confirmed positive test result from the laboratory.

13. If a test is verified positive under the circumstances specified in #12 (b,c) above, the driver may, within 60 days, present to the MRO information documenting that serious illness, injury or other circumstances unavoidably prevented the driver from being contacted by the MRO or his/her employer's DER, or from contacting the MRO, as applicable, within the times provided. The MRO, on the basis of such information, may reopen the verification, allowing the driver to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be negative.
14. When a required drug test (pre-employment, return-to-duty, or follow-up) is canceled, the employee will be required to immediately take another test, with minimum advance notice.
15. A Negative dilute drug test (or the report of an invalid specimen) will result in the employee's being required to immediately take another test, with minimum advance notice.
16. A positive dilute drug test will be considered to be a positive test.
17. When an MRO reports a negative dilute test with creatinine level greater than or equal to 2 mg/dL but equal to or less than 5 mg/dL, DOT regulations require the employee to submit to an immediate recollection under direct observation, with minimum advance notice. (A refusal to provide this second specimen will be a refusal to be tested.)
18. A negative dilute drug test (or the report of an invalid specimen) will result in the employee being required to immediately take another test, unobserved, with minimum advance notice. (A refusal to provide this specimen will be a refusal to be tested.)
19. If, in the MRO's opinion, the employee provides information that medically disqualifies the employee from providing safety-sensitive functions, or that causes the MRO to have concern about the employee's ability to safely perform his/her safety-sensitive duties, the MRO is required to give that information to an employer's DER.
20. After verifying the test results, the MRO shall report the test results in a confidential manner to the employer's DER. The MRO's report will include:

- a. The driver's name and Social Security # or employee ID #;
  - b. The date of collection;
  - c. The reason for the test (e.g., random, post-accident, etc.);
  - d. The test results will be reported as either positive (with the identity of the specific controlled substance), negative, dilute, refusal to test, or canceled, and the date the result was verified by the MRO.
21. A required Return-to Duty drug test must be completed, with a negative test result, prior to a driver returning to performing any safety-sensitive function.

### **XXI. TEST RECORDS**

Records pertaining to the alcohol and controlled substances testing program shall be maintained in secured and locked confidential files in the office of each employer's DER. Access to these records shall be limited to each employer's management officials on a need-to-know basis. Records and report data shall be maintained as specified in U.S. DOT's rules and regulations.

Except as required by law or expressly authorized or required by FMCSA's rules and regulations, driver testing information maintained under the alcohol and controlled substances testing program will be released only to the driver (on written request), or to an identified person as directed by the specific, written consent of the driver authorizing the release of the information.

### **XXII. CONSEQUENCES OF PROHIBITED CONDUCT**

If an applicant who has tested positive, or who refused to be tested, intends to reapply to the Company, or apply to another transportation industry employer, he/she must successfully complete a SAP assessment and recommendation before he/she can be considered.

When a DER receives notice of a driver's verified positive drug or alcohol test result, or of a verified refusal to be tested, or of any other violation of FMCSA rules (See Section X, FMCSA Prohibitions), the driver will be immediately removed

from all FMCSA safety-sensitive functions (see definition), including driving, and will not be permitted or required to return to performing safety-sensitive functions until or unless the employee, successfully completes the return-to-duty process that is required by FMCSA under this regulation. This includes a supervisor or manager having actual knowledge (see definition) that a driver has used alcohol on duty, or a controlled substance on duty, without authorization.

The employer's DER will provide the driver with the phone number of BCRC's Employee Assistance Program, who will in turn direct the driver to qualified SAPs. Under independent authority, each employer will accept evaluations conducted only by EAP recommended SAPs. Additionally, DOT regulations do not permit an employee to obtain a second SAP's evaluation. If an employee does obtain a second SAP's opinion, DOT regulations do not permit an employer to acknowledge that second opinion.

If an applicant intends to reapply to an employer, or to another transportation industry employer, he/she must first successfully complete a SAP assessment and recommendation.

A driver who refuses to submit to testing will, under each employer's independent authority, be terminated from employment, and will be provided with names, addresses and phone number of qualified SAPs and of available treatment resources.

DOT rules and regulations do not permit an employer to consider a driver for return to safety-sensitive functions until the driver has been evaluated by a qualified SAP, and has complied with the SAP's recommendation(s) for rehabilitation and/or education.

If and when possible, an employer may reassign a driver to non safety-sensitive functions while he/she is following the SAP's recommended program of assistance and/or education. However, due to the safety-sensitive nature of most of the jobs in this industry, no employer can guarantee that these accommodations can or will be made.

For employers with more than 50 employees, a driver who is following a SAP's recommendation of treatment may access benefits under Family and Medical Leave Act (FMLA), provided he/she is eligible for such benefits. Under separate authority, employers may permit a driver who has been removed from safety-sensitive functions under these regulations to request to receive earned time off and/or vacation time benefits during the assessment and/or treatment phase.

Upon receiving a SAP's report of compliance with recommendations, each employer will arrange for the driver to take a Return-to-Duty test. In order for the employee to return to safety-sensitive functions, this Return-to-Duty test must have a negative test result.

Under independent authority, each employer will require that any costs incurred in regard to services provided by a SAP, or of treatment and/or education recommended by the SAP, which are not covered by a driver's insurance plan or by BCRC's Employee Assistance Program, will be the responsibility of the driver.

When a SAP requires a driver to participate in a program of aftercare, the driver's compliance with that requirement will be monitored by the EAP or the SAP. Under independent authority, any costs related to this monitoring will be the responsibility of the driver. The aftercare requirement will be included in a Return-to-Duty Agreement, which must be signed by the driver. Failure to sign such agreement, or failure to adhere to the terms of a signed agreement, will result in termination of employment.

### **XXIII. EDUCATION AND TRAINING**

Any employee who has questions or concerns regarding this policy may seek clarification and further details from his/her employer's DER.

### **XXIV. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

BCRC provides a comprehensive Employee Assistance Program (EAP) for employees of all contractor participants in the association. Our EAP is accessible by a toll-free phone number. Employees are encouraged to access the EAP for

consultation and assistance regarding non-work-related problems that are or could potentially affect their ability to perform their jobs satisfactorily or safely, including problems with alcohol misuse or the use of controlled substances. Educational materials, including a copy of this policy, and information concerning the effects of alcohol and controlled substances use on an individual's health, work and personal life, signs and symptoms of an alcohol or controlled substances problem (the employee's or a coworker's) and available methods for intervening when an alcohol or controlled substances problem is suspected, will be provided to each employee. Additional materials may be requested and answers-to questions about the materials may be obtained by contacting his/her employer's DER.

Attendance at training programs will be mandatory for supervisors and other employees involved in administering the drug/alcohol testing program.

Supervisors who are designated to determine whether or not reasonable suspicion exists and who then order a DOT FMCSA-covered employee to undergo testing under FMCSA rules and regulations will receive at least 60 minutes of training on, recognizing alcohol misuse, and at least 60 minutes of training on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All supervisors who participate in training will be given a certificate of completion of such training., The original certificate will be kept in Company records, and a copy will be provided to each supervisor for his/her own records, when requested.

## **XXV. DRUG-FREE WORKPLACE EDUCATION**

BCRC employers are committed to a Drug-Free Awareness program for all employees. Each employer will use that program in an ongoing educational effort to prevent and eliminate drug and alcohol abuse that may affect the workplace. The Drug-Free Awareness program will inform employees and their families about the dangers of alcohol and drug abuse in the workplace, of the employer's alcohol and drug policy, the

availability of treatment for employees who voluntarily seek such assistance (including the Employee Assistance Program), and the consequences imposed by the employer on employees who violate the alcohol and drug policy.

## **XXVI. SELF-IDENTIFICATION PROGRAM AND POLICY**

BCRC encourages drivers who recognize that they may have a problem with drugs and/or alcohol to seek assistance for resolving that problem before they have a DOT violation due to a positive test result or because they engaged in other DOT prohibited conduct.

A driver who admits to a drug and/or alcohol problem will not have a DOT violation. He/she will be given an opportunity, to obtain a chemical use assessment from BCRC's Employee Assistance Program (EAP). Prior to the assessment, however, each employer will require the driver to sign a release of information that will enable that employer's DER to receive the results of the assessment, and to receive subsequent reports related to the assessment, and the driver's successful completion of all recommendations for assistance.

The following conditions must apply to the driver's self-admission:

- The driver's admission cannot be made during his/her on-duty time. It must occur prior to the driver's reporting for duty on any particular day.
- The driver's admission cannot be made in an attempt to avoid a required DOT drug test.
- Under 49 CFR Part 382.121, DOT requires the employer to remove the driver from safety-sensitive functions, including driving.
- When the employer is satisfied that the driver has complied with the EAP's recommendations for assistance, the employer will return the driver to safety-sensitive functions, provided that:
- Prior to returning to safety-sensitive functions, the driver will be required to provide a negative DOT drug and/or alcohol test result, and
- After being returned to safety-sensitive function, the driver will be subject to follow-up non-DOT testing, as permissible by BCRC's policy for non-DOT drug and alcohol testing.

- A driver who self-identifies under this policy, and who then fails to comply with the EAP's recommendations will be considered to have engaged in conduct prohibited by the DOT in 49 CFR Part 382, Subpart B, and will, not be permitted to return to safety-sensitive function until he/she has successfully complied with the SAP return-to-duty process.

Each BCRC employer will adhere to the following terms, in accordance with 49 CFR Part 382.121;

- No adverse job action will be taken against a driver who admits to drug and/or alcohol use under the terms above.
- A driver who self-identifies under this program will be given reasonable time to obtain the required assessment and assistance. Under independent authority, BCRC requires the assessment process to be initiated within three (3) days of the driver's disclosure.
- A driver who complies with all requirements, and who complies satisfactorily with the EAP's recommendations for assistance, will be permitted to return to safety-sensitive functions.
- A driver who cooperates and successfully complies with this program will not be considered to have had a DOT violation of prohibited conduct under 49 CFR Part 382, Subpart B.

## **XXVII. EFFECTS, SIGNS, AND SYMPTOMS OF USE OF ALCOHOL AND CONTROLLED SUBSTANCES**

Effects: The use of alcohol and controlled substances adversely affects the health, work environment, and personal life of the user. Consumption of alcohol slows down physical responses and progressively impairs mental functions. Since the liver is the primary location of alcohol metabolism, consumption of alcohol can cause liver disease including fatty liver, alcoholic, hepatitis, and cirrhosis. Alcohol use can also harm the gastrointestinal tract, the heart and vascular system, the immune system, and the brain. There is also evidence that alcohol abuse is associated with the incidence of some types of cancer, particularly cancers of

the liver, esophagus, nasopharynx, and larynx. Consumption of large quantities of alcohol in a short period of time can lead to the overdose effects of unconsciousness, coma, and/or death. The use of alcohol also adversely affects the health of persons other than the user.

Approximately one-half of all traffic accident fatalities are alcohol-related. Numerous traffic related injuries are also caused by a user's abuse of alcohol. The use of alcohol also contributes to crime and family violence. Use of controlled substances also causes significant changes in the user's body and mental functions. Such changes may include changes in the rates of some body functions and impairment of the normal body functions. The changes in the mental functions may include lapses in attention, ignoring warning signals, apathy, depression, and hallucinations. The use of controlled substances can also lead to the overdose symptoms of unconsciousness, coma, and/or death.

The use of controlled substances also adversely affects the health of persons other than the user. Such use contributes to, and in many cases causes, serious bodily injuries and the death of persons other than the user. The use of controlled substances also contributes to crime and family violence.

The use of alcohol and controlled substances by an employee also adversely affects the work environment. Such use poses significant safety risks to the employee, other employees, customers, and the general public. Such safety risks include the greater potential for work-place accidents and for defects in the services and products provided to customers.

The personal life of users of alcohol and controlled substances is also adversely affected by the use of alcohol and controlled substances. Such use adversely affects the ability to form and maintain relationships with spouses, children, other family members, and friends. The deterioration and breakdown of such relationships increases anxiety and causes additional stress for the user, which can lead to an increase in the use of alcohol and controlled substances.

## **Signs and Symptoms**

The use of alcohol can be detected by observation of physical evidence such as the presence of alcohol containers (e.g., bottles, cans, etc.), drinking from paper bags, the odor of the presence of alcohol, slurred speech, and impairment of balance and other bodily functions. Significant changes in behavior and/or personality traits can also be signs and symptoms of the use of alcohol.

The use of controlled substances can also be detected by observation of physical evidence such as dilated pupils, sweating, signs of confusion, panic, false sense of confidence and power, and acts that demonstrate impulsive and risk-taking behaviors. The use of controlled substances oftentimes causes significant changes in behavior and/or personality traits, which are also signs and symptoms of the use of controlled substances.

## **XXVIII. METHODS OF INTERVENTION WHEN ALCOHOL AND/OR CONTROLLED SUBSTANCES PROBLEM IS SUSPECTED**

If an employee suspects that he or she may have an alcohol and/or controlled substances problem, the employee is strongly encouraged to comply with the self-identification program and policy set forth herein. Compliance with the self-identification program and policy set forth herein will allow the employee to obtain an assessment and to pursue treatment and other assistance to address such alcohol and controlled substances problems. Reporting in compliance with the self-identification program and policy set forth herein will not constitute a DOT violation.

When an employee has a problem with alcohol and/or controlled substances, the employee's problem has adverse effects upon his or her co-workers, customers, and the general public. Such adverse effects include significant safety risks posed by the increased risk of accidents, defects in products and services, bodily injury, and property damage. Therefore, each employee also has an obligation to take appropriate action when an employee suspects that another employee may have an alcohol and/or controlled substances problem. Such action should include confrontation of the employee who

is suspected of having the problem in an appropriate manner (e.g., physical contact and verbally abusive confrontation are not acceptable), and referral of the employee to an employee assistance program. In any situations where the suspected problem is significant and/or there is a reasonable possibility that the problem poses a significant risk of bodily injury and/or property damage, then the employee who suspects the problem shall immediately refer the matter to management by notifying an immediate supervisor or other management representative.

## **XXIX. DRUG AND ALCOHOL CLEARING HOUSE**

Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse  
SOURCE: 81 FR 87725, Dec. 5, 2016, unless otherwise noted.

### **Drug and Alcohol Clearinghouse**

(a) Pre-employment query required. (1) Employers must not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information about whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance, in violation of §382.213.

(2) The employer must conduct a full query under this section, which releases information in the Clearinghouse to an employer and requires that the individual driver give specific consent.

(b) Annual query required. (1) Employers must conduct a query of the Clearinghouse at least once per year for information for all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees.

(2) In lieu of a full query, as described in paragraph (a)(2) of this section, an employer may obtain the individual driver's consent to conduct a limited query to satisfy the annual query

requirement in paragraph (b)(1) of this section. The limited query will tell the employer whether there is information about the individual driver in the Clearinghouse, but will not release that information to the employer. The individual driver may give consent to conduct limited queries that is effective for more than one year.

(3) If the limited query shows that information exists in the Clearinghouse about the individual driver, the employer must conduct a full query, in accordance with paragraph (a)(2) of this section, within 24 hours of conducting the limited query. If the employer fails to conduct a full query within 24 hours, the employer must not allow the driver to continue to perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions as defined in paragraph (d) of this section.

(c) Employer notification. If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer.

(d) Prohibition. No employer may allow a driver to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of §382.211; or that an employer has reported actual knowledge, as defined at §382.107, that the driver used alcohol on duty in violation of §382.205, used alcohol before duty in violation of §382.207, used alcohol following an accident in violation of §382.209, or used a controlled substance in violation of §382.213, except where a query of the Clearinghouse demonstrates:

(1) That the driver has successfully completed the SAP evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing plan prescribed by the SAP.

(2) That, if the driver has not completed all follow-up tests as prescribed by the SAP in accordance with §40.307 of this title and specified in the SAP report required by §40.311 of this title, the driver has completed the SAP evaluation, referral, and

education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) Recordkeeping required. Employers must retain for 3 years a record of each query and all information received in response to each query made under this section. As of January 6, 2023, an employer who maintains a valid registration fulfills this requirement.

### **Driver consent to permit access to information in the Clearinghouse**

(a) No employer may query the Clearinghouse to determine whether a record exists for any particular driver without first obtaining that driver's written or electronic consent. The employer conducting the search must retain the consent for 3 years from the date of the last query.

(b) Before the employer may access information contained in the driver's Clearinghouse record, the driver must submit electronic consent through the Clearinghouse granting the employer access to the following specific records:

- (1) A verified positive, adulterated, or substituted controlled substances test result;
- (2) An alcohol confirmation test with a concentration of 0.04 or higher;
- (3) A refusal to submit to a test in violation of §382.211;
- (4) An employer's report of actual knowledge, as defined at §382.107, of:
  - (i) On duty alcohol use pursuant to §382.205;
  - (ii) Pre-duty alcohol use pursuant to §382.207;
  - (iii) Alcohol use following an accident pursuant to §382.209; and
  - (iv) Controlled substance use pursuant to §382.213;
- (5) A SAP report of the successful completion of the return-to-duty process;
- (6) A negative return-to-duty test; and
- (7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.

(d) A driver granting consent under this section must provide consent electronically to the Agency through the Clearinghouse prior to release of information to an employer in accordance with §382.701(a)(2) or (b)(3).

(e) A driver granting consent under this section grants consent for the Agency to release information to an employer in accordance with §382.701(c).

### **Reporting to the Clearinghouse**

(a) MROs. (1) Within 2 business days of making a determination or verification, MROs must report the following information about a driver to the Clearinghouse:

- (i) Verified positive, adulterated, or substituted controlled substances test results;
- (ii) Refusal-to-test determination by the MRO in accordance with 49 CFR 40.191(a)(5), (7), and (11), (b), and (d)(2).

(2) MROs must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

- (i) Reason for the test;
- (ii) Federal Drug Testing Custody and Control Form specimen ID number;
- (iii) Driver's name, date of birth, and CDL number and State of issuance;
- (iv) Employer's name, address, and USDOT number, if applicable;
- (v) Date of the test;
- (vi) Date of the verified result; and
- (vii) Test result. The test result must be one of the following:
  - (A) Positive (including the controlled substance(s) identified);
  - (B) Refusal to test: Adulterated;
  - (C) Refusal to test: Substituted; or
  - (D) Refusal to provide a sufficient specimen after the

MRO makes a determination, in accordance with §40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. Under this subpart a refusal would also include a refusal to undergo a medical examination or evaluation to substantiate a qualifying medical condition.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a MRO must report that changed result to the Clearinghouse.

(b) Employers. (1) Employers must report the following information about a driver to the Clearinghouse by the close of the third business day following the date on which they obtained that information:

- (i) An alcohol confirmation test result with an alcohol concentration of 0.04 or greater;
- (ii) A negative return-to-duty test result;
- (iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;
- (iv) A refusal to test determination made in accordance with 49 CFR 40.191(a)(1) through (4), (a)(6), (a)(8) through (11), or (d)(1), but in the case of a refusal to test under (a)(11), the employer may report only those admissions made to the specimen collector; and
- (v) A report that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title.

(2) The information required to be reported under paragraph (b)(1) of this section must include, as applicable:

- (i) Reason for the test;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Employer name, address, and USDOT number;
- (iv) Date of the test;
- (v) Date the result was reported; and
- (vi) Test result. The test result must be one of the following:
  - (A) Negative (only required for return-to-duty tests administered in accordance with §382.309);
  - (B) Positive; or
  - (C) Refusal to take a test.

(3) For each report of a violation of 49 CFR 40.261(a)(1) or 40.191(a)(1), the employer must report the following information:

- (i) Documentation, including, but not limited to, electronic mail or other contemporaneous record of the time and date the driver was notified to appear at a testing site; and the time, date and testing site location at which the employee was directed to appear, or an affidavit providing evidence of such notification;

- (ii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, indicating the date the employee was terminated or resigned (if applicable);
  - (iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b) (6) of this section when the reported refusal occurred (if applicable); and
  - (iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section.
- (4) Employers must report the following violations by the close of the third business day following the date on which the employer obtains actual knowledge, as defined at §382.107, of:
- (i) On-duty alcohol use pursuant to §382.205;
  - (ii) Pre-duty alcohol use pursuant to §382.207;
  - (iii) Alcohol use following an accident pursuant to §382.209; and
  - (iv) Controlled substance use pursuant to §382.213.
- (5) For each violation in paragraph (b)(4) of this section, the employer must report the following information:
- (i) Driver's name, date of birth, CDL number and State of issuance;
  - (ii) Employer name, address, and USDOT number, if applicable;
  - (iii) Date the employer obtained actual knowledge of the violation;
  - (iv) Witnesses to the violation, if any, including contact information;
  - (v) Description of the violation;
  - (vi) Evidence supporting each fact alleged in the description of the violation required under paragraph (b)(4) of this section, which may include, but is not limited to, affidavits, photographs, video or audio recordings, employee statements (other than admissions pursuant to §382.121), correspondence, or other documentation; and

- (vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section.

(6) An employer who employs himself/herself as a driver must designate a C/TPA to comply with the employer requirements in paragraph (b) of this section related to his or her own alcohol and controlled substances use.

(c) C/TPAs. Any employer may designate a C/TPA to perform the employer requirements in paragraph (b) of this section. Regardless of whether it uses a C/TPA to perform its requirements, the employer retains ultimate responsibility for compliance with this section. Exception: An employer does not retain responsibility where the C/TPA is designated to comply with employer requirements as described in paragraph (b)(6) of this section.

(d) SAPs. (1) SAPs must report to the Clearinghouse for each driver who has completed the return-to-duty process in accordance with 49 CFR part 40, subpart O, the following information:

- (i) SAPs name, address, and telephone number;
- (ii) Driver's name, date of birth, and CDL number and State of issuance;
- (iii) Date of the initial substance-abuse-professional assessment; and
- (iv) Date the SAP determined that the driver demonstrated successful compliance as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part.

(2) SAP must report the information required by paragraphs (d)(1)(i) through (iii) of this section by the close of the business day following the date of the initial substance abuse assessment, and must report the information required by paragraph (d)(1)(iv) of this section by the close of the business day following the determination that the driver has completed the return-to-duty process.

(e) Reporting truthfully and accurately. Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from reporting information he or she knows or should know is false or inaccurate.

## **Reporting entity-When information will be reported to clearinghouse**

Prospective/Current Employer of CDL Driver - An alcohol confirmation test with a concentration of 0.04 or higher.

- Refusal to test (alcohol) as specified in 49 CFR 40.261.
- Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
- Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
- Negative return-to-duty test results (drug and alcohol testing, as applicable)
- Completion of follow-up testing.

Service Agent acting on behalf of Current Employer of CDL Driver - An alcohol confirmation test with a concentration of 0.04 or higher.

- Refusal to test (alcohol) as specified in 49 CFR 40.261.
- Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
- Actual knowledge, as defined in 49 CFR 382.107, that a driver has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance.
- Negative return-to-duty test results (drug and alcohol testing, as applicable)
- Completion of follow-up testing.

MRO - Verified positive, adulterated, or substituted drug test result.

- Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.

SAP - Identification of driver and date the initial assessment was initiated.

- Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing.

### **Notice to drivers of entry, revision, removal, or release of information**

- (a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.
- (b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.
- (c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. Exception: A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

### **Drivers' access to information in the Clearinghouse**

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law or regulation. A driver must register with the Clearinghouse before accessing his or her information.

### **Clearinghouse registration**

(a) Clearinghouse registration required. Each employer and service agent must register with the Clearinghouse before accessing or reporting information in the Clearinghouse.

(b) Employers.

(1) Employer Clearinghouse registration must include:

- (i) Name, address, and telephone number;
- (ii) USDOT number, except if the registrant does not have a USDOT Number, it may be requested to provide other information to verify identity; and
- (iii) Name of the person(s) the employer authorizes to report information to or obtain information from the Clearinghouse and any additional information FMCSA needs to validate his or her identity.

(2) Employers must verify the names of the person(s) authorized under paragraph (b)(1)(iii) of this section annually.

(3) Identification of the C/TPA or other service agent used to comply with the requirements of this part, if applicable, and authorization for the C/TPA to query or report information to the Clearinghouse. Employers must update any changes to this information within 10 days.

(c) MROs and SAPs. Each MRO or SAP must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;

(2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

(3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) C/TPAs and other service agents. Each consortium/ third party administrator or other service agent must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and

(2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.

(3) Each C/TPA or other service agent must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

### **Duration, cancellation, and revocation of access**

(a) Term. Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) Cancellation. FMCSA will cancel Clearinghouse registrations for anyone who has not queried or reported to the Clearinghouse for 2 years.

(c) Revocation. FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate or false information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements as set forth in part 40 of this title.

## **Authorization to enter information into the Clearinghouse**

- (a) C/TPAs. No C/TPA or other service agent may enter information into the Clearinghouse on an employer's behalf unless the employer designates the C/TPA or other service agent.
- (b) SAPs. A driver must designate a SAP before that SAP can enter any information about the driver's return-to-duty process into the Clearinghouse.

## **Procedures for correcting information in the database**

- (a) Petitions limited to inaccurately reported information.

(1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy of test results or refusals.

(2) Exceptions.

- (i) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.
- (ii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge (other than as provided for in paragraph (a)(2)(i) of this section) if that report does not comply with the reporting requirements in §382.705(b)(5).
- (iii) Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of a violation under 49 CFR 40.261(a)(1) or 40.191(a)(1) if that report does not comply with the reporting requirements in §382.705(b)(3).

(b) Petition. Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information in the Clearinghouse. The petition must include:

- (1) The petitioner's name, address, telephone number, and CDL number and State of issuance;
- (2) Detailed description of the basis for the allegation that the information is not accurate; and
- (3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(c) Submission of petition. The petitioner may submit his/her petition electronically through the Clearinghouse or in writing to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, Attention: Drug and Alcohol Program Manager, 1200 New Jersey Avenue SE., Washington, DC 20590.

(d) Notice of decision. Within 45 days of receiving a complete petition, FMCSA will inform the driver in writing of its decision to remove, retain, or correct the information in the database and provide the basis for the decision.

(e) Request for expedited treatment. (1) A driver may request expedited treatment to correct inaccurate information in his or her Clearinghouse record under paragraph (a)(1) of this section if the inaccuracy is currently preventing him or her from performing safety-sensitive functions, or to remove employer reports under paragraph (a)(2) of this section if such reports are currently preventing him or her from performing safety-sensitive functions. This request may be included in the original petition or as a separate document.

(2) If FMCSA grants expedited treatment, it will subsequently inform the driver of its decision in writing within 14 days of receipt of a complete petition.

(f) Administrative review. (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraph (d) or (e) of this section was in error.

(2) The request must prominently state at the top of the document: "Administrative Review of Drug and Alcohol Clearinghouse Decision" and the driver may submit his/her request electronically through the Clearinghouse or in writing to the Associate Administrator for Enforcement (MC-E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

(3) The driver's request must explain the error he or she believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 30 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

(g) Subsequent notification to employers. When information is corrected or removed in accordance with this section, or in accordance with 49 CFR part 10, FMCSA will notify any employer that accessed the incorrect information that a correction or removal was made.

### **Availability and removal of information**

(a) Driver information not available. Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

- (1) The SAP reports to the Clearinghouse the information required in §382.705(d);
- (2) The employer reports to the Clearinghouse that the driver's return-to-duty test results are negative;
- (3) The driver's current employer reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§40.307, 40.309, and 40.311 of this title; and
- (4) Five years have passed since the date of the violation determination.

(b) Driver information remains available. Information about a particular driver's drug or alcohol violation will remain available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) Exceptions. (1) Within 2 business days of granting a request for removal pursuant to §382.717(a)(2)(i), FMCSA will remove information from the Clearinghouse.

(2) Information about a particular driver's drug or alcohol violation may be removed in accordance with §382.717(a)(2)(ii) and (iii) or in accordance with 49 CFR part 10.

(d) Driver information remains available. Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing, or enforcement purposes.

### **Fees**

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. Exception: No driver may be required to pay a fee to access his or her own information in the Clearinghouse.

### **Unauthorized access or use prohibited**

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining whether a prohibition applies to a driver performing a safety-sensitive function with respect to a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at §382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research, auditing, or enforcement purposes.

### **Access by State licensing authorities**

(a) In order to determine whether a driver is qualified to operate a commercial motor vehicle, the chief commercial driver's licensing official of a State must obtain the driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official who does not take appropriate safeguards to protect the privacy and

confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

### **Penalties**

An employer, employee, MRO, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

**THIS DRUG AND ALCOHOL POLICY IS NOT AN  
EMPLOYMENT CONTRACT, OR AN OFFER OF AN  
EMPLOYMENT CONTRACT.**

*BCRC may change, alter, or eliminate any or all portions of this policy as it deems appropriate, or as mandated or permitted by applicable laws, and may interpret it in response to any particular circumstance. An up-to-date copy of the policy is kept in the office of each employer's DER. Employees may request to see the policy at any time during normal business hours.*

## **ACKNOWLEDGEMENT AND AGREEMENT FORM**

for Contractor Participants who are Contributing Members  
of Building and Construction Resource Center, Inc. (BCRC)

Contractor Participant: \_\_\_\_\_

This acknowledges the receipt of BCRC's Drug and Alcohol  
Policy in compliance with:

- 49 CFR Part 382 (FMCSA)
- 49 CFR Part 199 (PHMSA)

In addition, I understand that as an employer who is subject to federal requirements, laws and regulations related to misuse of alcohol and use of controlled substances, I am responsible for all requirements of compliance with these rules. I understand that my company is subject to DOT-levied sanctions and fines for non-compliant services. As an employer, I agree to:

- Provide a copy of this DOT Policy to all current employees who are subject to these rules.
- Require each employee to sign an Acknowledgement of Receipt of this policy; an employee who refuses to sign will be removed from safety-sensitive functions.
- Give each applicant an opportunity to review the policy at the time of application for employment, and will sign a form acknowledging that he/she has seen the policy.
- Arrange for each manager/supervisor to receive training as required by the regulations of the transportation mode that apply to the employees he/she supervises, and to maintain documentation of the training in the manager/supervisor's file.
- Maintain all files and records as specified in the regulations, including a file that identifies all managers and administrators who have responsibilities related to this program, and the nature of those responsibilities.

- Maintain current list of all employees who are subject to testing under these regulations, and immediately inform BCRC of newly-hired and terminated employees within two (2) days of the date of occurrence.
- Designate and authorize one or more DERs to perform the functions of the DER for the Company, and advise your employees of the name(s), contact information, and responsibilities for such DERs.
- Promote the Employee Assistance Program (EAP) as a reliable and confidential resource for employees who recognize that they may have personal problems related to drug and/or alcohol use.
- Seek assistance, clarification and guidance from BCRC when questions and problems arise related to the administration of this program.
- Immediately notify BCRC of non-compliance problems and issues (known or potential) when they are discovered.

\_\_\_\_\_  
Contractor Participant

\_\_\_\_\_  
Date

\_\_\_\_\_  
BCRC Representative

\_\_\_\_\_  
Date

**ACKNOWLEDGEMENT OF RECEIPT OF  
DOT DRUG AND ALCOHOL POLICY AND TESTING  
PROGRAM FOR  
(INSERT COMPANY NAME)**

I acknowledge that I have received a copy of the DOT Drug and Alcohol Policy for (Insert Company Name) (hereinafter "Company"). I understand that it is my responsibility to read the policy in its entirety. I understand that as an employee of the Company, I am required to abide by the rules and regulations established by this policy, and that I am subject to consequences if I violate the policy. I understand that the policy may change to comply with federal and state laws, and that I may obtain a current copy of the policy at any time during business hours from my employer's designated employer representative (DER). I understand that if I have any questions about this policy, or if I need assistance or resources related to alcohol and/or drug-related, issues or problems, I may take those questions and concerns to my employer's DER.

\_\_\_\_\_  
Name of Employee (Print Name)      Employee's signature

\_\_\_\_\_  
Social Security No.      Date

\_\_\_\_\_  
Signature of Supervisor or DER

*Instructions:*

DOT requires all DOT-covered employees to sign this acknowledgement form. The original of this form will be retained in the employee's file in compliance with DOT regulations.

An employee who refuses to sign this acknowledgement form is disqualified from providing safety-sensitive function for the Company.

**INFORMATION FOR APPLICANTS**  
**FOR DOT-COVERED POSITIONS**  
**(INSERT COMPANY NAME)**

Federal law requires applicants to indicate whether they have previously refused to be tested or received a positive test result on any pre-employment test for any other DOT employer. Please provide this information below. It is a federal offense to falsify this information.

- I have NOT tested positive on a pre-employment drug test for any other DOT employer in the past three (3) years, nor have I refused to be tested. (If so, please sign below, and complete the remainder of this form.)
- Yes, I tested positive (or I refused to be tested) on a pre-employment drug test for another DOT employer in the past three (3) years. (If so, please sign below, and do not continue.)

---

Signature of Applicant

---

Date

---

Each applicant for a DOT-covered position at Employer, after being notified that he/she will be offered a job, must be drug tested, in accordance with federal regulations 49 CFR Part 382. If the test result is positive, or if the applicant refuses to submit to a pre-employment test, the job offer will be withdrawn.

We must have a negative test result in our file before we can request or allow an employee to provide safety-sensitive function for us.

The cost of the initial screening test and the confirmatory test will be paid by (Insert Company Name).

Every applicant who provides a positive test result will have an opportunity to speak with a Medical Review Officer about any recent use of prescription and non-prescription drugs that might explain the positive test result.

An applicant whose test result is positive may, within 72 hours, request a re-test, at his/her own expense. The re-test will be conducted on the same sample as was provided for the initial test, and must be conducted by a different testing laboratory that meets the requirements of certification DOT's testing requirements.

---

I have not tested positive (or refused to be tested) on a DOT pre-employment drug test, at any time in the previous 3 years.

My signature below means that I have read this information, that I have had an opportunity to review a copy of the Company's drug and alcohol testing policy, and that if I am offered a position, I understand that drug and alcohol testing is required by the U.S. Department of Transportation.

---

Signature of Applicant

---

Date

~ Release of Information Form ~  
**49 CFR Part 40 Drug and Alcohol Testing**

**Section I.** To be completed by the new employer, signed by the employee, and transmitted to the previous employer:

Employee Printed or Typed Name: \_\_\_\_\_

Employee SS or ID Number: \_\_\_\_\_

I hereby authorize release of information from my Department of Transportation regulated drug and alcohol testing records by my previous employer, listed in Section I-B, to the employer listed in Section I-A. This release is in accordance with DOT Regulation 49 CFR Part 40, Section 40.25. I understand that information to be released in Section II-A by my previous employer, is limited to the following DOT-regulated testing items:

1. Alcohol tests with a result of 0.04 or higher;
2. Verified positive drug tests;
3. Refusals to be tested;
4. Other violations of DOT agency drug and alcohol testing regulations;
5. Information obtained from previous employers of a drug and alcohol rule violation;
6. Documentation, if any, of completion of the return-to-duty process following a rule violation.

Employee Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**I-A.**

New Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_

Designated Employer Representative: \_\_\_\_\_

**I-B.**

Previous Employer Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone #: \_\_\_\_\_

Designated Employer Representative (if known): \_\_\_\_\_

**Section II. To be completed by the previous employer and transmitted by mail or fax to the new employer:**

**II-A.** In the three years prior to the date of the employee's signature (in Section I), for DOT-regulated testing ~

1. Did the employee have alcohol tests with a result of 0.04 or higher?

YES \_\_\_ NO \_\_\_

2. Did the employee have verified positive drug tests?

YES \_\_\_ NO \_\_\_

3. Did the employee refuse to be tested?

YES \_\_\_ NO \_\_\_

4. Did the employee have other violations of DOT agency drug and alcohol testing regulations?

YES \_\_\_ NO \_\_\_

5. Did a previous employer report a drug and alcohol rule violation to you?

YES \_\_\_ NO \_\_\_

6. If you answered "yes" to any of the above items, did the employee complete the return-to-duty process?

N/A \_\_\_ YES \_\_\_ NO \_\_\_

*NOTE: If you answered "yes" to item 5, you must provide the previous employer's report. If you answered "yes" to item 6, you must also transmit the appropriate return-to-duty documentation (e.g., SAP report(s), follow-up testing record).*

**II-B.**

Name of person providing information in Section II-A:

\_\_\_\_\_

Title: \_\_\_\_\_

Phone #: \_\_\_\_\_

Date: \_\_\_\_\_

**(INSERT COMPANY NAME)**  
**RETURN-TO-DUTY AGREEMENT**  
**FOLLOWING A DOT DRUG OR ALCOHOL VIOLATION**

The Employee, the SAP, the EAP, and Company's DER will review and sign this agreement prior to the first day the Employee returns to DOT safety-sensitive functions.

Name of Employee: \_\_\_\_\_

Date: \_\_\_\_\_

Your continued employment is subject to the following conditions:

1. You are required to comply with the SAP's required program of aftercare, as discussed with you by the SAP, and as provided to the DER. If the SAP determines that you are not complying with the required aftercare program, the SAP will report that to the DER, and it will be considered a violation of our policy. (DOT regulations permit free exchange of this information between the SAP and the employer, without the employee's written authorization).
2. You are subject to a program of follow-up testing, as determined by the SAP. The tests will be unannounced, and spread reasonably throughout the testing period. The testing program is confidential, and neither the SAP nor your employer can divulge the program to you. DOT regulations allow the SAP to extend this follow-up testing program to five years. During this time you continue to be subject to all other DOT tests, including random, post-accident, and reasonable suspicion.
3. Any required personal leave and/or medical leave must conform to our standard policies. You are expected to contact Smith's Human Resource Department regarding those policies and any approvals or arrangements that must be made in advance.

4. A second violation of our DOT Drug and Alcohol Policy will result in termination, as stated in our policy.
5. The DER may meet with you periodically over the next months, to follow up on your reintegration into the workplace, to discuss return to work issues, to give you an opportunity to discuss any problems that you may be experiencing, and to answer any questions or concerns that you may have. Should you have a need to discuss any of these issues at any time, please feel free to contact our DER directly.
6. Your work behavior and performance are expected to remain at a level acceptable to your manager and supervisor, consistent with normal expectations for job performance. This includes attendance, punctuality, productivity, and attitude.  
 You may continue to work here as long as you are in full compliance with all parts of this agreement. Failure to fully comply with any or all of these conditions and terms will result in termination.

Employee	Date
DER	Date
SAP	Date
EAP	Date

Copies to:                      Employee  
    DER  
    SAP  
    EAP  
    Personnel/Human Resources

**DOT's Direct Observation Procedures**  
**Office of Drug and Alcohol Policy and Compliance**  
**U.S. Department of Transportation**

1. DOT's 49 CFR Part 40 directly observed collections are authorized and required only when:
  - The employee attempts to tamper with his or her specimen at the collection site, which includes, but is not limited to, the following:

The specimen temperature is outside the acceptable range; The specimen shows signs of tampering ~ unusual color / odor / characteristic; or The collector finds an item in the employee's pockets or wallet which appears to be brought into the site to contaminate a specimen; or the collector notes conduct suggesting tampering.
  - The Medical Review Officer (MRO) orders the direct observation because:

The employee has no legitimate medical reason for certain atypical laboratory results; or The employee's positive or refusal [adulterated / substituted] test result had to be cancelled because the split specimen test could not be performed (for example, the split was not collected).
  - The test is a Follow-Up test or a Return-to-Duty test.
2. The observer must be the same gender as the employee.
3. If the collector is not the observer, the collector must instruct the observer about the procedures for checking the employee for prosthetic or other devices designed to carry "clean" urine and urine substitutes AND for watching the employee urinate into the collection container.

- The observer requests the employee to raise his or her shirt, blouse or dress / skirt, as appropriate, above the waist, just above the navel; and lower clothing and underpants to mid-thigh and show the observer, by turning around, that the employee does not have such a device.
  
  - If The Employee Has A Device: The observer immediately notifies the collector; the collector stops the collection; and the collector thoroughly documents the circumstances surrounding the event in the remarks section of CCF. The collector notifies the DER. This is a refusal to test.
  
  - If The Employee Does Not Have A Device: The employee is permitted to return clothing to its proper position for the observed collection. The observer must watch the urine go from the employee's body into the collection container. The observer must watch as the employee takes the specimen to the collector. The collector then completes the collection process.
4. Failure of the employee to permit any part of the direct observation procedure is a refusal to test.





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Striving to be Drug Free  
for a Safe Industry



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